DRAFT REPORT

of the Committee on Legal Affairs and Citizens' Rights

on the Commission proposal for a Council directive on the legal protection of databases

(COM(92) 0024 final - C3-0271/92 - SYN 0393)

Rapporteur: Mr Manuel GARCIA AMIGO

Part A
<table>
<thead>
<tr>
<th>CONTENTS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procedural page</td>
<td>3</td>
</tr>
<tr>
<td>A. Amendments to the Commission proposal</td>
<td>4</td>
</tr>
<tr>
<td>DRAFT LEGISLATIVE RESOLUTION</td>
<td>13</td>
</tr>
<tr>
<td>B. EXPLANATORY STATEMENT</td>
<td>14</td>
</tr>
<tr>
<td>Opinion of the Committee on Economic and Monetary Affairs and Industrial Policy</td>
<td></td>
</tr>
<tr>
<td>Opinion of the Committee on Energy, Research and Technology</td>
<td></td>
</tr>
</tbody>
</table>
By letter of 23 June 1992 the Council consulted the European Parliament, pursuant to Articles 57(2), 66 and 100a of the EEC Treaty, on the Commission proposal for a Council directive on the legal protection of databases.

At the sitting of 6 July 1992 the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic Affairs and Industrial Policy and the Committee on Energy, Research and Technology for their opinions.

At its meeting of 22 May 1991 the Committee on Legal Affairs and Citizens' Rights had appointed Mr García Amigo rapporteur.

At its meetings of 4 December 1992, 17 March 1993 the committee considered the Commission proposal and draft report.

At the last meeting it adopted the draft legislative resolution by votes to , with abstentions.

The following were present for the vote:

The opinions of the Committee on Economic Affairs and Industrial Policy and the Committee on Energy, Research and Technology

The report was tabled on

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.
A
Commission proposal for a Council directive
on the legal protection of databases

Commission text

(Amendment No. 1)

Recital 31

(31) Whereas, in the interests of competition between suppliers of information products and services, the maker of a database which is commercially distributed whose database is the sole possible source of a given work or material, should make that work or material available under licence for use by others, providing that the works or materials so licenced are used in the independent creation of new works, and providing that no prior rights in or obligations incurred in respect of those works or materials are infringed;

(Amendment No. 2)

Article 1(1)

For the purposes of this Directive:

1. 'database' means a collection of works or materials arranged, stored and accessed by electronic means, and the electronic materials necessary for the operation of the database such as its thesaurus, index or system for obtaining or presenting information; it shall not apply to any computer programme used in the making or operation of the database;

Amendments

(31) Whereas the Community provisions of competition law, and in particular Articles 85 and 86 of the EEC Treaty, are applicable:

For the purposes of this Directive:

1. 'database' means a collection of facts, works or other materials arranged, stored and accessed by electronic or non-electronic means, and the materials necessary for the operation of the database such as its thesaurus, index or system for obtaining or presenting information. It shall not apply to any computer programme used in the making or operation of the database;

1 For full text see COM(92) 0024 final - OJ No. C 156, 23.6.1992, p. 4
Article 1(4) (Amendment No. 6)

4. "Insubstantial change" means for the purposes of the term of protection provided for in article 9(2) addtions, with regard to the provisions of article 9(2) as so modified.

Article 1(3) (Amendment No. 5)

3. "Insubstantial part" means a part of a database or a database whose resemblance to it is not protected under paragraph 2 or 3 of this article (new).

Article 1(2) (new) (Amendment No. 4)

2. Right to prevent extraction of a database to the extent of material from and prevents acts of extraction and preservation of data. The use or use for research or pecuniary purposes, "commercial purposes", for the purposes of this paragraph.

Article 1(2) (Amendment No. 3)

2. Right to prevent extraction of a database to the extent of material from and prevents acts of extraction and preservation of data. The use or use for research or pecuniary purposes, "commercial purposes", for the purposes of this paragraph.
It was intended by its maker to function.

With regard to the provisions of Article 9(4), insubstantial additions or alterations, which, taken together, do not substantially modify the contents of a database.

For the purposes of the term of protection provided for in Article 9, 'substantial change' means:

(a) with regard to the provisions of Article 9(2), additions or alterations which involve the substantial modification of the contents of a database, or arrangement of the contents of a database, or part of a database;

(b) with regard to the provisions of Article 9(1), the substantial modification of a database, resulting in a new edition of that database.
3. A database shall be protected by copyright only if it is original. Only a database which is a collection of facts, works or materials which, by reason of their selection or their arrangement, constitutes the author's own intellectual creation shall be regarded as original.

