NOTE

from: Council Secretariat

to: Working Party on Intellectual Property (Copyright)

No. prev. doc.: 5693/94 PI 24 CULTURE 16
No. Cion prop.: 9219/93 PI 89 CULTURE 113

- Third consolidated text

Delegations will find attached a third consolidated text, which takes account of the Working Party's discussions up to the end of May 1994.

The recitals have not yet been examined.
CHAPTER I: DEFINITIONS

Article 1
Definitions

1. For the purposes of this Directive, "database" means a [collection] [compilation]1 of data, works or other materials [arranged, stored and [capable of being] accessed by electronic means] [whether in machine-readable or other form]2 [and the materials necessary for the operation of the database such as its thesaurus, index or system for obtaining or presenting information];3 it shall not apply to any computer program used in the making or operation of the database.

2. Deleted.

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1 The term "collection" corresponds to the Commission's proposal and is preferred by the Belgian, Greek and French delegations; "compilation" is the term used in Article 10(2) of the TRIPS Agreement.

2 The Greek, Spanish, Irish, Italian, Netherlands and United Kingdom delegations are in favour of extending the scope of the Directive to cover non-electronic databases; the German delegation is in favour of such an extension in respect of copyright protection, but has doubts as to such an extension in respect of sui generis protection. The Belgian, French and Portuguese delegations are opposed to such an extension in respect of both forms of protection, although the Belgian delegation could envisage an extension of some of the copyright provisions to non-electronic databases. The Danish delegation has expressed doubts in respect of any extension. The Luxembourg delegation has indicated an open position.

3 Several delegations have expressed difficulties with this wording, which might have to be reconsidered if the scope of the Directive is extended to cover non-electronic databases. It has been suggested that consideration be given to providing separate definitions for electronic and non-electronic databases.
CHAPTER II: COPYRIGHT

Article 2
Object of Protection

1. In accordance with the provisions of this Directive, Member States shall protect databases by copyright as collections within the meaning of Article 2(5) of the Berne Convention for the Protection of Literary and Artistic Works (text of the Paris Act of 1971).\(^4\)

[2.\(^5\)] The definition of database in Article 1(1) is without prejudice to the protection by copyright of collections of data, works or other materials arranged, stored or accessed by non-electronic means, which accordingly remain protected to the extent provided for by [Article 2(5) of the Berne Convention] [national law].\(^6\)

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\(^4\) The German and Portuguese delegations have expressed doubts on the need for this paragraph.

\(^5\) This paragraph would be deleted if the scope of the Directive were extended to cover non-electronic databases.

\(^6\) On the hypothesis that this paragraph were to be retained, the French delegation and the Commission representative would prefer the first variant; the Danish, German, Spanish, Irish and United Kingdom delegations would prefer the second variant.
Article 2 (continued)

3. [Collections] [compilations]7 of data, works or other materials [, whether in machine-readable or other form]8, 9, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected by copyright as such. [No other criteria shall be applied to determine their eligibility for this protection.] 10, 11.

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7 See footnote 1.

8 See footnote 2 in respect of the words in square brackets.

9 This first part of the first sentence is based on Article 10(2) of the TRIPs Agreement. The Spanish, Irish and Portuguese delegations would prefer to replace these words by the word "Databases".

10 The German, Irish and United Kingdom delegations have a reservation on this second sentence.

11 Reservation on this paragraph by the French delegation, which considers that the same test of originality should be applied as in the 17th recital of Directive 93/98/EEC: "... is to be considered original if it is the author's own intellectual creation reflecting his personality" (OJ No. L 290, 24.11.1993, P. 9).
Article 2 (continued)

[3a. Copyright protection in accordance with this Directive shall extend to the expression of a database and not to ideas, procedures, methods of operation or mathematical concepts as such which underlie any element of a database.]

4. The copyright protection of a database given by this Directive shall not extend to its contents and shall be without prejudice to any rights subsisting in those contents themselves.

12 Subject to a scrutiny reservation by the Irish delegation, there is general agreement that the contents of this paragraph, which corresponds to Article 9(2) of the TRIPS Agreement, should be transferred to a recital.
Article 3

Authorship

1. The author of a database shall be the natural person or group of natural persons who created the database or, where the legislation of the Member States permits, the legal person designated as the rightholder by that legislation.

