Database Protection: A Comparative Study India Vs the European Union

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***Abstract*—Databases, as structured compilations of information, are vital commercial assets requiring substantial investment in their creation, maintenance, and organization. The legal protection of databases varies globally, primarily between copyright-based and sui generis models. This study provides a comparative analysis of database protection in India and the European Union (EU), focusing on their legislative frameworks, judicial interpretations, and policy approaches. While India relies on general copyright principles under the Copyright Act, 1957 and limited provisions in the Information Technology Act, 2000, the EU offers comprehensive dual protection through the Database Directive (1996), which grants both copyright protection for original databases and sui generis rights for databases involving substantial investment. Indian courts continue to follow the "sweat of the brow" doctrine, protecting databases as literary works where skill and labour are demonstrated, but the absence of a dedicated database law creates ambiguity, especially for non-original compilations. Conversely, the EU's sui generis right recognizes the value of investment independent of originality, providing robust commercial protection but raising concerns about public access and information monopolies. The study concludes that India needs a separate, well-defined legal framework for database protection — one that balances investment incentives with public interest, ensures fair use, and prevents perpetual monopolies over factual information. Recommendations include a limited-term sui generis right, mandatory registration, clear exceptions for research and education, and provisions for compulsory licensing to maintain the free flow of information.**

I. INTRODUCTION

Databases can be a valuable commercial asset, and generally, time and money are invested in their creation and maintenance. They are data collections that allow the selection and arrangement of data based on attributes defined in the database. A fully developed database is an interrelated set of components capable of generating value from the collection, processing, merger, storage, or dissemination of data. Traditionally, databases have been classified as literary works and protected in many countries by copyright. Database developers seeking to protect the data compiled by them face a unique challenge: facts cannot be copyrighted, but an arrangement of facts, such as a database, can be copyrighted, provided it features an original selection or arrangement that possesses at least some minimal degree of creativity.

II. AIM OF THE STUDY

This paper aims to analyze the protection given to the database by the Indian and European Union legislations as a comparative study.

III. DEFINITION

Database rights are essentially rights conferred in recognition of labor and investment, rather than creativity or innovation. The strongest argument in favor of database protection is the prevention of copying by a competitor, as compiling a database is an expensive and time-consuming proposition. The person who copies, on the other hand, does not share the original compiler's development costs and can undercut the original compiler's price. A database is defined in the legislation as "a collection of independent works, data or other materials which are arranged in a systematic or methodical way and are individually accessible by electronic or other means."

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IV. THE SCOPE AND NATURE OF PROTECTION

International reference to the legal protection of databases is found in the Berne Convention Article 2(5), which says that 'a database is a collection of literary and artistic work such as encyclopedias and anthologies which by reason of the selection and arrangement of their contents, constitute intellectual creations'. TRIPS relaxes the Berne Convention standard by allowing protection based solely on originality in the choice of works compiled or in the arrangement, and broadens the definition of compilation to include data and other material in any form.[2] The most recent WIPO Copyright Treaty of 1996, enforced in 2002, defines compilations of data substantially similar to the TRIPS Agreement provisions.[3] All three international agreements talk about the presence of some intellectual creativity as a requirement for originality in the author's selection of the materials or in their arrangement to get copyright protection. At the Diplomatic Conference of WIPO held in Geneva, Switzerland, in December 1996, the World Intellectual Property Organization (WIPO) considered, and ultimately deferred a proposal for a Database Treaty.[4] Since then, the matter has remained on the agenda of WIPO's Standing Committee on Copyright and Related Rights (SCCR), but there has been little movement due to increasing opposition from developing countries. The draft WIPO Database Treaty was based on proposals by Europe and the US proposals that were similar in nature and scope to the EU Database Directive.[5] While the database treaty was removed from the conference agenda and taken off the table, WIPO has not abandoned its work on the subject.

V. INDIAN SCENARIO

There is no express legislation in India dealing with database protection. Although the Personal Data Protection Bill was introduced in Parliament in 2006, it is yet to see the light of the day. The bill seems to be based on the general framework of the European Union Data Privacy Directive, 1996. It follows a comprehensive model with the bill aiming to govern the collection, processing and distribution of personal data. It is important to note that the applicability of the bill is limited to 'personal data' as defined in Clause 2 of the bill.[6] Data protection is aimed at protecting the privacy of information pertaining to individuals, while database protection has an entirely different function, namely, protect creativity and investment in the compilation, verification and presentation of databases.

