

SKY CASE GIVES HOPE TO DATABASE OWNERS

In October a judge in the High Court gave judgement against various associated businesses in a case brought by Sky claiming that its “database right” had been infringed.

Since 2004 when the European Court of Justice gave a judgement in the British Horseracing Board v William Hill case it had been believed that the new database right introduced in 1997 was largely a “dead duck.” This case gives new hope to database owners.

The European Court had ruled that for a database to be protectable (and thus give its owner the right to stop unauthorised extraction or re-use of the data) substantial investment needed to have been made in its creation or verification and that investment spent on creating the content did not count. As many databases are of data created by the database owner that caused a problem.

In the Sky case the database in issue was their customer database. The court held that the creation of the data (by call centres and other customer contacts) was distinct from the creation of the data base into which such data was subsequently entered.

That distinction is remarkably fine and it is possible that the judge’s decision was influenced by the fact that it would seem the infringing businesses obtained access to the database dishonestly. In the British Horseracing Board case William Hill had received the data honestly and the only question was over how it was used.

In the Sky case the infringers were using the database (and the Sky trademark) to contact Sky customers and sell them breakdown cover for their Sky equipment in competition with Sky’s authorised supplier. The judge held that the infringers also misled customers into believing that they were part of, or authorised by Sky.

Most businesses now hold client databases. The lessons from the Sky case would seem to be:

- Keep the database secure. Prevention is better than cure.
- Make it protectable by Database Right---separate data collection from Database creation.
- If you use other people’s data, do not assume that Database Right is unenforceable.

The Case is British Sky Broadcasting Group plc and others v Digital Satellite Warranty Cover Limited and others [2011] EWHC 2662

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