

Gowers Review of Intellectual Property  
Zone 4/E1  
HM Treasury  
1 Horse Guards Road  
London SW1A 2HQ

20<sup>th</sup> April 2006

## **Submission from the DPA to the Gowers Review of Intellectual Property**

The Data Publishers Association (DPA) was established in 1972 and now represents 80 UK directory and database publishers and associated supplying companies. DPA member companies are active in all sectors of database publishing from the provision of local classified directories, supported by advertising sales and distributed free of charge, to industry directories and business information reference sources sold to users and libraries.

### **General Comments**

The DPA welcomes the opportunity to contribute to the Gowers review and to encourage UK government and HM Treasury to maintain the support given to the UK publishing industry in general, and data publishers in particular, through robust IP protection which reflects the high level of investment the sector makes in producing world-leading database products and services. Data publishing is a sector which is evolving quickly and transitioning itself from national based print on paper products to internet and database enabled services which meet the needs of both national and international information users and advertisers. This transition has involved significant investment in new technology and the underlying content.

Intellectual Property protection is regarded by data publishers as the cornerstone of the successful and innovatory business models which have allowed flexible data delivery systems which meets the specific needs of users in industry, research, education and library sectors.

## **SPECIFIC COMMENTS AND ANSWERS TO GENERAL QUESTIONS**

### **1. How IP is awarded**

- a. Data publishers either create their own intellectual property or utilise third party IP through licences. Although the Gowers review

specifically excludes Public Sector Information (PSI) the DPA wishes to put on record members concerns about issues surrounding the re-utilisation of specific types of public sector information held by Trading Funds where added-value re-use by the private sector is sometimes in competition with the commercial offerings and services of the PSI holding institution. In these instances there are commercial and organisational cultural barriers to the private sector obtaining IP rights from the public sector.

## **2. How IP is used**

a.f. A major concern of data publishers is the status of IP for database products. The EU Database Directive of 1996 was seen as a positive and welcome encouragement by UK directory and database publishers to invest in new and innovative products.

The success of the sector in investing in database products is demonstrated in the DPA survey statistics attached to this document.

The need for protection of the IP in databases results from the possibility that the specific content presented in a database may either a) include factual data (statistics or names and addresses) which may not enjoy specific copyright protection or b) include third party copyright data licensed specifically for the database. The concern for data publishers prior to the database directive was that their investment, in the first case in both the underlying content and the database structure and in the second case the database structure alone, was not protected. The industry therefore welcomed the protection given by national legislation which implemented the EU directive.

Recent European Court of Justice decisions, specifically *BHB vs William Hill*, and the recent evaluation of the Database Directive carried out by the European Commission give publishers of database products significant cause for concern. The ECJ decision suggested that investment in the re-purposing of existing data into a database did not have the *Sui Generis* protection. The difficulty and potential threat for UK data publishers for whom publishing is their primary economic activity is that their investment in re-purposing existing data which may not have its own IP protection is no longer protected.

This recent uncertainty works against the potential for investment and creativity in new and innovative data products by a world leading sector of the UK publishing industry which relies on the UK IP system to protect and promote innovation.

j. In contrast to the encouragement to the private sector in promoting innovation the DPA repeats the concerns expressed in 1. above about the defensive use of IP by some PSI holders to protect their competitive advantage or monopoly position.

## **SPECIFIC ISSUES**

### **Copyright Exceptions - fair use/fair dealing**

The DPA supports the current regime of allowing specific exceptions that allow re-use of copyright works under specific and limited circumstances. The concern of publishers is that of damage to their investment resulting from unauthorised commercial exploitation and re-use. Specific examples of this include the use of web crawlers and scrapers to compile and publish competing data products. New and rapidly evolving digital technologies allow greater opportunities for unauthorised users to make unfair use of a publisher's content. Legal and technological measures are necessary to combat this illegal commercial exploitation often carried out in or from overseas jurisdictions where legal enforcement is impossible. These measures should not concern legitimate users nor are they intended to prevent private use of legitimately acquired content.

