6. Legal protection of data bases

PRESIDENT. — The next item is the report (Doc. A3-0183/93) by Mr García Amigo, on behalf of the Committee on Legal Affairs and Citizens' Rights, on the proposal from the Commission to the Council (COM(92) 24 final — Doc. C3-0271/92 — SYN 393) for a directive on the legal protection of data bases.

GARCÍA AMIGO (PPE), rapporteur. — (ES) Mr President, once again this Parliament is faced with a new issue. An issue for which even the Member States that comprise the Community do not yet have their own legislation. In fact, Mr President, this is a politically neutral issue but economically it is very important, with a great future from the economic point of view. It is a new problem, so not much is known about it. Even the Committee on Legal Affairs, made up of experts, all lawyers, had to bring in experts from across the Community for a briefing to advise members of the committee on taking the decisions. The national governments do not have their own legislation, except for specific mentions in certain ordinances, as in Spain, or applications of old ideas like the originality criterion for protection based on copyright. But precisely because of that, there is a lack of Community harmonization on a subject where it is badly needed now, and above all in the future.

The draft directive is an attempt to respond to the challenge of legal protection of databases from a dual perspective: on the one hand, dealing with the criterion of traditional copyright, as governed by the Berne Convention, with the requirement of total originality and, in addition, introducing a special new right -the creative work of this Parliament and the Commission — which prevents illegal extraction of the content of databases. The draft seeks to put a premium on original or creative work, through copyright, and also on the effort or investment made in the creation of the databases, through a special right. That general outline is taken up by the Committee on Legal Affairs in its report — which I will say in passing has been supported almost in its entirety, except in certain very specific points of a technical nature, by all the political groups.

But as was bound to happen with a new issue, the draft directive contains certain errors and a few defects, chiefly of legal structure, and that is what the Committee on Legal Affairs has sought to correct through its amendments. Most of the amendments relate to minor points, but some are very significant and are worth highlighting here.

First there is the scope of the directive, which seeks to cover not just electronic databases, but non-electronic ones as well.

Secondly, it is necessary to specify the way the scope is defined and to tighten up the legal concepts which underlie the protection of databases, including the concept of the creator or owner of the database, the concepts of minor parts and substantial parts, those of minor changes or substantial changes, in order to determine periods of protection, etc.

I regard two points as the most important, Mr President: one is the issue of the obligatory licences which have to be granted in monopoly situations, whether administrative or de facto. Another important point, which modifies the draft directive considerably, is the period of protection, particularly of the special right. The ten years proposed in the draft directive should be extended to fifteen and in determining the start point of this period should be based specifically on: 1) whether or not it is made available to the public from the start; 2) whether there are substantial changes; and 3) — as regards dynamic databases — on the individual introduction of each item of data.

I want to highlight another important point which is not resolved in the draft directive: the transitional aspect, that is, how the draft directive will be applied to databases already in existence rather than those which are newly created and do not pose special problems. An attempt has been made to solve the problem based on an amendment by Mr Bru Puron, which was accepted in committee and provides a way out for the draft directive.

I end, Mr President, by recalling that the groups were virtually unanimous, with only one or two points outstanding which I hope can be resolved tomorrow at the meeting of the majority groups.

WETTIG (PSE), draftsman of the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy. — (DE) Mr President, ladies and gentlemen, as the rapporteur of the Legal Affairs Committee has pointed out, this directive breaks new ground in the European Community, not only legally but economically.

The directive concerns an extraordinarily important sector of our information society, and its turnover in thousands of millions vastly exceeds the turnover in other economic sectors of the European Community. The Economic Affairs Committee has of course had to consider this directive largely from an economic perspective and has concentrated on the question of the strength of legal protection in relation to development of the electronic database system since it is apparent that databases can only develop if the economic benefit of the investment has strong legal protection.

A high level of protection is beneficial to this new service sector. Also dependent on this level of protection, however, is the structure of the sector, since small and medium-sized undertakings in particular need legal protection, whilst the larger ones are not so dependent. With a high level of legal protection smaller undertakings can defend their investment more easily and assert themselves on the market.

This is why our committee has said the directive is necessary. This too has been the subject of lengthy discussion since whether a sector really needs to be ringed around with legal arrangements is not always very clear.

Of the legal problems considered by the Legal Affairs Committee it was primarily the economic aspects that concerned us. These include the issue of "substantial changes" and period of protection since a particular form of words would give rise to an unlimited period of protection, the issue of constraints on licensing, since this would involve infringement of the right to conclude contracts, and also the review of this directive. We are pleased that our suggestions have been adopted by the Legal Affairs Committee and the Committee on Economic and Monetary Affairs and Industrial Policy wel-
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to the fact that this directive has been adopted in this form.

