

Software Patents and Database Right: Some Facts

Software Patents

In the UK and Europe, only some types of computer programs are patentable, unlike in the United States where computer programs are generally patentable. Computer programs are currently protected by copyright laws (see copyright information fact sheet for more information about copyright). Protection of software in this way stops a computer program being copied *verbatim* but doesn't stop another individual from creating a program that has exactly the same function. However, creating such a program from scratch is likely to take a considerable investment of time and effort.

Software (also referred to as Computer-Implemented Inventions or **CII's**) can generally be patented in European countries provided the software produces a "technical effect" or "technical contribution". Examples of such patents include software for the progress bars seen on computer screens and programmes allowing payment by credit card. In the USA the situation is different to that in Europe as patenting of software is freely allowed and companies such as Microsoft own a large number of patents (as of March 2006, Microsoft alone owned 5,000 patents) including patents on the file formats for "Word" documents and for the use of short, long or double clicks to launch different applications on "limited resource computing devices" such as PDA's (Personal Digital Assistants) and mobile phones. There has been much opposition to software patents being introduced within the EU as some feel that it would produce a patent situation similar to that in America which some have argued has made independent software development "*unworkable*" (Rasmus Lerdof, the infrastructure architect at Yahoo and creator of the PHP Web scripting language). The benefits of harmonising the rules relating to software patents in Europe would include greater certainty for the public and industry and reducing the variation in practice of the different national patent offices and the European Patent Office.

Unless stated otherwise in your contract or through a separate agreement, any IP pertaining to software that you have developed in the course of your employment will be owned by your employer and not by yourself

Database Right

Databases are protected by a right similar to copyright which is referred to as database right. Like copyright, database right is an automatic right and so no registration is required for it to apply. However, the database must be the result of substantial investment (time, money) and the right can apply to both paper and electronic databases. Database right lasts for 15 years from the making or the publication of the database (whichever is the sooner) and protects the extraction and re-use of the contents of the database. For example, database right can be infringed simply by rearranging the contents of a database. If the database is significantly altered during this 15 year period, or other significant investments put into it, then it may re-qualify for another 15 year period of protection. Databases can also be covered by copyright (if there is originality in the selection or arrangement of the contents) and it is not uncommon for databases to be covered by both copyright and database right. Unless stated in your contract or through a separate agreement, database rights will be owned by your employer and not by yourself. Whilst you are in their employment you may freely use the database, but if you leave then you will need to seek permission to carry on using the database but may not use it for any commercial purpose or distribute it to third parties. If the database is a clinical one, then it is important that if third-parties are granted permission to use it and that all patient information is removed from it (due to the requirements of the data protection act). Like copyright, database right can be sold or assigned.

Useful Links:

The UK Intellectual Property Office: <http://www.ipo.gov.uk>

UK Resource on Software Patents: <http://www.softwarepatents.co.uk>

UK Intellectual Property Online: http://www.intellectual-property.gov.uk/resources/other_ip_rights/database_right.htm

Software Patents and Database Right: FAQs

I was a co-creator of a database with a colleague who has now gone to work for another NHS trust. The database is still in use here but has been significantly modified since he left and he wants to use it at his new trust. What are his rights?

Your former colleague would be able to use the database in the format in which it was when he left your trust for personal work and research with permission from his former employer, although he must beware the rules regarding data protection and patient records. He cannot however use the database in any form for commercial purposes, install it for widespread use around his new trust or develop it further without approaching his former employer for a licence to do so.

I created a clinical database which I published a couple of years ago. Yesterday, I came across a newly published database in the same field which had the same fields and arrangement of the contents as mine. Have any of my rights been infringed and what can I do about it?

It is likely that your copyright has been infringed if the arrangement of the contents of your database showed originality. In this case you should contact either your IP lead or Medipex for clarification of the situation before proceeding any further

I have created a piece of medical software which I have made freely available on the internet. I have been contacted by an American company who have alleged that I have infringed one of their patents. What should I do?

If the software in question is hosted on a website in such a way that it is not available in the US, then it may be arguable that you have not infringed a US patent. However, the mere location of the computer hosting the software may not be enough to preclude infringement of US patent rights. If the software is protected by a European patent, because it relates to a technical invention, then there may be a risk that the patent has been infringed. However, because it is on the internet then it is likely to be available in the US, or to have effect in the US, which is where any more general patent is likely to exist. In any cases such as these you should immediately get in contact with Medipex.

A couple of years ago I created a piece of software and now someone else has produced a piece of software which does exactly the same function. Have any of my rights been violated?

Unless they have directly copied a substantial part of the code of your software then it is unlikely that any of your rights have been violated. If a substantial part of your code has been copied, then your copyright may have been breached and you should contact either your IP lead or Medipex.

I have created a clinical database which I gave a copy of to a colleague working in the same discipline at another trust. Recently, I came across a newsletter from that trust saying that she has just won an innovation award for the database. Upon further investigation it would appear that all she has done is to re-arrange the contents. Have any of my rights been infringed and do I have any claim on the award?

So long as you created the database at some point in the last 15 years, then in this case, it is likely that database right has been infringed because the contents of the database have been re-arranged. You should inform your IP lead and Medipex of the situation.

I have created some electronic training materials which are distributed on a CD-ROM but which use MPEG-2 files. I know that these files are protected by patents but do I have to get permission to use this file format in my materials?

There is no need to get permission to use these files in your training materials; the patents only protect the algorithms in the software and the way the software works from being copied, not the actual use of the files.

I have invented a novel computer algorithm for use in medical imaging. Can I patent it so that it is protected?

Under current UK and European law you may be able to patent the algorithm in the UK and elsewhere in Europe if there is an improvement in the technical quality of the image (although this is a difficult area of law with grey boundaries), but copyright law would protect you against anyone copying it. However, you should be able to patent the software in the USA if you so wished.

Further Information or Advice:

Please contact Medipex on the contact details given below

This fact sheet has been produced in conjunction with Urquhart-Dykes and Lord, Patent Attorneys (Tel: 0113 245 2388; e-mail: email@udl.co.uk). It is provided for the purposes of information only and is not intended as a comprehensive guide to software patents and database right.. In any cases where you have concerns or require advice regarding intellectual property matters, you should get in touch with your IP lead or Medipex.