- a. Current exceptions are adequate. The 2003 clarification and limiting of the fair dealing exception for the purposes of "non-commercial research" was a long overdue and much needed protection for business information publishers whose investment was being prejudiced by unauthorised commercial re-users.
- f. Technological change has presented more opportunities than difficulties for the use of copyright materials in education.
- g. Publishers are supportive of the licensed and legitimate archiving of copyright materials and are working with the library community to ensure the preservation of a national archive to be accessed by future generations of researchers when copyright materials are no longer available from commercially available sources.

Trevor Fenwick  
DPA Director of Public Affairs

# Data Publishers Association Annual Members Survey 2006

## Questions on Database Investment

The DPA included questions in the 2006 annual survey of members designed to determine whether investment in databases had increased or decreased since the implementation of the Sui Generis right.

The survey was sent online to DPA members in February 2006 and conducted by an independent online survey research agency.

The results are based on 19 replies to the section of the survey on database investment, a response rate of 33%.

1. Do you make your data available as a database?  
Yes 84%  
No 16%
  
2. Is the database content available in other formats or media (print, offline, online)?  
Print Only 5%  
Print + Digital Formats 95%
  
3. Did you publish more databases in 2005 than in 2000?  
Yes 58%  
No 42%
  
4. Has the average amount of the data content in your databases increased or decreased since 2000?  
  
Increased 89%  
Decreased 11%

Please give examples: *(Following comments are from 10 different publishers)*

“The amount of data that we hold, and what we are able to use it for commercially, have both declined since the introduction of recent legislation”

“Product X up from 60k records to 2m+. Expansion in Product Y database.”

“With the increase in pre-paid mobile telephones, fewer customers are listed in our telephone directories than 5 years ago.”

“We try to both increase the number of entries in most of our books as well as the depth of information”

“Increased complexity in the industry we cover means our database has grown by around 50% in this period in order to remain useful and provide relevant contact details.”

“more information required from members”

“We are consolidating small databases into portal applications.. The number of databases decreases the quantity of data increases”

“More depth per record - eg contacts and web addresses”

“Overall increase of 18%. Examples include 400k URLs and 100k mobile phone numbers”

“Five years ago, we were not actively selling advertising into our print product, and now we are. That increased activity inherently increases the amount of data content that we store in our databases.”

5. What is the increase in your company's investment or cost of data in 2005 over 2004? (Please supply actual numbers, if unavailable then estimate percentages): (*Following comments are from 13 different publishers*)

“ I approximate that we are spending an extra 10% year on year to maintain our data stocks at current levels”

“Not collected”

“An increase of over £25,000 in cost of investment in acquiring new data license”

“Depends on how calculate, we have extra editorial/research staff of 17 plus many students. Total salaries are around £400,000 and increases by 5-10% pa”

“2005 £63.2k, 2004 £60.1k, Increase 5%”

“+25%”

“+10%”

“N/a”

“£1million”

“ Not immediately available”

“Editorial staff doubled in last 5 years to cope with data updates. Expected to increase by a further 25% in coming year. Staffing costs are the biggest individual cost.”

“0%”

“5%”

6. What is the increase in your company's investment or costs in IT or production in the production of databases (as opposed to the cost of the data)? (please supply actual numbers, if unavailable then estimate percentages) : (*Following comments are from 13 different publishers*)

“It is difficult to attribute direct costs here as much of the financial burden is shared across many products. I would envisage no more than 2-3%.”

“No year on year change”

“IT costs have increased by £40-50,000. (Building new software to automate our data processes).”

“Costs have increased by around 30% over last 2 years, currently 9 staff, soon to be 10 with salaries of £250k+ (total for IT and Production dept.)”

“2005 - £62.1k, 2004 - £60.4k, Increase 2.8%”

+100%

+5%

Not available

+ 2.4%

Not immediately available

Production costs are reducing all the time. Hardware is cheaper. Production staffing costs are increasing by a relatively small amount

15%

5%