BRU PURÓN (PSE). — (ES) Mr President, I would first like to congratulate the rapporteur, Mr García Amigo, on the excellent work he has done in examining a matter of great economic importance and enormous legal complexity.

This draft directive is set in the context of the group of proposals on intellectual property, presented by the Commission over the last few years, and relates to the well-known directive on legal protection of computer programmes for which Mrs Salema was the rapporteur.

The objective of the present directive is the establishment of a harmonized legal system for the protection of databases in the Community. The need for this harmonization arises from two basic causes: the growing economic importance of this sector in the Community and the divergence — or rather the silence — of Member States' legislation on the matter. This is because the sector is relatively new and has been expanding rapidly in the last few years.

The need for a Community regulation on the subject is clear, given its repercussion on the freedom of goods and services and the importance of developing a strong and internationally competitive sector. We should not forget that these issues are discussed today in international fora like the GATT or the World Intellectual Property Organization (WIPO) where the Community needs to have a strong but also a united position to be able to defend its interests.

As has been said, the directive establishes two complementary systems: real protection of copyright, when there is originality in the selection or arrangement of the bases which constitutes a real creation, and a new form of protection, which is the right to prevent — it has a negative character — the unauthorized extraction of the content of a database, independently of whether or not it is copyright because of the question of originality.

The Committee on Legal Affairs agreed with the basic principles of this system of protection, focusing on the discussion and the amendments on defining it, that is: scope, computation of time, exceptions to exclusive right, etc.

The committee has had to clarify the terms used in the directive, and it is appropriate to highlight the amendments to define commercial purposes, changes of major and minor importance and substantial changes. The Socialist Group is in agreement with these amendments and with those presented in order to try to clarify the terminology used in the directive: the distinction between the creator and the owner of a database etc. Another group of important amendments seeks to clarify relations between copyright on the database and possible copyright on the works incorporated into it, a case which could occur at the same time. The Socialist Group was responsible for these and is naturally in agreement with them.

One subject of debate has been whether or not to extend the scope to cover non-electronic databases. In principle, the Socialist Group is in agreement with the original version of the directive which does not include the protection of non-electronic bases, taking the view that, as regards copyright, it covers any kind of base and, as regards the new right, it can only have incidence on electronic bases because this is the new field in which a database is really important and carries economic weight. As regards the licensing system, this subject has to be linked with that of competence, regulated in articles 85 and 86 of the Treaty of Rome.

One last and very controversial point — I have nearly finished, Mr President — was the possibility of re-initiating a period of protection of 15 years on new data incorporated into a system of databases. The Socialist Group is not going to vote in favour of that amendment because it thinks the Commission's position of re-initiation or new computation only when there is a substantial change in the database is more prudent on a day to day basis. There is an amendment by the Socialist Group, n° 34, which I think can, as the rapporteur has said, be assimilated because it is of a purely technical nature.

INGLEWOOD, The Lord (PPE). — Mr President, the computer and its application have revolutionized all kinds of business practice in recent years so that traditional forms of protection of intellectual property are scarcely applicable. The compilation of databases is a large-scale and costly business which merits appropriate protection. The product is often one which has considerable commercial value and application. In a Community of widely varying laws relating to protection, this is an important piece of legislation to ensure the single market works fairly for all.

There are three points I wish to make: first, many databases have to be regularly updated and their use and efficacy depends upon doing this. In my view the Commission proposal does not properly address this matter which is why I strongly support the concept introduced by Amendment No 24 to have rolling protection for this category of material. Secondly, while it is obviously a generous concept that material and databases should not be legally protected vis-à-vis bona fide research, such a use should be clearly differentiated from commercial activities carried on by institutions of learning since if this does not occur, unfair competition will ensue. Thirdly, in the event of compulsorily licensing the use of the information contained in a database, such licensing should only take place under exceptional rather than run-of-the-mill circumstances because to do otherwise is to deny the owner of the database the legitimate fruits of his endeavour in compiling it.

BANDRÉS MOLET (V). — (ES) Mr President, I just want to state that our group will vote in favour of the García Amigo report on this draft directive.

In our group we believe the harmonization of the legal system for databases is necessary if these are to be effective and properly protected. Only the establishment of a harmonized protection system will make it possible to stimulate the creation of these electronic support systems. The lack of a clear set of rules which safeguards copyright and sole user right may produce — in fact is producing — grave damage to the protection of copyright and, in general, irreparable damage to artistic creation.

I believe only two Member States have so far introduced specific legislation on the subject: the United Kingdom and Spain. And we are of the opinion that this proposal for a directive is a very important step forward in the protection of intellectual property in the Community
area, while avoiding damage to free competition in this field.

The European Community — as we all know — lags behind the United States and Japan to a certain extent in this sector. The lack of legal regulation has reduced opportunities in the audiovisual industry and the electronics industry and this proposal is intended to solve the specific problems which arise as a result of the use of electronic data processing equipment in compilation, processing and recovery of information.

