



**ASSOCIATION OF EUROPEAN
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in Russia**

Legal protection of databases and the new database right in Russia



*“Software contracts and Part 4 of the
Civil Code: what foreign companies working with Russian
software developers should know”*

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Part IV came into effect on 01 January 2008

- *Almost all IP laws including law “On copyright and related rights” and law “On legal protection of computer programs and databases” are repealed*
- *Part IV deals with all IP issues including databases*
- *Part IV establishes a “two-tier” system for protection of databases*

Database – a collection of independent data (articles, legal texts, calculations, judicial decisions and other similar materials) represented in an objective form that are arranged in such a way that they can be found and processed by a computer

- Database is protected by copyright if by reason of selection or arrangement of contents it represents result of creative activity
- Non original databases are not protected by copyright (i.e. telephone directories)
- No registration or other formalities are necessary as a precondition of protection but database can be registered with Rospatent

- ✓ Database may consist of elements protected by copyright (i.e. Encyclopedia) or not protected by copyright (judicial decisions, etc)
- ✓ Copyright does not protect ideas, concepts, methods, processes, facts, etc
- ✓ Copyright protects selection and arrangement but not contents of database
- ✓ Copyright does not prevent others from collecting and arranging the same materials

Agreements:

✓ Assignment

✓ License

If a database has been registered with Rospatent assignment agreement for this database should be registered with Rospatent

- One of the related rights
- First time in Russia!!!
- See articles 1333-1336 of Part IV
- See EC Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases and “Sui generis” protection of database makers

The maker of a database - a legal entity or an individual who organizes the creation of a database and the work on the obtaining (collection), processing and arrangement of its contents

Database right belongs to the database maker if the creation of a database involves **substantial financial, economic, logistical or other expenses**

Q How to prove substantial expenses?

In the absence of any proof to the contrary, the creation of a database is considered to involve substantial expenses if the database contains at least 10,000 independent pieces of information (elements)

The database maker has the following rights:

- ✓ Exclusive right of a database maker and
- ✓ The right to indicate his name or its trade name on the copies (packaging) of a database

Exclusive right - Extraction and Re-utilization of database contents in any form

Extraction - transfer of all or a substantial part of the contents of a database to another medium by means of any technical devices and in any form

The database right applies regardless of whether the database itself or its components enjoys copyright protection

The database right also protects non-original databases

Duration - 15 years starting from the first of January in the year following the year of creation (or the year when the database was made available to the public)

Term of protection is automatically renewed when any updates are made to the database

A lawful user of the database may without consent of the right holder:

- Extract and re-utilize database contents for personal, scientific, educational and other non-commercial purposes provided such actions do not go beyond necessary scope of the purpose of such use and to the extent copyright of the database maker and other persons is not infringed

- The EC Directive prohibits the repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database if such acts conflict with a normal exploitation of that database or unreasonably prejudice the legitimate interests of the maker of the database
- Under the EC Directive only substantial change evaluated qualitatively or quantitatively, to the contents of the database shall result in automatic renewal of the term of protection

- Will databases that contain less than 10 000 (ten thousand) elements be protected and if so how the makers can prove substantial qualitative or quantitative investments?
- Does the new exclusive right allow to prohibit the repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database?
- How substantial the renewal should be for a database to qualify for a new term of protection? Will any change suffice (even update of two or three elements) or the maker will have to prove that the changes were substantial?
- “Spin-off” doctrine in Russia?

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Thank you for your attention!