FOLLOW-UP TO THE GREEN PAPER

Working programme of the Commission in the field of copyright and neighbouring rights

(Communication from the Commission)
INTRODUCTION

This paper sets out to define a general policy programme outlining the steps the Commission will be taking in respect of copyright and neighbouring rights(1) following publication of the Green Paper on Copyright and the Challenge of Technology (COM(88) 172 final, June 1988) and the reactions it elicited. This action programme covers the period up to 31 December 1992, the date by which the Internal market is to be established.

The 1988 Green Paper was a consultative document intended to provide a basis for wide-ranging discussion particularly among those directly involved both in the Community and internationally. It represented neither a definitive statement of the Commission's position nor an exhaustive study of the problems at issue.

Before embarking on a programme of specific measures to harmonize legislation in the field, the Commission felt it would be advisable to seek the opinion of all those concerned so as to be able to make a proper assessment of the interests affected, that is to say the interests of authors, artists, the cultural industries, and consumers, and to identify the areas to which priority should be given.

In this extensive process of consultation the views of interested parties were put forward both in the form of written comments and at hearings arranged for the purpose. Four hearings were held. The first took place on 6 and 7 October 1988, and dealt with the legal protection of computer programs (Chapter 5 of the Green Paper). The second was held on 1 and 2 December 1988, and dealt with audio-visual home copying (Chapter 3 of the Green Paper). The third took place on 18 and 19 September 1989 and was devoted to rental rights (Chapter 4 of the Green Paper) and certain aspects of piracy (Chapter 2 of the Green Paper). Finally, the fourth hearing took place on 26 and 27 April 1990; it dealt with the protection of data bases (Chapter 6 of the Green Paper).

Chapters 2 to 7 of the present document follow the order of the corresponding chapters of the Green Paper.

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(1) In this paper the term "neighbouring rights" refers to the rights of performers, producers of phonograms and broadcasting organizations guaranteed by the Rome Convention of 26 October 1961.
CHAPTER 1 : COPYRIGHT, NEIGHBOURING RIGHTS AND THE EUROPEAN COMMUNITY - THE NEED FOR A GLOBAL APPROACH

1.1. The emergence of new technologies in the last ten years has aroused fresh interest in the subject of copyright and neighbouring rights. The new technologies have brought three main developments with them:

(i) the increasing role played by copyright and neighbouring rights in the economy, particularly in the western countries, with their growing orientation towards goods and services with a high value-added content;

(ii) the internationalization of questions of copyright and neighbouring rights, as the new technologies have removed or at least blurred the frontiers between countries so that difficulties can no longer be contained within a single state and dealt with at a purely domestic level;

(iii) profound changes in the use made of goods and services with links with copyright, neighbouring rights and the cultural sector in general.

These aspects are closely bound up together. The new uses of copyright and neighbouring rights which have been made possible by technological advances are in many cases practiced on an international scale. The approach taken consequently has to operate in a multilateral and Community context to take account of this new dimension.

1.2. The new technologies represent both an opportunity and a challenge: an opportunity, because of the scope they open up for individuals to improve their quality of life and businesses their effectiveness, by providing access to literary and artistic works and to information and data, frequently on a real-time basis; and a challenge, because of the scope for large-scale and uncontrolled copying of works, with no proper return to the holders of the rights involved.

1.3. In the face of these developments, and given the imminent establishment of the 1993 single market, the Community has a duty to act.

Copyright provides a basis for intellectual creation. To protect copyright is to ensure that creativity is sustained and developed, in the interest of authors, the cultural industries, consumers, and ultimately of society as a whole. Neighbouring rights underpin these objectives in various ways, particularly by guaranteeing a proper return to performing artists and those who invest in the provision of these cultural goods and services.
1.4. The Commission will be guided by two principles here: firstly, the protection of copyright and neighbouring rights must be strengthened; secondly, the approach taken must as far as possible be a comprehensive one.

1.5. The changes which technological advance has brought make it urgently necessary to strengthen the protection of copyright and neighbouring rights, if an important economic and cultural asset in the Member States is not to be lost.

The rights existing under the international conventions must be adapted to the changed technology, in ways which improve the protection given to authors, and new rights must be conferred on authors to prevent their creative efforts and their investments from being unlawfully appropriated by others.

1.6. The author's exclusive right to exploit his work or to authorize others to do so is the fundamental economic element in copyright. Holders of neighbouring rights have similar entitlements in respect of certain uses. (1)

The holder of an exclusive right may exercise it himself, and thus himself determine the extent of dissemination of his work and the financial terms for its exploitation. But when an international system of copyright was set up it was immediately clear that certain rights, notably the right of public performance of musical works, would be difficult to exercise on an individual basis. As technology progressed the areas in which individual exercise was difficult or impractical expanded. In recent times the technological developments which have permitted new forms of use on an international scale, and no longer at a purely domestic level, have added a new dimension to the question of individual or collective rights management. The problem is rendered all the more important by the prospect of the adaptation of existing rights and the conferring of new rights on authors.

The completion of the internal market requires that authors and other right holders will find a level of protection at least comparable if they wish to exploit their rights in other Member States. Thus the conferring of a right and the practical management of that right are more and more closely bound up together.

(1) For other uses holders of neighbouring rights have a claim to remuneration.
Under these circumstances, the Commission has also to consider the question of the management of copyright and neighbouring rights in the light of the completion of the Internal market in 1993. The Commission has the intention of carrying out in the near future a study on the question of collective management in order better to identify the issues.

1.7. The Commission proposes to take a comprehensive approach to the problems of copyright and neighbouring rights. The approach would be "comprehensive" in three ways.

Within the Community, first of all, the Commission must not confine itself to a few salient points but must try to tackle all the main aspects which might have implications for the creation of the single market in cultural goods and services. Indeed in its communication Books and Reading: a Cultural Challenge for Europe(2) the Commission emphasized that alongside the matters looked at in the Green Paper there were other questions of copyright which needed to be considered at Community level. Similarly, in its communication on audiovisual policy(3), the Commission emphasized the need for action on copyright in the field of broadcasting.

Next, a response to the challenges of new technology which is limited to the Member States of the Community will deal with only part of the problem. If protection is inadequate outside the borders of the Community creative work produced in the Community can be plagiarized in non-member countries, and productive activity displaced to countries in which the level of protection of intellectual property is lower. As we move towards an intensification of world trade the Community would find itself having to deal with growing imports of work produced in breach of copyright in those countries.

Neither can we underestimate the fact that the rule of national treatment laid down in the International copyright conventions means that any improved protection available in the Member States of the Community has to be granted to natural or legal persons from non-member countries, even though in those countries natural or legal persons from the Community may receive a lower level of protection. The existing imbalances would be aggravated.

(2) COM(89) 258 final, 3 August 1989.

(3) COM(90) 78 final, 21 February 1990.
The same thing holds for neighbouring rights, with one qualification. Under the Rome Convention national treatment is granted only to the nationals of other contracting states which are party to the Convention.

1.8. The Commission and the Community have accordingly been making an active contribution to the work on trade-related aspects of intellectual property rights ("TRIPs") in the framework of the GATT Uruguay Round, in order to arrive at a minimum level of substantive and effective protection at world level. While taking account of the legitimate interests of the developing countries and of the need to secure as broad a consensus as possible, the Commission feels that the level of protection provided should be high. It feels that in the medium term this would profit all countries, developed and developing.

1.9. The Commission would also like to repeat its full backing for the sustained efforts undertaken by the World Intellectual Property Organization (WIPO) to ensure adequate protection of copyright and neighbouring rights. The Commission supports the initiatives worked out, and particularly the preparation of standard provisions intended to serve as a model for national copyright legislation in the countries party to the Berne Convention and the setting up of a committee of experts to consider whether a protocol to the Berne Convention should be drawn up and if so what its content should be.

1.10. Finally it is necessary to have a basic level of harmonisation common to all Member States upon which it is possible to build more easily as means of a complementary harmonisation of these rights in specific areas.

1.11. Proposed Community action

1.11.1. The Commission feels that to parallel and complement the steps taken in the multilateral framework the protection of copyright and neighbouring rights should be consolidated inside the Community. This is why it intends to take its first initiative in the form of a joint approach.

1.11.2. As well as, and without prejudice to the other measures referred to in this paper, it is vital that all the Member States of the Community should accede to the multilateral conventions administered by WIPO - alone or in conjunction with other international organizations - in the field of copyright and neighbouring rights.
1.11.3. This would supply a common foundation in all the Member States, on the basis of which specific aspects could be harmonized in the Community, and steps taken in the multilateral framework, in order to improve the level of protection. Such a common foundation would facilitate the practical exercise of the powers conferred by the Treaty of Rome, which already permit Community action on certain specific aspects of copyright and neighbouring rights.

1.11.4. As things stand at present the majority of Member States are already party to the Berne Convention on the protection of literary and artistic works, as revised by the Paris Act of 1971, and to the 1961 Rome Convention on the protection of performers, producers of phonograms and broadcasting organizations. In most of the Member States which have not yet acceded to these Conventions legislation allowing ratification or accession to the Rome Convention has already been passed or is currently before the national Parliaments.

1.11.5. In order to eliminate the distortions which exist and to clear the way for the large single market, therefore, the Commission is presenting to the Council a proposal for a decision which would require all Member States to have acceded to and comply with the provisions of the Berne Convention, as revised by the Paris Act, and to the Rome Convention, by 31 December 1992, the date on which the Internal market is to be completed.

1.11.6. Such an initiative, which seeks to lay down a minimum level of protection, does not mean that on more specific matters the Commission will not pursue a more complete harmonisation.

1.11.7. This proposal forms the subject of a separate document.
CHAPTER 2 : PIRACY

2.1. Conclusions of the Green Paper

2.1.1. In Chapter 2 of Its Green Paper on Copyright and the Challenge of Technology the Commission concluded that the repression of piracy of sound and audiovisual recordings in the Community requires the existence of clear substantive legal provisions in favour of authors, producers, performers and broadcasting organizations in respect of their right to authorize the reproduction for commercial purposes of their recordings and broadcasts.

2.1.2. In the view of the Commission, such substantive legal protection must be accompanied by appropriate procedures facilitating legal action and proof against acts of piracy, in particular provisions on search and seizure. Furthermore, efficient remedies must be at the disposal of right holders in infringement cases and deterrent criminal sanctions must be available. There must be an organized framework permitting an effective cooperation between right holders and public authorities, in particular, law enforcement authorities. Specific measures, such as the control of commercial tape duplication equipment, should be adopted where appropriate.

2.1.3. To achieve these goals, the Commission indicated its intention to submit to the Council as a matter of priority a proposal for a binding legal instrument:

- requiring all Member States to provide, through one legal technique or another, for rights for producers of cinematographic works, videograms and sound recordings to authorize the reproduction for commercial purposes of those works and their commercial distribution;

- requiring all Member States to provide rights for performing artists to authorize the reproduction for commercial purposes of their fixed performances and their commercial distribution;

- requiring all Member States to provide rights for organizations engaged in broadcasting to authorize the fixation and reproduction for commercial purposes of their broadcasts, as well as the commercial distribution of such fixed broadcasts, and the introduction of similar rights in respect of signals transmitted by cable in favour of cable television operators;
2.1.4. In addition, the Commission indicated an intention to submit to the Council in due course a proposal for a regulation:

- extending Council Regulation (EEC) no. 3842/86 laying down measures to prohibit the release for free circulation of counterfeit goods to cover equally goods under copyright;

- extending the mutual assistance regime to include first counterfeit and then copyright infringements.

2.1.5. Furthermore, the Commission stated the desirability of:

- recommending to Member States the provision of rights for authors, producers of phonograms and videograms and performers to request public prosecution in respect of acts of piracy;

- recommending to Member States the introduction of minimum requirements as regards search and seizure procedures in cases of suspected piracy of copyright goods;

- recommending to Member States the introduction of minimum requirements as to criminal sanctions and civil remedies;

- creating at the appropriate Community or international level a register or registers, financed by right holders, of rights in sound recordings, video recordings and feature films, possibly linked to the C.D. project(1);

- setting up an agreement at the international level on the seizure of counterfeit goods, applicable not only to counterfeit of trade marks but also to intellectual property rights including copyright and related rights.

(1) CD project: A computerised data storage system containing information on a range of materials protected by intellectual property rights.
2.2. Hearing

The conclusions suggested by the Commission for the harmonization of certain neighbouring rights (see 2.1.3. above) were also dealt with in the hearing the Commission held for interested circles on 18 and 19 September 1989 in Brussels.

There was general support for the Commission to submit a proposal on those items mentioned above (under 2.1.3) which would in effect harmonize the protection for performing artists, producers of phonograms and videograms and broadcasting organizations on the line of the Rome Convention of 1961.

Furthermore, participants unanimously held that the term of protection for all neighbouring right holders protected by the Rome Convention of 1961 should be harmonized and fixed to 50 years from production, performance or publication for all rightholders.

2.3. Proposed Community action

2.3.1. A proposal for a directive on the harmonization of certain neighbouring rights has been prepared. This proposal is intended to follow the suggestions in the Green Paper to fight piracy (above 2.1.3). Based on these suggestions, on the results of the hearing and the written and oral comments received, the proposal includes the following elements:

- Introduction of exclusive rights of reproduction and distribution for performing artists, phonogram producers, videogram producers and broadcasting organizations;

- Introduction of an exclusive right of fixation for performing artists and broadcasting organizations.

2.3.2. Thus, the proposal would follow the line of the Rome Convention of 1961, to which a majority of Member States have adhered, and go beyond it in some respects. This proposal on the harmonization of neighbouring rights may be linked, for practical purposes, to the proposal for a directive on rental/lending right.

2.3.3. On duration of these rights, the Commission accepts the suggestion that their duration shall be 50 years after the fixation or the performance was made or took place or was published. For practical purposes this point will be included in a separate proposal which will deal with the problem of duration in general.
2.3.4. In addition, most of the other items mentioned in Chapter 2 of the Green Paper (above 2.1.4 and 5) are at present dealt with on a multilateral basis in the context of the Uruguay Round of the GATT (TRIPs) which is intended to improve the protection and enforcement of trade related intellectual property rights.

2.3.5. The proposal concerning the reinforcement of neighbouring rights is presented in a separate document (see point 2.3.2.).
CHAPTER 3: HOME COPYING OF SOUND AND AUDIOVISUAL RECORDINGS

3.1 Introduction

3.1.1 The question of home copying of audio-visual recordings, which was discussed in Chapter 3 of the Green Paper, evoked considerable interest in relevant circles. The problem is a particularly important and complex one.

Home recording of sound and audio-visual works by private individuals for personal and non-commercial use, whether from other recordings or from broadcasts, has become a widespread practice both in the European Community and elsewhere. It can be expected to grow even further, as a result particularly of technological progress.

3.1.2 To take account of the new situation, copyright legislation in a number of countries, both within and outside the Community, has been amended to ensure the protection of right holders and to introduce a right to remuneration. The Commission also raised the question in the Green Paper. On that basis it engaged in a wide-ranging process of consultation with all interested parties.

3.1.3 On the basis of what was said in the Green Paper and in the course of the subsequent consultation, the Commission considers that measures must be taken to deal with the problem at the Community level.

3.2 Conclusions of the Green Paper

3.2.1 After thoroughly studying the legal, practical and technical aspects of the problem the Commission sought the views of interested parties.

3.2.2 As regards digital audio recordings the Commission asked for comments on the following propositions:

(a) digital audio tape (DAT) recorders should be required to conform to technical specifications which prevent their use for unlimited acts of audio reproduction;

(b) the manufacture, importation or sale of machines which do not conform to the specifications should be prohibited;

(c) the measures outlined in (a) and (b) should apply to all DAT machines for recording audio;

(d) the manufacture, importation or sale of devices intended to circumvent or render inoperable the measures outlined in (a) and (b) should be prohibited;
(e) possession of machines intended for professional or specialist use and not conforming to the specifications for home use outlined in (a) should be made dependent upon a licence to be delivered by a public authority and the maintenance of a register or registers in respect of licensed equipment.

3.2.3 The Commission also asked for views on the question whether it was acceptable that systems of remuneration for private copying should remain in those Member States which have introduced them, and could be introduced if Member States so wish in those countries which have not yet introduced them, no Community action being required for their introduction or harmonization.

3.3 Hearing and submissions

3.3.1 Since the Green Paper was published a great many opinions have been expressed, and some positions have shifted as a result of developments in the field.

3.3.2 The general comment was put forward that it was unwise to focus attention exclusively on digital recording, since analogue recording would continue to be the major form for years to come.

It was also said that there was no need to differentiate between the copying of audiovisual works and of works in sound only because from the point of view of copyright all reproduction is treated in the same way. Also, the progressive integration of technical means of reproduction tends to render such a distinction increasingly meaningless. Finally, a large majority opposed any prohibition on home copying.

3.3.3 On the question of systems of remuneration for home copying the opinions expressed differed. Right holders — authors, performers and the producers of phonograms and videograms — all insisted that this system must be generalized in all the Member States in order to safeguard their rights. Other groups, including consumers and the manufacturers of magnetic tape, were opposed to any system of levies.

3.3.4 Finally, as regards technical protection systems, there was a broad consensus in favour of a system to regulate DAT recording, which was supported by right holders, equipment and carrier manufacturers, and consumers. This system, the Serial Copy Management System (SCMS), permits copies to be made from the original work but not from other copies. The holders of rights in protected works would accept this system only if a right of remuneration was also ensured.
3.4 Proposed Community action

3.4.1 Given the need to complete the Internal market the Commission intends initially to take two measures regarding the private copying of sound and audio-visual works.

3.4.2 Firstly, the Commission intends to lay before the Council a proposal for a directive on home copying.

3.4.3 Secondly, the Commission is favourably disposed to the general use of the SCMS system for digital audio tape (DAT) recording equipment. New technology is to be encouraged, but not where it would damage the interests of right holders and consumers.

The SCMS system satisfies these requirements, by allowing copies to be made while at the same time limiting the practice; the user thus has the full benefit of technological progress. It also allows right holders to keep at least partial control of the exploitation of their works by preventing the making of the unlimited series of copies permitted by DAT technology. There will also have to be consideration of the scope for extending such a system or an equivalent system to other forms of digital reproduction.

3.4.4 The Commission intends to include the drafting of a proposal for a directive in its work programme for 1991.
CHAPTER 4 : DISTRIBUTION RIGHT, EXHAUSTION AND RENTAL RIGHT

4.1. Conclusions of the Green Paper

4.1.1. Upon review of the legal situation in the Member States and evaluation of the economic background, the Green paper on Copyright and the Challenge of Technology in chapter 4 concluded that there is a need to harmonize a rental right for certain areas of copyright and for certain recording media.

4.1.2. Thus, the Commission in the Green Paper (4.11.1.) suggested the introduction in all Member States of a right for the author, the performer and the phonogram producer to authorize the commercial rental of sound recordings. This suggestion is mainly based on the consideration that the increasing penetration of compact discs, which do not deteriorate upon repeated use, entails the risk that the author, the performer and the phonogram producer may suffer economic damage by the unauthorized commercial rental of sound recordings.

4.1.3. Furthermore, the Commission (Green Paper 4.11.2.) suggested the introduction or generalization in all Member States of a right for the producers of cinematographic works to authorize the commercial rental of their videograms. In the view of the Commission the economic interests of such producers of videograms make it necessary to guarantee them the right to choose the time and place to exploit their works by performance in movie theatres and by commercial rental.

4.1.4. However, the Commission in the Green Paper (4.11.3.) saw no obvious need for the introduction of a general right for authors to control other elements in the commercial distribution of their works or to harmonize exhaustion provisions. Neither did the Commission consider it necessary at that time to extend the scope of a rental right to non-commercial lending.

4.1.5. The harmonization of a right for the commercial rental of sound and audiovisual recordings was intended to be initiated by a proposal for a directive, to be submitted to the Council by the Commission based on Article 100A EEC (Green Paper 4.12.1.).

4.2. Hearing

4.2.1. The conclusions of the above mentioned proposals in Chapter 4 of the Green Paper were discussed at a hearing which the Commission held for interested circles on 18 and 19 September 1989 in Brussels.
4.2.2. Most participants in this hearing agreed to the need for a harmonization of rental rights. An overwhelming majority held that a harmonization should concern both rental right and non-commercial lending right and thus should go beyond the suggestions made in the Green Paper. There was unanimity that not only sound recordings and videograms should be covered by such a rental/lending right, but also all categories of works under Article 2 of the Berne Convention. In the view of many participants the determination of the beneficiaries of a rental/lending right should not be decided at the Community level but should be left to the legislation of Member States.

4.2.3. Most participants were in favour of an exclusive right (to authorize or prohibit) for commercial rental. For lending right, most participants considered that a right to remuneration would suffice, which could preferably be exercised by collecting societies or other similar bodies.

4.3. Proposed Community action

4.3.1. A proposal for a directive on the harmonization of rental and lending right has been prepared.

4.3.2. On the basis of the Green Paper, the results of the hearing and the numerous written and oral comments submitted to the Commission on these issues, the proposal is intended to include the following elements:

- An exclusive right (to authorize or prohibit) the commercial rental of protected copyright works, phonograms and videograms.

- The beneficiaries of such a rental right will be the authors, performing artists and producers.

- An exclusive lending right, which may be subject to derogations, on the part of Member States, for cultural or other reasons.

- The duration of the rental/lending right will follow the minimum term of the Berne Convention (at least 50 years after the death of the author) and Rome Convention (at least 20 years) until such time that a Community harmonization of the duration of these rights has taken effect.

4.3.3. This proposal is the subject of a separate document.
CHAPTER 5: THE LEGAL PROTECTION OF COMPUTER PROGRAMS

5.1. Conclusions of the Green Paper

5.1.1. Chapter 5 of the Green paper proposed the submission of a proposal for a Council Directive on the legal protection of computer programs, and indicated the possible contents of such a directive in broad terms (5.7.1)

5.1.2. In October 1988 the Commission held a hearing of interested circles to discuss the conclusions set out in the Green Paper. Participants from major organizations representing producers and users of computer programs were invited to contribute oral and written statements.

5.2. Hearing

5.2.1. The hearing of October 1988 confirmed the support of industry for the broad terms of paragraph 5.8.2 (i.e., the contents of any Directive which might be proposed) of the Green Paper with the following reservations:

Point c) It was generally felt that access protocols and interfaces should not be treated differently from other parts of programs.

Point d) It was generally felt that the normal restricted acts provided for by the Berne Convention should apply, and that these should be listed as separate acts.

Point j) There was no support for this point.

5.2.2. The conclusions of the hearing were:

a) a directive should be prepared without further delay;
b) it should be based on copyright: neighbouring right or sui generis protection were rejected;
c) it should correspond to the majority view expressed in the hearing, and depart as little as possible from the legislation already enacted in the Member States.

5.3. Proposed Community Action

5.3.1. The text of a proposed directive was adopted by the Commission in December 1988 and published in the Official Journal.
5.3.2. The opinion of the Economic and Social Committee was received in October 1989. It was generally favourable to the Commission's proposal.

5.3.3. Considerable controversy was generated in industry circles by the proposed directive on two specific points: the scope of protection (whether protection covered interfaces or not) and reverse engineering (the changing of the object code form in which the program is supplied to the source code form in which it was first written in order to study aspects of the program design). The controversy on these issues delayed the Parliamentary opinion by several months.

5.3.4. The opinion of the Parliament was delivered in July 1990.

5.3.5. The Commission amended its proposal on 17 October 1990(1) by incorporating those amendments of the European Parliament which it considered to be acceptable.

5.3.6. A common position of the Council is expected by the end of 1990.

(1) COM(90) 509 final SYN 183.
CHAPTER 6: DATABASES

6.1. Conclusions of the Green Paper

6.1.1. The Commission solicited views as to whether databases should be protected by copyright or a sui generis system, and whether protection should be granted by virtue of the selection and arrangement of the compilation.

6.1.2. The conclusions of this chapter of the Green Paper were left relatively open ended, with no firm indication being given of specific action by the Commission in view of the rapid development of this new sector. Comments received on Chapter 6 indicated a strong desire in many quarters to see measures introduced within the Community to clarify and harmonize protection of databases, where such protection exists at present, and to introduce protection explicitly in those Member States where existing legislation is unclear or deficient as regards databases.

6.2. Hearing

6.2.1. A hearing of interested circles was held on April 26/27 1990. The hearing confirmed that there was overwhelming support from right holders for protection of databases by means of copyright. No support was expressed for a 'sui generis' approach.

6.2.2. The conclusions of this hearing were as follows:

(1) As regards the first question on the questionnaire, a large majority spoke against making any distinction between "database" and "data bank". Both terms are used equally at present. However, there is a growing tendency to use the general term "database".

(2) As regards a definition of "database", several participants proposed a broad definition which includes the following elements:

a) collection, organization and storage of data;

b) information in a digital form in which it can be processed by means of a computer.

In the course of the discussion it became clear that the fact that the information is stored digitally means that the definition of "database" can include all media, e.g. text, image, sound, whether protected as such by copyright or not.

(3) All speakers indicated that databases are in their view protected by copyright. This view was shared by the representative of WIPO.
Copyright should apply to databases without prejudice to the application of other forms of legal protection such as patents, unfair competition, criminal law, contract, etc.

As to the applicability of an alternative form of protection instead of copyright (neighbouring right or sui generis right) a large majority of participants rejected this approach.

As to the categorization of databases, speakers did not indicate a desire to limit this to "compilations" given that some databases are "literary works" in their own right.

As far as the protection of personal data is concerned, this problem was considered to be outside the scope of the hearing.

As to the distinction which could be made between real time and static databases, the majority of speakers believed no distinction should be made. Copyright could apply to and resolve legal problems arising in respect of all databases regardless of the technique used to create them.

Regarding the ownership of rights in the database itself, all participants felt that the author, in the sense of the person creating the database, should be the first rightholder.

As regards databases created by joint authors or under a contract of employment, in the absence of contractual provisions to the contrary, the Berne Convention would provide the appropriate legal framework.

The question of the inclusion in a database of protected works was raised. A large majority believed that normal copyright rules should apply. All participants agreed that indexing (inclusion of bibliographical information) of protected works without authorization of the rightholder should not be an infringement of copyright. The same rule could apply to abstracts of protected works provided that they did not substitute for the original protected works themselves. Normal copyright rules should apply in this instance.

As regards the term of protection, Article 7 of the Berne Convention was referred to on a number of occasions. The term of protection should be compatible with the provisions of the Berne Convention. The possibility of increasing the term of protection to 70 years met with no particular resistance. Some participants however reserved their position on this issue.
(13) As to the originality issue, most participants expressed a desire to see a criterion of originality compatible with the requirements of the Berne Convention and which would impose no special requirements on the authors of databases.

(14) As regards the restricted acts, there was general agreement that classic copyright principles as laid down in the Berne Convention should apply. These restricted acts should cover: displaying, inputting, loading, transmission, storage, downloading.

(15) The need to provide for the collective administration of rights in works input into databases was indicated by some participants.

(16) Several speakers advocated that no distinction should be drawn between databases on CD Rom and on-line databases. It was felt that the physical medium on which the database was stored was irrelevant to this issue.

(17) It was said that the use of the same software to create different databases did not affect their protectability: sufficient choices were available to make different databases using the same software.

(18) As regards technical measures to protect databases, several speakers indicated that in their view rightsholders should use all available means to control access to and use of their works.

6.3. Proposed Community Action

6.3.1. The above conclusions suggest that a uniform and stable legal environment for the creation of databases within the Community should be established without further delay, given the economic importance of the sector and the risk of distortions arising within the Single Market.

6.3.2. Given that there was general support for a directive harmonizing copyright protection for databases, it has therefore been announced that a proposal for a Directive to this end should be prepared for adoption as soon as possible.

6.3.3. The Commission will include this initiative in its working program for 1991.
CHAPTER 7: THE ROLE OF THE COMMUNITY IN MULTILATERAL AND BILATERAL EXTERNAL RELATIONS

7.1. Conclusions of the Green Paper

7.1.1. In Chapter 7 of its Green Paper on Copyright and the Challenge of Technology, the Commission dealt with the international aspects of copyright protection, including the negotiations currently taking place in the framework of the GATT.

7.1.2. The Commission concluded that copyright also is placed in a multi-faceted, plurilateral world. The success or failure of multilateral efforts, and the ongoing negotiations in the new GATT round in particular, cannot fail to have an effect on the Community's bilateral efforts. These, in turn, will affect and are affected by the use which interested parties may make of the autonomous new commercial policy instrument.

7.1.3. Rather than submitting specific proposals for initiatives, the Commission has in the Green Paper submitted for discussion the following matters:

- the priorities to be given to the different aspects of reinforcement of intellectual property protection in the international context;

- the development by the GATT of new disciplines as regards the effective reinforcement of intellectual property laws, in particular, copyright, as well as the adoption, as appropriate, of improved substantive standards;

- the more systematic use of bilateral relations, to ensure better protection in non-Member States of the intellectual and industrial property of Community right holders, particularly in the copyright field.

7.2. Negotiations on "TRIPs" in the Uruguay Round of the GATT

7.2.1. Numerous written and oral submissions to the Commission have encouraged the active role the Community, as represented by the Commission, plays in the negotiations on "TRIPs" (Trade related Intellectual Property Rights) in the ongoing Uruguay Round of the GATT.

7.2.2. The mandate for the TRIPs-negotiations is included in the Ministerial Declaration of Punta del Este. It was further specified and clarified in the course of the Mid-term Review (Montreal/Geneva) which struck a balance between the items industrialized countries are seeking and points of importance for developing
countries. According to this mandate, the negotiations aim at establishing a multilateral agreement on the improved protection of intellectual property rights, governed by the GATT.

7.2.3. The issues to be included in the TRIPS agreement are substantive standards (copyright, neighbouring rights, patents, trademarks, industrial design, chips/semiconductor layouts, trade secrets and geographical indications); enforcement (internal enforcement including provisional measures, border enforcement and the acquisition of IPR’s) and basic principles (national treatment, MFN/non-discrimination, transparency, dispute settlement, relationship between organizations, developing countries, transitional periods).

7.2.4. On all of these three issues, the Community submitted in 1989 comprehensive and detailed written proposals (Doc. W26 on substantive standards, Doc. W31 on enforcement and Doc. W49 on basic principles). Among the other participants in the group, nearly all industrialized countries, but also some developing countries, have also submitted written proposals. The Community proposals have succeeded in forming the main basis for discussion.

7.2.5. Finally, the Community was the first participant in the negotiating group to submit, in March 1990, its own complete legal draft of an agreement on "TRIPS" (Doc. W68). On this draft the Commission has received on the whole very positive reactions, including from among developing countries. Thus the Community has become a leading force in its commitment to the highest possible level of intellectual property protection, particularly in the field of copyright and neighbouring rights.

7.2.6. The Commission strongly believes that the agreement on TRIPS should become an integral part of the GATT. This would strengthen the role and function of the GATT. Furthermore, it is the declared interest of the Community to enable as many developing countries as possible to join such a TRIPS agreement, while not compromising on the level of protection.

7.2.7. Ministerial meetings on the Uruguay Round have confirmed that adequate protection for Intellectual Property Rights is an issue of increasing importance for international trade in the global economy. Some issues in the negotiations, such as the level of intellectual property protection, the relationship between GATT and WIPO and the balance between the in part diverging interests of developing and industrialized countries, were identified as still pending reasonable definition.
7.3. Work in WIPO

7.3.1. The World Intellectual Property Organization (WIPO) has worked constantly to render the protection of intellectual property, including copyright and neighbouring rights, more effective throughout the world. WIPO administers the relevant international conventions, including the Berne and Rome Conventions, alone or in conjunction with other international organizations. The Commission has hitherto taken part in WIPO's work in these fields in an observer capacity.

7.3.2. Since the 1971 Paris revision of the Berne Convention there have been several fresh developments with implications for the creation, dissemination and use of literary and artistic works, mainly as a result of the appearance of new technology. A number of meetings held under WIPO's auspices have analysed copyright-related questions raised by these developments.

In the course of WIPO's 1982-83 and 1984-85 biennia meetings of governmental experts were held to discuss such new uses as home copying, hiring and lending, storage and recovery of data processing systems, cable television and satellite broadcasting.

During the 1986-87 biennium and the first part of 1988, guidelines with commentaries covering nine categories of literary and artistic works were discussed at meetings of governmental experts called jointly by WIPO and UNESCO. These guidelines and their commentaries were revised and supplemented in Geneva in June and July 1988 by a committee of governmental experts given the task of evaluating and drawing together the principles relating to the different categories of work.

7.3.3. In accordance with the WIPO Programme for the 1988-89 biennium a committee of governmental experts has examined the question of model provisions for legislation in the field of copyright, on the basis of documents drawn up by the International Bureau.(1)

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(1) Document CD/MPC/1/2-1 to III; document CE/MPC/11/2, Addendum to Chapter IX, "Obligations concerning Equipment used for Acts Covered by Protection", of document CE/MPC/1/2; and document CE/MPC/11/2.
These model provisions are intended to serve as examples for the drafting of aspects of national copyright legislation in the Berne Union countries which are indispensable to the strict and proper interpretation of the Convention, and to provide satisfactory answers to traditional copyright questions and to the new questions linked to the development of technology.

The committee completed its work at its third session in Geneva on 2 to 13 July 1990. In the light of the opinions received the model provisions are now to be drawn up and published by the International Bureau.

7.3.4. The Programme for the 1990–91 biennium which the Governing Bodies of WIPO approved at their twentieth series of meetings(2) includes Item PRG 02.7 entitled "setting of norms for the protection and enforcement of intellectual property rights," which calls for the following initiatives:

"(a) in the field of norm setting by treaties
(iii) preparations for
- the conclusion of a protocol to supplement the Berne Convention ("Protocol to the Berne Convention"),
- the conclusion of a treaty on the settlement of disputes between States in the field of intellectual property ("Treaty on the Settlement of Intellectual Property Disputes between States"),(3)

7.3.5. Under Item PRG.03, "Exploration of intellectual property questions in possible need of norm setting," the Programme for the 1990–91 biennium refers to "Intellectual Property Disputes between Private Parties."


(3) "WIPO will invite GATT to cooperate, if GATT so desires, with WIPO in this undertaking. The treaty would cover possible disputes arising in all fields of intellectual property, particularly concerning any disputes that may arise in connection with the interpretation or application of the Paris Convention, the Berne Convention, other treaties or other international obligations."
The International Bureau is to study the possibilities of establishing a mechanism to provide services for the resolution of disputes between private parties over intellectual property rights. Recourse to such a mechanism would be open to private parties (not governments) on a completely voluntary basis.

The mechanism would situate the settlement of disputes in WIPO's specialized and clearly neutral environment, and, in most cases, would make the non-judicial procedures much faster and cheaper than today.

7.3.6. These initiatives, which by no means account for the whole of WIPO's extensive activities in the field of copyright, are of particular interest to the Community. The Commission intends to take part, and to make its own contribution within the limits of its powers.

7.3.7. In the Green Paper (point 7.2.3.) the Commission concluded that "the further evolution of the Community's role within WIPO in general is a matter of considerable importance given the likelihood of further Community legislation on copyright and related rights and, indeed, on other forms of intellectual property."

7.3.8. Before 31 December 1992 the Commission will reconsider the need for a change in the status of the Community within WIPO in respect of copyright and neighbouring rights.

7.4. The Community and other European States and Institutions

The pursuit of effective and appropriate protection for intellectual property rights at the world level, which in the nature of things must seek a balance between the interests of the industrialized countries and those of the developing countries, must not be allowed to obscure the need for more extensive protection in Europe. Such an approach is fully in line with the letter and spirit of the Berne Convention (Article 20) and the Rome Convention (Article 22), and with the cultural traditions of the European countries. Discussion must continue with the other European States and institutions, particularly those of the European Free Trade Association (EFTA), the countries of central and eastern Europe, and the Council of Europe.
7.5. **Negotiations on the European Economic Area**

7.5.1. With a view to the establishment of a European Economic Area the Council has given the Commission a brief to negotiate an agreement between the Community and EFTA and Liechtenstein. The agreement is to allow free movement of goods, services, capital and persons within the European Economic Area by 31 December 1992. The basis of the agreement would be the relevant *acquis communautaire*, i.e. the general principles of the Community Treaties and secondary legislation as interpreted by the Court of Justice. The *acquis communautaire* would be integrated into the agreement.

7.5.2. Community secondary legislation in the intellectual property field is so far very limited, but the Court of Justice has developed a number of principles regarding the implications for copyright and neighbouring rights of the free movement of goods and the freedom to provide services. These principles therefore form an integral part of the *acquis communautaire*.

7.5.3. The various proposals in the field of copyright and neighbouring rights which the Commission intends to submit to the Council and Parliament should also be considered to form part of the *acquis communautaire* as soon as they are adopted.

This would emphasise once again the importance which the Commission attaches to the maintenance and reinforcement of a high level of protection for intellectual property rights, and more particularly copyright and neighbouring rights, not only in the Community but also in the wider context of the European Economic Area.

7.6. **The Community and the countries of central and eastern Europe**

7.6.1. In the trade and cooperation agreements concluded in 1989 and 1990 between the Community and most of the countries of central and eastern Europe the question of intellectual, industrial and commercial property was given particular attention, particularly because of its implications for direct investment in those countries by Community businesses and for the transfer of technology.

In the present state of Community law, intellectual, industrial and commercial property rights are to a great extent within the jurisdiction of the Member States. Apart from the Directives on semiconductors and trade marks, the Council has not yet approved the proposals submitted by the Commission, on computer programs and biotechnology for example.
7.6.2. Despite this there is an article in the agreements concluded recently under which, within the limits of their respective powers, the Contracting Parties undertake to:

- ensure adequate protection and enforcement of industrial, commercial and intellectual property rights,

- ensure that their international commitments in the field of industrial, commercial and intellectual property rights are honoured,

- encourage appropriate arrangements between undertakings and institutions within the Community and the other party with a view to due protection of industrial, commercial and intellectual property rights,

- encourage cooperation and exchanges of views between organizations and institutions responsible for industrial, commercial and intellectual property.

It has also been agreed that Community right holders will have access to the relevant courts and administrative bodies of the countries of central and eastern Europe.

7.6.3. While aware of the limits to action on its part the Commission intends to make full use of the scope provided by these agreements to ensure effective and appropriate protection of the rights in question.

In this spirit the Commission held an information conference on intellectual property with the countries of central and eastern Europe in Brussels on 23 May 1990. Its aim was to improve mutual awareness of the present situation and future developments in the Community and in those countries. Such contact should go on, in a bilateral or multilateral framework.

7.6.4. The trade and cooperation agreements are the first step towards closer relations between the Community and the countries of central and eastern Europe. The protection of intellectual property, and more especially copyright and neighbouring rights, have so far played only a limited role in this connection.
At the European Council meeting in Dublin on 28 April 1990 the Commission envisaged the conclusion of association agreements with certain countries of central and eastern Europe under Article 238 of the EEC Treaty. These agreements will represent a major qualitative advance on the first step. They will establish a lasting and structured relationship with associate countries and will substantially shape tomorrow's Europe. They will include chapters on the following subjects: political dialogue, free trade and free movement, economic cooperation, financial cooperation, cultural cooperation and institutional aspects.

7.6.5. Questions regarding the protection of copyright and neighbouring rights are to be seen against this more general background.

A communication from the Commission was submitted in August 1990(4), to the Council and was discussed on 17 September 1990. The outcome of the discussion was favourable and, on the basis of the communication, the Commission made explanatory contacts with Poland, Hungary and Czechoslovakia. The Commission informed the Council about these contacts and submitted proposals for negotiation guidelines with the countries in question. These were discussed in the Council in 4 December 1990.

7.6.6. Regarding intellectual property rights, the proposals for negotiating guidelines envisage that measures guaranteeing effective and adequate protection of intellectual, industrial and commercial property, at a comparable level to that which exists in the Community, will be taken by Poland, Hungary and Czechoslovakia. These countries would have undertake to join to those multilateral agreements in this field to which they are not yet party.

7.7. The Council of Europe

7.7.1. In line with the exchange of letters between the Council of Europe and the European Community concerning the consolidation and intensification of cooperation, of 16 June 1987(5) the Commission intends to continue working together with the Council of Europe on matters of common concern in the copyright field, as it said in the Green Paper.(6)

7.7.2. The Council of Europe has already adopted recommendations in this field, such as those on sound and audiovisual private copying, piracy, and reprography.(7)

Work is going on on a legal instrument dealing with questions of copyright in broadcasting, either in the form of a separate instrument to the the European Convention on Transfrontier Television, which was opened for signature on 5 May 1989, or an additional protocol to the Convention. A final decision on this could be taken around the beginning of 1991.

7.7.3. The Council of Europe and the Commission are already working together. The Commission would repeat its desire to pursue this process, in the interests of both sides, in order to consolidate the protection of copyright and neighbouring rights at European level.

7.8. The role of the Community in bilateral relations

7.8.1. The Green Paper pointed out that the existing international conventions had not yet achieved the objective of providing effective copyright protection on a large enough international scale. In addition to the work in the multilateral context, therefore, problems existing with regard to individual countries or groups of countries need to be tackled bilaterally.

(5) OJ No L 273, 26 September 1987, pages 35 to 39.
(7) Recommendation No R(88)1 of the Committee of Ministers to Member States on Sound and Audiovisual Private Copying and Recommendation No R(88)2 of the Committee of Ministers to Member States on Measures to combat Piracy in the field of Copyright and Neighbouring Rights, adopted on 18 January 1988.
Recommendation No R(90)11 of the Committee of Ministers to Member States on Principles relating to Copyright Law Questions in the field of Reprography, adopted in April 1990.
7.8.2. Community industry encounters difficulties of three kinds in non-member countries:

- the absence of adequate substantive standards protecting intellectual property,
- the lack of effective enforcement where such standards exist,
- failure to accord national treatment to Community right holders.

7.8.3. It will be clear that an agreement on the aspects of intellectual property rights affecting trade, which the Commission hopes can be concluded in the GATT framework (see point 7.2) and to which all the Community trading partners could agree, would place bilateral relations between the Community and non-member countries on an entirely new footing, and would make an important if gradual contribution to alleviating the current difficulties.

7.8.4. In order to prepare for an intensification of bilateral relations following the conclusion of the GATT multilateral trade negotiations, and particularly if the negotiations in the field of intellectual property do not produce the desired outcome, the Commission will need information on the legal and practical situation regarding all aspects of the protection of intellectual property in non-member countries. The Commission's information must be sound if it is to make the best possible assessment of priorities, to concentrate the action taken by the Community, and to select the most suitable forms of action, in the field of copyright and neighbouring rights as elsewhere.

7.8.5. The Commission accordingly proposes to draw up an inventory covering the situation with regard to intellectual property in the majority of non-member countries and the difficulties encountered by Community industry there. This would include a summary of legislation and regulations in force regarding copyright, neighbouring rights, designs and models, patents, trade marks, appellations of origin, etc.

7.8.6. Such an exercise will be of little use if it is not supplemented by an assessment of the factual situation in the relevant countries, since in some cases the legal position and the practical position are quite different. There will therefore have to be a study of the real difficulties encountered by Community industry. The Commission is in the process of consulting Community business, through UNICE, regarding the difficulties encountered in the field of intellectual property in all non-member countries.
7.8.7. The replies received will supplement the information already in the Commission's possession. Existing studies by international organizations will also be used.

7.8.8. The inventory will be published in 1991; it will of course have to be updated regularly. In time, therefore, it will allow a complete picture of the changing situation to be built up, and will put the Community in a strong position to defend its interests.
CHAPTER 8: OTHER COMMUNITY INITIATIVES IN THE FIELD OF COPYRIGHT AND NEIGHBOURING RIGHTS

8.1. Introduction

In this Chapter the Commission outlines some areas for action in respect of copyright and neighbouring rights which were not discussed in the Green Paper. This is without prejudice to the other initiatives referred to in the communication Books and Reading\(^{(1)}\) or the communication on audio-visual policy\(^{(2)}\).

This is not an exhaustive account, and it may be that matters not referred to here will have to be tackled if the development of technology or legislation and national practice should make it advisable to take measures at Community level.

8.2. The duration of protection

The international conventions on copyright and neighbouring rights lay down minimum periods of protection; the states which are party to these conventions are free to apply longer periods. Some Member States have made use of this possibility, to different extents.

The result is that at present the duration of protection varies within the Community, in some cases according to the nature of the work. The disparities can create obstacles to the free movement of cultural goods and services and lead to distortion of competition, since the same work may at the same time be protected in one Member State and have fallen into the public domain in another.

8.2.2. In the Patricia case\(^{(3)}\) the Court of Justice had to rule on the interpretation of Articles 30 and 36 of the EEC Treaty with regard to different periods of protection in force in two Member States. Legislation in one Member State allowed a manufacturer of sound recordings to invoke exclusive rights which it held over the reproduction and sale of certain musical works in order to prohibit the sale in that country of recordings incorporating some of those works which had

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\(^{(1)}\) COM(89) 258 final, 3 August 1989.

\(^{(2)}\) COM(90) 78 final, 21 February 1990.

\(^{(3)}\) Case 341/87 EMI Electrola v Patricia and Others; judgment delivered on 24 January 1989, not yet reported.
been imported from another Member State where they had been lawfully marketed, without the consent of the right holder or his licensee, a period of protection previously enjoyed by the manufacturer there having since expired.

8.2.3. The Court found that in the present state of Community law, which was characterized by a lack of harmonization or approximation of laws relating to the protection of literary and artistic property, it was for the national legislatures to determine the conditions and rules for such protection. In so far as disparities between national laws might lead to restrictions on intra-Community trade in sound recordings, those restrictions were justified under Article 36 of the Treaty as long as they were due to the disparity between the rules concerning the period of protection and this was inseparably linked to the existence of the exclusive rights.

8.2.4. This state of affairs is clearly not in keeping with the spirit and the reality of a Community area without internal frontiers in which the free movement of cultural goods and services is ensured in the same way as it is within a domestic market. The Commission therefore has a duty to take steps towards the harmonization of the duration of copyright and neighbouring right protection.

8.2.5. The Commission intends to draw up a proposal for a directive on this subject; it will be guided by four main principles:

(a) The harmonization achieved should be total, that is to say that it should lay down fixed periods of protection, beginning and ending at the same time in all Member States of the Community, for each type of work and for each neighbouring right covered.

(b) The duration laid down should provide a high level of protection for authors and other holders of neighbouring rights. This will mean that the periods of protection will be longer than the minimum period laid down in the international conventions.

(c) The harmonization of periods of protection must not in any way prejudice rights acquired under existing national legislation. Transitional measures will be proposed in order to avoid any reduction in periods of protection already running which may be longer than those laid down under the directive.
(d) Lastly, the Commission's proposal will seek to preserve the delicate balance between copyright and neighbouring rights, while at the same time avoiding excessive complexity.

8.2.6. The Commission will include the presentation of such a proposal for a directive in its 1991 work programme.

8.3. Authors' moral rights

8.3.1. Copyright includes entitlements of an economic nature and entitlements of a moral nature. Economic rights are bound up with the author's right to benefit from the economic use of his work. Moral rights spring from the fact that the work is a reflection of the personality of the author. This approach is in fact enshrined in the Universal Declaration of Human Rights, and specifically Article 27(2). (4)

8.3.2. Article 6bis of the Berne Convention on the protection of literary and artistic works lays down minimum rules on the scope and duration of moral rights, while leaving it to legislation in the country where protection is claimed to define the means of redress available to the author and other holders after his death.