2. Where collective works are recognized by the legislation of a Member State, the person considered by that legislation to have created the database shall be deemed to be its author.

3. In respect of a database created by a group of natural persons jointly, the exclusive rights shall be owned jointly.

4. Where a database is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to exercise all economic rights in the database so created, unless otherwise provided by contract.

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13 Reservation by the German delegation on the whole of Article 3.

14 Scrutiny reservation by the Portuguese delegation on the term "designated as the rightholder".

15 The Portuguese delegation would prefer to replace the terms "to have created the database" by the terms "to be the rightholder".

16 Scrutiny reservation by the Netherlands delegation on paragraphs 2 and 3.

17 Reservations by the Belgian, Danish and German delegations and scrutiny reservations by the French and Irish delegations on this paragraph.
Article 4
Entitlement to protection under copyright¹⁸

Protection under copyright shall be granted to all owners of rights, whether natural or legal persons, who fulfil the requirements laid down in national legislation [or international agreements]¹⁹ on copyright applicable to literary works.

¹⁸ The German and Netherlands delegations consider that the whole of Article 4 is superfluous. The Belgian delegation also has doubts as to the need for this Article.

¹⁹ All delegations are in favour of deleting the contents of the square brackets. The Commission representative has a waiting reservation on this deletion.
Article 5

Incorporation of Data, Works or other Materials into a Database

[1. The incorporation into a database of any data, works or other materials shall remain subject to the authorization of the owner of any copyright, related rights or other rights, as well as to any obligations incurred, in those data, works or materials.] 

Variant 1

2. The incorporation into a database of bibliographical references, summaries made by the author of the database or [ brief ] quotations, shall not require the authorization of the owners of rights in

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20 Reservation on the whole of Article 5 by the Belgian, Danish and German delegations. The Belgian delegation considers that this Article should be in a separate chapter from Chapter II.

21 There is general agreement that the contents of this paragraph should be transferred to a recital.

22 The Spanish delegation considers that bibliographical references and summaries should be dealt with separately from quotations. The United Kingdom delegation considers that summaries of literary or artistic works should be dealt with separately from summaries of scientific works. The Netherlands delegation considers that the incorporation into a database of a summary made by the author of the database should require the authorization of the owner of rights in the original work. The Belgian delegation considers that the incorporation of a summary into a database should be subject to the identification of the work summarized and of its author.

23 Several delegations consider that the word "brief" should be deleted.
those works, provided the name of the author and the
source of the extract are clearly indicated in
accordance with Article 10(3) of the Berne
Convention.\textsuperscript{24} \textsuperscript{25}

\textbf{Variant \textsuperscript{26}}

2. It shall be permissible to incorporate into a
database quotations from a work which has already
been lawfully made available to the public, provided
that their making is compatible with fair practice,
and their extent does not exceed that justified by
the purpose, including quotations from newspaper
articles and periodicals in the form of press
summaries.

3. It shall be permissible to use, to the extent
justified by the purpose, literary or artistic works
by way of illustration in databases for teaching,
provided such utilization is compatible with fair
practice.

4. Where use is made of works in accordance with the
preceding paragraphs of this Article, mention shall
be made of the source, and of the name of the author
if it appears thereon.

\textsuperscript{24} Several delegations consider that the wording of this
paragraph should follow more closely that of Article 10 of the
Berne Convention.

\textsuperscript{25} Reservation by the German, French, Netherlands and
United Kingdom delegations on the need for this paragraph.
Scrutiny reservations by several other delegations on this
paragraph.

\textsuperscript{26} Variant (paragraphs 2 to 5) based on Article 10 of the
Berne Convention.
Article 5 (continued)

5. The incorporation into a database of bibliographical references, or summaries made by the author of the database, shall not require the authorization of the owners of rights in the original works, provided that mention is made of the original works and of the name of the author if it appears thereon.
Article 6
Restricted acts

[Notwithstanding any exclusive rights in the contents of the database.]  

