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Case Nos: IL-2023-000080 and IL-2024-000038

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 10 October 2025

Before :

HIS HONOUR JUDGE HACON

Between :

IDDQD LIMITED	<u>Claimant</u>
- and -	
(1) CODEBERRY LIMITED	
(2) LEE PAUL SMITH	<u>Defendants</u>

And Between

ROYAL MAIL GROUP LIMITED	<u>Claimant</u>
- and -	
(1) CODEBERRY LIMITED	
(2) LEE PAUL SMITH	<u>Defendants</u>

Chris Aikens and Mitchell Beebe (instructed by **Pinsent Masons LLP**) for the **Claimant** in
Case No. IL-2023-000080

Jonathan Hill (instructed by **Addleshaw Goddard LLP**) for the **Claimant** in
Case No. IL-2024-000038

In both claims **the Second Defendant** appearing in person for the **Defendants**

Hearing dates: 2-4, 7-8 and 10-11 April 2025

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE HACON

Judge Hacon :

Introduction

1. At the end of 1959, a pilot scheme was introduced in Norwich allotting a postcode to each private and business address in that city. During the 1960s and 70s the scheme was modified and rolled out to cover all addresses in the UK. It gave rise to a database of UK postal addresses created by the Post Office. The addresses consisted of, at the minimum, a building number or name, the name of a thoroughfare, a town name and a postcode. The database was given the name ‘the Postcode Address File’ or ‘PAF’. The PAF has been continually maintained, corrected and updated since then.
2. In 2001, following interim changes the Post Office became the Royal Mail Group (‘RMG’), now trading as Royal Mail. Since the 1990s the PAF has been made available to other users, subject to a licence fee. There are now about 50,000 such users.
3. In 2013 Christopher Blanchard, a software developer, reached the view that there was a potential market demand for a software program allowing the user to search for or verify postal addresses, a service that would be easier to use than those then available. He created such a program, called ‘Ideal Postcodes’. Ideal Postcodes is based on a database of postal addresses called the ‘GBR Database’ created by Mr Blanchard. The GBR Database was built around the PAF as licensed from RMG. Ideal Postcodes was first made available to users in August 2013 through IDDQD Limited (‘IDDQD’), of which Mr Blanchard is sole director.
4. In 2014-15 another software developer, Lee Smith, created a database of postal addresses which he called ‘GetAddress’. GetAddress was first marketed by Mr Smith in around November 2014. In May 2015 Mr Smith incorporated Codeberry Limited (‘Codeberry’) as his trading company which was thereafter the marketing vehicle for GetAddress. GetAddress has been marketed in competition with the PAF and Ideal Postcodes. The claimants say that GetAddress was created using PAF data in part and later modified using the GBR Database which contains PAF data. They allege that because the defendants have avoided paying any licence fees to RMG they have been able to offer GetAddress at prices which severely undercut the prices of competitors who pay PAF licence fees, including IDDQD.
5. On 18 May 2023 IDDQD issued the claim form in the first of the present joined actions, brought against Codeberry and Mr Smith. IDDQD claims ownership of database right in the GBR Database and alleges that Mr Smith acted in breach of the terms of a licence entered into by Mr Smith with IDDQD for the use of the GBR Database. In consequence, acts done by Mr Smith and Codeberry were not licensed and both have infringed IDDQD’s database right. There was also a claim for copyright infringement which was later not pursued.
6. On 27 March 2024 RMG issued the claim form in the second action before the court. RMG says alleges that the defendants have infringed RMG’s copyright and database right in the PAF by, without a licence, obtaining a substantial part of the PAF when GetAddress was created and later adding further data from the PAF via the defendants’ use of the GBR Database, and by marketing that substantial part within Codeberry’s GetAddress product.

7. On 2 August 2024 Peter Knox KC ordered that the IDDQD and RMG actions were to be heard together at a single trial subject to an exception. There is a counterclaim in the RMG action in which the defendants allege anti-competitive behaviour by RMG in breach of art.102 of the Treaty of the Functioning of the European Union and s.18 of the Competition Act 1998. By the Order of 2 August 2024 the counterclaim is to be tried separately.

Interim appeals

8. This judgment has been delayed by appeals from some of the many interim orders in these proceedings. The last of them was an application for permission to appeal from the Order of Master Pester dated 7 February 2025. By an Order of Marcus Smith J dated 30 September 2025 permission was refused.

Representation

9. There have been multiple changes in counsel acting for the defendants since the Defence was signed by leading and junior counsel. On Monday 31 March 2025, just before the trial, Mr Smith filed a Form N434 giving notice that the defendants' solicitors had ceased to act. No substitute solicitors appeared on the form and it was later made clear that Mr Smith had decided to appear in person at the trial for both defendants. I gave Mr Smith permission to appear for Codeberry. Mr Smith conducted cross-examinations and the defendants' closing argument.
10. On the first day of closing arguments Mr Smith applied for permission to be assisted by a McKenzie friend, Nick Ellison, who stated that he was there to help on technical matters. There was no objection from the claimant in either action so I gave permission.
11. Chris Aikens and Mitchell Beebe appeared for IDDQD, Jonathan Hill for RMG.

The defendants' skeleton arguments

12. The parties were ordered to file their skeleton arguments by Friday 28 March 2025. No skeleton was filed on behalf of the defendants by that date. On 31 March 2025 the defendants filed and served two skeleton arguments, one for each of the claims. They are not signed and are clearly not finalised, being very much in draft form. Their content and style suggest that they were drafted by counsel. It is possible that the counsel concerned did not authorise their use (see below). If not, pursuant to s.45(1) of the Copyright, Designs and Patents Act 1988 there is no difficulty from a copyright perspective. Junior counsel for IDDQD was unable to find any other reported barrier to their use by the defendants.
13. I indicated to counsel for the claimants that they should treat the arguments raised on those skeletons as arguments advanced by the defendants at the trial unless Mr Smith stated otherwise.

Applications during the trial

14. In the Defence and Counterclaim to the RMG claim there is reliance on the Limitation Act 1980 on a narrow point which I discuss below. During the trial, on 3 April 2025, Mr Smith filed an application notice by which he sought to amend the Defence in the

RMG action to include a much broader limitation defence: that the claim as a whole is barred by limitation for acts occurring before 17 March 2018. I dismissed the application.

15. RMG submitted that the application was nothing more than a device to get the trial postponed. No justification was given by Mr Smith for having failed to plead reliance on limitation either at the time the Defence was filed, or at least in good time before the trial. Until just before the trial the defendants were represented by solicitors and several successive counsel, all of whom had had every opportunity to advise that limitation provided a broad potential defence. Apparently, none of them did so advise. Limitation was undoubtedly considered by all or some of them because the narrow limitation point was pleaded.
16. If I had given permission to plead the broader limitation point RMG would have been forced to deal with it under the pressure of conducting a trial. RMG would have been entitled to consider whether there were grounds for relying on s.32(1) of the Limitation Act 1980, alleging deliberate concealment on the part of the defendants. RMG would have needed time to assess and if appropriate to formulate the point. It did not seem to me to be an argument beyond any reasonable contemplation and would have raised significant issues of fact, requiring further disclosure and evidence and forcing an adjournment of the trial.
17. Mr Smith said that he was amenable to an adjournment. That would have entailed not only a delay in reaching a result and the corresponding prejudice to the claimants, it would have significantly increased their costs. There was no way of telling when an adjourned trial could have been heard.
18. As to potential harm to the defendants, RMG submitted that having its claim restricted to acts done after 17 March 2018 would anyway not make much difference to the scale of potential damages which may be awarded against the defendants. That seemed to be correct.
19. On the balance of justice, the defendants' loss of a potential defence raised so late in the day did not in my view outweigh the inevitable and substantial prejudice to the claimants if the defence was allowed. I therefore refused permission to make the amendment.
20. After the close of parties' oral evidence, Mr Smith made another application, this time for an adjournment of closing submissions for 14 days. I refused the adjournment.
21. Due to the impossibility of knowing when all concerned could be reassembled, it is certain that the adjournment would have been longer than 14 days, probably much longer.
22. Mr Smith said that he wanted to find junior counsel who would be able to argue the defendants' case in closing. He produced a letter dated 7 April 2025 from Victoria McEvedy of McEvedys Solicitors & Attorneys Ltd, his former solicitors, addressed to the leading and junior counsel at one time briefed to appear on behalf of the defendants at the trial. Junior counsel was apparently briefed on 1 March 2025, leading counsel not until 26 March 2025. The letter alleges that junior counsel had ceased work on 21 March 2025, that leading counsel had then agreed to step in, but on the first day of the

trial he had withdrawn from the case. Both counsel were accused by Ms McEvedy of being in ‘fundamental breach’.

23. Mr Smith relied on the letter, as I understood it, to indicate that his lack of representation was no fault of his, rather the fault of his former counsel, and that therefore justice favoured the adjournment he was seeking.
24. An odd feature of the letter was that it came from Victoria McEvedy, seven days after Mr Smith had filed his Form N434 formally stating that Ms McEvedy’s firm no longer acted for the defendants.
25. Counsel for IDDQD told me that the letter was at best incomplete and possibly inaccurate. Apparently, at 3pm on Friday 28 March 2025 leading counsel then acting for the defendants emailed the claimants’ counsel saying that he was ready to serve a skeleton argument. On the evening of the same day, leading counsel for the defendants informed counsel for the claimants that he had been instructed by Ms McEvedy that he should not serve the skeleton he had prepared. This notwithstanding, late on Saturday 29 March 2025 Ms McEvedy served on the claimants the defendants’ draft skeletons I have seen. At about 9am on Sunday 30 March 2025 leading counsel for the defendants asked the claimants’ counsel to delete the skeletons because he had not authorised them. Later that day he followed this up by saying that the skeletons sent were drafted by junior counsel, not him. There was apparently no word from junior counsel.
26. The relevance of this confusing story so far as this judgment is concerned is that even if the charges made by Mr Smith against leading and junior counsel for the defendants contained in the letter of 7 April 2025 had any bearing on anything, I have no way of telling whether the charges are justified. They are anyway of minor relevance. More significant to my mind is the apparently turbulent relationship between Mr Smith and the successive counsel representing the defendants over recent years. I do not know whether the responsibility for that turbulence lies here or there, but I think it is fair for me to assume that the turnover must have involved decisions taken by Mr Smith. I also know that Mr Smith took the decision to appear in person for the defendants on or shortly before 31 March 2025.
27. When Mr Smith made his application to adjourn after the oral evidence was concluded he had apparently by this time changed his mind and decided that he wanted the assistance of counsel after all. In my view, Mr Smith found himself where he was largely because of his own earlier decisions. If I had granted an adjournment the prejudice to the claimants would have been self-evident and mirrors that which would have been caused by an adjournment of the trial. I therefore took the view that the balance of justice favoured the refusal of an adjournment.

The witnesses

28. IDDQD’s sole witness of fact was Christopher Blanchard who is the director of IDDQD. RMG filed witness statements from Scott Childes, former Consumer and Network Access Compliance Manager; Andrew Metcalfe, Advanced Customer Advisor; John Batchelor, Operation Performance Manager; Ian Evans, Head of the Address Management Unit and Gareth Robson, Chief Data Architect at HM Land Registry. They were cross-examined briefly or not at all by Mr Smith, by which I imply no criticism. I have no reason to doubt the truth or accuracy of the evidence they gave.

29. Mr Smith was the defendants' principal witness of fact. Understandably, since Mr Smith also acted as the sole advocate on behalf of the defendants, he had difficulty in distinguishing the two roles. His prime concern in answering questions from counsel tended to be to argue the defendants' case rather than just addressing the question. I formed the view that Mr Smith's priority was to say what was required to promote his case rather than assisting the court with fair and accurate evidence. He also seemed unconcerned about the defendants' obligation to comply with interim orders made by the court during these proceedings. I cannot assume that evidence given by Mr Smith which has no documentary corroboration is reliable.
30. Evidence was also given by Mr Smith's wife, Claire. Mrs Smith was at least notionally a bookkeeper for Codeberry and had some involvement in the management of some of Codeberry's accounts for larger clients. Her answers in cross-examination revealed that she knew little or nothing about the conduct of Codeberry's business and although she signed the accounts and other documents provided to her by Mr Smith, she did not know what they contained.
31. Phil Beckett acted as expert witness for both IDDQD and RMG. Mr Beckett is a Managing Director at Alvarez & Marsal, a management consultancy. He works within the Forensic Technology team which provides opinion and evidence on their clients' technology issues. Mr Smith conducted his cross-examination of Mr Beckett in a courteous manner, putting relevant and sensible questions to Mr Beckett. Mr Beckett gave clear and balanced answers.
32. The defendants' expert was Jason Coyne. Mr Coyne is a partner at Evolution Project Consulting, a consulting firm which provides its clients with help in disputes involving the use or implementation of technology. He has earlier worked in other consultancy firms assisting clients principally in the resolution of disputes arising from software application projects. Mr Coyne has had considerable experience in providing expert evidence in various court proceedings, arbitrations and inquiries. These included the inquiry into the conduct of the Post Office in relation to its Horizon IT accounting software and the wrongful conviction of hundreds of sub-postmasters. In his written expert reports, Mr Coyne was firm in his support of the defendants' case against the allegations made by RMG and IDDQD. However, in cross-examination Mr Coyne made fair concessions, leaving his expert opinion more neutral in tone.
33. Mr Beckett and Mr Coyne were both helpful witnesses at the trial.

