

# Footprints of Feist in European Database Directive

Indranath Gupta

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A Legal Analysis of IP Law-making in Europe

 Springer

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# Foreword

Intellectual property is not a monopoly on facts, information and data. Until recent years, this principle seemed to be safely entrenched in both national laws and jurisprudence across the world. Copyright laws instruct that authors have certain exclusive rights on their own original expressions, but cannot exclude others from accessing, using and benefiting from the information that such expressions convey. Similarly, patents give to inventors a temporary monopoly on certain uses of their own inventions, but on condition that the information on how to work the invention is fully disclosed and made accessible to anyone interested in the patent. Collections of data, or databases, made no exception. However many facts, information or data you collect, you do not acquire a right to exclude others from using the collection and pick up the information therein contained. As the US Supreme Court stated in the landmark *Feist* decision: “Common sense tells us that 100 uncopyrightable facts do not magically change their status when gathered together in one place”.

With the Database Directive of 1996, the European legislator has challenged this commonsensical statement. A new, somehow “magical” right has been introduced, in the hope of creating an incentive to database makers. The latter now enjoy a right to exclude others from using facts, information and data, on the very ground that they have gathered them in one place—a database. Does the “database right” represent a departure from that revered principle of intellectual property recalled above? To what extent is this right a monopoly on facts, information and data? And what is its practical effect and significance?

The book of Indranath Gupta addresses these questions with rigour and in a variety of ways. It tells a fascinating story of unrealistic policy objectives, unwise lawmaking and unwanted consequences. It unveils the roots of the European lawmaking process in the background of the American experience and the persistent influence of the *Feist* decision. It tells how the European Court of Justice has in part succeeded in mitigating the harmful effect of the database right, by developing a subtle albeit occasionally convoluted interpretation of the requirement of subsistence of this right. Perhaps the most important lesson to be drawn from the story told in this book is that the use of intellectual property as “incentive” must be made

with extreme care and caution, and not without sound supporting evidence. This is the challenge that databases present today to intellectual property scholars and legislators alike.

Maurizio Borghi  
Professor of Intellectual Property Law  
Bournemouth University

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## About the Author

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# Abbreviations

AOIC	Author's Own Intellectual Creation
Ariz. St. L J	Arizona State Law Journal
ASCII	American Standard Code for Information Interchange
BCL Rev	Boston College Law Review
Berkeley Tech L J	Berkeley Technology Law Journal
BGH-IZR	German Federal Court of Justice
BHB	British Horseracing Board
Can Bus L J	Canadian Business Law Journal
Chicago-Kent L Rev	Chicago-Kent Law Review
CIS	Congressional Information Service
CJEU	The Court of Justice of the European Union
CLR Int'l	Computer Law Review International
CLSR	Computer Law and Security Report
CMLR	Common Market Law Review
Colum J L & Soc Probs	Columbia Journal of Law and Social Problems
Colum L Rev	Columbia Law Review
COM	Commission
Comm & Law	Communication and Law
Computer L Rev & Tech	Computer Law Review and Technology
CDPA	Copyright, Designs and Patent Act
CRDR	Copyright and Rights in Databases Regulations
CW	Copyright World
DePaul-LCA J. Art & Ent L	DePaul-LCA Journal of Art and Entertainment Law
DMCA	Digital Millennium Copyright Act
E L Rev	European Law Review
EADP	European Association of Directory and Database Publishers
EBBA	European Border Breakers Awards

ECC	European Commercial Cases
ECDR	European Copyright and Design Report
ECJ	The European Court of Justice
ECR	European Court Reports
ECU	European Currency Unit
EDNY	Eastern District of New York
EEC	European Economic Community
EEPROM	Electrically Erasable Programmable Read-Only Memory
EIPR	European Intellectual Property Review
Ent L Rev	Entertainment Law Review
EWCA	England and Wales Code of Appeal
EWHC	High Court of England and Wales
Fordham Int'l L J	Fordham International Law Journal
Fordham Intell Prop Media & Ent L J	Fordham Intellectual Property, Media & Entertainment Law Journal
FSR	Fleet Street Reports
GDD	Gale Directory of Databases
Harv L Rev	Harvard Law Review
Hellenic Rev of Int'l L	Hellenic Review of International Law
High Tech L J	High Tech Law Journal
ICC Reports	Investors Capital Corporation Reports
IDEA Intell Prop L Rev	IDEA Intellectual Property Law Review
IIC	International Review of Intellectual Property and Competition Law
IJLIT	International Journal of Law and Information Technology
Iowa L Rev	Iowa Law Review
IPQ	Intellectual Property Quarterly
IVIR	Institute for Information Law
J Econ Persp	Journal of Economic Perspectives
J Intell Prop L	Journal of Intellectual Property Law
J Legal Stud	The Journal of Legal Studies
J of Tech L & P	Journal of Technology Law and Policy
Minn L Rev	Minnesota Law Review
Neb L Review	Nebraska Law Review
Notre Dame L Rev	Notre Dame Law Review
NRP	National Register Publishing
Ohio St L J	Ohio State Law Journal
OJ C	Official Journal of the European Union Information and Notices
OJ L	Official Journal of the European Union Legislation
Pat Trademark & Copyright J	Patent Trademark and Copyright Journal
RDF	Raw Data Feed

RIDA	The Revue Internationale Du Droit D’Auteur
Roger Williams UL Review	Roger Williams University Law Review
RPC	Restrictive Practices Court
RRP	Reed Reference Publishing
RTDcom	Revue trimestrielle de droit commercial et de droit économique
Santa Clara L Rev	Santa Clara Law Review
SDNY	Southern District of New York
Tex L Rev	Texas Law Review
The Geor Wash L R	The George Washington Law Review
TPM	Technological Protection Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
U Cin L Rev	University of Cincinnati Law Review
U Dayton L Rev	University of Dayton Law Review
U Pitt L R	University of Pittsburgh Law Review
UCLA L Rev	University of California Law Review
UKHL	United Kingdom House of Lords
Univ of Ottawa L T J	University of Ottawa Law and Technology Journal
USPQ	United States Patents Quarterly
VA J L & Tech	Virginia Journal of Law and Technology
Vand L Rev	Vanderbilt Law Review
Wash U J L & Pol’y	Washington University Journal of Law and Policy
WIPO	World Intellectual Property Organization
WLR	Weekly Law Reports
Yale J of L & Tech	Yale Journal of Law & Technology