As a result of different legal approaches and traditions, there are differences between the Member States of the Community, as well as between the States party to the Berne Convention, with regard for example to the extent and duration of moral rights.

8.3.3. In recent years cases have come before the courts of some countries in which moral rights, and more especially the right of the author to object to any distortion, mutilation or other modification of his work which would be prejudicial to his honour or reputation, were invoked against the way in which cinematographic works were being treated (the colourization of black and white films, commercial breaks in films broadcast on television, etc). Thus moral right entitlements can generate restrictions on the use of works already made public.

8.3.4. The Commission has not so far decided to propose any general harmonization of moral rights in the Member

(4) "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author."
States. However, the Commission does not rule out the possibility that it might have to take action in respect of one or other defined area of moral rights if that should prove advisable in connection with any of the measures referred to in this communication. The duration of moral rights, for example, might have to be harmonized.

8.3.5. The Commission proposes to make a more thorough study of all problems raised by the differences existing between Member States' legislation on moral rights, beginning in 1991. It will then decide what initiatives may be called for on the question of moral rights in the Community.

8.4. Reprography

8.4.1. Reprography of printed works, that is to say their reproduction by photocopying or by similar mechanical reproduction processes, has grown considerably in the last few years. This is due primarily to improvements in the machines used. These have become smaller while nevertheless giving a better quality product more rapidly and at a lower cost. The appearance on the market of colour photocopying machines has opened up new scope for the reproduction of protected works, as has the possibility of combining reprography with the recovery of works stored on computer.

8.4.2. Article 9(1) of the Berne Convention allows authors of literary and artistic works the exclusive right of "authorizing the reproduction of these works, in any manner or form." It is generally accepted that reprography is a form of reproduction covered by this exclusive right.

Limitations on this right are provided for in paragraph 2 of the same article, under which it is to be a matter "for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author."
8.4.3. In the light of this article and of the report of the Stockholm diplomatic conference, (5) it must therefore be asked whether technological developments in reprography do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.

8.4.4. In 1990 the Commission undertook a study of the problems raised by reprography and of possible solutions, as it had promised to do in its communication Books and Reading.

8.4.5. After it has consulted interested parties the Commission envisages taking a Community Initiative in this area in 1991.

8.5. Resale rights

8.5.1. In accordance with Article 14ter of the Berne Convention for the protection of literary and artistic works, the laws of certain Member States give authors a resale right, which is an inalienable right enjoyed by the author, or after his death the persons or institutions authorized by the national legislation, to an interest in any sale of original works of art and original manuscripts of writers and composers subsequent to the first transfer by the author of the work.

8.5.2. This article of the Berne Convention is an optional provision, and by way of exception from the general principle of national treatment its application may be made subject to a reciprocity condition.

8.5.3. The Commission proposes to examine this aspect, before 31 December 1992, looking particularly at the practice in the States which do confer a resale right, and the arguments for and against the introduction of such a right. The Commission will then take a decision on the advisability of a Community Initiative on this question.

(5) The revision of the Berne Convention which was drawn up in Stockholm on 14 July 1967 has not entered into force as far as the substantive provisions are concerned. The same provisions were however taken over without change in the Paris Act of 24 July 1971, which is the most recent version of the Convention and to which most of the states of the Berne Union are party.
CHAPTER 9 : BROADCASTING AND COPYRIGHT

9.1. On the subject of broadcasting and copyright, in its communication on audiovisual policy, the Commission announced its intention to propose a directive on the harmonisation of copyright rules applicable to satellite broadcasting and cable retransmission. In order to facilitate the consultation of interested parties, the Commission has prepared a discussion paper on the problems raised by copyright in the field of satellite broadcasting and cable retransmission. The measures envisaged for satellite broadcasting are based on three principles.

9.2. Any satellite broadcast originating in a Community Member State, must be regarded as an act of broadcasting for copyright purposes, regardless of the technology used, once it constitutes communication to the public. As far as copyright is concerned, therefore there is no longer any point in making a distinction between direct broadcasting satellites and other satellites.

9.3. The right to broadcast protected works by satellite has to be acquired only in the country of establishment of the broadcaster. For the purpose of acquiring the rights, the parties may take into consideration the actual or potential audience within the footprint of the satellite.

9.4. An adequate level of protection for authors’ rights and of the neighbouring rights of performers, producers of phonograms and broadcasters has to be secured by a minimum level of harmonisation of Member States’ laws on the subject. In this respect, the possibility of a legal licence for satellite broadcasts must be ruled out. Thus, the interests of right holders will be safeguarded no matter in which Member State the broadcaster may be established.

9.5. The Commission’s proposals in respect of simultaneous, unaltered and unabridged cable retransmission of broadcasts can be summed up in four principles.

9.6. The cable retransmission of a programme coming from another Member State is a form of exploitation subject to copyright. It follows that the cable operator must obtain authorisation from the owners of all rights in any part of the programme.

9.7. These authorisations must be obtained by contractual means.
9.8. It should be possible for such rights to be managed on an exclusively collective basis to the extent that this is made necessary by the specific features of cable retransmission. There should be a Community measure to ensure that the smooth operation of collective agreements is not brought to a halt by the opposition of the owners of individual rights in sections of the programme to be retransmitted.

9.9. On the other hand, negotiations between cable operators and right holders, these being represented by collecting societies, should be made easier by supplementary measures such as a voluntary conciliation mechanism and a mechanism designed to prevent abuse of negotiating positions.

9.10. The discussion paper forms a separate document which has been available since the end of November 1990.
ANNEX

ACTIONS PROPOSED IN THE FIELD OF COPYRIGHT AND NEIGHBOURING RIGHTS

I. Legislative action to be taken by 31 December 1991

(i) Proposal for a decision that the Member States will, by 31 December 1992, ratify or adhere to and comply with the 1971 Paris Act of the Berne Convention and the Rome Convention of 26 October 1961.

(ii) Proposal for a directive on rental right, lending and certain neighbouring rights.

(iii) Proposal for a directive on home copying of sound and audiovisual recordings.

(iv) Proposal for a directive on the harmonisation of the legal protection of databases.

(v) Proposal for a directive on the harmonisation of the term of protection for copyright and certain neighbouring rights.

(vi) Proposal for a directive on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite and cable broadcasting.

II. Studies to be carried out by 31 December 1992 at the latest.

(i) Moral rights,

(ii) Reprography,

(iii) Resale right,

(iv) Collective management of copyright and neighbouring rights and collecting societies.

III. Other actions planned by 31 December 1992

(i) Consolidation of the role of the Community in the field of bilateral and multilateral external relations;

(ii) Establishment of an inventory of the intellectual property situation in certain non-member countries.
II

(Preparatory Acts)

COMMISSION


(92/C 156/03)

COM(92) 24 final — SYN 393

(Submitted by the Commission on 15 April 1992)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2), 66, and 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

1. Whereas databases are at present not clearly protected in all Member States by existing legislation and such protection, where it exists, has different attributes;

2. Whereas such differences in the legal protection offered by the legislation of the Member States have direct and negative effects on the establishment and functioning of the internal market as regards databases and in particular on the freedom of individuals and companies to provide on-line database goods and services on an equal legal basis throughout the Community; whereas such differences could well become more pronounced as Member States introduce new legislation on this subject, which is now taking on an increasingly international dimension.

3. Whereas existing differences having a distortive effect on the establishment and functioning of the internal market need to be removed and new ones prevented from arising, while differences not at the present time adversely affecting the establishment and functioning of the internal market or the development of an information market within the Community need not be addressed in this Directive;

4. Whereas copyright protection for databases exists in varying forms in a number of Member States according to legislation or case-law and such unharmonized intellectual property rights, being territorial in nature, can have the effect of preventing the free movement of goods or services within the Community if differences in the scope, conditions, derogations or term of protection remain between the legislation of the Member States;

5. Whereas although copyright remains an appropriate form of exclusive right for the legal protection of databases and in particular an appropriate means to secure the remuneration of the author who has created a database, in addition to copyright protection, and in the absence as yet of a harmonized system of unfair competition legislation or of case-law in the Member States, other measures are required to prevent unfair extraction and re-utilization of the contents of a database;

6. Whereas database development requires the investment of considerable human, technical and financial resources while such databases can be copied at a fraction of the cost needed to develop them independently;

7. Whereas unauthorized access to a database and removal of its contents constitute acts which can have the gravest economic and technical consequences;

8. Whereas databases are a vital tool in the development of an information market within the
Community; whereas this tool will be of use to a large variety of other activities and industries;

9. Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry requires investment in all the Member States in advanced information management systems;

10. Whereas a correspondingly high rate of increase in publications of literary, artistic, musical and other works necessitates the creation of modern archiving, bibliographic and accessing techniques, to enable consumers to have at their disposal the most comprehensive collection of the Community's heritage;

11. Whereas there is at the present time a great imbalance in the level of investment in database creation both as between the Member States themselves, and between the Community and the world's largest database-producing countries;

12. Whereas such an investment in modern information storage and retrieval systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of authors of databases and the repression of acts of piracy and unfair competition;

13. Whereas this Directive protects collections, sometimes called compilations, of works or other materials whose arrangement, storage and access is performed by means which include electronic, electromagnetic or electro-optical processes or analogous processes;

14. Whereas the criteria by which such collections shall be eligible for protection by copyright should be that the author, in effecting the selection or the arrangement of the contents of the database, has made an intellectual creation;

15. Whereas no criteria other than originality in the sense of intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular no aesthetic or qualitative criteria should be applied;

16. Whereas the term database should be understood to include collections of works, whether literary, artistic, musical or other, or of other material such as texts, sounds, images, numbers, facts, data or combinations of any of these;

17. Whereas the protection of a database should extend to the electronic materials without which the contents selected and arranged by the maker of the database cannot be used, such as, for example, the system made to obtain information and present information to the user in electronic or non-electronic form, and the indexation and thesaurus used in the construction or operation of the database;

18. Whereas the term database should not be taken to extend to any computer programme used in the construction or operation of a database, which accordingly remain protected by Council Directive 91/250/EEC (1);

19. Whereas the Directive should be taken as applying only to collections which are made by electronic means, but is without prejudice to the protection under copyright as collections, within the meaning of Article 2 (5) of the Berne Convention for the Protection of Literary and Artistic Works (text of Paris Act of 1971) and under the legislation of the Member States, of collections made by other means;

20. Whereas works protected by copyright or by any other rights, which are incorporated into a database, remain the object of their author's exclusive rights and may not therefore be incorporated into or reproduced from the database without the permission of the author or his successors in title;

21. Whereas the rights of the author of such works incorporated into a database are not in any way affected by the existence of a separate right in the original selection or arrangement of these works in a database;

22. Whereas the moral rights of the natural person who has created the database should be owned and exercised according to the provisions of the legislation of the Member States consistent with the provisions of the Berne Convention, and remain therefore outside the scope of this Directive;

23. Whereas the author's exclusive rights should include the right to determine the way in which his work is exploited and by whom, and in particular to control the availability of his work to unauthorized persons;

(1) OJ No L 122, 17. 5. 1991, p. 42.
24. Whereas, nevertheless, once the rightholder has chosen to make available a copy of the database to a user, whether by an on-line service or by other means of distribution, that lawful user must be able to access and use the database, for the purposes and in the way set out in the agreement with the rightholder, even if such access and use necessitate performance of otherwise restricted acts;

25. Whereas if the user and the rightholder have not concluded an agreement regulating the use which may be made of the database, the lawful user should be presumed to be able to perform any of the restricted acts which are necessary for access to and use of the database;

26. Whereas in respect of reproduction in the limited circumstances provided for in the Berne Convention, of the contents of the database by the lawful user, whether in electronic or non-electronic form, the same restrictions and exceptions should apply to the reproduction of such works from a database as would apply to the reproduction of the same works made available to the public by other forms of exploitation or distribution;

27. Whereas the increasing use of digital recording technology exposes the database maker to the risk that the contents of his database may be downloaded and re-arranged electronically without his authorization to produce a database of identical content but which does not infringe any copyright in the arrangement of his database;

28. Whereas in addition to protecting the copyright in the original selection or arrangement of the contents of a database this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment incurred in obtaining and collecting data by providing that certain acts done in relation to the contents of a database are subject to restriction even when such contents are not themselves protected by copyright or other rights;

29. Whereas such protection of the contents of a database is to be achieved by a special right by which the maker of a database can prevent the unauthorized extraction or re-utilization of the contents of that database for commercial purposes; whereas this special right (hereafter called 'a right to prevent unfair extraction') is not to be considered in any way as an extension of copyright protection to mere facts or data;

30. Whereas the existence of a right to prevent the extraction and re-utilization for commercial purposes of works or materials from a given database should not give rise to the creation of any independent right in the works or materials themselves;

31. Whereas, in the interests of competition between suppliers of information products and services, the maker of a database which is commercially distributed, whose database is the sole possible source of a given work or material, should make that work or material available under licence for use by others, providing that the works or materials so licensed are used in the independent creation of new works, and providing that no prior rights in or obligations incurred in respect of those works or materials are infringed;

32. Whereas licences granted in such circumstances should be fair and non-discriminatory under conditions to be agreed with the rightholder;

33. Whereas such licences should not be requested for reasons of commercial expediency such as economy of time, effort or financial investment;

34. Whereas in the event that licences are refused or the parties cannot reach agreement on the terms to be concluded, a system of arbitration should be provided for by the Member States;

35. Whereas licences may not be refused in respect of the extraction and re-utilization of works or materials from a publicly available database created by a public body providing that such acts do not infringe the legislation or international obligations of Member States or the Community in respect of matters such as personal data protection, privacy, security or confidentiality;

36. Whereas the objective of the provisions of this Directive, which is to afford an appropriate and uniform level of protection of databases as a means of securing the remuneration of the author who has created the database, is different from the aims of the proposal for a Council Directive concerning the protection of individuals in relation to the processing
of personal data (1), which are to guarantee free circulation of personal data on the basis of a harmonized standard of rules designed to protect the fundamental rights, notably the right to privacy which is recognized in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas the provisions of this Directive are without prejudice to the data protection legislation;

37. Whereas, notwithstanding the right to prevent unfair extraction from a database, it should still be possible for the lawful user to quote from or otherwise use, for commercial and private purposes, the contents of the database which he is authorized to use, providing that this exception is subject to narrow limitations and is not used in a way which would conflict with the author's normal exploitation of his work or which would unreasonably prejudice his legitimate interests;

38. Whereas the right to prevent unfair extraction from a database may only be extended to databases whose authors or makers are nationals or habitual residents of third countries and to those produced by companies or firms not established in a Member State within the meaning of the Treaty if such third countries offer comparable protection to databases produced by nationals of the Member States or habitual residents of the Community;

39. Whereas, in addition to remedies provided under the legislation of the Member States for infringements of copyright or other rights, Member States should provide for appropriate remedies against unfair extraction from a database;

40. Whereas in addition to the protection given under this Directive to the database by copyright, and to its contents against unfair extraction, other legal provisions existing in the law of the Member States relevant to the supply of database goods and services should continue to apply,

HAS ADOPTED THIS DIRECTIVE:

Article 1
Definitions

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;

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;

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;

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.

Article 2
Object of protection: copyright and right to prevent unfair extraction from a database

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).

2. The definition of database in point 1 of Article 1 is without prejudice to the protection by copyright of collections of works or 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.

3. A database shall be protected by copyright if it is original in the sense that it is a collection of works or materials which, by reason of their selection or their arrangement, constitutes the author's own intellectual creation. No other criteria shall be applied to determine the eligibility of a database for this protection.

4. The copyright protection of a database given by this Directive shall not extend to the works or materials contained therein, irrespective of whether or not they are themselves protected by copyright; the protection of a database shall be without prejudice to any rights subsisting in those works or materials themselves.

5. Member States shall provide for a right for the maker of a database to prevent the unauthorized extraction or re-utilization, from that database, of its
contents, in whole or in substantial part, for commercial purposes. This right to prevent unfair extraction of the contents of a database shall apply irrespective of the eligibility of that database for protection under copyright. It shall not apply to the contents of a database where these are works already protected by copyright or neighbouring rights.

Article 3
Authorship: copyright

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.

Article 4
Incorporation of works or materials into a database

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.

Article 5
Restricted acts: copyright

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:

(a) the temporary or permanent reproduction of the database by any means and in any form, in whole or in part;

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

(c) the reproduction of the results of any of acts listed in (a) or (b);

(d) any form of distribution to the public, including rental, 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, with the exception of the right to control further rental of the database or a copy thereof;

(e) any communication, display or performance of the database to the public.

Article 6
Exceptions to the restricted acts enumerated in Article 5: copyright in the selection or arrangement

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 rightholder.
2. In the absence of any contractual arrangements between the rightholder and the user of a database in respect of its use, the performance by the lawful acquirer of a database of any of the acts listed in Article 5 which is necessary in order to gain access to the contents of the database and use thereof shall not require the authorization of the rightholder.

3. The exceptions referred to in paragraphs 1 and 2 relate to the subject matter listed in Article 5 and are without prejudice to any rights subsisting in the works or materials contained in the database.

**Article 7**

Exceptions to the restricted acts in relation to the copyright in the contents

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 rightholder 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.

**Article 8**

Acts performed in relation to the contents of a database — unfair extraction of the contents

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.

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.

3. Member States shall provide appropriate measures for arbitration between the parties in respect of such licences.

4. The lawful user of a database may, without authorization of the database maker, extract and re-utilize insubstantial parts of works or materials from a database for commercial purposes provided that acknowledgement is made of the source.

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.

6. The provisions of this Article shall apply only to the extent that such extraction and re-utilization does not conflict with any other prior rights or obligations, including the legislation or international obligations of the Member States or of the Community in respect of matters such as personal data protection, privacy, security or confidentiality.

**Article 9**

Terms of protection

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.

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.

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

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.
Article 10
Remedies

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

Article 11
Beneficiaries of protection under right to prevent unfair extraction from a database

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.

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 legislation of a Member State and having their registered office, central administration or principal place of business within the Community. Should the company or firm formed in accordance with the legislation of a Member State have 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.

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 12
Continued application of other legal provisions

1. The provisions of this Directive shall be without prejudice to copyright or any other right subsisting in the works or 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. 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.

Article 13
Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1993.

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.

Article 14

This Directive is addressed to the Member States.

(93/C 19/02)

On 18 June 1992, the Council decided to consult the Economic and Social Committee, under Article 100a of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee’s work on the subject, adopted its Opinion on 6 November 1992. The Rapporteur was Mr Moreland.

At its 301st Plenary Session (meeting of 24 November 1992), the Economic and Social Committee adopted the following Opinion unanimously.

1. Summary of the Commission’s proposal

1.1. This Draft Directive is designed to protect electronic databases through the medium partly of the law of copyright and partly through a specific new right to prevent 'unfair extraction' from a database.

1.2. Existing legislation in the Member States varies. The United Kingdom which has the largest share of the Community market [estimates vary but the UK share may be a high 60% with 37% of UK production being used elsewhere in the Community (see speech by D.R. Warlock, London 7 May 1992)], provides comprehensive copyright protection for databases and most databases qualify for protection. In Spain, databases are protected as such and there is an elaborate definition of precisely what qualifies as a database. In other Member States the level of protection is less and in some cases in need of clarification.

1.3. In this proposal, a database must be electronic to be protected at all. To enjoy copyright protection it must also be 'original', that is, its 'selection or arrangement' must constitute the author’s own intellectual creation. It is the selection or arrangement which must be original, not the contents of the database.

1.4. The Commission does provide some protection for databases that are not 'intellectual creation' (i.e. often referred to as 'sweat of the brow'). As regards the contents of a database, there is an unfair extraction right which permits the maker of a database to prevent others from making extracts from the database for commercial purposes without the maker's consent. This applies whether or not the database itself is protected by copyright but does not apply if the contents of the database are themselves protected by copyright.

1.5. For example, white pages telephone directories are protected under the law of copyright in some Member States. If, as frequently happens, these white pages directories are made available on CD-ROM as databases, the databases themselves would not be protected as 'original' databases (because there would be no intellectual creation in transposing them from paper to the electronic medium) and would not be the subject of the unfair extraction right because, at least in some Member States, there would be copyright in the underlying materials.

1.6. Where the contents of a database which is made publicly available are either:

a) unobtainable from any other source; or

b) made available by a public body under a duty to gather and disclose information,

extraction of such contents must be licensed on fair and reasonable terms, but the proposal does not state how the 'fair and reasonable terms' should be determined.

1.7. The unfair extraction right lasts for ten years (in contrast to the copyright in a database which qualifies for copyright protection, which lasts for at least 50 years pma).

2. General comments

2.1. Although the Committee advocates changes in the Directive, it welcomes the Commission’s initiative on this subject in order to ensure that the Community has a strong database industry, able to compete against its competitors in third countries. The Committee believes that in assessing this proposal the Council should keep as its paramount objective the need for a
strong database industry. Consequently, examination should focus on ensuring that the legal protection envisaged leads to this objective and, equally, on the extent to which it does not hinder new entrants to the market. The Council should resist being sidetracked into a debate on legal philosophies which underlie the Directive, particularly on the subject of 'originality'.

2.2. The experience of the United Kingdom in attracting a substantial database industry (particularly vis-à-vis the United States) indicates that the development of a strong local database industry correlates with a high level of intellectual property protection. Any effective weakening of existing intellectual property protection may cause the Community to run the risk that potential database creators will look to third countries (e.g. Canada) where protection may be stronger, to create databases in future.

2.3. In this context the proposed 'unfair extraction' protection does have limitations in ensuring that the database industry is strong.

a) First, only if the contents themselves of a database are not protected by copyright do EC nationals have the benefit of protection.

b) Secondly, the term of the right is too short. More importantly, it is unclear as to when the term of either the unfair extraction right or the copyright begins. Databases are constantly being updated. The extent to which the term has been 'restarted' depends on whether a change is 'insubstantial', because an 'insubstantial' change does not start the term of protection running again. It will be difficult to judge objectively the concept of insubstantiality.

c) Thirdly, the borderline between a database from intellectual creativity or 'sweat of the brow' will be difficult to define giving rise to the risk of extensive (and expensive) legal action. This begs the question as to whether a distinction is important. Databases, which others would like to copy commercially may have involved much effort and expense without meeting the originality criteria. Yet, they would only be protected by the limited unfair extraction right.

2.4. Consequently, the Committee believes that the unfair extraction right may prove inadequate in providing the protection needed for a strong Community database industry and for those whose efforts need protection against copying.

2.5. The Committee believes that the Council should consider the following alternatives.

2.6. One choice would be for the unfair extraction right to be removed from the draft Directive as a separate right and that a right to prevent unfair extraction be inserted as one of the restricted acts under the copyright in a database. The Committee's reasons for this recommendation as are as follows.

2.6.1. The unfair extraction right is a sui generis right. So far, in its proposals on the harmonization of intellectual property questions, the Commission has rejected the concept of new sui generis rights and the Council has followed this approach in its decision-making. It should be noted in particular that the Council followed this approach in respect of the recent Directive on the Protection of Computer Programs (the 'Software Directive'). This approach has also been endorsed by this Committee in the past.

2.6.2. It would be wrong to compromise on the question of whether or not something should be protected by allowing a measure of short-term intellectual property protection with a compulsory licence. It is preferable to take a decision on whether something qualifies for protection and, if so, then to grant intellectual property protection of a high standard.

2.6.3. It may be said that to include the unfair extraction right as one of the rights of the copyright owner is inconsistent with the philosophy that copyright protects the rights of authors. However, the concept of copyright as an economic right which is important in an industrial context has already been accepted in the Software Directive and the approach to copyright set out in the Software Directive has been widely welcomed throughout the Community.

2.7. The second choice is to accept the unfair extraction right as a sui generis right, but should ensure that it is as effective a right as it would be if it were a restricted act under the copyright in the database. In other words, the unfair extraction right should not be as limited as it is in Article 2.5 in respect of its term and the compulsory licensing provisions in Article 8.1 should be curtailed. Granted the increasing sophistication of the Community's laws ensuring fair competition, any misuse by its proprietors of this exclusionary right can be dealt with by the application of those laws.

3. Specific comments

3.1. Preamble

The Committee welcomes the practice of numbering paragraphs in the Preamble but wonders if is really
necessary to have 40 paragraphs of often repetitious wording.

3.2. Article 1.1

The draft is confined to ‘electronic’ databases. The Committee is concerned that this will mean that different legal regimes will apply to the same database if it is stored both electronically and otherwise. This would not only complicate the law but could lead to undesirable practical consequences.

3.3. Article 1.4

The use of the phrase ‘insubstantial changes’ as a means of defining when a database becomes a new ‘original’ database for the purposes of the term of protection (Article 9.2) is unsatisfactory. It is difficult to imagine changes made to the selection or arrangement of the contents (as opposed to the contents themselves) which would be insubstantial.

3.4. Article 2.1

The significance of the reference to the Berne Convention is that by protecting databases in this way Member States will be obliged to protect databases emanating from other countries of the Convention (in particular, the USA). The same would also be true of the unfair extraction right if it were made a restricted act under the copyright in the database. However, that is not, in the opinion of the Committee, a serious obstacle: this dichotomy between the rights granted in the USA and the rights granted in certain Member States already exists to no significant detriment to the database industry in the Member States concerned.

3.5. Article 2.5

If the unfair extraction right survives as a sui generis right it should be made clear that it applies to unauthorised access as well as to extraction and re-utilisation.

3.6. Article 3.1

As in the case of the Software Directive, the draft does not oblige Member States to protect computer-generated databases (i.e. databases which have no human author). This is an issue which will have to be addressed at some time.

3.7. Article 4.1

This appears to require an alteration to the laws of the Member States relating to the copyright in the underlying works which make up a database, rather than relating to rights in databases themselves. In the opinion of the Committee this is something which should await the harmonization of the general law of copyright.

3.8. Article 5

The exclusive rights are substantially the same as in the Directive on the protection of computer programs. This is the correct approach.

3.9. Article 7

It may be appropriate to extend the exceptions referred to in Article 7.1 to cover the reporting of, for example, current affairs and other exceptions normally made to the exclusive rights of the copyright owner in the laws of most Member States.

3.10. Article 8.1

It may be appropriate to make it clear that the compulsory licensing provisions under the unfair extraction right (if it is considered appropriate to have compulsory licensing at all, which would not be permissible if the unfair extraction right were part of the general law of copyright) only apply to the right created by Article 2.5 and not to the copyright (if any) in the database or its contents.

3.11. Article 8.2

The definition of ‘public body’ needs to be made more precise, bearing in mind in particular the need to ensure consistency in the type of activity which is to be the subject of these provisions throughout the EC.

3.12. Article 8.3

This is very vague. Is it intended that all Member States should be required to set up (if they do not have it already) a body equivalent to the UK Copyright Tribunal? If so, the powers and duties of such a tribunal, and the principles upon which it is to operate, should be specified in much greater detail.

3.13. Article 9.3

It is not clear why the specific term of ten years for this right was selected. As stated in section 3.4 above, it
does not appear that existence of the equivalent of an unfair extraction right as part of the copyright in some Member States has impeded the growth of the industry.

3.14. **Article 9.4**

The definition of 'insubstantial changes' in Article 1.4 refers to changes to the selection or arrangement of the contents of a database. As currently drafted, this is not an appropriate phrase to use in relation to the contents themselves for the purposes of determining when the unfair extraction right begins to run. Further, the Committee would repeat its criticisms of this Article as set out in section 2.3b) above. The Committee suggests that a more practical means of determining the start of a fresh term of protection would be for each item of data in the database to be electronically or otherwise 'date-stamped' on its incorporation into the database. Each piece of data would be protected for the appropriate term from the date of its date-stamp.

3.15. **Article 10**

The Council should consider whether it is appropriate to include a provision similar to Article 7.1 (c) of the Software Directive, namely a requirement that devices designed to circumvent technical protection of databases are unlawful.

3.16. **Article 11.3**

This will mean that the Commission would negotiate on this issue with third countries.

3.17. **Article 13**

The date specified of 1 January 1993 is wholly unrealistic. This issue is not one that was covered in the 1985 Single Market White Paper.

3.18. The Committee notes that the Council has, in previous Directives, asked for regular reports on aspects of copyright to be produced by the Commission. If similar action is incorporated in the final Council Decision on this proposal, the Committee looks forward to being an official recipient of such a report.


*The Chairman*

*of the Economic and Social Committee*

Susanne TIEMANN
SUMMARY OF PROCEEDINGS

of: the Working Party on Intellectual Property (Copyright)
on: 28 and 29 January 1993

No. prev. doc.: 6857/93 PI 43 CULTURE 57
No. Cion prop.: 6919/92 PI 64 CULTURE 61


1. At its meeting held on 28 and 29 January 1993, the Working Party on Intellectual Property (Copyright) began a first reading of the above proposal.

A. General discussion

a) Appropriateness of the proposal

2. The United Kingdom delegation, supported by the Italian delegation, raised the question whether it would not have been more appropriate to have discussed the principles underlying the Commission's proposal in a forum open to non-governmental experts before being presented with a formal Commission proposal.
In this context, the German delegation, supported by the Belgian and Spanish delegations expressed strong doubts whether there was any need for Community harmonization of the legal protection of databases at this stage.

The Commission representative replied that discussions of this subject at Community level had begun in 1986; a chapter had been devoted to this subject in the Commission's green paper on copyright and the challenge of technology(1) in 1988; a hearing had been held in 1990 which had endorsed the principle of harmonizing the legal protection of databases on the basis of copyright; and discussions on this subject were under way in the World Intellectual Property Organization (WIPO) and in the GATT Uruguay Round. The Commission could therefore not accept that its proposal was premature.

b) Limitation of the proposal to electronic databases

3. The Belgian and Danish delegations considered that the Directive should not be limited to electronic databases (Article 1(1)), but should apply to databases in all forms. The German delegation was not convinced of the need to limit the Directive to electronic databases. The Italian delegation pointed out that there was no precedent for making copyright protection dependent upon the means of presentation of a work. The French delegation considered that the protection given to electronic databases would inevitably have repercussions on the protection of databases in

(1) 7675/88 PI 64.
paper form, and drew attention to the need to consider the implications in cases where an electronic database was created from an existing database in paper form. The United Kingdom delegation indicated that opinion in the United Kingdom was divided on the question whether or not the Directive should be limited to electronic databases, but pointed out that such limitation could complicate infringement proceedings where a database was available in both electronic and non-electronic forms. The Belgian, Spanish and Netherlands delegations pointed out that the wording of the 15th recital (".... means which include electronic ...") suggested that other forms of databases could be included in the scope of the Directive.

The Commission representative stated that the main risk of piracy was in relation to electronic databases, and that therefore the Commission had considered it appropriate to give the greatest priority to harmonization of the protection of such databases.

4. The Danish and United Kingdom delegations also considered that if the Directive were to be limited to electronic databases, careful consideration would have to be given to defining what was meant by "electronic databases". The French and Netherlands delegations questioned whether it would always be possible to make a clear distinction between "the electronic materials necessary for the operation of the database" and "any computer program used in the making or operation of the database" (Article 1(1)).
The Commission representative drew attention to the definition contained in the 13th recital and offered to provide glossary definitions of a number of terms used in the proposal.

5. The Danish delegation expressed doubts with regard to the application of the Directive to databases which contained collections of both facts and works. The French delegation was not convinced that databases containing collections of literary works could be dealt with in the same way as databases containing collections of audiovisual works or sound recordings.

c) Combination of copyright protection and sui generis protection

6. The French delegation welcomed the distinction made in the Commission's proposal between copyright protection and sui generis protection. The Belgian, Danish and United Kingdom delegations expressed doubts with regard to the relationship and the interface between these two types of protection. The Italian delegation considered that the combination of the two types of protection increased the complexity of the proposal and expressed misgivings at the fact that this combination would result in the possibility of compulsory licences being granted in respect of databases which were the subject of copyright protection.

The Commission representative explained that copyright protection could not be used to protect facts contained in a database, and that it was therefore necessary to make provision for some
other form of protection in addition to copyright protection.

7. With regard to copyright protection, the German delegation considered that the obligation to protect databases by copyright already existed under the Berne Convention for the Protection of Literary and Artistic Works. Together with the Danish delegation, it questioned whether the reference in Article 2(1) of the proposal to Article 2(5) of the Berne Convention should not be accompanied by a reference to Article 2(1) of that Convention.

The United Kingdom delegation doubted whether the copyright protection of databases should be based on the criteria of selection and arrangement, pointing out that this would result in less protection for some databases than that resulting from present law in the United Kingdom.

8. The German delegation considered that copyright protection should be combined not with sui generis protection, but with either a right related to copyright or protection under unfair competition law as part of a general harmonization of unfair competition law within the Community.

9. The Belgian, Netherlands and United Kingdom delegations considered that the term of sui generis protection should be longer than the 10 years proposed by the Commission.

The Commission representative considered that 10 years represented a fair balance between the interests of rightholders and the interests of the
general public in having competing products on the market.

10. The Danish and Spanish delegations expressed doubts with regard to the compulsory licence provisions proposed as a counterpart to the sui generis protection.

The Irish delegation expressed a favourable reaction to these provisions in this context.

The Belgian, German and French delegations indicated that they were still examining whether these provisions constituted an acceptable counterpart to the sui generis protection.

d) **Structure of the Directive**

11. Almost all delegations considered that the present structure of the Directive was not conducive to its comprehension, and several delegations invited the Commission to separate the provisions relating to copyright protection from those relating to sui generis protection. The Commission representative agreed to reconsider the structure while not changing the substance of the proposal.

e) **Authorship**

12. The German and Italian delegations expressed doubts on the need to harmonize the authorship of databases.

13. The Irish delegation considered the provisions on authorship (Article 3) unsatisfactory, as it

14. The Danish delegation expressed doubts with regard to the provision concerning the relationship between an employee and his employer (Article 3(4)).

15. The Belgian, Spanish, French, Italian, Netherlands and United Kingdom delegations considered that the provision concerning the authorship of collective works (Article 3(2)) would have to be examined in the light of the ongoing discussions in this respect in the content of the amended proposal for a Directive harmonizing the term of protection of copyright and certain related rights.

The German and Irish delegations questioned whether this provision was compatible with the Berne Convention.

f) Originality

16. The United Kingdom delegation expressed doubts with regard to the proposal that originality be assessed in relation to the selection or arrangement of the works or materials contained in a database (Article 2(3)).

The French delegation suggested that it would be sufficient to apply the criteria for originality normally applied by the Member States.

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The Spanish delegation considered that it was useful to have the criteria for originality set out in the Directive.

The Commission representative considered that it was not possible to define originality without reference to choice in the selection or arrangement of the works or materials concerned, as all copyright protection concerned choice in the selection or arrangement of otherwise unprotected elements.

**g) Article 4 of the proposal**

17. The Belgian, Danish, German, Irish, Netherlands and United Kingdom delegations expressed doubts as to the need for the inclusion of Article 4(1) in the Directive.

The Belgian, German, Netherlands and United Kingdom delegations considered that if this provision were to be included, it would have to be considered whether its wording was consistent with the Berne Convention.

The Danish, German and French delegations expressed particular concern with regard to the references to abstracts and summaries in this provision.

The Commission representative explained that the intention of this provision was to avoid the need for a creator of a database, who wished to make an abstract or a summary of a work for inclusion in his database, to seek the authorization of the author of the original work;
it was not intended to allow the creator of a database to take an existing abstract or summary without authorization; the Commission services would reconsider the wording of this provision in the light of the observations made.

18. The Netherlands delegation suggested that Article 4(2) might be transferred to the transitional provisions of the Directive.

h) Other general observations

19. The Netherlands delegation expressed difficulties in understanding a number of concepts used in the proposal.

20. The Danish delegation considered that it should be examined to what extent updating a database would affect the protection resulting from the Directive.

21. The German delegation questioned whether Article 5 was necessary and whether it was compatible with the Berne Convention.

The Commission representative considered that it was compatible with the Berne Convention, and pointed out that Directive 91/250/EEC contained a corresponding article.

22. The German delegation criticized the quality of the German translation of the proposal. The Netherlands delegation also drew attention to shortcomings in the Dutch version, in particular in Article 3.
B. Examination of the provisions

23. It was agreed that:

- the definitions in Article 1 would be examined in relation to the provisions in which the terms defined occurred;

- the Working Party would examine first the provisions relating to copyright protection, then those relating to sui generis protection.

Article 2(1)

24. The Commission representative pointed out that the term used to translate the English word "collections" throughout the proposal for a Directive should be the word used in Article 2(5) of the Berne Convention.

The Irish and United Kingdom delegations considered that "compilations" might be an acceptable alternative term in English.

25. The German delegation questioned the need for Article 2(1).

The Commission representative explained that the purpose of Article 2(1) was to require that the form of protection to be given to databases was that of copyright, and that they should be protected as collections within the meaning of Article 2(5) of the Berne Convention. Its structure was based on that of Article 1(1) of Directive 91/250/EEC.
26. The Belgian, Danish, German, Irish, Portuguese and United Kingdom delegations questioned whether the reference to Article 2(5) of the Berne Convention was not too restrictive; since that provision mentioned only collections of literary or artistic works, these delegations feared that this reference would exclude databases which were collections of facts. Some of these delegations suggested that this reference be supplemented by a reference to Article 2(1) of the Berne Convention.

The Commission representative pointed out that recent work in the GATT and in WIPO showed a trend to consider Article 2(5) of the Berne Convention as covering not only collections of works, but also collections of facts. If a database were to be protected as a literary or artistic work within the meaning of Article 2(1) of the Berne Convention, rather than as a collection within the meaning of Article 2(5) of that Convention, there would be a greater onus on the author to demonstrate the originality of his work than was required by the criteria of selection and arrangement contained in the latter provision.

**Article 2(2) and Article 1(1)**

27. With regard to the limitation of the proposal to electronic databases, see points 3 and 4 above.

28. A number of delegations questioned whether it was

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(4) This provision reads: "collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections."
intended that the criteria "arranged, stored and accessed by electronic means" in the definition of "database" in Article 1(1), which is referred to in Article 2(2), should be cumulative. The Commission representative confirmed that this was the intention.

29. The Netherlands and United Kingdom delegations asked whether a database on a CD-ROM would come within the definition in Article 1(1). The Commission representative considered that it would.

30. The Irish and United Kingdom delegations considered that it was not clear from this definition, particularly when it was read in conjunction with the 13th recital, that a database on a CD-ROM would come within the scope of the Directive but a database in paper form which was read by optical character recognition (OCR) technology would not. The Commission representative was invited to reconsider the wording in this respect.

31. The French, Netherlands and United Kingdom delegations asked for clarification of the terms "electronic materials necessary for the operation of the database" in Article 1(1).

The Commission representative explained that an electronic database was composed of the data which it contained, the software used in its making or operation, and the electronic materials (or tools) necessary for its operation; these tools were the thesaurus, the index and the system for obtaining or presenting information. The thesaurus and index could in some cases qualify for copyright protection in their own right. The system for obtaining or presenting information was not the software used for retrieving data, but the means chosen by the author of the database for ensuring that the information
contained in the database could be presented to the user in a user-friendly way.

32. The French delegation questioned why Article 1(1) would have the effect that a thesaurus or an index which was not sufficiently original to qualify for copyright protection in its own right would be given copyright protection as a result of its inclusion in an electronic database.

The Commission representative explained that it was unclear whether a thesaurus or an index, whether in electronic or paper form, would at present qualify for copyright protection in the Member States. In order to bring about a minimum level of harmonization in this respect, the Commission had proposed that these tools be eligible for copyright protection when included in an electronic database.

33. The Irish and Netherlands delegations asked for clarification as to the relationship between copyright protection for the thesaurus, the index and the system for obtaining or presenting information and the compulsory licensing provisions in Article 8.

The Commission representative explained that these compulsory licensing provisions were not applicable to:

- works protected by copyright which were included in an electronic database;

- the right in the selection or arrangement of works or materials contained in an electronic database;

- the thesaurus, index or system for presenting or obtaining information.
Compulsory licences were available under Article 8 for the commercial use of the contents of a database in the independent creation of a new database.

The United Kingdom delegation considered that it was not clear from the wording of Article 8 that these compulsory licences were available only in respect of the independent creation of a new database.

The Commission representative drew attention to the 31st recital in this context.

34. The Irish, Netherlands and United Kingdom delegations expressed doubts with regard to the inclusion of the "system for obtaining or presenting information" in the definition in Article 1(1). They considered that a system was something conceptual, and pointed out, with specific reference to Article 1(2) of Directive 91/250/EEC, that it was generally accepted that copyright protection applied to expression, not to ideas and principles.

The Commission representative considered that these systems would consist not only of ideas, but also of expression.

35. The Belgian, Danish, German, Irish and United Kingdom delegations questioned the reference in Article 2(2) to non-electronic databases remaining "protected to the extent provided for by Article 2(5) of the Berne Convention". They considered that a Community Directive should not prescribe what was to be protected under an international convention, and pointed out that since the scope of this Directive was limited to electronic databases, it should not stipulate how non-electronic databases were to be protected. Several of
these delegations suggested that it would be preferable to say that this Directive was without prejudice to the rules of national law and international law on the protection of collections of works or materials arranged, stored or accessed by non-electronic means. The United Kingdom delegation also pointed out that, since the Berne Convention gave minimum protection, Member States were free to provide protection for non-electronic databases which went beyond that provided for by Article 2(5) of the Berne Convention.

Article 2(3)

36. The French delegation questioned whether the criterion of selection alone or the criterion of arrangement alone would ensure a sufficient degree of originality; it suggested replacing the words "by reason of their selection or their arrangement" with the words "by reason of their selection and their arrangement".

The Commission representative considered that selection alone and arrangement alone would be sufficient, and pointed out that this alternative corresponded to the wording of Article 2(5) of the Berne Convention in the French-language version, which, in accordance with Article 37(1)(c) of that Convention, should prevail in case of differences of opinion on the interpretation of the various texts.

37. The Irish and United Kingdom delegations, while recognizing the relevance of the criteria of selection and arrangement in respect of copyright protection of collections of literary or artistic works, questioned the need for these criteria to be applied to collections of data in electronic databases. They considered that making copyright protection dependent upon selection of the
materials to be included in a database was dangerously close to protecting ideas by copyright. Application of this criterion would imply that the more comprehensive a database was, the less likely it would be to attract copyright protection, in spite of the greater investment and labour involved. They also questioned how the arrangement of material in an electronic database and the originality of such arrangement were to be assessed.

The German delegation also questioned the need for the words "by reason of their selection or their arrangement" in this provision, considering that the criterion "original in the sense that it is a collection of works or materials which constitutes the author's own intellectual creation" was sufficient without this qualification. It also questioned the need for the second sentence of Article 2(3).

The Commission representative and the French delegation considered that selection and arrangement were appropriate criteria for determining copyright protection, but that the investment and labour involved were not. The German delegation agreed with them on the latter point.

In this connection, the Irish and United Kingdom delegations questioned whether it was necessary for the Directive to prescribe the régime of protection to be applied to electronic databases. They asked whether it would be sufficient for the Directive to describe the protection to be given, leaving the Member States free to decide what form this protection should take.

The Commission representative considered that such an approach would not provide sufficiently harmonized protection for the database industry in the Community.
The United Kingdom delegation asked that a recital or a minutes statement be added to the effect that the terms of Article 2(3) were without prejudice to the freedom of Member States to decide whether or not to give copyright protection to computer-generated databases.

Article 2(4)

The German delegation suggested that in addition to the works or materials contained in a database, other parts of the database, such as the thesaurus or the index, could have copyright protection in their own right outside the protection given by the Directive.

The Commission representative explained that the thesaurus and the index would be covered by the copyright protection given by the Directive.

In reply to a question from the Netherlands delegation, the Commission representative explained that the purpose of the last part of Article 2(4) was to make it clear that the protection of a database resulting from the Directive in no way affected any rights, whatever the nature of those rights, subsisting in the works or materials contained in the database.

Article 3

This Article had been commented on in the general discussion (see points 12 to 15 above).

A number of delegations continued to question the need for this Article, pointing out that it would achieve relatively little harmonization.
44. If this Article were to be considered necessary, a number of delegations questioned whether it was essential that it should be so closely aligned on Article 2 of Directive 91/250/EEC.

The Commission representative pointed out that problems were likely to arise if the rules (resulting from this Directive) applicable to authorship of a database were to be different from the rules (resulting from Directive 91/250/EEC) applicable to authorship of a computer program incorporated in that database.

45. The Danish and United Kingdom delegations in particular reserved their positions on this Article until similar questions had been resolved in the framework of the amended proposal for a Directive on term of protection(9).

46. Several delegations also expressed reservations with regard to Article 3(4).

The Commission representative considered that this provision was necessary, since databases were often created by a number of persons under contracts of employment.

Article 4

47. A number of comments had been made on this Article in the course of the general discussion (see points 17 and 18 above).

48. The United Kingdom delegation considered that this provision should refer not only to the incorporation of

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works or materials into a database, but also to the
downloading of such works or materials from a database.

49. The United Kingdom delegation considered that it
would be useful to include a definition of the term
"bibliographical material".

The Commission representative explained that this
term would cover the title of a work, the name of its
author and its reference number. In the Commission's
view, it was necessary to state clearly that this
material was not covered by copyright protection, since
this was not clear at present in all Member States.

50. Several delegations considered that Article 4(1)
should be reformulated to make a clear distinction
between abstracts and summaries made by the author of the
original work, the incorporation of which into a database
would require the authorization of the rightholder in the
original work, and abstracts and summaries made by the
creator of the database, the incorporation of which into
a database would not require the authorization of the
rightholder in the original work.

The Netherlands delegation expressed doubts whether
the creator of a database could make an abstract or
summary of a work protected by copyright without the
authorization of the rightholder in that work.

The United Kingdom delegation suggested that
consideration be given to the possibility of providing
for a compulsory licence where the creator of a database
wished to incorporate into his database an abstract or
summary made by the author of the original work.

51. The Belgian, Irish and Italian delegations
considered that the term "summaries which do not substitute for the original works themselves" was unclear.

52. In reply to a question from the Belgian delegation, the Commission representative explained that "brief" was intended to qualify "abstracts", "quotations" and "summaries".

53. Several delegations considered that quotations should be dealt with separately from abstracts and summaries in this provision. They also considered that the reference to quotations should be expanded to include the safeguards contained in Article 10(1) and (3) of the Berne Convention.

54. The Chairman suggested that consideration be given to the possibility of Article 4 taking the form of a recommendation, and drew attention in this respect to the Recommendations for Settlement of Copyright Problems Arising from the Use of Computer Systems for Access to or the Creation of Works, adopted in Paris on 11 June 1982 by the joint UNESCO and WIPO Second Committee of Governmental Experts on Copyright Problems Arising from the Use of Computers for Access to or the Creation of Works\(^\text{(6)}\).

C. Other business

55. The Working Party reviewed the implementation of Directive 91/250/EEC. It noted that Denmark, Italy and the United Kingdom had already implemented this Directive, and that procedures were under way in the other Member States.

