



General Information

COPYRIGHT CASE LAW: A MAP IS A DATABASE

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It is a long-established principle that maps (including nautical charts) benefits from the protection of artistic and literary works under the Berne Convention. Enforcing copyright was relatively straightforward in the paper world. The emergence and uptake of digital maps, such as Electronic Navigational Chart, make it much more difficult to monitor the unauthorized use and reproduction of elements of information contained in the relevant databases. Noting that databases should be accorded an appropriate level of protection so as to create an attractive environment for investment while safeguarding users' interests, the European Parliament and the Council of the European Union established Directive 96/9/EC of 11 March 1996 on the legal protection of databases. The Directive harmonizes the provision of copyright protection for the intellectual creation involved in the selection and arrangement of materials and introduces a sui generis right for the creators of databases which do not qualify for copyright, in order to protect the investment (financial and in terms of human resources, effort and energy) in the obtaining, verification or presentation of the contents of a database.

Almost twenty years later, it was an ironic twist of events that on 29 October 2015, a ruling of the Court of Justice of the European Union (CJEU) would conclude that extracting information from a paper topographic map is subject to the protection provided by the database directive.

The ruling originated from a dispute between an Austrian publisher and the *Land* (State) of Bavaria, Germany. The Land of Bavaria considered that the publisher made unlawful use of its topographic maps and underlying data in order to produce the material for its own maps. In that specific case, the publisher used scanning techniques to extract geographical information about tracks appropriate for cyclists, mountain bikers and inline skaters from the Land of Bavaria's topographic maps.

As the case made its way through the German court system, the Land of Bavaria referred to the rights laid down by the database directive and the German Federal Court of Justice requested guidance from the CJEU on whether topographic maps could be considered as databases.

In its ruling [1], the CJEU notes in particular:

The analog nature of the topographic maps at issue in the main proceedings, which required them to be scanned using a scanner so that they could be utilised individually using a graphics programme does not preclude them from being recognised as a 'database' within the meaning of that directive.



General Information

It is settled case-law, first of all, that not only an individual piece of information, but also a combination of pieces of information can constitute 'independent material' within the meaning of Article 1(2) of Directive 96/9 [2].

(...) the Court has held that the informative value of material from a collection is not affected within the meaning of that case-law if it has an autonomous informative value after being extracted from the collection concerned.

In addition to the difficulties involved in determining a principal intended use or typical user of a collection such as a topographic map, the application of such a criterion for the assessment of the autonomous informative value of the materials making up a collection would run counter to the intention of the EU legislature to give broad scope to the definition of the term 'database'.

Consequently, the conclusion of the Court is:

Article 1(2) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases must be interpreted as meaning that geographical information extracted from a topographic map by a third party so that that information may be used to produce and market another map retains, following its extraction, sufficient informative value to be classified as 'independent materials' of a 'database' within the meaning of that provision.

This means that the elements of information contained in a map are protected under the database directive, independently of the copyright protection of the map itself.

Hydrographic Offices should welcome a ruling that adapts the traditional copyright protection of maps to the digital era.

[1] <http://curia.europa.eu/juris/document/document.jsf?text=&docid=170741&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1>

[2] Article 1(2) of Directive 96/9: *For the purposes of this Directive, 'database' shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.*