Energy Databases: Protection and Licensing

Dr. Lina Boecker
Lawyer
JBB Rechtsanwaelte, Berlin
Agenda

I. Database Protection by Law

II. Licensing Energy Data

III. Conclusion
I. Introduction: Database Protection by Law
The Copyright Idea

- Exclusive right over the use of the creation for a pretty long term (70 years post mortem)

- Meant as an incentive to create, because artists (authors of works) were given the opportunity to earn money when licensing their works
What can be protected?

- Originally: Protection for „creations of the mind“ – books, paintings and other artistic works

- Due to technical developments and new means to create, the concept has been extended to „new media“, such as fotos and film, but also computer programs and databases
The Database Directive

• Sui generis protection right

• Protection for all kinds of databases, not only those who are creative enough for Copyright protection

• Only requirement: Substantial investment

• Included in the German Copyright Act
What is a „database“?

• A database is „a collection of independent works, data or other materials, arranged in a systematic or methodical way and individually accessible by electronic and other means“ (EU Directive 96/6/EC)

• Needs to be separated from
  – the means (software or hardware) that is used to organize it and
  – from the data itself
What is „data“ and is it also protected?

• „Data“ itself is not protected under copyright law, because it is just (open) information

• What is protected is the structure and organization behind the databases, if such database can be considered an intellectual creation

• Simple accumulations of various information are therefore not protected by Copyright Law.
III. Licensing of Energy Data
What is a license?

• A license is an agreement between the owner of an intellectual property right (such as copyright)

• Two general types of licenses:
  – Proprietary
  – Open
Proprietary licenses

• Restrictive

• Only certain rights to certain users are granted

• Users usually have to pay for their rights
Open Licenses

- Rights of use for everyone who wants it, sometimes under certain conditions
- Databases licensed under open licenses are often called “open data”
- Popular examples: Creative Commons/ Open Date Commons and so called Public Domain Licenses
What am I allowed to do?

• The data itself is free to be used by everyone

• However, this is not the case if the usability of the data depends on a certain structure/organization

• In this case, you need to check under which license the database was published and if you are allowed to use it

• If you are a publisher of databases, open licenses are much easier to handle
Obligation to publish Energy Data

- Regulation 543/2013 contains the obligation to publish certain data regarding grids, power generation, trade etc. in realtime

- It is only an obligation to publish, not an obligation to license

- Purpose behind the obligation is not free use of the databases, but transparency

- German law: § 111d EnWG – a platform will be created by BNetzA
IV. Conclusion
Thank you. Any questions?

Dr. Lina Boecker
Lawyer

JBB Rechtsanwaelte
Jaschinski Biere Brexl Partnerschaft mbB
Christinenstrasse 18/19 | 10119 Berlin
Tel. +49.30.443 765 0

boecker@jbb.de
www.jbb.de