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\(^{6}\) See Annex.
The Commission representative reminded delegations that the Commission had written to Member States in Autumn 1992 asking for a table indicating the provisions of national law which implemented each of the provisions of the Directive.
Annex I. Recommendations for Settlement of Copyright Problems Arising from the Use of Computer Systems for Access to or the Creation of Works

Noting that States and international organizations are now giving high priority to information policy,
Recognizing that creation of systems for the organization and co-ordination of information and documentation has become a main element for the performance of the various functions of the society, in particular in scientific, economic, technical, political, cultural, educational and social fields,
Noting also that the rapid development of information technology and the importance of information products and services in international trade have led to the creation of computerized information systems, networks, and data bases, on both national and international levels, to enable information-seeking users to have direct access to such systems,
Taking into account that, at present, more and more works protected by copyright are used for storage in and retrieval from computer systems and this practice is likely to grow,
Considering that, at present, technological developments in the computer area have led to changes in methods of producing various categories of creative works which may respond to the general requirements for international and national copyright protection,
Recognizing the important role of copyright as a stimulus for creativity and the development of society,
Considering also that the use of the new technologies for access to or the creation of works should be facilitated consistently with the appropriate protection of works,
Taking note of the provisions of the international conventions on copyright actually in force,
Bearing in mind that the use of computer systems for access to or the creation of works has given rise to certain problems in the field of copyright,
Considering that the development towards international computerized information systems and the increasing transborder flow of data make it highly desirable to harmonise international views on the settlement of these copyright problems and
to achieve co-operation among States on common and practical solutions in this
connection.

The Committee is of the opinion that:
(a) the use of computer systems for access to or the creation of protected works
should be governed by the general principles of copyright protection as laid
down in particular in the international copyright conventions and such use does
not at present require amendments to these principles;
(b) the copyright problems raised by such use are complex and while settling them
national legislation should take into account the legitimate interests of both the
copyright owners and the users of the protected works in order to stimulate
creativity of authors and not hamper the dissemination of works by means of
computer technology;
(c) States, while seeking legal solutions on the basis of the existing principles or
enacting specific legal provisions governing the problems arising from the use of
computer systems for access to or the creation of works, should be guided by
the following recommendations:

USE OF COMPUTER SYSTEMS FOR ACCESS TO PROTECTED WORKS

Subject-matter to which the recommendations apply

1. These recommendations apply to material which either constitutes intellectual
creation and therefore is to be considered as enjoying protection under copyright
legislation or otherwise enjoys protection under such legislation (hereinafter referred to
as "protected works"). Bibliographic data as such of a particular protected work (name
of the author, title, publisher, year of publication, etc.) are not included in this
definition.

2. Subject to the provisions of paragraph 1 above, protected works may embrace
in particular the following categories:
(a) full texts, or substantial parts thereof and other complete representations of pro-
tected works;
(b) abbreviated representations of protected works either in the form of adaptations
or derivative works or in the forms of independent works;
(c) collections and compilations of information, whether or not resulting from data
processing, independently of the kind of information contained in them and of
their material support (including collections and compilations of bibliographic
data of several works);
(d) theses and similar works intended for the exploitation of computerized data
bases.

Rights concerned

3. Storage in and retrieval from computer systems (input and output) of protected
works may, as the case may be, involve at least the following rights of authors
provided for in either international conventions or national legislation on copyright
or both:
(a) the right to make or authorize making of translations, adaptations or other
derivative works;
(b) the right to reproduce any work involved;
(c) the right to make the work available to the public by direct communication;
(d) the moral rights.
Acts concerned

4. Input. The act of input of protected works into a computer system includes reproducing the works on a machine-readable material support and fixation of the works in the memory of a computer system. These acts (such as reproduction) should be considered as acts governed by the international conventions (Article 9(1) of the Berne Convention and Article IVbis (1) of the Universal Copyright Convention as revised in 1971) and national legislation on copyright and therefore subject to the author's exclusive rights and the requirement of prior authorization by the copyright owner.

For the purposes of this paragraph a work should be considered as reproduced when it is fixed in a form sufficiently stable to permit its communication to an individual.

5. Output. States should consider granting protection under copyright legislation in respect of output of protected subject-matter from computer systems whether this constitutes:

(a) a reproduction or a corresponding act (e.g. production of a hard copy print-out or fixation of texts, of drawings, of machine-readable forms, of sounds, of audio-visual works, etc. on analogous physical medium or a transmission of the contents of a data base into the memory of another computer system with or without an intermediary fixation); or

(b) an act whereby such subject-matter is made available to the public (e.g. as visual images or other perceivable form of a presentation of a work).

Provisions of national legislation concerning reproduction and direct communication to the public must normally apply to such acts.

6. However, in order to harmonize the approach of States in settling the problems relating to input and output and to provide the authors with the real possibility of exercising control when their works are put into computer systems, States should consider the desirability of express recognition under their national laws of the exclusive right of the author to make his work available to the public by means of computer systems from which a perceivable version of the work may be obtained. Such a right may apply to the acts of input or output or to the act of input only, the latter being, in this case, the starting-point of control exercised by the author over the distribution of his work.

Moral rights

7. General provisions in national and international law on moral rights are also applicable to the use of computers for access to protected works. States should consequently ensure that the obligations in this respect following from the relevant instruments are duly taken into account.

Limitations on copyright

8. States should give special consideration to the application of the limitations of copyright protection permitted under international conventions (Article 9(2), 10 and 10bis of the Berne Convention and Article IVbis, paragraph 2, of the Universal Copyright Convention) and provided for in national laws, with regard to the use of protected materials in computerized systems, taking into account the developments in the field of computerized systems and the impact which these sophisticated techniques may have on the application of such limitations.

9. States may consider the possibility of allowing in their domestic laws, as
an exception to the exclusive rights, certain uses of protected materials in computer systems but such use must be within the limits established by the international conventions on copyright and in no way reduce the level of protection provided for under the conventions.

10. To the extent to which the right of translation and reproduction is concerned, in relation to storage in and retrieval from computer systems of protected works, the developing countries may avail themselves under national legislation of the relevant special provisions contained in the Paris Act of the Berne Convention and the Universal Copyright Convention as revised in 1971.

Administration and exercise of rights and legislative measures

11. Storage in together with retrieval from computer systems of protected works should be based upon contractual agreements or other freely negotiated licences arranged either individually or collectively. Taking into account that both authors and society at large are mutually interested in rapid and easy dissemination of works, States should consider undertaking appropriate measures to facilitate effective systems for the proper exercise and administration of rights in respect of works used in computer systems and practical possibilities for the exercise of moral rights.

12. The introduction of non-voluntary licences in respect of use of protected works in computer systems is permissible only when freely negotiated licences as mentioned in the preceding paragraph are not practicable and only to the extent to which such licences are compatible with the relevant provisions of the international conventions on copyright. Although such use of protected works in computer systems can have a trans-border character, the effect of non-voluntary licences would be applicable only in the State where such licences have been prescribed.

Use of computer systems for creation of protected works

13. These recommendations do not deal with or affect the protection of computer software or programs as such which may enjoy protection under national laws (e.g. copyright, patent, unfair competition or trade secrets).

14. Where computer systems are used for the creation of works, States should basically consider them as a technical means used in the process of creation for achieving the results desired by human beings.

15. In order to be eligible for copyright protection the work produced with the help of computer systems must satisfy the general requirements for such protection established by the international conventions and national laws on copyright.

16. In the case of works produced with the use of computer systems, the copyright owner in such works can basically only be the person or persons who produced the creative element without which the resulting work would not be entitled to copyright protection. Consequently, the programmer (the person who created the programs) could be recognized as co-author only if he or she contributed to the work by such a creative effort.

17. When a computer system is used in the case of commissioned works or in the case of works by a person or persons under an employment contract the matter of attribution of copyright ownership should be left to national legislation.

18. Paragraphs 15 to 17 deal mainly with problems in connection with the creation of works by means of computer systems. It should, however, be borne in mind that these problems have, to some extent, aspects in common with those dealt with in the preceding paragraphs, e.g. as regards compilations, adaptations or translations produced by means of a computer system.
1 March 1993

WORKING DOCUMENT

of the Committee on Legal Affairs and Citizens' Rights

on a Commission proposal for a Council directive on the legal protection of databases
(COM(92)0024 final - SYN0393)

Draftsman: Mr Manuel GARCIA AMIGO
1. Introduction. Relation between copyright protection and the right to prevent unauthorized extraction of material from databases

The Commission's proposal for a directive aims to provide a harmonized and stable legal regime to protect and encourage the creation of databases in the Community.

The draft directive will demand no less than the introduction of new laws in most Member States. Very few countries, apart from Britain and Spain, make specific provision in their intellectual property law for databases. Many databases in paper form - and even some electronic databases - have enjoyed protection in the Member States as literary or intellectual works, as 'compilations'. In France, electronic databases were protected under the old law of 1957 and as a result of a liberalization of the law, as 'works of information', a concept not recognized by the old French law on intellectual property (see case law on the Montfort case, 1987 judgment of the Court of Cassation).

Nor could the authors of the Berne Convention foresee in their day the advent of new technologies, linked to the expansion of information, which were to give rise to new forms of literary creation and communication with the public.

This is why the addition of a protocol to the Berne Convention, which would cover the creation of electronic databases and computer programmes, is currently under discussion.

In both types of creative activity, however, the expression of the author's personality is largely overshadowed by the technology used to record the works in question. It is nevertheless undeniable that in many cases the creation of databases demands an intellectual effort involving ordering and selection, which requires copyright protection.

The draft directive does not provide copyright protection for all electronic databases as such, but only for those which fulfil the requirements of 'originality' laid down in Article 2 of the directive.

The great challenge which this measure represents is to strike a balance between Anglo-Saxon principles on intellectual property - which have provided protection for many of the databases currently operating on the Community market - and the continental system, which is far more stringent as regards verification of originality, without undermining Community criteria in the field established by other Community directives and, in particular, by the directive on computer programs.

In other words, the laws of the Anglo-Saxon countries have enabled many databases to enjoy protection as literary works, giving precedence above all to 'the technical work of the compiler', by contrast with other, more stringent criteria of originality laid down in the legislation and case law of certain Member States. British copyright law has even been used to protect exhaustive or virtually exhaustive lists or catalogues of data, which would not meet the criterion of originality laid down by the draft directive.
One thus needs to ask whether the application of certain of the directive's provisions (particularly those on 'originality' in Article 2(3), in conjunction with the provision laid down in Article 12(2) on the temporary application of the directive with retroactive force, might not result in a loss of the protection which certain databases enjoy in certain Member States today. Loss of protection could have clearly adverse effects on business within the Community, by, for instance, introducing a disincentive for production and reducing investment in this sector.

The Commission seems to have been aware of this problem in establishing a double system of protection in its draft directive; databases which do not, in themselves, meet the requirements of originality laid down by the directive, in that they are not original by reason of their selection or their arrangement, may nonetheless enjoy special protection against parasitic use of their material. Consequently, the maker of the databases will be entitled to prevent the unauthorized extraction or re-utilization for commercial purposes of the whole or part of the material contained in the databases.

Any databases protected under copyright may thus become gradually eligible for this sui generis right, as regards their material, except where such material is already protected under other intellectual property rights.

The purpose of this right is to protect the investment necessary for the creation and development of a database, the introduction of this sui generis right, which does not apply to intellectual property, would seem logical in principle.

However, ten years after the publication of the database, some databases may have increased their commercial value considerably. At the end of this period, such databases would be unprotected and would pass into the public domain. It would therefore be advisable to consider the possibility of extending the period for which this sui generis right of protection applies.

2. Consideration of a number of aspects of the proposal for a directive

2.1. Scope

This draft directive applies only to 'electronic' databases. It does not, therefore, cover databases 'in paper form' or databases incorporated into other types of support. The Commission's Explanatory Memorandum, however, states that if in practice divergent interpretations of the Berne Convention should arise in respect of databases in paper form, it might be possible to extend the directive to cover all databases in future. However, written databases will continue to enjoy protection as literary works in the Member States under Article 2(5) of the Berne Convention.

It is also important to mention that Article 1(1) of the draft directive clearly establishes that it does not apply to any computer program used in the making or operation of the database.

The first question which arises is thus whether it would be appropriate to extend the scope of the directive to include all databases. If so, it would be necessary to examine whether each and all of the provisions laid down in the directive could apply to databases in paper form.
2.2. Object of protection

The draft directive does not extend copyright protection to all databases as such, but only to those which are 'original'. Such databases enjoy protection equal to that accorded by the Member States to collections or anthologies, pursuant to Article 2(5) of the Berne Convention.

Not all collections of data are 'original' and thereby eligible for protection; only those which, by reason of their selection or their arrangement, constitute the author's own intellectual creation. At all events, the copyright protection for which databases which meet the requirements laid down in Article 2(3) are eligible can never extend to material contained therein, that is, to the works or materials which make up the collection. If this were not so, it would be possible under certain of the directive's provisions to grant obligatory licences for works accorded copyright protection.

Their contents, however, enjoy permanent protection under the new sui generis right to prevent unfair extraction for commercial purposes, except where the said contents are already protected by other intellectual property rights.

2.3. Acts performed in relation to the contents of a database - unfair extraction of the contents

Article 8 of the draft directive is one of the most problematic in the document.

The Commission's intention in incorporating this article in the draft directive seems to have been to prevent rightholders from abusing a dominant position and to avoid a negative impact on free competition. This article states that if the works or materials contained in a database which is made publicly available cannot be independently created, collected or obtained independently from any other source, the right to extract and re-utilize them for commercial purposes shall be licensed.

A licence shall also be issued if the database is made publicly available by a public body which is established to assemble or disclose information. It would, however, be advisable to think carefully about this provision, which will particularly affect commercial competition relations between undertakings.

In principle, it seems sensible to apply a provision of this type where public bodies, or even undertakings operating on the market as semi-monopolies, are concerned. However, should it be applied generally in a normal competition situation? Should it be applied to all competitors, when the directive in question lays down a general principle of free contracting between producers, users and competitors? Might this obligatory licence, applied across the board, not function as a kind of private expropriation of the rightholder's exclusive rights?

The Commission itself acknowledges in recital 33 (although this does not seem to be reflected in the rest of the text) that it is not legitimate to apply for such licences for reasons of commercial expediency, i.e. because they save time, effort or financial investment.
Another problem raised by this article is the possibility that the lawful user may extract and re-utilize 'insubstantial parts' of works or materials contained in a database. 'Insubstantial parts' are 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.

This concept, however, is vague and too broad, and it seems likely to give rise to a considerable number of disputes in the Member States.

One must recognize that it is difficult to establish specific or percentage-based criteria to determine when the extraction of an insubstantial part is 'legitimate' under the directive, or when it constitutes a parasitic act which infringes the rightholder's exclusive rights.

One should therefore examine the need to establish other criteria to define this concept, or, on the contrary, to determine whether its interpretation should be left once and for all to the courts of the Member States.

It does, however, follow from the various provisions of Article 8 and the arguments set out that there is a need to include in the directive a specific definition of the phrase 'commercial purposes'.

2.4. Period of protection

Article 9 poses another of the draft directive's major problems.

When the Commission's committee on legal affairs examined this proposal in December 1992, the Commission stated that its aim in this context was to apply to databases a system similar to that applied to new editions of books. It should, however, be reiterated here that copyright protection applies only to databases deemed original by reason of the selection or arrangement of the materials they contain. Consequently, only extensive changes in the selection or arrangement of databases, to the extent that such databases constitute a new edition, could justify extension of the period of protection. Insubstantial changes in the selection or arrangement (such as simply inputting more data), on the other hand, would not necessitate extension of the period of protection.

The problem does not arise so much in connection with databases protected by copyright, as in connection with those whose contents are protected solely by the sui generis right. The problem is even more acute where 'dynamic' databases, which need to be constantly updated, are concerned.

The constant input of new material may considerably increase the economic value of the contents and, in the long term, give rise to far-reaching changes in the substance which constitutes the database's contents.

Article 9(4) clearly states that insubstantial changes to the contents of a database shall not extend the original period of protection of that database by means of the right to prevent unfair extraction.
Moreover, the directive does not define such 'insubstantial changes' in relation to the contents protected by the right to prevent unfair extraction. Article 1(4) of the directive merely defines insubstantial changes as additions, deletions or alterations which may be made to the selection or arrangement of the contents, which are protected by copyright, not by the sui generis right. Such insubstantial changes shall not extend the period of protection under copyright, since changes in the selection or arrangement of the content are necessary for the database to continue to function in the way intended by its maker.

Some thought should be given to the period of protection to be accorded to the content of a database which is constantly updated, without this necessarily implying preference for permanent protection.

Accordingly, some of the sectors consulted have raised questions about the way in which the duration of the right to protection would be calculated.

During the exchange of views in the Commission's committee on legal affairs held in December 1992, the Commission stated that it had discussed two possible options in this connection:

- Protection for a fixed ten-year period, counting from the publication of the database.
- The second option would be to count this ten-year period from the date of input of material or information of any type into the database. The Commission rejected this second proposal on grounds of excessive bureaucracy.

According to certain of the sectors concerned, which favoured the second option, a system of individual 'stamps' for each item of data input would have to be set up, to prove the exact date of input into the contents of the database.

Since operations of this type may depend chiefly on the technical characteristics of the support or program utilized, it would be advisable to consider the costs which such a system would entail, which might prove too heavy for small and medium-sized undertakings. There is also a need to examine whether a provision of this type could be incorporated on an ex-lege or compulsory basis in a draft directive like the one under consideration.

3. Other provisions contained in the draft directive

For reasons of space, your rapporteur cannot cover all aspects of the draft directive. He does, however, reserve the right to take action later, at the amendments stage.

He would, however, make the following general observations:

3.1. Authorship and author's exclusive rights

As regards entitlement to copyright over a database and authorship (Article 3) and restricted acts in relation to copyright (Article 5), the draft directive is broadly similar to the corresponding articles in the directive on computer programs.
3.2. Incorporation of works or materials into a database

As regards the input into a database of 'whole' works or materials already protected under other intellectual property rights, it would be appropriate to consider whether or not this provision is superfluous, bearing in mind that the laws of the Member States will continue to apply in this area at any rate. Consequently, the original author's authorization will always be required. As regards the incorporation of other materials, such as brief abstracts, quotations, summaries or bibliographical material, the Commission has opted for the criterion which emerged from the famous French case law on the Montfort case. The incorporation of such material shall not require the author's authorization, provided that it is not a substitute for the original work.

3.3. Exceptions to restricted acts relating to copyright, on the selection or arrangement of the content of the database

Although access to databases shall be governed by contractual agreements between the parties concerned, the Commission has chosen to make an exception in favour of the lawful user. In utilizing the database which he has acquired, the user often commits illegal acts, especially reproduction, which may infringe the author's exclusive rights to the selection and arrangement of the database's contents.

The Commission states that once a database has been legally acquired, the legitimate user shall not require the author's authorization to perform the necessary actions to access and use the contents of the database.

3.4. Exceptions in relation to the copyright on the contents

Article 7 allows the Member States to continue applying the derogations provided for by their laws, such as private copies or the right to brief quotations and illustrations for the purposes of teaching, provided that such use is compatible with fair practice in relation to the works or materials making up the contents of the database and that the material in question is already protected by copyright.

3.5. Reciprocal arrangements with third countries with respect to the right to prevent the unauthorized extraction of the contents of a database

The right to prevent the unfair extraction of the contents is not a right under intellectual property law, and therefore falls outside the scope of the Berne Convention, which is based on the principle that such matters must be dealt with at national level.

Under the draft directive, this right can therefore be extended to databases produced in third countries on a reciprocal basis only, or -which comes to the same - if such countries provide comparable protection for databases created by Member State nationals. To this end, as provided for by Article 11(3), the Community can conclude the necessary conventional instruments.
PARLEMENT EUROPEEN

COMMISSION JURIDIQUE
ET DES DROITS DES CITOYENS

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DOCUMENT n° 2

de

M. Richard BAKER

e:\wpdoc\divers\aud17-3.pb
5 mars 1993
(81/91)
To: The Committee on Legal Affairs & Citizen Rights of the European Parliament


I greatly appreciate the opportunity to contribute to the deliberations of the Legal Affairs Committee on this important proposal.

As the Legal Director of Reed International I speak on behalf of a major UK based International publishing and information group of companies whose databases include such well known products as the World Airways Guide, The Hotel and Travel Index, The Martindale-Hubbell Law Directories and Digests, Books in Print, Who's Who (the American version) and Kelly's & Kompass Business Directories.

As of 1st January, 1993 we became at an operating level Reed Elsevier plc through our merger with the leading scientific publisher Elsevier NV which also has a considerable interest in database publishing as abstracting develops in that direction. Although I expect that Reed's and Elsevier's views will become harmonised much more rapidly than the views of Community members on these subjects, after only two months I have to say I do not as yet seek to represent the Elsevier view of the Directive which my Dutch colleague Erik Ekker puts forward as a member of the Legal Advisory Board of DGXIII and through his Chairmanship of the Copyright Council of the Dutch Publishers Association.

Reed wholeheartedly welcomes the initiative of the Commission in putting forward its proposal for a Directive to cover the specific issues that arise in relation to the construction and maintenance of databases. We believe that copyright law as it has evolved is likely to be ill suited for tackling all the aspects of database protection. I am not a expert copyright lawyer but I am relieved to find that my new colleague Mr. Ekker (who is) shares this view also. Therefore I believe that the new right to prevent unfair extraction suggested is a necessary and imaginative legal response to the challenge of technology and I have concentrated my efforts on four or five main points relating to these new rights.

I think it is equally important to ensure that the provisions of the Directive relating to copyright law and to the relationship between Berne convention rights and the new protection are carefully examined but others will be able to help you more than I can on these subjects.
1. **Scope of Directive (Article 1 & 2)**

Many of our largest directories are stored on electronic databases and distributed by both electronic and hard copy means. For example, Kompass revenues are split between hard copy and online database subscription and libraries are increasingly using Books in Print in CD-ROM form. Although hard copy versions of the World Airways Guide published by ABC International still abound we see increasing use being made of CD delivery of this database to travel professionals. I actually have the ABC Travel Disc loaded into my own PC. In the legal directories market Martindale Hubbell has just become available to subscribers via Lexis and other opportunities beckon.

Hard copy will, of course, remain a viable alternative method of delivery of this information to certain segments of the market for as far ahead as we can see. Moreover in developing databases, publishers and information providers often do not know the preferred delivery system for material on it and need to conduct actual research by sample before determining the market’s preference.

The effect of the definition of "database" in Article 1 however is to restrict the right to prevent unfair extraction to databases which are distributed electronically.

Where the originality requirement for copyright protection is not met, the effect of this is to remove any protection, particularly where ‘sweat of the brow’ copyright protection had previously been available, from database products distributed in hard copy form.

Once the investment in a database product has been made, the owner has created the economic effect which this proposal is designed to protect. It seems to me that subsequently if an owner can prove unauthorised use of factual material derived from an electronic database the means of delivery should be irrelevant. I think UK owners may well be prepared to harmonise back to European originality definitions on copyright if this approach was adopted, allowing any problems of overlap to be dealt with by Article 12.

Accordingly, I suggest (using the English version) that the relevant words in Article 1(1) read:-

"a collection of works or materials arranged and stored by electronic means and accessed by electronic or non-electronic means."
2. Parts (Articles 1 & 8)

Some problems arise about the definition of parts. Multiple separate 'products' are produced from one database. For example valuable specialised mailing lists are formed from tiny parts of our Kompass database. If such products can be fairly extracted individually, much of the value of the new protection is lost. I consider that the addition of the words "or its products" after "the database" where those words appear in 1(3) (twice) would be a more practicable test of insubstantiality? This would also be consistent with the 'brief extracts of works' derogation from copyright in Article 7.

3. Revisions & Duration (Article 9)

The ten year protection period appeals to owners the value of whose databases lies in storing relatively current information. The Commission recognises this point in its preamble (para 5.c page 47). Our initial reaction to this was based on the hope and expectation that a way would be found to deal with the position of updates.

If this is not done the effect of the directive would be to impose on producers a requirement to reconstitute their database design every ten years. A sensible time period for protection would thus be converted into an arbitrary re-design criterion for producers.

The Commission's suggestion for date stamping individual pieces of information is a thoughtful response to this point but one which we think would throw up major difficulties in practice. There are at least two other approaches which could be adopted.

a) At some point, certain databases change completely as a result of the cumulative effect of successive insubstantial changes (e.g. World Airways Guide). One could therefore envisage clarifying Article 9(4) by adding after "insubstantial changes to the contents of a database" the words "(which do not themselves or when combined with other changes to the database subsequent to the date of first protection amount to a new database)".

b) Other databases consist of the additional assertion of new material which does not replace the old (e.g. Books in Print). Here individual changes do not amount to a new database and so would not benefit from suggestion a). My conclusion on these cases which I have reached after initially supporting the ten year period as adequate, is that the only practicable solution may be a longer period of protection of up to twenty-five years.
4. Licensing (Article 8.1)

We understand that the need to harmonise this proposal with the requirements of competition policy suggests licensed access where the material on the database has in effect been exclusively contracted for by the database producer. However the present language of the directive could also allow member states to legislate in a way which would apply compulsory licensing to a wider group of situations than this. While accepting that the following amendment may be redundant in the Commission's view, my experience of my own country's enthusiasm for legislating on directives in a somewhat restrictive fashion leads me to suggest that in Article 8(1) after (line 3) "materials" there should be inserted "or similar works or materials" and after "cannot" insert "(whether by investment of appropriate resources or otherwise)".

5. Licence Valuation (Article 8.3)

It is important that the licensing provisions clearly ensure that an economic return to the database producer results from the process of making the material available to third parties. For this to happen it is necessary that the purpose of the arbitration referred to in this paragraph is to value the new right and provide for a return to the right holder from the licensee based on valuation principles rather than any other considerations. For this reason I would add "having regard to the value of the right to prevent the unauthorised extraction and re-utilisation of the contents of a database to its owner" to the end of Article 8.3.

I have limited my comments on unfair extraction to these few points to indicate that in general we welcome and support this proposal. I hope that those of my more expert colleagues on copyright who are concerned about the interaction of copyright and the new right will not mind me saying that, as a database producer, it is better to have a choice of remedies than none at all; and I also hope that at the end of their deliberations your Committee's report will facilitate and encourage the creation of this new and potentially very useful right.
PARLEMENT EUROPEEN

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DOCUMENT n° 3

de

M. Charles CLARK
Fédération des Editeurs Européens

e:\wpdoc\divers\aud17-3.pb
mars 1993
(81/91)
A First Assessment of this draft Directive was made by me for the FEP and for the IPCC in March 1992 (attached, for convenience). Nothing in the commentaries and articles published since that time invalidates the Assessment. It is, however, only on Assessment, and in January 1993 the publishing community must move from an assessment to a position which we can propose and defend, as the draft Directive begins to move through the pressure of reviews at Parliamentary, Council and Commission levels to a ‘common position’, and then to a final Directive.

The major problem areas in the draft Directive are set out in my Assessment under the headings of Originality, Fair Extraction (the compulsory licence), Term of Protection, and Remedies. There are minor problems, again set out in the Assessment, of Substantial and Insubstantial Part, and of Abstracts. There should not be too much difficulty in persuading the EC that the level of insubstantiality is set too high, and that the Article on Abstracts should simply be deleted.

The major problem areas on the other hand, are substantial. After much thought and discussion with colleagues, I have come to the view that while the unfair extraction right is admirably intentioned (not least in favour of publishers’ investment in databases whose contents are not protected by copyright) the price for adopting the draft Directive as a whole is too high, because particularly of the uncertainties that surround originality, the proposed compulsory licence in favour of competing database producers, and the uncertainties that surround duration.
One alternative route, proposed by the Economic and Social Affairs Committee, is to adopt a right to prevent unfair extraction of the contents of a database as an act restricted by copyright, alongside the other classic rights of e.g. reproduction, performance, etc. This route would involve wholesale rethinking by member nations of the nature of copyright protection, and is most unlikely to find favour in the droit d'auteur tradition. It does, however, suggest that somewhere between copyright and the (to borrow from the EP Rapporteur) 'trop baroque' sui generis right against unfair extraction in the draft Directive, there may lie a way forward through a neighbouring right approach. The 'building blocks' for a neighbouring right Directive are offered in the following draft Articles, together with short comments. The draft draws, wherever appropriate, on the EC Computer Programs Directive.

ARTICLE 1

Member States shall protect databases in accordance with the terms of this Directive. For the purpose of this Directive, "database" means any collection of information which is stored and accessed by electronic means.

Comment

Unlike the Computer Programs Directive, no attempt is made in this draft to restrict the protection to a particular form of copyright protection, nor is an originality test imposed. The normal requirement of authorship in some member states are simply not relevant to commercial databases. The basic philosophy of this draft is that of the English judge who said: 'if it is worth copying, it is worth protecting'. It should also be noted that the definition of originality adopted in the EC Directive on the Protection of Computer Programs, 'the author's own intellectual creation', is conspicuously absent from the drafts for implementation of that Directive in the national laws for Denmark, France, The Netherlands and the UK, so that, in copyright, uncertainty will continue.

The definition of database is broad. The expression "information" is employed to embrace copyright and public domain works as well as data that does not constitute a 'work' in the copyright sense.
Protecting all databases on the same footing creates a level playing field in the EC internal market and makes it easier for both providers and users alike, who will not have to ask, and answer, very difficult questions about whether a particular compilation is, or is not, protected.

By structuring the rights so that they are analogous to copyright, the draft is clearly proposing a new neighbouring right. Member States with common law systems may, however, be able to include the rights within copyright statute.

ARTICLE 2

The natural or legal person who compiles the database shall be the first owner of the rights in the database.

Comment

The neighbouring right approach allows one to move away from the irrelevant search to identify an author and the qualities of authorship in the production of a database. The natural place for the rights is with the organisation that compiles the information into the database, effectively the publisher.

ARTICLE 3

Protection shall be granted to all natural or legal persons in Community countries and to those from third countries who provide equivalent protection to EC databases.

Comment

Since a neighbouring right approach is suggested, there is no obligation under Berne. The experience with semiconductor chip protection is an interesting precedent. The USA introduced protection on the basis of reciprocity, which spurred the EC, and others, into a very quick legislative response. With the completion of the single market, US and Japan could not afford to be without protection in Europe and the EC member states can insist on proper protection in those markets. It may well be that in their cases they can satisfy a reciprocity test on the basis of their existing laws.
This reciprocity approach is not without its political problems for the publishing community. On the one hand, to offer protection on the national treatment basis of Berne is no guarantee, alas, that third countries would do the same. On the other hand, the IPA and STM Group have consistently supported national treatment, and since the protection of computer programs is seen as a copyright right under Berne, the EC has gone down that route in its Computer Programs Directive. This proposal for a neighbouring rights regime must open the debate up again in relation to protection of databases.

ARTICLE 4

The owner of the rights shall have the exclusive right to do, or authorise, any of the following acts:

a) permanent or temporary reproduction by electronic means from the database of any material stored in it, whether by loading into another electronic storage medium or computer memory or by displaying on a screen.

b) translation, adaptation or alteration of the database by electronic means.

Comment

This is, of course, the central provision. The reproduction right (a) is partly modelled on that in the Computer Programs Directive. The rights in the database are only infringed if it is accessed. Independent compilation would not be prevented, even if this compilation was the same as the original, both in content and expression. All would be free to make a database of, say, telephone numbers, providing they made the compilation without accessing an existing database.

The reproduction right is however not limited by any requirement that a substantial part must be taken or that the information constitutes a 'work' or part of it, nor is it subject to fair use/fair dealing limitations. The issue of Substantiality is thus disposed of, and the difficulty which the Berne Art. 2 (5) has of being limited to collections of 'works' is avoided.
The adaptation right (b) is an integrity right, not in the sense of the moral right of integrity, but as a means of preserving the integrity of the data in the database which can be easily corrupted.

ARTICLE 5

In the absence of specific provisions, the acts referred to in Article 4 shall not require authorisation when done by a person with lawful access to the database to the extent necessary for the use of the database in accordance with its intended purpose.

Comment

This provides the only exception and is based on Article 5.1 of the Computer Programs Directive. It probably does no more than recognise legal principles such as 'implied licence'.

ARTICLE 6

Members States shall provide appropriate remedies against:

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

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

c) accessing a database knowing, or having reason to believe, that access was not authorised by the rights owner;

d) any act of putting into circulation, or the possession for commercial purposes, of any means, the intended purpose of which is to facilitate the unauthorised removal of any technical device applied to prevent, deter or to measure the extent of copying of, or access to, database.

Member States shall also provide for the seizure of infringing copies and of any means referred to in (d) above.
This draws on Article 7 of the Computer Program Directive, and also brings in to the debate the issue of not allowing circumvention of a device incorporated in the database to provide the database owner 'record and reward' information, which would be the base for reward for use of the database.

ARTICLE 7

The database shall be protected for 10 years from the end of year following the last substantial addition to, or deletion from, the material stored in the database.

Comment

The term of protection in neighbouring rights is often dated from publication or some other public activity. This is not appropriate here. First, the ever changing nature of the database makes it difficult to determine what is the subject of protection. Secondly, a number of databases may not be made available in terms which would satisfy some tests of "publication": they may, indeed, not be made available to the public at all.

This issue of duration is not an easy one. On balance, it seems preferable to offer maximum protection, even although substantial changes (and how do we measure 'substantial'?) will create for certain databases perpetual copyright. The alternative of a fixed term of protection running from first fixation would leave long-established, but ever-changing databases without protection. If, however, a period of 50 years (a familiar period for neighbouring rights) were adopted after first fixation, that period might be sufficient protection for most databases.

ARTICLE 8

1. The provisions of this directive shall be without prejudice to other legal provisions such as, but not confined to, those concerning patents rights, trade marks, unfair competition, trade secrets, protection of semiconductor products, or the law of contract.
2. In particular, it shall not prejudice any rights in copyright or neighbouring rights which are enjoyed by the owners of rights in works included in the database or which exist in the database as a whole.

Comment

This Article ensures that other legal rights and obligations are not prejudiced and is similar in form to that in the Computer Program Directive. Paragraph 2 preserves the rights of those whose 'works' are incorporated in the database. This is a welcome consequence of EC Member States' membership of the Berne Convention. Paragraph 2 also preserves full protection in those databases which, by virtue of showing the necessary creativity, qualify for copyright protection.

I am well aware that this Draft Proposal does not address (never mind solve) all the problems inherent in the protection of databases. It is offered as something for colleagues to get their teeth into. We need to concentrate time and energy in the first few months of 1993.

CHARLES CLARK
PARLEMENT EUROPEEN

COMMISSION JURIDIQUE
ET DES DROITS DES CITOYENS

Réunion des 16 au 18 mars 1993
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DOCUMENT n° 4

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de

M. Gabriel LAFFERRANDIE

European Space Agency

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15 mars 1993

(81/91)
Honourable Members of Parliament, Mister Chairman,

Let me thank you for giving the European Space Agency the opportunity to intervene for such an important Forum as this Legal Committee of the European Parliament. I would like to emphasise the special character of this session for the European Space Agency as it will constitute the first time that ESA will address this Committee on a subject that is of great importance to all of us namely the observation of the earth and its environment by satellites, in short remote sensing, which will enable mankind to monitor better changes of the earth environment and at the same time will provide essential information for managing the earth resources.

Let me first explain to you why ESA is giving this intervention and what its activities have to do with today's discussion on the Draft Directive on the legal protection of databases. ESA is the European Space Research and Development Agency with 13 Member States. ESA is an international intergovernmental organisation with as its main goal to carry out R&D projects related to space activities. Most of the money contributed by the Member States is used for industrial research and development contracts managed by a relatively small staff of engineers and administrators of the Agency. One of the important programmes of the Agency is the Earth Observation programme and ESA developed the successful European Remote Sensing Satellite (ERS-1) which was launched in 1991 and operated by the Agency. ERS-1 should be followed in the near future by a number of other satellites monitoring the earth environment and assisting meteorological services in carrying out their useful tasks. These new satellites are for example the European Polar Platform destined for environmental research and the METOP programme which will provide meteorological data from polar orbits.

Other European remote sensing satellites are the Meteosat satellite generation developed by ESA which data are distributed by the Eumetsat organisation and the French SPOT satellite which was launched in 1986.

Currently, ESA and the European industry are further developing the necessary ground segment to use the data these satellites provide. In this ground segment active participation of the users of the data, network providers and value added industry is needed in order to achieve an optimal use of the data and to develop a European industry having the knowledge and technology to distribute the data. One of the main obstacles to develop the ground segment and the service industry using the data is the legal uncertainty with regard to the protection of these data. The only solution for creating a healthy and viable economic chain justifying the expectation of profitability is to provide the private sector with an adequate legal tool at its disposal to enable recovering the investments needed. At present no clear legal framework exists granting the protection of remote sensing data. The European Space Agency has studied together with ECSL and the European Commission ways of improving this situation and the Draft Council Directive on the legal protection of databases appears to be the possible adequate legal framework for the protection of these remote sensing data. This is the reason why ESA gives so much importance to this Directive.
Before going further into detail I first would like to introduce to you briefly the activities and structure of the European Space Agency, a European international organisation established in 1975.

After that I will give a short overview of the relationship between ESA and the Community and I will describe remote sensing and its importance for environmental monitoring and the prominent role Europe plays through ESA.

Finally I will discuss the Draft Directive and its relevance and importance for European remote sensing activities.

1) ESA

The European Space Agency and the European Community have almost the same member states. ESA has currently thirteen member states of which 10 states are also member of the European Community. Four states Austria, Norway, Sweden, and Switzerland are only ESA Member State and three EC Member States, Greece, Luxembourg and Portugal are not a member of ESA. Finland is an Associate State of ESA and is planned to become full member in 1995 and ESA has a special cooperation relation with Canada which participates in several programmes of the Agency.

The main purpose of ESA is "to provide for and to promote, for exclusively peaceful purposes, cooperation among European States in space research and technology and their space applications, with a view of their being used for scientific purposes and for operational space applications systems".

ESA developed very quickly since its establishment in 1975, and is the main organisation that made Europe the third space power in the World with its Ariane Launcher programme, its telecommunications programme OTS and ECS now widely used for pan-European television programmes, Olympus, and EMS, its Columbus space station and its Earth Observation programme ERS.

ESA played a key role for the establishment of INMARSAT (by developing the MARECS satellites used by INMARSAT), EUTELSAT and EUMETSAT all international organisations which carry out the operational activities of satellite initially developed by ESA, and Arianespace which holds currently some 50% of the world market for launchers and which is responsible for the commercialisation of the by ESA developed Ariane launchers.

Apart from these applications programmes ESA carried out various scientific missions for exploring the Universe with as an example the successful encounter with the Halley Comet in March 1986.

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1 Article 2 of the ESA Convention
2) ESA and Europe

Space activities were always of interest to Community entities and for example in 1985 the European Parliament adopted the (Toksvig) report that discussed ESA activities and that supported the policy of ESA with an emphasis on the creation of an independent European Space capacity.

Since 1987, with the adoption of the Single European Act, the European Community became more actively involved in space policy as it is now considered to be falling under the general R&D competence of the Community. A number of documents have been published within the European Community framework with regard the question of the role of the Community in space activities in Europe and on the importance of space activities for Europe in general.

In this respect the Resolution on Space Policy adopted by the Parliament in 1990 is important to mention because in this report it was advised amongst others to "suggest proposals for solutions in the three most urgent fields of European Space Policy namely industrial utilisation of space technology, de-regulation of satellite telecommunications, the use of earth observation satellites for environmental and resource control and monitoring".

With regard the relation between the European Community and ESA it was concluded that: "the overall objectives of the Community and ESA are the same: thus a sound basis for harmonious cooperation between the "two bodies" exists" but ESA as an intergovernmental international organisation has the character of a joint venture which implies that there exists no overall mutual legal or political obligations towards another and that there is no enforcement power of ESA towards its Member states.

The Community, however, as a supranational organisation has the instruments to define, implement and enforce common policies. Therefore, the Report concluded, the role of the Community is to complement ESA activities for the general benefit of Europe. Of course we are speaking here of two separate international organisations with different roles and responsibilities. The European Community with a prominent political and economic role and the European Space Agency with a responsibility of the management of the major space R&D programmes in Europe.

One of the means which was identified to complement ESA activities is "to enact the necessary legislation in Member states to make possible the full exploitation in Europe of the potential of space flight and technology by creating a favourable legal framework for the creation or growth of new or existing space markets".

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2 Ref: PE 95.639/fin: doc A2108/85
3 See, also the first Communication of the Commission on Space entitled "The European Community and Space: A Coherent Approach", July 1988
4 Rovsing Report; European Space Policy, European Parliament, 1990, EP/R9009001:
This is exactly the reason why I am giving this presentation for the Parliament concerning the interest the space community has in the Draft Directive on the legal protection of databases.

Last year a number of documents were published by the European Community which draw attention to the problem of the protection of satellite remote sensing data.

For example in its Communication to the Council and the European Parliament, the Commission stated that uncertainties exist concerning the conditions of access to earth observation data and that therefore legislative action should be undertaken to establish the appropriate legal conditions for the protection of intellectual property rights for satellite data.

In the same Communication it is provided that the Commission will make proposals to increase and intensify the use of satellite data within the framework of various Community policies.

It therefore obvious that for achieving this aim of the Community a clear legal framework for obtaining and distributing the data is essential and beneficial. Now, the Community is in the position to use its regulatory powers to harmonise and strengthen the use of remote sensing data in Europe and I can only hope that the Members of Parliament can come to the same conclusion as the Agency did and will support the recommendations of ESA.

For the Agency it is clear that both the Community and ESA have a political interest in stimulating the use of remote sensing data and that creating a stable legal regime for these data can be an important tool for reaching this aim. In this respect at the ESA Council Meetings at Ministerial level, held in Munich in November 1991 and in Granada in November 1992, European ministers competent for space matters unanimously supported the view of acquiring a solid basis for the formulation and strengthening of a European Earth Observation Policy.

I will now give you a short overview on the earth observation activities carried out by European actors and especially within the framework of ESA.

3) Importance of the Draft Directive for European Remote Sensing Activities

At this moment legal protection of remote sensing data is either lacking or depends on the interpretation of national legislations by national Courts. The main question concerns the legal character of the data produced by remote sensing satellites. In the actual practice there appears to be confusion under which type of law the data should fall. Conflicting schemes for protection are applied in the Member States as copyright laws, trade secret laws, or just ownership rights which all lead to different rights and obligations for the suppliers and distributors of these data.

5"The European Community and Space: Challenges, Opportunities and new Actions" of 23 September 1992 (COM(92) 360 final)

6 ESA/C-M/CIV/Res.1 (Final), Chapter II. A. 8
This uncertainty hampers the further development of the European remote sensing industry as (private) investments will only be made when clear legal rights and obligations are established making the risks of investments in the remote sensing industry predictable.

Currently, satellite operators in the remote sensing area claim ownership and copyright on their data. These operators in Europe are Spot Image, ESA and Eumetsat. The last one promoted even changes to its Convention in an attempt to claim copyright-protection and ownership over its data and started to encrypt its signal in order to prevent unauthorised reception of the meteorological data and images. However, it is clear that copyright does not really solve the uncertainty concerning the legal status of these data as remote sensing activities have nothing in common with concepts like authorship, originality, creativity and human intervention. All essential doctrinal concepts within copyright. Also as we have stated before copyright protection due to the interpretations of the various national laws may lead to a un harmonised legal situation in Europe with regard the protection of remote sensing data.

Also ESA and other satellite operators are continuously confronted when negotiating data reception agreements with non-member countries with the question what kind of rights it could be asserted on these data, and under which applicable legislation. This of course was very important in agreeing the rights of the receiver of the data and to formulate in this way a data policy.

The Draft Directive on the protection of databases could end this unclear situation.

If remote sensing activities are to be considered as activities creating databases falling under the protection of the Draft Directive an important goal for the European remote sensing activities will be reached: a harmonised legal situation for protecting remote sensing data in Europe. Due to the sui-generis approach of the Draft Directive questions with regard to the author, originality and creativity have become irrelevant which when we consider the nature of remote sensing activities would constitute a far better legal approach and solution.

This will stimulate (private) investments in remote sensing activities in Europe. At the same time this harmonised environment would enable the remote sensing operators and the European Space Agency to base its data policy on a well vested legal fundament.

Moreover, it would make the European position in international fora dealing with data policy and the exchange of remote sensing data much stronger.

Now I have to discuss the needs for the European remote sensing community with regard the current Draft Directive as it has been proposed by the Commission.

It is clear that this Directive has not been drafted having in mind the needs of the space remote sensing players in Europe and that therefore the actual version of the Directive can only be applied to remote sensing activities when an extensive interpretation of the articles will be given. However, due to the nature of a Directive and the freedom it gives to the States to implement legislation applying the Directive, the legal uncertainty which we identified before will not be solved in a satisfactory manner and moreover may not lead
to a clear data policy and increased private participation in these activities.

In this respect we would like to stress again that the databases created through earth observation sensors on board satellite platforms deserve particular attention because they are of growing importance to Europe due to their use for the observation, modelling and understanding the complexities of the Earth for addressing global environmental problems.

The Directive intends to regulate the specific problems which arise as a result of the use of electronic data processing equipment for the storage, processing and retrieval of "information", in the widest sense of that term.

By considering remote sensing as a process creating databases and by considering reception of these data as accessing the database the whole process of remote sensing would be covered and protection under the terms of the Directive could be given.

Hereto two main concepts of the Directive have to be adapted to the needs of remote sensing actors. Firstly, the concept of a database and secondly, the concept of extraction and accession of the database.

A database is characterised by the following elements:

- a structure which defines which information is contained in the database and in which format/organisation
- a medium on which the data is stored
- an access method defining how to retrieve the data, how to access the database (protocols, access language, connection procedures)

As we will see below in the case of raw data, which are the data directly coming from the satellite, we can distinguish the following elements:

- there is a structure; the data are organised in a fixed and well defined format before being transmitted to the ground
- there is an access method; formats, decoding procedures, down-link characteristics etc. These are described by the satellite operator in documents which are distributed to the entities authorised to receive the data
- there is a storage medium; 1) the data can be stored on tape on board the satellite or 2) the data can be transmitted to the ground (without storing on tape) the data undergo a temporary storage in the memory of the on-board computer, during the reformatting process and while the telemetry packets are being assembled (see attachment for a schematic explanation).

Thus in principle there are only two legal problems namely, the database definition which is tailored for "earth databases" and which does not include databases without thesaurus and which consist, as in the case of remote sensing, of direct registered thematic information. Also the question of accession has to be raised as data can be obtained from satellites by simple interception.
Hereto a small modification of the definition of access and extraction is necessary which I now will propose to you; such proposed additional wording will only complement the Directive’s framework of rights and does not change the purpose and the extent of its applicability neither the degree of protection sought by the present draft Directive.

**Modifications proposed for the Draft Directive in order to cover remote sensing activities**

Replace in Article 1 the definition of data base by the following text:

*data base means a collection of materials arranged, stored and accessed by electronic means, including intellectual materials necessary for the functioning of certain databases such as the 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;*

Add to Article 1:

*material means protected works as well as directly registered electronic measurements intended to produce thematic information by external processing;*

*access means the entering in the database including the interception of the signal carrying the whole or part of the information of the database;*

*extraction means all methods of accessing as referred to in paragraph 1 of this article;*

Finally I would like to conclude my intervention by thanking you again giving the Agency the opportunity to make this intervention and that this action also illustrates an example of a good cooperative spirit between the Agency and the Community.

Thank you.
ANNEX 1

Data are being collected through the lens of the observation instrument. The lens just receives reflections of various kinds of radiation.

LENSE

PHOTO-DETECTION

The storage is actually taking place after the Figure 2 where the photo detection is being processed by the computer in the memory fields which always are organised in a well defined way and therefore can be considered as a database.

COMPUTER

The action of accessing the database takes place by the decoding of the memory fields and the data contained in the fields. If we accept this reasoning then the database is created, if we use the criterium of a discrete organised structure of the data, after the computer has stocked/processed the data in the memory fields.

