

Asset and Database Protection



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Digital Transactions, Week #9

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What are we trying to protect?



- ✓ Is “protect” the right word?
- ✓ What are we protecting?
- ✓ What we are really after is *control*.
- ✓ So what we are trying to “protect” is our control over the data.
- ✓ Why?

Levels of Control



- ✓ Own the data.
- ✓ Control access to the data.
- ✓ License to use the data.
- ✓ No control over the data at all.

Owning the Data



- ✓ How to gain/maintain ownership?
- ✓ Sufficient originality (*Feist*)?
- ✓ Pros:
 - ✓ Ability to exploit for \$\$\$.
- ✓ Cons:
 - ✓ Have to input/maintain the data.

Control Access to the Data



- ✓ Use formats/location to regulate access.
- ✓ Pros:
 - ✓ No input and/or maintenance expenses.
- ✓ Cons:
 - ✓ Conversion issues.

License to Use the Data



- ✓ Different end result.
- ✓ Usually connected to advertising or marketing.
- ✓ Don't try to own, just exploit.
- ✓ Google gmail.

No Control Over the Data at All



- ✓ Normal when publishing software having open formats.
- ✓ Must use other measures to gain income from data:
 - ✓ Customization Services; or
 - ✓ Maintenance Agreements.

Most Commercial Databases



- ✓ Compilation of facts.
- ✓ Facts are *not* protected by copyright.
- ✓ Selection and arrangement of facts *can* be copyrightable -- if original.
- ✓ But only selection/arrangement covered, not the underlying facts.

Originality



- ✓ Under *Feist*:
 - ✓ Original to the author (not copied); and
 - ✓ Some level of creativity.
- ✓ Originality does not require novelty.
- ✓ Facts are discovered -- not created.
- ✓ Selection and arrangement must be made by the author -- creatively.

State Laws



- ✓ Trade secrets.
- ✓ Misappropriation of intangible property.
- ✓ Enforceability of contractual restraints.
- ✓ Trespass to chattels.
- ✓ Computer fraud statutes (state & federal).

International Laws



- ✓ Directive 96/9/EC of the European Parliament
 - ✓ Enacted *sui generis* protection for databases.
- ✓ Covers: “a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means”.
- ✓ Software used to create database not covered.

International Laws



- ✓ Protection for “substantial investment”.
- ✓ Protection against acts of:
 - ✓ Extraction; and/or
 - ✓ Re-utilization.
- ✓ Insubstantial parts excluded.
- ✓ Some exceptions apply.
- ✓ Limited term (15 years in EU).

Other Control Mechanisms



- ✓ File Formats.
- ✓ Encryption.
- ✓ Digital Restriction Management (“DRM”).
- ✓ Remote Location of Data.
- ✓ Customizations/Maintenance Contracts.
- ✓ Preclude mass data extraction.

Data Privacy Issues



- ✓ Many states have data security statutes.
- ✓ Some states have breach notification statutes.
- ✓ Third parties may be implicated.
- ✓ Contracts may require indemnification or security standards.

Questions?

