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
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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 meetings 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, 26 April 1993, 1 June 1993 and 9 June 1993 the committee considered the Commission proposal and draft report.

At the last meeting it adopted the draft legislative resolution by 8 votes to 1, with 1 abstention.

The following were present for the vote: Bocklet, chairman; Garcia Amigo, rapporteur; Alber, Bontempo, Bru Piron, Comol I Naval (for Hoon, pursuant to Rule 111(2)), Defraigne (for Salema O. Martins), Fantini (for Casini), Fremion (for Bandres Molet, pursuant to Rule 111(2)), Glinne (for Rothley), Grund, Inglewood, Janssen van Raay, Medina Ortega, Oddy, Perreau de Pinninck Domenech (for Ukeiwa), Sierra Bardaji (for Marinho, pursuant to Rule 111(2)), Stamoulis (for Vayssade), Wettig (for Ferri, pursuant to Rule 111(2)) and Zavvos (for Anastassopoulos).

The explanatory statement will be submitted orally in plenary.

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

The report was table on 10 June 1993.

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

Commission text

(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 licensed 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:

Amendments

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

(Amendment No. 1)
Recital 31

(Amendment No. 2)
Recital 37a (new)

Whereas distributors of databases should make provision in their contracts for exceptions as regards the unauthorized reutilization of the contents of the database by the lawful user where such reutilization is for strictly domestic purposes or for the purposes of teaching or research provided such activities are not carried out for commercial purposes:

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

1. 'database' means a collection of a large number or amount of data, 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;

(Amendment No. 4)

Article 1a (new)

'author of a database' means the person who undertook to and assumed responsibility for creating the database and selecting or arranging the facts, works, or other materials contained therein.

(Amendment No. 5)

Article 1b (new)

'owner of a database' means the author of a database or the natural or legal person to whom the author has lawfully granted the right to prevent unauthorized extraction of material from a database.
2. 'right to prevent unfair extraction' means the right of the maker of a database to prevent acts of extraction and re-utilization of material from that database for commercial purposes;

2. 'right to prevent unauthorized extraction' means the right of the owner of a database to prevent acts of extraction and re-utilization of part or all of the material from that database for commercial purposes;

2. For the purposes of the present directive, and in particular the provisions of Article 8(4), 'commercial purposes' shall be understood to mean any use - whether private or collective - aiming at economic activity or a compulsory transaction.

For the purposes of Article 8(5), 'non-commercial purposes' shall be understood to mean any use:

(a) domestic and non-collective, or

(b) for non-profit making purposes of teaching, research or humanitarian aid.

2. 'insubstantial part' means parts of a database whose reproduction, evaluated quantitatively and qualitatively in relation to the database from which they are copied, can be considered not to prejudice the exclusive rights of the maker of that database to exploit the database.
4. 'insubstantial change' means additions, deletions or alterations to the selection or arrangement of the contents of a database which are necessary for the database to continue to function in the way it was intended by its maker to function.

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

(a) with regard to the provisions of Article 9(2), additions, deletions or alterations to the selection or arrangement of the contents of a database which are necessary for the database to continue to function in the way it was intended by its maker to function;

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

(Amendment No. 10)
Article 1(4a) (new)

4a. 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)a, alterations, additions or deletions which involve substantial modification to the selection or arrangement of the contents of a database, resulting in a new edition of that database;

(b) with regard to the provisions of Article 9(4)a, the successive accumulation of insubstantial alterations, additions or deletions in respect of the contents of a database, resulting in substantial modification to all or part of a database.
5. Member States shall provide for a right for the **maker** 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 **unfair** 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. 12)
Article 3a (new)

**ENTITLEMENT TO PROTECTION UNDER COPYRIGHT**

Protection under copyright shall be granted to all owners, whether natural or legal persons, who fulfills the requirements laid down in national legislation or international agreements on copyright applicable to literary works.
1. The incorporation into a database of bibliographical material or brief abstracts, quotations or summaries which do not substitute for the original works themselves, shall not require the authorization of the right owner in those works.

2. The incorporation into a database of other works or materials remains subject to any copyright or other rights acquired or obligations incurred therein.

1. The incorporation into a database of any works or materials remains subject to any copyright or other rights acquired or obligations incurred therein.

2. However, for the purposes of indexing, the incorporation into a database of references or abstracts specially produced for the database, with the exception of substantial descriptions or summaries of the content or the form of existing works, shall not require the authorization of the right owners on those works, provided the name of the author and the source are clearly indicated in accordance with Article 10(3) of the Berne Convention.