MEMORY

TRANSMISSION
AND/OR
TAPE

Unauthorised accessing in the words of the draft directive takes place when the data is received (unauthorised/pirate) and decoded by entities not having the legal title to do this.
PARLEMENT EUROPEEN

COMMISSION JURIDIQUE
ET DES DROITS DES CITOYENS

Réunion des 16 au 18 mars 1993
BRUXELLES

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AUDITION

le
17 mars 1993
relative à la

proposition de directive du Conseil

concernant la protection juridique des bases de données

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DOCUMENT n° 5

de

M. Barry MAHON

The European Association of Information Services

EUSIC

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15 mars 1993

(81/91)
Presentation to the Legal Affairs and Citizens Rights Committee of the European Parliament

By

Barry Mahon, Executive Director, EUSIDIC, The European Association of Information Services

representing also:

DGD: Deutsche Gesellschaft für Dokumentation

BBLIDA: The European Bureau of Library, Information & Documentation Associations

EIIA: The European Information Industry Association

GFII: Groupement Français de l'Industrie de l'Information

March 17 1993
Mr Chairman and Members of the Legal Affairs and Citizens Rights committee of the European Parliament, it is a pleasure and an honour to have been asked to present to you the views of Eusidic and to represent to you the views of a number of other National and European trade and professional Associations on the subject of the draft directive on the legal protection of databases.

Eusidic is an Association which will celebrate its 25th anniversary in 1995 and has therefore been a close witness to the dramatic developments that have taken place in the production, distribution and consumption of information. As an Association which represents producers, distributors and users of electronic information our response is based on a wide range of opinions and viewpoints.

This Directive comes before you at a time when the much heralded convergence between computing and telecommunications is actually being implemented in many sectors of the economy and none more so than in the information sector. Members of Eusidic are in the forefront of these developments and are therefore extremely interested in the content and effect of the proposed Directive. The other bodies who have asked me to represent their views have equal interest in this topic. We are jointly and severally of the opinion that the status quo is not sacrosanct and look forward to the challenges brought about by the changes.

Since the publication of the text a number of opinions have been expressed on the validity and the necessity for the Directive. We would subscribe to the viewpoint that the proposition is necessary in order to rationalise certain anomalies within the Community regarding the status and level of protection afforded to electronic collections of data and the intellectual effort associated with their creation. However, we feel that certain provisions of the text go further than what is actually required.
As I said, the information sector has undergone dramatic changes in recent years. These changes have served the objectives of all who are professionally involved in the sector, namely to ensure the rapid and accurate production and distribution of information for consumers. Electronic databases are fundamental to that process. I have deliberately used the words 'production and consumption' because we in Eusidic feel that the economic climate of electronic information creation and use have changed also, from being primarily the outputs of somewhat rarefied environments of academic research to being a vital part of developed economies. In the same process, the efficient protection of investment, both intellectual and financial, is also fundamental. In that context, any procedure that potentially inhibits the free flow of information has to be viewed with suspicion. The proposed Directive falls into that category.

Allow me to explain.

In an effort to cover as much as possible of the territory which is occupied by electronic databases, the draft establishes a number of criteria designed to evaluate the extent to which their creation and exploitation is legitimate. Typical are the concepts of 'insubstantial part' and 'commercial purposes' as applied to the exploitation of a database or its contents. These concepts are well known to lawyers and others who are concerned with the protection of property, but they do not sit easily in the information sector. Consider an electronic database of medical data - the recommended dosage of a drug may be only one number amongst millions in that database but it may be the most important item of information concerning that drug. Is it an 'insubstantial part'? Many of you will say no, in that particular context, but if someone wishes to dispute that interpretation they may be permitted to refer the matter to the European Court for a ruling. This process will take time - meanwhile, the information sector awaits, in limbo, the outcome. Development may be inhibited. Similarly, many institutions active in the information sector are 'non-commercial' in the sense that they do not sell products and services. They have a clientele and therefore their use is not the same...
as that of a private individual, what is their status under this proposal? There are a number of other areas of the draft to which similar uncertainties apply.

It is easy to criticise a text such as this and I am sure that the members of this committee have had many representations on the subject. I will not dwell further on the apparent shortcomings, I will suggest some solutions.

In many Member States Government Ministers may establish "rules of procedure" for the application of a law. Such a course of action is normal where the legislation concerned covers complex matters. Directives of the EC do not normally allow for such a mechanism. Perhaps in the case of this Directive the Community could break new ground and provide for regulations to be included. This would have the effect of allowing the Directive to be implemented in a 'known' environment from the point of view of the information sector participants and would also allow the Directive to take account of technical developments over time in the production and use of databases.

The following areas of uncertainty in the present proposal could be covered by regulations:

1. The treatment of databases containing numerical data compared to those containing text or images, specifically concerning the meaning of 'insubstantial part' and 'substantial part'.

2. How to keep the application of the exclusive criteria for protection - selection and arrangement - up to date; typically how they might be applied to databases created through advanced techniques such as Artificial Intelligence.

3. To establish the meaning and understanding of 'publicly available' as it applies to databases made available over wide area academic networks.

4. To regulate matters concerning the re-sale of databases.

5. To define rules for the operative date for copyright protection, especially in the case of constantly changing data collections.
6. Provide the framework for a code of practise between publishers and database creators on the re-use of abstracts or summaries created by the original authors, a matter of contention today.

Apart from the advisability of creating a method of using regulations to control some of the consequences of the proposal, the present text incorporates very well the basic requirement, that of establishing ground rules for the protection of electronically created databases. In so doing it opens up new areas of potential exploitation, typically the concepts of so called compulsory licensing and unfair extraction. We in Busidic would have no particular problem with those concepts, as proposed, which I must admit is not the view of all the associations I represent here.

Let me refer to one or two fears which have been expressed:

The ten year provision for sui generis protection is arbitrary and very difficult to implement in the case of databases which are undergoing constant change. Many database producers feel that the economic principles of their business will be seriously affected by this provision. In addition, whilst users welcome the option to exploit data without copyright they realise that in many cases the original material is protected and that furthermore the overall economics of information transfer may be affected.

Concerning the licensing provisions, they take no account of the discussions presently being co-ordinated by DG 13 of the Commission on the access to & use of publicly collected data. The proposal if implemented would arbitrarily cut short these discussions.

In summary what we all fear is that the implementation of the Directive as presently conceived will lead to either a plethora of legal protective measures by database producers and their distributors, or debatable practises to defeat the purposes of the Directive or deliberate provocation in order to establish Court rulings. In all or any of these
circumstances the effect is one of creating uncertainty, and no set of economic activities can feel happy in a climate of uncertainty.

Our proposal to allow for regulations, within the framework of the Directive, would create a workable solution. The regulations would presumably be established by the Commission in collaboration with the parties affected and inspected by the European Parliament - an example of subsidiarity? The overall effect would be to achieve the objective of providing a stable legal environment for the exciting developments still to come in the area of electronic database creation and exploitation.

Once again we welcome the opportunity to present our views to your Committee Mr Chairman, and I will be happy to try to respond to any queries you or the other Members may have.
PARLEMENT EUROPEEN

COMMISSION JURIDIQUE
ET DES DROITS DES CITOYENS

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AUDITION

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DOCUMENT n° 7

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de

M. Barry WOJCIK

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mars 1993

(81/91)
Database Directive - Europarlament hearing on 17 March

1. Express Thanks

I would first of all like to express my thanks to the Committee on Legal Affairs and Citizen's Rights of the European Parliament for organizing today's hearing, and for inviting me to speak on behalf of Dun & Bradstreet.

I would also like to apologize for the fact that I was not able to send you the text of my presentation here before today, to help the interpreters. I shall try to compensate for this omission by keeping my comments as simple as....the subject allows.

2. Describe Dun & Bradstreet

2.1. Let me begin with a brief description of my company's business. Dun & Bradstreet is an international provider of business information. We operate in over 60 countries. We have 55,000 employees worldwide, of whom some 15,000 are EC nationals. This makes us one of the largest European businesses in our field. The main kinds of database-dependent business information provided by Dun & Bradstreet are:

- commercial-credit information services, with operations in 27 countries and worldwide databases covering more than 25 million businesses. Nearly 12 million of these businesses are in Europe.
- receivables-management and business-marketing services worldwide, including companies directories.
- marketing-research: to measure consumer purchases, and the factors which influence consumers, in 28 countries for manufacturers and retailers of groceries, health-and-beauty aids, and other packaged and durable goods; also television-audience research and household-panel information services.
- marketing-research and services to the worldwide pharmaceutical industry, measuring the consumption of prescription drugs and evaluating the prescribing patterns of physicians in over 60 countries.
- market research to the high-technology and heavy-equipment industry sectors worldwide

2.2. To support these international businesses, Dun & Bradstreet has created a number of databases, which are physically located in different countries, both inside and outside the EC. The databases for the same type of business activity are linked together.

For example, commercial-credit information on businesses is held in several regional databases: in the EC, in the USA, in the Asia-
Pacific region. Each D&B company, and customers, can access from any country the data stored anywhere in this international database network. For example, a German customer can obtain information not only on another German company with which it wishes to do business, but also on that company’s parent company and grandparent company, which may be located in the Netherlands and USA respectively. Dun & Bradstreet can deliver this information on European businesses with automatic translation into several languages: Dutch, English, French, German, Italian, Portuguese, and Spanish. These also include "French" French and Belgian French, Netherlands Dutch and Flemish.

2.3. Dun & Bradstreet's databases are created from data which is input by its employees in many different countries, including all EC Member States. Much of the data is from publicly-accessible sources, much is not.

2.4. Dun & Bradstreet's databases are often multi-functional. This means that the data which they contain can be accessed, extracted and presented in different ways for different purposes ("sliced and diced"). For example, from its files on 25 million businesses used for commercial-credit information, Dun & Bradstreet can also provide information about how timely a business in paying its bills, or provide a list of businesses of a specified size operating in a specified line of business, for direct-marketing purposes.

2.5. Dun & Bradstreet’s databases can be accessed by customers on-line. Through this same on-line facility, a customer can order the data to be delivered automatically by fax within minutes. Dun & Bradstreet also delivers data from its databases on magnetic media and, in some cases, on CD-ROM.

2.6. Dun & Bradstreet’s databases are updated continually and, to a large extent, daily. For example, we have data on nearly 12 million European businesses in our databases, and the data on between 20,000 and 30,000 of these businesses is updated every day.

2.7. From this brief description of some of Dun & Bradstreet’s activities, you can see that:

(a) the information business of Dun & Bradstreet is international, and covers both Europe and the rest of the world;

(b) databases and the data stored in them represent a huge investment in money, effort and expertise - to create them, to maintain and update them, and to develop and enhance them.

(c) the improvements in technology which improve delivery to authorized customers for authorized purposes also facilitate unauthorized use of databases.
3. Why is a Directive needed to provide Harmonized Legal Protection of Databases?

3.1. The Directive states in its introduction, or preamble, that "database development requires the investment of considerable human, technical and financial resources, and that a stable and uniform legal protection regime is necessary to encourage such investment".

The Commission's Explanatory Memorandum also states that "Divergencies and anomalies exist in the legislation of the Member States on the question of the legal protection of databases" (p.4).

Dun & Bradstreet agrees with both these statements.

3.2. In its attempt to create a uniform legal protection regime, Article 2.3. of the draft Directive first confirms that copyright shall protect a database which is original in the sense that it is a collection of works or materials whose selection or arrangement constitutes the author's own intellectual creation. No other criteria are to be applied to determine the eligibility of a database for copyright protection. This therefore excludes copyright protection for databases and their contents based on the theory of "sweat of the brow" (or "industrious collection") which currently exists in the UK and Ireland. Under the "sweat of the brow" theory, the investment of money and effort in creating a database containing pre-existing factual material can be protected by copyright.

3.3. Copyright law which does not extend to the "sweat of the brow" theory cannot, on its own, give adequate legal protection to databases, because it does not protect factual material. However, the Commission considers that "it would be an unacceptable extension of copyright and an undesirably restrictive measure if simple exhaustive accumulations of works or materials arranged according to commonly used methods or principles could attract protection on the same basis as other literary works" (EP,p.24).

3.4. The Commission does not explain why such an extension of copyright is unacceptable. However, this approach does now appear to be consistent with the law in the United States, following the decision of the US Supreme Court in March 1991 in the Feist case. This case confirmed that a compilation or collection of facts may be protected by copyright, if it is an original selection or arrangement of facts. But the court also emphasized that copyright may not protect the facts contained in the compilation, and rejected the "sweat of the brow" theory. As a result of the Feist case, protection of computerised databases by copyright in the United States is less than was previously thought. Feist confirms that "copyright rewards originality, not effort" - as does the draft Directive.

3.5. It is interesting to note that the US Supreme Court, which in the Feist case rejected the "sweat of the brow" theory as a
basis for copyright protection, described it as a theory of unfair competition. Under the current law of the UK and Ireland, the rationale for copyright protection based on "sweat of the brow" is indeed to protect entrepreneurs against unfair competition. The introduction to the draft Directive acknowledges that several Member States have unfair competition laws, but rejects this as a basis for a uniform legal protection regime, stating that "in the absence of a harmonized system of unfair competition law in the Member States, other measures are required to prevent unfair extraction and re-utilization of the contents of a database".

4. The Right to Prevent Unauthorized Extraction and Reutilization

4.1. So let us now look at the "other measures" of protection which the Directive proposes in order to supplement the limited and unharmonized copyright protection. The draft Directive proposes a right to prevent unauthorized extraction and re-utilization of data from a database. The Commission says that "This protection against parasitic behaviour by competitors, which (protection} would already be available under unfair competition law in some Member States but not in others, is intended to create a climate in which investment in data processing can be stimulated and protected against misappropriation. It does not prevent the flow of information, nor does it create any rights in the information as such" (EP,p25).

Dun & Bradstreet is in basic agreement with this broad statement of intention.

4.2. However, in order to achieve the draft Directive's objectives, it is essential that the new right satisfies at least two criteria:

(1) it must provide adequate and harmonized additional protection for database contents; and

(2) it must not create new uncertainty about the scope of protection, and use, of databases. In particular, this means that producers of databases and their customer-users must be clear about their respective rights and obligations, based on the contracts signed between them, including the price agreed for the defined use rights.

4.3. The new right as proposed is defined in three main provisions: Article 2.5, Article 8 and Article 9. I would like to comment on each of these in turn.

4.4. Under Article 2.5, "Member States shall provide for a right for the maker of a database to prevent the unauthorized extraction or re-utilization, from that database, of its contents, in whole or in substantial part, for commercial purposes". I have the following comments on this:
(a) Why does the new right not also include the right to prevent unauthorized access to a database?

(b) Who is the maker of a database? Article 11 recognizes that the maker may be a company, where its employees have created the database. However, the company whose employees create a database may then sell the database: is the purchaser of a database whose employees did not create it also entitled to the benefit of the right to prevent unauthorized extraction? The answer to this question must be yes, because the purchase of a database is an investment which also deserves to be protected by the new right. There is no reference to this in the draft Directive.

(c) "Unauthorized": sometimes "unfair" is used instead. The wording should be made consistent. Also, "unauthorized" should be defined, for example, "without the express authorization of the maker or other owner (or rightholder) of the database, and not expressly authorized by this Directive".

(d) "Substantial part": this appears to be an expression borrowed from copyright law. For example, under the 1988 UK Copyright Act, there is infringement of copyright if there is copying of the whole of a work, or of a substantial part. The legislation does not define the expression, but the courts decide in each case. To quote one judgment: "What is a substantial part of a work is a question of degree, depending on the circumstances, and it is settled law that the quality of what is taken is usually more important than quantity".

These notions of quality and quantity are important, but they only appear in a different definition in the Directive, the definition of "insubstantial part". We suggest that a definition of "substantial part" be added to the Directive, because this is a new right, and some guidance is needed - both for the Member States who have to implement it, and for the courts who will have to interpret it. This definition could be similar to the definition of "insubstantial part", but after removing the word "not".

(e) (extraction or re-utilization) "for commercial purposes": this implies that anyone, whether or not an authorized user, can extract or re-utilize the whole or a substantial part of the contents of a database, if this is not done for commercial purposes. Why this exception to the new right of protection? What is the meaning of "commercial purposes" as opposed to non-commercial purposes? Does it for example depend on whether a user is a company or individual carrying on a business, as opposed to organizations or individuals who are not considered to carry on a business? Does it mean only re-sale or rental for money, or also internal use by a business?

We suggest that the words, "for commercial purposes", should be removed.

(f) As a general comment on Article 2.5, we feel that the scope of the new right needs to be clarified, and the words which
dilute it should be removed.

4.5. Article 8. contains two further exceptions to the new right to prevent unauthorized extraction which we wish to comment on:

(a) Firstly, under Article 8.4., the lawful user of a database may, without authorization of the database maker, extract and re-utilize insubstantial parts of works or materials from a database for commercial purposes, provided that acknowledgement is made of the source.

Dun & Bradstreet is concerned that this article may significantly weaken the new protection, and we have the following comments:

(i) Again, the words "for commercial purposes" are not defined. This could include extraction and re-utilization in order to compete. As mentioned earlier, the Commission stated in its Explanatory Memorandum on the draft Directive that this new right is intended to protect against "parasitic behaviour by competitors". Dun & Bradstreet is not convinced that this intention is adequately reflected in this Article, even with the definition which is given to the expression "insubstantial part".

Insubstantial part is defined as "parts of a database whose reproduction, evaluated quantitatively and qualitatively in relation to the database...can be considered not to prejudice the exclusive rights of the maker of that database".

If for example, the competitive advantage which one database has over another database is, in terms of quantity and quality, an insubstantial part of that database, then a competitor may be legally able to extract the information which it needs.

The Commission's Explanatory Memorandum (page 52) comments as follows: "Where the user of a database requires to produce small extracts from a database, by quotation or by reference to the information, it should be possible for him to do so, provided that he is a lawful user, and that the source is acknowledged". We feel that this intent is not reflected in Article 8.4. nor in the definition of insubstantial part. These are capable of a much wider interpretation, and should be amended to reflect the concept of "small extracts".

(ii) It is not clear whether Article 8.4. is subject to the specific conditions of the contract between the database owner and the user, whether the contract is signed before or after the Directive. This may be the intention of Article 8.6, which refers to prior rights or obligations. And it may also be the intention of Article 12.1, but the words "this Directive shall be without prejudice to...the law of contract applicable to the database itself or to its contents" are not clear on this point. Furthermore, Article 12.2 refers only to contracts concluded prior to the date of publication of the Directive.

(b) Secondly, under Article 8.1, if [and to the extent that] the
works or materials contained in a database which is made publicly available [are not protected by copyright or neighbouring rights and] cannot be independently created, collected or obtained from any other source, the right to extract and re-utilize works or materials from that database for commercial purposes, shall be licensed on fair and non-discriminatory terms.

(i) The Commission’s Explanatory Memorandum (page 50) states that a compulsory licence can be demanded only when the contents of the database in question are not protected by copyright or neighbouring rights. This should therefore be expressly stated in Article 8.1.

(ii) The Commission’s Explanatory Memorandum also states that the works or materials in question may be the subject of contractual arrangements, which may mean that a compulsory licence is not possible. This is echoed in Article 8.6., which states that a compulsory licence shall apply only to the extent that it does not conflict with any other prior rights or obligations. We assume that this means rights or obligations which exist prior to a demand for a compulsory licence, rather than prior to the Directive.

(iii) The Commission’s Explanatory Memorandum (page 51) states that "the request for a licence may not be made for reasons of commercial expediency such as a saving of time or financial resources". Thus the relevant test is what is possible, not what is commercially realistic.

However, Article 8.1. should distinguish between the raw data contained in a database but obtained from an outside source, and the added value which the database owner gives to such data by combining it with other data, or updating it through its own efforts, or re-arranging it so that it can be used more easily. This added value element (which may or may not comprise trade secrets or other confidential information), often gives a database owner its competitive edge, and should be expressly excluded from compulsory licensing.

(iv) In the introduction to the draft Directive, Paragraph 31 states that if works or materials are made available under compulsory licence, such works or materials should be "used in the independent creation of new works". This should be made clear in Article 8.1. itself.

(v) Article 8.1. should also exclude from compulsory licensing, data which could have been obtained by anyone at a particular date, but which was only obtained by one database owner. That is to say, if only one database owner took advantage of a commercial opportunity which was in principle available to anyone, then those who failed to take the same commercial opportunity should not subsequently be allowed to claim a compulsory licence.

(vi) Article 8.1. does not explain when a database is “made publicly available”. If only available to users who sign a contract, is this considered to be publicly available? If so,
then we suggest that the words "whether by contract or otherwise" should be added.

(vii) As a general comment on Article 8, we feel that some of the concepts need clarification, and changes are also needed to ensure that this Article does not excessively weaken the new right under Article 2.5.

4.6. Article 9 is the third Article which defines the new right to prevent unauthorized extraction.

(a) Article 9.3. states that the right to prevent unfair extraction [and re-utilization] shall run from the date of creation of the database and shall expire...10 years from the date when the database is first lawfully made available to the public.

We see several problems here:

(i) The 10-year period of protection runs from when the database as a whole is made available to the public. However, the protection applies to the database contents. These contents in most cases are continually being added to, updated and replaced, which represents a substantial investment in money, effort and expertise. Indeed, this investment would in most cases exceed the investment in the initial creation of a database in a relatively short time. (I have already mentioned the 20-to-30,000 changes daily which are made to some of Dun & Bradstreet's European databases). Much of this essential ongoing investment, therefore, would not be protected under the draft Directive: each day's investment would receive a shorter period of protection than the previous day's investment. This will not encourage the development of the database industry.

(ii) This discouraging approach is confirmed by Article 9.2: insubstantial changes to the contents of a database shall not extend the original 10-year period of protection of that database by the right to prevent unfair extraction. Because of the way in which the expression "insubstantial change" is defined, normal but essential updating of a database will not extend the period of protection. In order to extend the 10-year period, the database would have to be made to function in a significantly new way (arrangement), or there would have to be a significant change in selection criteria: for example, to include all magazine articles as well as newspaper articles on subjects already covered.

(iii) No reason has been given for proposing a 10-year protection period. This period is the same as the protection period available in Denmark and other Scandinavian countries for catalogues, timetables, telephone directories and similar works which are not necessarily protected under copyright. We do not consider that these so-called "catalogue rules" are appropriate as the basis for a legal protection regime intended to encourage the development of the database industry in Europe.
(iv) The Commission's Explanatory Memorandum (page 54) states that the right to prevent unfair extraction is similar to "unfair competition or parasitic behaviour legislation", and the similarity has also been noted. However, a significant advantage of unfair competition is that its remedies are not limited in time.

(v) It is doubtful whether 10 years is long enough to allow the recovery of investment in even the initial creation of many databases. In addition to which, there is the considerable investment in updating and in delivery technology. We therefore strongly urge that the basic period of protection be significantly increased, for example, to at least 25 years. However, this should be without prejudice to 10 years protection for any material, to run from the date of its inclusion in its latest form in a database, or verification of its accuracy, if such 10-year period expired later than the basic 25-year period protecting the database contents as a whole.

Different types of databases will have different possibilities of "date-stamping" their contents: some may do it by "groups" of data, instead of applying it to each individual piece of data. If database owners know that date-stamping allows them to enhance the protection of their investment, they can over time increasingly incorporate date-stamping techniques in their development plans. This may complicate distinguishing between dated and undated material in the event of a dispute, but it would also (to quote the Commission) help to "create a climate in which investment in data processing can be stimulated and protected against misappropriation". We feel that it would be worthwhile for the EC legislators to explore with industry the possibility of drafting guidelines for date-stamping.

(b) We are also concerned about protection for existing databases. The only reference to existing databases in the draft Directive is in Article 12.2. This merely states that "Protection pursuant to...this Directive shall also be available in respect of databases created prior to the date of publication of the Directive". The Commission's Explanatory Memorandum (page 54) states that "The one finite period of protection begins on incorporation of the work or material into the database and continues for a period of 10 years from the time when the database was made publicly available".

So, if we apply the proposed 10-year protection period now, it appears that all databases made available to the public before March 1983 will have no protection under the new right. It also appears that they can never obtain protection under the new right: Article 8.4. implies that substantial changes to a database can extend the original period of protection. However, if there never was protection, because a database was created too long ago, then it does not appear that substantial changes can create protection under the new right. Such a situation cannot encourage the development of a strong database industry. Furthermore, it is particularly inequitable for databases in the UK and Ireland. As we have seen, the draft Directive proposes to
abolish the copyright protection which they have under the "sweat of the brow" principle. Thus many existing databases in these countries would lose existing protection and still not be protected under the new right in the draft Directive.

As for more recent existing databases, they would receive a very short period of protection, being the unexpired balance of 10 years from when the databases were made publicly available.

To rectify this unsatisfactory situation, we suggest that, for existing publicly available databases, the protection period should begin from the date when the Directive is adopted. This would also avoid complications from database owners who claim that, prior to the Directive, their protection period has already been extended as a result of substantial changes.

(c) As a general comment on the period of protection, we feel that 10 years is seriously inadequate to protect the investment in both new and existing databases, including their ongoing updating and enhancement.

5. Other General Comments

5.1. "Author, rightholder, maker" of a database.

(a) Article 3 of the draft Directive defines the author of a database for copyright purposes. It also uses the word "rightholder" where the author is considered to be a legal person, not a natural person, and this word "rightholder" also appears elsewhere, for example, in Articles 4.1 and 5(d). We feel that it is confusing and unnecessary to use "rightholder": it would be preferable to amend the definition of author in Article 3, to make clear that in certain cases a legal person can be the copyright owner.

(b) Computer-generated databases should be covered: for example, "in the case of a database or part of a database which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken".

(c) "Maker" of a database is used to designate the beneficiary of the right to prevent unfair extraction. We wonder why there is no definition of "maker", whereas a whole Article - Article 3 - is used to define "author". We also feel that it should be made clear that "maker" can include the successors-in-title of the maker, such as a purchaser. In the national laws of the Member States, it is of course possible to transfer copyright. However, the right to prevent unauthorized extraction is a completely new right, and so the draft Directive should make clear that successors-in-title of the maker can exercise the new right. Indeed, it may be preferable to use the expression "owner" of a database, instead of maker.

(d) Article 11 excludes from the benefit of the right to prevent unauthorized extraction, databases produced outside the EC.
Agreements may be made by the EC with third countries to extend the new right to databases produced there, subject to reciprocity. However, if the maker of a third country database is a company with a registered office in the EC and an effective link with a Member State, it can benefit from the new right. The Commission has indicated informally that most third country databases will in practice be able to benefit under the new right by setting up a company presence in the EC. Therefore, the Commission suggests, this reciprocity principle should not create many problems with third countries. If the Commission is right, why prejudice the EC's relations with its trading partners with such a reciprocity clause? Particularly when the database information industry is becoming more and more international and inter-dependent? And when there is no evidence that denying the benefit of the new right to third country producers will push them into making their own unauthorized extraction laws?

Dun & Bradstreet does not feel that the reciprocity clause is helpful, and suggests that it be replaced by the rule of national treatment.

5.2. Under Article 2.4 of the draft Directive, only the owners of copyright in copyrighted works contained in a database are entitled to enforce such copyright. However, for effective protection of database contents as a whole, the database owner should also be given the right to enforce the copyright in copyrighted works contained in the database.

5.3. We have already mentioned Articles 8.6 and 12, which state that the Directive shall be without prejudice to various prior rights and obligations and legal provisions. We feel that the different wording used is confusing, and should be reviewed. We are particularly concerned to know which parts of the Directive will override contracts between database owners and users, and which parts will be subject to such contracts.

6. Conclusion

I hope that my remarks today have conveyed the impression which I wished to convey. We feel that the objective of the draft Directive, to create a uniform legal regime throughout the EC for the protection of the enormous investments which databases represent, deserves support. However, we feel that more work is needed on the draft Directive in order that it may achieve this objective. We have offered our comments in a desire to be constructive. Our comments reflect our concerns as owners of existing and future databases which we wish to expand and enhance to meet the needs of our customers in the EC and worldwide. Our comments also reflect our concern to be able to operate in a clear legal environment which facilitates making decisions about the future direction of our business, and which facilitates doing business with our customers. Given the time allotted here today, our comments have not been exhaustive. We hope that they have been helpful. And we shall be pleased to continue to be associated with your reflections on the draft Directive.
COMMISSION JURIDIQUE
ET DES DROITS DES CITOYENS

Réunion des 16 au 18 mars 1993
BRUXELLES

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AUDITION

le

17 mars 1993

relative à la

proposition de directive du Conseil

concernant la protection juridique des bases de données

COM (92) 24 final - C3-0271/92 - SYN 393

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DOCUMENT n° 8

de

EUROPEAN BUREAU OF LIBRARY,
INFORMATION AND DOCUMENTATION ASSOCIATIONS
EBLIDA

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12 mars 1993

(81/91)
Position Paper Directive on the legal protection of databases

General

At the moment there is no overall regulation on the protection of databases in the European Community. As far as existing regulations in Member States contain provisions (on parts), it is uncertain whether they correspond. Because of the great investments required to make or to keep a database, it is necessary that an appropriate protection is safeguarded. On the other hand, provisions are also necessary for the lawful users of databases to be able to make full and practical use of their rights.

Therefore a Directive on the legal protection of databases will be for the benefit of producers as well as users of databases and is therefore of great importance to libraries.

Overview on the legal protection of databases as proposed in the Directive

<table>
<thead>
<tr>
<th>DATABASE arrangement</th>
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<td>copyright</td>
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Remarks on particular parts of the Directive

Article 1: Definitions

We welcome the clear definition of database, which has been a subject of considerable debate in several Member States. We also welcome the clear statement that databases, as defined, will be given legal protection as Literary Works under copyright law, irrespective of whether they are on-line, on CD-ROM or whatever. Concerning Article 1 paragraph 3 and 4 we would like to stress the importance of having the terms 'insubstantial' and 'substantial' defined more accurately.
Article 2: Object of protection: right to prevent unfair extraction

We regret the creation by the European Commission of a separate and unknown sui generis right for certain types of databases, which do not deserve full copyright protection. It should get particularly close attention before it will be adopted. Our concern is based on a number of reasons:

- The term 'unfair extraction', although defined in the draft Directive, has no track record in law and is therefore uncertain for database producers, users and Courts to interpret.

- The period of ten years' protection seems inadequate, considering the 50 (or even 70) years other databases whose individual records are copyrightable enjoy. Similar expenditure of time, effort and money may go into the creation of both types of database.

- Many experts were already unanimous that sui generis is not the way to protect such databases, copyright was.

- We do not see the need to distinguish electronic and print publications in this way, especially as these days print publications are frequently produced from electronic equivalents. For example, a telephone directory would deserve 50 (or 70) years' full copyright protection in print form, and only 10 years' weaker protection in electronic form. Even though the chances are that the print form was created from the electronic form.

Article 4: Incorporation of works or materials into a database

We welcome the inclusion of a provision that enable users to incorporate bibliographical data or brief abstracts, quotations or summaries without having to seek permission from rights owners. This reflects accepted practice.

Article 6: Exceptions to the restricted acts to copyright in the selection or arrangement

We welcome the provision in this article which would allow users to display the contents in order to use the database.

Article 7: Exceptions to the restricted acts to copyright in the contents

Article 7.1 is not formulated very clearly. As we understand this paragraph, Member States shall apply the same exceptions to any exclusive copyright or other rights for purposes, like research and private study. For example, a user will be permitted to download everything he finds in the database for personal private use without seeking any permission. We expect that the activities of the libraries qualify as exceptions and will be defined as activities for private and research purposes.

However for the purpose of teaching a special provision has been made by the European Commission. To avoid misunderstandings we would like to suggest to start 'in respect' with a new sentence.

At present, there is considerable confusion about the amounts which may be downloaded. There is similar confusion about the use of downloaded information as to whether it may be passed on to a third party or copied for a class of students, etc. We welcome the proposal on page 48 last paragraph that contracts for the supply of database goods or services should specify what acts of downloading, reproduction in paper form, adaptation and so on are to be permitted. A reference to this should be made in Article 7.2.
Article 8: Compulsory licenses

We see this Article as an important new development.

Article 9: Terms of protection

A major issue concerns the duration of protection. Unfortunately, while the draft Directive addresses this question, the solution proposed is vague. In particular, there needs to be a clear provision in the Directive on the duration of protection for the contents of a database which is continually updated as most of them are.

Article 1.4 only defines insubstantial changes to the selection or arrangement of the contents of a database. Article 9.3 does not refer to updating and Article 9.4 does not define what insubstantial changes to the contents are and what will happen to the protection according to copyright and to unfair extraction.

The problem is, does the updating or addition of a single record 'restart the clock' for the contents of the whole database? Or should we see any addition or change to the database as 'insubstantial', so that the whole database may only be protected for 50 years (or 70) from when it was first published. Alternatively, does every addition to the contents exist separately in the sense that older records go out of protection 10 or 50 or 70 years after their addition to the database?

The first option carries the risk that the protection will never end. We do not think that databases need never-ending protection. The second option will not encourage database producers to produce good quality databases. To have legal protection of the database removed after 50 (or 70) years seems illogical, as a good database grows and improves with time. The producers may react by not bothering to amend databases or making cosmetic changes to produce 'new' databases etc. This certainly would not be of value to the users.

We prefer the last suggested approach. Each added item or items should start their own clock ticking. Technically it is quite easy to datetimestamp each record in the database. Although it will bring administrative and control problems, to the users it seems the fairest approach.

We would urge that an addition to the Directive should make the intentions absolutely clear whatever the proposed course.

Relation with the Berne Convention

In Clause 38 it is stated that provisions to prevent unfair extraction made by the Member States should only apply to databases whose authors or makers are nationals or habitual residents of third countries or whose producers are not established in a Member State, if such third countries offer comparable protection to databases produced by nationals or habitual residents of the Community. In other words reciprocity is a condition for this kind of protection. This is inconsistent with the protection copyright provides.

The Berne Convention holds the basic principle of assimilation: provision for nationals or habitual residents apply to nationals or habitual residents of all countries which have undersigned the Convention. To have two regimes for the protection of the contents of a database with third countries will be confusing and inefficient.

This note tries to concentrate on main matters of substance for non-profit information providers. It is not comprehensive, and should not be read as such. EBLIDA protects the interests of 42 associations in the field of library and information science within and outside the EC. For questions please contact Mrs Emanuella J.C. Giavarra LL.M., director.

March 1993
SUMMARY OF PROCEEDINGS

of: Working Party on Intellectual Property (Copyright)
on: 24 and 25 March 1993

No. prev. doc.: 11185/92 PI 133 CULTURE 144
No. Cion prop.: 6919/92 PI 64 CULTURE 61


1. Introduction

1.1. At its meeting on 24 and 25 March 1993 (1), the Working Party on Intellectual Property (Copyright) continued its initial examination of the above proposal, discussing in the following order Articles 5, 6 and 7, Article 9(1) and (2), Article 2(5), and Article 8, and using as its basis document 6919/92.

Delegations will find the main conclusions of this initial examination set out in paragraphs 2 to 7 below in the order in which the Articles were discussed.

1.2. The Working Party took note of a Commission working document which clearly

(1) The Greek delegation was not represented at this meeting.
separated the copyright provisions in the proposal from those concerning the "sui generis" right. (2).

It was agreed that future examination of the proposal would be based on this working document.

1.3. Several delegations were critical of the translations of the proposal into their own languages, claiming that they often did not correspond to the original English. The German delegation in particular asked for a corrected German version so that its consultations with interested parties in Germany could proceed on the basis of a reliable text.

The Commission representative apologized for any errors which had occurred in the translation of the different language versions and undertook to provide delegations with improved translations at a later stage.

2. Article 5

2.0. General

The Commission representative pointed out that as this Article broadly followed the structure and content of Article 4 of Directive 91/250/EEC on the legal protection of computer programs (3), subparagraphs (a), (b) and (d) should have been taken mutatis mutandis from that Directive in all the language versions.

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(2) Working document No 8, in which Article 2(1) to (4), Articles 3 to 7, and also Article 9(1) and (2) were classified together as "copyright", with Article 2(5), Article 8, Article 9(3) and (4) and also Article 11 being grouped together in the "sui generis right" category.

(3) OJ L 122, 17.5.1991, p. 42
2.1. Introductory sentence

2.1.1. Generally speaking, the United Kingdom delegation thought that the question of how much protection should be afforded the author of the database should be looked at closely. To protect the investment made by an author in setting up and updating the database would seem a reasonable thing to do, but it might perhaps be wrong to seek to grant exclusive rights over all selection or arrangement of contents.

2.1.1.2. As suggested by the United Kingdom delegation, the Commission representative undertook to provide the Working Party with all the available information on United States case law on database copyright protection.

2.1.2. On a more specific point, several delegations felt that the relationship between Article 5, which constituted a framework provision, and the subsequent Articles which contained exceptions to Article 5, should be clarified as in Directive 91/250/EEC.

One delegation wanted Article 5 to state that any copyright existing in the contents (or a proportion of the contents) of the database would be unaffected by the copyright over the database itself.

2.1.3. Another delegation wanted to know whether it was necessary to list the criteria in the two indents in Article 5 since the scope of the database copyright had already been established in Article 2.
2.1.4. The point was also made that a reference to the "exclusive right within the meaning of Article 2(1)" would seem to be incorrect since that paragraph made no provision for an exclusive right as such.

2.1.5. As regards the first indent, the Commission representative confirmed that on the basis of the French version of Article 2(5) of the Berne Convention (\(^4\)), it was correct to cite the selection or the arrangement of the contents of the database (as an alternative). The French delegation thought on this point that a criterion of originality should be required both in the selection and the arrangement of the contents of the database.

2.1.6. On the second indent, the Commission representative made it clear that the term used for "electronic material" should be the same as in Article 1(1) (\(^5\)), but that the rest of the sentence required different terminology.

For the definition of "electronic material", the Commission representative referred delegations to a special Commission note. (\(^6\))

2.2. The following comments were made on subparagraphs (a) to (f):

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\(^5\) The original English term is correct, but the French and German versions should be amended.

\(^6\) Working document No 7/93 of 5.3.1993 (in English only).
2.2.1. Re subparagraph (a)

2.2.1.1. This text was taken straight from Article 4(a) of Directive 91/250/EEC and the French version should be amended accordingly.

2.2.1.2. One delegation wondered whether the right provided for in both this paragraph and in subparagraph (e) would be inconsistent with some of the provisions in the forthcoming Directive on the protection of individuals with regard to the processing of personal data.

It was felt that this aspect could be examined further when Article 12(1) was discussed.

2.2.2. Re subparagraph (d)

2.2.2.1. As regards the scope of this provision, the Commission representative said that:

- "any form of distribution of the database to the public" should be understood in a broad sense, but excluding any loan arrangement;

- copies thereof should be interpreted as meaning copies produced by the copyright holder or with his consent, but not illicit copies.

2.2.2.2. Several delegations wanted to know the exact meaning of the phrase "distribution to the public" and how it squared with the terms used in subparagraph (e) ("communication, display or performance to the public").

2.2.2.3. As regards the term "rental", the German delegation proposed using the same
definition as in Directive 92/100/EEC on the rental right and lending right. (*)

2.2.4. As for the concept of copyright exhaustion referred to in the second sentence, several delegations thought that although it came straight from Directive 91/250/EEC, the sentence should be better expressed, in line with more appropriate precedents.

The German delegation would prefer the phrase "right to control further rental" not to be used.

2.2.3. Re subparagraph (e)

The Commission representative explained that the three terms used in this subparagraph were intended to express different phenomena:

- communication of the database to the public meant making certain data accessible to the public, without necessarily making them visible to the human eye (e.g. by electronic transmission);

- display of the database to the public meant making the selection or arrangement of the contents visible to the public, by presenting all or part of it in the form of a reproduction;

- performance of the database to the public referred to cases where the data bank

(*) OJ L 346, 27.11.1992, p. 61, Article 1(2)
was automatically on display to the public although unsolicited (e.g. prices of stocks and shares on a public screen).

2.2.4. Several delegations furthermore queried the link between the three acts listed in subparagraph (e) and the act of distribution to the public in subparagraph (d).

The Commission representative replied that subparagraph (e) was intended to supplement subparagraph (d)

3. Article 6

3.1.1. A number of delegations pointed out that paragraph 1 did not contain any exception to the acts listed in Article 5 as the heading of Article 6 indicated.

The paragraph should therefore be deleted or be included in another Article.

3.1.2. As to the content of paragraph 1, several delegations queried the need for such a provision which seemed to be functioning as an interpreting rule for a contractual arrangement between the copyright holder and the user of the database on how it should be used.

A number of delegations also thought that if the provision were to be retained in the Directive, the term "lawful user" should be defined.

3.2.1. As regards paragraph 2, it was noted that the paragraph was vaguely based on Article 5(1) of Directive 91/250/EEC and was intended to constitute an exception to the rule in Article 5.
3.2.2. Several delegations commented that the relationship between the three persons mentioned in this paragraph (the rightholder, user and the lawful acquiror) required clarification, particularly as the term "lawful acquiror" (of the database) was an ambiguous one.

3.2.3. At the close of the discussion, the German delegation proposed the following new draft which was based on the assumption that the lawful acquiror and the user of the database were one and the same:

"In the absence of any contractual arrangements between the rightholder and a lawful acquiror of a copy of a database, the latter may perform any of the acts listed in Article 5 which are necessary in order to gain access to the contents of the database and the use of those contents."

3.3. There were no comments on paragraph 3.

4. Article 7

4.1.1. The Commission representative explained that paragraph 1 was intended, in the interests of database users, to regulate Member States' practice with respect to the right to make quotations and use illustrations from the contents of a database. Member States would accordingly be obliged to apply to both these rights in the database context the same rules that they applied to literary and artistic works under the Berne Convention.

4.1.2. As regards the wording of paragraph 1, it was pointed out that the beginning should read as follows:
"Member States shall apply the same exceptions to any copyright or any other exclusive rights in respect of the contents of the database...". (8)

4.1.3. The following comments regarding the underlying principle of paragraph 1 as described in 4.1.1. were made by a number of delegations:

- the aim of the rules was not to harmonize but to formalize a situation which might well already differ from one Member State to another and for which amendment was possible under Article 10 of the Berne Convention. Hence the rules were neither necessary or desirable;

- the terminology of Article 10 of the Convention had not been followed, which could give rise to differing interpretations;

- by referring only to exceptions in respect of the two rights mentioned in 4.1.1., the paragraph would leave it uncertain as to how to treat other exceptions applied by the Member States (e.g. the right to make private copies).

4.2.1. On paragraph 2, the Commission representative explained that the intention behind this provision was to define the scope of the rights - as laid down in Article 5 - of the user of database (A) in relation to those of the rightholder of database (B) in the following two cases:

(a) the rights of A were determined by a Member State's legislation;

(8) For the record (repeats English text).
(b) the rights of A were determined by a contract, between B and the holder of the copyright in a work contained in the database (or in a part of its contents), governing the use of that work.

The Commission representative conceded that in the case of (b) above, the wording should be clarified as follows:

"Where (the legislation of the Member States or) contractual arrangements between the rightholder of the copyright in the database and the rightholder of the copyright in the contents thereof permit the user of a database to carry out acts ...". (remainder unchanged). (\(^9\))

4.2.2. Even after this clarification, several delegations expressed further doubts as to the meaning of paragraph 2, making the following points in particular:

- which legal provisions in the Member States did the paragraph refer to, those of the law of contract, those regarding copyright, and/or those concerning databases? Were these the existing provisions, or did they include those yet to be adopted?

- who was "the user of a database" in this context?

- should a distinction not be made between the two cases (a) and (b) as described? Indeed, in case (a), infringement of the copyright in a database would seem completely out of the question.

\(^9\) For the record (repeats the above English text).
The delegations said that they would decide on the content of paragraph 2 as soon as its meaning had been clarified.

5. Article 9

5.1. Paragraph 1, it was pointed out, would become superfluous once the Directive on the harmonization of the term of protection had been adopted.

It was therefore not examined.

5.2. With regard to paragraph 2:

5.2.1. The proposed legal effect, that no new period of protection should commence in the event of an "insubstantial change" to the selection or arrangement of the contents of a database, elicited no major criticism at this stage.

5.2.2. However, several delegations wondered how it could be determined whether a change made to the selection or arrangement of the contents was "substantial" or not. If indeed it were substantial, the commencement of a new period would seem justified. Furthermore, even a series of insubstantial changes might possibly amount to a substantial change.

To overcome this difficulty, the Spanish delegation suggested deleting the word "insubstantial" in paragraph 2.

5.2.3. In the same context, it was felt that the definition of "insubstantial change", as set out in Article 1(4), was perhaps unsatisfactory, particularly as the criterion that the
change to the selection or arrangement of the contents of a database had to be necessary in order for the database to function seemed an arbitrary one, especially as the question of whether such necessity existed would depend on the views of the maker (\(^{10}\)) of the database.

5.3 Article 9(3)(4) have not yet been discussed.

6. Article 2(5)

6.1. After first hearing each delegation's initial reactions, the Commission representative gave an outline of the principles underlying the proposed provision, which was intended to create a specific sui generis right:

6.1.1. The right in question was a specific right over the contents of the database, and not copyright over the contents or a part thereof. (\(^{11}\))

The right was an exclusive one in favour of the maker (10) of the database, prohibiting a third party from extracting data from the base or using extracted data for commercial purposes. The "extraction" of data from the base would mean using

\(^{10}\) On the question of the terminology to be used, the Commission representative said that a neutral term should be found so as to avoid as far as possible a link with the rightholder. Neither "producer" nor "author" nor "creator" should therefore be used in English. He acknowledged that the proper term in all the other language versions had perhaps yet to be found.

\(^{11}\) As this is a specific right, the relevant provisions (particularly Article 2(5) and Article (8) will be grouped together in a separate chapter - see footnote 2.
the base as a source of information, and placing the data in some set format.

The existence of the specific right did not depend on a creative act on the part of the maker, as distinct from the situation outlined in Article 2(3) which dealt with the source of copyright in the database itself.

6.1.2. A specific right might exist alongside copyright in the database, or together with other rights arising, for example, from a contract or unfair competition rules. However, it could not be combined with copyright over any material in the database.

The relationship between specific rights and other rights would be covered in Article 12(1).

6.2. The point was made that Article 2(5) had to be read in conjunction with Article 1(2), which defined the "right to prevent unfair extraction", and that the translation of the two provisions should be consistent in all language versions. However, the latter definition had yet to be examined.

6.3. Delegations' initial reactions concerned both the principle of creating a specific right and matters of detail concerning its nature and scope.

6.3.1. On the principle involved, several delegations, particularly the Belgian, Danish and French delegations, welcomed the idea of creating such a right.

On the other hand, other delegations, particularly the German, Irish, Italian and
United Kingdom delegations, voiced doubts as to the necessity or desirability of creating any such new right in view of the legislation in their own countries.

6.3.2. On matters of detail, a number of delegations commented on the scope of the specific right:

- it would perhaps be too restrictive to seek to prohibit the use of data for commercial purposes only.

Nor would it seem reasonable to prohibit third parties from extracting any data at all from the base.

- Was it the intention to exclude from the specific right parts of the contents of the base which were themselves covered by copyright, or could the last sentence of paragraph 5 have some other meaning?

- The relationship between Article 2(5) and the exceptions provided for in Article 8 (particularly paragraphs 4 and 5) should be clearly established. In that connection, the point was made that several language versions (the French and German versions among others) did not render the English phrase (first sentence) "in whole or in substantial part" correctly, thus creating a contradiction with Article 8(4) and (5). (12)

(12) See also 7.1 below.
7. **Article 8**

Following the Commission representative's comments on the structure and content of Article 8, several delegations formulated their critical comments under the same two headings.