Database Right – the law

34. Database rights were created by Directive 96/9/EC of 11 March 1996 ('the Directive'). The Directive was implemented in the UK by the Copyright and Rights in Databases Regulations 1997 (SI 1997/3032) ('the Database Regulations'). The Database Regulations are retained EU law pursuant to the European Union (Withdrawal) Act 2018, renamed 'assimilated law' pursuant to the Retained EU Law (Revocation and Reform) Act 2023.

Application of EU law

35. All parties asserted that pursuant to the European Union (Withdrawal) Act 2018 as amended and the Retained EU Law (Revocation and Reform) Act 2023 the law

governing events occurring before the end of 2023 must be construed at first instance by reference to relevant judgments of the CJEU made by the end of 2020. Regard may be had to decisions of the CJEU delivered from the beginning of 2021.

36. The parties agreed that the position with regard to events occurring from 1 January 2024 is less clear. The *Marleasing* principle (*Marleasing SA v La Comercial Internacional de Alimentacion SA* (C-106-/89) EU:C:1990:395) no longer has application in English law (see also *Makeality Ltd v City Doggo Ltd* [2025] EWCA Civ 400, at [38]). On the other hand, the following general proposition has been stated by the Supreme Court in *Uber BV v Aslam* [2021] UKSC 5:

‘[70] The modern approach to statutory interpretation is to have regard to the purpose of a particular provision and to interpret its language, so far as possible, in the way which best gives effect to that purpose. In *UBS AG v Revenue and Customs Comrs* [2016] UKSC 13; [2016] 1 WLR 1005, paras 61-68, Lord Reed (with whom the other Justices of the Supreme Court agreed) explained how this approach requires the facts to be analysed in the light of the statutory provision being applied so that if, for example, a fact is of no relevance to the application of the statute construed in the light of its purpose, it can be disregarded. Lord Reed cited the pithy statement of Ribeiro PJ in *Collector of Stamp Revenue v Arrowtown Assets Ltd* (2003) 6 ITLR 454, para 35:

"The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically."

37. It would seem to follow from *Uber* that in relation to a UK regulation enacted to implement an EU Directive, where Parliament's intention was that the regulation should be consistent with the Directive, it remains legitimate to consider the language of the Directive when interpreting the Regulation. Possibly also, without being bound, to have regard to any explanation of that language from the CJEU.

Definition of database

38. Reg.12 of the Database Regulations states that ‘database’ has the meaning given by s.3A of the Copyright, Designs and Patents Act 1988 (‘the 1988 Act’) (for the purpose of copyright protection), taken from art.1(2) of the Directive:

“‘database” means a collection of independent works, data or other materials which –

(a) are arranged in a systematic or methodical way, and

(b) are individually accessible by electronic or other means.’

Subsistence

39. Reg.13 of the Database Regulations, taken from art.7(1) of the Directive, provides, so far as is relevant:

- ‘13. (1) *A property right (“database right”) subsists, in accordance with this Part, in a database if there has been a substantial investment in obtaining, verifying or presenting the contents of the database.*
- (2) *For the purposes of paragraph (1) it is immaterial whether or not the database or any of its contents is a copyright work, within the meaning of Part I of the 1988 Act.’*
40. Art.7(1) states that the substantial investment may be quantitative or qualitative.
41. Reg.12 of the Database Regulations explains what is meant by ‘substantial investment’:
- “‘investment” includes any investment, whether of financial, human or technical resources;
- ...
- “substantial”, in relation to any investment, extraction or re-utilisation, means substantial in terms of quantity or quality or a combination of both.’
42. The CJEU provided guidance with regard to the meaning of ‘obtaining’, ‘verifying’ and ‘presenting’ in *CV Online Latvia SIA v Melons SIA* (C-762/19) EU:C:2021:434. This was decided after IP completion day (31 December 2020) but as noted above, English courts may have regard to such decisions for events occurring before the end of 2023, all the more so here since the relevant passage of the judgment draws from CJEU judgments delivered before IP completion day:
- ‘[25] In accordance with the court’s settled case law, investment in the obtaining of the contents of a database concerns the resources used to seek out existing independent materials and collect them in the database, and not to the resources used for the creation as such of independent materials (*British Horseracing Board Ltd v William Hill Organisation Ltd* (Case C-203/02) [2009] Bus LR 932; [2004] ECR I-10415, para 31 and *Fixtures Marketing Ltd v Svenska Spel AB* (Case C-338/02) [2004] ECR I-10497, para 24).
- [26] Next, the concept of an investment in the verification of the contents of a database must be understood to refer to the resources used, with a view to ensuring the reliability of the information contained in that database, to monitor the accuracy of the materials collected when the database was created and during its operation (*British Horseracing Board Ltd*, para 34).
- [27] Lastly, investment in the presentation of the contents of the database includes the means of giving that database its function of processing information, that is to say those used for the systematic or methodical arrangement of the materials contained in that database and the organisation of their individual accessibility (*Fixtures Marketing Ltd v Svenska Spel AB* [2004] ECR I-10497, para 27; *Fixtures Marketing Ltd v Organismos Prognostikon Agonon Podosfairou (OPAP)* (Case C-444/02) [2004] ECR I-10549, para 43 and *Fixtures Marketing Ltd v Oy Veikkaus AB* (Case C-46/02) [2004] ECR I-10365, para 37).’

43. As appears from paragraph 25 of the CJEU's judgment, investment in the creation of materials is not protected by a database right, as opposed to investment in seeking out materials and collecting them into a database, which is. 'Creation' means creating the materials obtained and assembled into a database, not creating the data. To give an example, data may be created by measuring natural phenomena such as successive air temperatures over a given period. In that instance the materials would be the temperatures. Any amount of investment in heating or cooling to create the temperatures would not be protected. Substantial investment in assembling a database of the temperatures, on the other hand, would qualify for protection. See also *Football Dataco Ltd v Britten Pools Ltd* [2013] EWCA Civ 27, at [35]-[49]. Separately, investment in verification of the temperatures and in the presentation of the contents of the data setting out the temperatures, would each be protected.
44. Reg.17(1) of the Database Regulations states that a database right subsists until the end of the period of 15 years from the end of the calendar year in which the making of the database was completed.
45. Reg.17(3) states:
- '(3) Any substantial change to the contents of a database, including a substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment shall qualify the database resulting from that investment for its own term of protection.'*
46. This implements art.10(3) of the Directive. Art.10(3) itself indicates that the substantial change to the contents of the database may be qualitative or quantitative.
47. In the case of a dynamic or 'rolling' database, i.e. one which is constantly updated, the correct analysis seems to be that there is always a single database which, taken at the stage of any substantial change within the meaning of reg.17(3), is the database at that point, with the 15 years of protection accordingly. In *British Horseracing Board Ltd v William Hill Organisation Ltd* (Case C-203/02) EU:C:2004:695 ('BHB') the CJEU declined to consider this approach but Advocate-General Stix-Hackl said:
- '[148] It is characteristic of dynamic databases that there is only ever one database, namely the most recent. Previous versions "disappear". That raises the question of what the new term of protection covers, in other words, what the object of protection, that is to say, the new one, is.
- [149] The point of departure must be the objective of the changes, which is to bring the database up to date. That means that the whole database is the object of the new investment. Thus, the most recent version, that is to say, the whole database, is always the object of protection.'

Ownership

48. Reg.15 states:

'The maker of a database is the first owner of database right in it.'

49. Reg.18, as amended and so far as is relevant, requires that the maker was at the material time a UK national or, as appropriate, incorporated or formed under UK law.

Infringement

50. Reg.16 provides:

‘(1) Subject to the provisions of this Part, a person infringes database right in a database if, without the consent of the owner of the right, he extracts or re-utilises all or a substantial part of the contents of the database.

(2) For the purposes of this Part, the repeated and systematic extraction or re-utilisation of insubstantial parts of the contents of a database may amount to the extraction or re-utilisation of a substantial part of those contents.’

51. Definitions are given in reg.12:

“extraction”, in relation to any contents of a database, means the permanent or temporary transfer of those contents to another medium by any means or in any form;

“insubstantial”, in relation to part of the contents of a database, shall be construed subject to Regulation 16(2);

“re-utilisation”, in relation to any contents of a database, means making those contents available to the public by any means;

“substantial”, in relation to any investment, extraction or re-utilisation, means substantial in terms of quantity or quality or a combination of both.’

Substantiality

52. The definition of ‘insubstantial’ in reg.12(1) above states that it must be construed subject to reg.16(2) (quoted above). The CJEU gave guidance as to the meaning of substantiality in *BHB*:

[70] The expression “substantial part, evaluated quantitatively”, of the contents of a database within the meaning of Art.7(1) of the directive refers to the volume of data extracted from the database and/or re-utilised, and must be assessed in relation to the volume of the contents of the whole of that database. If a user extracts and/or re-utilises a quantitatively significant part of the contents of a database whose creation required the deployment of substantial resources, the investment in the extracted or re-utilised part is, proportionately, equally substantial.

[71] The expression “substantial part, evaluated qualitatively”, of the contents of a database refers to the scale of the investment in the obtaining, verification or presentation of the contents of the subject of the act of extraction and/or re-utilisation, regardless of whether that subject represents a quantitatively substantial part of the general contents of the protected database. A quantitatively negligible part of the contents of a database may in fact

represent, in terms of obtaining, verification or presentation, significant human, technical or financial investment.’

53. In *CV Online Latvia* (cited above) the CJEU said in its dispositive ruling that content of a database is extracted and reutilised within the meaning of the Directive:

‘... where those acts adversely affect its investment in the obtaining, verification or presentation of that content, namely that they constitute a risk to the possibility of redeeming that investment through the normal operation of the database in question ...’

Extraction

54. The CJEU has said that the concept of extraction is to be given a wide definition: *Directmedia Publishing GmbH v Albert-Ludwigs-Universität Freiburg* (C-304/07) [2008] E.C.R. I-7565, at [31].
55. Extraction of the contents of a database may occur indirectly, from a source other than the database concerned and therefore does not necessarily require direct access to it, see *BHB* at [53].
56. In *Directmedia* the CJEU gave further guidance to meaning of extraction, which I will summarise:
- (1) It refers to any unauthorised act of appropriation of the whole or part of the contents of a database ([34]).
 - (2) The decisive criterion is whether there has been an act of transfer of all or part of the database from one medium to another by any means, electronic, manual or otherwise ([35]-[38] and [48]-[49]).
 - (3) It is immaterial whether the transfer leads to an arrangement of the content which is different from that in the original database, or whether the content has been otherwise adapted ([39]-[41]).
 - (4) Since a substantial part of the database taken may be assessed qualitatively, ‘extraction’ is not limited to the transfer of (quantitatively) all or a substantial part of the protected database ([42]-[44]).
 - (5) There may be an infringing transfer of material even if the transfer is only after a critical assessment by the party carrying out the transfer ([45]).
 - (6) The objective pursued by the act of transfer is immaterial to whether there has been an extraction [[46]-[47]].
 - (7) Extraction does not include consultation of a database ([51]). See below with regard to the meaning of ‘consultation’ as used by the CJEU (it is not a term taken from the Directive).

Re-utilisation

57. The CJEU has held that, like extraction, re-utilisation is to be given a broad construction, see *Innoweb BV v Wegener ICT Media* (C-202/12) EU:C:2013:850, at [33] and [38]. The term:

‘refers to any unauthorised act of distribution to the public of the contents of a protected database or a substantial part of such contents ...’ (*Innoweb* at [37]).

58. The interpretation of ‘substantial’ as discussed by the CJEU in *Directmedia* in the context of extraction applies equally to re-utilisation, see *BHB* at [50]. As with extraction, re-utilisation may be indirect, without the re-utilising party having access to the database protected, see *BHB* at [53].

Consultation

59. As noted above, in *Directmedia* the CJEU stated that the consultation of a database does not constitute extraction, citing *BHB* at [54] (which refers also to re-utilisation). In the latter case the Court said:

‘[54] However, it must be stressed that the protection of the *sui generis* [database] right concerns only acts of extraction and re-utilisation as defined in Art.7(2) of the directive. That protection does not, on the other hand, cover consultation of the database.

[55] Of course, the maker of a database can reserve exclusive access to his database to himself or reserve access to specific people. However, if he himself makes the contents of his database or a part of it accessible to the public, his *sui generis* right does not allow him to prevent third parties from consulting that base.’

60. Although paragraph 54 states that an act of consultation by itself does not qualify as an act of either extraction or re-utilisation, paragraph 55 then casts doubt on that proposition. A database owner may restrict access to his database. This implies that an unauthorised person who consults the database may be sued, presumably for infringement of database right, which would seem only to be possible if consultation does in those circumstances qualify as either an act of extraction or re-utilisation. Paragraph 55 gives the impression that the consuler is only off the hook if the database or the relevant part of it has been made publicly accessible for consultation.
61. There are different ways of viewing a database. In the case of an electronic database, consultation will require the transfer of data, albeit temporarily. It would make sense to view consultation by this means as being preceded by extraction.
62. The CJEU said this at paragraph 60 of *Directmedia*:

‘[60] In the light of the above, the answer to the question referred must be that that the transfer of material from a protected database to another database following an on-screen consultation of the first database and an individual assessment of the material contained in that first database is capable of constituting an “extraction”, within the meaning of Art.7 of Directive 96/9, to the extent that—which it is for the referring court to ascertain—that operation amounts to the transfer of a substantial part, evaluated qualitatively or

quantitatively, of the contents of the protected database, or to transfers of insubstantial parts which, by their repeated or systematic nature, would have resulted in the reconstruction of a substantial part of those contents.’