(Amendment No. 14)

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 owner 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:
1. The lawful user of a database may perform any of the acts listed in Article 5 which is necessary in order to use that database in the manner determined by contractual arrangements with the right owner.

Amendments

1. Unless otherwise stipulated, authorization to use a database issued by the copyright owner shall imply the right to perform the acts listed in Article 5 for the requirements and within the limits of the authorized use.

(Amendment No. 16) Article 7

1. Member States shall apply the same exceptions to any exclusive copyright or other rights in respect of the contents of the database as those which apply in the legislation of the Member States to the works or materials themselves contained therein, in respect of brief quotations, and illustrations for the purposes of teaching, provided that such utilization is compatible with fair practice in accordance with Article 10(3) of the Berne Convention.

2. Where the legislation of the Member States or contractual arrangements concluded with the right owner permit the user of a database to carry out acts which are permitted as derogations to any exclusive rights in the contents of the database, performance of such acts shall not be taken to infringe the copyright in the database itself provided for in Article 5.

1. Member States shall apply the same exceptions to any exclusive copyright or other rights of the author of a work contained in a database as those which apply in the legislation of the Member States to that work, in respect of brief quotations, and illustrations for the purposes of teaching, provided that such utilization is compatible with fair practice, in accordance with Article 10(3) of the Berne Convention.

2. Where the legislation of the Member States or contractual arrangements concluded with the author of a work contained in a database permit the user of that database to carry out acts which are permitted as derogations to any exclusive rights of the author of the work, performance of such acts shall not be taken to infringe the right of the creator of the database laid down in Article 5.
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.

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 that are not for reasons such as economy of time, effort or financial investment, shall be licensed on fair and non-discriminatory terms. A declaration shall be submitted clearly setting out the justification of the commercial purposes pursued and requiring the issue of a licence.

5. 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.
(Amendment No. 20)
Article 8(5a) (new)

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

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 owner of that database to exploit the database, and that such practices are not carried out any more than is necessary to achieve the desired objective.

(Amendment No. 21)
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.

1. The duration of the period of copyright protection of the database shall be the same as that provided for literary works.

(Amendment No. 22)
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.

2. Insubstantial changes to the selection or arrangement of the contents of a database shall not entail a fresh period of copyright protection of that database.
(Amendment No. 23)
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.

(Amendment No. 24)
Article 9(3)

3. The right to prevent unfair extraction shall run from the date of creation of the database and shall expire at the end of the 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, or

(b) any substantial change to the database, or

(c) the date of insertion of each data item included in a regularly updated database, in accordance with the provisions of Article 9(4).

(Amendment No. 25)
Article 9(4)

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.

4. Insubstantial changes to the contents of a database shall not entail a fresh period of protection of that database by the right to prevent unfair extraction.
(Amendment No. 26)
Article 9(4)a (new)

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.

(Amendment No. 27)
Article 11(1)

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.

(Amendment No. 28)
Article 11(2a) (new) and (3)

2a. Furthermore, databases shall be protected against unauthorized extraction in accordance with the terms of international treaties.

3. Agreements extending the right to prevent unfair extraction to databases produced in third countries and falling outside the provisions of paragraphs 1 and 2 shall be concluded by the Council acting on a proposal from the Commission. The term of any protection extended to databases by virtue of this procedure shall not exceed that available pursuant to Article 9(3).
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.

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 which on that date fulfilled the requirements laid down therein as regards the protection of databases. Such protection shall be without prejudice to any contracts concluded and rights acquired before that date.

(Amendment No. 30)
Article 12a (new).

ARTICLE 12a: TRANSITIONAL PROVISIONS

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.

Protection pursuant to the provisions of this Directive as regards the right to prevent unauthorized extraction and re-utilization of the contents of the database shall also be available in respect of databases created prior to the entry into force of this Directive and since that date without prejudice to any contracts concluded and rights acquired before that date.

(Amendment No. 31)
Article 13(1)

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1992.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1995.
(Amendment No. 32)
Article 13(3) (new)

Not later than at the end of the fifth year after implementation of this directive and every two years thereafter the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this directive and, where necessary, shall submit proposals for its adjustment in line with developments in the area of databases.
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 (A3-0183/93),

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

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ANNEX I

OPINION

(Rule 120 of the Rules of Procedure)

by the Committee on Economic and Monetary Affairs
and Industrial Affairs
for the Committee on Legal Affairs and Citizens' Rights

Draftsman: Mr Klaus WETTIG

At its meeting of 17 June 1992 the Committee on Economic and Monetary Affairs
and Industrial Policy appointed Mr Wettig draftsman of its opinion.