7.1. Regarding the structure, they pointed out in particular that:

- it was unclear from the text which provisions (paragraphs 1, 4 and 5?) had been framed as exceptions to the rule in Article 2(5); a number of delegations noted that paragraphs 4 and 5 appeared to confer rights which were more extensive than those afforded to the maker (producer) of the database in Article 2(5) - i.e. the right for the lawful user to extract insubstantial parts of the database provided that he indicated their source (paragraph 4) or else for his private and personal use (paragraph 5) - and hence those provisions did not constitute exceptions;

- the relationship between paragraph 6 and Article 12 would probably require clarification when the latter Article was discussed.

7.2. As regards the content of Article 8:

7.2.1. Several delegations queried whether it was necessary to oblige Member States to set up a system of compulsory licensing as proposed in paragraphs 1 and 2; a number of them would prefer to delete paragraph 2 altogether as it involved a prior action by a public authority.
7.2.2. Were such a licensing system to be set up, a number of delegations felt that the conditions for issuing the licences should be specified (particularly the accessibility of the data to the public) and the legal implications clarified (e.g. "licensing on fair terms").

7.2.3. On paragraph 3, one delegation thought that Member States should not be obliged to adopt arbitration measures.

7.3. In conclusion, the Commission representative was asked to review all the paragraphs discussed in the light of delegations' comments.
DRAFT REPORT

of the Committee on Legal Affairs and Citizens' Rights

on the Commission proposal for a Council directive on the legal protection of databases
(COM(92) 0024 final - C3-0271/92 - SYN 0393)

Rapporteur: Mr Manuel GARCIA AMIGO

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By letter of 23 June 1992 the Council consulted the European Parliament, pursuant to Articles 57(2), 66 and 100a of the EEC Treaty, on the Commission proposal for a Council directive on the legal protection of databases.

At the sitting of 6 July 1992 the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic Affairs and Industrial Policy and the Committee on Energy, Research and Technology for their opinions.

At its meeting of 22 May 1991 the Committee on Legal Affairs and Citizens' Rights had appointed Mr García Amigo rapporteur.

At its meetings of 4 December 1992, 17 March 1993 the committee considered the Commission proposal and draft report.

At the last meeting it adopted the draft legislative resolution by votes to , with abstentions.

The following were present for the vote:

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

The report was tabled on

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

Commission text

(Amendment No. 1)

Recital 31

(31) Whereas, in the interests of competition between suppliers of information products and services, the maker of a database which is commercially distributed, whose database is the sole possible source of a given work or material, should make that work or material available under licence for use by others, providing that the works or materials so licenced are used in the independent creation of new works, and providing that no prior rights in or obligations incurred in respect of those works or materials are infringed;

(Amendment No. 2)

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;

For the purposes of this Directive:

1. 'database' means a collection of facts, 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;

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

DOC_EN\PR\224\224210 - 4 - PE 204.504/A
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 holder of a database to prevent acts of extraction and re-utilization of material from that database for commercial purposes;

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;

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

4. 'insubstantial change' means additions, deletions or alterations to the selection or arrangement of the contents of a database which are necessary for the database to continue to function in the way it was intended by its maker to function.

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

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

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

(Amendment No. 7)

Article 1(4)a (new)

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

(a) with regard to the provisions of Article 9(2)a, alterations, additions or deletions which involve substantial modification to the selection or arrangement of the contents of a database, resulting in a new edition of that database;

(b) with regard to the provisions of Article 9(4)a, the successive accumulation of insubstantial alterations, additions or deletions in respect of the contents of a database, resulting in substantial modification to all or part of a database.

(Amendment No. 8)

Article 2(2)

2. The definition of database in point 1 of Article 1 is without prejudice to the protection by copyright of collections of works or 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.

Deleted
Commission text

(Amendment No. 9)
Article 2(3)

3. A database shall be protected by copyright if it is original in the sense that it is a collection of works or materials which, by reason of their selection or arrangement, constitutes the author's own intellectual creation. No other criteria shall be applied to determine the eligibility of a database for this protection.

(Amendment No. 10)
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, in whole or in substantial part, for commercial purposes. This right to prevent unfair extraction of the contents of a database shall apply irrespective of the eligibility of that database for protection under copyright. It shall not apply to the contents of a database where these are works already protected by copyright or neighbouring rights.

(Amendment No. 11)
Article 3, title

AUTHORSHIP: COPYRIGHT

THE COPYRIGHT HOLDER

(Amendment No. 12)
Article 3a (new)

ENTITLEMENT TO PROTECTION UNDER COPYRIGHT

Protection under copyright shall be granted to any natural or legal person who fulfils the requirements laid down in national legislation on copyright applicable to literary works.

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- 7 -

PE 204.504/A
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 holder shall have, in respect of:
- the selection or arrangement of the contents of the database,
and
- the material referred to in point 1 of Article 1 used in the creation, operation or interrogation of the database,
the exclusive right within the meaning of Article 2(1) to do or to authorize:

(e) any communication, display or performance of the database to the public.

(e) any communication, exhibiting, dissemination or retransmission, using any appropriate means, or performance of the database to the public.

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

(Amendment No. 17)
Article 8(3)

2. Member States shall provide appropriate measures for arbitration between the parties in respect of such licences.

(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.

(Amendment No. 19)
Article 8(5)a (new)

5a. For the purposes of paragraphs 4 and 5 of this Article, 'insubstantial parts' 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 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.

(Amendment No. 20)
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.

(Amendment No. 21)
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.

(Amendment No. 22)
Article 9(2)a (new)

2a. Substantial changes to the selection or arrangement of the contents of a database which involve a new edition of that database shall give rise to a fresh period of copyright protection for that database.
Commission text

(Amendment No. 23)

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 a 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 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.

(Amendment No. 24)

Article 9(4)

4. Insubstantial changes to the contents of a database shall not extend the original period of protection of that database by the right to prevent unfair extraction.

4. Insubstantial changes to the contents of a database shall not entail a fresh period of protection of that database by the right to prevent unfair extraction.

(Amendment No. 25)

Article 9(4)a (new)

4a. Any substantial change to the contents of a database shall give rise to a fresh period of protection by the right to prevent unfair extraction.

(Amendment No. 26)

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 holders are nationals of the Member State or who have their habitual residence on the territory of the Community.
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.

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1998.
DRAFT LEGISLATIVE RESOLUTION  
(Cooperation procedure: first reading) 
embodying the opinion of the European Parliament  
on the Commission proposal for a Council directive  
on the legal protection of databases

The European Parliament,

- having regard to the Commission proposal to the Council (COM(92) 0024 final - SYN 0393)

- 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 (A3-0000/93),

1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;

2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;

3. Calls for the conciliation procedure to be opened if the Council should intend to depart from the text approved by Parliament;

4. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;

5. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;

6. Instructs its President to forward this opinion to the Council and Commission.

1 OJ No. C 156, 23.6.1992, p. 4
Strasbourg, 26 May 1993


Dear Mr Bocklet,

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

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

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

The following took part in the vote: Desama, chairman; Adam and Quisthoudt-Rowohl, vice-chairmen; Bettini, Rovsing, Schlee, Seligman, De Gaulle (for Verwaerde, pursuant to Rule 111(2)) and Goedmakers (for Garcia Arias, pursuant to Rule 111(2)).
Essential factors for the dissemination of electronically stored collections of data in databases include on-line services between the database and the user (ASCII-database services, especially financial, economics and science databases), increasingly CD-ROM, videotext services as well as audiotos and radio. These information delivery media fulfill very different requirements, but have one thing in common: there is only incomplete legal protection for information which has been arranged by individual effort (in no Member State does copyright law mention the legal protection of databases) and essentially protection has so far only been secured through contract law. Because the information market in the Community is growing very rapidly, it is advisable to establish, at an early stage, a harmonized legal framework for the protection of databases to prevent the Member States from legislating in differing ways to prevent the misappropriation of electronically stored and retrievable collections of information.

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

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

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

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

Yours sincerely,

(sgd) C. DESAMA
3 June 1993

OPINION

of Committee on Economic and Monetary Affairs and Industrial Policy

for the Committee on Legal Affairs and Citizens' Rights

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

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

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

At the latter meeting it adopted the conclusions unanimously.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Conclusion

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

(Amendment No. 1)
Article 8(1)

Notwithstanding the right provided for in Article 2(5) to prevent the unauthorized extraction and re-utilization of the contents of a database, if the works or materials contained in a database which is made publicly available cannot be independently created, collected or obtained from any other source, the right to extract and re-utilize, in whole or substantial part, works or materials from that database for commercial purposes, shall be licensed on fair and non-discriminatory terms.

(Amendment No. 2)
Article 9(3)

The right to prevent unfair extraction shall run as of the date of creation of the database and shall expire at the end of a period of ten years from the date when the database is first lawfully made available to the public. The term of protection given in this paragraph shall be deemed to begin on the first of January of the year following the date when the database was first made available.
(Amendment No. 3)
Article 13(3) (new)

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

COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

MINUTES
of the meeting of
Tuesday, 8 June 1993 at 3 p.m.
Wednesday, 9 June 1993 at 9 a.m. and 3 p.m.
Thursday, 10 June 1993 at 9 a.m.
Room 2 - VAN MAERLANT
BRUSSELS

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   (SYN 0358 -  - A3-0271/92)
   - Draftsman: Manuel MEDINA ORTEGA
   - Draftsman's statement on the common position, exchange of
   views and deadline for amendments .................. 5

5 July 1993
4. **Removal of legal obstacles to the use of the ECU**

   T01631 (COS0067 - SEC(92) 2472 - C3-0040/93)
   Responsible: ECON R (RISKE PEDERSEN Klaus - LDR)
   Draftsman: Manuel MEDINA ORTIGA
   Exchange of views

5. **Commission's failure to act concerning violation of Article 8a of the EEC Treaty**

   (60/93)
   Statement by Mr VANNI D'ARCHIRAFI, Member of the Commission, and exchange of views on possible proceedings against the Commission for failure to act (Article 175 of the EEC Treaty)

6. **13th company law directive on takeover bids**

   (48/91)
   **II T00582** (SYN 0186 - COM(88) 0823 - C3-0057/89)
   (SYN 0186 - COM(90) 0416)
   Rapporteur: Nicole FONTAINE
   Statement by Mr VANNI D'ARCHIRAFI and exchange of views on progress of the proposal before the Council

**Wednesday, 9 June 1993 at 9 a.m.**

7. Exchange of views, in the presence of Mr CAMPINOS, Legal Adviser, on the following matters:

   (60/93)
   **A. Possible proceedings against the Commission (Article 175 EEC) for failure to act concerning the violation of Article 8a of the EEC Treaty on freedom of movement for persons**
   - Appointment of rapporteur

   (55/93)
   **B. Proceedings brought by the Commission against the Council (Article 173 EEC) seeking to set aside the decisions of the Council (92/609/EEC and 92/610/EEC of 7 December 1992) relating to the conclusion of agreements with Hungary, the Czech Republic and the Slovak Republic respectively in the field of transport services**
   - Decision to intervene in the proceedings

   (51/93) (65/93)
   **C. Possible 'second' set of proceedings against the Council (Article 175 EEC) in the field of transport, particularly as regards the harmonization of taxes on commercial vehicles (B3-0431/93 and B3-0452/93)**
   - Appointment of rapporteur and interim decision

   (63/93)
   **D. Possible proceedings against the Council (Article 173 EEC) to set aside two decisions of 10 May 1993 (93/323/EEC and 93/324/EEC), on agreements with the United States of America on public sector procurement**
   - Decision to institute proceedings
E. 'Common position' with a view to the adoption of a directive establishing a committee on transferable securities (see letter of 24 May 1993 from the Council to the President of Parliament, ref. 5463)
- Chairman's announcement

8. Non-revelation of journalists' sources
192/90
T01444 (B3-1544/90)
Opinion: CULT A* (ANDRE-LEONARD Anne -LDR)
CIVI A
- Chairman's announcement

Wednesday, 9 June 1993 at 3 p.m.

9. Legal protection of databases
81/91
**II T01563 (SYN 0393 - COM(92) 0024 - C3-0271/92)
(SYN 0393 -
- A3-0183/93)
- Rapporteur: Manuel GARCIA AMIGO
- Adoption of draft report (PE 204.504/A, PE 204.504/Am.29-69 and PE 203.016/DT)

Thursday, 10 June 1993 at 9 a.m.

10. Adoption of minutes of meetings of:
- 23-25 November 1992 (PE 202.646)
- 15-17 February 1993 CORRIGENDUM (PE 203.333/CORR.)
- 24-25 February 1993 FR/CORR. (PE 203.932)
- 16-18 March 1993 (PE 203.940)
- 24-26 March 1993 (PE 204.231), and
- 26-27 April 1993 (PE 204.831)

11. Appointment of rapporteurs and draftsmen - decisions on procedure to be followed (PE 204.835/Ann.I and PE 204.835/Ann.II)

12. Charter for ethnic groups
115/89
T00867 (B3-0177/89 - )
(B3-0478/90 - )
(B3-0690/90 - )
Opinion: CULT A* (SIMEONI Max - ARC)
- Rapporteur: Siegbert ALBER
- Consideration of draft report (PE 204.838) and deadline for amendments

DOC_EN\PV\225\225841 - 3 - PE 204.837
**I T02593 (SYN 04/55 - COM(93) 0037 - C3-0114/93) 
Opinion: ECON L 
- Rapporteur: Carlo PARREAU DE PINNINCK DOMENECH 
- Consideration of draft report (PE 204.839/A) and deadline for amendments ........................................ 8

14. Petition No. 150/91 on bad treatment of animals in the EEC (PE 152.334) (107/91) PET0019 
- Responsible: PETI 
- Draftsman: Christine Margaret ODDY 
- Consideration of working document (PE 205.031/DT) .............. 8

15. Other business 
A. Meeting on 3, 4 and 5 November 1993 in Luxembourg ................. 9
B. Meeting between the Committee on Legal Affairs and chairmen of national parliaments' legal affairs committees ............... 9
C. Border controls by British Airways - incompatibility with Article 8a of the EEC Treaty ........................................ 9

16. Amendments to the agenda ........................................ 9
17. Date and place of next meeting .................................... 9

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ANNEX I: Record of attendance 
ANNEX II: Appointment of rapporteurs and draftsmen 
ANNEX III: Decisions on the procedure to be followed on motions for resolutions tabled pursuant to Rule 63 of the Rules of Procedure and referred to the Committee on Legal Affairs and Citizens' Rights
ANNEX IV: Voting list on proposal for a directive on legal protection of databases (draft report by Mr GARCIA AMIGO, see item 9 on the agenda)

DOC_EN\PV\225\225841 - 4 - PE 204.837
The meeting opened at 3.12 p.m. with Mr Bocklet, chairman, in the chair.

* * *

The chairman read out the names of those who had requested authorization to attend the meeting:

Mrs Catherine STEWART, Cabinet Stewart;
Mr Anthony GOUTH, Cabinet Stewart;
Mr John STEPHENS, Reuters;
Mrs Anne VAN COPPENOLLE, Dun & Bradstreet;
Mr Marc DEERING, Adamson Associates;
Mrs Heidi RANSCOME, Coopers and Lybrand;
Mr Gerard GRIBBOM, Archimede;
Mrs Emmanuelle BUTAUD, CNPF;
Mrs Martine REZZI, European Group of Societies of Writer-Composers;
Mr Robert PRIESTER, guest of the RDE Group.

The committee authorized the above to attend.

* * *

1. The chairman read out the points on the agenda in the order in which they would be dealt with. Consideration of item 10 (equality of treatment between men and women) had been held over to a later meeting.

Mr Janssen van Raay and Mrs Fontaine spoke.

The draft agenda was adopted with these changes, subject to changes made to the order of items during the meeting.

2. Following a joint proposal from Mr Janssen van Raay, draftsman, and the chairman, the committee set the deadline for tabling amendments to the conclusions in the draft opinion (PE 204.507) at 12 noon on Thursday, 24 June 1993.

3. Mr Medina Ortega, rapporteur, commented on the Council's common position (C3-0201/93 - SYN 358). He proposed to submit a draft recommendation for the meeting on 28 and 29 June 1993.

The following spoke: the chairman, Anastassopoulos, Bruhann (Commission) and the rapporteur.

On a proposal from the chairman and with the agreement of the rapporteur - in the interest of complying with the three months' deadline ending on 28 August 1993 - the committee set the deadline for tabling amendments at 12 noon on Wednesday, 16 June 1993. This matter would be considered again at the next meeting.

4. Mr Medina Ortega, draftsman, summarized the subject briefly, insisting that it would be more in keeping with the nature of the subject if the Committee on Legal Affairs were to be the committee responsible.
Mr Anastassopoulos supported the rapporteur's view. The chairman spoke. The matter would be considered again at the meeting on 28 and 29 June 1993.

5. The chairman welcomed Mr Vanni d'Archirafi, Member of the Commission, who explained the legal nature of Article 8a of the EEC Treaty, the complexity of implementing it, the Commission's efforts to this end and the difficulties it had encountered with the Council, particularly in the area of freedom of movement. He stressed the decisive importance of the meeting scheduled for 30 June 1993 of the ministers of the States signatory to the Schengen Agreements.

The following spoke: the chairman, Turner (chairman of the Committee on Civil Liberties), Anastassopoulos, Janssen van Raay, Medina Ortega, Fontaine, Bonin, Bru Piron, Alber, Marinho and the Commissioner.

The chairman closed the debate, noting that the discussion on the advisability of bringing proceedings pursuant to Article 175 EEC for failure to act would be continued the following morning in the presence of the legal adviser.

6. Mr Vanni d'Archirafi explained the difficulties which the proposal for a 13th company law directive faced in the Council, which had not held a meeting on this subject since June 1991.

Mrs Fontaine, rapporteur, spoke, stressing the need for Community rules on take-over bids. Mr Vanni d'Archirafi said that the Commission planned to take further soundings from the Member States. If it appeared necessary to include new material in its proposal or amend it substantially, it would ensure that Parliament was consulted at first reading.

The chairman spoke, thanking the Commissioner for his attendance and for his contribution to the work of the committee.

* * *

The meeting was adjourned at 6.30 p.m. and resumed the following morning, Wednesday, 9 June, at 9.12 a.m., with Mr Bocklet in the chair.

* * *

7. The chairman welcomed Mr Campinos, legal adviser, and said that the meeting would continue in camera.

A. The legal adviser briefed members on the implementation by the Commission and the Council of Article 8a EEC, particularly as regards freedom of movement for persons.

The following spoke: Medina Ortega, Janssen van Raay and the chairman. The chairman reminded members that the committee would need to appoint a rapporteur on this subject (see PE 204.835/Ann.II, item 7) and said a decision might be taken at the committee's next meeting.

B. The legal adviser summarized the matter which Mrs Van Dijk, chairman of the Committee on Transport and Tourism, had raised before the Committee on Legal
Affairs by letter of 3 May 1993. The following spoke: the chairman, Medina Ortega and Janssen van Raay.

The problem at issue was the conflict between the use of Article 113 EEC (proposed and defended by the Commission) and Article 75 EEC (adopted by the Council in its two decisions). The committee, maintaining a consistent position on this matter, decided unanimously to recommend to the President that Parliament intervene together with the Council in the case currently pending before the Court of Justice.

C. Mr Schoo, of the Legal Service, gave an account of the subject. The following spoke: Medina Ortega, the chairman, van Dijk (chairperson of the Committee on Transport and Tourism), Alber, Janssen van Raay and Schoo.

It was decided to defer a decision pending further discussions by the Committee on Transport and Tourism. The committee would monitor the case and appoint a rapporteur (see PE 204.835/Ann.II, point 8).

D. Following a briefing by Mr Quintana Rufas, of the Legal Service, and contributions by Mr Janssen van Raay and the chairman, the committee decided unanimously to recommend that proceedings be brought (pursuant to Article 173 EEC) to have the Council's two decisions (93/323/EEC and 93/324/EEC; OJ No. L 125, 20 May 1993) set aside.

The chairman spoke.

E. The chairman informed members that, following the committee's discussions on this subject (see minutes of meeting of 26 and 27 April 1993, item 6c, PE 204.831), he had asked the President on the committee's behalf that the text which the Council had adopted as a common position on the establishment of a committee on transferable securities should not be announced at the May 1993 part-session.

The following spoke: the legal adviser, Mr Janssen van Raay and the chairman.

The chairman thanked the legal adviser and the members of the Legal Service for their contribution to the committee's work and declared the meeting no longer in camera.

8. Mr Anastassopoulos, rapporteur, briefed members on the basis of his working document (PE 204.510). The following spoke: the chairman - who emphasized the need for preliminary work, in this case the search for an appropriate legal basis -, Malangre, Vayssade, Bontempi, Garcia Amigo, the rapporteur and Grund.

Consideration of this matter would resume at the meeting on 28 and 29 June 1993.
The meeting was adjourned at 12.23 p.m. and resumed at 3.10 p.m. with Mr Bocklet in the chair.

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9. The committee voted on the proposal for a directive and the amendments thereto (see PE 204.504/A and PE 204.504/Am. 29-69).

A table setting out the detailed results of the vote appears in annex IV to these minutes.

The proposal as a whole, as amended, was adopted by 8 votes to 1, with one abstention.

The motion for a legislative resolution was adopted (8/1/1).

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The meeting was adjourned at 6.15 p.m. to enable a coordinators' meeting to be held. It resumed the following morning, Thursday, 10 June, at 9.10 a.m. with Mr Rothley, second vice-chairman, in the chair.

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10. The minutes were approved.

11. The committee, on the basis of the recommendations of the coordinators' group, took the decisions shown in annexes II and III to these minutes.

12. Mr Alber, rapporteur, introduced his draft report (PE 204.838). The following spoke: Janssen van Raay, Grund, Inglewood, Bontempi, Garcia Amigo, Rothley and the acting chairman.

On a proposal from the acting chairman, it was decided to set the deadline for tabling amendments at 12 noon on Wednesday, 8 September 1993. Discussion of the subject would resume at a subsequent meeting.

13. Mr Perreau de Pinninck Domenech, rapporteur, introduced his draft report (PE 204.839/A). The following spoke: the acting chairman, Mr Fombellida (Commission), Mr Rogalla and the rapporteur.

On a proposal from the acting chairman, it was decided to set the deadline for tabling amendments at 12 noon on Wednesday, 8 September 1993. Discussion of the subject would resume at a subsequent meeting.

14. Mrs Oddy, draftsman, introduced her working document on Petition No. 150/91 (PE 152.334). The following spoke: Rogalla, the acting chairman and the draftsman.

Consideration of the subject would resume at a later meeting, on the basis of a draft opinion to be drawn up by the draftsman.
15. Other business

A. The acting chairman informed members that, if the meeting on 3, 4
and 5 November 1993 in Luxembourg were confirmed:
- a working meeting would be held at the Court of Justice on
4 November, and
- on 5 November a visit would be organized to the Academy of
European Law in Trier.

B. The acting chairman stated that, in principle, the joint meeting
with the chairmen of the legal affairs committees of national
parliaments would be held on 14 October 1993.

C. Mr Rogalla spoke, and the acting chairman said that the committee
had appointed a rapporteur on this subject (see PE 204.835/Ann.II,
item 5).

16. The following items on the agenda (PE 204.835) were held over to a
subsequent meeting:
- 11 (situation of notaries in the Member States of the Community);
- 15 (1994 general budget: Section III) and
- 16 (1994 general budget - other sections).

17. The next meeting would be held in Brussels on Monday, 28 June 1993 at
3 p.m. and on Tuesday, 29 June 1993 at 9 a.m.

* * *

The meeting closed at 11.15 a.m.
| Art. 111,2 | COLOM I NAVAL (2) - FREMION (2) - SCHLECHTER - SIERRA BARDAJI (2) - WETTIG (2) |
| Art. 124,4 | BEAZLEY (1) - PRONCK (1) - TURNER (1,2) - VAN DIJK (2) |

| Endv. deltag/Weitere Teiln./ | BEAZLEY (1) - PRONCK (1) - TURNER (1,2) - VAN DIJK (2) |

| (P) = Formand/Vorsitzender/Chairman/President/Presidente/Voorzittend/Presidente |
| (VP) = Nestform/Stellv. Vorsitz./Avtonom/Chairman/Vice-President/Vice-Presidente/ |
| (1) = Form/Sed/Weitere Tilm./ | (1) = Form/Sed/Weitere Tilm./ |
| (2) = Stk/Sed/Weitere Tilm./ | (2) = Stk/Sed/Weitere Tilm./ |
| (3) = Stk/Sed/Weitere Tilm./ | (3) = Stk/Sed/Weitere Tilm./ |

| (P) = Formand/Vorsitzender/Chairman/President/Presidente/Voorzittend/Presidente |
| (VP) = Nestform/Stellv. Vorsitz./Avtonom/Chairman/Vice-President/Vice-Presidente/ |
| Stedfærdigere/Stellvertreter/Avvankunft/Substitutes/Suplentes/Suppleants |
| Stedfortrædere/Stellvertreter/Avonkunft/Substitutes/Suplentes/Suppleants |
| (1) = Form/Sed/Weitere Tilm./ |
| (2) = Stk/Sed/Weitere Tilm./ |
| (3) = Stk/Sed/Weitere Tilm./ |

| Members/Mitglieder/Membres/Diputados/Leden/Delegados: |
| *BOCKETT (P) (1,2) - VAYSANC (VP) (1,2) - BOROS (VP) (1) |
| AMIGO - GRUNO - LORD INGELMOOD (2) - JANSSEN VAN RAAY - MALANGRE - MARINHO (1) - MEDINA (1,2) |
| (1,2) - ODY (1,2) - REYMANN (1,3) - UKEIWE (1) |

| Participants également/ |
| Hanno partecipato altresi'/Andr-o altre | |
| Outros participantes/ |
| (Dagsorden/Tagesordnung/ |
| Hjelpeside/Inläsning/03/06/Agenda/ |
| Orden do dia/Pkt./Início/Point/Punto/Punt/Punto): |

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| (2) = Stk/Sed/Weitere Tilm./ |
| (3) = Stk/Sed/Weitere Tilm./ |

| (P) = Formand/Vorsitzender/Chairman/President/Presidente/Voorzittend/Presidente |
| (VP) = Nestform/Stellv. Vorsitz./Avtonom/Chairman/Vice-President/Vice-Presidente/ |
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| (2) = Stk/Sed/Weitere Tilm./ |
| (3) = Stk/Sed/Weitere Tilm./ |
Efter indbydelse fra formanden/Auf Eindlandung d. Vorsitzenden/Mc πρόεδρος του Προέδρου/At the invitation of the Chairman/Por invitación del presidente/Sur l'invitation du président/Su invito del presidente/Op uitnodiging van de voorzitter/A convite do presidente:

Rådet/Rat/Toulioilo/ Council/Consejo/Consegil/Raad/Conselho: (*)

Kommissionen/Kommission/Entpouj/Commission/Comisión/Commissione/Comissão: (*)

BRUHANN - CZARNOTA - FOMBELLIDA - LAU - VANNI D'ARCHIRAFI (commissionaire)

Coeur des comptes:

C.E.S.:

Andre deltagere
Andere Teilnehmer
Enlones Neslæge
Also present
Otros participantes
Autres participants
Autri partecipanti
Andere aanwezigen
Outros participantes

Gruppernes sekretariat
Sekretariat der Fraktionen
Γραμματεία των Πολ. Ομάδων
Secretariat of pol. groups
Sccr. de los grupos políticos
Sccr. des gr. politiques
Sccr. del gruppi politici
Sccr. van de fracties
Sccr. dos grupos políticos

Cab. du Président
Cab. du Secrétaires Général

Generaldirektorat
Generaldirektion
Γενική Διεύθυνση
Directorate-General
Dirección General
Direction générale
Direzione generale
Direcção geral

Controle financier
Service juridique

Udvalgssekretariatet
Ausschubsekretariat
Γραμματεία Εντοποίησης
Committee secretariat
Secretaría de la comisión
Secretariat della commissione
Secretariado da comissão

Assist./Bønboč

SOC
PPE
LDR
Verta
QGE
RDE
DR
CG
ARC
CLARKE - LANGE - ROKOFYLLOU
KAVALERAKIS
COLERA GARZON
MORERA - BOCKRAAD
GUCCIONE

OLIVARES MARTINEZ
NATSCHERADIT - VAN ARUM
PACHECO
DI STEFANO - NAHAROZKI

PASSOS
KARAMAROS
COSTI
LEONHARDT
FEENEY

BOURSEAU

* (P) = Formand/Pras./Préside/Chairman/Président/Voorzitter
(VP) = Næstform./Vize-Pras./Vice-Chairman/Vice-Président/Ondervoorz./Vice-pres.
(M) = Medlem/Mitglied/Miembro/Member/Membre/Membro/Lid/Membro
(F) = Tjenestemand/Beamter/Yndålnøgø/Official/Funcionario/Fonctionnaire/Funzionario/Ambtenaar/Functionario
I. Nomination de rapporteurs pour avis sur des consultations :

1. Pluralisme et concentration des médias dans le marché intérieur - Evaluation de la nécessité d'une action comm. 
(13/93)
T02557 - ( COS0066 - COM(92)0480 - C3-0035/93 )
- Rapporteur pour avis: Kurt MALANGRE (PPE) (1 point)
  Fond: JEUN R (FAYOT Ben - PSE)
  Avis: ECON A

2. 22e rapport annuel sur la politique de concurrence 
(56/93)
T02862 - ( COS0071 - COM(93)0162 - C3-0191/93 )
- Rapporteur pour avis: Anthony SIMPSON (PPE) (0 point)
  Fond: ECON R (READ Imelda Mary - PSE)
  Avis: AGRI A

II. Nomination de rapporteurs pour avis sur des propositions de résolution, art: 63

3. Libre circulation sur les axes routiers communautaires 
(25/93)
SAPENA GRANELL Enrique(PSE), COIMBRA MARTINS António
T01698 - ( B3-1955/90 - - - )
  - ( B3-1553/92 - - - )
- Le 20/3/91, la comm JURI a décidé de ne pas donner AVIS sur
  prop.rés.B3-1955/90 portant sur le même sujet que B3-1553/92
  Fond: TRAN R (SAPENA GRANELL Enrique - PSE)
  - Décision de ne pas faire avis.

4. Lutte contre la pauvreté et l'exclusion sociale dans la CE 
(44/93)
CRAWLEY Christine M.(PSE), CRAMPTON Peter Duncan, COATES Kenneth,
MCMAHON Hugh R.
T02402 - ( B3-0314/93 - - - )
- La comm. JURI a été saisie pour AVIS en séance le 23/4/93.
- La comm. ASOC a décidé de joindre cette proposition de résolution au
  rapport d'initiative de Mme HADJIGEORGIOU qui devrait être adopté le
  1/7/93
  Fond: ASOC R (HADJIGEORGIOU Menelaos - PPE)
  Avis: PETI
  - Décision de ne pas faire avis.

III. Nomination de rapporteurs au fond sur des initiatives (suite à la 
  décision du Bureau élargi du 19 mai 1993)

5. Incompatibilité des contrôles frontaliers exercés par la British Airways 
  avec l'art. 8 A du traité CEE 
(18/93)
- Rapporteur au fond : David W. MARTIN (S) (1 point)
6. Harmonisation de certains secteurs du droit privé des États membres (54/93)
   - Rapporteur au fond : Carlos Maria BRU PURON (S) (1 point)

   Recours en carence pour faire constater la violation art. 8 A du traité CEE sur la libre circulation des personnes (60/93)
   - Avis : LIBE
   - Rapporteur au fond : Manuel MEDINA ORTEGA (S) (1 point)

IV. Nomination de rapporteur au fond sur des propositions de résolution, art. 63

8. Deuxième recours en carence dans le domaine des transports (51/93 + 65/93)
   (B3-0431/93 de M. TOPMANN - B3-0452/93 de M. MÜLLER)
   - Rapporteur au fond : Lord INGLEWOOD (PPE) (1 point)
Décisions sur la procédure à suivre au sujet de propositions de résolution déposées conformément à l'article 63 du cours de la période de session du 19 au 23 avril 1993 et renvoyées pour examen au fond à la commission juridique et des droits des citoyens

200. Réglementation des services érotiques offerts par les télécommunications

ROBLES PIQUER Carlos (PPE)
B3-0126/93
Avis : ECON S
JEUN S
Pas de rapport

201. Mesures contre la discrimination et la xénophobie

ARBELOA MURU Victor Manuel (PSE)
B3-0132/93
Avis : LIBE S
Pas de rapport

202. Discrimination fondée sur l'âge dans les institutions communautaires

JACKSON Christopher M. (PPE)
B3-0323/93
- Rapporteur : Marie-Claude VAYSSADE (S)

203. Discrimination fondée sur l'âge dans les institutions communautaires

SIMPSON Anthony M.H. (PPE)
B3-0324/93
- Rapporteur : Marie-Claude VAYSSADE (S) (1 point).

204. Imposition de limites d'âge pour le recrutement des fonctionnaires des institutions communautaires

JACKSON Christopher M. (PPE), SIMMONDS Richard J., SIMPSON Anthony M.H., INGLEWOOD The Lord
B3-0325/93
- Rapporteur : Marie-Claude VAYSSADE (S)

205. Déontologie politique et mandats privés des hommes politiques

STAES Paul M.J. (V)
B3-0327/93
- Rapporteur : Christine Margaret ODDY (S) (1 point).
206. La réforme de la Convention européenne des Droits de l'homme (52/93)
ARBELOA MURU Victor Manuel (PSE)
B3-0446/93
Pas de rapport.

207. Les droits et devoirs des minorités en Europe (53/93)
ARBELOA MURU Victor Manuel (PSE)
B3-0447/93
Pas de rapport.
ANNEXE IV

(81/91)

V O T E

concernant
le projet de rapport sur une proposition de directive
relative à la protection juridique des bases de données
(COM(92)0214 - C3-0271/92 - SYN0393)
Rapporteur : M. GARCIA AMIGO

(PE 204.504 - PE 204.504/A/Am.29-69)

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Commentaires

Caduc
Adopté
Rejeté

Resultat du vote

(7/2/1)
(9/1/2)
(10/0/2)
(9/1/1)
(9/1/1)
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REPORT

of the Committee on Legal Affairs and Citizens' Rights

on the Commission proposal for a Council directive on the legal protection of databases
(COM(92) 0024 final - C3-0271/92 - SYN 0393)

Rapporteur: Mr Manuel GARCIA AMIGO
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By letter of 23 June 1992 the Council consulted the European Parliament, pursuant to Articles 57(2), 66 and 100a of the EEC Treaty, on the Commission proposal for a Council directive on the legal protection of databases.

At the sitting of 6 July 1992 the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic Affairs and Industrial Policy and the Committee on Energy, Research and Technology for their opinions.

At its meetings of 22 May 1991 the Committee on Legal Affairs and Citizens' Rights had appointed Mr García Amigo rapporteur.

At its meetings of 4 December 1992, 17 March 1993, 26 April 1993, 1 June 1993 and 9 June 1993 the committee considered the Commission proposal and draft report.

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

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

The explanatory statement will be submitted orally in plenary.

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

The report was tabled on 10 June 1993.

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

Commission text

Recital 31

(31) Whereas, in the interests of
competition between suppliers of
information products and services,
the maker of a database which is
commercially distributed, whose
database is the sole possible source
of a given work or material, should
make that work or material available
under licence for use by others,
providing that the works or materials
so licensed are used in the
independent creation of new works,
and providing that no prior rights in
or obligations incurred in respect of
those works or materials are
infringed;

Amendments

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

(31) 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. 2)
Recital 37a (new)

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

For full text see COM(92) 0024 final - OJ No. C 156, 23.6.1992, p. 4
(Amendment No. 3)
Article 1(1)

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 No. 4)
Article 1a (new)

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

(Amendment No. 5)
Article 1b (new)

'owner of a database' means the author of a database or the natural or legal person to whom the author has lawfully granted the right to prevent unauthorized extraction of material from a database.
Commission text

(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;

(Amendment No. 7)

Article 1(2a) (new)

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

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

(a) domestic and non-collective, or

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

(Amendment No. 3)

Article 1(3)

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

4. For the purposes of the term of protection provided for in Article 2, '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(3), insubstantial additions, deletions or alterations which, taken together, do not substantially modify the contents of a database.

(Amendment No. 10)

Article 1(4a) (new)

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

(a) with regard to the provisions of Article 9(2), alterations, additions or deletions which involve substantial modification to the selection or arrangement of the contents of a database, resulting in a new edition of that database;

(b) with regard to the provisions of Article 9(4), the successive accumulation of insubstantial alterations, additions or deletions in respect of the contents of a database, resulting in substantial modification to all or part of a database.
5. Member States shall provide for a right for the *maker* of a database to prevent the unauthorized extraction or re-utilization, from that database, of its contents, in whole or in substantial part, for commercial purposes. This right to prevent *unfair* extraction of the contents of a database shall apply irrespective of the eligibility of that database for protection under copyright. It shall not apply to the contents of a database where these are works already protected by copyright or neighbouring rights.

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 *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.
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 remains subject to any copyright or other rights acquired or obligations incurred therein.

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

(Artment No. 14)

Article 5

The author shall have, in respect of:

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

and

- the electronic material referred to in point 1 of Article 1 used in the creation or operation of the database,

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

The owner shall have, in respect of:

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

and

- the material referred to in point 1 of Article 1 used in the creation, operation or interrogation of the database,

the exclusive right within the meaning of Article 2(1) to do or to authorize:
1. The lawful user of a database may perform any of the acts listed in Article 5 which is necessary in order to use that database in the manner determined by contractual arrangements with the right owner.

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 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.

2. 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 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.

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 of the author of the work, performance of such acts shall not be taken to infringe the right of the creator of the database laid down in Article 5.
(Amendment No. 17)
Article 8 - new subparagraph before subparagraph 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)

Notwithstanding the right provided for in Article 2(5) to prevent the unauthorized extraction and re-utilization of the contents of a database, if the works or materials contained in a database which is made publicly available cannot be independently created, collected or obtained from any other source, the right to extract and re-utilize, in whole or substantial part, works or materials from that database for commercial purposes, shall be licensed on fair and non-discriminatory terms.

Notwithstanding the right provided for in Article 2(5) to prevent the unauthorized extraction and re-utilization of the contents of a database, if the works or materials contained in a database which is made publicly available cannot be independently created, collected or obtained from any other source, the right to extract and re-utilize, in whole or substantial part, works or materials from that database for commercial purposes that are not for reasons such as economy of time, effort or financial investment, shall be licensed on fair and non-discriminatory terms. A declaration shall be submitted clearly setting out the justification of the commercial purposes pursued and requiring the issue of a licence.

(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 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.
1. 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.

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 terms 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.

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.
2a. Substantial changes to the selection or arrangement of the contents of a database which involve a new edition of that database shall give rise to a fresh period of copyright protection for that database.

3. The right to prevent unfair extraction shall run from the date of creation of the database and shall expire at the end of the period of 10 years from the date when the database is first lawfully made available to the public. The term of protection given in this paragraph shall be deemed to begin on 1 January of the year following:

(a) the date when the database was first made available to the public, or

(b) any substantial change to the database, or

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

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.
Commission text

(Amendment No. 26)
Article 9(4)a (new)

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.

Amendments

4a. Any substantial change to the contents of a database shall give rise to a fresh period of protection by the right to prevent unfair extraction.

(Amendment No. 27)
Article 11(1)

1. Protection granted pursuant to this Directive to the contents of a database against 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)

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

3. Agreements extending the right to prevent unauthorized extraction to databases produced in third countries and falling outside the provisions of paragraphs 1 and 2 shall be concluded by the Council acting on a proposal from the Commission. The term of any protection extended to databases by virtue of this procedure shall not exceed that available pursuant to Article 9(3).
2. Protection pursuant to the provisions of this Directive shall also be available in respect of databases created prior to the date of publication of the Directive which on that date fulfilled the requirements laid down therein as regards the protection of databases. Such protection shall be without prejudice to any contracts concluded and rights acquired before that date.

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

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 and since that date without prejudice to any contracts concluded and rights acquired before that date.

(Amendment No. 31)
Article 13(1)

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1995.
Not later than at the end of the fifth year after implementation of this directive and every two years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this directive and, where necessary, shall submit proposals for its adjustment in line with developments in the area of databases.
DRAFT LEGISLATIVE RESOLUTION  
(Cooperation procedure: first reading)  
embodying the opinion of the European Parliament  
on the Commission proposal for a Council directive  
on the legal protection of databases  

The European Parliament,  

- having regard to the Commission proposal to the Council (COM(92) 0024 final - SYN 0393),  
- 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.  

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1 OJ No. C 156, 23.6.1992, p. 4
ANNEX I

OPINION
(Rule 120 of the Rules of Procedure)

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

Draftsman: Mr Klaus WETTIG

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

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

At the latter meeting it adopted the conclusions unanimously.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Much more restrictive utilisation contracts could subsequently be negotiated that would restrict the right of access to information. Bigger producers would be in a more favourable position than small ones. The Commission seeks to combat this danger by making it compulsory to issue a licence pursuant to Article 8(1) and (2). The purpose of requiring a licence to be issued is to help ensure that monopoly positions are not abused. However, the licence must not be allowed to lead to a de facto expropriation of the database producer. A more precise stipulation of the criteria for issuing licences consequently is necessary. Although in recital 33 the Commission asserts that such licences should not be requested for reasons such as economy of time, effort or financial investment, this is not specifically stipulated in the main text of the directive.

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

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

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

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

Commission proposal

(Amendment No. 1)
Article 8(1)

Notwithstanding the right provided for in Article 2(5) to prevent the unauthorized extraction and re-utilization of the contents of a database, if the works or materials contained in a database which is made publicly available cannot be independently created, collected or obtained from any other source, the right to extract and re-utilize, in whole or substantial part, works or materials from that database for commercial purposes, shall be licensed on fair and non-discriminatory terms.

Amendment

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. 2)
Article 9(3)

The right to prevent unfair extraction shall run as of the date of creation of the database and shall expire at the end of a period of ten years from the date when the database is first lawfully made available to the public. The term of protection given in this paragraph shall be deemed to begin on the first of January of the year following the date when the database was first made available.

The right to prevent unfair extraction shall run as of the date of creation of the database and shall expire at the end of a period of fifteen years from the date when the database is first lawfully made available to the public or substantially changed. The term of protection given in this paragraph shall be deemed to begin on the first of January of the year following the date when the database was first made available or substantial changes were made to the database.
(Amendment No. 3)
Article 13(3) (new)

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

OPINION

of the Committee on Energy, Research and Technology

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

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Strasbourg, 26 May 1993


Dear Mr Bocklet,

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

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

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

1 The following took part in the vote: Desama, chairman; Adam and Quisthoudt-Roehl, vice-chairmen; Bettini, Rovsing, Schlee, Selignan, De Gaulle (for Verwaerde, pursuant to Rule 111(2)) and Goedmakers (for Garcia Arias).
Essential factors for the dissemination of electronically stored collections of data in databases include on-line services between the database and the user (ASCII-database services, especially financial, economics and science databases), increasingly CD-ROM, videotext services as well as audiotext and radio. These information delivery media fulfil very different requirements, but have one thing in common: there is only incomplete legal protection for information which has been arranged by individual effort (in no Member State does copyright law mention the legal protection of databases) and essentially protection has so far only been secured through contract law. Because the information market in the Community is growing very rapidly, it is advisable to establish, at an early stage, a harmonized legal framework for the protection of databases to prevent the Member States from legislating in differing ways to prevent the misappropriation of electronically stored and retrievable collections of information.

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

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

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

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

Yours sincerely,

(sgd) C. DESAMA
SUMMARY OF PROCEEDINGS

of: Working Party on Intellectual Property (Copyright)
dated: 10 June 1993

No. prev. doc.: 7964/93 PI 66 CULTURE 38
No. Conc prop.: 6919/92 PI 64 CULTURE 61


1. Introduction

1.1. At its meeting on 10 June 1993, the Working Party 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 I). The combined effect of these amendments was to:

(1) The Luxembourg delegation was not represented at this meeting.
(a) extend the scope of the Directive to cover non-
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)

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;

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;
ANNEX II

Amendments to Article 8

Commission text Amendment

(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, can 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)

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

For the purposes of Article 9, 'insubstantial change' means:

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

(b) with regard to the application of Article 9(4)(b), additions, deletions or alterations which do not, either taken together or taken separately, result in a new edition of that database.

7998/93 (ANNEX II)
### Annex III

#### Amendments to Article 9(3)

(Combination of amendments Nos. 63 and 66)

<table>
<thead>
<tr>
<th>Commission text</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Article 9(3)</strong></td>
<td><strong>Article 9(3)</strong></td>
</tr>
<tr>
<td>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.</td>
<td>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:</td>
</tr>
<tr>
<td></td>
<td>(a) the date when the database was first made available to the public.</td>
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<tr>
<td></td>
<td>(b) any substantial change to the database.</td>
</tr>
<tr>
<td></td>
<td>(c) the date of insertion, for each item included in a regularly updated database, with prejudice to Article 9(h).</td>
</tr>
</tbody>
</table>
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.

Amendment

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.
Amendment No. 29

by Mrs SALEMA O. MARTINS

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

Rapporteur: Mr GARCIA AMIGO

Commission text

Entire proposal for a directive

Amendment

Table a motion for a resolution, pursuant to Rule 41(4), calling on the Commission to withdraw its proposal for a directive, as provided for in the above Rule.

JUSTIFICATION:

It is proposed that the Committee on Legal Affairs and Citizens' Rights table a motion for a resolution in which Parliament would call upon the Commission to withdraw its proposal for a directive and to submit a clearer, more simply worded text consistent with existing law on intellectual property.
Amendment No. 30

by Mr GARCIA AMIGO

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

Rapporteur: Mr GARCIA AMIGO

<table>
<thead>
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<tbody>
<tr>
<td>Thirty seventh recital a (new)</td>
<td>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:</td>
</tr>
</tbody>
</table>
COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Amendment No. 31 (to replace Amendment No. 2 of the draft report)

by Mr GARCIA AMIGO

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

Rapporteur: Mr GARCIA AMIGO

<table>
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<tr>
<td>For the purposes of this Directive:</td>
</tr>
<tr>
<td>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;</td>
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<tr>
<td>For the purposes of this Directive:</td>
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<td>1. 'database' means a collection 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;</td>
</tr>
</tbody>
</table>
Amendment No. 32

by Mr FRÉMION

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

Rapporteur: Mr GARCIA AMIGO

Commission text

Article 1

DEFINITIONS

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

1. 'database' means a very large 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 No. 33
by Mr BRU PURON

Commission proposal for a Council directive on the legal protection of databases
(COM(92) 0024 final - C3-0271/92 - SYN 393
Rapporteur: Mr GARCIA AMIGO

**Commission text**

Article 1(1)

1. 'database' means a collection of works or materials arranged, stored and accessed by electronic means, and the materials necessary for the operation of the database such as its thesaurus, index or system for obtaining or presenting information; it shall not apply to any computer programme used in the making or operation of the database;

**Amendment**

1. 'database' means a collection of a large number of works or materials arranged, stored and accessed by 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;
Committee on Legal Affairs and Citizens' Rights

Amendment No. 34

by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

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**Commission text**

**Amendment**

Article 1(1), final clause

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;

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 or hardware used for the making or operation of the database;
Amendment No. 35
by Mrs FONTAINE
Commission proposal for a Council directive on the legal protection of databases (COM(92) 0024 final - C3-0271/92 - SYN 393
Rapporteur: Mr GARCIA AMIGO

Article 1a (new)

For the purposes of this Directive:

'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.
Commission text

Article 1b (new)

For the purposes of this Directive:

'holder 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. 37

by Mr BOCKLET

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

Rapporteur: Mr GARCIA AMIGO

Commission text

Amendment

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 legal owner of a database to prevent acts of extraction and re-utilization of material from that database for any other than purely private purposes.
Committee on Legal Affairs and Citizens' Rights

Amendment No. 38
by Mrs Fontaine

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

Rapporteur: Mr Garcia Amigo

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Commission text

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;

Amendment

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 in that database with a view to its sale;
By Mr GARCIA AMIGO

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

Rapporteur: Mr GARCIA AMIGO

Amendment No. 39

Commission text

Article 1(2a) (new)
2. For the purposes of the present directive, and in particular the provisions of Article 8(4), 'commercial purposes' shall be understood to mean any use - whether private or collective - aiming at economic activity or a compulsory transaction.
Amendment No. 40

by Mrs GRUND

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

Rapporteur: Mr GARCIA AMIGO

Article 1(2a) (new)

2a An exemption shall be granted in respect of the claim on the right to prevention of unauthorized extraction where a database is demonstrably being used for non-commercial purposes.
Amendment No. 41

by Mrs GRUND

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

Rapporteur: Mr GARCIA AMIGO

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Commission text

Amendment

Article 1(4a)

4a For the purposes of the term of protection provided for in Article 9, 'substantial change' must be objectively verifiable under the jurisdiction of the national courts responsible.
Amendment No. 42

by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

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**Commission text**

Article 2(3)

3. A database shall be protected by copyright if it is original in the sense that it is a collection of works or materials which, by reason of their selection or their arrangement, constitutes the author's own intellectual creation. No other criteria shall be applied to determine the eligibility of a database for this protection.

