SUMMARY OF PROCEEDINGS

of: Working Party on Intellectual Property (Copyright)

dated: 10 June 1993

No. prev. doc.: 7964/93 PI 66 CULTURE 93
No. Cion prop.: 6919/92 PI 64 CULTURE 61


1. Introduction

1.1. At its meeting on 10 June 1993, the Working Party\textsuperscript{(1)} was informed by the Commission representative of the amendments to the proposal which had been adopted by the European Parliament's Committee on Legal Affairs and Citizens' Rights at its meeting held on 9 June 1993. The amendments were available to the Working Party in the English language only.

1.2. Delegations gave their initial reactions to the following amendments in particular:
- the amendments to Article 1(1),
- the amendments to Article 8,
- the amendments to Article 9(1).

2. Amendments to Article 1(1)

2.1. The parliamentary committee had adopted amendments Nos. 31 and 33 (see Annex 1). The combined effect of these amendments was to:

\textsuperscript{(1)} The Luxembourg delegation was not represented at this meeting.
(a) extend the scope of the Directive to cover digital electronic databases;

(b) to amend the definition of databases to include not only collections of works or materials, but also collections of data;

(c) to amend this definition to cover collections of a large number of data, works or other materials.

2.2 The Danish, Spanish, French, Italian, Netherlands and United Kingdom delegations gave an initial favourable reaction to the amendment referred to under point 2.1(a) above.

3. Amendment to Article 8

3.1 The amendments to Article 8 and a number of related amendments to Article 1 are set out in Annex II.

3.2 The Spanish delegation considered that the amendment to Article 8(1) constituted an improvement on the Commission's proposal.

3.3 The Spanish and United Kingdom delegations questioned the amendment requiring acknowledgement of the source in respect of personal non-commercial use (amendment No. 18), as it was not clear to whom such acknowledgement should be made.

3.4 The Spanish, French and Netherlands delegations considered that the definitions of "commercial purposes" (amendments Nos. 1 and 4) required further examination.

3.5 The United Kingdom delegation expressed doubts in respect of the attempts made to distinguish between "insubstantial change" and "substantial change" (amendments Nos. 6 and 7).
4. Amendments to Article 9(3)

4.1. Amendments Nos. 63 and 66 to Article 9(3) are set out in Annex III.

4.2 The Spanish, French, Irish, Italian, Netherlands and United Kingdom delegations gave an initial positive reaction to the increase from 10 to 15 years of the term of the right to prevent unauthorized extraction.

4.3 The Spanish, French and Netherlands delegations gave an initial positive reaction to the amendment whereby this term would begin anew for each item inserted in a regularly updated database.

The United Kingdom delegation on the other hand expressed doubts whether an act which lacked originality should cause the term of protection to start anew.

In this context, the Irish and United Kingdom delegations reiterated their reservations on the need for a combination of copyright and sui generis protection for databases.

4.4 The Italian delegation considered that the change from "unfair extraction" to "unauthorized extraction" implied a change from an unfair competition concept to a copyright concept, and introduced a copyright element into the sui generis protection. It asked how this would affect the rights of the rightholder after the sui generis protection had expired.

The Commission representative explained that in the event of unauthorized extraction of material from a database protected by copyright during the term of sui generis protection, the rightholder would have the possibility of taking action under copyright law and under the sui generis protection. In the event of unauthorized extraction of material from a database protected by
Copyright after the expiry of sui generis protection, the rightholder would have the possibility of taking action under copyright law only, and this possibility would be dependent upon the amount of material extracted without authorization being sufficient to infringe the copyright in the selection or arrangement of the material.

Other amendments

The German delegation considered that amendment No. 67 introducing Article 11(2a) (Annex IV) was as significant as those mentioned under points 2 to 4 above. Although it had not yet taken a final position on this amendment, its initial reaction was that this amendment had the effect of reducing the applicability of the principle of reciprocity under Article 11(3) to what was not covered by the Paris Convention, since the Paris Convention provided for the principle of national treatment.

The Commission representative considered that the sui generis protection provided for by the Directive did not fall under the Paris Convention, and therefore the principle of reciprocity could be applied fully to it.

The German delegation considered that amendment No. 49 (Annex V) was mistaken in providing an exception for summaries from the provision of Article 4(2) as it resulted from this amendment.

The French delegation expressed an initial positive reaction to the change of order of the paragraphs of Article 4 resulting from amendment No. 49, and to the requirement in the new paragraph 2 that the name of the author and the source be clearly indicated.
Amendments to Article 1(1)  
(Combination of amendments Nos. 31 and 33)

Commission text  

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;

Amendment

For the purposes of this Directive:

1. "database" means a collection of a large number 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;
Amendments to Article 8

Commission text

(Amendment No. 58)

Article 8, before paragraph 1, paragraph -1 (new)

For the purposes of this Article, databases shall not be deemed to have been made publicly available unless they may be freely interrogated.

(Amendment No. 1 of the Committee on Economic and Monetary Affairs and Industrial Policy)

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.

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 license.

(Amendment No. 18)

Article 8(5)

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.

7998/93
Article 8(5)a (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, cannot be considered not to prejudice the exclusive rights of the holder 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 holder 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.

The following amendments to Article 1 also have to be considered in conjunction with the amendments to Article 8:

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

2a. For the purposes of this directive, 'commercial purposes' shall not include any personal use or use for research or teaching purposes the immediate or ultimate objective of which is not profit.

(Amendment No. 5)
Article 1(3)

1. '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.

Deleted

7998/93 (Annex II)
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.

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

(a) with regard to the purposes 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 purposes of Article 9(4), modifications resulting from an accumulation of additions, deletions, alterations which, when taken together, do not substantially modify the contents of a 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 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 the date when the database was first made available.

3. The right to prevent unauthorized extraction shall run from the date of creation of the database for 15 years, starting 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;

(c) the date of insertion, for each item included in a regularly updated database, with prejudice to Article 9(h).
Article 11(2a) (new)

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).
Article 4

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 rightholder 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 rightholders on those works, provided the name of the author and the source are clearly indicated.