

DATABASE DIRECTIVE – THE BAVARIAN CASE

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Background to the case

- Case concerns unauthorised extraction of features from State topographic map
- Bavaria seeks to apply legal protection of databases established by the Database Directive
- Court of first instance agreed; court of appeal disagreed
- German Federal Court has referred questions to CJEU



Database protection – the basics

- Copyright protection of analogue maps as artistic works may not prevent extraction of specific information
- In the case of databases, the selection and arrangement of database contents (the database structure) may be covered by copyright (if original)
- Investment in collection and collation of database contents is protected by the *sui generis* right of the Database Directive, which prevents unauthorised extraction and re-use of *substantial* parts



What is a database?

“‘Database’ shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means”

Database Directive Article 1(2)



Issues raised by the case

- Limitations of copyright in maps
- Is an analogue map a database? Case law suggests that the informational value of individual elements/features must be independent of the relationships among them
- Does the value attributed by the 'typical user' affect this decision?
- A database have to consist of items that can be accessed individually – what does that mean?
- If a map is not itself a database, can investment in the underlying database be protected by the Database Directive? (map copying as indirect extraction)
- Does the threat to database protection of analogue representations also extend to geospatial databases themselves?