---

**Amendment**

3. A database shall be protected by copyright if it is original in the sense that it is a collection of facts, works or other materials which, by reason of their selection or their arrangement, constitutes the maker's own intellectual creation. No other criteria shall be applied to determine the eligibility of a database for this protection.
COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Amendment No. 43
by Mr GARCIA AMIGO

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

Rapporteur: Mr GARCIA AMIGO

Commission text

Article 2(3)

3. A database shall be protected by copyright if it is original in the sense that it is a collection of works or materials which, by reason of their selection or their arrangement, constitute the author's own intellectual creation. No other criteria shall be applied to determine the eligibility of a database for this protection.

Amendment

3. A database shall only be protected as a literary work if it is original. Only databases in the form of a collection of data, works or materials which, by reason of their selection or their arrangement, constitute the author's own intellectual creation, shall be considered as being original.
Committee on Legal Affairs and Citizens' Rights

Amendment No. 44
by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

Commission text

Article 2(4)

4. The copyright protection of a database given by this Directive shall not extend to the works or other materials contained therein, irrespective of whether or not they are themselves protected by copyright; the protection of a database shall be without prejudice to any rights subsisting in those works or other materials themselves.

Amendment

4. The copyright protection of a database given by this Directive shall not extend to the facts, works or other materials contained therein, irrespective of whether or not they are themselves protected by copyright; the protection of a database shall be without prejudice to any rights subsisting in those facts, works or other materials themselves.
Amendment No. 45
by Mr Yves FREMION

Commission proposal for a Council directive on the legal protection of databases
(COM(92) 0024 final - C3-0271/92 - SYM 393

Rapporteur: Mr GARCIA AMIGO

Commission text

Article 2(5)

5. Member States shall provide for a right for the manufacturer of a database to prevent the unauthorized extraction or re-utilization, from that database, of its contents ...

(Rest unchanged)

Amendment

5. Member States shall provide for a right for the manufacturer of a database to prevent the extraction or re-utilization, from that database, without his consent, of its contents ...

(Rest unchanged)
Amendment No. 46
by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

**Commission text**

Article 2(5), first sentence

5. Member States shall provide for a right for the maker of a database to prevent the unauthorized extraction or re-utilization, from that database, of its contents, in whole or in substantial part, for commercial purposes.

(Rest unchanged)

**Amendment**

5. Member States shall provide for a right for the maker of a database to prevent the unauthorized extraction or re-utilization, from that database, of its contents, in whole or in substantial part, for purpose of offering the latter for sale.

(Rest unchanged)
COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Amendment No. 47
by Mr FREMION

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

Rapporteur: Mr GARCIA AMIGO

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Commission text  Amendment

Article 3

AUTHORSHIP: COPYRIGHT

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.

ORIGINAL COPYRIGHT HOLDER

(title amended)

1. The original copyright holder shall be:

- either the author of the database, i.e. the natural person or persons who created the database;

- or, where the legislation of the Member State concerned permits, the legal person designated as the rightholder by that legislation.

---
Amendment No. 48 (replaces Amendment No. 12 of the draft report)
by Mr GARCIA AMIGO

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

Rapporteur: Mr GARCIA AMIGO

Amendment text

Article 3a (new)

ENTITLEMENT TO PROTECTION UNDER COPYRIGHT

Protection under copyright shall be granted to any natural or legal person who fulfils the requirements laid down in national legislation or international agreements on copyright applicable to literary works.
COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Amendment No. 49
by Mr BRU PURON

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

Rapporteur: Mr GARCIA AMIGO

Commission text Amendment

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.

Amendment

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.
Amendment No. 50

by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

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**Commission text**

Article 4(1)

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.

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**Amendment**

1. The incorporation into a database of brief extracts, quotations or summaries which do not substitute for the original works themselves, shall not require the authorization of the holder of copyright or of other rights acquired relating to those works.
Amendment No. 51

by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

Commission text

Article 4(2)

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

Amendment

2. The incorporation into a database of other forms of work or material remains subject to any copyright or other rights acquired or obligations incurred therein.
Amendment No. 52

by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

Commission text

Article 5

The author shall have, in respect of:

- the selection or arrangement of the contents of the database, and
- the electronic material referred to in point 1 of Article 1 used in the creation or operation of the database,

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

...
Amendment No. 53

by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

Commission text  Amendment

(d) any form of distribution to the public, including the rental, 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, with the exception of the right to control further rental of the database or a copy thereof.

(d) any form of distribution to the public, including the rental, of the database or of copies thereof. The first sale in the Community of a copy of the database by the holder of the database or with his consent shall exhaust the distribution right within the Community relating to that copy, with the exception of the right to control further rental of the database or a copy thereof.
Commission text

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 rightholder.

Amendment

1. Unless otherwise stipulated, authorization to use a database, issued by the copyright holder, 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. 55

by Mr FREMION

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

Rapporteur: Mr GARCIA AMIGO

Commission text

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 rightholder 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.

Amendment

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.

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

Amendment No. 56

by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

Commission text

Amendment

Article 7(1)

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.

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 facts, works or other 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.
Article 7(2)

2. Where the legislation of the Member States or contractual arrangements concluded with the rightholder 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.

Amendment No. 57
by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

Commission text

2. Deleted

Amendment

2. Deleted
Amendment No. 58
by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

<table>
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<tr>
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<tr>
<td>Article 8, before paragraph 1, paragraph -1 (new)</td>
<td>For the purposes of this Article, databases shall not be deemed to have been made publicly available unless they may be freely interrogated and no obligation is entailed therein other than payment for the service rendered.</td>
</tr>
</tbody>
</table>

DOC_EN\AM\227\227510 - 30 - PE 204.504/Am.29-69
Amendment No. 59

by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

Commission text

Amendment

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 facts, works or other 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 in part, facts, works or other materials from that database for profit-making purposes, shall be licensed on fair and non-discriminatory terms.
Amendment No. 60 (to replace amendment No. 16 of the draft report)

by Mr GARCIA AMIGO

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

Rapporteur: Mr GARCIA AMIGO

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Commission text

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.

Amendment

2. The right to extract and re-utilize the contents of a database shall 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 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.

(c) firms which exercise a de facto monopoly as regards the creation of collection of the information introduced into the database.
Amendment No. 61
by Mrs FONTAINE

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

Rapporteur: Mr GARCIA AMIGO

Commission text Amendment

**Article 8(4) and (5)**

4. The lawful user of a database may, without authorization of the database maker, extract and re-utilize insubstantial parts of works or materials from a database for commercial purposes provided that acknowledgement is made of the source.

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.

4. **Deleted**

5. **Deleted**
Amendment No. 62 (to replace Amendment No. 19 of the draft report) by Mr. GARCIA AMIGO

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

Rapporteur: Mr. GARCIA AMIGO

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**Commission text**

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, can 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.
Amendment No. 63 (to replace Amendment No. 23 of the draft report)

by Mr GARCIA AMIGO

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

Rapporteur: Mr GARCIA AMIGO

---

### Commission text

**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 was 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.

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### Amendment

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 of each data item included in a regularly updated database, without prejudice to the provisions of Article 9(4).
Amendment No. 64

by Mr BRU PURON

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

Rapporteur: Mr GARCIA AMIGO

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**Commission text**

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 a 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:

**Amendment**

3. The right to prevent unfair extraction shall run from the date of creation of the database and shall expire at the end of a period of 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.
Commission text

Article 9(3)

2. The right to prevent unfair extraction shall run from the date of creation of the database and shall expire at the end of a period of ten years from the date when the database is first lawfully made available to the public. The term of protection given in this paragraph shall be deemed to begin on 1 January of the year following.

Amendment

3. The right to prevent unauthorized extraction shall run for 25 years, beginning 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.
AMENDMENT No. 66
by LORD INGLEWOOD

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

Rapporteur: Mr GARCIA AMIGO

Commission text Amendment

Article 9(3)

The right to prevent unfair extraction shall run from the date of creation of the database and shall expire at the end of a period of ten years from the date when the database is first lawfully made available to the public. The term of protection given in this paragraph shall be deemed to begin on 1 January of the year following the date when the database was first made available.

The right to prevent unauthorized extraction shall run for 15 years starting on 1 January of the year following:

(a) the date when the database was first lawfully made available to the public or

(b) any substantial change to the database or

(c) the date of insertion, for each data item included in a regularly updated database, notwithstanding Article 9(4).
COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Amendment No. 67

by Mr BOCKLET

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

Rapporteur: Mr GARCIA AMIGO

Commission text

Amendment

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).
COMMITTEE ON LEGAL AFFAIRS AND CITIZENS' RIGHTS

Amendment No. 68 (to replace Amendment No. 27 of the draft report)

by Mr GARCIA AMIGO

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

Rapporteur: Mr GARCIA AMIGO

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Commission text

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.

Amendment

ARTICLE 12(2)a: 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 without prejudice to any contracts concluded and rights acquired before that date.
Amendment No. 69

by Mr BRU PURON

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

Rapporteur: Mr GARCIA AMIGO

<table>
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<tr>
<th>Commission text</th>
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<tr>
<td>Article 12(2)</td>
<td>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.</td>
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</table>
2. The right to extract and reutilize 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 reutilize 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;

(c) firms which exercise a de facto monopoly as regards the creation of collection of the information introduced into the database.
A substantial change to the selection or arrangement of the contents of a data base shall give rise to the creation of a new data base, 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 data base.
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-
WETTIG
comes 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 Garcia 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 Salama 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 free movement 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, focussing 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 Garcia 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 a net effect of 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 Garcia 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 proposals, though obviously with some exceptions. The Commission 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 33(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
4. Fruit juices

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

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:

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<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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<tr>
<td>Recital 37a (new)</td>
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<td>Whereas distributors of databases should make provision in their contracts for exceptions as regards the unauthorised 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;</td>
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<td>(Amendment No 3)</td>
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<td>Article 1(1)</td>
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1. ‘database’ means a collection of works or materials arranged, stored and accessed by electronic means,
1. ‘database’ means a collection of a large number of data, works or other materials arranged, stored and

and the electronie 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; accessed by electronic means, and the materials necessary for the operation of the database such as its thesaurus, index or system for obtaining or presenting information. It shall not apply to any computer programme used in the making or operation of the database;

(Amendment No 4)

Article 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.
TEXT PROPOSED
BY THE COMMISSION

(TEXT AMENDED
BY PARLIAMENT)

(Amendment No 8)

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

(Amendment No 9)

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.

(Amendment No 10)

Article 1(4a) (new)

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

(a) with regard to the provisions of Article 9(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.

(Amendment No 11)

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.

(Article 3a (new))

Article 3a

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.

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.

(Article 4)

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.

(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:
TEXT PROPOSED
BY THE COMMISSION

(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.
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.

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.

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.

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.

(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.

(Amenment 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 the date when the database was first made available.

(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.

(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.
TEXT PROPOSED
BY THE COMMISSION

TEXT AMENDED
BY PARLIAMENT

(Amendment No 28)

Article 11(2a) (new) and (3)

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

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).

(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 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 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.

DRAFT LEGISLATIVE RESOLUTION:
Amendment rejected: 4
The different parts of the text were adopted in order.

Explanations of vote:
— oral:
Mr Vázquez Fouz, on behalf of the PSE Group, and Mr Verbeek, on behalf of the V Group.
Parliament adopted the legislative resolution (Part II, Item 2).

13. European Economic Area *** (vote)
Jepsen report — A3-0168/93: assent procedure

PROPOSAL FOR A DECISION 5124/93 — C3-0151/93
Explanations of vote:
— oral:
Mrs Ernst de la Graete.
— in writing:
Mr Cushnahan.
Parliament adopted the decision and thereby gave its assent (Part II, Item 3).

14. Fruit juices **II (vote)
Recommendation for the 2nd reading by Mr Collins on the common position adopted 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) (A3-0167/93) (without debate)

COMMON POSITION OF THE COUNCIL C3-0165/93 — SYN 416:
The President declared the common position approved (Part II, Item 4).

15. Legal protection of databases **I (vote)
García Amigo report — A3-0183/93

PROPOSAL FOR A DIRECTIVE COM(92)0024 — C3-0271/92 — SYN 393:
Amendments adopted: 2, 4 to 13 and 15 to 18 collectively, 3 (1st part, 3rd part), 14 (1st part, 3rd part), 33 (1st part), 19, 20, 21, 22, 34, 25 to 32 collectively, 24 (1st part)
Amendments rejected: 1, 3 (2nd part) by EV, 14 (2nd part), 33 (2nd part) by EV, 24 (2nd part)
Amendment fallen: 23

The following spoke during the vote:
— Mrs von Alemann, on behalf of the LDR Group, to ask for separate votes on ams 1, 3 and 14, and Mr Medina Ortega, on behalf of the PSE Group, to request separate and/or split votes on ams 1, 3, 14, 33, 19 and 24.

Separate and/or split votes:
Article 2(2) (PPE): adopted by EV
— Am. 3 (PSE):
1st part: up to ‘means’, without the words ‘or non-electronic’
2nd part: the words ‘or non-electronic’
3rd part: remainder
— Am. 14 (PSE):
1st part: up to and including first indent
2nd part: second indent
3rd part: remainder
— Am. 33 (PSE):
1st part: introduction and (a) and (b)
2nd part: (c)
— Am. 24 (PSE)
1st part: introduction and (a) and (b)
2nd part: (c)
Parliament approved the Commission proposal as amended (Part II, Item 5).

DRAFT LEGISLATIVE RESOLUTION:
Explanations of vote:
— oral:
Mr Frémion, on behalf of the V Group.
— in writing:
Mr Porto and Mr Bru Purón.
Mr Bru Purón spoke on the vote on am. 24.
Parliament adopted the legislative resolution (Part II, Item 5).

16. Personal protective equipment **I (vote)
Christiansen report — A3-0189/93

PROPOSAL FOR A DIRECTIVE COM(92)0421 — C3-0055/93 — SYN 443:
Amendments adopted: 1 to 4 collectively
Parliament approved the Commission proposal as amended (Part II, Item 6).
SUMMARY OF PROCEEDINGS

of: Working Party on Intellectual Property (Copyright)
on: 15 and 16 July 1993

No. prev. doc.: 7998/93 PI 67 CULTURE 89
No. Cion prop.: 6919/92 PI 64 CULTURE 61

1. At its meeting on 15 and 16 July 1993, the Working Party was informed by the Commission representative of the amendments to the above proposal which had been adopted by the European Parliament on 23 June 1993 (7630/93 PE-RESOL 35, Part II, point 5), and of the Commission's intentions with regard to these amendments.

General remarks

2. The Commission representative indicated that the European Parliament had not proposed any amendment to the basic approach of the proposal for a Directive, which was to combine copyright rights with a sui generis right.

The United Kingdom delegation, supported by the Irish delegation, reminded the Working Party that they could not accept this approach, particularly as regards the nature of the copyright rights, the nature of the sui generis right and the relationship between them. These delegations were not convinced that there was any need to oblige Member States whose present systems worked well to abandon these systems in favour of the
approach proposed by the Commission. They called for further
discussion of the basic approach proposed.

3. The Commission representative indicated that the
Commission would reconsider the order in which the various
provisions should appear when preparing its amended proposal.

Article 1(1)

4. The Commission representative informed the Working Party
that the European Parliament had not adopted an amendment
proposed by its Committee on Legal Affairs and Citizens'
Rights which would have extended the scope of the Directive to
cover non-electronic databases. However, should such a proposal
reappear at a later stage, the Commission was prepared to
consider it, providing that its implications for all aspects of
the Directive were taken into account.

5.1. The European Parliament had proposed replacing the terms
"collection of works or materials" by the terms "collection of
a large number of data, works or other materials" (Amendment
No. 3). The Commission was able to accept the part of the
amendment which contained the clarification that the term
"materials" used in the Commission proposal included data; on
the other hand, it did not accept the part of the amendment
which referred to "a large number", in view of the difficulty
of determining how many items constituted a large number. It
felt that it should be left to the courts to determine whether
or not a given number of data, works or other materials was
sufficient to constitute a collection.

5.2. The Italian delegation questioned what materials, other
than data and works, could be collected in an electronic
database. The Commission representative replied that "other
materials" would include anything which could be stored in
electronic form.

5.3. The Italian delegation considered that data in an
electronic database should not be inert, but should be
interoperative. The Commission representative advised against
the introduction of terms such as "inert" and "interoperative", which would require definition, and considered that the concern of the Italian delegation was met by the fact that an electronic database allowed random access to the data stored in it.

6. The Irish delegation asked whether the definition in Article 1(1) would cover a literary work stored on a CD-ROM which could be used in conjunction with software which could search for certain categories of words.

The Commission representative pointed out that a single work could not constitute a collection, and therefore would not be covered by the definition of a database in Article 1(1).

The Irish delegation stated that an electronic compilation of words or sentences taken from a single work would be protected by copyright under Irish law, and considered that it should also be protected under this Directive.

The Commission representative pointed out that what could be protected under the law of one Member State could not necessarily be protected under the law of another Member State; whether or not a particular collection of material could be protected as a database under this Directive would depend on whether or not it met all the criteria laid down in the Directive as finally adopted.

7. The Belgian delegation asked whether the term "computer program used in the making or operation of the database" should be defined to make clear the difference between this software and "the materials necessary for the operation of the database such as its thesaurus, index or system for obtaining or presenting information".

The Commission representative considered that it was not necessary to define something which was excluded from the scope of the Directive.
The Commission representative indicated that, in the light of discussions within the World Intellectual Property Organization (WIPO) on the question whether or not a phonogram which was a collection of earlier recordings constituted a database, Member States might wish to consider whether or not such phonograms with on-line access should be excluded from the definition in Article 1(1).

Article 1(1a) and (1b)

The European Parliament had proposed adding to Article 1 a new paragraph 1a defining "author of a database" (Amendment No. 4) and a new paragraph 1b defining "owner of a database" (Amendment No. 5).

The Commission was not able to accept the proposed Article 1(1a), as it conflicted with Article 3, to which the European Parliament had not proposed any amendment. It was able to accept the proposed Article 1(1b) as a useful clarification of the relationship between the author of a database and the owner of the sui generis right, but considered that the term "owner of the rights in a database" would be more appropriate than "owner of the database"; the Commission representative drew attention to differences between the various language versions of the European Parliament's amendment in this and other respects.

The German and Irish delegations agreed with the Commission representative that the proposed Article 1(1a) was unacceptable, particularly in the light of Article 3.

The Netherlands delegation considered that the proposed Article 1(1b) was unsatisfactory, as it implied that where the author of a database transferred the sui generis right to another person, that person would also become the owner of the copyright.

The Belgian delegation suggested that this provision would be clearer if it were to state that the owner of the rights in...
A database would be the author where the database qualified for copyright protection, but would be the maker of the database where the database qualified for sui generis protection only.

The German delegation considered that the amendment proposed by the European Parliament would not cover the case where a database qualified for sui generis protection only.

The French and Italian delegations also expressed doubts with regard to this amendment, the French delegation stating a preference for the terms "author" ("auteur") and "holder of the specific right" ("titulaire du droit spécifique").

Article 1(2)

10.1. The Commission representative explained that the amendment to Article 1(2) proposed by the European Parliament (Amendment No. 6) contained three elements:

(a) The Commission's proposal used both the term "unfair extraction" and the term "unauthorized extraction"; for the sake of consistency, the European Parliament had proposed the use of the term "unauthorized extraction" throughout the Directive. The Commission could accept this amendment, in particular since "unfair extraction" could create confusion between the sui generis right and unfair competition law.

(b) The European Parliament had replaced "maker of a database" by "owner of a database", using the same term as in the new Article 1(1b). The Commission could accept this change in principle, again preferring the term "owner of the rights in a database" (see point 9.1. above).

(c) The European Parliament had made it clear that the sui generis right concerned extraction and re-utilization not only of all of the material from the database, but also of part of this material. The Commission could accept this amendment.
10.2. **The French delegation** considered the systematic use of "unauthorized extraction" to be an improvement.

**The German delegation** considered the term "right to prevent unauthorized extraction" to be tautological.

**The Danish delegation** considered that the **sui generis** right should not be a right to prevent unauthorized extraction, but should be a right to authorize certain acts.

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

11.1. **The European Parliament** had proposed adding to Article 1 a new paragraph 2a defining "commercial purposes" for the purposes of Article 8(4) and a new paragraph 2b defining "non-commercial purposes" for the purposes of Article 8(5) (Amendment No. 7).

**The Commission** intended to include the new paragraph 2b in its amended proposal, subject to drafting improvements, but did not intend to include the new paragraph 2a. The Commission representative indicated that the European Parliament had not explained the meaning of use for purposes of humanitarian aid in this context.

The remarks of the delegations were confined to the proposed new paragraph 2b.

11.2. **The United Kingdom delegation** considered that it was unnecessary to add this definition, Article 8(5) being sufficiently clear without it.

**The Irish delegation** entered a reservation on this proposed new paragraph, considering that if any clarification of Article 8(5) was necessary, the concept of "fair use" or "fair practice" should be used.

**The German delegation** considered that any definition of "non-commercial purposes" should be included in Article 8(5), rather than in Article 1. In its view, the provisions of
Article 8(4) and (5) should be subject to any contractual clauses to the contrary.

11.3. The German and Netherlands delegations considered that the terms "domestic and non-collective" in Article 1(2b)(a) were unclear. The Netherlands delegation suggested replacing "non-collective" by "personal".

The Spanish delegation considered that domestic and non-collective use of a database would be difficult to control.

11.4. The French and Italian delegations expressed reservations on Article 1(2b)(b).

The United Kingdom delegation also expressed a negative reaction to this provision, pointing out that material extracted from a database for non-profit-making purposes could subsequently be used in a way which led to profit.

11.5. The Spanish delegation considered that where material from a database was used for research purposes, acknowledgement of the source should be required. The Netherlands delegation considered that acknowledgement of the source should be required where such material was used for either teaching or research purposes.

The Danish delegation, supported by the Belgian and Portuguese delegations, considered that material extracted from a database and used for teaching or research purposes should be the subject of an exemption from the sui generis right and should benefit from a provision equivalent to Article 7(1) of the proposal for a Directive, which was based on Article 10(2) of the Berne Convention.

The Danish and United Kingdom delegations were invited to submit papers explaining how the use for teaching or research purposes of material extracted from a database was dealt with in their respective systems.
The European Parliament had proposed transferring the definition of "insubstantial part" from Article 1(3) (Amendment No. 8) to Article 8(5a), with amendments to the definition (Amendment No. 20).

It was agreed to discuss this definition in the context of Article 8(5a).

The European Parliament had proposed amendments to the definition of "insubstantial change" in Article 1(4) (Amendment No. 9) and had proposed adding a new paragraph 4a defining "substantial change" (Amendment No. 10).

It was agreed to discuss these definitions in the context of Article 9 (see points 31.1. to 31.7. below).

The Working Party noted that the European Parliament had not proposed any amendments to the copyright provisions of Article 2. It agreed to postpone discussion of the amendment to Article 2(5) until it had considered the other amendments concerning copyright protection.

The Working Party noted that the European Parliament had not proposed any amendments to Article 3 (see points 9.1. and 9.2. above).

The European Parliament had proposed adding a new Article 3a (Amendment No.12) which was based on Article 3 of Council

The Commission could accept this addition.

16.2. The Danish, German, French, Italian and Netherlands delegations considered that this addition was not necessary.

The Irish delegation was in favour of this addition. In its view, it would empower courts to decide whether or not the authorship requirements of a Member State were compatible with the Berne Convention.

Article 4

17.1. The European Parliament had proposed changing the order of the two paragraphs of Article 4, as well as proposing clarifications of the substance of both paragraphs.

The Commission representative indicated that the Commission:

(a) could accept the change of order of the paragraphs, whereby the general rule was stated before the exceptions to it;

(b) could accept the clarifications proposed in the new paragraph 1;

(c) could accept the clarification proposed in the new paragraph 2 to the effect that the abstracts referred to had been specially produced for the database;

(d) intended to make it clear that the requirement of Article 10(3) of the Berne Convention to indicate the name of the author and the source concerned quotations but did not concern bibliographical references or abstracts specially produced for the database;

(e) did not intend to accept the words "for the purposes of indexing", which it considered were confusing.

17.2. The Spanish, French and United Kingdom delegations approved the new order of paragraphs in this Article.

17.3. The Netherlands delegation doubted whether the new paragraph 1 was necessary, particularly in the light of Article 12.

17.4. While considering that the new paragraph 2 was an improvement on paragraph 1 of the Commission's proposal, the French and United Kingdom delegations reserved their positions on the need for this paragraph.

The Danish, German and Irish delegations considered that this paragraph was unnecessary.

The Spanish and Netherlands delegations reserved their positions on this paragraph until the Commission presented its amended proposal.

The Commission representative pointed out that if the new paragraph 2 were to be deleted as superfluous, the new paragraph 1 alone would imply that there were no exceptions to the general rule, and this paragraph too would therefore have to be deleted.

17.5. The French delegation expressed the view that the requirement to indicate the name of the author and the source should apply not only to quotations, but also to bibliographical references and abstracts.

The Commission representative pointed out that bibliographical references would per se indicate the name of the author and the source; however, to include in the Directive a requirement to indicate the name of the author and the source in respect of these references and in respect of abstracts would imply that there was an obligation under copyright law to make these indications in their respect,
while the obligation under Article 10(3) of the Berne Convention concerned quotations only.

17.6. The French delegation expressed the view that if the new paragraph 2 were to remain, the words "for the purposes of indexing" proposed by the European Parliament should be included.

Article 5

18. The European Parliament had proposed replacing the term "author" by "owner" (Amendment No. 14), in accordance with its proposal for Article 1(1b) (see points 9.1. to 9.3. above).

The Commission could accept this amendment subject to the same drafting considerations as expressed in relation to Article 1(1b) (point 9.1. above).

The French delegation, supported by the Belgian, German, Italian and Netherlands delegations considered that the term "author" was more appropriate in the context of Article 5.

19. The Netherlands delegation considered that it should be stated that Article 5 was without prejudice to any rights subsisting in the materials contained in the database, by analogy with Article 6(3).

20. The French delegation expressed doubts whether the author of a database should have an exclusive copyright right in respect of the electronic materials (second indent of Article 5).

The Commission representative pointed out that without these electronic materials, the contents selected and arranged in the database could not be used, and that therefore the copyright protection should extend to these electronic materials (17th recital).

21. The French delegation expressed doubts with regard to the word "adaptation" in Article 5(b).
The Commission representative pointed out that the wording of Article 5(b) followed that of Article 4(b) of Directive 91/250/EEC and that of Article 12 of the Berne Convention.

22. The French delegation expressed doubts with regard to the distribution right in Article 5(d).

The Commission representative pointed out that this provision was based on Article 4(c) of Directive 91/250/EEC.

23; In connection with Article 5(d), the Netherlands delegation asked whether the European Parliament had considered the question whether or not public lending should be excluded from the scope of the Directive, as it had been excluded from the scope of Directive 91/250/EEC (16th recital of that Directive).

The Commission representative stated that the European Parliament had not proposed any amendment in this respect.

24. The German delegation suggested that the words "the right to control further rental" in Article 5(d) be replaced by the words "the right to authorize or prohibit further rental".

25. The French delegation expressed doubts with regard to the various terms used in Article 5(e).

**Article 6**

26. The European Parliament had proposed an amendment to Article 6(1) (Amendment No. 15).

The Commission did not intend to include this amendment in its amended proposal.
Article 7

27.1. The European Parliament had proposed a number of clarifications to the wording of Article 7 (Amendment No. 16).

The Commission could accept these clarifications.

27.2. The United Kingdom delegation welcomed particularly the first clarification proposed by the European Parliament in Article 7(1).

The Netherlands delegation considered that this clarification could be further improved by referring not only to the rights of the author of a work contained in a database, but also to the rights of a holder of a right related to copyright in materials contained in a database.

27.3. The Netherlands delegation considered that reference should be made in Article 7(1) not only to Article 10(3) of the Berne Convention, but also to Article 9(2) of that Convention.

28. It was pointed out that the adjective "exclusive" in Article 7(1) should apply to "copyright" only, not to "other rights".

The United Kingdom delegation felt that this adjective was redundant if it qualified "copyright" only.

29. The Danish delegation considered that Article 7 should also contain an exception to Article 5 in respect of reproduction for private purposes of materials contained in a database.

Article 9

30. The European Parliament had proposed removing from Article 9(1) the reference to future Community harmonization of the term of protection of copyright and related rights
(Amendment No. 21) in the light of the progress made on the corresponding proposal for a Directive.

The Commission could accept the removal of this reference.

31.1. The European Parliament had proposed a drafting amendment to Article 9(2) (Amendment No. 22) as well as the addition of a new paragraph 2a to make clear that a substantial change to the selection or arrangement of the contents of a database would give rise to the creation of a new database, for which a new period of copyright protection would begin to run (Amendment No. 34). The amendment to Article 1(4) (Amendment No. 9) and the new Article 1(4a) (amendment No. 10) were related to Amendments Nos. 22 and 34.

The Commission could accept these amendments. The Commission representative suggested reversing the order of Article 9(2) and the new Article 9(2a).

31.2. The French and United Kingdom delegations questioned the need for the new Article 9(2a) in the light of existing copyright law. The French delegation feared that such a provision could lead to a contrario interpretations in respect of categories of works other than electronic databases.

The Commission representative pointed out that for other categories of works, in which the selection or arrangement of the contents was static, it was evident when a new work had been created. In the case of electronic databases, the contents of which could be constantly updated, this was less evident and the new Article 9(2a) together with the new Article 1(4a)(a) proposed by the European Parliament provided a useful clarification of the situation.

31.3. The Spanish delegation questioned whether the definitions in Article 1(4)(a) and 1(4a)(a) were sufficient to make it

(2) The Council adopted a common position on this proposal on 22 July 1993 (7831/93 PI 64 CULTURE 83 PRO-COOP 35 + COR 1(f) + COR 2(en) + COR 3(nl + COR 4(dk)).
clear at what stage the updating of an electronic database resulted in the creation of a new database. It considered that this was too important a question to be left to the courts to decide.

31.4. The French delegation questioned the appropriateness of the term "edition" in Article 1(4a)(a) proposed by the European Parliament; since Article 9(2a) used the term "a new database", it considered that it was confusing to describe this new database in Article 1(4a)(a) as "a new edition of that database" (i.e. of the original database).

31.5. The German delegation questioned whether "a substantial change to the selection or arrangement of the contents of a database" was sufficient to give rise to the creation of a new database (Article 9(2a)), suggesting that the criterion of Article 2(3) should also be applied.

31.6. The United Kingdom delegation pointed out that the definition of a database in Article 1(1) required not only a collection of data, works or other materials, but also the materials necessary for the operation of the database; it questioned therefore whether a substantial change to the selection or arrangement of the contents of a database was sufficient to give rise to the creation of a new database in the absence of any corresponding change to the materials necessary for the operation of the database.

31.7. The Netherlands delegation considered that the Directive should also regulate the relationship between an existing database and the new database resulting from the changes made to it.
Amended proposal for a

COUNCIL DIRECTIVE

ON THE LEGAL PROTECTION

OF DATABASES

(presented by the Commission pursuant to Article 149(3)
of the EEC-Treaty)

The Economic and Social Committee delivered its opinion on the proposal on 24 November 1992.

The European Parliament, consulted under the co-operation procedure, discussed the proposal in detail in its Committees. On 21 June 1993 it debated the report drawn up on behalf of the Committee on Legal Affairs and citizens' rights by Mr Garcia Amigo, voting in support of the proposed Directive as amended by Parliament in its Plenary Session of 23 June 1993.

The amended proposal for a Directive presented by the Commission is intended to take into account the Opinion of the Parliament.

It contains one modification of substance and a number of amendments to the original proposal which are intended to give greater precision and clarity to the text.

The one modification of substance proposed by the Parliament is the extension of the period of protection under the sui generis regime from the ten years proposed by the Commission to fifteen years.

The modifications of a redactional nature include the following:

a) the term 'database' is to be clarified as including collections of data
b) the term 'owner of the rights' is to be used to cover both the author who owns any copyright right in the database and the maker of the database where there is a sui generis right in the contents of the database but no copyright in the selection or arrangement
c) the definition of "substantial" and "insubstantial" change in relation to the term of protection is clarified
d) the term 'unauthorised' extraction is to be used throughout the text in place of 'unfair' extraction
e) the terms under which licences to use the contents of a database are to be issued are more clearly defined in the text.

The Commission accepts, in whole or in part and subject in some instances to re-alignment of the various language versions, thirty two out of thirty seven amendments of Parliament.
The amendments which were not adopted by the Commission concerned:

a) a definition of database as including a "large number or amount of data or other material". This amendment was rejected because it would have given rise to problems of interpretation and is inconsistent with definitions proposed in the context of GATT Trips and on-going discussions in the World Intellectual Property Organisation on a possible Protocol to the Berne Convention.

b) a definition of 'author' of a database as the person "who undertook to and assumed responsibility for creating" the database. In the view of the Commission such an extensive definition of authorship should not be introduced into a Directive dealing with the legal protection of a specific type of work.

c) a definition of "non-commercial purposes" as including non-profit making purposes of teaching, research or humanitarian aid. The Commission, while accepting that private non-profit making activities including private research might fall within the scope of Article 8(5) of the original proposal, has doubts about the validity of the argument that teaching and humanitarian aid should fall under the heading of private use. The absence of profit is not the only criterion as to whether teaching or research is to be considered private or commercial since much commercial research could be said to be carried out without a direct profit-making objective, and teaching for private purposes would more correctly be defined as "private use".

d) additional language proposed to Article 6(1) stipulating that the lawful user of a database could be bound by contractual clauses reducing his ability to carry out acts necessary in order to use the database: any contractual restrictions which rendered the database unusable would in any event cause the contract to be of questionable validity.

e) additional restrictions on the use for private/personal purposes of the contents of the database under Article 8(5) of the original proposal: these restrictions would have obliged the user to quote the source of an insubstantial extract even for his own private purposes.

f) a requirement that databases should be protected against unauthorised extraction in accordance with the terms of international treaties. The Commission rejected this amendment as creating unnecessary ambiguity since the unauthorised extraction right is acknowledged in the report of the Legal Affairs Committee to be a sui generis right, subject to its own specific provisions as set out in the proposed Directive and not linked to any existing legal regime or international Convention, unlike the copyright protection of databases which is clearly linked in the proposal to that provided for internationally by the Berne Convention.
Amendment 2

This amendment was accepted since it expresses a non-binding and qualified wish that database distributors would take into account the specific requirements of users to use the contents of databases for personal private purposes and the special needs of education and research in concluding licence contracts with these groups of users.
COMMENTARY ON THE ARTICLES

Structure of the amended proposal

In its amended proposal the Commission has re-grouped all the Articles of the original proposal which relate to the copyright right in Chapter II and those which relate to the sui generis right in Chapter III. Although the Parliament's amendments did not specify this re-arrangement, the report of the Legal Affairs Committee makes reference to the complexity of the text as did the Opinion of the Economic and Social Committee. The Commission has therefore taken the decision to make the separation between copyright and sui generis provisions in order to make the amended text more comprehensible. This separation does not in any way change the substance of the proposal and is purely redactional.

Article 1

The addition of the word 'data' to the definition of database is a useful clarification consistent with both the draft GATT Trips text and the proposed text of the Protocol to the Berne Convention. Article 1(2) and 1(3) are deleted from Article 1 and re-located in Articles 10 and 11 respectively with some minor drafting clarifications. Article 1(4) is relocated in Article 9 (3).

The Parliament sought to clarify by a number of amendments, of which some presented linguistic inconsistencies, that the "owner of the rights in a database" can be the author or his successor in title in the case of the copyright right, or the maker or his successor in title in the case of the sui generis right, or a combination of both author and maker if the database benefits from both copyright and sui generis protection. These have inserted in a new paragraph 2.

Article 4

This amendment corresponds in spirit to the equivalent provision set out in Article 3 of Directive 91/250 on the legal protection of computer programs. It is not to be considered as implying any new obligation on the Member States or as requiring any acts of compliance with international agreements in respect of copyright.
Article 5

The order of paragraphs has been reversed to give first the rule and second the limitation, and clarifications to the text on limitations have been made to ensure that only those works or materials which are not subject to copyright (references), which do not infringe copyright in the pre-existing work (short abstracts) or which fall within Article 10 of the Berne Convention (quotations) can be incorporated into a database without authorisation. It is not intended that a database creator could incorporate abstracts written by third parties into his database without authorisation if such abstracts are themselves subject to copyright protection. The database creator may however make his own abstracts of pre-existing works and incorporate them into his database providing that the abstracts do not infringe the copyright in the pre-existing work by being "substantial descriptions or summaries of the content or the form".

Article 6

This change corresponds to the definition in Article 1 paragraph 2 of the amended proposal.

Article 8

The amendments to this Article were accepted by the Commission as being purely intended to give greater precision to the text. Since the amendments of the Parliament speak only of "author" and "work", a new paragraph 3 has been added which corresponds to the coverage of neighbouring rights provided for in Article 7 of the original proposal by the terms "rightholder" and "other rights".

Article 9

The amendment of the Parliament seeks to re-group in this Article all of the provisions of the original proposal which dealt with the term of copyright protection and the definitions of "substantial" and "insubstantial change". The Commission accepted the need to clarify the terminology and to define the starting point in time of the period of protection of databases which are being constantly updated.

Article 10

The amendments of the Parliament to Article 2(5) aim at clarifying the nature of the sui generis right and include the term "part or all of the material" in the definition of the right and have been introduced in a new Article 10(1). That right was then limited by Article 10(2) and by Article 11. The Commission can accept these amendments since they correspond to the spirit of the original proposal and do not create rights in information as such.
Article 11

The amendments to this Article are largely clarifications of the original text and have been accepted for the reasons set out above in respect of Article 10. In particular, the clarifications in respect of public bodies and their exclusive concessionaires, and the definition of "publicly available" are considered useful precisions.

Paragraph 7 and 8 contain clarifications of "commercial purposes" and "insubstantial part". To a large extent they represent language already existing in the Commission's original proposal but incorporate additional clarifications. Article 11(1) last sentence also applies to Article 11(2).

Article 12

The amendments to this Article correspond in intention to the amendments to Article 9 (on the term of copyright protection). These amendments re-group existing definitions of when a period of protection under the sui generis right arises in respect of constantly up-dated databases and defines "substantial" and "insubstantial" changes. As to the modification of the period of protection from ten to fifteen years the Commission has accepted the argument that the increased period corresponds better to the needs of industry to recover initial investments in the creation of databases, and is more proportionate to the term of 70 years for copyright protection provided for in the proposal for a Council Directive COM(92)33 final SYN 395 on which a Common Position of the Council was reached in July 1993.

Article 13

These changes are purely drafting improvements and have been accepted by the Commission as such.

Article 15

The amendment to this Article correspond to the wish of the Parliament that protection should be available for all databases in existence on the date of entry into force of the Directive or created thereafter. As there will be in all probability no electronic databases in existence for which the period of copyright protection has elapsed, there is not a problem of calling works which have fallen into the public domain back into protection or extending the period of protection under copyright.

Article 16

The Commission agrees to the later date of 1 January 1995 given that the date set out in the original proposal has already passed. The Commission also accepts that in this fast-moving area of technology it is appropriate to review the contents of the Directive in due course.
Amended proposal for a
COUNCIL DIRECTIVE
ON THE LEGAL PROTECTION
OF DATABASES
THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57(2), 66, 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

1. Whereas databases are at present not clearly protected in all Member States by existing legislation and such protection, where it exists, has different attributes;

2. Whereas such differences in the legal protection offered by the legislation of the Member States have direct and negative effects on the establishment and functioning of the Internal Market as regards databases and in particular on the freedom of individuals and companies to provide on-line database goods and services on an equal legal basis throughout the Community; whereas such differences could well become more pronounced as Member States introduce new legislation on this subject, which is now taking on an increasingly international dimension;

3. Whereas existing differences having a distortive effect on the establishment and functioning of the Internal Market need to be removed and new ones prevented from arising, while differences not at the present time adversely affecting the establishment and functioning of the Internal Market or the development of an information market within the Community need not be addressed in this Directive;

4. Whereas copyright protection for databases exists in varying forms in a number of Member States according to legislation or case-law and such unharmonized intellectual property rights, being territorial in nature, can have the effect of preventing the free movement of goods or services within the Community if differences in the scope, conditions, derogations or term of protection remain between the legislation of the Member States;
5. Whereas although copyright remains an appropriate form of exclusive right for the legal protection of databases and in particular an appropriate means to secure the remuneration of the author who has created a database, in addition to copyright protection, and in the absence as yet of a harmonized system of unfair competition legislation or of case-law in the Member States, other measures are required to prevent unfair extraction and re-utilization of the contents of a database;

6. Whereas database development requires the investment of considerable human, technical and financial resources while such databases can be copied at a fraction of the cost needed to develop them independently;

7. Whereas unauthorized access to a database and removal of its contents constitute acts which can have the gravest economic and technical consequences;

8. Whereas databases are a vital tool in the development of an Information Market within the Community; whereas this tool will be of use to a large variety of other activities and industries;

9. Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry requires investment in all the Member States in advanced information management systems;

10. Whereas a correspondingly high rate of increase in publications of literary, artistic, musical and other works necessitates the creation of modern archiving, bibliographic and accessing techniques, to enable consumers to have at their disposal the most comprehensive collection of the Community's heritage;

11. Whereas there is at the present time a great imbalance in the level of investment in database creation both as between the Member States themselves, and between the Community and the world's largest database producing countries;
12. Whereas such an investment in modern information storage and retrieval systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of authors of databases and the repression of acts of piracy and unfair competition.

13. Whereas this Directive protects collections, sometimes called compilations, of works or other materials whose arrangement, storage and access is performed by means which include electronic, electromagnetic or electro-optical processes or analogous processes;

14. Whereas the criteria by which such collections shall be eligible for protection by copyright should be that the author, in effecting the selection or the arrangement of the contents of the database, has made an intellectual creation;

15. Whereas no other criteria than originality in the sense of intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular no aesthetic or qualitative criteria should be applied;

16. Whereas the term database should be understood to include collections of works, whether literary, artistic, musical or other, or of other material such as texts, sounds, images, numbers, facts, data or combinations of any of these;

17. Whereas the protection of a database should extend to the electronic materials without which the contents selected and arranged by the maker of the database cannot be used, such as, for example, the system made to obtain information and present information to the user in electronic or non-electronic form, and the indexation and thesaurus used in the construction or operation of the database;

18. Whereas the term database should not be taken to extend to any computer programme used in the construction or operation of a database, which accordingly remain protected by Council Directive 91/250 EEC;
19. Whereas the Directive should be taken as applying only to collections which are made by electronic means, but is without prejudice to the protection under copyright as collections, within the meaning of Article 2.5. of the Berne Convention for the Protection of Literary and Artistic Works, (text of Paris Act of 1971) and under the legislation of the Member States, of collections made by other means;

20. Whereas works protected by copyright or by any other rights, which are incorporated into a database, remain the object of their author's exclusive rights and may not therefore be incorporated into or reproduced from the database without the permission of the author or his successors in title;

21. Whereas the rights of the author of such works incorporated into a database are not in any way affected by the existence of a separate right in the original selection or arrangement of these works in a database;

22. Whereas the moral rights of the natural person who has created the database should be owned and exercised according to the provisions of the legislation of the Member States consistent with the provisions of the Berne Convention, and remain therefore outside the scope of this Directive;

23. Whereas the author's exclusive rights should include the right to determine the way in which his work is exploited and by whom, and in particular to control the availability of his work to unauthorized persons;

24. Whereas nevertheless once the rightholder has chosen to make available a copy of the database to a user, whether by an on-line service or by other means of distribution, that lawful user must be able to access and use the database, for the purposes and in the way set out in the agreement with the rightholder, even if such access and use necessitate performance of otherwise restricted acts;

25. Whereas if the user and the rightholder have not concluded an agreement regulating the use which may be made of the database, the lawful user should be presumed to be able to perform any of the restricted acts which are necessary for access to and use of the database;
26. Whereas in respect of reproduction in the limited circumstances provided for in the Berne Convention, of the contents of the database by the lawful user, whether in electronic or non-electronic form, the same restrictions and exceptions should apply to the reproduction of such works from a database as would apply to the reproduction of the same works made available to the public by other forms of exploitation or distribution;

27. Whereas the increasing use of digital recording technology exposes the database maker to the risk that the contents of his database may be downloaded and re-arranged electronically without his authorization to produce a database of identical content but which does not infringe any copyright in the arrangement of his database;

28. Whereas in addition to protecting the copyright in the original selection or arrangement of the contents of a database this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment incurred in obtaining and collecting data by providing that certain acts done in relation to the contents of a database are subject to restriction even when such contents are not themselves protected by copyright or other rights;

29. Whereas such protection of the contents of a database is to be achieved by a special right by which the maker of a database can prevent the unauthorized extraction or re-utilization of the contents of that database for commercial purposes; whereas this special right (hereafter called "a right to prevent unfair extraction") is not to be considered in any way as an extension of copyright protection to mere facts or data;

30. Whereas the existence of a right to prevent the extraction and re-utilization for commercial purposes of works or materials from a given database should not give rise to the creation of any independent right in the works or materials themselves;
31. Whereas in the interests of competition between suppliers of information products and services, the maker of a database which is commercially distributed whose database is the sole possible source of a given work or material, should make that work or material available under licence for use by others, providing that the works or materials so licensed are used in the independent creation of new works, and providing that no prior rights in or obligations incurred in respect of those works or materials are infringed;

32. Whereas licences granted in such circumstances should be fair and non-discriminatory under conditions to be agreed with the rightholder;

33. Whereas such licences should not be requested for reasons of commercial expediency such as economy of time, effort or financial investment;

34. Whereas in the event that licences are refused or the parties cannot reach agreement on the terms to be concluded, a system of arbitration should be provided for by the Member States;

35. Whereas licences may not be refused in respect of the extraction and re-utilization of works or materials from a publicly available database created by a public body providing that such acts do not infringe the legislation or international obligations of Member States or the Community in respect of matters such as personal data protection, privacy, security or confidentiality;
36. Whereas the objective of the provisions of this Directive, which is to afford an appropriate and uniform level of protection of databases as a means to secure the remuneration of the author who has created the database, is different from the aims of the proposal for a Council Directive concerning the protection of individuals in relation to the processing of personal data (OJ N° C 277, 5.11.1990, p.3.) which are to guarantee free circulation of personal data on the basis of a harmonized standard of rules designed to protect the fundamental rights, notably the right to privacy which is recognized in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas the provisions of this Directive are without prejudice to the data protection legislation;

37. Whereas notwithstanding the right to prevent unfair extraction from a database, it should still be possible for the lawful user to quote from or otherwise use, for commercial and private purposes, the contents of the database which he is authorized to use, providing that this exception is subject to narrow limitations and is not used in a way which would conflict with the author's normal exploitation of his work or which would unreasonably prejudice his legitimate interests;

38. Whereas the right to prevent unfair extraction from a database may only be extended to databases whose authors or makers are nationals or habitual residents of third countries and to those produced by companies or firms not established in a Member State within the meaning of the Treaty if such third countries offer comparable protection to databases produced by nationals of the Member States or habitual residents of the Community;
39. Whereas, in addition to remedies provided under the legislation of the Member States for infringements of copyright or other rights, Member States should provide for appropriate remedies against unfair extraction from a database;

40. Whereas in addition to the protection given under this Directive to the database by copyright, and to its contents against unfair extraction, other legal provisions existing in the law of the Member States relevant to the supply of database goods and services should continue to apply,

HAS ADOPTED THIS DIRECTIVE
INITIAL COMMISSION PROPOSAL

Article 1
Definitions

1. For the purposes of this Directive, '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 program used in the making or operation of the database;

2. 'right to prevent unfair extraction' means the right of the maker of a database to prevent acts of extraction and re-utilization of material from that database for commercial purposes;

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;

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.