63. The infringing act was held to be the transfer of contents of the protected database which had followed on-screen consultation of the protected database. The judgment does not say whether the consultation was of itself an act of infringement, maybe because it made no difference.
64. In *77m Ltd v Ordnance Survey Ltd* [2019] EWHC 3007 (Ch) the claimant (77m) had created a dataset called Matrix consisting of the geospatial coordinates of all residential and non-residential addresses in Great Britain. 77m wanted to commercialise Matrix and sought a declaration that it had not infringed the rights of the defendant (OS). OS counterclaimed for infringement of copyright and database rights, although by the time of the trial it relied only on database rights. Matrix had been created by combining address data with geospatial data. The geospatial data used included centroids (the arithmetic mean position of all points in a figure) of all the freehold plots of England and Wales. The centroids were derived from data owned by OS. Birss J referred to the argument advanced by 77m that it had done no more than consult OS’s data and therefore had not infringed:

‘[276] In the end I have decided that what 77m have done is not consultation. The reasons are these. What is apt to confuse the issue is that in economic terms what OS is trying to stop is Matrix, but Matrix does not contain the relevant contents (the centroids). Matrix is not the "other medium". The fact that the process which involved the putative act of extraction by 77m of the centroids was ultimately something which led to another database being produced, is irrelevant to the analysis. If what 77m did is an act of extraction that must be true whatever it is 77m went on to do having used the centroids for its purposes and discarded them. This is I think what the court is referring to at [47] of *BHB v William Hill*. That case also used the term appropriation to refer to extraction, which has been picked up later (see [51]). Moreover while re-utilisation involves making available to the public, extraction does not have to.

[277] There may be a simple answer, as follows. In *Directmedia* at [60] the court refers to on screen consultation. It may be that what the CJEU is talking about there is that a situation in which a person reads the data on a computer screen and does nothing else is consultation. It is not extraction because the only possible "other medium" into which the contents have been transferred is the individual's brain and that is not a relevant sort of medium. If things are written down and then it is done on a large scale then there may be extraction but the act of on screen consultation is not infringing. If that is what the CJEU means then clearly 77m does not do this sort of consultation. However I have misgivings about this way of reading the cases. It is not clear that that is what is meant and, for example, I do not see why consultation by a user themselves sitting by a terminal should be exempt while consultation by a user accessing data through their own device like a mobile phone might not be.

[278] 77m is using the centroids from the original database for information purposes in a sense (to draw an inference) and that chimes with the references to consultation in *Directmedia* and *Innoweb*. Moreover 77m was given access

to the database albeit what 77m then did was not licensed. However what I think deprives 77m's activity of the character of mere consultation is its scale. When a member of the public, or a commercial user, wishes to consult the database to learn something about a particular entry or to learn something about particular entries, they consult the database. By contrast someone who takes all or a substantial part of all the contents, and transfers them into another medium so that they can use them, is appropriating to themselves a substantial part of the investment which went into creating the database. Protecting that investment is what database right is for. That is what 77m did and that is why it is extraction not consultation. There may be a grey area between the sort of commercial consultation I refer to and wholesale activity of the kind carried out by 77m but the scale of 77m's actions puts them firmly on the extraction side of the line.'

65. In *DRSP Holdings Ltd v O'Connor* [2021] EWHC 626 (Ch) the claimant alleged infringement of its right in a database used in its claims management business. Judge Cawson QC considered the concept of consultation:

'[231] As to consultation, whilst it is correct that mere consultation of a database may not, in itself, be an infringing act, I consider that the Claimants are correct in their assertion that if the consultation involves the permanent or temporary transfer to another medium, as is the case when looking at a database on screen, as opposed to a paper copy database, it does amount to infringement – see the discussion of *BHB v William Hill* in Laddie, Prescott and Vitoria (supra) at paras 23.66-23.67 supporting the view, which I consider to be correct, that all that was intended to be said by the CJEU in respect of "consultation" in that case was that when an electric database is lawfully consulted (i.e. with the express or implied consent of the database make), there is an implied consent or authorisation to any temporary transfer of the database to allow that lawful consultation, but no more than that.

[232] In my judgment, if Mr O'Connor and Octax were not authorised to do what they did, then what they did went beyond mere consultation of the Slate database, and did amount to extraction subject the Defendant' further arguments.'

66. I agree. Consulting a database, merely looking at it however carefully, is not by itself either extraction or re-utilisation. But there may have been an act of extraction in advance of the consultation, such as by temporarily downloading the database on to the consultor's screen. If something is done with the consulted data, that may further qualify as extraction and/or re-utilisation.
67. In paragraph 55 of *BHB* the CJEU was possibly doing no more than emphasising that there is a defence of consent to an allegation of extraction or re-utilisation where the database has been made available to the public. It may be that the CJEU felt the need to underline the existence of such a defence because there is no express provision for it in the Database Directive.

Consent

68. Reg.16(1) of the Database Regulations provides:

‘(1) Subject to the provisions of this Part, a person infringes database right in a database if, without the consent of the owner of the right, he extracts or re-utilises all or a substantial part of the contents of the database.’

69. As I have said, the qualification of consent in reg.16(1) does not appear expressly in the Database Directive, specifically not in art.7, although the recitals of the Directive and arts.8(1) and 9 suggest that qualification.
70. Can consent to extraction or re-utilisation be implied? Although the *Marleasing* principle no longer applies in English law, the purpose of the Database Regulations was to implement an aspect of EU IP law, namely the Database Directive (see reg.2(1)(a)). It seems to me that the intent of those drafting the Regulations was that the concept of consent should be in accordance with EU law as explained by the CJEU.
71. I considered the principles of implied consent under EU trade mark law in *Urbanbubble Ltd v Urban Evolution Property Management Ltd* [2022] EWHC 134 (IPEC):

‘[109] The leading judgment of the CJEU on implied consent to the use of a trade mark is *Zino Davidoff SA v A&G Imports Ltd* (Joined Cases (C-414/99), (C-415/99) and (C-416/99)) EU:C:2001:617. ...

...

[112] The Court then explained the concept:

“[45] In view of its serious effect in extinguishing the exclusive rights of the proprietors of the trade marks in issue in the main proceedings (rights which enable them to control the initial marketing in the EEA), consent must be so expressed that an intention to renounce those rights is unequivocally demonstrated.

[46] Such intention will normally be gathered from an express statement of consent. Nevertheless, it is conceivable that consent may, in some cases, be inferred from facts and circumstances prior to, simultaneous with or subsequent to the placing of the goods on the market outside the EEA which, in the view of the national court, unequivocally demonstrate that the proprietor has renounced his rights.

...

[53] It follows ... that consent must be expressed positively and that the factors taken into consideration in finding implied consent must unequivocally demonstrate that the trade mark proprietor has renounced any intention to enforce his exclusive rights.

[54] It follows that it is for the trader alleging consent to prove it and not for the trade mark proprietor to demonstrate its absence.

[55] Consequently, implied consent to the marketing within the EEA of goods put on the market outside that area cannot be inferred from the mere silence of the trade mark proprietor.”

[113] Thus, if consent is to be implied the court must be satisfied that the relevant facts and circumstances unequivocally demonstrate that the trade mark proprietor has renounced any intention to enforce his exclusive rights conferred by the mark.

[114] Counsel for the Defendants made the point that it is the demonstration which must be unequivocal, not the consent. It is not necessary that the trade mark proprietor gives unequivocal - in the sense of unqualified - consent. For instance, an unequivocal demonstration by the trade mark proprietor that he consents to the use of his mark provided it is never used in green would establish consent within the meaning of art.5, albeit qualified consent.

[115] The burden of proof is the usual one: the alleged infringer must show on the balance of probabilities that the relevant facts and circumstances unequivocally demonstrate consent, see *Dalsouple Société Saumuroise du Caoutchouc v Dalsouple Direct Ltd* [2014] EWHC 3963 (Ch) at [39].

...

[117] The language in *Davidoff* of unequivocal demonstration on the facts indicates, as one would expect, that this is an objective assessment of consent, not an assessment of subjective consent.’

72. Consent in relation to copyright protection under the Information Society Directive 2001/29 was discussed by the CJEU in *Soulier v Premier Ministre* (C-301/15) EU:C:2016:878. The Court did not elect to say that the principles are identical to those expressed in *Davidoff*, although they appear to be at least broadly consistent:

‘[35] Nevertheless, art.2(a) and art.3(1) of Directive 2001/29 do not specify the way in which the prior consent of the author must be expressed, so that those provisions cannot be interpreted as requiring that such consent must necessarily be expressed explicitly. It must be held, on the contrary, that those provisions also allow that consent to be expressed implicitly.

[36] Thus, in a case in which it was questioned about the concept of a “new public”, the Court held that, in a situation in which an author had given prior, explicit and unreserved authorisation to the publication of his articles on the website of a newspaper publisher, without making use of technological measures restricting access to those works from other websites, that author could be regarded, in essence, as having authorised the communication of those works to the general internet public (see, to that effect, *Svensson* [2014] 3 C.M.L.R. 4 at [25]–[28] and [31]).

[37] However, the objective of increased protection of authors to which recital 9 of Directive 2001/29 refers implies that the circumstances in which implicit consent can be admitted must be strictly defined in order not to deprive of effect the very principle of the author’s prior consent.

[38] In particular, every author must actually be informed of the future use of his work by a third party and the means at his disposal to prohibit it if he so wishes.

[39] Failing any actual prior information relating to that future use, the author is unable to adopt a position on it and, therefore, to prohibit it, if necessary, so that the very existence of his implicit consent appears purely hypothetical in that regard.’

73. I take the view that the concept of consent suggested in the Directive and expressly stated in reg.16(1) of the Database Regulations should, with regard to implied consent, be understood in accordance with the meaning explained in *Davidoff*.

Regulation 19 of The Database Regulations

74. Reg.19 of the Database Regulations provides:

‘Avoidance of certain terms affecting lawful users

19.—(1) A lawful user of a database which has been made available to the public in any manner shall be entitled to extract or re-utilise insubstantial parts of the contents of the database for any purpose.

(2) Where under an agreement a person has a right to use a database, or part of a database, which has been made available to the public in any manner, any term or condition in the agreement shall be void in so far as it purports to prevent that person from extracting or re-utilising insubstantial parts of the contents of the database, or of that part of the database, for any purpose.’

75. Reg.19(1) appears to go no further than reinforcing reg.16(1): a database right can only be infringed if there is extraction or re-utilisation of all or a substantial part of the contents of the database. An insubstantial part will not suffice. Reg.19 is derived from art.8 of the Database Directive. I was referred to the Statement of Reasons in paragraphs 15 and 16 of the EC Council’s Common Position (EC) No. 20/95, at 26-27, which indicates that indeed the provision was intended to be clarificatory.
76. Reg.19(2) goes further by providing that a party may not rely on a contractual term to prevent the extraction or re-utilisation of an insubstantial part. Nothing in reg.19 detracts from the effect of reg.16(2).

EU law and estoppel, laches and acquiescence

77. In *Marussia Ireland Ltd v Manor Grand Prix Racing Ltd* [2016] EWHC 809 (Ch) Males J ruled that EU trade mark law operates as a complete code so far as the rights of an EU trade mark are concerned. A defence of estoppel available under national law would undermine the objective of achieving the same protection in all EU jurisdictions and was accordingly unacceptable.
78. RMG argued that the same must apply in respect of database rights and to a defence of laches and acquiescence just as much as to estoppel. I agree to the extent that there is no reason to distinguish the three defences in this regard. In the absence of argument, which in the event was not necessary in this case, I make no observation as to whether the availability of those defences in relation to an alleged infringement of database rights or other EU-based right has been affected by Brexit.

Copyright – the law

79. Until the amendment of the 1988 Act in January 1998 in conformity with the Database Directive, databases were not expressly mentioned in it. The same was true of its predecessor the Copyright Act 1956 ('the 1956 Act'). Databases were nonetheless protected as literary works, subject to the law on such protection at the time. An example is *Waterlow Publishers Ltd v Rose* [1995] FSR 207, a judgment of the Court of Appeal given in October 1989 in relation to the 1956 Act. The Court confirmed that copyright subsisted in a list of the names and addresses of all solicitors holding practising certificates, being a 'written table or compilation' within the meaning of s.48(1) of the 1956 Act and therefore a protectable literary work. Under the 1988 before its 1998 amendment such a database was protected as a literary work in the form of a 'written .. table or compilation' within the meaning of s.3(1)(a).
80. From January 1998 the amended Act expressly excluded databases from the definition of 'table or compilation' and added 'database' as a separate category of literary work, defined in s.3A(1):

'(1) In this Part "database" means a collection of independent works, data or other materials which –

(a) are arranged in a systematic or methodical way, and

(b) are individually accessible by electronic or other means.'

Applicability of EU law

81. The distinction between the law which applies to events up to the end of 2023 and those which occurred from the start of 2024 applies to copyright in the same way it does to database rights.

