Has database passed go?

Washington

IN the first case of its kind, Dialog Information Service, a major online information service, has sued the American Chemical Society (ACS), claiming that the society's Chemical Abstracts Service (CAS) has created an unfair monopoly for its chemistry database. The \$50 million suit charges that ACS has used "anticompetitive, illegal, and predatory acts" to control online access to CAS, which maintains the world's largest collection of scientific databases. Under US antitrust law, Dialog could be awarded triple damages, to \$150 million, if it wins its case.

The dispute revolves around two issues. The first is that, because ACS was partially subsidized by the federal government during the development of its databases, it is required to make the information in the databases freely available at a fair price, according to Dialog. ACS created much of the database software with approximately \$25 million in National Science Foundation (NSF) grants between 1965 and 1975. Since 1980, when ACS started its own online service, Dialog claims, the society has taken over more than 60 per cent of the domestic market for online access to the CAS databases, while raising its fees and royalties. ACS has also cut Dialog off from certain CAS database features, such as graphical structure searching and chemical ring data, the online service says.

The second and more significant claim is that ACS, a not-for-profit entity, has essentially become a competitor that does not pay taxes. "A not-for-profit society has a duty to benefit society and not to line its own pockets", says Robert Simmons, general counsel for Dialog. On this point, Dialog seems to be in agreement with Columbus, Ohio, the city in which CAS is located.

Columbus recently filed a complaint with the state tax commissioner to challenge ACS's real-estate tax exemption. The commission ruled in ACS's favour, but that ruling is now under appeal. CAS had total revenues last year of about \$45 million.

In support of its claim, Dialog has released excerpts from the NSF contract with ACS. The contract states that ACS "shall make publicly available at fair and reasonable prices all programs, computer-accessible files or documents . . . whether or not such programs, files or documentation shall have been developed under this contract". In response, Edward Donell, a senior CAS adviser, says "We do not think that the database is in any way a government-subsidized entity. The major cost of the database is the intellectual effort, which consumes the efforts of 450 chemists on staff." ACS nevertheless considers itself bound to the NSF contract.

"But we do not consider that making [the data] publicly available means making it available to a profit-making entity. We think we have the right to make it available to Dialog or not at our discretion", says Donell.

Dialog has compiled congressional testimony by NSF officials that appears to show clearly that NSF intended the information in NSF-sponsored databases to be available to commercial online

ORPHAN DRUG ACT

Winners to keep all

Washington

A LONG battle in the war over the revision of the Orphan Drug Act ended last week without total victory for any of the different industry groups, consumer lobbyists and members of Congress that have been fighting one another. Although Congress has yet to vote, an amendment, passed by a congressional health subcommittee would prevent companies from obtaining new market monopolies for potentially profitable orphan drugs, but would keep monopolies available for orphan drugs now on sale or under development. That means that companies such as Genentech and Amgen will continue to exercise their controversial — and lucrative — monopolies over several genetically engineered drugs already on sale.

SEISMOLOGY

Iranian earthquake

Washington

LAST week's earthquake in northern Iran, which killed as many as 40,000 people and left half a million homeless, occurred near the Caspian Sea in a complex fault zone

between the Eurasian and Iranian tectonic plates. The latest position for the epicentre is given as 37.977° N and 49.229° E with a magnitude estimated by the US Geological Survey at 7.7, is the most powerful on record for this fault zone. David Lindley

services as well as to the general public. "The language of the NSF contract makes it clear that the benefits are to be very broad", says Simmons.

Other databases and online services say they are watching the case closely. "This is only instance I can recall where an online service has sued one of its database suppliers. It says to everyone else that you've got to be careful with your clients", says Arthur Elias, director of marketing and distribution for Biosis, a company that has both a biological database and an online service. **G. Christopher Anderson**

The Orphan Drug Act was passed in 1983 to give companies incentives in the form of grants, tax credits and a seven-year marketing monopoly for the development of drugs for rare diseases — those that affect fewer than 200,000 people.

A few companies, among them Genentech and Amgen, have come under fire for allegedly charging high prices for orphan drugs such as human growth hormone (hGH) and erythropoietin.

These developments prompted Representative Henry Waxman (Democrat, California), originator of the act, to propose an amendment that would strip a company of its marketing monopoly in circumstances where another company could show it had simultaneously developed an equivalent drug. Waxman called the new arrangement 'shared exclusivity' and also proposed that orphan drug status be withdrawn altogether from drugs with a patient population greater than 200,000.

In its final version, approved last week, the amendment did contain a 'shared exclusivity' clause, but one that exempted orphan drugs that either have been granted FDA approval or those in clinical trials by 15 August 1990. The exemption covers just those drugs whose high prices had led to the amendment being proposed in the first place.

Richard Godown, president of the Industrial Biotechnology Association trade group, which opposed changes to the Orphan Drug Act, says that "shared exclusivity, no matter how it is defined, is inevitably going to deter orphan drug development in the private sector".

Supporters of the amendment saw the key issues as having been side-stepped. Abbey Myers, executive director of the National Organization for Rare Disorders, says she is pleased about the avoidance of future abuses, but warns that "if, in the future, any congressman complains to us [NORD] about the exorbitant profits that some of the orphan drug manufacturers are making, we will be able to say to them, you had your chance to fix it".

Diane Gershon