

### Recap of Database Protection

Consider 3 components of a database:

1. Data entries – the information items contained within the database
2. Data collection – obtaining, verifying, inputting and encoding the data entries
3. Data presentation – selection criteria, organization and appearance (visual layout).

In the case of a digital database, there would be a 4<sup>th</sup> component:

4. Data operations – the software program (or modules) that underlies the database, facilitating sorting, relational operations, extraction, and other manipulation.

Which of these is protected by copyright? Let's use an actual database for illustration, for instance a hardcopy West Publishing Co. Reporter or Digest.

1. Individual data – If facts (e.g., date, citation), then excluded by §102(b). If expression created by gov't (decision, statute), no copyright subsists. §105. But if created by West (case summary, headnote), then that expression is copyrighted.
2. Data collection – assembling the individual entries into a coherent form. West expends considerable effort (“sweat of the brow”) in obtaining, verifying and inputting (typesetting) the cases and statutes into the database. These efforts are not protected by US © law, but would be under the EU Database Directive (EUDD).\*
3. Data presentation – Selection: if trivial selection criteria (e.g., all cases), then insufficient creativity under *Feist*. Organization: common ordering, such as chronological or alphabetical, lacks sufficient originality; but topical organization might since some intellectual processing is required to categorize. Appearance: West's tabular layout lacks creativity. Conclusion: only a “thin” copyright is available to compilations of this sort. Case reporters and code books may lack sufficient originality for protection; topical reporters (e.g., CCH) probably qualify.

If West now converts its database into electronic form (Westlaw), in addition to the above, it relies upon software as follows:

4. Data operations – digitization (compiling), storage (memory calls), manipulation (concordance), searching (boolean operations), encoding (e.g., hyperlinks), analysis (functional use of the data), delivery of search results (key terms, full text).

Software is protected by copyright. §117; TRIPs Art. 10. But since © protects only the particular expression of computer instructions, and there may be multiple ways to express the same computational functions, developers often patent their software as well. 35 USC §101; TRIPs Art. 27. That protects the underlying methodology or computer function irrespective of the language/code used.

The visual appearance of a digital database (graphical user interface – GUI) is part of data presentation (component #3) and would probably qualify for © protection as a compilation.

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\* West, a unit of Thomson, Inc., is a Canadian company. Canada, like the US, does not offer *sui generis* protection for databases. Lexis, in contrast, is a unit of Reed-Elsevier, a British-Dutch company, and protected by the EUDD