ADVANCE RULING IN FACTSET: Subscription for use of Database Not Royalty

". Now, coming to the grips of the first question bearing on the definition of 'royalty', as noticed earlier, the applicant's data base is a source of information on various commercial and financial matters of Companies and similar entities. What the appellant does is to collect and collate the said information/data which is available in public domain and put them all in one place in a proper format so that the customer (licensee) can have easy and quick access to this publicly available information. The applicant has to bestow its effort, experience and expertise to present the information/data in a focused manner so as facilitate easy and convenient reference to the user. For this purpose, the applicant is called upon to do collation, analysis, indexing and noting wherever necessary. These value additions are the product of the applicant's efforts and skills and they are outside the public domain. In that sense, the data base is the intellectual property of the applicant and copyright attaches to it; but, the question is whether in making this centralized data available to the customer–licensee for a consideration, can it be said that any rights which the applicant has as a holder of copyright in database are being parted in favour of the customer? The answer, in our view, must be in the negative. No proprietary right and no exclusive right which the applicant has, has been made over to the customer. The copyright or the proprietary rights over the 'literary work' remains intact with the applicant notwithstanding the fact that the right to view and make use of the data for internal purposes of the customer is conferred. Several restrictions are placed on the licensee so as to ensure that licensee cannot venture on a business of his own by distributing the data downloaded by it or providing access to others (vide clause 2.a & 2.c of the Agreement). The licensee has not been given the exclusive right to reproduce or adapt the work or to distribute the contents of data-base to others. The grant of license is only to authorize the licensee to have access to the copyrighted database rather than granting any rights in or over the copyright as such. The consideration paid is for a facility made available to the licensee. The license, it must be noted is a non-exclusive license. The term 'exclusive license' confers on the licensee and persons authorized by him, to the exclusion of all other persons, including the owner of the copyright, any right comprised in the copyright in a work*. The expression 'granting of license' placed within brackets takes colour from the preceding expression 'transfer of all or any rights'. It is not used in the wider sense of granting a mere permission to do a certain thing nor does the grant of licence denude the owner of copyrights all or any of his rights. A license granting some rights and entitlements attached to the copyright so as to enable the licensee to commercially exploit the limited rights conferred on him is what is contemplated by the expression 'granting of license' in clause (v) of Explanation 2.

9.1 The learned Departmental Representative has argued relying on Section 14a (i) and (vi) of the Copyright Act that the rights specified therein are granted to the customers and therefore there is a transfer of rights in respect of the copyright. We find no substance in this contention. The expression 'exclusive right' in the opening part of Section 14 is very important and it qualifies all the components of clause (a). The applicant is not onferred with the exclusive right to reproduce the work (including the storing of it in electronic medium), as contemplated by sub clause (i) of Section 14(a). The exclusive right remains with the applicant being the owner of the copyright and by permitting the customer to

store and use the data in the computer for its internal business purpose, nothing is done to confer the exclusive right to the customer. Such access is provided to any person who subscribes, subject to limitations. The copyright of the applicant has not been assigned or otherwise transferred so as to enable the subscriber to have certain exclusive rights over the applicant's works. In SBI vs. Collector of Customs, Bombay, the Supreme Court held that "Countrywide use of the software and reproduction of software are two different things and licence fee for countrywide use cannot be considered as the charges for the right to reproduce the imported goods." That was also a case in which the property in the software remained with the supplier-a foreign company and the licence fee was payable by SBI for using the software in a limited way at its own centers for a limited period....

9.3 We are, therefore, of the view that the subscription fee received by the applicant from the licensee (user of data base) does not fall within the scope of clause (v) of Explanation (2) to Section 9(1) of the Act."