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EXERCISE OF THE SUBJECTIVE RIGHT ON DATA COMPILATION (DATABASE): PROBLEM ASPECTS

To be protected by copyright, the database must meet the requirements that are generally imposed on all copyright objects: 1) be creative; 2) be the result of intellectual, creative activity; 3) to exist in an objective form, that is, to be expressed externally in such a way as to be available for perception by other persons; 4) be original.

At the same time, neither in international normative acts, nor in book 4 of the Civil Code of Ukraine (hereinafter referred to as the Civil Code of Ukraine) and special legislation, the requirement of originality is not explicitly stated. Originality is considered as an expression of a certain internal connection that exists between the subject (author) and the object (work). According to Art. 1 of the Law of Ukraine “On Copyright and Related Rights” the author is a natural person whose creative work created the work. Thus, originality is an essential characteristic and, at the same time, a criterion for the protectionability of a work due to the presumption of the method of its creation – the intellectual and creative efforts of a natural person.

The criterion of originality of the database can be applied only to the selection or arrangement of data or materials (clause 3, part 1, article 433 of the Civil Code of Ukraine) or the selection and arrangement of works, data or any other independent information (article 1 of the law of Ukraine “On Copyright and Related rights”).

From the point of view of copyright, a database is a composite (complex) work. This circumstance causes two important consequences:

a) firstly, objects (work, data or any other independent information). At the same time, it is necessary to take into account the possibility of the existence of independent rights to individual objects (work, data or any other independent information). Rights to the database are independent of rights to the data or materials included in it. Termination of rights to all or part of such data or materials (works or any other independent information) does not mean termination of rights to the database and vice versa. The owner of the exclusive right to the database is obliged, when using the database, to respect the rights of

the persons who own the rights to the specified materials (works, data or any other independent information);

b) secondly, it determines the scope of the copyright on the database as a whole. With respect to a database, copyright applies to the selection (selection), arrangement or arrangement of data or materials (works or any other independent information). The author must select data or materials for the database from a large array in a special way and/or show some originality regarding the arrangement of materials within the database. It is in this that the creative nature of the database author's activity should be manifested. The nature of the data and materials included in the database is not important for the evaluation of this circumstance.

The presence or absence of a creative element from a legal point of view does not matter for the emergence of the right of a database compiler (*sui generis*), for him, the "creative" but "economic" characteristic of a person's activity is important. The criterion of creativity is not used to assess the protectionability of the database in relation to the right of the compiler (producer) of the database (*sui generis*). Instead, another criterion is introduced: a significant contribution (investment) to its creation, which can be determined quantitatively and qualitatively, as well as certain requirements for the selection (selection), location and arrangement of materials in the database.

The need to prove a significant contribution rests with the compiler (producer) of the database created as a result of such a contribution. As possible methods of determining "substantial contribution", the author suggests either using the principle of British law, "what is worth copying is worth protecting", or by evaluating a significant part of the newly created database, which arose as a result of changing the existing database.

The first principle means that when the database created by the work of the compiler (producer) through selection and arrangement is worth copying (copies are copied and copies of the data compilation (database) are sold on the market), then the contribution of the compiler (producer) to the creation of the database can be recognized essential.

The second principle is based on the fact that it is possible to qualify any part of the database as essential on the basis that its unauthorized use can cause significant potential or actual damages to the compiler (producer) of the database.

When determining significant costs, costs for: acquisition of materials (works, data or any other independent information) for the purpose of including them in the database will be taken into account; verification of materials (works, data or any other independent information), their clarification and addition; any processing of materials (works, data or any other independent information), including changing the presentation format of materials (works, data or any other independent information), translation into another language,

etc.; submission of materials (works, data or any other independent information), i.e. proofreading, editorial, technical, design work, inclusion of comments, explanations, instructions, etc.

In addition, it is necessary to take into account that the assessment of investments in the creation of a database refers to costs both for the database as a whole and for individual materials (works, data or any other independent information).

The compiler (producer) of the database is the person who organized the creation of the database and work with the selection (selection), location and arrangement of its constituent materials (works, data, or any other independent information). It does not matter who actually carried out the work of selection (selection), arrangement and arrangement of its constituent materials (works, data, or any other independent information), their processing, database formation, etc., it is important only who organized it, more precisely, on whose behalf the database is created.

The compiler (producer) of the database can be natural persons who are citizens of Ukraine or who are not its citizens, but have a permanent place of residence on the territory of Ukraine, or legal entities that have a seat on the territory of Ukraine (article 3 of the Law of Ukraine “On Copyright and Related rights”).

The author of the database has such personal non-property rights as the right of authorship, the right to the author’s name, the right to inviolability of the database, the right to make the database public. Each of these actions must be authorized by the author. The definition of the object is ensured by granting the author the right to the inviolability of the work, the definition of the object by introducing the right of authorship and the right to the name, finally, the author gets the opportunity to control the availability of the work to society by means of the right of publication and the right of withdrawal.

In turn, the exclusive copyright on a database means the right to use this object by its author (or the person who owns the copyright), as well as a general prohibition on all other persons to carry out certain actions in relation to this object and to ensure the possibility for a person, which owns the copyright, allow others to perform certain actions in relation to the database. The main ways of using the database have been studied.