Subsistence of copyright in a database

82. Before the January 1998 amendment, copyright in a database that qualified as a literary work subsisted if it was original, which imposed the usual requirement under UK copyright law: the author or authors must have expended sufficient skill or labour in its creation. The bar was low and anything other than slavish copying generally sufficed. In *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 WLR 273 Lord Hodson said it was enough that the plaintiff had employed 'more than negligible skill and labour' in the designing of their football coupons and therefore copyright subsisted in them.
83. Since 1 January 1998 the law governing whether a database is an original literary work has been as set out in s.3A(2):

'(2) For the purposes of this Part a literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of the contents of the database the database constitutes the author's own intellectual creation.'

Transitional provisions

84. The Directive provides that databases shall continue to be protected by copyright as well as the *sui generis* database right introduced by the Directive. The Directive has

provisions on copyright law. The Database Regulations amended the 1988 Act accordingly.

85. In the case of some Member States, such as the UK, the criteria for originality in the Directive are more exacting than those which had applied under national law. The change had the potential to affect copyright protection for existing databases, so this was ameliorated by transitional provisions. Reg.29 of the Database Regulations provides:

‘29. (1) *Where a database—*

(a) was created on or before 27th March 1996, and

(b) is a copyright work immediately before 1st January 1998,

copyright shall continue to subsist in the database for the remainder of its copyright term.

(2) In this Regulation “copyright term” means the period of the duration of copyright under section 12 of the 1988 Act (duration of copyright in literary, dramatic, musical or artistic works).’

The consequence of amendments to a database

86. The origins of RMG’s PAF database go back to the 1960s, since when there have been continual amendments. The changes have been substantial in the sense that successively new databases have been created over time.
87. *L.A. Gear Inc v Hi-Tech Sports plc* [1992] FSR 121 concerned an application for summary judgment. The Court of Appeal held that the drawing of a shoe was original even if it had been copied (by inference slavishly) from a preliminary drawing. The argument advanced on behalf of the defendant that the final version relied on lacked originality because it was a copy was thought to be ‘novel and disturbing’ and was to be ‘firmly rejected’. Each drawing, including the final slavish copy, was the author’s original work.
88. In *Martin v Kogan* [2019] EWCA Civ 1645, the Court of Appeal adopted a more flexible approach. In some circumstances it may be better to analyse copyright works on a draft-by-draft basis:

‘[80] Where a copyright work is created by working on a series of drafts, it is possible to analyse the artistic or literary input in two ways. One approach is to treat each draft as a separate, derivative copyright work. On this approach only the skill and labour which goes into producing the draft in question is assessed for originality. A second approach is to treat the work holistically as a single work which required the totality of the skill and labour involved in producing all the drafts to produce it. Often the choice between these two approaches will not matter, for example if it is clear that one author produced all the drafts, or all the authors made the work in the course of their employment for a single employer in whom the copyright will vest by operation of law. Where all the relevant copyright is vested in the same person, splitting up the skill and labour

into historical chunks will only add complexity. The present case, by contrast, was one where one could see from the pleadings that it could well matter which approach was taken, as it was clear that Ms Kogan had been more involved in the early drafts than the later ones. Certainly, this was never a case which would turn on the circumstances relating to the converting of the penultimate draft into the final screenplay.’

Ownership of copyright

89. Section 10(1) of the 1988 Act defines a ‘work of joint authorship’ as:

‘a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.’

90. It seems to me that the requirement in the subsection that ‘the contribution of each author is not distinct’ is to be interpreted as meaning that the contribution of one author (or set of authors) is not distinct in nature, in classifiable form, from that of other authors. Otherwise the requirement would be robbed of any meaning: all collaborations are bound to involve a distinct contribution from each author in the limited sense that they are individuals each doing a task not being done by the others.
91. Section 10(3) of the 1988 Act states that references to the author of a work in the Act shall, except as otherwise provided, be construed in relation to a work of joint authorship as references to all the authors of the work.
92. Section 11 provides that the author of a literary work is the first owner of copyright subsisting in it unless the work is made in the course of the author’s employment, in which case his employer is the first owner subject to any agreement to the contrary.

Infringement of copyright

93. Section 16(2) of the 1988 Act states that a copyright work is infringed by a person who, without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by s.16(1).
94. In the present claim, the restricted acts relied on are: (i) copying the relevant database (s.16(1)(a)), (ii) issuing copies to the public (s.16(1)(b)), (iii) communicating the database to the public (s.16(1)(d)) and (iv) making an adaptation of the database (s.16(1)(e)).
95. The allegations are made in respect of the whole or a substantial part of the database (s.16(3)). In *Martin v Kogan* [2019] EWCA Civ 1645 Floyd LJ observed at [41]:
- ‘It is the skill and effort involved in creating, selecting or gathering together the detailed concepts or emotions which the words have fixed in writing which is protected in the case of a literary or dramatic work, ...’*
96. Seen in the context of a compilation in the form of database, copyright according to the law at the relevant time protected the skill and effort involved in gathering together the data to create the database, including presenting the data in the manner used. It seems to me, following *Martin v Kogan*, that there is infringement by, for instance, copying,

if a substantial part of that skill and effort was appropriated by the defendant by means of the copying.

Copying

97. Copying a database includes storing the work in any medium by electronic means (s.17(2)) and making a copy which is transient or incidental to some other use of the work (s.17(6)).

Issuing copies to the public

98. Since a copy may be an electronic copy, issuing a copy includes the putting into circulation in the UK an electronic copy of a database, provided the copy has not been previously put into circulation in the UK (s.18(2)).

Communication to the public

99. Section 20 of the 1988 Act states, so far as is relevant:

‘20 Infringement by communication to the public

(1) The communication to the public of the work is an act restricted by the copyright in—

(a) a literary, dramatic, musical or artistic work,

...

(2) References in this Part to communication to the public are to communication to the public by electronic transmission, and in relation to a work include—

...

(b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.’

100. In *Warner Music UK Ltd v TuneIn Inc* [2021] EWCA Civ 441 Sir Geoffrey Vos MR described communication of a copyright work to the public as ‘a difficult area of law’ which ‘gives rise to frequent issues and potential anomalies’ (at [198]). In this judgment it is not necessary, nor would it be helpful, to explore the difficulties. The law as it stood in March 2021 was set out by Arnold LJ in *Warner Music* at [70]-[72]. I draw the following propositions from *Warner Music* and the judgments of the CJEU cited therein:

- (1) A user makes an act of communication when it intervenes, in full knowledge of the consequences of its action, to give its customers access to a protected work, particularly where, in the absence of that intervention, those customers would not be able to enjoy the work, or would be able to do so only with difficulty ([70(8)]).

- (2) It is sufficient for there to be communication that the work is made available to the public in such a way that the public may access it, whether or not they actually access it ([70(9)]).
- (3) The ‘public’ refers to an indeterminate number of potential recipients and implies a fairly large number of persons ([70(11)]).
- (4) Where the posting on a website of a hyperlink to protected works is done in the pursuit of financial gain, knowledge of the illegal nature of the publication of those works on that other website is presumed ([70(15)]).

Making an adaptation

101. Adaptation of a database is defined in s.21 of the 1988 Act:

’21 Infringement by making adaptation or act done in relation to adaptation.

(1) The making of an adaptation of the work is an act restricted by the copyright in a literary, dramatic or musical work.

For this purpose an adaptation is made when it is recorded, in writing or otherwise.

(2) The doing of any of the acts specified in sections 17 to 20, or subsection (1) above, in relation to an adaptation of the work is also an act restricted by the copyright in a literary, dramatic or musical work.

For this purpose it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.

(3) In this Part “adaptation”—

...

(ac) in relation to a database, means an arrangement or altered version of the database or a translation of it;’

Authorisation

102. It is alleged in RMG’s claim that alternatively the acts complained of were authorised by the defendants (s.16(2)). Authorisation was defined by Lord Templeman in *CBS Songs Ltd v Amstrad Consumer Electronics plc* [1988] AC 1013, citing the dictum of Atkin LJ in *Falcon v Famous Players Film Co.* [1926] 2 KB 474, at 499, as:

‘to grant or purport to grant to a third person the right to do the act complained of, whether the intention is that the grantee shall do the act on his own account, or only on account of the grantor’.

Use of the PAF by RMG

103. The PAF contains about 32 million addresses, known in the trade as delivery points or DPs, and about 1.8 million postcodes. It is updated almost every day. Its primary purpose from RMG's point of view is to allow use of the postcodes to ensure that letters and parcels are passed to appropriate regional mail centres, from there to a local delivery office and then to a 'walk', which is the route used by a postman or postwoman for delivering mail. There are on average about 400 DPs per walk. Self-evidently, for this to work smoothly the addresses and especially the postcodes must be accurate and up to date.
104. RMG licenses the PAF for a fee and has done so since the 1980s. Licensees divide into 'end users' who use the PAF for internal purposes only, typically to update and maintain the accuracy of their own customer database, and 'solutions providers' who incorporate the PAF into their software which is marketed to others.

The defendants' case in summary

105. Codeberry's service allows its customers to search and verify addresses across the UK. At the core of the service is Codeberry's GetAddress Database. For the most part its customers are provided with an application programming interface (API), a set of rules and protocols which allows the customer's computer system to communicate with Codeberry's software via the internet and thereby to access GetAddress.
106. The defendants' pleaded case is that they made no use of PAF data in the creation of their database. This is from the Re-Re-Amended Defence:
- 'The Defendants independently created their own database of address information from resources available on OGL terms or otherwise on open source terms.'
107. OGL stands for Open Government Licence. The pleading goes on to list 12 datasets said to be freely available to the public which were 'incorporated into the initial address database'.
108. The same pleading admits that in October 2015 Mr Smith 'created an account with [IDDQD] in order to test [IDDQD's] services.' It is also admitted that since 31 October 2015 Mr Smith used his account with IDDQD to download data from IDDQD's GBR Database. The defendants say that they were licensed to do so pursuant to the account with IDDQD opened by Mr Smith. The GBR data was used only to update and correct their database.

RMG's claim in summary

109. RMG's claim in summary is that the defendants created and/or maintained their GetAddress Database in large part by downloading data from IDDQD's RMG database. GetAddress was then marketed to Codeberry's customers. The spine of the GBR database was and is the PAF. No licence to use the PAF was ever sought from or granted by RMG. The use of a substantial part of the PAF in the GetAddress Database and the marketing of the latter by Codeberry constituted infringement of both database right and copyright in the PAF owned by RMG.

Database Right

Subsistence and ownership of RMG's database right

110. The sole point taken in the defendants' skeleton with regard to subsistence of database rights in the PAF was that care should be taken to consider only the investment in creating the database itself and nothing other than investment within the relevant period of 15 years. Otherwise, in respect of both subsistence and ownership, it was said that these issues would be explored in the evidence.
111. Unchallenged evidence from Messrs. Evans, Batchelor and Childes explained the creation and maintenance of the PAF on behalf of the Post Office and subsequently RMG. Mr Batchelor described it as a massive task involving, among other things, input from over 53,000 posties and 9-12,000 changes to the PAF being made each week. Mr Evans said that the operating costs for the PAF have been between £27m and £34m per annum over the last decade.
112. I am satisfied from the evidence as a whole that RMG and its predecessor have sufficiently invested in the creation of the PAF itself, as opposed to any other associated purpose, for database right to subsist in the PAF as a rolling database. This has been true throughout the relevant period, namely from 15 years before the start of the creation of the defendants' GetAddress Database to the present, in other words from about 1998 to now.
113. The work done in maintaining the PAF in that period was by employees of the Post Office and then RMG. Both were incorporated under the law of the UK and qualify as successive makers of the PAF and therefore owners of the database right in the PAF.
114. The defendants made the argument that it was the Post Office, not RMG, that made relevant investment in the PAF. There was nothing in it. As already noted, the evidence showed that since RMG acquired the business of the Post Office RMG's employees have done the relevant work. Also in evidence was the Post Office (Transfer of Business No.2) Scheme 2001 made by the Post Office in the exercise of its powers under s.60 of the British Telecommunications Act 1981. Under that Scheme all the property, rights and liabilities of the Post Office were transferred to RMG, then called Consignia Limited.

The creation and maintenance of the GetAddress Database

115. Since the start of these proceedings the defendants have been less than forthcoming about the creation and maintenance of their GetAddress Database. Two orders of Master Pester were required in the claimants' attempt to secure better information. The orders were not complied with in significant part. Of 61 code files which would have served as a record of what was incorporated into GetAddress only 9 were disclosed. Mr Smith's evidence in cross-examination was that they were variously irrelevant or that they had been renamed and moved to a different directory which made them hard to find. I doubt that Mr Smith's answers were both truthful and complete.
116. RMG and IDDQD provided a long and detailed account of how by correspondence and interim applications they attempted to obtain information from Mr Smith about the source of data which went into the GetAddress Database. The sequence begins with a letter dated 24 November 2014 from Alasdair MacHardy of RMG to Mr Smith stating that the PAF was RMG's intellectual property, asking for confirmation that the PAF

had been used by the defendants, asking from whom the PAF data had been obtained and to whom it had been supplied. Mr Smith replied in an email dated 25 November 2014 with an initial and simple response: no data has been taken from the PAF. He identified publicly available websites as his sources.