At its meetings of 5 to 7 May and 2 and 3 June 1993 it considered the draft
opinion.

At the latter meeting it adopted the conclusions unanimously.

The following took part in the vote: Beumer (chairman), Wettig (draftsman),
Bofill Abeilhe, Braun-Moser (for Friedrich), de la Camara, Caudron,
Christiansen, Delorzoy (for Gasoliba I Böhm pursuant to Rule 111(2)),
Ernst de la Graete, Fourcans, Hermans, Nielsen (for Riskaer Pedersen), Speciale
and Thyssen.
I. The content of the proposal for a directive

The proposal on the legal protection of databases follows the adoption of the software directive (protection of computer programmes) as yet another step towards completing the internal market as regards intellectual property in the area of technology.

In its explanatory statement the Commission gives two overriding aims it wishes to secure with the directive. Firstly, the legal uncertainty in relation to the compiling of databases and the distortions of competition that arise from discrepancies in the provisions governing the protection of databases in the different Member States should be removed; secondly, an impetus should be given to boosting investment in the area of databases.

To that end the Commission is creating a new additional right that will extend protection to databases not already protected by the law of copyright in the Member States from unauthorized extraction.

II. The need for a directive: the economic importance of the sector

The need for Community rules arises in the Commission's opinion from a number of factors:

1. Databases have become much easier to access in recent years. CD-ROMs, increasingly popular as a computer storage medium, are becoming available to users of ordinary personal computers in addition to the standard diskette. This simultaneously increases the possibilities for their abuse and for pirating. The losses caused by pirating are not, however, exactly quantifiable at this time.

2. The on-line information sector is acquiring a steadily increasing economic and social importance in our information-oriented society. According to Commission estimates, its total economic turnover for 1992 should amount to some 3.5 billion ECU Europe-wide.

In 1990 the increase in turnover over the previous year was in the region of 13%. But total European share as a proportion of turnover by hosts (database providers) having their seat in the EC was only 6%.

3. One other important feature of the sector within the Community is its extremely high concentration. Thus in 1990 database producers in the United Kingdom recorded a total turnover of 2.68 billion ECU, whereas France managed only 403m, Italy 166m, Germany 49.3m and the Netherlands 31.5m.

The underlying reason for the dominance of British suppliers is that the leading European database producer and biggest worldwide supplier of real-time information services has its headquarters in London, and the big US hosts have also established their European subsidiaries there.

4. In France the widespread acceptance of the Teletel-System appears to have contributed substantively to the success of professional information services. In Italy real-time information services providing stock-exchange data hold the biggest market share, but the use of CD-ROM products is also growing. In Germany the real-time information market is dominated by the big European
suppliers from the UK, while credit information services (e.g. Schimmelpfeng) also tend to be predominantly UK based.

In 1990, 70% of turnover arising from the use of services from EC suppliers was generated in the EC itself. Of the remaining 30%, 12% was generated in the USA.

5. Although growth has fallen compared with previous years, both as a consequence of a certain saturation as well as of growing recessionary pressures generally, a dynamic development of the sector can still be look forward to in most Member States with relatively undeveloped markets hitherto.

6. In the area of off-line products CD-ROM products in particular are playing a part that is as yet hard to estimate. Turnover in these products grew at all events by 30% between 1989 and 1990. It nevertheless remains reasonable to assume that these products are still at a relatively early stage of market development. The dominance of US suppliers in this area is clearly illustrated by the fact that of 1 522 titles published worldwide only 487 come from EC suppliers.

7. As regards subject matter the dominant area within the EEC is financial and stock exchange information, at 70%, with economics/transport/patents at 25%, while such areas as science/technology/medicine, or politics/law/press-services account for only 1.9% and 1.6% of user take-up respectively.

In 1990 a total of 58% of turnover was accounted for by on-line information from real-time information services, which also accounts for the pre-eminent position of British large-scale suppliers.

III. Assessment of the Commission proposal and justification of the amendments

1. Given the economic significance and growth potential of the sector, an approximation of legislation appears appropriate, in particular to strengthen the international competitiveness of the Community.