AMENDED PROPOSAL SUBSEQUENT TO THE EUROPEAN PARLIAMENT OPINION OF 23 JUNE 1993

CHAPTER I: DEFINITIONS

Article 1
Definitions

1. For the purposes of this Directive, 'database' means a collection of data, works or other materials arranged, stored and accessed by 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 program used in the making or operation of the database;

2. "Owner of the rights in a database means:
   (a) the author of a database or
   (b) the natural or legal person to whom the author has lawfully granted the right to prevent unauthorized extraction of material from a database, or
   (c) where the database is not eligible for protection by copyright the maker of the database."
CHAPTER II: COPYRIGHT

Article 2

Object of Protection:

Copyright and Right to Prevent Unfair Extraction from a Database

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).

2. The definition of database in point 1 of Article 1 is without prejudice to the protection by copyright of collections of works or 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.

3. A database shall be protected by copyright if it is original in the sense that it is a collection of works or materials which, by reason of their selection or their arrangement, constitutes the author's own intellectual creation. No other criteria shall be applied to determine the eligibility of a database for this protection.

4. The copyright protection of a database given by this Directive shall not extend to the works or materials contained therein, irrespective of whether or not they are themselves protected by copyright; the protection of a database shall be without prejudice to any rights subsisting in those works or materials themselves.
5. Member States shall provide for a right for the maker of a database to prevent the unauthorised extraction or re-utilisation, 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.

Article 3
Authorship: Copyright

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.

Article 3
Authorship

 Deleted [re-inserted] 10(2)
Article 4

Entitlement to protection under copyright

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 on copyright applicable to literary works.

Article 4

Incorporation of Works or Materials into a Database

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 authorisation 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.

Article 5

Incorporation of Works or Materials into a Database

1. The incorporation into a database of any works or materials shall remain subject to the authorisation of the owner of any copyright or other rights acquired or obligations incurred therein.

2. The incorporation into a database of bibliographical references, abstracts (with the exception of substantial descriptions or summaries of the content or the form of existing works) or brief quotations, shall not require the authorisation of the owners of rights in those works, provided the name of the author and the source of the quotation are clearly indicated in accordance with Article 10(3) of the Berne Convention.
**Article 5**  
**Restricted Acts: Copyright**

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:

a) the temporary or permanent reproduction of the database by any means and in any form, in whole or in part,

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 (a) or (b),

d) any form of distribution to the public, including the rental, 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, with the exception of the right to control further rental of the database or a copy thereof.

e) any communication, display or performance of the database to the public.

**Article 6**  
**Restricted Acts**

The owner of the rights in a database shall have, in respect of:

- Unchanged
- Unchanged
- Unchanged
- Unchanged
- Unchanged
- Unchanged
- Unchanged
- Unchanged

**Article 6**  
**Exceptions to the Restricted Acts Enumerated in Article 5:**

**Copyright in the Selection or Arrangement**

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 rightholder.
2. In the absence of any contractual arrangements between the rightholder and the user of a database in respect of its use, the performance by the lawful acquirer of a database of any of the acts listed in Article 5 which is necessary in order to gain access to the contents of the database and use thereof shall not require the authorization of the rightholder.

3. The exceptions referred to in paragraphs 1 and 2 relate to the subject matter listed in Article 5 and are without prejudice to any rights subsisting in the works or materials contained in the database.

**Article 7**

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

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 utilisation is compatible with fair practice.

2. Where the legislation of the Member States or contractual arrangements concluded with the rightholder 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.

**Article 8**

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

1. Member States shall apply the same exceptions to any 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 utilisation 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 rights of the author of the database laid down in Article 6.

3. The provisions of paragraphs (1) and (2) above shall also apply in respect of owners of neighbouring rights attaching to materials contained in a database.
Article 8
Acts Performed in Relation to the Contents of a Database - Unfair Extraction of the Contents

1. Notwithstanding the right provided for in Article 2(5) to prevent the unauthorised 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-utilise, in whole or substantial part, works or materials from that database for commercial purposes, shall be licensed on fair and non-discriminatory terms.

2. The right to extract and re-utilise 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.

3. Member States shall provide appropriate measures for arbitration between the parties in respect of such licences.

4. The lawful user of a database may, without authorization of the database maker, extract and re-utilize insubstantial parts of works or materials from a database for commercial purposes provided that acknowledgement is made of the source.

5. The lawful user of a database may, without authorization of the database maker, and without acknowledgement of the source, extract and re-utilise insubstantial parts of works or materials from that database for personal private use only.
6. The provisions of this Article shall apply only to the extent that such extraction and re-utilization does not conflict with any other prior rights or obligations, including the legislation or international obligations of the Member States or of the Community in respect of matters such as personal data protection, privacy, security or confidentiality.

Article 9
Terms of Protection

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.

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.

Article 9
Terms of Protection

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

2. (a) 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 recognised in paragraph 1 of this Article. Such protection shall not prejudice existing rights in respect of the original database.

(b) For the purposes of the term of protection provided for in this Article 'substantial change' means:

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,

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

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.

(b) For the purposes of the term of protection provided for in this Article, '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.

Article 10
Remedies

Member States shall provide appropriate remedies in respect of infringements of the rights provided for in this Directive.
CHAPTER III: SUI GENERIS RIGHT

Article 10

Object of Protection:

Right to Prevent Unauthorized Extraction from a Database

1. For the purposes of this Directive "right to prevent unauthorized extraction" means the right of the owner of the rights in a database to prevent acts of extraction and re-utilization of part or all of the material from that database.

2. Member States shall provide for a right for the owner of the rights in a database to prevent the unauthorised extraction or re-utilisation, from that database, of its contents, in whole or in substantial part, for commercial purposes. This right to prevent unauthorised 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.
Article 11
Acts Performed in Relation to the Contents of a Database - Unauthorized Extraction of the Contents

1. Notwithstanding the right provided for in Article 10 (2) to prevent the unauthorised extraction and re-utilisation 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-utilise, 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.

2. The right to extract and re-utilise 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 authorised 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.

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

4. Member States shall provide appropriate measures for arbitration between the parties in respect of such licences.

[previous 8(3) Unchanged]
5. The lawful user of a database may, without authorization of the database maker, extract and re-utilize insubstantial parts of works or materials from a database for commercial purposes provided that acknowledgement is made of the source.

[previous 8(4)] Unchanged

6. The lawful user of a database may, without authorisation of the database maker, and without acknowledgement of the source, extract and re-utilise insubstantial parts of works or materials from that database for personal private use only.

[previous 8(5)] Unchanged

7. For the purposes of this Article, commercial purposes' means any use, which is not:

(a) private, personal, and
(b) for non-profit making purposes.

8. (a) 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.

(b) In both instances, it shall likewise be incumbent on the lawful user to demonstrate that the extraction and re-utilisation 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.

9. The provisions of this Article shall apply only to the extent that such extraction and re-utilization does not conflict with any other prior rights or obligations, including the legislation or international obligations of the Member States or of the Community in respect of matters such as personal data protection, privacy, security or confidentiality.

[previous 8(6)] Unchanged
Article 12

Term of Protection

1. The right to prevent unauthorised 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, or

(b) any substantial change to the database.

2. (a) 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.

(b) For the purposes of the term of protection provided for in this Article "substantial change" means 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.

3. (a) Insubstantial changes to the contents of a database shall not entail a fresh period of protection of that database by the right to prevent unauthorised extraction.

(b) For the purpose of the term of protection provided for in this Article "insubstantial change" means insubstantial additions, deletions or alterations which, taken together, do not substantially modify the contents of a database.
Article 11

Beneficiaries of Protection under Right to Prevent Unfair Extraction from a Database

1. Protection granted under 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.

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 legislation of a Member State and having their registered office, central administration or principal place of business within the Community. Should the company or firm formed in accordance with the legislation of a Member State have 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.

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 under Article 9(3).

Article 13

Beneficiaries of Protection under Right to Prevent Unauthorized Extraction from a Database

1. Protection granted pursuant to this Directive to the contents of a database against unauthorized extraction or re-utilization shall apply to databases whose makers are nationals of a Member State or who have their habitual residence on the territory of the Community.

3. Agreements extending the right to prevent unauthorized 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 12(1).

CHAPTER IV: COMMON PROVISIONS

Article 14

Remedies

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

[old Article 10]] Unchanged
Article 12
Continued Application of other Legal Provisions

1. The provisions of this Directive shall be without prejudice to copyright or any other right subsisting in the works or 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. Protection under 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.

Article 13
Final Provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1993.

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.

Article 15
Continued Application of other Legal Provisions

Unchanged

2. Protection pursuant to the provisions of this Directive as regards copyright and 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 date of publication of the Directive which on that date fulfilled the requirements laid down therein as regards the protection of databases. Such protection shall be without prejudice to any contracts concluded and rights acquired before that date.

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.

Unchanged

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

Article 14

This Directive is addressed to the Member States.

Article 17

Unchanged.
TRANSLATION OF LETTER
from: Commission of the European Communities, signed by Mr René STEICHEN, Member
dated: 4 October 1993
to: Mr Willy CLAES, President of the Council of the European Communities
Subject: Amended proposal for a Council Directive on the legal protection of databases

Sir,

I would inform you that, in response to the European Parliament's Opinion, the Commission has decided, under Article 149(3) of the Treaty establishing the European Economic Community, to amend the proposal for a Council Directive on the legal protection of databases, which it submitted to the Council on 15 April 1992 (COM(92) 24 final SYN 393).

The text of the amended proposal is enclosed.

(Complimentary close).

(s.) René STEICHEN
Member of the Commission

Encl.: COM(93) 464 final SYN 393
COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 484 final - SYN 393
Brussels, 4 October 1993

Amended proposal for a

COUNCIL DIRECTIVE

ON THE LEGAL PROTECTION
OF DATABASES

(presented by the Commission pursuant to Article 149(3) of the EEC-Treaty)

The Economic and Social Committee delivered its opinion on the proposal on 24 November 1992.

The European Parliament, consulted under the co-operation procedure, discussed the proposal in detail in its Committees. On 21 June 1993 it debated the report drawn up on behalf of the Committee on Legal Affairs and citizens' rights by Mr Garcia Amigo, voting in support of the proposed Directive as amended by Parliament in its Plenary Session of 23 June 1993.

The amended proposal for a Directive presented by the Commission is intended to take into account the Opinion of the Parliament.

It contains one modification of substance and a number of amendments to the original proposal which are intended to give greater precision and clarity to the text.

The one modification of substance proposed by the Parliament is the extension of the period of protection under the sui generis regime from the ten years proposed by the Commission to fifteen years.

The modifications of a redactional nature include the following:

a) the term 'database' is to be clarified as including collections of data

b) the term 'owner of the rights' is to be used to cover both the author who owns any copyright right in the database and the maker of the database where there is a sui generis right in the contents of the database but no copyright in the selection or arrangement

c) the definition of "substantial" and "insubstantial" change in relation to the term of protection is clarified

d) the term 'unauthorised' extraction is to be used throughout the text in place of 'unfair' extraction

e) the terms under which licences to use the contents of a database are to be issued are more clearly defined in the text.

The Commission accepts, in whole or in part and subject in some instances to re-alignment of the various language versions, thirty two out of thirty seven amendments of Parliament.
The amendments which were not adopted by the Commission concerned:

a) a definition of database as including a "large number or amount of data or other material". This amendment was rejected because it would have given rise to problems of interpretation and is inconsistent with definitions proposed in the context of GATT Trips and on-going discussions in the World Intellectual Property Organisation on a possible Protocol to the Berne Convention.

b) a definition of 'author' of a database as the person "who undertook to and assumed responsibility for creating" the database. In the view of the Commission such an extensive definition of authorship should not be introduced into a Directive dealing with the legal protection of a specific type of work.

c) a definition of "non-commercial purposes" as including non-profit making purposes of teaching, research or humanitarian aid. The Commission, while accepting that private non-profit making activities including private research might fall within the scope of Article 8(5) of the original proposal, has doubts about the validity of the argument that teaching and humanitarian aid should fall under the heading of private use. The absence of profit is not the only criterion as to whether teaching or research is to be considered private or commercial since much commercial research could be said to be carried out without a direct profit-making objective, and teaching for private purposes would more correctly be defined as "private use".

d) additional language proposed to Article 6(1) stipulating that the lawful user of a database could be bound by contractual clauses reducing his ability to carry out acts necessary in order to use the database: any contractual restrictions which rendered the database unusable would in any event cause the contract to be of questionable validity.

e) additional restrictions on the use for private/personal purposes of the contents of the database under Article 8(5) of the original proposal: these restrictions would have obliged the user to quote the source of an insubstantial extract even for his own private purposes.

f) a requirement that databases should be protected against unauthorised extraction in accordance with the terms of international treaties. The Commission rejected this amendment as creating unnecessary ambiguity since the unauthorised extraction right is acknowledged in the report of the Legal Affairs Committee to be a sui generis right, subject to its own specific provisions as set out in the proposed Directive and not linked to any existing legal regime or international Convention, unlike the copyright protection of databases which is clearly linked in the proposal to that provided for internationally by the Berne Convention.
Amendment 2

This amendment was accepted since it expresses a non-binding and qualified wish that database distributors would take into account the specific requirements of users to use the contents of databases for personal private purposes and the special needs of education and research in concluding licence contracts with these groups of users.
COMMENTARY ON THE ARTICLES

Structure of the amended proposal

In its amended proposal the Commission has re-grouped all the Articles of the original proposal which relate to the copyright right in Chapter II and those which relate to the sui generis right in Chapter III. Although the Parliament’s amendments did not specify this re-arrangement, the report of the Legal Affairs Committee makes reference to the complexity of the text as did the Opinion of the Economic and Social Committee. The Commission has therefore taken the decision to make the separation between copyright and sui generis provisions in order to make the amended text more comprehensible. This separation does not in any way change the substance of the proposal and is purely redactional.

Article 1

The addition of the word ‘data’ to the definition of database is a useful clarification consistent with both the draft GATT Trips text and the proposed text of the Protocol to the Berne Convention. Article 1(2) and 1(3) are deleted from Article 1 and re-located in Articles 10 and 11 respectively with some minor drafting clarifications. Article 1(4) is relocated in Article 9(3).

The Parliament sought to clarify by a number of amendments, of which some presented linguistic inconsistencies, that the “owner of the rights in a database” can be the author or his successor in title in the case of the copyright right, or the maker or his successor in title in the case of the sui generis right, or a combination of both author and maker if the database benefits from both copyright and sui generis protection. These have inserted in a new paragraph 2.

Article 4

This amendment corresponds in spirit to the equivalent provision set out in Article 3 of Directive 91/250 on the legal protection of computer programs. It is not to be considered as implying any new obligation on the Member States or as requiring any acts of compliance with international agreements in respect of copyright.
Article 5

The order of paragraphs has been reversed to give first the rule and second the limitation, and clarifications to the text on limitations have been made to ensure that only those works or materials which are not subject to copyright (references), which do not infringe copyright in the pre-existing work (short abstracts) or which fall within Article 10 of the Berne Convention (quotations) can be incorporated into a database without authorisation. It is not intended that a database creator could incorporate abstracts written by third parties into his database without authorisation if such abstracts are themselves subject to copyright protection. The database creator may however make his own abstracts of pre-existing works and incorporate them into his database providing that the abstracts do not infringe the copyright in the pre-existing work by being "substantial descriptions or summaries of the content or the form".

Article 6

This change corresponds to the definition in Article 1 paragraph 2 of the amended proposal.

Article 8

The amendments to this Article were accepted by the Commission as being purely intended to give greater precision to the text. Since the amendments of the Parliament speak only of "author" and "work", a new paragraph 3 has been added which corresponds to the coverage of neighbouring rights provided for in Article 7 of the original proposal by the terms "rightholder" and "other rights".

Article 9

The amendment of the Parliament seeks to re-group in this Article all of the provisions of the original proposal which dealt with the term of copyright protection and the definitions of "substantial" and "insubstantial change". The Commission accepted the need to clarify the terminology and to define the starting point in time of the period of protection of databases which are being constantly updated.

Article 10

The amendments of the Parliament to Article 2(5) aim at clarifying the nature of the sui generis right and include the term "part or all of the material" in the definition of the right and have been introduced in a new Article 10(1). That right was then limited by Article 10(2) and by Article 11. The Commission can accept these amendments since they correspond to the spirit of the original proposal and do not create rights in information as such.
Article 11

The amendments to this Article are largely clarifications of the original text and have been accepted for the reasons set out above in respect of Article 10. In particular, the clarifications in respect of public bodies and their exclusive concessionaires, and the definition of "publicly available" are considered useful precisions.

Paragraph 7 and 8 contain clarifications of "commercial purposes" and "insubstantial part". To a large extent they represent language already existing in the Commission's original proposal but incorporate additional clarifications. Article 11(1) last sentence also applies to Article 11(2).

Article 12

The amendments to this Article correspond in intention to the amendments to Article 9 (on the term of copyright protection). These amendments re-group existing definitions of when a period of protection under the sui generis right arises in respect of constantly up-dated databases and defines "substantial" and "insubstantial" changes. As to the modification of the period of protection from ten to fifteen years the Commission has accepted the argument that the increased period corresponds better to the needs of industry to recover initial investments in the creation of databases, and is more proportionate to the term of 70 years for copyright protection provided for in the proposal for a Council Directive COM(92)33 final-SYN 395 on which a Common Position of the Council was reached in July 1993.

Article 13

These changes are purely drafting improvements and have been accepted by the Commission as such.

Article 15

The amendment to this Article correspond to the wish of the Parliament that protection should be available for all databases in existence on the date of entry into force of the Directive or created thereafter. As there will be in all probability no electronic databases in existence for which the period of copyright protection has elapsed, there is not a problem of calling works which have fallen into the public domain back into protection or extending the period of protection under copyright.

Article 16

The Commission agrees to the later date of 1 January 1995 given that the date set out in the original proposal has already passed. The Commission also accepts that in this fast-moving area of technology it is appropriate to review the contents of the Directive in due course.
Amended proposal for a
COUNCIL DIRECTIVE
ON THE LEGAL PROTECTION
OF DATABASES
THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57(2), 66, 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

1. Whereas databases are at present not clearly protected in all Member States by existing legislation and such protection, where it exists, has different attributes;

2. Whereas such differences in the legal protection offered by the legislation of the Member States have direct and negative effects on the establishment and functioning of the Internal Market as regards databases and in particular on the freedom of individuals and companies to provide on-line database goods and services on an equal legal basis throughout the Community; whereas such differences could well become more pronounced as Member States introduce new legislation on this subject, which is now taking on an increasingly international dimension;

3. Whereas existing differences having a distortive effect on the establishment and functioning of the Internal Market need to be removed and new ones prevented from arising, while differences not at the present time adversely affecting the establishment and functioning of the Internal Market or the development of an information market within the Community need not be addressed in this Directive;

4. Whereas copyright protection for databases exists in varying forms in a number of Member States according to legislation or case-law and such unharmonized intellectual property rights, being territorial in nature, can have the effect of preventing the free movement of goods or services within the Community if differences in the scope, conditions, derogations or term of protection remain between the legislation of the Member States;
5. Whereas although copyright remains an appropriate form of exclusive right for the legal protection of databases and in particular an appropriate means to secure the remuneration of the author who has created a database, in addition to copyright protection, and in the absence as yet of a harmonized system of unfair competition legislation or of case-law in the Member States, other measures are required to prevent unfair extraction and re-utilization of the contents of a database;

6. Whereas database development requires the investment of considerable human, technical and financial resources while such databases can be copied at a fraction of the cost needed to develop them independently:

7. Whereas unauthorized access to a database and removal of its contents constitute acts which can have the gravest economic and technical consequences;

8. Whereas databases are a vital tool in the development of an Information Market within the Community; whereas this tool will be of use to a large variety of other activities and industries;

9. Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry requires investment in all the Member States in advanced information management systems;

10. Whereas a correspondingly high rate of increase in publications of literary, artistic, musical and other works necessitates the creation of modern archiving, bibliographic and accessing techniques, to enable consumers to have at their disposal the most comprehensive collection of the Community's heritage;

11. Whereas there is at the present time a great imbalance in the level of investment in database creation both as between the Member States themselves, and between the Community and the world's largest database producing countries;
12. Whereas such an investment in modern information storage and retrieval systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of authors of databases and the repression of acts of piracy and unfair competition.

13. Whereas this Directive protects collections, sometimes called compilations, of works or other materials whose arrangement, storage and access is performed by means which include electronic, electromagnetic or electro-optical processes or analogous processes;

14. Whereas the criteria by which such collections shall be eligible for protection by copyright should be that the author, in effecting the selection or the arrangement of the contents of the database, has made an intellectual creation;

15. Whereas no other criteria than originality in the sense of intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular no aesthetic or qualitative criteria should be applied;

16. Whereas the term database should be understood to include collections of works, whether literary, artistic, musical or other, or of other material such as texts, sounds, images, numbers, facts, data or combinations of any of these;

17. Whereas the protection of a database should extend to the electronic materials without which the contents selected and arranged by the maker of the database cannot be used, such as, for example, the system made to obtain information and present information to the user in electronic or non-electronic form, and the indexation and thesaurus used in the construction or operation of the database;

18. Whereas the term database should not be taken to extend to any computer programme used in the construction or operation of a database, which accordingly remain protected by Council Directive 91/250 EEC;
19. Whereas the Directive should be taken as applying only to collections which are made by electronic means, but is without prejudice to the protection under copyright as collections, within the meaning of Article 2.5. of the Berne Convention for the Protection of Literary and Artistic Works, (text of Paris Act of 1971) and under the legislation of the Member States, of collections made by other means;

20. Whereas works protected by copyright or by any other rights, which are incorporated into a database, remain the object of their author's exclusive rights and may not therefore be incorporated into or reproduced from the database without the permission of the author or his successors in title;

21. Whereas the rights of the author of such works incorporated into a database are not in any way affected by the existence of a separate right in the original selection or arrangement of these works in a database;

22. Whereas the moral rights of the natural person who has created the database should be owned and exercised according to the provisions of the legislation of the Member States consistent with the provisions of the Berne Convention, and remain therefore outside the scope of this Directive;

23. Whereas the author's exclusive rights should include the right to determine the way in which his work is exploited and by whom, and in particular to control the availability of his work to unauthorized persons;

24. Whereas nevertheless once the rightholder has chosen to make available a copy of the database to a user, whether by an on-line service or by other means of distribution, that lawful user must be able to access and use the database, for the purposes and in the way set out in the agreement with the rightholder, even if such access and use necessitate performance of otherwise restricted acts;

25. Whereas if the user and the rightholder have not concluded an agreement regulating the use which may be made of the database, the lawful user should be presumed to be able to perform any of the restricted acts which are necessary for access to and use of the database;
26. Whereas in respect of reproduction in the limited circumstances provided for in the Berne Convention, of the contents of the database by the lawful user, whether in electronic or non-electronic form, the same restrictions and exceptions should apply to the reproduction of such works from a database as would apply to the reproduction of the same works made available to the public by other forms of exploitation or distribution;

27. Whereas the increasing use of digital recording technology exposes the database maker to the risk that the contents of his database may be downloaded and re-arranged electronically without his authorization to produce a database of identical content but which does not infringe any copyright in the arrangement of his database;

28. Whereas in addition to protecting the copyright in the original selection or arrangement of the contents of a database this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment incurred in obtaining and collecting data by providing that certain acts done in relation to the contents of a database are subject to restriction even when such contents are not themselves protected by copyright or other rights;

29. Whereas such protection of the contents of a database is to be achieved by a special right by which the maker of a database can prevent the unauthorized extraction or re-utilization of the contents of that database for commercial purposes; whereas this special right (hereafter called "a right to prevent unfair extraction") is not to be considered in any way as an extension of copyright protection to mere facts or data;

30. Whereas the existence of a right to prevent the extraction and re-utilization for commercial purposes of works or materials from a given database should not give rise to the creation of any independent right in the works or materials themselves;
31. Whereas in the interests of competition between suppliers of information products and services, the maker of a database which is commercially distributed whose database is the sole possible source of a given work or material, should make that work or material available under licence for use by others, providing that the works or materials so licensed are used in the independent creation of new works, and providing that no prior rights in or obligations incurred in respect of those works or materials are infringed;

32. Whereas licences granted in such circumstances should be fair and non-discriminatory under conditions to be agreed with the rightholder;

33. Whereas such licences should not be requested for reasons of commercial expediency such as economy of time, effort or financial investment;

34. Whereas in the event that licences are refused or the parties cannot reach agreement on the terms to be concluded, a system of arbitration should be provided for by the Member States;

35. Whereas licences may not be refused in respect of the extraction and re-utilization of works or materials from a publicly available database created by a public body providing that such acts do not infringe the legislation or international obligations of Member States or the Community in respect of matters such as personal data protection, privacy, security or confidentiality;
36. Whereas the objective of the provisions of this Directive, which is to afford an appropriate and uniform level of protection of databases as a means to secure the remuneration of the author who has created the database, is different from the aims of the proposal for a Council Directive concerning the protection of individuals in relation to the processing of personal data (OJ No C 277, 5.11.1990, p.3.) which are to guarantee free circulation of personal data on the basis of a harmonized standard of rules designed to protect the fundamental rights, notably the right to privacy which is recognized in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas the provisions of this Directive are without prejudice to the data protection legislation;

37. Whereas notwithstanding the right to prevent unfair extraction from a database, it should still be possible for the lawful user to quote from or otherwise use, for commercial and private purposes, the contents of the database which he is authorized to use, providing that this exception is subject to narrow limitations and is not used in a way which would conflict with the author’s normal exploitation of his work or which would unreasonably prejudice his legitimate interests;

38. Whereas the right to prevent unfair extraction from a database may only be extended to databases whose authors or makers are nationals or habitual residents of third countries and to those produced by companies or firms not established in a Member State within the meaning of the Treaty if such third countries offer comparable protection to databases produced by nationals of the Member States or habitual residents of the Community;
39. Whereas, in addition to remedies provided under the legislation of the Member States for infringements of copyright or other rights, Member States should provide for appropriate remedies against unfair extraction from a database;

40. Whereas in addition to the protection given under this Directive to the database by copyright, and to its contents against unfair extraction, other legal provisions existing in the law of the Member States relevant to the supply of database goods and services should continue to apply,

HAS ADOPTED THIS DIRECTIVE
Article 1
Definitions

1. For the purposes of this Directive,
'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 program used in the making or operation of the database;

2. 'right to prevent unfair extraction' means the right of the maker of a database to prevent acts of extraction and re-utilization of material from that database for commercial purposes;

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;

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.
CHAPTER II: COPYRIGHT

Article 2
Object of Protection:
Copyright and Right to Prevent Unfair Extraction from a Database

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).

2. The definition of database in point 1 of Article 1 is without prejudice to the protection by copyright of collections of works or 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.

3. A database shall be protected by copyright if it is original in the sense that it is a collection of works or materials which, by reason of their selection or their arrangement, constitutes the author's own intellectual creation. No other criteria shall be applied to determine the eligibility of a database for this protection.

4. The copyright protection of a database given by this Directive shall not extend to the works or materials contained therein, irrespective of whether or not they are themselves protected by copyright; the protection of a database shall be without prejudice to any rights subsisting in those works or materials themselves.
5. Member States shall provide for a right for the maker of a database to prevent the unauthorised extraction or re-utilisation, 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.

Article 3
Authorship: Copyright

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.
Article 4

Entitlement to protection under copyright

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 on copyright applicable to literary works.

Article 4

Incorporation of Works or Materials into a Database

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 authorisation 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.

Article 5

Incorporation of Works or Materials into a Database

1. The incorporation into a database of any works or materials shall remain subject to the authorisation of the owner of any copyright or other rights acquired or obligations incurred therein.

2. The incorporation into a database of bibliographical references, abstracts (with the exception of substantial descriptions or summaries of the content or the form of existing works) or brief quotations, shall not require the authorisation of the owners of rights in those works, provided the name of the author and the source of the quotation are clearly indicated in accordance with Article 10(3) of the Berne Convention.
### Article 5

**Restricted Acts: Copyright**

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:

a) the temporary or permanent reproduction of the database by any means and in any form, in whole or in part,

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 (a) or (b),

d) any form of distribution to the public, including the rental, 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, with the exception of the right to control further rental of the database or a copy thereof.

e) any communication, display or performance of the database to the public.

### Article 6

**Restricted Acts**

The owner of the rights in a database shall have, in respect of:

- Unchanged

- Unchanged

- Unchanged

- Unchanged

- Unchanged

- Unchanged

### Article 6

**Exceptions to the Restricted Acts Enumerated in Article 5:**

**Copyright in the Selection or Arrangement**

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 rightholder.

### Article 7

**Exceptions to the Restricted Acts**

**Copyright in the Selection or Arrangement**

Unchanged
2. In the absence of any contractual arrangements between the rightholder and the user of a database in respect of its use, the performance by the lawful acquirer of a database of any of the acts listed in Article 5 which is necessary in order to gain access to the contents of the database and use thereof shall not require the authorization of the rightholder.

3. The exceptions referred to in paragraphs 1 and 2 relate to the subject matter listed in Article 5 and are without prejudice to any rights subsisting in the works or materials contained in the database.

**Article 7**

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

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 utilisation is compatible with fair practice.

2. Where the legislation of the Member States or contractual arrangements concluded with the rightholder 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.

**Article 8**

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

1. Member States shall apply the same exceptions to any 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 utilisation 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 rights of the author of the database laid down in Article 6.

3. The provisions of paragraphs (1) and (2) above shall also apply in respect of owners of neighbouring rights attaching to materials contained in a database.
Article 8
Acts Performed in Relation to the Contents of a Database - Unfair Extraction of the Contents

1. Notwithstanding the right provided for in Article 2(5) to prevent the unauthorised 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-utilise, in whole or substantial part, works or materials from that database for commercial purposes, shall be licensed on fair and non-discriminatory terms.

2. The right to extract and re-utilise 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.

3. Member States shall provide appropriate measures for arbitration between the parties in respect of such licences.

4. The lawful user of a database may, without authorization of the database maker, extract and re-utilize insubstantial parts of works or materials from a database for commercial purposes provided that acknowledgement is made of the source.

5. The lawful user of a database may, without authorisation of the database maker, and without acknowledgement of the source, extract and re-utilise insubstantial parts of works or materials from that database for personal private use only.
6. The provisions of this Article shall apply only to the extent that such extraction and re-utilization does not conflict with any other prior rights or obligations, including the legislation or international obligations of the Member States or of the Community in respect of matters such as personal data protection, privacy, security or confidentiality.

Article 9
Terms of Protection

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.

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.

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

2.(a) 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 recognised in paragraph 1 of this Article. Such protection shall not prejudice existing rights in respect of the original database.

(b) For the purposes of the term of protection provided for in this Article 'substantial change' means:

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.

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

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.

**Article 10**

**Remedies**

Member States shall provide appropriate remedies in respect of infringements of the rights provided for in this Directive.
CHAPTER III : SUI GENERIS RIGHT

Article 10

Object of Protection:

Right to Prevent Unauthorized Extraction from a Database

1. For the purposes of this Directive “right to prevent unauthorized extraction” means the right of the owner of the rights in a database to prevent acts of extraction and re-utilization of part or all of the material from that database.

2. Member States shall provide for a right for the owner of the rights in a database to prevent the unauthorised extraction or re-utilisation, from that database, of its contents, in whole or in substantial part, for commercial purposes. This right to prevent unauthorised 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.
Article 11

Acts Performed in Relation to the Contents of
a Database - Unauthorized Extraction of the Contents

1. Notwithstanding the right provided for in Article 10 (2) to prevent the unauthorised extraction and re-utilisation 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-utilise, 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.

2. The right to extract and re-utilise 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 authorised 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.

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

4. Member States shall provide appropriate measures for arbitration between the parties in respect of such licences.

[previous 8(3) Unchanged]
5. The lawful user of a database may, without authorization of the database maker, extract and re-utilize insubstantial parts of works or materials from a database for commercial purposes provided that acknowledgement is made of the source.

(previous 8(4)) Unchanged

6. The lawful user of a database may, without authorisation of the database maker, and without acknowledgement of the source, extract and re-utilise insubstantial parts of works or materials from that database for personal private use only.

(previous 8(5)) Unchanged

7. For the purposes of this Article, commercial purposes' means any use, which is not:

(a) private, personal, and

(b) for non-profit making purposes.

8. (a) 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.

(b) In both instances, it shall likewise be incumbent on the lawful user to demonstrate that the extraction and re-utilisation 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.

9. The provisions of this Article shall apply only to the extent that such extraction and re-utilization does not conflict with any other prior rights or obligations, including the legislation or international obligations of the Member States or of the Community in respect of matters such as personal data protection, privacy, security or confidentiality.

(previous 8(6)) Unchanged
Article 12

Term of Protection

1. The right to prevent unauthorised 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, or

(b) any substantial change to the database.

2. (a) Any substantial change to the contents of a database shall give rise to a fresh period of protection by the right to prevent unauthorised extraction.

(b) For the purposes of the term of protection provided for in this Article "substantial change" means 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.

3. (a) Insubstantial changes to the contents of a database shall not entail a fresh period of protection of that database by the right to prevent unauthorised extraction.

(b) For the purpose of the term of protection provided for in this Article "insubstantial change" means insubstantial additions, deletions or alterations which, taken together, do not substantially modify the contents of a database.
Article 11

**Beneficiaries of Protection under Right to Prevent Unfair Extraction from a Database**

1. Protection granted under 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.

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 legislation of a Member State and having their registered office, central administration or principal place of business within the Community. Should the company or firm formed in accordance with the legislation of a Member State have 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.

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 under Article 9(3).

**Article 13**

**Beneficiaries of Protection under Right to Prevent Unauthorized Extraction from a Database**

1. Protection granted pursuant to this Directive to the contents of a database against unauthorized extraction or re-utilization 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. Unchanged

3. Agreements extending the right to prevent unauthorized 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 12(1).

**CHAPTER IV : COMMON PROVISIONS**

**Article 14**

**Remedies**

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

[old Article 10)] Unchanged
Article 12
Continued Application of other Legal Provisions

1. The provisions of this Directive shall be without prejudice to copyright or any other right subsisting in the works or 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. Protection under 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.

Article 15
Continued Application of other Legal Provisions

Unchanged

Article 13
Final Provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1993.

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.

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.

Unchanged

Unchanged
Article 14

This Directive is addressed to the Member States.

Article 17

Unchanged.
GENERAL REMARKS

1. At its meeting on 4 and 5 October 1993, the Working Party examined Articles 1 to 5 and began an examination of Article 6 of the Commission's amended proposal (9219/93 PI 89 CULTURE 113).

2. The Commission representative explained that the amended proposal had grouped together all the Articles of the original proposal which related to the copyright right in Chapter II and those which related to the sui generis right in Chapter III, in order to make the amended text more comprehensible.

The Belgian delegation, while welcoming this new structure, suggested that the new Articles 5 and 8 be removed.

(1) The Greek delegation was not represented at this meeting.
from Chapter II and put together in a separate chapter.

It was agreed that this suggestion would be examined when these Articles were considered.

3. The Commission representative pointed out that two amendments which had been proposed by the European Parliament's Committee on Legal Affairs and Citizens' Rights had not been adopted by the Plenary. These amendments concerned:

(a) the extension of the scope of the Directive to cover non-electronic databases (7998/93 PI 67 CULTURE 89, Annex I);(2)

(b) "date-stamping" of the items included in a regularly updated database (7998/93, Annex III).

Although the Commission had not included these amendments in its amended proposal, it was open to discussion on both points.

4. The Commission representative considered that it was desirable that the Council reach a common position on the proposal for a Directive before the European Parliament suspended its work in May 1994 in preparation for the forthcoming elections. Ongoing work in the World Intellectual Property Organization (WIPO) and the need to transpose the results of the GATT Uruguay Round, which it was hoped would soon be concluded, were further reasons for seeking a common position on this proposal early in 1994.

The Chair indicated that it was the intention of the Presidency to hold a policy debate on this proposal at the

(2) See also point 8 below.
Council session (Internal Market) to be held on 16 December 1993.

The German, United Kingdom, Netherlands and Danish delegations expressed doubts whether such a debate at the political level would not be premature, unless it were to be limited to general issues and unless considerable work were done in the meantime on clarifying the nature and the object of protection resulting from the proposed Directive.

The Portuguese delegation suggested that one of the subjects of such a policy debate might be the question whether or not the Directive was necessary, and entered a provisional reservation on the whole Directive.

5. It was noted that some of the language versions contained inaccurate translations of the Commission's amended proposal. Delegations were invited to draw such errors to the attention of the Commission services, with a view to the publication of corrigenda.

Article 1(1)

6. The French delegation suggested that the term "collection" in the French-language version be replaced by "recueil", which was the term used in Article 2(5) of the Berne Convention for Protection of Literary and Artistic Works.

The Commission representative pointed out that the term "collection" had been chosen (in both English and French) as a neutral term which would cover data, works or other materials; the English term "compilation" or the French term "recueil" on the other hand might be construed as being applicable to works only. However, the Commission services were prepared to reconsider the terms used in the various
Language versions.

7. In its amended proposal, the Commission had accepted an amendment proposed by the European Parliament(3) replacing "works or materials" by "data, works or other materials". The Commission representative explained that the addition of the word "data" had been accepted as a useful clarification; moreover, it brought the text closer to the "TRIPs" text (see 11185/92, page 6) and was consistent with efforts in the WIPO.

The Danish, Spanish, French and United Kingdom delegations approved the addition of the word "data", and the Netherlands delegation could also accept it.

The French delegation questioned whether this addition made the term "other materials" redundant.

The Commission representative explained that "other materials" covered anything which was not covered by "data" or "works" and preferred to keep this term, unless "data" were to be given a broad meaning covering everything other than "works".

The Netherlands and United Kingdom delegations were also in favour of keeping the term "other materials".

8. With regard to the terms "arranged, stored and accessed by electronic means", the Danish and Netherlands delegations spoke in favour of extending the Directive to cover databases in all forms, rather than limiting it to electronic databases as proposed by the Commission. The Luxembourg delegation also expressed doubts as regards the limitation to electronic databases.

The Belgian, German, French, Irish, Italian and Portuguese delegations reserved their positions on this question.

9. The United Kingdom delegation queried whether the terms "arranged, stored and accessed by electronic means" were appropriate in the light of the possibility of a database in paper form being converted into an electronic database or vice versa, and put forward for consideration the alternative wording "not directly readable by a human observer".

The Commission representative explained that under the Directive as proposed, a database in paper form would not be covered, nor would the question whether or not the conversion of that database to an electronic database would infringe the rights in the paper database; however, the resulting electronic database would be covered by the Directive. Where an electronic database was converted into a database in paper form, the electronic database would be covered by the Directive and its conversion into a database in paper form would be a restricted act under the Directive, while the resulting paper database would not be protected under the Directive.

10. In reply to a question whether or not databases on CD-ROMs would be covered by the terms "arranged, stored and accessed by electronic means", the Commission representative drew attention to an earlier working document(4) which had demonstrated that the information contained in databases on CD-ROMs was stored and accessed by electronic means.

11. In its amended proposal, the Commission had accepted an amendment proposed by the European Parliament replacing "the electronic materials necessary ..." by "the materials

necessary ..."(5).

Several delegations indicated their approval of this amendment.

12. The United Kingdom delegation considered that it was far from clear whether the Directive would protect the database as such, or its various parts as such, or the interface between the various parts mentioned in Article 1(1).

In this context, the German and United Kingdom delegations questioned whether protecting a database's thesaurus, index and system for obtaining or presenting information would not be dangerously close to protecting ideas or principles, rather than expression, contrary to the rule that only expression is protected by copyright, and that ideas and principles are not; they drew attention in this respect to Article 1(2) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs(6).

The Commission representative pointed out that the thesaurus, index or system for obtaining or presenting information would not necessarily be protected by copyright under the Directive; these elements might be covered by the sui generis right only, or they might be covered by a combination of the sui generis right and the copyright right.

The Danish, Spanish and French delegations considered that it was important that the thesaurus, index and system for obtaining or presenting information should be protected under the Directive.

The United Kingdom delegation gave the example of an

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(5) This amendment is not reflected accurately in the Spanish-language version of the Commission's amended proposal.

electronic database listing all the streets in a particular city, with a thesaurus grouping together all the streets which had particular characteristics, such as one-way streets, streets with shopping precincts, etc. He asked whether a person who made a second electronic database which listed all the streets of a different city but used exactly the same criteria for grouping streets together in the thesaurus would infringe the right in the first database.

The Commission representative replied that if the thesaurus were to be protected by the copyright right as part of the database, there would be infringement if the expression of the thesaurus were copied; if the thesaurus were protected by the sui generis right, there would be infringement if a substantial part were copied for commercial purposes.

The Belgian delegation asked for clarification as to the difference between "the materials necessary for the operation of the database" and "any computer program used in the making or operation of the database".

The Commission representative explained that a computer program was a series of instructions which caused the hardware to perform a function; the materials necessary for the operation of a database were the tools which allowed the information stored in the database to be retrieved in an orderly and efficient manner (see also 7964/93, point 31, in this respect).

The Belgian delegation also asked whether a computer program which had been specifically created for the management of a particular database could be protected under the Directive.

The Commission representative explained that while the thesaurus, index and system for obtaining or presenting
information were operated by computer programs, they were not
themselves computer programs; the computer programs which
operated them would not be protected under this Directive.

14. The Danish delegation asked whether a database which was
commercialized in conjunction with another database would be
considered as eligible for separate protection under
Article 1(1).

The Commission representative replied that this would
depend upon the circumstances, in particular the terms of the
contract regulating the relationship between the databases
concerned.

Article 1(2)

15. The Commission representative explained that this
provision resulted from an amendment proposed by the European
Parliament (Amendment No. 5) which the Commission had accepted
subject to drafting improvements. The intention of this
provision as set out in the Commission's amended proposal was
to provide a single term which would cover both the author of
a database in cases where the database was eligible for
copyright protection (Article 1(2)(a)) and the maker of the
database in cases where the database was not eligible for
copyright protection but was protected by the sui generis
right (Article 1(2)(c)); it also covered the situation where
the author of the database was also entitled to the sui
generis right (for example, where the database contained not
works but data and fulfilled the criterion of originality
under Article 2(3)), but authorized another person to exercise
this right.

16. The Italian delegation suggested that it would be more
logical to reverse the order of subparagraphs (b) and (c).
17. The Netherlands delegation considered that the wording of subparagraph (b) was misleading, as it implied that where the author of a database authorized another person to exercise the sui generis right, that person automatically became the owner of the copyright too.

The Italian delegation also pointed out that it was illogical for subparagraph (b) to cover the case where the exercise of the sui generis right by another person was authorized by the author of the database, but not the case where there was no copyright right and the authorization was given by the maker of the database.

In the light of the above observations, the Commission representative suggested the following alternative wording for Article 1(2):

"2. "Owner of the rights in a database" means:

(a) the author of a database or his successor in title;

(b) where the database is not eligible for protection by copyright, the maker of the database or his successor in title."

18. The Belgian delegation doubted whether Article 1(2), either as set out in the Commission's amended proposal, or under the above alternative wording, would allow for the case where national law provided for the copyright right to be exercised by the author of the database, but for the sui generis right to be exercised by a legal person.

The Commission representative suggested that this question be considered in the context of Article 3.

Article 2(1)

20. This provision gave rise to no observations.

Article 2(2)

21. Delegations pointed out that their positions on this provision depended on the question whether or not the Directive was extended to cover non-electronic databases (see point 8 above).

22. The German delegation expressed doubts whether, in the event of the Directive remaining limited to electronic databases, this provision should provide that non-electronic databases would remain protected to the extent provided for by Article 2(5) of the Berne Convention.

The Danish delegation, supported by the Spanish, Irish, Netherlands and United Kingdom delegations, considered that in that event the reference to Article 2(5) of the Berne Convention should be replaced by a reference to national law. The possibility was also mentioned of transferring this paragraph as so adapted to the recitals.

The Commission representative entered a reservation on the changes suggested.

Article 2(3)

23. The United Kingdom and Irish delegations reiterated their reservation on this paragraph in conjunction with Article 1(1) and Article 6 of the Commission's amended proposal.

The French delegation also reserved its position on this paragraph.
24. The Commission representative pointed out that Article 1(3) of Directive 91/250/EEC(7) and Article 6 of the common position on the proposal for a Directive harmonizing the term of protection of copyright and certain related rights(8) contained the criterion for copyright protection that the work concerned be original in the sense that it is the author's own intellectual creation, as proposed in Article 2(3) of this Directive. She asked whether the United Kingdom and Irish delegations considered that different criteria should apply to different categories of works.

The United Kingdom and Irish delegations replied that their reservation concerned not so much this criterion as the further requirement that the author's own intellectual creation be considered in terms of the selection or arrangement of the contents of the database.

25. The Commission representative also asked how the United Kingdom and Ireland fulfilled their obligations under the Berne Convention if they applied a standard of originality which was different from that laid down in the Berne Convention.

The United Kingdom and Irish delegations replied that the level of protection required by the Berne Convention was a minimum level; their laws provided a higher level of protection than this minimum and than the level of protection which would result from the proposal for a Directive.