The Copyright Act, 1957 was amended in 1994 to extend more effective protection to owners of copyright by making provision for the special nature of computer programs as literary work and for the protection of computer generated works. It protects works under literary, dramatic, musical, artistic and cinematographic categories. The term 'literary work' under section 2(o) includes computer databases as well. Therefore, copying a computer database, or copying and distributing a database amounts to infringement of copyright for which civil and criminal remedies are available. The section's applicability to database protection was reently examined in *Diljeet Titus, Advocate & Ors v. Alfred A Adebare & Ors* where the Delhi high court held, 'the copyright in a database prepared by an advocate working under and in the office of another advocate by using the latter's resources expertise and investment, would vest in the employer advocate'. The court reasoned that under section 17(1)(c) in case of a work made in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, the employer shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein.[7]

The Information Technology Act, 2000 was recently amended to meet challenges in cybercrime. It has introduced two important provisions that have a strong bearing on the legal regime for data protection. These are Sections 43A[8] and 72A.[9] But the provisions pertaining to data security and confidentiality are still inadequate. The proposed amendments widen the liability for breach of data protection and negligence in handling sensitive personal information.[10] There are very few cases that can be found on the works of compilation or databases. One such is the case of *Burlington Home Shopping Pvt Ltd v Rajnish*

Chibber,[11]where the plaintiff published mail order catalogues dealing with several consumer items which were posted to a select list of the plaintiff's clients. The said database was an expensive one in a gradual process of compilation. The defendant managed to get a copy of the database and started making use of the same for the purpose of establishing relationship with the plaintiff's customers. The question which arose was whether a database consisting of compilation of mailing addresses of customers was a subject matter of copyright. The court decided that compilation of addresses involved devoting time, money, labour and skill. Even though the sources were commonly situated, the compilation amounted to a 'literary work' wherein the author had a copyright.[12] This was reiterated in the case of The *Himalaya Drug Company v Sumit.*[13] The Indian courts seem to uphold the 'sweat of the brow' theory or the skill, labour and judgment test in deciding copyright protection against infringement. In other cases, like *McMillan v Suresh Chunder Deb*,[14] *Govindan v Gopalakrishna*,[15] the courts held that a compilation developed through devotion of time, capital, energy and skill, though taken from a common source, amounted to a literary work and was therefore protected under copyright. The Court referred to the US Supreme Court's Feist decision and said that there should be a modicum of creativity in the selection, arrangement or co-ordination of the contents of a database to attract copyright protection.[16] In India the adoption of the Feist doctrine leads to inequitable results.

VI. EUROPEAN UNION

Feist caused swells of apprehension in Europe. A Feist-type approach by European courts was quite conceivable and would have posed a substantial threat to the database industries in the European Union specifically.[17] Before the Database Directive came out in EU, the standard for the protection of databases in the Anglo-Irish systems had been very different because of the different originality requirements. The United Kingdom has a very low prerequisite of originality. The English statutory law long accorded copyright protection to databases as 'collections or compilations of data'. The requirement of originality in this context was that some degree of 'labour, skill and judgement' had been applied in the 'selection and arrangement' of the contents of the work as said in the judgement of Peterson J in *University of London Press v University Tutorial Press.*[18] It allows copyright in a database (as distinct from its contents), but only on the basis of authorship involving personal intellectual creativity. Where this copyright exists, it is an author's right and accordingly will last during his/her life plus 70 years.[19] The Database Directive[20] extends copyright protection to databases as collections under Article 2(5) of the Berne Convention and without prejudice to the protection by copyright of collections of works or materials arranged, stored or accessed by non-electronic means, which accordingly remain protected to the extent provided for by the Berne Convention.[21] Article 1(2) of the Database Directive defines a database as, 'a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.'[22] A typical database system is comprised of three components. The first is a computer program which operates the database, the second component is the actual information stored within the database. The Directive extends protection to such information if it meets the requirements of 'originality in selection or arrangement' (Recital 14) and the third part is an amalgam of electronic material that allows the user to interact with the database to store, retrieve, and manipulate the information. This broad category includes search criteria implemented in command strings or macro language procedures, indexing methods, thesaurus, and presentation methods. The Directive specifically extends protection to such methods of presentation, manipulation and data input (Recital 17). In a radical departure from the copyright paradigm, the European Commission took a sui generis approach to database protection in Article 10(2) which confers upon the database creator the right to 'prevent the unauthorized extraction or reutilization', from that database, of its contents in whole or substantial part, for commercial purposes. The right is subject to certain exceptions that resemble, but are narrower than the fair use exceptions under copyright law. The right owner in this case has to be from Europe, and in case of an individual, he/she must be a national or resident of one of the member states of the EU.[23] As originality requirements pervade