Aware of this lack, the Committee on Legal Affairs, and its rapporteur in particular, have acted with intelligence, with diligence and with responsibility. As the rapporteur himself has mentioned, there was virtual unanimity in approving the amendments and so, Mr President, I repeat that my parliamentary group will vote in favour of the report.

GRUND (NI). — (DE) Mr President, ladies and gentlemen, the ambit of this directive on legal protection of databases at Community level cannot at the moment be clearly discerned. By this means the Commission opens wide the door to monopolies of all electronic or non-electronic data material, especially if it is in the hands of a few large firms with a dominant position on the market. This is a serious threat to free exchange of information since the proposal ignores almost entirely the option of allowing intervention by Member States to prevent possible wrongful dissemination of data through the monopolistic practices of legal owners. In future they will be able to doctor any information supplied, using specific disinformation to influence public opinion. Mr García Amigo is even seeking to extend to owners of databases rights that are so much more powerful than copyright.

In my amendments tabled in the Legal Affairs Committee, I have sought to counter this dangerous development by making Member States more influential and by keeping legal protection in the province of national legislation. As usually happens in this unholy sphere of EC legislation my amendments in the Legal Affairs Committee were either voted down or eliminated by the adoption of other amendments. This makes it possible for me to vote against the entire directive. George Orwell, whose vision ten years after 1984 is now becoming a reality, sends heartiest greetings! We have the Union to thank for this.

BLAK (PSE). — (DE) Mr President, the Commission has come forward with this proposal because it is unhappy that most commercial data bases in the world are produced in the United States. But there is nothing we can do about it. It is reasonable in the circumstances to draw up common rules for the use of data bases since this is an aspect of the GATT negotiations on intellectual property law.

I have two concerns: First, we should not draw up rules which prevent the general use of data bases, and second, rules should not make it easier to create virtual monopolies for the owners of attractive data bases. I think our report is pretty good since it makes provision for licensing which the data-base owner cannot avoid. It should be noted that the international data-base market uses only one language — English — and there is no point in spending money to develop data bases in other languages, unless they are aimed at a local public. This should be accepted here in Parliament where we have wretched data-bases in nine languages instead of good data-bases in just one or two languages.

MILLAN, Member of the Commission. — Mr President, may I first of all thank Mr García Amigo for his report and the other reports that other committees have made on this extremely important and technically rather complex subject. I am very grateful for the general support that has been expressed this evening for the Commission’s propo- sals, though obviously with some exceptions. The Com- mission proposed in its green paper on copyright in 1988 to harmonize the legal protection of databases, so this question does go back a long way. The question of how best to protect databases has also been under discussion for the last two years in the GATT TRIPS talks and in the Committee of Experts in the World Intellectual Property Organization in Geneva.

The Commission’s proposal has been very thoroughly analyzed in the report prepared by the Legal Affairs Committee and the other two committees which have given their opinion on the text. There are in total 34 amendments, of which the Commission can accept a large number because they constitute helpful clarifications of the text. Some of the amendments of course do constitute changes in substance but they are very much in the spirit of the original proposal. I might specifically mention, since a number of Members have referred to the question of the length of protection, that the Commission can accept Amendment No 24, which will extend the protection period from 10 to 15 years.

There are a small number of amendments which the Commission will not be able to accept. Most of these concern definitions of terms habitually used in copyright legislation.

The Commission can therefore accept Amendments Nos 6, 8, 9 and 10 — which are important amendments on the definition of insubstantial change — 11, 12, the first part of 13, 14, 16, 17, 18, 21, 22, 34 — which we prefer to Amendment No 23, also mentioned by one honourable Member this evening — 24, 25, 26, 27, the second part of 28, 30, 31 and (a) and (b) of 33. The Commission can also accept the following amendments subject to some drafting changes: part of No 2, part of No 3 which deals with non-electronic databases — the amendment is acceptable but requires some possible consequential changes in the directive — 5, the second part of 7, the second part of 13, 20 — which is another significant amendment — 29 and 32.

The amendments which the Commission is not able to accept are Nos 1, 4, the first part and the second part, (b), of 7, 15, 19, 28 and 33c. The reason for rejecting these amendments is largely a consequence of the fact that the Member States and the Commission are in the process of discussing definitions of a number of key copyright terms within international bodies. This applies, for example, to the definition of ‘database’ itself, to the term ‘author’ to the terms ‘commercial purposes’ and ‘private purposes’. So while we agree with Parliament that definitions of these terms would give greater clarity to the text in some cases, we would prefer for the sake of coherence of legislative text to take the definitions of these terms which will be agreed in the context of the World Intellectual Property Organization.