2. The Commission's intention of creating greater legal security in order to boost investment activity, is appropriate as an initial approach. But if that aim really is to be achieved it is necessary to consider whether the Commission's proposal for a directive does in fact remove the existing legal uncertainties. It will also be important to determine whether the removal of distortions of competition arising from non-uniform legal systems might not lead to disruption of the conditions needed by fully functional and competitive undertakings, eventually having a negative impact on worldwide competitiveness.

3. The advantage enjoyed by suppliers located in the United Kingdom is in part accounted for by the fact that Anglo-Saxon copyright law applies, and that this allows the application of copyright protection to databases, while dispensing with more stringent criteria of originality. On the other hand, the protection introduced against unfair extraction Article 2(5) - as it were as compensation for smaller and medium-sized data base producers from the other Member States in which no such protection is laid down under copyright law and available to them on that basis - introduces a right hitherto virtually unknown in the Community, the full impact of which will only be observable on implementation by the Member States.
4. The Commission fixes the duration of this right at 10 years (Article 9(3)) and stipulates that 'insubstantial changes' to the content of database shall not extend the original period of copyright protection (Article 9(4)). Yet the commercial viability of a database frequently depends precisely on its being regularly updated, which requires repeated additions of new data to that already stored. Since Article 1(4) lays down only an extremely vague definition of an 'insubstantial change', it can be expected that clarifying what does or does not constitute an 'insubstantial change' will lead to repeated conflicts of interpretation and the bringing of legal proceedings through which database producers will try to demonstrate that regular updating represents a 'substantial change', allowing the period of protection to be extended.

5. Administrative difficulties and costly resort to the national courts consequently are built in. To claim to speak in terms of more legal certainty in such circumstances is highly questionable. In the present state of technological development there is nothing whatsoever to prevent the re-location of database production outside the Community. The need to lay down a positive definition of a 'substantial change' consequently seems inescapable.

6. Similar arguments apply to the exemptions laid down in Article 8(4) and (5). These authorize the lawful user of a database to extract and re-utilize 'insubstantial parts' of works or materials from a database for commercial purposes, but do so in terms such that too little attention is paid to the possibility of commercial use being made by competitors of what may at first sight appear to be 'insubstantial parts'.

7. Much more restrictive utilisation contracts could subsequently be negotiated that would restrict the right of access to information. Bigger producers would be in a more favourable position than small ones.

The Commission seeks to combat this danger by making it compulsory to issue a licence pursuant to Article 8(1) and (2). The purpose of requiring a licence to be issued is to help ensure that monopoly positions are not abused. However, the licence must not be allowed to lead to a de facto expropriation of the database producer. A more precise stipulation of the criteria for issuing licences consequently is necessary. Although in recital 33 the Commission asserts that such licences should not be requested for reasons such as economy of time, effort or financial investment, this is not specifically stipulated in the main text of the directive.

8. There must also be a re-think on the question of the period of protection under the new additional right. In the unanimous opinion of the parties concerned the period of 10 years proposed by the Commission in Article 9(3) is too short. This is further complicated by the fact that no allowance is made for regular updating which, as already stated, is precisely what makes many databases economically viable to their suppliers. The dating of each new contribution entered in the database would, given a successful claim that these represented 'substantial changes,' result in the term of protection being renewed repeatedly, in effect affording permanent protection. At the same time conversion to such a system could entail high costs, by which the producers of smaller and medium-sized databases would be hardest hit. An extension to the proposed time period consequently provides the more pragmatic solution, one that would also be directly compatible with the 50-year period for databases protected by copyright law. This term however should not exceed that laid down for works with their own original intellectual component. An appropriate form
of protection for database producers can be expected in connection with the need
to lay down a definition of a 'substantial change' in Article 1.

9. Although the proposal for a directive as a whole is undoubtedly a welcome
first step by the Commission, it nevertheless raises problems of detail the
precise impact of which cannot be anticipated. The economic situation in the
database sector at present is such that urgent actions are not as yet required.

In the final provisions it should therefore be clearly stipulated that a review
of the directive is provided for if administrative difficulties and cost
increases due to problems of interpretation arising from the new additional
right of protection turn out to be excessive. The Commission is therefore asked
to conduct a review of the situation five years after the entry into force of
the directive. By that time it will also be possible to make a more accurate
assessment of separate market segments in the database area.
IV. Conclusion

The Committee on Legal Affairs and Citizens' Rights, as the committee responsible, is requested pursuant to Article 120(5) of the Rules of Procedure to accept the following amendments:

Commission proposal

(Amendment No. 1)
Article 8(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.