[Variant 1]
the author of a database shall have, in respect of:

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

- the material referred to in Article 1(1) used in the creation or operation of the database,]

[Variant 2]
the author of a database shall have, in respect of the copyrightable expression of the database,]

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27 Scrutiny reservation by the Italian delegation on this Article.

28 Addition suggested by the Netherlands delegation. The German, Greek, Spanish and Italian delegations consider that this addition is unnecessary in the light of Article 2(4).

29 Variant preferred by the Commission. The Portuguese delegation is also in favour of this variant, but is opposed to the second indent. The Italian delegation is in favour of an alternative version of this variant in which the contents of the first indent would be transferred to subparagraphs (a), (b), (d) and (e) and the second indent would be deleted. The French and Portuguese delegations could also consider positively this alternative version. The German, Irish, Netherlands and United Kingdom delegations are opposed to this variant.

30 Variant preferred by the Belgian, French, Irish and United Kingdom delegations. The Italian delegation is opposed to this variant.
Article 6 (continued)

[Variant 3]

the author of a database [which is original by virtue of the selection or arrangement of its contents]\(^{32}\) [which is eligible for copyright protection in accordance with Article 2(3)]\(^{33}\) shall have

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

a) the temporary or permanent reproduction of the database by any means and in any form, in whole or in part,\(^{34}\)

b) the translation, adaptation, arrangement and any other alteration of the database,

c) the reproduction of the results of any of the acts listed in (b),

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\(^{31}\) Variant preferred by the Spanish delegation, The Portuguese delegation could also consider this variant positively. The Italian delegation and the Commission representative are opposed to this variant.

\(^{32}\) Sub-variant of Variant 3 preferred by the Belgian, Danish and Spanish delegations. The United Kingdom delegation is opposed to this sub-variant.

\(^{33}\) Sub-variant of Variant 3 preferred by the German, Netherlands and United Kingdom delegations. The Irish delegation could also consider this sub-variant positively.

\(^{34}\) The French delegation doubts the need to include "temporary or permanent" and "in whole or in part". The Italian and United Kingdom delegations would prefer the wording "... in whole or in substantial part,".
Article 6 (continued)

d) any form of distribution to the public, including the rental,\textsuperscript{35} of the database or of copies thereof. The first sale in the Community of a copy of the database by the rightholder or with his consent shall exhaust the distribution right within the Community of that copy,\textsuperscript{36} with the exception of the right to control further rental of the database or a copy thereof,\textsuperscript{37}
e) any communication, display or performance of the database to the public.\textsuperscript{38}

\textsuperscript{35} The German, Spanish and Netherlands delegations consider that it should be made clear in the preamble that public lending remains outside the scope of this Directive. The Portuguese delegation would prefer this to be stated in Article 6(d).

\textsuperscript{36} The Netherlands delegation would like it to be made clear that the principle of Community exhaustion set out here would exclude international exhaustion being applied.

\textsuperscript{37} The French and United Kingdom delegations questioned whether the wording of this paragraph was appropriate for dealing with the on-line distribution of databases. The French delegation also questioned the relationship between subparagraphs (d) and (e), and the relationship of these subparagraphs to previous Community directives.

\textsuperscript{38} The Belgian, German, Spanish, French and Italian delegations questioned the terminology used in this subparagraph.
Article 7

Exceptions to the Restricted Acts in relation to Copyright in the Selection or Arrangement\(^3\)

1. The lawful user of a database may perform any of the acts listed in Article 6 which is necessary in order to use that database in the manner determined by contractual arrangements with the author of the database.\(^4\)

2. In the absence of any contractual arrangements in respect of use of a database,\(^5\) the performance by the lawful user of a database or of a copy thereof of any of the acts listed in Article 6 which is necessary in order to gain access to the contents of the database and use of the database by the lawful user shall not require the authorization of the author of the database.

3. The exceptions referred to in paragraphs 1 and 2 relate to the subject matter listed in Article 6 and are without prejudice to any rights subsisting in the data, works or other materials contained in the database.\(^6\)

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\(^3\) The French delegation considers that the title should read: "Exceptions to the restricted acts".

\(^4\) The German, French and Italian delegations consider this paragraph superfluous. The Irish and Netherlands delegations also have doubts as to the need for it. The German delegation also considers the rest of this Article superfluous.