The Commission has rejected Amendment No 15 because the addition proposed would make the text
Millan ambiguous as to what use of the database is authorized when there is a contract between the supplier and user. The Commission has rejected the first part of Amendment No 28 because it disagrees with the proposition that the sui generis right can be covered by the Paris Convention and is therefore subject to national treatment. We reject Amendment No 35(c) because it conflicts with the principle of Article 8(1).

Mr President, I have given a rather full account, which I hope will demonstrate to the rapporteur and his committee and to the other Members concerned that there is really no significant difference between the Commission and Parliament on these various matters. We are able to accept a very large number of amendments and those that we are not able to accept are for the reasons which I have explained, very largely practical reasons in the context of present international discussions. Again, I am grateful to the committee for the work it has done and to the rapporteur particularly, and grateful for the general support that has been expressed here this evening.

García Amigo (PPE), rapporteur. — (ES) Mr President, I have asked for the floor simply to thank the Commissioner for the effort the Commission has made to accept Parliament’s amendments. I think this is a good way to work and I believe, Mr President, that this is an anticipation of the Treaty of Maastricht and that its spirit is already beginning to be applied making Parliament co-legislative with the Commission and the Council. Once again, many thanks, Mr President.

President. — The debate is closed.

The vote will take place at 5 p.m. on Wednesday.

7. French overseas departments and the single market

President. — The next item is the report (Doc. A3-162/93) by Mr Da Cunha Oliveira, on behalf of the Committee on Regional Policy, Regional Planning and Relations with Regional and Local Authorities, on the development of the French overseas departments in the context of the single market.

Cunha Oliveira (PSE), rapporteur. — (PT) Mr President, the French overseas departments are fully entitled to be an integral part of the Community. However, their separateness as islands in remote areas, their particular mountainous and climatic conditions, as well as the bottlenecks and backwardness that characterize their economies and the standard of living of their populations, mean that the FODs clearly constitute ‘ultra-peripheral regions’. The ultimate aims of the European Community must be pursued in respect of the FODs as an integral part of it. As ultra-peripheral regions, it is their need and their right not only to benefit from certain derogations, albeit transitional, but above all from a range of specific measures.

Now, Mr President, while this has always been so, and to a certain extent is already happening, the situation is getting worse particularly since the Single Market came into being. This is because the greatest advantages of economic integration and a large market are obtained when the countries concerned are neighbours and possess a comparable level of development, which is certainly not the case for the FODs, or for any other ultra-peripheral region of the Community. Hence the timeliness and importance of this report on the development of the FODs in the context of the Single Market which I have the honour to present, and which I hope will be favourably received by this Parliament.

New perspectives and approaches are opened up in it and a whole series of measures are set out but I shall not refer to them in detail for lack of time. I shall restrict myself to highlighting just three.

The first relates to the privileged geographic position of the FODs, which gives them a natural link with European cooperation policy towards ACP countries and third countries in their region.

The second is the fact that the lasting development of the FODs has to be based notably on the optimization of indigenous resources, on the consolidation of their traditional agricultural activities, on the development of vocational training, on the creation of industrial activities and services targeting exports to neighbouring countries, in building up high technology services and supplying them to the respective geographic area, in the improvement of internal and external transport conditions.

It is precisely transport that I want to emphasize as my third point. This is vital infrastructure for the future of the FODs, and indeed any ultra-peripheral region of the Community. There is no reason why we cannot find a way of extending the benefits arising from the trans-European networks to the FODs and other ultra-peripheral regions, given that one of the objectives is precisely that of linking the island regions to the central regions of the Community. I have introduced in this report the new concept of ‘pluri-insularity’ as another type of bottleneck in the ultra-periphery, and I wanted the concept of ‘territorial continuity’ to appear in it too. In transport terms, above all the transport costs the inhabitants of the FODs and other ultra-peripheral regions have to pay, they should be regarded for the purposes of the calculation as parts of a ‘territorial continuity’.

I shall end, Mr President, with a request to the Commission to continue as before with the impact study in the FODs, and in general in the ultra-peripheral regions, of Community measures relating to the reform of the CAP, the mobility of persons, the trans-European networks and, above all, the entry into force of the Internal Market.

Rosmini (PSE). — (FR) Mr President, ladies and gentlemen, ever since the Treaty of Rome came into force, the European Community has pursued apparently contradictory objectives as far as the overseas departments are concerned. We encourage the implementation in these regions of Community policies, notably the free circulation of goods and the common agricultural policy, and affirm the desire that all the provisions of the Treaty should eventually apply fully in the FODs, as an integral part of the French Republic. But at the same time as requiring common application of the rules of our institutions, Parliament must take account of the specific geographic and climatic conditions and especially of economic dependence.

That is why it is indispensable to adopt particular measures in order to permit these regions to catch up with the average economic and social level of the Community. These measures must relate to almost all the major sectors of Community activity. So it is absolutely indispensable that the policy on trans-European networks