5. Member States shall provide for a right for the holder of a database to prevent the unauthorized extraction or re-utilization, from that database, of its contents, in whole or in substantial part, for commercial purposes. This right to prevent unauthorized extraction of the contents of a database shall apply irrespective of the eligibility of that database for protection under copyright. It shall not apply to the contents of a database where these are works already protected by copyright or neighbouring rights.
(Amendment No. 13)
Article 5

The **author** shall have, in respect of:

- the selection or arrangement of the contents of the database,

and

- the **electronic material** referred to in point 1 of Article 1 used in the creation or operation of the database,

the exclusive right within the meaning of Article 2(1) to do or to authorize:

The **holder** shall have, in respect of:

- the selection or arrangement of the contents of the database,

and

- the material referred to in point 1 of Article 1 used in the creation, operation or interrogation of the database,

the exclusive right within the meaning of Article 2(1) to do or to authorize:

(Amendment No. 14)
Article 5(e)

(e) any communication, **display** or performance of the database to the public.

(e) any communication, exhibiting, dissemination or retransmission, using any appropriate means, or performance of the database to the public.

(Amendment No. 15)
Article 8(1)

1. **Notwithstanding** the right provided for in Article 2(5) to prevent the unauthorized extraction and re-utilization of the contents of a database, if the works or materials contained in a database which is made publicly available cannot be independently created, collected or obtained from any other source, the right to extract and re-utilize, in whole or substantial part, works or materials from that database for commercial purposes, shall be licensed on fair and non-discriminatory terms.

Deleted
2. The right to extract and re-utilize the contents of a database shall also be licensed on fair and non-discriminatory terms if the database is made publicly available by a public body which is either established to assemble or disclose information pursuant to legislation, or is under a general duty to do so.

2. The right to extract and re-utilize the contents of a database shall be licensed on fair and non-discriminatory terms if the database is made publicly available by public authorities or public corporations or bodies which are either established or authorized to assemble or disclose information pursuant to legislation, or are under a general duty to do so, or by firms or entities enjoying a monopoly status by virtue of an exclusive concession.

3. Member States shall provide appropriate measures for arbitration between the parties in respect of such licences.

4. The lawful user of a database may, without authorization of the database maker, and without acknowledgement of the source, extract and re-utilize insubstantial parts of works or materials from that database for personal private use only.

5. The lawful user of a database may, without authorization of the database maker, with acknowledgement of the source, extract and re-utilize insubstantial parts of works or materials from that database for personal non-commercial use only.

5a. For the purposes of paragraphs 4 and 5 of this Article, 'insubstantial parts' means parts of a database whose reproduction, evaluation quantitatively and qualitatively in relation to the database from which they are copied, can be considered not to prejudice the exclusive rights of the holder of that database to exploit the database.
Commission text

Amendments

In both instances, it shall likewise be incumbent on the lawful user to demonstrate that the extraction and re-utilization of insubstantial parts do not prejudice the exclusive rights of the holder of that database to exploit the database.

(Amendment No. 20)
Article 9(1)

1. The duration of the period of copyright protection of the database shall be the same as that provided for literary works, without prejudice to any future Community harmonization of the term of protection of copyright and related rights.

(Amendment No. 21)
Article 9(2)

2. Insubstantial changes to the selection or arrangement of the contents of a database shall not extend the original period of copyright protection of that database.

(Amendment No. 22)
Article 9(2)a (new)

2a. Substantial changes to the selection or arrangement of the contents of a database which involve a new edition of that database shall give rise to a fresh period of copyright protection for that database.
3. The right to prevent unfair extraction shall run from the date of creation of the database and shall expire at the end of a period of 10 years from the date when the database is first lawfully made available to the public. The term of protection given in this paragraph shall be deemed to begin on 1 January of the year following:

(a) the date when the database was first made available to the public.

(b) any substantial change to the database.

4. Insubstantial changes to the contents of a database shall not extend the original period of protection of that database by the right to prevent unfair extraction.

4a. Any substantial change to the contents of a database shall give rise to a fresh period of protection by the right to prevent unfair extraction.

1. Protection granted pursuant to this Directive to the contents of a database against unfair extraction or re-utilization shall apply to databases whose makers are nationals of the Member State or who have their habitual residence on the territory of the Community.

1. Protection granted pursuant to this Directive to the contents of a database against unauthorized extraction or re-utilization shall apply to databases whose holders are nationals of the Member State or who have their habitual residence on the territory of the Community.
2. Protection pursuant to the provisions of this Directive shall also be available in respect of databases created prior to the date of publication of the Directive without prejudice to any contracts concluded and rights acquired before that date.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1993.
DRAFT LEGISLATIVE RESOLUTION

(Cooperation procedure: first reading)

 embodying the opinion of the European Parliament

on the Commission proposal for a Council directive

on the legal protection of databases

The European Parliament,

- having regard to the Commission proposal to the Council (COM(92) 0024 final - SYN 0393)¹,

- having been consulted by the Council pursuant to Articles 57(2), 66 and 100a of the EEC Treaty (C3-0271/92),

- having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy and the Committee on Energy, Research and Technology (A3-0000/93),

1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;

2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;

3. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;

4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;

5. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;

6. Instructs its President to forward this opinion to the Council and Commission.

¹ OJ No. C 156, 23.6.1992, p. 4