1. INTRODUCTION

Databases are an integral part of digital curation whether as part of the toolkit for curating data or as entities to be curated themselves. Ownership of the intellectual property in a database and the associated rights this provides will have a significant effect on what curation acts can be carried out in relation to a database. A clear understanding of what these rights are, when they arise and how they operate will be beneficial for practitioners. The benefits will be gained not only in terms of avoiding infringement of third party rights but in being able to recognise the rights they themselves hold, thereby maximising the potential for access, exploitation and dissemination.

In any given database, copyright, the database right, both or neither may subsist. Confused..? Read on.

2. COPYRIGHT

Copyright is the intellectual property right that protects the expression of ideas or information. There is often confusion around the subsistence of copyright in a database. A database may attract copyright protection but only in certain limited circumstances. Firstly, the structure of a database may be protected if, by reason of the selection or arrangement of the contents, it constitutes the author’s own intellectual creation. Secondly, depending on what is contained in the database, copyright might also exist independently in the contents of the database (for example, a database of images where each of the images would attract its own copyright protection as an artistic work).

Copyright protection arises automatically as soon as the created object has some material form. A person does not need to register or publish the work. The first owner of copyright is ‘the author’ which in the case of a database is the person who creates the database. In summary, the copyright owner has the exclusive right to:

- Copy the work
- Issue copies to the public
- Rent or lend to the public
- Communicate to the public
- Make an adaptation or do any of these other acts in relation to an adaptation

In Europe, the term of copyright in a database is 70 years. The term of copyright in the individual works contained in the database will depend on the category of works in question.

3. THE DATABASE RIGHT

In addition to limited copyright protection, a database may also qualify for a relatively new right called the Database Right. Introduced in 1996, this is a sui generis form of intellectual property protection developed exclusively to protect databases. The database right subsists in a database if there has been a substantial investment in obtaining, verifying or presenting the contents of the database (even if the contents and/or structure of the database are not original and therefore do not attract copyright). Investment is construed widely and covers financial, human and technical resources. Like copyright, the database right arises automatically.

The legislation provides that the first owner of the database right is the ‘maker’ of a database. The maker is the person who takes the initiative in obtaining, verifying or presenting the contents of a database and assumes the risk of investing in the same. The database right enables the owner to prevent others from extracting and/or re-utilising all or a substantial part of the contents of their database. What constitutes a ‘substantial part’ is still unclear but it is known that it may be tested both quantitatively and qualitatively. It should also be noted that the repeated and systematic
The right subsists for 15 years from the creation of the database, but if the database is published in this time, then the term is 15 years from publication. Although this term is much shorter than its copyright equivalent there is some uncertainty surrounding it. The legislation that implemented the database right states that there is renewal of the term of the right each time there is a "substantial change" to the contents of the database. Many databases are dynamic. It has been suggested that if a database is continually changed and updated the right could last indefinitely.

A key concern in relation to the database right has been a perception that it seems close to the grant of an intellectual property right in data and information per se, allowing only a limited exception for extraction (but not re-utilisation) of data for illustration for teaching or research and not for any commercial purpose. The result is that those involved in curation activity may suffer restrictions on access to, and ability to re-use the raw data necessary for scientific progress.

"Numerous scientists have pointed out the irony that, at the historical moment when we have the technologies to permit worldwide availability and distributed processing of scientific data, legal restrictions on transfer make it harder to connect the dots."

(http://sciencecommons.org/about/towards.html)

4. LIVE TOPICS

There are many unresolved or controversial issues in relation to the IPR in databases. These include:

- Ownership in instances of employee creation
- The role of contract/licensing in overriding IP legislation
- The effect of multiple authorship (very common in database creation)
- Ownership where much of the database content has been assimilated from other databases (also very common in database creation)
- What constitutes 'substantial' in relation to the database right
- What constitutes 'publication' of a database
- The potential term of the database right in the case of dynamic databases
- Ownership where the database is created as part of an externally funded project

The DCC is currently investigating a number of these issues (see ADDITIONAL RESOURCES).

5. CONSIDERATIONS

- Database creators should assess which databases they have rights in and whether they want people to be able to use them over time.
  Recommendation: Attaching a users' licence will make it clearer that the resource is available for use by others.
- Users should consider which databases contain information that they wish to access and/or reuse. Are they protected by copyright or the database right?
  Recommendation: If the answer is yes, users should check if the rightsholder has entered into a licence allowing certain uses. If not they may request specific permission from the rightsholder.
- Some databases may be created in the course of employment or by multiple authors/contributors. In this situation clarity should be sought on exactly who was involved and who has rights in the database.
  Recommendation: Multiple authorship and the specific rights associated with each author should be confirmed in writing as this will make things much simpler if and when a rights transfer or licence agreement is entered into.
A rightsholder may want to protect certain elements of a database and make others freely available in the public domain for re-use. **Recommendation:** The rightsholder should make sure they are clear about what rights they have and which ones they are willing to forgo and then draw up a licence accordingly.

It is possible for a rightsholder to adopt a 'some rights reserved' position allowing certain uses and not others. For example they may want to allow others to copy or modify for the purpose of preservation but not for commercial use. **Recommendation:** Database creators should consider how long they need the contents of their databases to remain accessible for and clearly state what rights exist with regards to preservation actions that may be required to preserve usability of the database over time.

### 6. ADDITIONAL RESOURCES

- **The DCC Blawg** provides access to information about the latest legal news and events relating to digital curation.
- Intellectual Property Rights Helpdesk (EC initiative) [Guide on employees’ creations](http://www.cec.eu.int/123456789/123456789/docs/23456/234567899/en/78999en.pdf) (see Section 4f)
- NIPC [IP/IT-Update pages on Database Rights](http://www.nipc.com)
- Dr C. Waelde and M. McGinley (2005). "Public Domain; Public Interest; Public Funding: focussing on the 'three Ps' in scientific research"
- Dr C. Waelde and M. McGinley (2007). "Designing a licensing strategy for sharing and re-use of geospatial data in the academic sector"
- [Science Commons Databases FAQ](http://www.sciencecommons.org)
- [Upcoming JISC legal paper on the database right](http://www.jisc.ac.uk/)
- [UK database right legislation - Copyright and Rights in Databases Regulations 1997](http://www.legislation.gov.uk)
- [The Open Knowledge Foundation's Guide to Open Data Licensing](http://www.okfn.org)
- [AHDS Information Paper - "Copyright and Other Rights Issues in Digitisation"](http://www.hss.ac.uk/ahds)