\(^5\) The United Kingdom delegation would prefer the wording: "In the absence of any contractual arrangements to the contrary,".

\(^6\) The Portuguese delegation considers that this Article should include all the exceptions provided for in the Berne Convention.
Article 8

Exceptions to the Restricted Acts in Relation to the Copyright in the Contents

1. Where a Member State permits exceptions to the copyright rights of the author of a work in accordance with Article 9(2) or Article 10 of the Berne Convention, that Member State shall also permit the same exceptions where the work concerned is contained in a database, notwithstanding the rights of the author of the database laid down in Article 6.

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

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43 Scrutiny reservation by the Belgian, German, French, Italian and Portuguese delegations on the need for this Article. Scrutiny reservation by the Danish and Netherlands delegations on the relation between Articles 7 and 8.

44 The Belgian, Danish, German, Irish, Netherlands and Portuguese delegations are in favour of the inclusion of these words; reservation by the Commission representative on their inclusion.

45 Scrutiny reservation by the Spanish and Netherlands delegations on the need for paragraph 1; reservation by the United Kingdom delegation on the present wording of this paragraph; it suggests that this paragraph should state that any exceptions made by a Member State in accordance with Articles 9(2) or 10 of the Berne Convention shall not prejudice the rights of the author of a database in that database.
Article 8 (continued)

of the work, performance of such acts shall not be
taken to infringe the rights of the author of the
database laid down in Article 6.\textsuperscript{46}

3. The provisions of paragraphs 1 and 2 above shall also
apply mutatis mutandis in respect of owners of rights
related to copyright attaching to materials contained
in a database.

Article 9
Term of Protection

[1. The term of copyright protection of a database shall
be determined in accordance with Council Directive
93/98/EEC of 29 October 1993 harmonizing the term of
protection of copyright and certain related
rights. ]\textsuperscript{47}

\textsuperscript{46} Reservations by the Netherlands and United Kingdom
delегations on this paragraph.

\textsuperscript{47} The majority of delegations are in favour of
transferring the contents of this paragraph to a recital. The
Spanish delegation is in favour of this paragraph remaining in
Article 9. The Italian delegation considers that this
paragraph should not only remain in Article 9, but should also
be more precise as to when the term of protection begins.
Article 9 (continued)

2. A substantial change\(^4^8\) to the selection or arrangement\(^4^9\) of the contents of a database shall give rise to the creation of a new database, which shall enjoy from that moment its own term of copyright protection, without prejudice to existing rights in respect of the original database.\(^5^0\)

2a. For the purposes of paragraph 2 "substantial change" means additions, deletions or alterations, which involve substantial modification of the selection or arrangement of the contents of a database, resulting in a new edition which fulfils the criteria set out in Article 2.\(^5^1\)

3. Deleted.

\(^4^8\) The Netherlands delegation considers that "substantial change" should be replaced by "original change".

\(^4^9\) Reservation by the Irish and United Kingdom delegations on the reference to selection or arrangement.

\(^5^0\) The Belgian, French, Irish and United Kingdom delegations doubt the need for paragraphs 2 and 2a. Reservation by the Netherlands delegation on these paragraphs.

\(^5^1\) The German, Spanish and French delegations consider this paragraph unclear.
CHAPTER III: SUI GENERIS RIGHT

Article 10
Object of Protection

1. Deleted.

2. Member States shall provide for a right for the maker of a database to prevent acts of extraction and/or re-utilization of the contents of that database, in whole or in part. This right shall apply irrespective of the eligibility of that database for protection under copyright. It shall not apply to the contents of a database to the extent that these are works protected by copyright or subject matter protected by rights related to copyright. [ No [ other ] right is created in the data, works or other materials as such. ]

3. Deleted.

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52 Scrutiny reservation by the German and United Kingdom delegations on the nature and the object of protection of the sui generis right.

53 The Danish, German, Italian and United Kingdom delegations consider that the object of protection by the sui generis right should be the database as a whole.