117. I see no point in charting each twist and turn (there were many) in the history of what was done to try to obtain information from the defendants about where the GetAddress data came from and the evolving answers given by Mr Smith in response. IDDQD submitted that Mr Smith had a ‘contemptuous’ attitude to court orders that did not suit him. In cross-examination he described them as ‘annoying’. I am clear that Mr Smith did not take seriously his duty to the court to provide evidence in a complete and candid manner and that this was intended to, and did, hamper the court’s ability to reach an accurate conclusion about the sources of the GetAddress Database.
118. The defendants’ almost final position before the trial with regard to the initial creation of their database was contained in a revised Response dated 27 January 2025 to a Part 18 Request. The Response was signed by Mr Smith and was stated to represent Mr Smith’s best recollection of how GetAddress was created. He said that 13 sources were used: (i) The Ordnance Survey Code-Point Open dataset, (ii) HM Land Registry Price Paid Data (PPD) (a record of property sales in England and Wales), (iii) Companies House dataset, (iv) the ICO (Information Commissioner’s Office) Register, (v) the Food Standards Agency’s Food Hygiene Ratings Scheme dataset (restaurants), (vi) addresses of GP practices in England, Scotland and Wales, (vii) addresses of dental surgeries in England, (viii) addresses of social housing in England, (ix) an NHS postcode directory, (x) council tax data, (xi) Open Addresses (a dataset of physical and postal addresses worldwide, including the UK), (xii) the Scottish and Northern Irish energy performance certificate (EPC) register and (xiii) the BT A-Z directory. The Response stated that in addition many addresses had been inferred, giving the example of inferring from the existence of Flat 8 that Flats 1-7 were also present at the same location.
119. One last identified source emerged from the evidence of the defendants’ expert, Mr Coyne, who identified GoCompare (an insurance website) as a further source.
120. Gareth Robson, Chief Data Architect at HM Land Registry, estimated that roughly 90% of existing addresses are added to the Land Registry PPD using PAF data. Mr Smith dealt with this by saying in his fifth witness statement dated 7 March 2025 that he had stopped importing Land Registry addresses in August 2024 and that he had carried out a process which probably removed all of these. He said that he would find alternative sources.
121. Mr Evans explained that EPC Scotland uses PAF data to capture and cleanse its database under licence from RMG. Mr Smith said in his fifth witness statement that he had removed EPC Scotland data from GetAddress. He said that he kept a full record of the changes made. He exhibited a large table of what at first seemed to be a very large number of changed addresses but which on closer inspection displays just one address in Peterhead with many different postcodes.
122. The evidence of Mr Smith’s own expert, Mr Coyne, was that the method used by Mr Smith to remove Land Registry and EPC Scotland addresses would not have been comprehensive.

123. Mr Evans said that the Ordnance Survey Code-Point dataset, the NHS postcode directory contain PAF data, in both cases under licence from RMG.
124. The defendants' pleaded assertion that any PAF data obtained from these sources was in each case, or in any instance, provided under OGL terms such that RMG had licensed the defendants to use the data was not established at the trial. I conclude from the foregoing that Mr Smith downloaded a substantial amount of PAF data from these sources for incorporation into the GetAddress Database, sufficient for infringement of RMG's copyright and database right if the GetAddress Database was marketed by the defendants without a licence.
125. Then there is IDDQD's GBR Database. As I have said, it was built around the PAF. Mr Smith opened an account with Ideal Postcodes in his own name in late 2015. He signed up for a second account under the name 'Colin Berry' on 24 November 2018.
126. The defendants admitted downloading parts of the GBR Database but said that all they were doing was verifying, validating or cleansing the GetAddress Database, created from other sources, for maintenance.
127. Even if the assertion were accurate, it is not clear to me that this makes a difference. The verifying, validating or cleansing apparently involved downloading parts of the GBR Database. Subject to a defence of mere consultation, which I will discuss below, 'verifying' and 'validating' would at the least involve temporary downloading of RMG's data, infringing both database right and copyright subject to specific defences considered below. 'Cleansing' on its face involves removing false data and replacing it with correct data, thereby incorporating the GBR data into GetAddress and making it available to customers. This was confirmed by Mr Smith in cross-examination when he said that he went to Ideal Postcodes to obtain data if he could not find it more cheaply elsewhere and then added that data to GetAddress.
128. The overall point taken by the defendants in this part of the dispute was that they neither took nor sold a substantial part of the PAF. The issue, in other words, is whether what was taken, either for the initial creation of the GetAddress Database or for its subsequent maintenance (i.e. modification), included the PAF in substantial part.
129. The claimants' expert, Mr Beckett, pointed out that two 'seed' addresses planted by RMG in their PAF data appear in the GetAddress Database. Mr Smith contended that this must have been the sum total of PAF seeds in the GetAddress Database because seeds are difficult to remove. It was a point he put to Mr Beckett and Mr Evans. They both disagreed and explained why. Seeds have postcodes which do not exist. The maintenance of the GetAddress Database by comparing it with other sources of address data would have flagged up false postcodes. Mr Beckett and Mr Evans expected that most seeds with false postcodes would then have been removed by Mr Smith.
130. Mr Beckett found a high correlation between PAF data and GetAddress data, in the region of 78%, in certain files compared. He pointed to similarities between the databases in the more frequent use of 'Bldg Soc' rather than 'Building Society' and 'C of E' rather than 'Church of England'. Mr Beckett also drew attention to many typographical errors in common between the PAF and the GetAddress Database. None of this was challenged.

131. Mr Beckett reached the conclusion that accordingly there was strong evidence consistent with the GetAddress Database having been obtained directly or indirectly from the PAF. In cross-examination he did not resile from that view.
132. Mr Coyne was adamant in his written evidence that the defendants had not incorporated any of the PAF into their GetAddress Database. But in cross-examination he accepted that (a) the lack of records kept and disclosed by the defendants going back further than 2024 provided a significant limitation to his ability to give an opinion on the matter, (b) the content of the current GetAddress Database was consistent with the defendants having incorporated part of the PAF and (c) accordingly the court was obliged to look at evidence other than expert evidence in order to reach a conclusion as to whether any of the PAF was taken and if so how much.
133. Following Mr Blanchard's suspicions that the defendants were taking IDDQD's data and using it contrary to the terms of the agreement with IDDQD, he wrote what he called 'sleeper software' to gather evidence against the defendants. Whenever Mr Smith's account made a request for addresses using a particular postcode, the software was able to collect all the addresses for that postcode existing on the GetAddress Database before any data was transferred from the GBR Database, if that was going to happen. After the requests had been concluded, the GetAddress Database was checked again by the software to see whether addresses using that postcode had now been added. In addition, Mr Blanchard introduced errors into some of the addresses requested, which he called 'sleepers'. Mr Blanchard's evidence was that on 9 August 2022 Mr Smith downloaded over 70,000 addresses from the GBR Database and Mr Blanchard found them to have been added to the GetAddress Database. Within these, 5,855 sleepers were found. Mr Blanchard maintained this evidence in cross-examination.
134. The experts were agreed that of the 5,855 sleepers around half were still present on the GetAddress Database two years later in October 2024. They also agreed that 84% of the matched sleepers were added to the GetAddress Database within 2 hours of the search of the GBR Database on 9 August 2022.
135. Between late 2015 and 13 February 2023 when IDDQD terminated these accounts, according to Mr Blanchard 196,599 postcode searches were made on the two accounts. Mr Blanchard said that on average there are 17-18 addresses which use a single postcode, so this means that the defendants would have extracted 3-4 million addresses from the GBR Database, around 10% of all UK addresses. The defendants' expert, Mr Coyne, put the figure at up to 7.2%.
136. Either way, for that reason alone, given that the GBR Database is built around the PAF the defendants must have downloaded PAF data. The PAF data thus downloaded during maintenance of the GetAddress Database would have joined the PAF data used in the creation of the GetAddress Database.
137. By the time of closing argument the defendants accepted that 5.3% of the GBR Database was taken. Even if correct, and it may well be an underestimate, it is likely that the PAF data within it and the PAF data used in creating the GetAddress Database constituted significant human, technical and/or financial investment on the part of RMG and thereby made up a substantial part of the PAF.

138. It follows from the foregoing that Mr Smith extracted a substantial part of the PAF and incorporated it into the GetAddress Database. That substantial part was re-utilised by Codeberry by the marketing of GetAddress. Subject to any defence, the defendants infringed RMG's database right in the PAF.

Consultation

139. The defendants submitted that they did no more than consult the PAF. I have discussed the meaning of 'consultation' in respect of a database in some detail above. I have found that part of the PAF was copied, whether directly or indirectly, for the purpose of its incorporation into the GetAddress Database. That database, including part of the PAF, was made available to customers of Codeberry for a fee.
140. This was more than just looking at the PAF. The acts of the defendants went well beyond consultation.

Whether the defendants had a licence granted by RMG

141. Right at the start of their closing written argument the defendants relied on s.116(1) and (2) of the Postal Services Act 2000, as amended:

'(1) The owner for the time being of the Postcode Address File shall—

(a) maintain the File, and

(b) make the File available to any person who wishes to use it on such terms as are reasonable.

(2) Compliance with subsection (1) shall be enforceable by civil proceedings brought by OFCOM for an injunction or for interdict or for any other appropriate relief or remedy.

(2A) OFCOM may give a direction to the owner for the time being of the Postcode Address File requiring the owner—

(a) to issue, and comply with, a code of practice dealing with the making of revisions to the File, or

(b) to make such modifications of the code as are specified in the direction.'

142. The defendants emphasised that the terms under which the PAF is licensed must be reasonable. Although I was given no information about how s.116 functions in practice or any other relevant legislation there may be which shines a light on s.116, it is apparent from the section itself that the reasonableness or otherwise of any licence granted is policed by OFCOM (the government regulator of communications services). No doubt any party may apply to OFCOM to raise an objection to a licence, but the section offers no direct right to bring proceedings.
143. More fundamentally, the defendants never pleaded that they entered into a licence directly with RMG. As I have mentioned, RMG has issued around 50,000 licences to users of the PAF on its standard terms but it was not part of RMG's case that it has a

cause of action against either defendant for breach of contract. The defendants' closing skeleton argument asserted that the defendants do hold a licence from RMG. If this was intended to mean that there was direct contract between RMG and the defendants which led to a licence, apparently it was the first that RMG had heard of the suggestion. I can give this unsupported argument no further consideration.

144. More likely, what Mr Smith meant was that RMG's end user terms afforded the defendants a licence. I turn to that next.

The relevance of RMG's End User Terms

145. Schedule 1 of RMG's standard PAF licence sets out RMG's End User Terms ('EUT') which provides the terms under which end users of the PAF are licensed.
146. Part of IDDQD's claim, discussed below, is that the RMG EUT were incorporated into the standard licence agreement entered into between IDDQD and Mr Smith. IDDQD alleges that Mr Smith was in breach of various terms of the RMG EUT.
147. The defendants' pleaded response was not to admit that the RMG EUT were incorporated into IDDQD's standard agreement. Instead they argued that different RMG terms were published on IDDQD's website, referred to by the defendants as the Royal Mail End User Licence Terms, or EULA. The EULA were said to be not sufficiently clear to be binding or enforceable and some of the terms relied on by IDDQD and that they are further unenforceable because they are in restraint of trade or contrary to Regulation 19(2) of the Database Regulations.
148. The terms of the RMG EUT and what the defendants called the EULA are the same. The difference is that definitions in the RMG EUT as published by RMG are missing from the version annexed by IDDQD to its standard licence agreement. I will return to this below.
149. Despite the defendants' pleaded stance, in their draft skeleton and closing submissions the defendants accepted that they were bound by the RMG EUT. The point of this altered position was that the defendants now say that they were at all times licensed to use the PAF under the RMG EUT. In the written closing submissions drafted by Mr Smith, there was repeated reliance on the RMG EUT (albeit termed the EULA) under which the defendants were said to be licensed to use the PAF.
150. It is now common ground that at least Mr Smith was bound by the RMG EUT. It is not common ground that the RMG EUT licensed the defendants to use the PAF for their GetAddress business.
151. The RMG EUT as published by RMG contain the following definitions:

'Data Extraction' the extraction of PAF® Data or any part of it for the generation of new address records in a new or existing database

End User a single legal entity who you or a Licensee may permit to use PAF® Data through its Users in accordance with this Licence

End User Terms the terms set out in Schedule 1

Licensee	a person whose use of PAF® Data you authorise further to this Licence, or whose use is authorised by such a person by way of a sub-licence granted further to this Licence (whether directly or by way of a chain of sub-licences) but not an End User
Solution	a product or service or other solution which benefits from or incudes PAF® Data (including the provision of PAF® Data itself) in whatever form, however produced or distributed and whether or not including other functionality, services, software or data
User	an individual authorised by an End User to use a Solution'

152. The RMG EUT include the following:

‘1. *End Users' permitted use of Solutions*

End Users may freely use PAF® Data in Solutions in accordance with these End User Terms.

2. *Conditions of use*

(a) End Users must not make copies of PAF® Data except as permitted by these End User Terms or reasonably necessary for back-up, security, business continuity and system testing purposes.

(b) End Users may use PAF® Data for Data Extraction but Extracted Data:

(i) may only be accessed by Users, and

(ii) must not be supplied or any access to it provided to any third party.

...