virtually every system of copyright known, the problem is further compounded in the context of compilations, because originality must be manifest in the selection or arrangement of the included materials. The Commission admits that the arrangement of database materials is performed in large part by the system.[24] This standard is very similar to the standard that is applied in the United States after Feist with one additional limitation: under the Database Directive, there must be intellectual creation by a human author for copyright protection to exist, raising questions about the extent to which a database can be protected under copyright law if the selection and arrangement of data is accomplished by a computer program with minimal human contribution. The new right gives protection from the moment the database is completed, and expires 15 years later [Article 10(1)]. A fresh 15-year term can be obtained if the contents are 'substantially changed'.[25] Depending on what level of investment is ultimately required to be substantial, the provision for a renewable sui generis right could last in perpetuity if the contents are regularly updated.[26]

However, the sui generis right is not absolute and there are restrictions to this right like, a maker of a database that is made available to the public cannot prevent a lawful user of the database from extracting or re-utilizing insubstantial parts of it. In addition, the sui generis right is subject to certain exceptions for non-commercial uses related to teaching, scientific research, and public security. These exceptions are narrower than the similar fair use exceptions under copyright law. For example, the sui generis right has no exceptions for criticism, news reporting, satire, or library use. The primary objective of the intellectual property regime is to promote creativity and innovation and also to maintain a vigorous public domain. But this new right may block dissemination of information and obstruct its flow into the public domain.[27] The Final European Commission Directive does not condition sui generis protection on any showing of a creative achievement or of a novel contribution to the prior art, the classical bases for justifying legal derogation from free competition. Rather, it merely requires the database maker to prove that 'there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents'. This may create hurdles for diverse communities like academicians, researchers, scientists, and students due to the commercial nature of facts. Further, there is also potential danger of the new database right ending in perpetuity. Because the EC Directive itself provides no further guidelines for evaluating the requisite level of investment in either case, this threshold will remain uncertain, pending decisions by European courts applying the still to be drafted domestic database laws. Further, on closer inspection, the investor's scope of protection under the hybrid extraction right appears paradoxically to exceed even that afforded to authors of traditional literary and artistic works under the classical copyright paradigm of the Berne Convention. For instance, it ignores the important distinction that copyright law makes between ideas (a legal metaphor for the non-copyrightable components of protected works, including among other things, the facts or data they contain) and the author's expression.

The TRIPS Agreement makes this distinction universally applicable to all copyrightable works, including such borderline works as computer programs and factual compilations.[28]Yet, the database law contains no such distinction. This means that, in the universe of data generators, there is no evolving public domain substratum from which either research workers or second comers are progressively entitled to withdraw previously generated data without seeking licences that may or may not be granted.[29] The absence of any equivalent to the idea-expression doctrine under the new sui generis regime means that investors, in effect, obtain proprietary rights in data as such, a type of ownership that the copyright paradigm expressly precludes. Proponents of the sui generis right downplay this prospect by insisting that third parties remain free to generate their own databases.[30]

In *British Horseracing Board v William Hill* [31], the European Court of Justice adopted a parallel ruling, which affected the very existence of the right, besides its infringement. The British Housing Board maintained a large, costly database of horseracing across Britain as a part of its management of the industry, in which the details of entries and results were constantly updated. This information was sold to two companies who were entitled to distribute it to

bookmakers and others. The defendant, UK's biggest betting firm, obtained the information this way for publishing each day's racing programs. However, when it set up an Internet betting service partly based on this source of information, the BHB relied on its database right to demand a separate charge. The ECJ held that quality was to be judged by referring back to the elements of investment which gave rise to the existence of the sui generis right in the first place. The 'elements of investment' superseded the value of the extracted material itself and was the measure to be assessed in these types of infringement cases. The Court held that as to the provision which related to the repeated extractions of insubstantial content, this would constitute infringement only if it allowed the defendant to 'reconstitute and make available to the public the whole or a substantial part of the contents of the BHB database and thereby seriously prejudice the investment made by BHB in the creation of the database.'[32] The Court's ruling in this case substantially truncated the scope of the sui generis database right. Identifying the object of the right as the promotion and protection of investment in data storage and processing systems, it drew a fundamental distinction between investment in creating the information in the first place and investment in storing and processing it in the database. To claim a database right it was thus necessary to show substantial investment in the latter which is the database itself in both qualitative and quantitative terms. So, where the collection and storage investment is substantial, the database right will still accrue. For there to be infringement, there has to be a substantial extraction and utilization, including the repeated takings that are in themselves insubstantial.[33]