54 Reservation by the United Kingdom delegation on this sentence. Scrutiny reservation by the German and French delegations on the wording of this sentence. The Italian delegation suggests that this sentence be replaced by the following addition to the previous sentence: "... and irrespective of the eligibility of the contents of the database for protection by copyright or by other rights".

55 The German, French, Italian and Netherlands delegations consider this sentence superfluous. The Belgian, Danish, Irish and United Kingdom delegations consider it useful.
Article 11

Exceptions to the Sui Generis Right

[Variant 1]

1. Notwithstanding the right provided for in Article 10, if the contents of a database which is made publicly available cannot be created or collected independently \(^{57}\) and cannot be obtained from any other source, the right to extract and re-utilize, in whole or substantial part, the contents of that database for commercial [, research or educational ]\(^{58}\) purposes [ that are not for reasons such as economy of time, effort or financial investment ]\(^{59}\) shall be licensed on reasoned request on fair and non-discriminatory terms.\(^{60}\) ]

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\(^{56}\) Reservation on this Article by the Portuguese delegation, which considers that the exceptions to this right should be left to national law. The Danish, German and United Kingdom delegations consider that the exceptions to this right should be aligned as far as possible on the exceptions to the copyright right (for the German delegation, this concerns the exceptions in paragraphs 5 to 8 in particular).

\(^{57}\) The United Kingdom delegation would prefer to replace "cannot be created or collected independently" by "could not have been created or collected independently".

\(^{58}\) The Belgian and French delegations are in favour of including research and educational purposes in this paragraph. The Danish, German, Greek, Irish, Italian and Portuguese delegations consider that research and educational purposes should be dealt with separately from commercial purposes. The Irish and Portuguese delegations consider that they should be dealt with in paragraph 6 only. However, several delegations (B,DK,D,IRL,PO) are prepared to consider dealing with research and educational purposes in a separate paragraph.

\(^{59}\) Scrutiny reservation by the Belgian and Italian delegations on the inclusion of these words.

\(^{60}\) Reservations on this paragraph by the Danish, German, Netherlands and United Kingdom delegations. The reservations by the Danish, German and Netherlands delegations concern in particular the recourse to compulsory licensing.
Article 11 (continued)

[Variant 261]

1. Notwithstanding the right provided for in Article 10, a licence for commercial, research or educational purposes relating to the whole or a substantial part of the data, works or other materials contained in a database shall be granted if those data, works or other materials cannot be created, collected or obtained from any other source, whatever the means of dissemination.

However, the person requesting the licence shall undertake to add value to the data, works or other materials thus obtained, and not to have made the request for reasons solely of economy of time, effort or financial investment.

The licence shall be granted on fair and non-discriminatory terms.

1a. Where a single source holds all the means of dissemination, the Member States may impose the granting of licences under the conditions set out in the previous paragraph.

2. The right to extract and re-utilize, in whole or substantial part, the contents of a database for commercial [ , research or educational ]62 purposes shall also be licensed on reasoned request on fair and non-discriminatory terms if the database is made publicly available by:

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61 Variant proposed by the French delegation.

62 See footnote 58 above.
Article 11 (continued)

(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.\(^63\)

3. (Transferred to paragraph 10)

4. Member States shall provide appropriate measures for making mediation available to the parties in respect of licences provided for in paragraphs 1 and 2, without prejudice to the access of parties to the courts.\(^64\)

\(^63\) Reservations by the Belgian, Danish, German, Spanish, French, Irish, Netherlands and United Kingdom delegations and scrutiny reservation by the Italian delegation on this paragraph. The reservations by the Danish, German and French delegations concern recourse to compulsory licensing for the public sector. In the view of the German and French delegations, this paragraph should at least be limited to cases where the public database is in competition with one or more private databases. The reservation by the Spanish delegation concerns "substantial part". The reservation by the Irish delegation concerns the absence of the condition that the body concerned is the sole source of the information in question. The reservation by the Netherlands delegation concerns the relationship between paragraphs 1 and 2. The United Kingdom delegation considers that this paragraph should be restricted to cases where the information concerned has been supplied by a third party under a legal obligation to do so.

