



# **An Unexplored Legal Issue for the Provision of Free Legal Information in Hong Kong**

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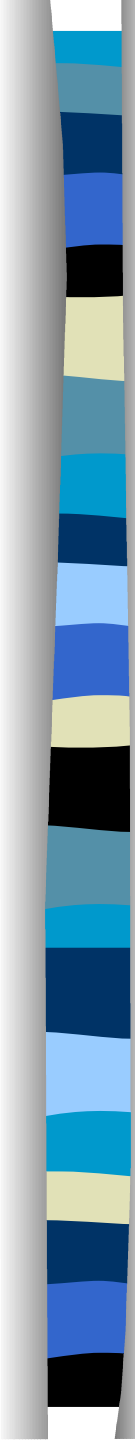
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# Free Legal Info Providers

- not copyright owners
- mere licensees of Government and Judiciary for hosting primary legal materials on the Internet

**Q:** Can these providers sue someone who hosts a website containing the same materials obtained from their websites?



**A1:** No *locus standi* to sue for infringement of copyright in those materials!

**A2:** If the user interface is different, can't bring copyright action in respect of user interface.



# Compilation Copyright

- Copyright Ordinance, s.4(1)(a)
- protection available only if selection or arrangement of the contents of the compilation constitutes "an intellectual creation"

**Q:** Do free legal DBs such as HKLII enjoy compilation copyright in HK?



# UK Skill & Labour

- compilation copyright arises if there is skill and labour put into the selection or arrangement of contents
- no need for selection or arrangement to be creative
- free legal DBs protected

**NB.** This doctrine now open to challenge.



# ***US Feist v Rural Telephone***

- US Supreme Court rejected "sweat of the brow" doctrine
- for a compilation to be "original", its selection, coordination or arrangement of contents must possess a minimal degree of creativity
- hence white pages in telephone directory not protected by compilation copyright



# EC Database Directive

- response to *Feist*
- selection or arrangement of contents must constitute the author's own intellectual creation
- Explanatory Memorandum at proposal stage clearly stated that "author's own intellectual creation" would be a higher standard than UK "skill and labour"



# *Sui Generis* Right

- to protect investment in the obtaining, verification or presentation of contents, regardless of whether the DB is protected by copyright
- right infringed if whole or substantial part (evaluated qualitatively and/or quantitatively) of contents is extracted or re-utilised without consent



# UK New Law on Databases

- implemented EC Database Directive in 1997
- adopted new higher standard of "author's own intellectual creation" for DB copyright
- incorporated *sui generis* right and renamed it as "database right"



# Situation in Hong Kong

- no HK court has been asked to interpret the meaning of "an intellectual creation"
- if HK adopts new UK standard for compilation copyright, free legal DBs must be creative in their selection or arrangement of contents
- even so, no copyright infringement if only copies contents without copying their selection or arrangement



**NB. HK has no *sui generis* right to prevent extraction or re-utilisation of contents.**

- free legal DBs seem protected only if HK sticks to conventional skill and labour standard
- support for conventional skill and labour: *Desktop Marketing Systems v Telstra* 55 IPR 1 (Australian Fed Ct)



# Advice

- do not rely solely on legal protection
- focus on making the free legal DB useful
- constantly improve on the useful features:
  - good search engine
  - up-to-date contents
  - friendly interface
  - cross linking with other free legal DBs