VII. SUGGESTION

1. The purpose of a new database law should be to support commerce by offering a lead time to database producers for investing time, energy and capital
2. A new database law should offer sui generis rights to non-original databases and copyright to original databases
3. A new database law should offer a mandatory system of registration of database rights under a governmental authority which will oversee the commercial exploitation of database rights
4. The governmental authority under a new database law should ensure that the quality and quantity of the public domain shall not be affected
5. The fair use exception should be the same as is available under copyright law (Section 52 of Indian Copyright Act)
6. A new database law should offer protection only to those databases which are created solely for commercial purposes
7. Private databases, non-electronic databases, government databases and scientific and educational databases should be excluded
8. There should be compulsory licensing for sole-source databases
9. The new legislation should offer protection for a short and limited period to gain a commercial head-start over competitors.[34]

VIII. CONCLUSION

The European Union has created the Directive to resolve the issues about the database in 1996. The Directive provides for two forms of protection – copyright and a sui generis right specific to database. The Copyright protects the author's intellectual creation whereas, a sui generis protection is against unauthorized use of the database n any form when such a database is not a new creation but involves a substantial investment. Thereby the EU countries provide a larger protection of rights and enforcement mechanisms. In India, the database rights are recognized through different legislations and has scope for further improvement and a consolidated piece of legislation solely for the purpose of protecting the database to keep up with the changing digital world.

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[2] Article 10 (2) provides that: Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself

[3] Article 5 provides that: Compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are protected as such. This protection does not extend to the data or the material itself and is without prejudice to any copyright subsisting in the data or material contained in the compilation1 Basic proposal for the substantive provisions of the Treaty on Intellectual Property in Respect of Databases to be considered by the diplomatic conference, WIPO, CRNR/DC/6, 31 August 1996.

[4] Jukka Liedes, 'the database treaty is based on the European directive and the European Union proposal for a treaty on the sui generis protection of databases. And at the same time, it is based on the United States proposal, which was made last May in the context of the last expert committee meeting dealing with both conventions, http://www.uspto.gov/web/offices/dcom/olia/diplconf/briefi ng.pdf (31 March 2011).

[5] Patry William, Copyright in collection of facts: A reply, Communications & The Law, 6 (1984) 11-31.

[6] Personal data means information or data which relate to a living individual who can be identified from that information or data whether collected by any government or any private organization or agency.2006 (32) PTC 609 (Del).

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[8] Compensation for failure to protect data: Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation, to the person so affected, enforced on 27 October 2009.

[9] Breach of confidentiality and privacy: Save as otherwise provided in this Act or any other law for the time being in force, any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person shall be punished with imprisonment for a term which may extend to three years, or with a fine which may extend to five lakh rupees, or with both enforced on 27 October 2009.

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[16] EBritish Horseracing Board v William Hill (2004) ECR I-1045 (European Court of Justice). astern Book Company v Desai, (2001) AIR (Delhi) 185, p. 203.
[17] University of London Press Ltd v University Tutorial Press Ltd (1916) 2 Chancery Division 601 (United Kingdom), The word 'original' does not in this connection mean that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the originality of ideas, but with the expression of thought, and, in the case of 'literary work', with the expression of thought in print or writing. The originality which is required relates to the expression of the thought. But the Act does not require that the expression must be in an original or novel form, but that the work must not be copied from another work that it should originate from the author.
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[20] The Database Directive, Article 2(2), Recital 19, The Directive should be taken as applying only to collections which are made by electronic means.
[21] The Database Directive, Article 2(2), Recital 19, The Directive should be taken as applying only to collections which are made by electronic means.
[22] Computer programs used in the manufacture or operation of databases are not within the scope of protection described in the Database Directive. These remain protected by the Software Directive under Article 1(3) of the Directive.
[23] Article 11, A company will qualify if (1) it is created under the laws of one of the member states and has a substantial presence in a member state, or (2) it has a registered office within the EU and 'its operations are genuinely linked on an ongoing basis with the economy of a Member State.'
[24] The 'arrangement' of the materials within the database depends to some extent on the indexing system which has been devised, so that efficient retrieval of information from a given location is possible by virtue of the index. To this extent, 'arrangement' does not occur unless a framework of references is established, which the database management software then implements. The 'framework of references' is a set of indexes set up by the creator of the database. The author selects items, called 'data-fields,' which the user may access with search criteria. Thus, originality in arrangement for databases is limited to selecting which items to expose to the system for searching purposes.
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