\(^64\) Reservation by the German delegation on the need for this paragraph. Scrutiny reservation by the Greek delegation on this paragraph.
5. The lawful user of a database which is made publicly available may, without authorization of the maker of the database, extract and re-utilize [insubstantial] parts of the contents of a database for commercial [, research or educational] purposes provided that acknowledgement is made of the source and [provided that such extraction and re-utilization does not conflict with a normal exploitation of the database and does not unreasonably prejudice the legitimate interests of the maker of the database] [provided that the reproduction of those parts, evaluated qualitatively and quantitatively in

65 The Danish delegation is in favour of deleting the word "insubstantial" and the Belgian and Portuguese delegations have doubts as to the need for it; the Netherlands delegation has a scrutiny reservation on this word. For the German and United Kingdom delegations, this word is linked with the object of protection of the sui generis right. For the Spanish delegation, this term is unclear; it suggests that the following definition be included in Article 1: "Insubstantial parts" means parts of the contents of a database which, evaluated qualitatively and quantitatively, do not conflict with normal exploitation of the database and does not unreasonably prejudice the legitimate interests of the maker of the database. The source from which such extraction and re-utilization is made must always be acknowledged.

The Irish delegation can accept this term if research and educational purposes are removed from this paragraph (see footnote 66 below). The French delegation is in favour of keeping this term, and the Commission representative would have a reservation if it were to be deleted.

66 The Belgian, Danish, German, Irish, Portuguese and United Kingdom delegations consider that research and educational purposes should be transferred to paragraph 6 or to a separate provision. The French delegation and the Commission representative consider that use for research or educational purposes should not be allowed without acknowledgement of the source.

67 Variant preferred by the Belgian, Danish, French, Irish, Italian and Portuguese delegations.
relation to the database from which they are copied, can be considered not to prejudice the exclusive rights of the maker of the database to exploit the database.\textsuperscript{69}

6. The lawful user of a database which is made publicly available may, without authorization of the maker of the database, and without acknowledgement of the source, extract and re-utilize [insubstantial]\textsuperscript{69} parts of the contents of that database for personal private use [or for research or educational purposes]\textsuperscript{70} only, [provided that such extraction and re-utilization does not conflict with a normal exploitation of the database and does not unreasonably prejudice the legitimate interests of the maker of the database]\textsuperscript{71} [provided that the reproduction of those parts, evaluated quantitatively and qualitatively in relation to the database from

\textsuperscript{69} Variant preferred by the United Kingdom delegation, which considers that "qualitatively and quantitatively" should read "qualitatively or quantitatively". The Commission representative, while preferring this variant, could accept neither if "insubstantial" were to be deleted.

\textsuperscript{69} The Irish delegation is in favour of deleting "insubstantial". For the positions of the other delegations, see footnote 65 above.

\textsuperscript{70} The Netherlands delegation considers that research and educational purposes should not be dealt with in the same way as personal private use. For the positions of the other delegations, see footnote 66 above.

\textsuperscript{71} See footnote 67 above.
Article 11 (continued)
which they are copied, can be considered not to
prejudice the exclusive rights of the maker of the
database to exploit the database].\textsuperscript{72,73}

7. Deleted.

8. (a) Deleted.

[(b) For the purposes of paragraphs 5 and 6, it shall
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 maker of the database to
exploit the database, and that such practices
are not carried out any more than is necessary
to achieve the desired objective.\textsuperscript{74}]


10. For the purposes of this Article, a database shall
not be deemed to have been made publicly available
unless it may be interrogated by anyone [against
payment or free of charge] [and unless the whole
database may be interrogated].\textsuperscript{75}

\textsuperscript{72} See footnote 68 above.

\textsuperscript{73} Reservation by the United Kingdom delegation on the
whole of paragraph 6. The Belgian delegation considers that
 contractual arrangements should not be allowed to override
paragraphs 5 and 6.

\textsuperscript{74} The Belgian, Danish, German, Greek, French, Irish,
Italian, Netherlands, Portuguese and United Kingdom
degradations are in favour of deleting paragraph 8 (b). The
Commission representative is opposed to this deletion.
Scrutiny reservation by the Spanish delegation.