(e) Except as set out in these End User Terms, End Users must not:

(i) transfer, assign, sell or licence Solutions or their use to any other person,

(ii) use Solutions to create a product or service distributed or sold to any third party which relies on any use of PAF® Data, including copying, looking up or enquiring, publishing, searching, analysing, modifying and reformatting, or

(iii) copy, reproduce, extract, reutilise or publish Solutions or any of them.

...

4. *Personal rights*

End User rights are personal, limited and non-transferable.’

153. As appears from the terms I have quoted, the licence granted by RMG permits End Users use the PAF. The End User may be a licensee or sub-licensee of the contracting party, but it is the End User who is licensed to use the data. The End User is likely to be a company or firm, so the End User may authorise individuals, Users, to use a Solution. A Solution is a product or service which exploits the PAF.
154. End Users may extract data from the PAF, that is to say their Users – their authorised individuals – may do so. But third parties may not be supplied with or given access to the data. This indicates that Users are not third parties, which makes sense if they are employees of the End User.
155. Clause 2(e) restrains the End User from in particular (i) selling to others the use of a product or service which exploits the PAF and (ii) using such a product or service to create another such service for sale or distribution to third parties.
156. Mr Smith, licensed as an End User, was permitted to extract PAF data to verify or correct the GetAddress Database if the data was used solely for that purpose. He was not permitted to use the PAF for incorporation in the GetAddress Database and then to market that database to third party customers in competition with RMG.
157. The defendants did not benefit from a licence pursuant to the RMG EUT to carry out the acts complained of by RMG.

Whether RMG otherwise consented to use of the PAF

158. The defendants relied on the time it took for RMG to issue proceedings to infer consent. RMG wrote to Mr Smith on 20 November 2014 asking whether he was using the PAF. Mr Smith responded five days later stating that this was not the case and that the data on GetAddress came from other sources. Ian Evans, Head of the Address Management Unit at RMG gave evidence about the slow investigation process which followed. A report commissioned from RMG’s audit supplier provided in 2015 suggested that an old version of the PAF had been used to create GetAddress but RMG still wanted more information. The auditor was asked to contact Mr Smith which was done several times between 2017 and 2022 without any response from Mr Smith. RMG did not communicate its complaint to the defendants until 2023. The claim form was issued in May 2024.
159. The defendants relied on the following passage from the judgment of Blackburne J in *Fisher v Brooker* [2006] EWHC 3239, at 94:

‘[94] ... The plain fact is that Mr Fisher has sat back and permitted the two societies to account to the defendants for royalties in respect of the musical copyright in the Work for nearly 40 years. The fact that he may have had no awareness of his right in law to share in the royalties or had felt unable to vindicate his claim in the meantime (whether because of poor advice or for other reasons) does not seem to me to matter. ... For so long as Mr Fisher chose not to make and establish his claim the defendants had no reason to think that they were not entitled to the payments they received. Moreover, for so long as Mr Fisher allowed the societies to account to the defendants, notwithstanding his

long held belief that as co-writer of the music he was entitled to share in the musical copyright or at the least to be recognised as having co-written the Work, he must be taken to have gratuitously licensed the exploitation of his copyright. ...'

160. *Fisher* concerned a claim for a share in copyright in a song and the royalties generated. The claimant was a member of the band Procol Harum. The defendants were another member who had been solely credited with writing the music and an assignee of the copyright. The judge found that the claimant was a joint author of the work and joint owner of the copyright to the extent of 40%. There was a restitutionary claim for a share in the royalties paid out up to the date of the claim form, which was rejected by the judge on the ground of the implied licence which continued up to the date of the claim form, when it was revoked. In the passage quoted above the judge explains his finding of an implied licence in the context of his ruling on the claim for restitution.
161. The defendants appealed. The appeal succeeded on the ground that the defendants were entitled to a defence of laches and acquiescence. On a further appeal to the House of Lords their Lordships rejected the Court of Appeal's finding of laches and acquiescence (and proprietary estoppel, which was found to apply in a largely indistinguishable way on the facts). The finding of an implied licence by the trial judge had not been appealed to the Court of Appeal and so was not an issue either there or before the House of Lords. In the appeals the claimant sought relief only from the date of the claim form going forward.
162. In the present case RMG seeks the option of an account of profits. In the event of an account there would be an claim by RMG for restitution; at present it is just a contingent claim.
163. The defendants' Defence pleads the alleged licence by reciting the lack of communication of RMG's contention until 2023 and states that the defendants 'relied on that silence as informed consent.'
164. To the extent that the defendants' submission is simply that RMG's failure to formulate a complaint between 2014 and 2023 constituted consent, I reject the submission. For the reasons discussed above, if consent is to be implied the court must be satisfied that the relevant facts and circumstances unequivocally demonstrate that the proprietor of the intellectual property right has renounced any intention to enforce his exclusive rights. No attempt was made to point to such facts and circumstances. Mr Evans' evidence indicates otherwise.
165. If the defendants' argument is better seen as being based on acquiescence, laches and/or estoppel, no such defence was pleaded and RMG did not come to trial to meet that case. Had it been pleaded, it would have been necessary to consider the law discussed in *Marussia Ireland* and its application since Brexit.
166. I find that RMG did not at any time consent to use of the PAF by the defendants.

Regulation 19 of the Database Regulations

167. Reg. 19 was raised by the defendants as a defence. In my view it has no application. It is no part of RMG's case that an insubstantial part of the PAF was extracted or re-utilised by the defendants, save insofar as reg.16(2) applies.

The Consumer Rights Act 2015

168. I will deal with the defendants' pleaded reliance on the Consumer Rights Act 2015 ('the 2015 Act') briefly because it was not referred to in the opening draft skeleton argument filed by the defendants or orally or in closing written submissions.

169. Section 62(1) of the 2015 Ac states:

'(1) An unfair term of a consumer contract is not binding on the consumer.'

170. 'Consumer' under s.2(3) of the CRA 2015 is:

'an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession'

171. Subsections 62(4) and (5) of the 2015 Act provide:

'(4) A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

(5) Whether a term is fair is to be determined—

(a) taking into account the nature of the subject matter of the contract, and

(b) by reference to all the circumstances existing when the term was agreed and to all of the other terms of the contract or of any other contract on which it depends."

172. The short points are that Mr Smith was at no relevant time acting as a consumer in his dealings with RMG and there was no contract with RMG. His evidence was that he was charging customers for his GetAddress service from the beginning of 2014, even before Codeberry was incorporated and used as the commercial vehicle for the service. The downloading of data from the PAF was for the purpose of adding to and enhancing the GetAddress Database in order to market that database to Mr Smith's and then Codeberry's customers.

Restraint of trade

173. There is a pleaded allegation of restraint of trade although it is not clear to me what the defendants' case is. The Defence and Counterclaim pleads:

'Insofar as the Claimant seeks to prevent the Defendants from use of their own database, this attempt constitutes an unlawful restraint of trade, an unreasonable restriction on a lawful user, and/or anti-competitive conduct as particularised in the Counterclaim below.'

174. RMG's Reply and Defence to Counterclaim denies the allegation of restraint of trade but otherwise does not engage with it. Nothing was said about it in either side's written or oral submissions at the trial. I can take it no further. The allegation of restraint of trade was not made out.

Copyright

175. RMG pleaded reliance on copyright in the PAF as it existed on 27 March 1996, not any subsequent copyright which may have subsisted. The copyright relied on was referred to in the pleadings as copyright in 'the Historic PAF'.
176. I find that the Historic PAF was created by individuals collaborating in the assembly of data, a collaboration within the meaning of s.10(1). For the reasons stated above, the Historic PAF falls to be considered as a single work.

Subsistence and ownership

177. Subsistence turns on whether the Historic PAF was a copyright work in the form of a compilation under the law as it applied immediately before 1 January 1998. The only argument raised by the defendants against RMG's case on subsistence was that none of the authors of the PAF had contributed sufficient skill or labour in the creation of the database which, it was stated in the defendants' skeleton argument, would be explored in cross-examination.
178. The evidence from Messrs. Evans, Batchelor and Childes referred to above in relation to database right, which was not challenged, clearly establishes that copyright subsists in the Historic PAF. As with database right, the evidence also showed that the copyright is owned by RMG.

Infringement

179. Aside from more specific defences, the defendants' case on infringement was that no part of the Historic PAF was copied into GetAddress or, if any was, it did not form a substantial part of the Historic PAF.
180. I have found in relation to database right that Mr Smith copied a substantial part of the PAF for creating, maintaining and updating the GetAddress Database. The difference is that the Historic PAF had been amended by both deletion and addition by the time that a later version of the PAF, the product of the deletions and additions, was copied.
181. The evidence given at trial was that most addresses, including postcodes, do not change over time. It seems to me to be likely that data derived from the Historic PAF and taken by Mr Smith from the PAF in its later form embodied sufficient skill and effort expended by the authors of the Historic PAF, skill and effort appropriated by Mr Smith for Codeberry's benefit, for the Historic PAF to have been copied in substantial part. Subject to the defences considered below, RMG's copyright in the Historic PAF was infringed by the acts of copying part of the Historic PAF.
182. The creation and sale of the GetAddress Database led to infringement by issuing the relevant part of the Historic PAF to the public, communicating that part to the public and adapting it to create GetAddress.

Consent

183. The defendants' argument that RMG consented to their use of the Historic PAF is rejected for the same reasons given in relation to alleged consent to use of the PAF discussed above.

Limitation

184. A narrow argument on limitation was pleaded in the Defence and Counterclaim. It was that any claim by RMG pertaining to consultations of the PAF before 28 March 2018, said to have been about 63,163 in number, is barred by limitation. RMG makes no claim in respect of any act by the defendants which was no more than a consultation. As mentioned above, I refused the defendants' late application to broaden their claim to rely on limitation in a larger sense.

Restraint of trade

185. I refer back to what I said about restraint of trade in the context of database right.

Joint liability

186. Mr Smith's evidence was that he created the GetAddress Database personally. He is therefore personally liable for infringement of RMG's database right and copyright. Codeberry is directly liable for the acts of marketing GetAddress insofar as it was done by Codeberry. The issue was whether Mr Smith was jointly liable for the acts of infringement by Codeberry.
187. In *Lifestyle Equities CV v Ahmed* [2024] UKSC 17 the law on the joint liability of one party for a tort committed by another was set out by Lord Leggatt, with whom the remainder of their lordships agreed, at [102] to [137]. Accessory liability may arise either by one party knowingly procuring another to commit an actionable wrong or alternatively because the wrong is committed pursuant to a common design between the parties:

‘[135] To summarise, there is a general principle of the common law that a person who knowingly procures another person to commit an actionable wrong will be jointly liable with that other person for the wrong committed. The liability of the procurer is an accessory liability. Where the primary wrong is a breach of contract, this accessory liability takes the form of a distinct tort. Where the primary wrong is a tort, however, there is no need to posit a separate tort of procuring another person to commit a tort. Where the general principle applies, the procurer is made jointly liable for the tort committed by the primary wrongdoer.

[136] There is a further, distinct principle of accessory liability by which a person who assists another to commit a tort is made jointly liable for the tort committed by that person if the assistance is more than trivial and is given pursuant to a common design between the parties. On the facts of a particular case both principles may be engaged. But on the present state of the law assistance which falls short of procuring the primary wrongdoer to commit the tort cannot lead to liability unless it is given pursuant to a common design.

[137] Although procuring a tort and assisting another to commit a tort pursuant to a common design are distinct bases for imposing accessory liability, they must operate consistently with each other and such that the law of accessory liability in tort is coherent. Considerations of principle, authority and analogy with principles of accessory liability in other areas of private law all support the conclusion that knowledge of the essential features of the tort is necessary to justify imposing joint liability on someone who has not actually committed the tort. This is so even where, as in the case of infringement of intellectual property rights, the tort does not itself require such knowledge.’

188. No person other than Mr Smith had any involvement in the acts of Codeberry with the exception of his wife. Mrs. Smith did no more than sign documents put in front of her without any knowledge of what they contained. The defendants formally admitted that the acts of Codeberry and those of Mr Smith in relation to Codeberry were one and the same.
189. Mr Smith must have had knowledge of the essential features of the acts of infringement of database right complained of as carried out by Codeberry because he did them. For the same reason Mr Smith must have procured those acts. Mr Smith undoubtedly assisted Codeberry to conduct those acts since he carried them out himself. Although it is a little artificial to view a common design between Mr Smith and himself, it seems to me that nevertheless there was a common design between Mr Smith in his own right and Mr Smith as an officer of Codeberry. Mr Smith is jointly liable for Codeberry’s acts.

Additional damages

190. RMG claims additional damages pursuant to s.97(2) of the 1988 Act, which subsection applies equally to database right infringement as it does to copyright infringement (see reg.23 of the Database Regulations). RMG also pleaded that damages should be assessed in accordance with reg.3 of the Intellectual Property (Enforcement, etc.) Regulations 2006. Argument was directed to additional damages.
191. The defendants submitted that the question of additional damages should be left to an inquiry in the event that there is one. RMG said that the principle of whether additional damages should be awarded is suitable for decision now, with quantum to be resolved later. I think that in the present case it may save time overall if I decide the point of principle now.
192. Section 97(2) provides:

‘(2) The court may in an action for infringement of copyright having regard to all the circumstances, and in particular to—

(a) the flagrancy of the infringement, and

(b) any benefit accruing to the defendant by reason of the infringement,

award such additional damages as the justice of the case may require.’

