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Databases: which protections are granted?

The latest contributions from French jurisprudence on the protection of databases

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Databases provide a rich and valuable source of information which is essential to companies, and which should consequently be appropriately protected by intellectual property law.

Databases are defined as a collection of independent pieces of work, data or other elements, which are arranged in a systematic or methodical manner, and individually accessible by electronic or any other means.

These are more typically **protected** by:

- **Copyright** on the condition that the structure of the database, i.e. the arrangement and/or selection of the data is the result of a process of intellectual creation and can therefore considered as original.

- **The *sui generis* right of the creators of databases** which protects the content of the database when the constitution, verification, or presentation thereof attests to a substantial investment being made either financially, materially, or by persons. Such investment must concern only the **collection of data** and not the creation of it. Based on this specific protection, the creator of a database can object to the extraction (transfer of content) and/or the reuse (making available to the public) of the database content by a third party.

Copyright therefore aims to protect **the structure of the database**, whereas the ***sui generis* right** can protect exclusively **the content of the database**. These two protections are therefore distinctly independent and autonomous and the **cumulation of the two is possible as long as the conditions provided by the texts are satisfied.**

More than 25 years after the adoption of the European Directive on the legal protection of databases (Directive 96/9/EC of March 11, 1996), introducing the specific protection of *sui generis*, there have been few rulings on the subject.

In a recent case however, clarifications and precisions were brought to the matter following a ruling by France's Court of Cassation on 5 October 2022, (*Cour de cassation*, 1st Civil Chamber, n°21-16.307).

The case in question took place between the company operating the private individual ads website leboncoin.fr and the company operating Entreparticuliers.com. Operating in a similar activity to leboncoin.fr, Entreparticuliers.com offered a paying real estate ads service to individuals. As part of its activity, the latter called on a subcontractor to collect and transmit all new real estate ads published by private individuals on the internet. The consequence of this was that through the subcontractor, Entreparticuliers.com was in fact accused of extracting and reusing the database initially created by the leboncoin.fr website.

Three points of consideration are worth remembering from the decision rendered last October:

- The Court of Cassation **clarifies the measures of protection in place for databases which are constantly renewed** in their content, by confirming the position of the Paris Court of Appeal. The latter considers that **a person who claims to be the creator of a database** where the content is constantly renewed must be able to demonstrate that any new substantial investment made be it financial, material or human, can alone give him or her the status of creator, or give him or her the benefit of *sui generis* protection.

It should be underlined that if such renewed content does benefit from the protection of *sui generis* protection, this will result in a new term of legal protection of 15 years, covering both the renewed content and the original contents of the database.

- Moreover, the Court of Cassation **recognizes that where significant advertising and communication expenses have been incurred and** have contributed to attracting advertisers and obtaining their ads, this **may be considered as substantial investment in the constitution of the content of the database,** thereby equally allowing for protection under the *sui generis* right.

- Finally, the Court **established the possibility that where sub-databases have received specific and substantial investments, they could be given protection independently of the main database**. As a case in point, the Court of Cassation confirmed the position of the Court of Appeal, which considered that the "real estate" sub-database of leboncoin.fr had been subject to sufficient investment in itself and that Entreparticuliers.com had extracted and reused a qualitatively substantial part of the content of the sub-database, which had its own independent value and was different from the general database (i.e., the data related to real estate).

It should be noted that in a decision of 3 June 2021, the Court of Justice of the European Union (CJEU) considered that the extraction and reusing of the contents of a database could only be prohibited under the *sui generis* right of its creator on an additional condition not stipulated in the texts, namely where *"said extractions and reusing of content deprived the creator of revenues that would help the latter to recover the costs related to his or her investment*" (CJEU, 3 June 2021, aff C-762/19, CV-Online Latvia SIA c/ Melons SIA).

It will therefore be interesting to see how French jurisprudence positions itself regarding this additional condition specifically established by the CJEU, and whether it will indeed be applied by our jurisdictions.

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