Amendment

(Amendment No. 2)
Article 9(3)

The right to prevent unfair extraction shall run as of the date of creation of the database and shall expire at the end of a period of ten 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 the first of January of the year following the date when the database was first made available.

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 that are not for reasons such as economy of time, effort or financial investment, shall be licensed on fair and non-discriminatory terms. A declaration shall be submitted clearly setting out the justification of the commercial purposes pursued and requiring the issue of a license.
(Amendment No. 3)
Article 13(3) (new)

Not later than at the end of the fifth year after implementation of this directive and every two years thereafter the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this directive and, where necessary, shall submit proposals for its adjustment in line with developments in the area of databases.
ANNEX II

OPINION

of the Committee on Energy, Research and Technology

Letter from the chairman of the committee to Mr Reinhold Bocklet,
chairman of the Committee on Legal Affairs and Citizens’ Rights

---------------------------------------------

Strasbourg, 26 May 1993

of databases (COM(92) 0024 final - C3-0271/93)

Dear Mr Bocklet,

At its meeting of 25 May 1993 the Committee on Energy, Research and Technology
examined the above-mentioned Commission proposal and came to the following
conclusions:

The Commission proposal seeks to take account of technical developments in the
field of the storage and dissemination of and collections of information works
and to improve the incomplete and varying legal protection of databases.
According to the Commission proposal, the term 'database' should be taken to
mean collections of literary, musical, artistic or other works or other
information materials which are arranged, stored and accessed by electronic
means, such as text, sounds, images, numbers, facts, data or combinations
thereof as well as electronic material which is required for the operation of
the database.

The quantity of information continuously being produced that needs to be
archived, collected or catalogued (new books, newspapers, periodicals, sound and
image recordings) is increasing exponentially and it is now almost impossible
to arrange it rationally using traditional physical media and to make it
available to interested parties in a reasonable time. Accordingly, the
electronic storage and marketing of information of all kinds using databases is
making increasing headway. In industry, the possibility of utilizing databases
(which are, like stock-exchange quotations, updated in real time and on offer
to the public) is increasingly becoming a key factor in competitiveness.

1 The following took part in the vote: Desama, chairman; Adam and Quisthoudt-
Rowohl, vice-chairmen; Bettini, Rovsing, Schlee, Seligman, De Gaulle (for
Verwaerde, pursuant to Rule 111(2)) and Goedmakers (for Garcia Arias).

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Essential factors for the dissemination of electronically stored collections of
data in databases include on-line services between the database and the user
(ASCII-database services, especially financial, economics and science
databases), increasingly CD-ROM, videotext services as well as audiotext and
radio. These information delivery media fulfill very different requirements, but
have one thing in common: there is only incomplete legal protection for
information which has been arranged by individual effort (in no Member State
does copyright law mention the legal protection of databases) and essentially
protection has so far only been secured through contract law. Because the
information market in the Community is growing very rapidly, it is advisable to
establish, at an early stage, a harmonized legal framework for the protection
of databases to prevent the Member States from legislating in differing ways to
prevent the misappropriation of electronically stored and retrievable
collections of information.

The Committee on Energy, Research and Technology therefore fundamentally
welcomes the Commission proposal to establish early on a framework for the whole
Community so that the development of this fast-growing sector is not hampered
and a further fragmentation of the European market is prevented from the outset.

The course adopted by the Commission strikes a balance between the essential
protection needs of database operators and the legitimate interests of users and
the authors of the works incorporated in databases. The proposal is also an
incentive to the development of the European market for information collection
stored and offered by electronic (or optical) means.

In order to ensure rational operation and to safeguard investment in databases,
the right of database owners to protection from unfair extraction - involving
the neutralization of the contents of databases, and existing alongside the
rights of the authors of works incorporated therein, is particularly important.

However, the term 'database' should be defined more comprehensively so as to
include unprotected collections of data resulting from the operation of
Earth-observation satellites (such as weather and climatic satellites). This
was rightly pointed out by the ESA. Legal protection must also extend to
databases already in existence. Provided that these points are taken into
account, the Committee on Energy, Research and Technology recommends approval
of the Commission proposal.

Yours sincerely,

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