\textsuperscript{75} Scrutiny reservation by several delegations on this
paragraph.
Article 12
Term of Protection

1. The right provided for in Article 10 shall run from the date of creation of the database.\textsuperscript{76}

1a. In the case of a database which is [ made available to the public ] [ put on the market ], the term of protection by this right shall expire 15 years from the first of January following the date when the database was first [ made available to the public ] [ put on the market ].\textsuperscript{77}

\textsuperscript{76} The Belgian, German, Spanish, Italian and Portuguese delegations consider that protection of databases by the sui generis right should not begin before the database is made available to the public (or put on the market), their main objection being that a database which was not made available to the public (or put on the market) would enjoy unlimited protection by the sui generis right. The Greek, French and Netherlands delegations also have doubts in this respect. The German and Irish delegations have open minds on the question. The Danish and United Kingdom delegations and the Commission representative are in favour of the sui generis right running from the date of creation of the database; however, the Danish and United Kingdom delegations consider that the term of protection should not be unlimited in respect of databases which are not made available to the public (or put on the market). The Italian delegation has suggested that if the right were to run from the date of creation, the maker of the database should be obliged to register the database in the interests of legal security.

\textsuperscript{77} The majority of delegations and the Commission representative are in favour of a term of 15 years. The Danish delegation suggests that the term be 15 years from the date of creation or 10 years from the date when the database was first made available to the public (or put on the market), whichever is the longer. The United Kingdom delegation suggests a term expiring 50 years from the date of creation of the database or, if the database is made available to the public (or put on the market) within this period, 50 years from that date. The Italian delegation, while preferring a term as proposed in paragraph 1a, considers that if the right were to run from the date of creation of the database, expiry of the term 50 years from that date would be acceptable.
Article 12 (continued)

1b. Any substantial change to the contents of a database which has been [ made available to the public ] [ put on the market ] [, including any substantial change ] resulting from the successive accumulation of [ additions, ] deletions or alterations, which would result in the database being considered to be [ made available to the public ] [ put on the market ] as a new database, shall qualify that database for its own term of protection.⁷⁰

[ First variant

2. In the case of a database which is [ made available to the public ] [ put on the market ] and the contents of which are not deleted or altered, but to which successive substantial additions are made, the maximum term of protection for the original material contained in the database when it was first [ made available to the public ] [ put on the market ] shall be [ 50 ] years. ]⁸¹

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⁷⁸ The Danish and United Kingdom delegations consider that this paragraph should apply not only where a substantial change results from the successive accumulation of smaller changes, but also where a single massive change to the contents of a database occurs.

⁷⁹ The Irish and Italian delegations consider that additions should be included in this paragraph. The Commission is opposed to their inclusion.

⁸⁰ Scrutiny reservation by the Netherlands delegation on this paragraph.

⁸¹ Scrutiny reservations by the Danish, German, Greek, Irish, Italian, Netherlands and United Kingdom delegations on this variant. Several of these delegations consider that additions should not be treated differently from deletions and alterations.
Article 12 (continued)

[ Second variant

2. Where paragraph 1b applies, the term of protection for any material which was contained in the first database when it was first [ made available to the public ] [ put on the market ] and which is also contained in the new database shall expire at the latest [ 50 ] years from the first of January following the date when the first database was first [ made available to the public ] [ put on the market ] .\textsuperscript{82}

[2a. By way of derogation from paragraphs 1a, 1b and 2, in the case of a database which is [ made available to the public ] [ put on the market ] and the contents of which are constantly updated, [ if the maker of the database so chooses ]\textsuperscript{83} the term of protection by the right provided for in Article 10 shall expire, for each data item, 15 years from the first of January following the date of insertion of that data item. ]\textsuperscript{84}

3. Deleted.

\textsuperscript{82} This variant, which has not yet been examined by the Working Party, attempts to meet the concerns of those delegations (B, IRL, NL, P, UK) which consider that paragraph 1b should not result in material contained in successive databases receiving indefinite protection.

\textsuperscript{83} The Irish delegation is in favour of the inclusion of these words. The Netherlands delegation has a scrutiny reservation on their inclusion.

