

Computer Databases & the Law

This document is an extract from the book *IPR & Cyberspace – Indian Perspective* authored by Rohas Nagpal. This book is available as courseware for the **Diploma in Cyber Law** and **PG Program in Cyber Law** conducted by Asian School of Cyber Laws



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4. Computer Databases & the Law

According to section 43 of the Information Technology Act (IT Act), a "computer data base" means

a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalised manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network.

Essential elements of “computer database”

A. Computer database is a representation of

1. information,
2. knowledge,
3. facts,
4. concepts or
5. instructions

B. This representation can be in

1. text,
2. image,
3. audio,
4. video

C. This representation must be such as

1. being prepared in a formalized manner or
2. has been prepared in a formalized manner or
3. has been produced by a computer, computer system or computer network

D. Computer database is intended for use in a computer, computer system or computer network.

Illustration 1

Sameer has prepared an online database of all Hindi movies. This database is searchable by movie name, director name, lead actor etc.

Illustration 2

The Noodle Ltd website contains several password protected web-pages. The usernames and passwords of all authorized users are contained in a Microsoft Access database.

Illustration 3

Noodle Telecom Services Ltd creates a CD ROM containing the names and phone numbers of all their subscribers.





Illustration 4

Noodle School has an automated system for student administration. This system is powered by a database that contains detailed student information.

One table of this database is titled “basic_info” and contains the following categories of information:

Roll no.	Name	Address	Phone	Email

Another table is titled “student_marks” and contains the following categories of information:

Roll no.	Test 1	Test 2	Test 3	Final

When a student’s report card is to be prepared, the system automatically takes the marks from the “student_marks” table and the name and contact information from the “basic_details” table.

It then collates the information and prepares the final report card.

Illustration 5

Noodle Law Firm has prepared a computerized database of all their client companies along with the relevant contact persons.

An interesting element of computer databases is that copyright can exist in **two levels**.

Firstly, the information contained in the database may be the subject of copyright e.g. a list of computer vulnerabilities and the relevant security measures.

Secondly, the actual representation of this information may be the subject of copyright protection e.g. the above mentioned information in a searchable online database.

Let us take a simple illustration to see this protection at “two levels”.

Illustration

Sanya is a computer security professional. Based upon years of experience in this field, she prepares three large lists:

- i. A list of vulnerabilities in major operating systems.
- ii. A list outlining the ways in which these vulnerabilities can be exploited.
- iii. A list outlining the security measures to plug these vulnerabilities.

She then enters this information into a Microsoft Access database. This database is searchable using Sanya’s website. Registered users of her website can enter the name of their operating system. The website then displays the list of vulnerabilities, relevant exploits and security measures.

The three lists that Sanya has prepared can be the subject of copyright protection. The online database containing the information in the lists can also be the subject of copyright protection.





Diljeet Titus case

130(2006)DLT330, 2006(32)PTC609(Del)

This case involved two counter suits filed by a group of legal professionals. **Diljeet Titus** (the plaintiff) is the proprietor of Titus and Co. His colleagues Alfred Adebare, Seema Jhingan, Alishan Naqvee and Dimpy Mohanty (hereinafter referred to as **defendants**) had left Titus and Co.

While leaving Titus and Co, the defendants had taken with them **computer data** (from the computers of Titus and Co) relating to:

1. proprietary drafts of precedents, agreements, forms, presentation, petitions, confidential documents, legal opinions, legal action plans, and
2. computerized database containing client information, proprietary client list, proprietary potential client list and other related information.

Titus claimed to have copyright over the above.

The defendants claimed to be the owners of the copyright in what they had created. It was their contention that the creation was independent and was created by advising and counseling the clients.

The defendants sought a decree of declaration that they were the owners of the copyright in what they had created and sought a permanent injunction against Mr. Titus and his firm from using and parting with the same.

The question was whether there was exclusive right of any of the parties in what they had created or it was a joint right.