193. In *Nottinghamshire Healthcare NHS Trust v Newsgroup Newspapers Limited* [2002] RPC 49 Pumfrey J held that additional damages are apt where the infringement was either deliberate, reckless or careless in the sense of a 'couldn't care less' attitude on the part of the infringer (at [52]).
194. In *Phonographic Performance Limited v Ellis* [2018] EWCA Civ 2812 Lewison LJ held that additional damages may be wholly or partly punitive (at [37]) and may serve the purpose of being a deterrent (at [38]), though a particularly egregious award of additional damages would amount to an abuse of rights (at [40]-[42]).
195. In my view the infringement in the present case fell into one of the categories of deliberate, reckless or couldn't care less. Before Mr Smith began his GetAddress enterprise he was aware that he could obtain a licence from RMG. He took the view that this would be expensive, by inference too expensive for what he had in mind. Mr Smith must have assumed that RMG was able to charge for the use of the PAF because RMG held rights in the PAF that it could use to restrain unauthorised use. He must have been aware from the terms of his agreement with IDDQD that IDDQD had taken a licence from RMG and had no reason to doubt that IDDQD had paid RMG accordingly.
196. As a consequence of the foregoing, Mr Smith must have known that since he had not paid RMG, he and Codeberry would probably not be authorised to exploit the PAF for the purpose of setting up a business in the marketing of a rival database and if not, this would be in breach of the rights in the PAF held by RMG. Alternatively, Mr Smith was reckless in that regard, or quite possibly he could not have cared less.
197. I find that RMG is entitled to an award of additional damages.

IDDQD's claim

198. IDDQD says that the defendants' acts of downloading IDDQD's GBR Database into the GetAddress Database and then marketing that database was in breach of IDDQD's database right in the GBR Database.
199. As is common ground, the RMG EUT were incorporated into the agreement between IDDQD and Mr Smith. IDDQD says that the acts by the defendants just referred to were in breach of the RMG EUT and also other terms of the agreement.
200. The defendants raised the following issues as part of their defence, either as pleaded or as argued at the trial:

Database Right

- (1) Subsistence and ownership of database right in the GBR Database.
- (2) Whether it was Mr Smith or Codeberry that entered into the agreement with IDDQD.
- (3) Whether Codeberry was licensed under the terms of the agreement even if it was not a contracting party.

- (4) Whether the acts of the defendants complained of were licensed under IDDQD's own terms.
- (5) Whether the acts of the defendants complained of were licensed under the RMG EUT.
- (6) Whether the defendants are entitled to rely on reg. 19 of the 1997 Regulations.
- (7) If Mr Smith was the contracting party to the agreement, whether he was acting as a consumer within the meaning of the 2015 Act and if so, whether that affords the defendants a defence.
- (8) Whether the defendants infringed database right owned by IDDQD.
- (9) If Codeberry has infringed IDDQD's database right, whether Mr Smith is jointly liable..

Breach of contract

- (10) Whether Mr Smith was in breach of the agreement between Mr Smith and IDDQD, other than the RMG EUT if incorporated.
- (11) Whether the agreement between Mr Smith and IDDQD incorporated the RMG EUT.
- (12) If so, whether Mr Smith was in breach of the RMG EUT.
- (13) Whether the RMG EUT are not sufficiently clear to be binding and enforceable.
- (14) Whether the terms of the agreement between Mr Smith and Codeberry were in restraint of trade.

Additional Damages

- (15) Whether there is a liability for additional damages.

Database right

Subsistence and ownership of database right

- 201. Mr Blanchard gave evidence about how he created the GBR Database, beginning with the PAF for which he purchased a licence from RMG in early 2013. Mr Blanchard worked on the raw data to make a usable and searchable database, writing his own specialist software to assist in this. He offered Ideal Postcodes to his first customer in August 2013.
- 202. Over the next 10 years or so Mr Blanchard integrated further address data from sources other than the PAF. The GBR Database was also updated on a daily basis, with work done on modifying the data to correct for errors and to provide for more efficient searching and retrieval. By the end of 2024 Mr Blanchard had enlisted two software developers to assist in the work. None of this was challenged in cross-examination.

203. I find that at all material times since immediately before Mr Smith's first access to the GBR Database there was a substantial investment in obtaining, verifying and presenting the contents of the PAF and then the GBR Database as developed from the PAF. Database right has throughout that period subsisted in the GBR Database.
204. The individual who carried out the investment concerned was Mr Blanchard. In its Particulars of Claim IDDQD pleaded reliance on confirmatory deeds of assignment by which the database right in the GBR Database was assigned to IDDQD. The defendants did not admit ownership but no point was taken at the trial. I find that the database right is owned by IDDQD.

The contracting party in the agreement with IDDQD

205. IDDQD say that the agreements entered into in relation to the Lee Smith and Colin Berry accounts opened by Mr Smith were agreements between IDDQD and Mr Smith, not Codeberry. The significance is that if this is right, Codeberry could not have been granted any sort of licence by IDDQD.
206. The defendants argue that Mr Smith was acting for Codeberry as agent when he opened those accounts and that therefore Codeberry was the contracting party.
207. Mr Smith signed up for an Ideal Postcodes account on the first occasion in October 2015 using his email address, substantially consisting of his own name: leepaulsmith@gmail.com. This was done on IDDQD's website. The appearance of the relevant form on the website was not in dispute. It included:
- 'Before we can allow you to use Royal Mail's Postcode Address File, we need you to provide some information about your company or yourself and agree to both the Ideal Postcodes and Royal Mail Terms and Conditions.'
208. That wording implied that the person signing was to be the contracting party unless that person stated that he or she was signing on behalf of a company, in which case information about the company had to be provided.
209. The possibility of an agency was expressly provided for in another part of the form:
- 'If you are an agent (e.g. a web design company) signing up on behalf of a client, please have your client fill out their details and agree to the service terms.'
210. Mr Smith neither provided details of Codeberry, nor stated that he was signing on behalf of Codeberry, nor stated that Codeberry agreed to the terms. The terms were updated in 2018 and 2021. IDDQD's form on its webpage continued to request details of the applicant's company if there was one, or of an agent's client if there was an agency. Mr Smith did not amend his form.
211. The draft opening skeleton filed on behalf of the defendants argued that Mr Smith's use of an email address did not indicate whether he was acting for a company. It was common ground that the identity of the contracting party was an issue of fact and the skeleton added that this was to be determined by the court after hearing oral evidence.
212. In cross-examination Mr Smith agreed that he personally was developing and maintaining the GetAddress Database and that he personally signed up for the account

with Ideal Postcodes. Had Mr Smith not been clear about that I would anyway have found that he was the contracting party. A reasonable person reading the application form would have had no ground to believe that any company was to be the licensee because no required details of the company were given. Similarly no details of a principal were given for which the applicant was acting as agent. The fact that Mr Smith used his personal email address would not have altered that understanding.

213. I find that the contract of 2015 was between IDDQD and Mr Smith, not Codeberry.
214. As to Mr Smith's second account, set up under the name Colin Berry on 24 January 2018, the pleaded Defence admits that Mr Smith was the contracting party.
215. It follows from the foregoing that Codeberry could never have been granted a licence of any sort by IDDQD unless the licence granted to Mr Smith was, on a correct interpretation, a licence granted also to Codeberry.

Whether either RMG's or IDDQD's licence extended to Codeberry

216. Another argument was newly raised in the defendants' opening skeleton: even if Mr Smith was the contracting party the agreement licensed both him and Codeberry. IDDQD did not file evidence or otherwise come to court to meet the point so I will not consider it further. I add only that it not evident that the terms of the agreements provided for a licence to third parties.

Whether the acts of the defendants were licensed under IDDQD's terms

217. The defendants submit that the IDDQD's standard terms in 2015 and 2018 other than the RMG EUT afforded them a licence. They do not say that they had a licence under the 2021 terms but argue that the amendments made by IDDQD in 2021 to their standard terms were never incorporated into the licence which had been granted to Mr Smith.
218. IDDQD made the initial point that IDDQD terminated the account held in Mr Smith's name on 27 February 2023, as was common ground. It was not contended by the defendants that the acts done after that date could have been licensed under that agreement.
219. I find the defendants' argument in their draft skeleton regarding the 2015 terms hard to follow. The terms identify no positive right granted to the licensee, but the defendants argue that the terms do not restrict the use of data obtained by Mr Smith from IDDQD. It appears to be a submission that the express terms of the 2015 licence gave Mr Smith unrestricted right to use data provided by IDDQD. They plainly do not. It seems to me that the only way that such an argument could have been presented would have been by advancing a case based on an implied licence of unrestricted licence. No such case was pleaded or argued.
220. The 2015 terms included the following:

‘We may change these terms from time to time. The terms that apply to you are those posted here on our Website at the time you submit your order.’

‘You agree to use Ideal Postcodes, and any data obtained through this service [defined to mean Ideal Postcodes], in accordance with the Royal Mail End Users’ Terms. These terms are available on our Website.’

221. It was not in dispute that despite the lack of an express term granting the right to use Ideal Postcodes data, there was such a right. I agree with the apparent position of all parties that there was an implied term to that effect. But the right granted was not unrestricted. It was limited by reference to the RMG EUT, with which the licensee was obliged to comply.

222. In May 2018 there was a major overhaul of IDDQD’s terms. Nonetheless the requirement that data obtained through the service provided by IDDQD had to be used in accordance with the RMG EUT remained. The reference to change of terms now read:

‘We may update the Terms of Service from time to time. You will be required to agree to any updates to the Terms of Service in order to make a new order submission.’

223. The amended terms included the grant of a positive right:

‘You may use the Ideal Postcodes Service to retrieve, validate or cleanse addressing information.’

224. The defendants argued that their use of the GBR Database went no further than that positive right. This was an assertion unsupported by any submissions on the meaning of ‘retrieve’, ‘validate’ and ‘cleanse’.

225. IDDQD argued that ‘retrieve’ means viewing information on screen and downloading it as a file. I agree, since viewing will require temporary downloading. IDDQD said that ‘validate’ means checking data in a database to ensure it is accurate. I agree. IDDQD interpreted ‘cleanse’ to mean using data to identify, correct or remove errors. Again I agree, with the clarification that ‘addressing information’ is being cleansed and to make any commercial sense of the licence, this will have been addresses held by the licensee. In other words, the licence permitted the licensee to check the correctness of the data the licensee already held.

226. IDDQD submitted that the licence did not permit the copying of data to another database to add additional postcodes or addresses or to replace incorrect postcodes or addresses. I disagree. There would be little point in using the GBR Database to discover that a postcode or other part of an address held was wrong, unless there was a further right to correct it by copying the correct address. I think it is arguable that the right to ‘validate’ and ‘cleanse’ in neither case includes the right to introduce addresses that did not feature in the licensee’s data. That was not the subject of argument and I leave it to one side.

227. The defendants submitted that neither the 2018 nor the 2021 terms applied to Mr Smith because neither set of amendments to IDDQD’s standard terms impinged on its agreement with Mr Smith. No basis of this submission was put forward, it was just an assertion. IDDQD drew my attention to the following passage in the judgment of Andrews LJ in *Parker-Grennan v Camelot UK Lotteries Ltd* [2024] EWCA Civ 185:

[31] So far as incorporation is concerned, the legal test to be applied is whether Camelot did what was reasonably sufficient to bring the various Terms and Conditions to the notice of a player of the Game. The trader is generally required to signpost “onerous or unusual” terms if he wishes to incorporate them, but as Hale LJ observed in *O'Brien v MGN Ltd* [2001] EWCA Civ 1279; [2002] CLC 33 at [23]:

“... the words ‘onerous or unusual’ are not terms of art. They are simply one way of putting the general proposition that reasonable steps must be taken to draw the particular term in question to the notice of those who are to be bound by it and that more is required in relation to certain terms than to others depending on their effect.”

228. Mr Blanchard’s evidence was that when IDDQD’s terms were updated each customer was presented with a notification at the top left of their account page on the Ideal Postcodes website stating ‘Please review and accept updated terms of use’. Both the Lee Smith and Colin Berry accounts were pay-as-you-go. For that type of account, any attempt to purchase new credits for retrieving data redirected the customer to the account authorisation page and this message:

‘Our Terms of Service have been updated. Please review the Terms and your information to proceed.’

229. Further down the page read (original underlining):

‘Terms of Service

By clicking the link below, you agree to the Ideal Postcodes Terms of Service’

230. If the new terms were not accepted, once the customer’s account balance reached zero the customer would be prevented from using Ideal Postcodes further.
231. In cross-examination Mr Smith agreed that he read the updated 2018 terms and that it would have been reasonable to check them to make sure that he was permitted to do what he was doing. In respect of the 2021 terms he said that he believed there was a box which, if clicked, allowed use of a credit card on file without having to go to IDDQD’s website. This was not only contrary to Mr Blanchard’s written evidence but it was not put to Mr Blanchard when Mr Blanchard gave oral evidence. I make allowances for the fact that the cross-examiner was Mr Smith who has no legal training. Nonetheless I found Mr Smith’s story about a box to be clicked to enable short-cut payment unconvincing, with the air of a wishful recollection. I accept Mr Blanchard’s evidence.
232. I find that IDDQD did what was reasonably sufficient to bring the amendments to their terms in 2018 and 2021 to the attention of users of their service. Mr Smith accepted that there was nothing in either sets of terms that was onerous or unusual. I further find that the updated terms were incorporated into the agreement with Mr Smith. The exact dates of incorporation were not in dispute. Mr Smith’s account was opened on 1 November 2015. The terms of his agreement with IDDQD were amended on 16 June 2018 and 23 June 2021.