\textsuperscript{84} The Spanish, Irish and Netherlands delegations are in favour of the principle of this paragraph. The Danish, Italian and United Kingdom delegations have reservations on this principle, as they consider that the sui generis right should protect the contents of the database as a whole, not individual data items. The Belgian delegation has a scrutiny reservation.
Article 13

Beneficiaries of Protection under the Sui Generis Right 85

1. The right provided for in Article 10 shall apply to databases whose makers are nationals of a Member State or who have their habitual residence on the territory of the Community.

2. Where databases are created under the provisions of Article 3(4), paragraph 1 above shall also apply to companies and firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community; however, where such a company or firm has only its registered office in the territory of the Community, its operations must possess an effective and continuous link with the economy of one of the Member States. 86

3. Agreements extending the right provided for in Article 10 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 12.

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85 The majority of delegations have not yet taken a firm position on the question whether reciprocity or national treatment should apply to the sui generis right. Provisionally at least, the Danish, Greek, Spanish, French, Irish and Netherlands delegations are in favour of the principle of reciprocity.

86 The delegations mentioned in footnote 17 above also have reservations/scrutiny reservations on this paragraph.
CHAPTER IV: COMMON PROVISIONS

Article 14
Remedies

Variant 1

Member States shall provide appropriate remedies in respect of infringements of the rights provided for in this Directive.

Variant 2

1. Member States shall provide, in accordance with their national legislation, appropriate remedies against a person committing any of the acts listed in subparagraphs (a), (b) and (c) below:

(a) any act of putting into circulation a copy of a database knowing, or having reason to believe, that it is an infringing copy;

(b) the possession, for commercial purposes, of a copy of a database knowing, or having reason to believe, that it is an infringing copy;

87 Commission amended proposal.

Article 14 continued

(c) any act of putting into circulation, or the possession for commercial purposes of, any means the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of any technical device which may have been applied to protect a database.

2. Any infringing copy of a database shall be liable to seizure in accordance with the legislation of the Member State concerned.

3. Member States may provide for the seizure of any means referred to in paragraph 1(c).
Article 15
Continued Application of other Legal Provisions

1. The provisions of this Directive shall be without prejudice to copyright, rights related to copyright or any other rights or obligations subsisting in the data, works or other materials incorporated into a database as well as to other legal provisions such as patent rights, trade marks, design rights, unfair competition, trade secrets, confidentiality, data protection and privacy [, and the law of contract applicable to the database itself or to its contents ].

2. (Transferred to Article 15a).

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89 Reservation by the German delegation on this Article in connection with the question whether the sui generis right should be subject to reciprocity or to national treatment.

Reservation by the Irish and United Kingdom delegations on this Article to the extent that Member States would not be allowed to continue to apply to a database itself a copyright regime other than that resulting from the Directive.

90 Reservation by the Belgian delegation on the reference to the law of contract.

Reservation by the Irish delegation on the reference to contracts, to the extent that the balance of power between a rightholder and a user of a database could be such as to enable the rightholder to impose contractual terms which would prevent the user from using the database for its intended purpose.
Article 15a
Application in time

1. Protection pursuant to the provisions of this Directive as regards copyright and the right provided for in Article 10 shall also be available in respect of databases created prior to [ the date of publication of the Directive ] 92 [ the date referred to in Article 16(1) ] 93 which on that date fulfilled the requirements laid down in this Directive as regards the protection of databases. Such protection shall be without prejudice to any contracts concluded and rights acquired before that date.

2. In the case of a database which has already been [ made available to the public ] [ put on the market ] prior to the date referred to in Article 16(1), the term of protection by the right provided for in Article 10 shall expire 15 years from [ the first of January following ] that date. 94

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91 Scrutiny reservations by several delegations on this Article.

92 Commission amended proposal.

93 Variant preferred by the Belgian, Danish, German, Greek, French, Irish, Italian, Netherlands and United Kingdom delegations. The other delegations have not yet expressed a position on this question.

94 See footnote 77. The text of this paragraph has not yet been discussed.

7617/94
Article 16
Final Provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before [1 January 1995].

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

3. Not later than at the end of the fifth year after the date referred to in paragraph 1 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.

Article 17

This Directive is addressed to the Member States.

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The German, Italian and Portuguese delegations consider that the date to be fixed in this paragraph should be approximately three years after the date of adoption of the Directive.