

Can EU law benefit Geodesy?

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European Community Law

- is **superior in status** to National Law
- **Primary** Elements of EU law are the Treaties, such as that of Rome, Maastricht and Amsterdam;
- **Secondary** legislation
 - **Regulations,**
 - **Directives and**
 - **Decisions**
- EU Directives take **Direct Effect** in that no further legislation is required

EU Directives

- They have a *horizontal* effect between government bodies;
- *vertical* effect, in that they operate between government bodies on the one hand and a private individual on the other;
- There is no effect between private individuals.

What Is Intellectual Property?

- It is the realisation of those ideas which give rise to the idea of intellectual property.
- The conundrum of intellectual property law is providing sufficient reward to the originator to continue being creative, whilst not preventing society at large from benefiting from the originator's creativity



Fact therefore not
copyrightable

Northernmost point
on European
Mainland – design of
monument is
copyrightable

Photograph
Copyright Carl
Calvert, October
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Database Rights (1)

- Databases can be defined as a collection of independent works, data or other materials arranged in a systematic way and retrieved singly;
- The maker^[1] of the databases is defined as the person who takes the initiative and risk in collecting, collating, verifying and displaying the contents of the database.

^[1] Undefined in the Directive

Database Rights (2)

- a ***sui generis***[\[1\]](#) right is meant to protect substantial investment against unauthorised extraction or utilisation and lasts for a, renewable, period of 15 years.

[\[1\]](#) Of its own right

The British Horseracing Board (BHB) Ltd &
Ors v William Hill Organisation (WH) Ltd
[2004] ECJ C-203/02

- compilation of data related to horseracing;
- cost of maintaining the database is €6 million;
- the database has over 20 million records with 200,000 entries a year.

ECJ Ruling

- The ECJ held that the intended purpose of the Directive was to safeguard the financial and professional investment of the database;
- The 'data collection' needed to populate the database is excluded from the equation;
- Re-utilisation or re-use means making the contents of the database available to the public. It is immaterial whether the contents have already been made public once.

Software Patents and Copyright

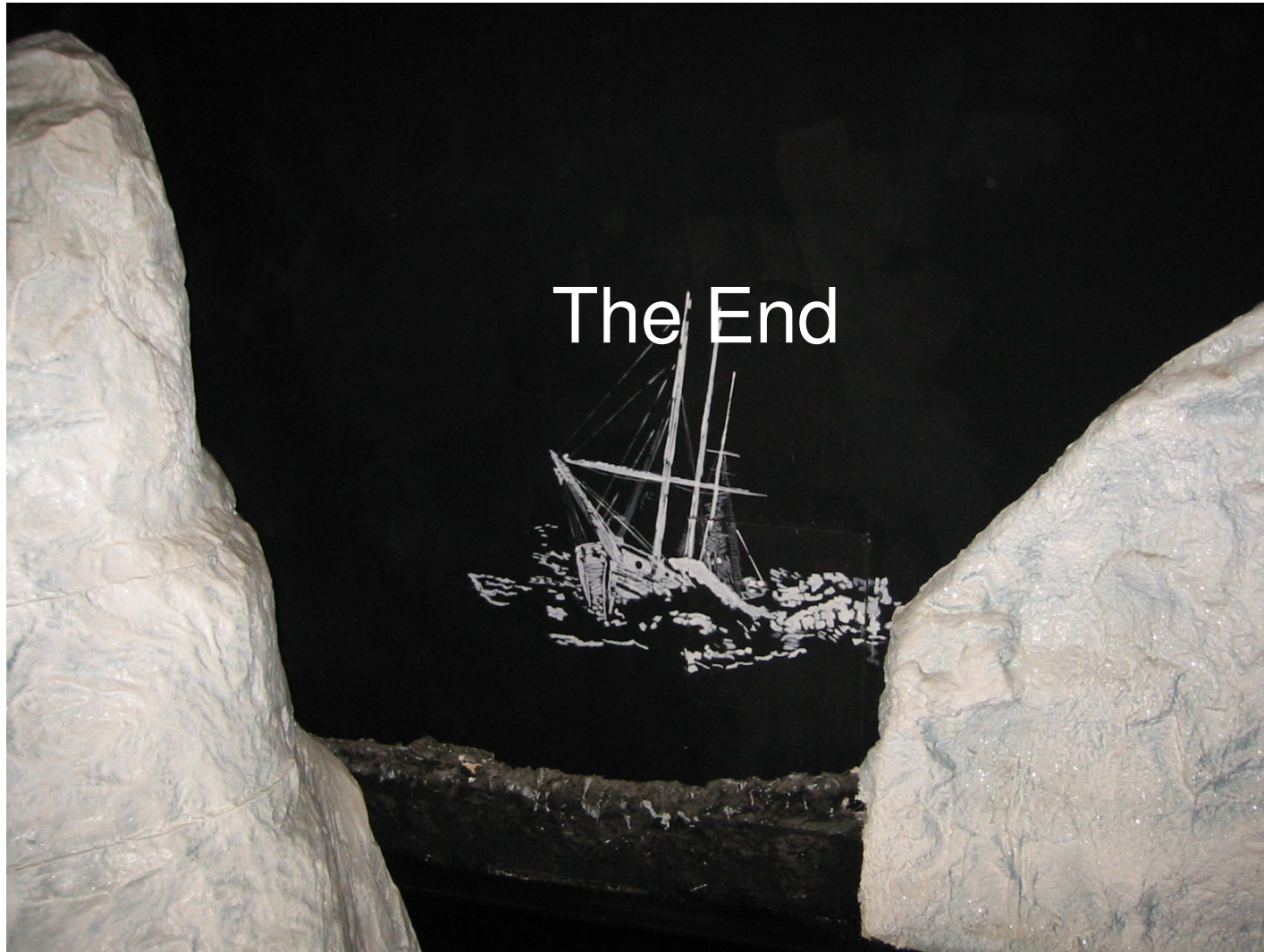
- Directive on the Patentability of Computer-Implemented Inventions COM (2002) 92
- Furthermore *programs for computers* ‘as such’ are defined as not being inventions and are thus excluded from patentability.
- The difference between the USA and Europe is that in Europe a ‘technical contribution’ must be provided by the invention. In the USA that requirement is missing, that means business methods, providing that they are novel and have an inventive step, are patentable.

Computer Programs - Directive 91/250/EEC

- A computer program gains copyright protection if *'... it is original in the sense that it is the author's own intellectual creation. No other criteria shall be applied to determine its eligibility for protection.'*
- Contains specific provisions that copyright is not infringed by doing certain acts which would otherwise constitute infringement; therefore many acts which all involve copying the program, which if it were not for the exceptions be unlawful

Conclusions

- For Database rights
 - ECJ gave a strong indication that database owners need to re-assess both their proof of rights in the database and their exposure to infringement of those rights;
- For Software
 - EU Directive on the legal protection of Computer Programs may be better protection than the draft Directive on the Patentability of Computer Implemented Inventions.



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