Background of the case

Just a couple of days before leaving Titus and Co, one of the defendants visited the Titus office (after office hours). He connected a CD-Writer to an office computer which was part of the office computer network. He then copied 7.2 GB of confidential data onto CDs and emailed some data to himself and other defendants. Additionally, the defendant took-

1. proprietary legal drafts
2. CDs (licensed in the name of Titus and Co.) of foreign judgements, precedents, conveyances and forms
3. 3,000 visiting cards

Following a criminal complaint, the police raided the residence-cum-office of the defendant and seized hard disks from four computers found there. The confidential data referred to above was found in the said hard disks.

Points put forth by the Plaintiff

Mr. Titus put forth the following points:

1. All the defendants were in full time employment of Mr. Titus.
2. The billing to the clients was in the name of Mr. Titus.
3. The defendants were paid performance linked remuneration and were under the discipline and regime of Mr. Titus which included maintaining daily time sheets and adhering to the disciplines of the plaintiff's law firm.
4. There was no separate clientele of the defendants and the defendants provided professional services only to Mr. Titus and never independently represented any client of Mr. Titus.
5. The assignment of the work was done by Mr. Titus at his sole discretion.
6. The productivity of the defendants was determined by actual number of billable hours they had worked on a particular matter for a client of the plaintiff.
7. Under Mr. Titus' guidance and supervision the defendants and others developed extremely confidential electronic records, documents, data and information utilizing the computer system at Mr. Titus's office.

Points put forth by the Defendants

The Defendants claimed to be partners of Titus and Co. They stated that they had independently created most of the legal drafts and databases and as such were owners of the copyright in the same. The defendants put forth the following points:

1. They had a fee sharing agreement with Titus and Co.
2. They independently exercised professional skills and knowledge.
3. They had sole discretion to advise and serve clients without any supervision including that of Mr. Titus.
4. Mr. Titus' interaction on a daily basis with the clients was minimal and insignificant.
5. The time sheets were maintained only for billing purposes.
6. There was no fixed salary or remuneration for the defendants.





Findings of the Court

1. If there are certain aspects in common domain, it is open for all and sundry to utilize the same. It may not be disputed that there are books on conveyancing giving formats of agreements and checklists. These are available for use by all. What is, however, important is the treatment meted out to such standard format while applying it for assistance to any particular client. It is the expertise of a person or a firm in handling such matters which persuades a client to approach them in preference to others.
2. If everything was in common domain and one had to only punch information, there would be no occasion for clients to engage services of advocates for such purposes and pay them large fees. There is a utility, and that too of great importance, of how a particular format is applied to the needs of a client which gives importance to the whole exercise.
3. If an associate or an advocate whatever be the terminology by which it is called works for another advocate and his clients he certainly owes a duty and obligation not only to maintain the confidentiality between the client and his advocate but also not to surreptitiously take away what is the final product of the effort put in to which he also may be a party. The report filed by the Investigating Officer in the criminal case thus show prima facie that there is complete copying by the defendants of the material of the plaintiff which has been taken away. Such an exercise has become easier because of the development of technology where most of such data is stored on computers and can be transmitted away were a person to misuse the trust and authority vested in him in being in control of utilization of such material.
4. The information about clients and solicitors also to some extent is in public domain where it appears in printed directories and everyone can use the same. However, as an advocate or a law firm develops its work and relationship with other law firms or clients, the details about the particular persons in such law firms handling certain nature of work or as to which officer in a client's company is material for getting the work becomes of great importance. Such a list is of great importance to an advocate or a law firm. The mere fact that defendants would have done work for such clients while being associated with the plaintiff would not give them the right to reproduce the list and take it away. It may again be emphasized that it is possible that a part of this information is retained in the memory of the defendants and if that is utilized no grievance can be made in this behalf. This would, however, be different from a copy made of the list.
5. The legal pronouncements also make it clear that the copyright exists not only in what is drafted and created but also in list of clients and addresses specially designed by an advocate or a law

firm. The exposition in the commentary of David Bainbridge on Software Copyright Law leaves no manner of doubt where it is emphasized that copyright can exist at two levels including the level of the database itself as a form of work in its own right. This has been cited with approval in Berlington Hope Shopping Private Limited case (Supra) where it has been further emphasized that customers' list and information consisting of mail order, catalogues itself amounts to confidential information.

Conclusion

The Court concluded that Titus and Co was a sole proprietorship concern and not a partnership. It held that the defendants did not have a right over the subject matter of the suit.





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