4. Fruit juices  **II

A3-0167/93

Decision on the common position established by the Council with a view to the adoption of a directive relating to fruit juices and certain similar products (C3-0165/93 — SYN 416)

(Cooperation procedure: second reading)

The European Parliament,
— having regard to the common position of the Council (C3-0165/93 — SYN 416),
— having regard to its opinion delivered at first reading (1) on the Commission proposal (SEC(92)0949),
— having regard to the relevant provisions of the EEC Treaty and its Rules of Procedure,
1. Approves the common position;
2. Instructs its President to forward this decision to the Council and Commission.


5. Legal protection of databases  **I

A3-0183/93

Proposal for a Council directive on the legal protection of databases (COM(92)0024 — C3-0271/92 — SYN 393)

The proposal was approved with the following amendments:

<table>
<thead>
<tr>
<th>TEXT PROPOSED BY THE COMMISSION (*)</th>
<th>TEXT AMENDED BY PARLIAMENT</th>
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<tr>
<td>(Amendment No 2)</td>
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<td>Recital 37a (new)</td>
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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;

(Amendment No 3)

Article 1(1)

1. ‘database’ means a collection of works or materials arranged, stored and accessed by electronic means,
2. ‘database’ means a collection of a large number of data, works or other materials arranged, stored and

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 No 4)

*Article 1(1a) (new)*

1a. '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 1(1b) (new)*

1b. '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.

(Amendment No 6)

*Article 1(2)*

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;

(Amendment No 7)

*Article 1(2a) and (2b) (new)*

2a. for the purposes in particular of Article 8(4), 'commercial purposes' means any use — whether domestic or collective — aiming at economic activity or a remunerated transaction.

2b. for the purposes of Article 8(5), 'non-commercial purposes' means any use:

(a) domestic and non-collective, or

(b) for non-profit making purposes of teaching, research or humanitarian aid.
Article 1(3)

3. ‘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

Article 1(4)

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.

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(2a), additions, deletions or alterations 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(4a), the successive accumulation of insubstantial additions, deletions or alterations in respect of the contents of a database, resulting in substantial modification to all or part of a database.

Article 2(5)

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,

5. Member States shall provide for a right for the owner 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.

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 12)

Article 3a (new)

Entitlement to protection under copyright

Protection under copyright shall be granted to all owners, whether natural or legal persons, who fulfil the requirements laid down in national legislation or international agreements on copyright applicable to literary works.

(Amendment No 13)

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 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 shall remain subject to the authorization of the owner of 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, introduction

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 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:
(Amendment No 15)

Article 6(1)

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.

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.

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 author of the database laid down in Article 5.

(Amendment No 17)

Article 8(–1) (new)

–1. 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 18)

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.

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 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.
(Amendment No 33)

Article 8(2)

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 also be licensed on fair and non-discriminatory terms if the database is made publicly available by:
   (a) public authorities or public corporations or bodies which are either established or authorized to assemble or to disclose information pursuant to legislation, or are under a general duty to do so,
   (b) firms or entities enjoying a monopoly status by virtue of an exclusive concession by a public body.

(Amendment No 19)

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.

(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 34)

Article 9(2a) (new)

2a. A substantial change to the selection or arrangement of the contents of a database shall give rise to the creation of a new database, which shall be protected from that moment for the period recognized in paragraph 1 of this article. Such protection shall not prejudice existing rights in respect of the original 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.

(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 unauthorized extraction.

(Amendment No 26)

Article 9(4a) (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 unauthorized 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.

1. Protection granted pursuant to this directive to the contents of a database against unauthorized extraction or re-utilization shall apply to databases whose owners 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)**

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

3. Agreements extending the right to prevent unauthorized extraction to databases produced in third countries and falling outside the provisions of paragraphs 1 to 2a 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).

(Amendment No 29)

**Article 12(2)**

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.

(Amendment No 30)

**Article 12a (new)**

**Article 12a**

**Transitional provisions**

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. Such protection shall be 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 1993.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive before 1 January 1995.
Legislative resolution embodying the opinion of the European Parliament on the Commission proposal for a Council directive on the legal protection of databases

(The Cooperation procedure: first reading)

The European Parliament,

— having regard to the Commission proposal to the Council (COM(92)0024 — 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.