233. IDDQD's standard terms were amended again in 2022 but it was not part of the IDDQD's case that Mr Smith agreed to these in relation to the account opened under his name.
234. The account opened by Mr Smith on 24 January 2018 under the name Colin Berry was initially governed by the 2015 terms and it was agreed that from 19 November 2022 the 2022 terms applied.
235. Neither the 2015, 2018, 2021 nor the 2022 terms provided Mr Smith with a licence to use any part of the GBR Database to create and market a database in competition with IDDQD.

Licence under the RMG EUT

236. I have found that the RMG EUT did not afford a licence to the defendants to carry out the acts complained of.

Regulation 19 of The Database Regulations

237. Reg. 19 (quoted above) was raised by the defendants as a defence. In my view it has no application. It is no part of IDDQD's case that an insubstantial part of the PAF was extracted or re-utilised by the defendants, save insofar as reg.16(2) applies.

The Consumer Rights Act 2015

238. As in the RMG proceedings, the defendants' pleaded reliance on the 2015 Act was not referred to in their draft opening skeleton argument or orally or in writing at the trial.
239. I refer to what I have said in respect of the RMG action. Mr Smith was at no time acting as a consumer in relation to his contract with IDDQD. The downloading of data from the GBR Database was for the purpose of adding to and enhancing the GetAddress Database for marketing to Mr Smith's and then Codeberry's customers.

Infringement of database right

240. I have found that the defendants extracted 3-4 million addresses from the GBR Database. I have no doubt that this constituted a significant part. For the reasons given in respect of the RMG claim the use of IDDQD's data by the defendants was more than mere consultation.
241. None of the defendants' pleaded defences succeed. I find that the defendants infringed IDDQD's database right in the GBR Database.

Joint liability

242. Mr Smith's evidence was that he created the GetAddress Database personally and for a brief period marketed GetAddress himself. He is personally liable for infringement of IDDQD's database right. Codeberry is directly liable for its acts of marketing GetAddress. As in the RMG action the issue was whether Mr Smith is jointly liable for the acts of infringement by Codeberry. For the reasons given in relation to the RMG action, I find that he is.

Breach of contract

The terms of the IDDQD agreement other than the RMG EUT

243. The allegation by IDDQD that Mr Smith is in breach of the substantive terms of the agreements between IDDQD and Mr Smith is only in respect of the 2021 and 2022 terms. At the trial the defendants admitted that both sets of terms prevented the defendants from making any commercial re-use of IDDQD's data, in particular to compete with IDDQD. Mr Smith is in breach of those terms subject to defences considered below.

Cause of action in respect of the RMG EUT

244. IDDQD said that the RMG EUT were part of the terms of its licence agreements with Mr Smith, giving them a cause of action for breach of the RMG EUT.
245. The defendants admitted that they were bound by the RMG EUT but submitted that although RMG had a potential cause of action in contract (not part of RMG's case) IDDQD did not because there was privity of contract only between RMG and Mr Smith.
246. In the defendants' draft skeleton argument it was further suggested, I assume by way of alternative, that the agreement between IDDQD and Mr Smith required Mr Smith to enter into a licence with a third party, RMG, no more than that. There was no suggestion that Mr Smith approached RMG (or vice versa) to conclude the licence so if that were all Mr Smith would neither have been bound by the RMG EUT nor could he have benefitted from a licence under the terms. Since this is contrary to the defendants' insistence that the RMG EUT did afford Mr Smith a licence, I leave the alternative argument to one side.
247. The law on the interpretation of contracts is well established and was not in dispute. It was recently summarised by Mrs Justice O'Farrell in *IBM United Kingdom Limited v LZ Labs GmbH* [2025] EWHC 532 (TCC):

‘[149] The principles applicable to contractual interpretation are well established and not in dispute. When interpreting a written contract, the court is concerned to ascertain the intention of the parties by reference to what a reasonable person, having all the background knowledge which would have been available to the parties, would have understood them to be using the language in the contract to mean. It does so by focussing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the contract, (iii) the overall purpose of the clause and the contract, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions: *Arnold v Britton* [2015] UKSC 36 per Lord Neuberger at [15]-[23]; *Wood v Capita Insurance Services Ltd* [2017] AC 1173 at [11]-[15]; *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50 per Lord Clarke at [21]-[30]; *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38 per Lord Hoffmann at [14]-[15], [20]-[25].’

248. The defendants' case was again inconsistent. In their opening skeleton argument they said:

'Ds dispute that IDDQD became a party to [the RMG EUT] and says only RMG had a right of action under it and all IDDQD could do was terminate its own agreement when it would also fall away.'

249. I take this to mean that Mr Smith's admitted obligation to be bound by the RMG EUT would end if and when IDDQD chose to terminate its licences with Mr Smith. Yet if RMG was the contracting party it is hard to see how IDDQD had the right to terminate a contract between RMG and Mr Smith as and when it chose.

250. The defendants referred to clause 3.3 of IDDQD's 2021 terms, headed 'Third Party Contracts'. The following definitions are among those provided in the 2021 terms:

'Client' means the organisation named as the "Client" or "Business" or "Company" in the registration form for use of the Service and Software Materials, the IDDQD Quote Sheet or this Agreement.

Database means a third party database, access to the whole or part of which is made available to the Client by IDDQD.

Licensor means a third party licensor of the Database or any of the Software Materials.

Service means the online service made available, or agreed to be made available, by IDDQD to the Client pursuant to this Agreement (excluding the Premium Service).

Software means the software (including any Enterprise Software) and data (including the relevant Databases) made available by or on behalf of IDDQD, which enable the Client to access or use the Service; which enable the Client to access or use the Service; including any updates made available to the Client from time to time by or on behalf of IDDQD. "Software" excludes any software, data or databases provided by the Authorised Reseller under a separate contract between the Client and the Authorised Reseller.

Software Materials means the Software and the Documentation

Third Party Contracts means the Third Party Licences and Third Party EULAs.

Third Party EULAs means the material terms of the third party end user licences found on the IDDQD Website on the Third Party Licenses Page.

Third Party Licenses means the material terms of the third party licences which are in force at ideal-postcode.co.uk and which are imposed by the Licensors on IDDQD in respect of the Software Materials and/or Service.'

251. This is clause 3.3:

‘1. The Services may include use of third party software and services which are governed by Third Party Licences and Third Party EULA's. The terms of these Third Party Contracts are listed on the Third Party Licenses Page. The Client confirms that it has read, agrees to, and shall be bound by the terms of the applicable Third Party Contracts and will observe those provisions in any applicable Third Party Contracts relating to the Services.

2. The Client agrees that by requesting access to any third party software or data which is subject to a Third Party EULA, the Client shall be bound by such Third Party EULA's (where this is the intention of the Third Party EULA), and the Licensor will have rights and remedies against the Client pursuant to this Agreement and the Third Party EULA.

3. By receiving the applicable Services outlined on the Third Party Licenses Page, the Client is deemed to enter into the relevant Third Party EULA with the relevant Licensor.’

252. Applying the definition of Third Party Contracts, paragraph 1 of clause 3.3 taken alone is consistent with both the contention of IDDQD and that of the defendants. The same is true of the second sentence up to the words in brackets. The words after that support IDDQD's case. IDDQD has rights and remedies both in respect of the terms set out in the IDDQD agreement and the terms found on the IDDQD Website on the Third Party Licenses Page. The third paragraph deems the Client to have entered into an agreement with a relevant Licensor (such as RMG) under the end-user terms of that Licensor. What is meant by ‘deemed’ is not clear.
253. The defendants also relied on IDDQD's account authorization webpage, in particular to the separate references to the IDDQD terms and the RMG EUT on that page with separate hyperlinks and the requirement ‘we need you ... to agree to both’. I find this to be neutral.
254. There are two fixed points: the defendants' admission that Mr Smith was bound by the RMG EUT and no suggestion of any relevant independent communications or agreement between Mr Smith and RMG. The only way to square that circle is if Mr Smith is bound because the RMG EUT are incorporated into the IDDQD licences. Clause 3.3 of IDDQD's 2021 terms and the accounts authorisation page can be read consistently with that view. Clause 3.3 does not figure in the 2015 or 2018 terms.
255. I find that the RMG EUT as they appeared on IDDQD's website formed part of the terms of IDDQDs agreements with Mr Smith.

Breach of the RMG EUT

256. I have found that Mr Smith, licensed as an end user, was permitted to extract PAF data to verify or correct the GetAddress Database if it was used solely for his own benefit in his own business. He was not permitted to use the PAF for incorporation into the GetAddress Database and then to market that database to third party customers in competition with RMG. It follows that Mr Smith was in breach of the RMG EUT as incorporated into his agreements with IDDQD and is liable to IDDQD for that breach.

Clarity of the RMG EUT

257. The defendants argued that the RMG EUT, if incorporated into the agreement between Mr Smith and IDDQD, were too vague to be enforceable. As indicated above, definitions provided for the RMG EUT as published by RMG are missing from the version which is annexed to IDDQD's standard terms.
258. I have two difficulties with the defendants' argument. First, to make it good would have required a development of the point to explain which missing definitions mattered and why. This was not done. IDDQD submitted that a reasonable reader would find the definitions self-evident. I was provided with no submission as to whether it was likely that a reasonable reader of RMG's terms would consult the definitions made available on RMG's website. Secondly, the defendants' assertion that the RMG EUT afforded Mr Smith a licence means that the RMG EUT must have had contractual effect.
259. I do not accept the defendants' argument that the RMG EUT was void for lack of clarity.

Restraint of trade

260. The defendants pleaded that certain clauses of the RMG EUT were in restraint of trade insofar as they purported to prevent a licensee from extracting or re-utilising insubstantial parts of the contents of the database or from using the Ideal Postcodes service to retrieve, validate or cleanse addressing information. As to the first, this was no part of IDDQD's case. As to the second, I refer to my discussion above in relation to the RMG EUT and restraint of trade. For the reasons given there I find that they are not in restraint of trade.
261. The defendants also argued that clauses 3.1.2, 3.1.3, 5.7(vi) and 7.2(1) were in restraint of trade. These are the pleaded reasons (original italics):
- '(i) As to 3.1(2) this prohibited reselling (including for free) and also copying when this is what an API is for, updating data in one's own records.
 - (ii) As to 3.1(3)(i) this prevents API use by "competitors" which is anti-competitive and unreasonable.
 - (iii) As to 3.1(3)(ii) this prevents data cleansing by the API which had been permitted in the previous terms and was also the subject of an express representation in the 2018 terms such that "*You may use the Ideal Postcodes Service to retrieve, validate or cleanse addressing information*" and the Defendants wanted that service and relied upon that representation.
 - (iv) In relation to 5.7(iv), this seeks to prevent use of the cleansed and verified data or database by third parties which is unreasonably restrictive and would render the API service meaningless.
 - (v) In relation to clause 7.2(1), this seeks to prevent resale of distribution of cleansed and verified data, defeating the purpose of the API service.'
262. Mr Smith said nothing about this in his oral argument. The defendants' opening and closing skeleton arguments make brief reference to restraint of trade but give little

further detail as to how the defendants frame their case. The closest they come is in the draft opening skeleton:

‘Ds also argue that terms on which IDDQD relies were an unreasonable restraint of trade: ... This can have a similar contour to Lawful user in this context and/or will overlap with Competition law defences and counterclaim.’

263. This must be a reference to the counterclaim in the RMG action. No point was raised by either side about the pleaded reference to ‘an unreasonable restriction on a lawful user’, as echoed in the opening skeleton. If it was intended to be a stand-alone defence it was nowhere explained. I must assume that the defences of restraint of trade and restriction on lawful user not only have a ‘similar contour’ – they are the same.
264. The particulars of the competition law defence in the RMG action are set out in some detail, but I do not know which parts are said to overlap with the case on restraint of trade in the IDDQD claim and which are supposed to share contours.
265. IDDQD pointed out that Mr Smith was not obliged to enter into the agreement in that other sources of address data were available, as Mr Smith conceded in cross-examination. IDDQD argued that Mr Smith wanted the benefit of a licence under IDDQD’s database right and anything less than an unrestricted licence was, according to Mr Smith, in restraint of trade.
266. That may or may not address the points that the defendants were trying to make under this head. I am anyway nowhere near satisfied that the defendants have established on the evidence that any of the clauses complained of in the agreement between Mr Smith and IDDQD are in restraint of trade.

Additional damages

267. For the reasons given above in respect of RMG’s entitlement to additional damages, IDDQD is likewise entitled.

Final conclusion

268. Mr Smith is in breach of all versions of the two agreements between Mr Smith and IDDQD, which agreements incorporated the RMG EUT.
269. The defendants have infringed RMG’s database right and copyright in the PAF and IDDQD’s database right in the GBR Database. Mr Smith is jointly liable for the acts of infringement committed by Codeberry. RMG and IDDQD are entitled to additional damages for infringement of their rights.