



Eatons

Database Actions are Back!

Actions for breaches of database rights are not common in the UK. This is the result of a 2004 decision of the European Court of Justice (ECJ), which narrowed the perceived legal protection offered by the European Database Directive.

The Directive protects owners of databases from unauthorised 'extraction or re-utilisation' of the data. Interestingly, this right also covers data placed in the public domain by the owner – so copying a database which is made available for public use by its owner would be a breach of database right.

However, the restriction to the right rests in the ECJ's ruling that for protection to be given, the database owner must have substantially invested in the 'obtaining, verification and presentation' of the contents, not merely in the creation of the content of the database itself. It is this stipulation which has led to many unauthorised uses of database information not having legal consequences for the perpetrators.

Recently, however, a claim for breach of the Database Directive was successful in a different context. It involved employees of a furnishing fabric company, who left to form a new company and took with them database information concerning the customers of their old company. Their ex-employers sued them for breach of confidentiality and breach of database rights.

The claim for breach of confidentiality failed, as the information taken (names, addresses, sales etc.) was in the public domain or it was built up as part of the skills and expertise expected of an employee – which could not therefore be restricted by the employers.

However, the High Court agreed that the ex-employees had breached the company's database rights by removing the information. Furthermore, they had breached their fiduciary duty to their employers by their subsequent use of the information.

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“Businesses often face problems when employees leave and set up in business in competition with them,” says Marcuss Baff. “The first defence against this is an appropriately-worded service agreement which includes an enforceable restraint of trade clause. However, it will be gratifying for businesses to know that there appears to be a further remedy against ex-employees who remove confidential business information held in a database and use it for their own purposes.”

For advice on all aspects of litigation, company regulation and contracts and agreements please contact Marcus Baff on Tel: 01274 728 327.

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