The United Kingdom delegation explained that under its law, copyright protection was available for any compilation or tabulation that constituted an original literary work. While "original" was not defined in the copyright law, case-law had shown that in order to be original, a work must not

(8) 7831/1/93 REV 1 PI 64 CULTURE 83 PRO-COOP 35.
be copied from any source and required a certain amount of skill and effort. The expression of the work, not the ideas and principles underlying it, was protected. Copyright protection of the work would be infringed if a substantial amount of the work was reproduced; "a substantial amount" could be evaluated in either quantitative or qualitative terms. The United Kingdom delegation interpreted Article 2(5) of the Berne Convention as providing for protection of collections as such, not as providing for protection of the selection or arrangement of their contents.

The Irish delegation added that the situation in Ireland was similar to that described by the United Kingdom delegation, much of Ireland's case-law being derived from case-law in the United Kingdom. However, under Irish law, collections of works were protected as works in their own right under Article 2(1) of the Berne Convention, while collections of data were protected as original works.

The Commission representative questioned whether the United Kingdom did not in fact apply the test of whether the work was the author's own intellectual creation, since it had considered that it was not necessary to transpose Article 1(3) of Directive 91/250/EEC on the grounds that this resulted already from its case-law. She also questioned whether "skill and effort" were sufficient criteria for granting copyright protection. Since the copyright protection of the expression of a novel was based not on the individual words used but rather on the way in which they were selected or arranged, the copyright protection of the expression of a collection of data, works or other materials in an electronic database should be based not on these data, works or other materials as such, but on the way in which they were selected or arranged. With regard to the protection of databases in Ireland under Article 2(1) of the Berne Convention, the Commission representative pointed out that this could have the
undesirable effect of protecting facts or pieces of data. In the Commission's view, the only equitable basis for protecting an electronic database by copyright was under Article 2(5) of the Berne Convention, whereby it would be protected only if its author had made an intellectual contribution by selecting or arranging its contents; it would not be equitable to protect by copyright an electronic database in its entirety, including works which were no longer protected by copyright in their own right, or including data or other materials which, as such, had never been eligible for copyright protection.

26. The Portuguese delegation asked whether a database containing a list of authors in alphabetical order would be protected by copyright.

The Commission representative replied that a collection arranged by a method that was not well-known would normally attract copyright protection, but a collection arranged in alphabetical or chronological order would normally not attract copyright protection.

27. The German delegation questioned whether the second sentence of Article 2(3) was necessary. The Commission representative replied that it had been included for avoidance of doubt.

28. The German delegation asked why the Commission had not included in its proposal a provision corresponding to Article 1(2) of Directive 91/250/EEC, making clear that copyright protection would apply to expression but not to ideas and principles.

The Commission representative replied that Article 1(2) of Directive 91/250/EEC had been included for avoidance of doubt. The Commission had not considered it necessary to
include such a provision in the present proposal, but if the Member States were in favour of doing so, the Commission services would not oppose its inclusion.

**Article 2(4)**

29. The Commission representative gave the following examples to illustrate this provision:

(a) In the case of a database containing a collection of learned articles which were protected by copyright as literary works, the copyright protection given by the Directive to the collection would in no way affect the copyright protection of the articles.

(b) In the case of a database containing a collection of learned articles which were no longer protected by copyright as literary works, this protection having expired, the copyright protection given by the Directive to the collection would not revive the copyright protection of the articles.

(c) In the case of a database containing a collection of names, addresses and telephone numbers, the copyright protection given by the Directive to the collection would not confer any copyright protection on the names, addresses or telephone numbers as such.

**Article 3**

30. The Commission representative drew attention to the fact that Article 3 was based closely on Article 2 of Directive 91/250/EEC.

31. The German delegation entered a reservation on the whole of Article 3, considering that it had no harmonizing effect.
It expressed a particular reservation on paragraph 4.

**Article 3(1)**

32. This provision gave rise to no observations.

**Article 3(2) and (3)**

33. The Commission representative explained that Article 3(2) concerned the situation where a database was made by a number of persons whose individual contributions could not be easily distinguished, whereas Article 3(3) covered the situation where a database was made by a number of persons whose individual contributions were readily distinguishable. She further pointed out that Article 3(2) did not create any obligation on those Member States whose legislation did not recognize collective works to create such a category of works.

34. The Netherlands delegation considered that it should be stated in Article 3(3) that in the event of infringement of the copyright in a database, each rightholder should be entitled to take legal action.

**Article 3(4)**

35. The Danish, German and French delegations entered reservations on this provision. The Danish and German delegations considered that it was not necessary to include a provision of this nature in the Directive, preferring to leave this matter to be settled by national law, particularly as their national laws provided that in the absence of contractual provisions to the contrary, the economic rights were exercised by the natural person who had created the database. These delegations did not consider it necessary to follow Directive 91/250/EEC in this respect. The Danish delegation also pointed out that in the event of the Directive
being extended to cover non-electronic databases, the rule proposed by the Commission might not be appropriate to those databases.

**Article 4**

36. The Commission representative explained that this Article, which was based on Article 3 of Directive 91/250/EEC, had been added following a proposal to this effect by the European Parliament (Amendment No. 12). She added that since Article 13 of the amended proposal (Article 11 of the original proposal) specified the beneficiaries of protection under the sui generis right, it was useful to include a provision specifying the beneficiaries of protection under copyright.

37. The Belgian, German, Spanish, French, Italian and Netherlands delegations expressed reservations on this provision, which they considered to be unnecessary. Their reservations concerned more particularly the reference to international agreements, which they considered to be vague, and which was not contained in the corresponding provision of Directive 91/250/EEC. Moreover, they considered that the part of the explanatory memorandum which concerned this provision did not correspond to the text proposed. These delegations indicated that they would be prepared to discuss a provision which corresponded closely to Article 3 of Directive 91/250/EEC.

The Belgian delegation, supported by the Spanish, French and Italian delegations, also considered that it would be premature to accept, by such a reference to international agreements, that the copyright protection of databases was subject to national treatment under Article 5 of the Berne Convention before this matter had been settled in negotiations in the WIPO.
Article 5

38. The Belgian, Danish, German, Spanish, French, Netherlands, Portuguese and United Kingdom delegations questioned the need for this Article, a number of these delegations asking whether any problems had arisen which made harmonization desirable in this respect.

The Commission representative indicated that problems had arisen in respect of the incorporation of abstracts into databases.

Article 5(1)

39. The Netherlands delegation questioned the need for this provision in the light of Article 15(1) of the amended proposal.

The Commission representative suggested that this question be considered when Article 15(1) was examined.

40. The Italian and Spanish delegations suggested that rights related to copyright be mentioned specifically in Article 5(1).

41. The German and Netherlands delegations asked for clarification of the reference to "obligations" in this provision.

The Commission representative explained that there could be obligations of confidentiality or secrecy in respect of certain pieces of data; where the maker of a database intended to incorporate such data into his database, any such obligations should be transferred to him.

The Netherlands delegation expressed doubts whether
obligations incumbent upon a supplier of data could be made applicable to a maker of a database.

42. Following the observations made in respect of Article 5(1), the following revised wording was put forward for consideration:

"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 and shall remain subject to any obligations incurred in those data, works or materials."

Article 5(2)

43. The Danish, German and United Kingdom delegations expressed reservations with regard to the words in brackets in respect of abstracts.

The Commission representative explained that this qualification was intended to make it clear that there had to be reasonable limits on what constituted abstracts. Moreover, the abstracts referred to in this paragraph were abstracts made by the maker of the database, not abstracts made by the author of the original work.

44. The United Kingdom delegation asked whether the Commission had considered the possibility of harmonizing the conditions under which an abstract made by the author of the original work could be incorporated into a database.

The Commission representative replied that there was no reason for harmonizing the conditions under which such abstracts could be incorporated into a databases without the authorization of the author of the abstract, without considering similar harmonization in respect of other categories of documents, such as legislative texts. Moreover, the purpose of this provision was not to remove certain categories of work from copyright protection, but to make it
clear that there should be no impediment to the incorporation of material into a database where that incorporation involved no infringement of copyright.

45. The Italian delegation drew attention to the danger that where the maker of a database made an abstract of a work by another author and incorporated it into his database, the author of the work might consider the abstract to be a distortion of the contents of his work, and therefore an infringement of his moral rights in that work.

46. The Danish and German delegations pointed out that Article 10 of the Berne Convention referred to "quotations", not to "brief quotations".

The Commission representative explained that the adjective "brief" had been included in order to make it clear that there should be reasonable limits on the length of quotations included in databases without authorization.

47. The Danish delegation considered that Article 5(2) would not necessarily be applicable to databases in paper form in the event of the Directive being extended to cover non-electronic databases.

48. The German delegation questioned the need for Member States to be required to legislate on the incorporation of the items referred to in Article 5(2) into databases in the absence of corresponding legislation on the incorporation of those items into other works, such as encyclopaedias.

49. The Belgian delegation drew attention to the problem of how authors of the works concerned could obtain the correction of any errors made when bibliographical references, abstracts or quotations were incorporated into databases.
Article 6

50. The Netherlands delegation considered that the text of this Article should be prefaced by the words: "Notwithstanding any exclusive rights in the contents of the database, ...".

51. The Netherlands, French, Italian and Belgian delegations considered that it would be preferable in the context of this Article to replace the words "the owner of the rights in a database" by "the author of a database".

The French delegation suggested the alternative wording: "the author of a database or his successor in title".

52. In connection with its reservation on Articles 1(1) and 2(3), the United Kingdom delegation asked whether the exclusive right provided for in Article 6 was dependent upon both the expression of the selection or arrangement of the contents of the database (first indent) and the expression of the electronic material referred to in point 1 of Article 1 used in the creation or the operation of the database (second indent) being sufficient to merit copyright protection.

The Commission representative replied that copyright infringement would occur if the expression of the database were copied, irrespective whether what was copied was the expression of the selection or arrangement of the contents referred to in the first indent, or the expression of the electronic material referred to in the second indent.

53. The Portuguese delegation asked why it was necessary to mention both temporary and permanent reproduction in subparagraph (a).

The Commission representative replied that the exclusive right should cover both temporary reproduction, which would
occur for example when the database was accessed "on-line", and permanent reproduction, which could be made from a temporary reproduction of the database.

54. In the light of the explanations given in respect of Articles 1(1) and 2(3), and in particular of the explanations set out under point 12 above, the United Kingdom delegation questioned whether it was appropriate to refer in subparagraph (a) to "reproduction of the database ... in whole or in part".

The Commission representative replied that unauthorized reproduction of a substantial part of the database would inevitably involve reproduction of a substantial part of the selection or arrangement of the contents and therefore would infringe the copyright in the selection or arrangement of the database; unauthorized reproduction of the thesaurus, index or system for obtaining or presenting information would infringe the copyright in the electronic material used in the operation of the database, including where this material was reproduced to operate a different set of data in a different database. It was therefore appropriate to refer not only to "reproduction of the database ... in whole", but also to "reproduction of the database ... in part".

55. The Netherlands delegation questioned whether it was appropriate to refer to "any other alteration" in subparagraph (b).

The Commission representative pointed out that this wording corresponded to that of Article 4(b) of Directive 91/250/EEC.

56. The German delegation queried the reference to subparagraph (a) in subparagraph (c), pointing out that the result of this reference would be "reproduction of the results
of an act of reproduction", and drawing attention to the fact that there was no corresponding reference in the corresponding provision of Article 4 of Directive 91/250/EEC.

The Netherlands delegation considered that the whole of subparagraph (c) was superfluous.

The Commission representative, while preferring to leave subparagraph (c) unchanged, was prepared to consider removing the reference to subparagraph (a), but was not prepared to delete the part referring to subparagraph (b).

Other business

57. The Commission representative informed the Working Party of the stage reached by the European Parliament's Committee on Legal Affairs and Citizens' Rights in its second reading of the proposal for a Directive harmonizing the term of protection of copyright and certain related rights, following the adoption of the Council's common position on 22 July 1993 (7831/1/93 REV 1 PI 64 CULTURE 83 PRO-COOP 35). The Working Party held a brief informal exchange of views on the information given.
SUMMARY OF PROCEEDINGS

of: Working Party on Intellectual Property (Copyright)
on: 25 October 1993

No. prev. doc.: 9142/93 PI 87 CULTURE 110
No. Cion prop.: 9219/93 PI 89 CULTURE 113

Subject: Amended proposal for a Council Directive on the legal protection of databases

1. At its meeting on 25 October 1993, the Working Party continued its first reading of the Commission's amended proposal (9219/93 PI 89 CULTURE 113), examining Articles 7 to 9 and beginning an examination of Chapter III. (1)

Article 7

2. The Danish delegation indicated its readiness to accept this Article in the light of the discussions which had been held on the corresponding Article (Article 5) of Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs. (2)

3. The Greek delegation questioned whether it should be made clear whether or not the "contractual arrangements" referred to it in Article 7(1) and (2) had to be written.

The Commission representative replied that it was not the purpose of this Directive to determine the conditions for validity of a contract.

(1) The numbering of Chapters, Articles and paragraphs is that of the Commission's amended proposal, which differs from that of the original proposal.
4. The German and French delegations questioned whether this paragraph had any harmonizing effect. These delegations, together with the Italian and Netherlands delegations, also questioned the need for this provision.

The Commission representative explained that, since under Article 6 all acts of reproduction of the database would be subject to authorization, this provision was necessary to enable a lawful user of a database to use that database in accordance with the terms of his contract, without having to seek the authorization of the rightholder each time such use involved any of the restricted acts set out in Article 6.

5. In reply to questions, the Commission representative explained that this provision applied equally to a database which was accessed on line and a database which was made available in the form of a CD-ROM.

6. The Commission representative explained that the purpose of this provision was to ensure that the lawful acquirer of a copy of a database who had not concluded any contractual arrangements with the rightholder would be able to perform any of the restricted acts set out in Article 6 which were necessary for the normal use of the database, without having to seek the authorization of the rightholder. In the light of the breadth of this exception, this provision could be considered to be an incentive to rightholders to make clear contractual arrangements with users as to how the database could be used.

7. The Spanish delegation considered that it would be dangerous to provide such a broad exception.
8. The Netherlands delegation asked whether the Commission intended that this exception should apply solely to the lawful acquirer of a database, or be applicable to any user of the database.

The Commission representative replied that it would not be reasonable to allow any user other than the lawful acquirer to benefit from the broad exception set out in Article 7(2).

The Italian delegation on the other hand considered that Article 7(2) should be applicable to any lawful user; it considered in particular that where the lawful acquirer of a copy of a database was a public authority and that authority made that copy of the database available to an educational or research establishment, the exception provided for in Article 7(2) should be broad enough to cover use of the copy of the database by that establishment. It proposed the following wording for this provision:

"In the absence of any contractual arrangements in respect of use of a database, the performance by the lawful user of (a copy of) a database 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 thereof, shall not require the authorization of the rightholder."

The Commission representative pointed out that the restricted acts set out in Article 6 concerned the selection or arrangement of the contents of the database; she did not consider it necessary for an educational or research establishment to reproduce the selection or arrangement in the circumstances described by the Italian delegation. Use of the contents of a database for the purposes of teaching was a separate matter which was regulated in Article 8.

9. The Netherlands delegation questioned whether it would be licit for the lawful acquirer of a copy of a database in the form of a CD-ROM to lend the CD-ROM privately.
The Commission representative pointed out that, since the exception provided for in Article 7(2) applied solely to the lawful acquirer of a copy of the database, performance by any other person, including a person to whom that copy had been lent privately, of any of the acts listed in Article 6 which was necessary to use the database would remain a restricted act.

The German delegation considered that private lending should not be regulated by the Directive, and that this should be stated clearly.

10. Several delegations asked for clarification of the term "use thereof", which they feared could be construed too broadly.

The Commission representative indicated that the term was intended to refer to use of the database, rather than to use of the contents.

Article 7(3)

11. This provision gave rise to no observations.

Article 8(1)

12. The German delegation, supported by the Italian delegation, questioned the need for this provision, since all the Member States were bound by Article 10 of the Berne Convention for the Protection of Literary and Artistic Works.

The Commission representative explained that the purpose of this provision was to ensure that, where Member States had allowed exceptions provided for in Article 10 of the Berne Convention to copyright rights, the exclusive rights of the author of a database under Article 6 of the amended proposal could not be invoked to prevent the application of those exceptions where the works concerned were incorporated in a database.

13. It was agreed that the words "or other rights" could be deleted, as neighbouring rights were dealt with in Article 8(3).
14. The Netherlands and United Kingdom delegations considered that the reference to the author of a work contained in a database should also mention his successor in title.

15. In reply to questions concerning the meaning of the terms "for the purpose of teaching" and "compatible with fair practice", the Commission representative pointed out that these terms were used in Article 10(1) and (2) of the Berne Convention.

16. The Danish delegation considered that this provision should refer not only to Article 10(3) of the Berne Convention, but to the whole of Article 10 of that Convention.

17. The Danish and Netherlands delegations considered that this provision should also cover any exceptions allowed by Article 9(2) of the Berne Convention provided for in the laws of the Member States. They entered a reservation in this respect.

18. The Italian delegation considered that where the law of a Member State allowed exceptions in respect of the use of illustrations for purposes other than teaching, for example for the purpose of literary or artistic criticism, such exceptions should also be applied where the works concerned were incorporated in a database.

The United Kingdom pointed out in this context that its law made provision for such exceptions for the purposes of research and private study, and considered that this provision of the Directive should not affect the rights of users in this respect.

19. The German and Danish delegations expressed doubts as to the need for this provision, considering that this matter could be left to contractual arrangements.

The Commission representative explained that the purpose of this provision was to ensure that, where derogations to the exclusive rights of the author of a work were allowed, the
exclusive rights of the author of a database under Article 6 could not be invoked to prevent the application of those derogations where the works concerned were incorporated in a database. In the absence of this provision, contractual negotiations were likely to result in the user of a database being deprived of the benefits of such derogations where the works were incorporated in a database.

20. The United Kingdom delegation considered that reference should be made not only to the author of a work, but also to his successor in title.

21. The Commission representative drew attention to problems which could arise where the law of a Member State allowed derogations in respect of the reproduction of a particular category of works, and where the repeated application of Article 8(2) to a database containing a collection of works of that category could lead to the reproduction of a sufficient number of those works to infringe the rights in the selection or arrangement of the contents of the database. The Danish and United Kingdom delegations shared this concern.

Article 8(3)

22. The Commission representative explained that, since Article 8(1) and (2) had been limited to copyright rights in the amended proposal, neighbouring rights were dealt with in this third paragraph.

23. The German delegation expressed a reservation on this paragraph in the light of its doubts on the need for paragraphs 1 and 2.

24. The German delegation also pointed out that, in the event of this paragraph being maintained, the words "mutatis mutandis" would have to be included, as the rights of owners of neighbouring rights differed from the rights of authors.
25. In reply to a question from the French delegation, the Commission representative stated that this paragraph was not limited to those neighbouring rights harmonized in Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property.\(^{(3)}\)

**Article 9(1)**

26. The French, German and Danish delegations considered that this provision was unnecessary in the light of Article 2(1) of this proposal for a Directive and Directive 93/98 of 29 October 1993 harmonizing the term of protection of copyright and certain related rights.\(^{(4)}\)

The Commission representative suggested that this provision be maintained in square brackets pending the final adoption of the latter Directive.

**Article 9(2) and (3)**

27. The French, German and Danish delegations expressed doubts as to the need for these provisions. They considered that the criteria for the copyright protection of a database, as set out in Article 2, were the only relevant criteria for determining whether or not a new database had been created. The German delegation was particularly opposed to definitions of "substantial change" and "insubstantial change" that could overlap each other or leave gaps.

The Commission representative considered that, where databases were constantly updated, it was not easy to determine at what point the changes made to an existing database were sufficient for it to be considered that a new database had been created. It was necessary for the Directive to lay down criteria in this respect, in order to avoid this matter being left to the courts, which might adopt different criteria.

\(^{(3)}\) OJ No L 346, 27.11.1992, p. 61.
28. Several delegations considered that it was unnecessary to define both "substantial change" and "insubstantial change". The Netherlands delegation felt that Article 9(3) was superfluous in the light of Article 9(2).

The Commission representative considered that a definition of at least one of the two terms was necessary. In the light of the various criticisms made, she was prepared to consider a definition which contained the criterion of a substantial change to the selection or arrangement of the contents of the database, and which referred to the criteria contained in Article 2.

29. The Netherlands delegation considered that there should be greater consistency between Article 9 and Article 12.

Chapter III

30. The Commission representative explained the reasons why a sui generis right had been proposed in addition to copyright protection for electronic databases. Copyright protected the selection or arrangement of the contents of a database, but not the information contained in it nor the investment made to create the database. Since there was little, if any, original selection or arrangement involved in making many fact-based databases, copyright protection alone was not sufficient to protect the investment made by makers of such databases. It was doubtful whether copyright protection could be extended at Community level to cover information or investment, and even if this were possible, it was highly unlikely that this would be accepted by third countries. The majority of makers of fact-based databases sought a specific protection for their investment, and were prepared in return to accept a short term of protection and licensing conditions.

31. The Belgian, Danish, German, Greek, Spanish, French, Italian and Netherlands delegations accepted that copyright was insufficient to protect the investment involved in making many fact-based databases.

The United Kingdom delegation needed to understand more
clearly the precise scope of copyright protection of databases under the Directive before deciding whether or not this was sufficient.

The Irish delegation entered a reservation on the need for any protection in addition to copyright protection.

The Portuguese delegation reserved its position on this question.

32. The Danish, Greek, Spanish, French and Netherlands delegations were prepared in principle to accept a sui generis right as the means of providing additional protection for the makers of databases.

The Belgian, German, Italian and United Kingdom delegations suggested that consideration should also be given to other means of protection. The Belgian, German and Italian delegations mentioned unfair competition law as a possible alternative solution and the Belgian and United Kingdom delegations mentioned the possibility of a neighbouring right.

The Commission representative considered that unfair competition law would not be suitable for a number of reasons: not all Member States had unfair competition laws; unfair competition law concerned the relationship between competitors, not the relationship between rightholders and users; the advisability of attempting to harmonize those specific aspects of unfair competition law which would be relevant for the purpose of this Directive was questionable in the absence of any initiative to harmonize unfair competition law in general. The French delegation also doubted the appropriateness of unfair competition law for resolving this problem at Community level.

The Commission representative also considered that a neighbouring right would not be appropriate: there was no internationally accepted definition of a neighbouring right; neighbouring rights were limited to prohibiting certain acts, which would not be sufficient to take account of the legitimate needs of database makers; in the case of a neighbouring right,
national treatment would have to be accorded to third countries rather than reciprocity; by analogy with other matter benefitting from neighbouring rights protection, a 50-year term of protection would be indicated, whereas the Commission considered that a considerably shorter term would be sufficient for the additional protection envisaged.

33. The Netherlands delegation questioned why the sui generis right should not apply to the contents of a database where these were works already protected by copyright or neighbouring rights (Article 10(2), last sentence).

The Commission representative explained that the compulsory licence provisions could not apply to works protected by copyright. However, she was prepared to consider the possibility of making the sui generis right applicable to contents which were works protected by copyright, provided that compulsory licences were not applicable to such works.

34. The Danish delegation, while approving the principle of a sui generis right, since Danish law already provided for sui generis protection which could be applied to databases, and which had proved satisfactory, expressed doubts with regard to the sui generis protection as proposed by the Commission. It was particularly concerned by the provisions on compulsory licences, there being no comparable provisions in Danish law. It had serious doubts as to the feasibility of a system whereby compulsory licences would be applicable to the contents of some databases but could not be applied to the contents of other databases by virtue of the Berne Convention.
LIST OF PROPOSALS PENDING BEFORE THE COUNCIL
ON 31 OCTOBER 1993

for which entry into force of the Treaty on European Union will require a change in the legal base and/or a change in procedure

(presented by the Commission)
EXPLANATORY MEMORANDUM

The entry into force of the Treaty on European Union could require a change in the legal base and/or a change in procedure for Commission proposals awaiting a decision.

A list of amendments to Commission proposals is attached.
Key to abbreviations

C  codecision procedure (Article 189b)

PC  cooperation procedure (Article 189c)

MQ  qualified majority

CR  Committee of the Regions

CES  Economic and Social Committee

MRPS  Social area: proposal to be retained or withdrawn and replaced by a new proposal under the Protocol on Social Policy

U  unanimity
PROPOSITION DE RÈGLEMENT DU CONSEIL PORTANT CONCLUSIOH DU PROTOCOLE À L'ACCORD DE COOPERATION ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET LA RÉPUBLIQUE HELvéTIE SUITE À L'ADHÉSION DE LA RÉPUBLIQUE HELvéTIE À LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE  

PROPOSITION DE RÈGLEMENT DU CONSEIL PORTANT CONCLUSIOH DU PROTOCOLE À L'ACCORD DE COOPERATION ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET LE ROYAUME HACHEMITE DE JORDHIE SUITE À L'ADHÉSION DE LA RÉPUBLIQUE HELvéTIE À LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE  

PROPOSITION DE RÈGLEMENT DU CONSEIL PORTANT CONCLUSIOH DU PROTOCOLE À L'ACCORD DE COOPERATION ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET LA RÉPUBLIQUE LIBANAISE SUITE À L'ADHÉSION DE LA RÉPUBLIQUE HELvéTIE À LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE
COM/81/0031-01
PROPOSITION DE RÈGLEMENT DU CONSEIL PORTANT CONCLUSION D'UN PROTOCOLE À L'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EURÉPÉENNE ET L'ÉTAT D'ISRAËL SUITE À L'ADHÉSION DE LA RÉPUBLIQUE HELLENIQUE À LA COMMUNAUTÉ 238CEE
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1981/01/29
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DAT. AVIS PE=1982/07/10
REF.PUB=JOCE C 238 DU 13/09/1982 P.90

COM/81/0435-01 PROPOSITION DE RÈGLEMENT DU CONSEIL PORTANT CONCLUSION DE PROTOCOLES AUX ACCORDS DE COOPÉRATION ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EURÉPÉENNE ET LE MAROC SUITE À L'ADHÉSION DE LA GRECE À LA COMMUNAUTÉ 238CEE
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DAT.DECISION CONSEIL DE CONSULTER PE=1982/04/07
DAT.AVIS PE=1982/07/09
REF.PUB=JOCE C 238 DU 13/09/1982 P.91

COM/81/0485-02 PROPOSITION DE RÈGLEMENT DU CONSEIL PORTANT CONCLUSION DE PROTOCOLES AUX ACCORDS DE COOPÉRATION ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EURÉPÉENNE ET LA SYRIE SUITE À L'ADHÉSION DE LA GRECE À LA COMMUNAUTÉ 238CEE
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DAT.AVIS PE=1982/07/09
REF.PUB=JOCE C 238 DU 13/09/1982 P.91

COM/82/0665-01 PROPOSITION DE RÈGLEMENT DU CONSEIL PORTANT CONCLUSION D'UN PROTOCOLE À L'ACCORD DE COOPÉRATION ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EURÉPÉENNE ET LA RÉPUBLIQUE ALGÉRIENNE DÉMOCRATIQUE ET POPULAIRE À LA SUITE DE L'ADHÉSION DE LA RÉPUBLIQUE HELLENIQUE À LA COMMUNAUTÉ 238CEE
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1982/10/25
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AVIS CONFORME DU PE
DAT.AVIS PE=1982/07/09
REF.PUB=JOCE C 077 DU 19/03/1984 P.107
RÉCOMMENDATION DE DÉCISION DU CONSEIL CONCERNANT LA CONCLUSION D'UN PROTOCOLE À L'ACCORD DE COOPERATION ÉCONOMIQUE ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE ET LA REPUBLIQUE ARABE D'ÉGYPTE À LA SUITE DE L'ADHÉSION DU ROYAUME D'ESPAGNE ET DE LA REPUBLIQUE PORTUGAISE À LA COMMUNAUTÉ CEE.

COM/87/0099-02

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AVIS=CONFORME DU PE;

DATE DÉCISION DU CONSEIL DE CONSULTER 1987/06/05;

DATE DÉCISION DU CONSEIL 1987/06/16.

COM/87/0099-03

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COM/87/0099-04

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COM/87/0099-05

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COM/87/0099-06

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CONSEIL=CONSEIL DE CONSULTATION OBBLIGATORIE;

AVIS=1987/09/16.
RECOMMANDATION DE DECISION DU CONSEIL

CONSEILLER LA RÉPUBLIQUE ARABE SYRIENNE À LA SUITE DE L'ADHÉSION DE L'ESPAGNE ET DU PORTUGAL À LA COMMUNAUTÉ ÉCONOMIQUE COMM/88/104-02

RECOMMANDATION DE DECISION DU CONSEIL

CONSEILLER LA RÉPUBLIQUE ARABE SYRIENNE À LA SUITE DE L'ADHÉSION DE L'ESPAGNE ET DU PORTUGAL À LA COMMUNAUTÉ ÉCONOMIQUE COMM/88/104-02

Avis de l'Adhésion de la République Arabie Syrienne à la Communauté Economique de l'Espagne et du Portugal
COM/87/0172-01


DATE OF DECISION COUNCIL TO CONSULT PE=1987/06/10
REF. PUB. J0CE C 200 DU 14/11/1987 P. 60

COM/88/0104-02

RECOMMENDATION OF DECISION OF THE COUNCIL

CONCERNING THE ADOPTION OF A PROTOCOL TO THE AGREEMENT ON COOPERATION BETWEEN THE COMMUNITY AND THE ARAB PEOPLE'S REPUBLIC OF SYRIA FOLLOWING THE ACCESION OF SPAIN AND PORTUGAL TO THE EEC

DATE OF DECISION COUNCIL TO CONSULT PE=1988/12/10
REF. PUB. JOCE C 281 DU 19/11/1988 P. 60
COM/91/0442 PROPOSITION DE DÉCISION OU COMMISSION RELATIVE À LA PARTICIPATION DE LA COMMUNAUTÉ À LA TROISIÈME DÉCISION RÉVISÉE DE L'OCDE CONCERNANT LE TRAITEMENT HATIONAL 57 CEE; 93 CEE

DOC.COM=COM/91/442 FIHAL; DOC.CS=995319 P LED70; DOC.PE=C3-32192 1991/11/18

DGO1=CHEF DE FILE; DG02=ASSOCIÉ; DG03=ASSOCIÉ; PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; COMICE=DESTINATAIRE POUR ACTE FORMEL

PROCEDE CONFORME À LA CONCLUSION DE L'ACCORD-CADRE DE COOPÉRATION ENTRE LA COMMUNAUTÉ ÉCONOMIQUE ET SOCIALE ET LA RÉPUBLIQUE FÉDÉRALE DU BRÉSIL

DOC.COM=COM/92/209 FINAL; DOC.CS=10S58/92; PVD53; AMALFI; REPUB PJOCE C 05 DU 20/01/1993 P. 71

DGO1=CHEF DE FILE; DG02=ASSOCIÉ; DG03=ASSOCIÉ; DG15=ASSOCIÉ; PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; COMICE=DESTINATAIRE POUR ACTE FORMEL

PROPOSITION DE DÉCISION DU CONSEIL

REF. PUBL-JOCE C 337 DU 21/12/1992 P. 237

DGO1=CHEF DE FILE; DG02=ASSOCIÉ; DG03=ASSOCIÉ; DG06=ASSOCIÉ; DG07=ASSOCIÉ; DG08=ASSOCIÉ; DG10=ASSOCIÉ; DG11=ASSOCIÉ; DG12=ASSOCIÉ; DG13=ASSOCIÉ; DG14=ASSOCIÉ; DG15=ASSOCIÉ; DG17=ASSOCIÉ; DG19=ASSOCIÉ; DG20=ASSOCIÉ; DG21=ASSOCIÉ; DG23=ASSOCIÉ; PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; COMICE=DESTINATAIRE POUR ACTE FORMEL

PROPOSITION DE DÉCISION DU CONSEIL

REF. PUBL-JOCE C 337 DU 21/12/1992 P. 237

DGO1=CHEF DE FILE; DG02=ASSOCIÉ; DG03=ASSOCIÉ; DG06=ASSOCIÉ; DG07=ASSOCIÉ; DG08=ASSOCIÉ; DG10=ASSOCIÉ; DG11=ASSOCIÉ; DG12=ASSOCIÉ; DG13=ASSOCIÉ; DG14=ASSOCIÉ; DG15=ASSOCIÉ; DG17=ASSOCIÉ; DG19=ASSOCIÉ; DG20=ASSOCIÉ; DG21=ASSOCIÉ; DG23=ASSOCIÉ; PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; COMICE=DESTINATAIRE POUR ACTE FORMEL

PROPOSITION DE DÉCISION DU CONSEIL
COM/88/016.8-02 RECOMMUNICATION DE DECISION DU CONSEIL CONCERNANT LA CONCLUSION D'UN PROTOCOLE A L'ACCORD DE COOPERATION ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE ET LE ROYAUME DU MAROC À LA SUITE DE L'ADHÉSION DU ROYAUME D'ESPAGNE ET DE LA REPUBLIQUE PORTUGAISE.


PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL.

PROCE=AVIS CONFORME DU PE; OPINION PE=1988/06/15.


COM/90/0095.


235CEE DOC.COM=COM/90/95; DOC.CS=5646/90/ED; DOC.PE=C3-234/90 1990/03/20.

PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL.

PROCE=AVIS CONFORME DU PE; OPINION PE=1990/10/26.

REF.PUB=JOCE C 295 DU 26/11/1990 P.647.

PROPOSITION DE DECISION DU CONSEIL RELATIVE A LA CONCLUSION D'UN ACCORD SOUS FORME DE LETTRES ENTRE LA CEE ET LA REPUBLIQUE DE SAINT-MARIN.


PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL.

PROCE=AVIS CONFORME DU PE; OPINION PE=1992/07/09.

PROPOSITION
DE REGLEMEHT
CCEE>DU COHSEIL
COHCERNAHT
DES ACTIONSEH FAVEURDES FORETSTROPICALES
130SCEE;235CEE
C 078 DU 19/03/1993 P.8
1993/02/26
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DGOl=CKEF
DE FILE;0008=CORESPOHSABLE;DG1l=CORES~OHSABLE;DG12=ASSOCIE;DG19=ASSOCIE;DG20=ASSOCIE;

PARLEMEHT
EUROPEEN=COHSULTATIOH
OBLIGATOIRE;COMITE·ECOHOMIQUE
ET SOCIAL=COHSULTATIOH
OBLIGATOIRE;

COHSEIL=DESTIHATAIRE
POURACTEFORMEL
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OPOCE
PE=l993/04/0l
DAT.DECISIONCOHSEILDE CONSULTER
CES=l993104101JDAT.DECISIOHCOHSEILDE CONSULTER
DAT.D~CISIOH~ONSEILDE CONSULTER
PE=l993/04/0l
DAT.DECISION
COHSEILDE CONSULTER
CES=1993/04/0l;DAT.AVIS CE.=1993106/30
REF.PUB=JOCE
C 249 DU13109/1993 P. 3

COM/93/0082
PROPOSITION
DE DECISIONDU COHSEIL
COHCERHAHT
LA CONCLUSION
DE L'ACCORDDE COOPERATION
EHTRELA COMMUNAUTE
EU.ROPEEHHE
ET LA REPUBLIQUEDE
L'IHDE RELATIFAU PARTEHARIAT
ET AU DEVELOPPEMEHT
113CEE;235CEE
C 103 DU 14/0~/1993 P.8
1993/03/10
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DGOl=CHEF
DE FILEJDG06=ASSOCIE;SECRETARIAT
GEHERAL=ASSOCIE;PARLEMEHT
EUROPEEH=COHSULTATIOH
OBLIGATOIREJCOHSEIL=DESTIHATAIRE
POURACTEFORMEL
OPOCE

COM/93/0101-01
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PROPOSITION
DE DECISIONDU COHSEIL
CONCERNAHT
LA CONCLUSION
D'ACCORDSSOUSFORMED'ECHAHGES
DE LETTRESAVECL'ARMEHIE, LA BIEtORUSSIE, LA

·---•-·
GEORGIE,LE KAZAKHSTAN,
LA KIRGHIZIE, LA MOLDAVIE,LE TADJIKISTAN, LE TURKMEHlSTAH
El L'U~RA1Nt,
ACCORDSSE RAPPORTANTA L'Acc·oRD DE COMMERCEET DE COOPERATION COMMERCIALE SIGNE LE 18 DECEMBRE 1989
EHTRELA cee; LA CEEAET L'URSS
113CEE;235CEE
C 110 DU 20/04/1993 P.8
DOC.COM=COM/93/lOlFIHAL;REF.PUB=JOCE

1993/03/18

DGOl=CHEF
DE FILE;DG2l=ASSOCIE;PARLEMEHT
EUROPEEN=COHSULTATION
OBLIGATOIRE;COHSEIL=DESTIHATAIRE
POUR
ACTE FORMEL
OPOCE
DAT.DECISIONCOHSEILDE CONSULTER
PE=l993107/02
DAT.DECISIONCOHSEILDE CONSULTER
PE=l993/07/02

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CXM/93/513 final

Proposition de décision concernant l'application de la Convention internationale de 1993 concernant l'application de la Convention internationale de 1993 en matière d'huile d'olive et d'olives de table.

00 01 chef du fichier

CXM/93/514 final

Proposition relative au protocole de 1993 modifiant et prolongant l'accord international de 1986 concernant l'huile d'olive et les olives de table.

00 01 chef du fichier

CXM/93/519 final

Proposition relative à l'abrogation de l'embargo sur certaines échanges commerciaux entre la Communauté économique européenne et Haïti et modifiant le règlement CEE n° 101/93 du Conseil instituant cet embargo.

00 01 chef du fichier

SEC/91/2358

PROPOSITION DE DÉCISION DU CONSEIL CONCERNANT LA CONCLUSIOH D'UN ÉCHANGE DE LETTRES ENTRE LA CEE ET LE GOUVERNEMENT DE LA REPUBLIQUE DE COREE SUR DES QUESTIONS D'INTÉRÊT COMMUN 13 CEE

00 01 chef du fichier

DGO1=CHIEF DE FICHE; DG03=ASSOCIÉ; CONSEIL=DESTINATAIRE POUR ACTE FORMEL
SEC/91/235

1991/12/06

DGO1=CHEF DE FILE;DG03=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

11:30

CONFIDENTIEL

DO.005=PROJET;DO.003=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

CFA/93/513

final Proposition de decision du Conseil concernant la signature et l'application provisoire de l'accord international de 1993 sur le Cacao au nom de la Communauté ot de l'Etat membre

CXM/93/513

final Proposition de décision du Conseil concernant la signature et l'application provisoire de l'accord international de 1993 sur le Cacao au nom de la Communauté et de l'Etat membre

CXM/93/513

final Proposition de décision du Conseil concernant la signature et l'application provisoire de l'accord international de 1993 sur le Cacao au nom de la Communauté et de l'Etat membre

CXM/93/513

final Proposition de décision du Conseil concernant la signature et l'application provisoire de l'accord international de 1993 sur le Cacao au nom de la Communauté et de l'Etat membre

1991/12/06

DGO1=CHEF DE FILE;DG03=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

11:30

CONFIDENTIEL

DO.005=PROJET;DO.003=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

CFA/93/513

final Proposition de decision du Conseil concernant la signature et l'application provisoire de l'accord international de 1993 sur le Cacao au nom de la Communauté et de l'Etat membre

CXM/93/513

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CXM/93/513

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CXM/93/513

final Proposition de décision du Conseil concernant la signature et l'application provisoire de l'accord international de 1993 sur le Cacao au nom de la Communauté et de l'Etat membre

1991/12/06

DGO1=CHEF DE FILE;DG03=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

11:30

CONFIDENTIEL

DO.005=PROJET;DO.003=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

CFA/93/513

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CXM/93/513

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1991/12/06

DGO1=CHEF DE FILE;DG03=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

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CFA/93/513

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CXM/93/513

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CXM/93/513

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CXM/93/513

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1991/12/06

DGO1=CHEF DE FILE;DG03=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

11:30

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1991/12/06

DGO1=CHEF DE FILE;DG03=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

11:30

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CXM/93/513

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1991/12/06

DGO1=CHEF DE FILE;DG03=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

11:30

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DO.005=PROJET;DO.003=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

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1991/12/06

DGO1=CHEF DE FILE;DG03=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

11:30

CONFIDENTIEL

DO.005=PROJET;DO.003=ASSOCIE;CONSEIL=DESTINATAIRE POUR ACTE FORMEL

CFA/93/513

final Proposition de decision du Conseil concernant la signature et l'application provisoire de l'accord international de 1993 sur le Cacao au nom de la Communauté et de l'Etat membre

CXM/93/513

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CXM/93/513

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CXM/93/513

final Proposition de décision du Conseil concernant la signature et l'application provisoire de l'accord international de 1993 sur le Cacao au nom de la Communauté et de l'Etat membre
PROPOSITION DE DÉCISION DU CONSEIL CONCERNANT LA CONCLUSION D'UN ACCORD SOUS FORME D'ÉCHANGE DE LETTRES MODIFIANT L'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE ET MACAO SUR LE COMMERCE DES PRODUITS TEXTILES.

PROPOSITION DE DÉCISION DU CONSEIL CONCERNANT LA CONCLUSION D'UN ACCORD SOUS FORME D'ÉCHANGE DE LETTRES MODIFIANT L'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE ET LA REPUBLIQUE DES PHILIPPINES SUR LE COMMERCE DES PRODUITS TEXTILES.

PROPOSITION DE DÉCISION DU CONSEIL CONCERNANT LA CONCLUSION D'UN ACCORD SOUS FORME D'ÉCHANGE DE LETTRES MODIFIANT L'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE ET LA COLOMBIE SUR LE COMMERCE DES PRODUITS TEXTILES.
PROPOSITION DE DÉCISION DU CONSEIL RELATIVES À LA CONCLUSION D'ACCORDS SOUS FORME D'ÉCHANGE DE LETTRES CONCERNANT LA DÉFINITION DE LETTRES MODERNE D'ÉCHANGE DE LETTRES MODERNE D'ÉCHANGE ENTRE La CEE ET L'AUTRICHE, LA FINLANDE, L'ISLANDE, LA NORVEGE, LA SUEDE ET LA SUISSE RESPECTIVEMENT.

1992/04/28 DGO1=CHEF DE FILE; DG06=CORESPONDANT; DG14=CORESPONDANT; PARLEMENT EUROPEEN=CONSULTATION FACULTATIVE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL.


PROPOSITION DE DÉCISION DU CONSEIL CONCERNANT LA CONCLUSION D'ACCORD SOUS FORME D'ÉCHANGE DE LETTRES MODÉRÉE D'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE ET LA REPUBLIQUE DE SINGAPOUR SUR LE COMMERCE DES PRODUITS TEXTILES.

1993/04/16 DGO1=CHEF DE FILE; DG03=ASSOCIE; DG21=ASSOCIE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL.

CONFIDENTIEL.

PROPOSITION DE DÉCISION DU CONSEIL CONCERNANT LA CONCLUSION D'ACCORD SOUS FORME D'ÉCHANGE DE LETTRES MODÉRÉE D'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE ET LA REPUBLIQUE DE SINGAPOUR SUR LE COMMERCE DES PRODUITS TEXTILES.

1993/04/16 DGO1=CHEF DE FILE; DG03=ASSOCIE; DG21=ASSOCIE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL.

CONFIDENTIEL.
PROPOSITION DE DECISION DU CONSEIL CONCERNANT LA CONCLUSION D'UN ACCORD SOUS FORME D'ÉCHANGE DE LETTRES MODIFIANT L'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET LA REPUBLIQUE FÉDÉRALE DU BRÉSIL SUR LE COMMERCE DES PRODUITS TEXTILES (CEE DOC.COM=SEC/93/1460-11)

1993/04/16

DGO1=CHEF DE FILE; DG03=ASSOCIÉ; DG21=ASSOCIÉ; CONSEIL=DESTINATAIRE POUR ACTE FORMEL

PROPOSITION DE DECISION DU CONSEIL CONCERNANT LA CONCLUSION D'UN ACCORD SOUS FORME D'ÉCHANGE DE LETTRES MODIFIANT L'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET LA REPUBLIQUE FÉDÉRALE DU GUATEMALA SUR LE COMMERCE DES PRODUITS TEXTILES (CEE DOC.COM=SEC/93/1460-11)

1993/04/16

DGO1=CHEF DE FILE; DG03=ASSOCIÉ; DG21=ASSOCIÉ; CONSEIL=DESTINATAIRE POUR ACTE FORMEL

PROPOSITION DE DECISION DU CONSEIL CONCERNANT LA CONCLUSION D'UN ACCORD SOUS FORME D'ÉCHANGE DE LETTRES MODIFIANT L'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET LES ÉTATS-UNIS DU MEXIQUE SUR LE COMMERCE DES PRODUITS TEXTILES (CEE DOC.COM=SEC/93/1460-11)

1993/04/16

DGO1=CHEF DE FILE; DG03=ASSOCIÉ; DG21=ASSOCIÉ; CONSEIL=DESTINATAIRE POUR ACTE FORMEL
COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET LA MALAISIE SUR LE COMMERCE DES PRODUITS TEXTILES

PROPOSITION DE DECISION DU CONSEIL COHÉRENT ET CONCLUSIF D'UN ACCORD SOUS FORME D'ÉCHANGES DE LETTRES MODIFIANT L'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET LA MALAISIE SUR LE COMMERCE DES PRODUITS TEXTILES

PROPOSITION DE DECISION DU CONSEIL COHÉRENT ET CONCLUSIF D'UN ACCORD SOUS FORME D'ÉCHANGES DE LETTRES MODIFIANT L'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET LA MALAISIE SUR LE COMMERCE DES PRODUITS TEXTILES

PROPOSITION DE DECISION DU CONSEIL COHÉRENT ET CONCLUSIF D'UN ACCORD SOUS FORME D'ÉCHANGES DE LETTRES MODIFIANT L'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET LA MALAISIE SUR LE COMMERCE DES PRODUITS TEXTILES

PROPOSITION DE DECISION DU CONSEIL COHÉRENT ET CONCLUSIF D'UN ACCORD SOUS FORME D'ÉCHANGES DE LETTRES MODIFIANT L'ACCORD ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET LA MALAISIE SUR LE COMMERCE DES PRODUITS TEXTILES
PROPOSITION DE DECISION DU CONSEIL COHÉRENT LA CONCLUSION DE CERTAINS ACCORDS SOUS FORME D'ÉCHANGE DE LETTRES SUR LE COMMERCE DES PRODUITS TEXTILES ...

CONCERNANT LA CONCLUSION DE CERTAINS ACCORDS ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET CERTAINS ÉTATS ÉTRANGERS.

PROPOSITION DE DECISION DU CONSEIL

CONCERNANT LA CONCLUSION D'UN ACCORD SOUS FORME D'ÉCHANGE DE LETTRES ENTRE LA COMMUNAUTÉ ÉCONOMIQUE EUROPEENNE ET CERTAINS ÉTATS ÉTRANGERS SUR LE COMMERCE DES PRODUITS TEXTILES.

ART. 113

ART. 228
COM/81/0712

SYH 021

PROPOSITION DE DÉCRETE DU CONSEIL
PORTANT MODIFICATION DE LA DÉCLARATION 64/154/CEE RELATIVE AU RAPPROCHEMENT DES LEGISLATIONS DES ÉTATS MEMBRES CONCERNANT LES AGENCIES CONSERVÉS POUR LA PUBLICITÉ FAITE À LEUR EGARD.

17èmes MODIFICATIONS DE LA DÉCLARATION 64/154/CEE.

MEMBRES CONCERNANT L’ÉTAT ET LA PUBLICITÉ ET LA PRÉSENTATION DES DÉCisions ET DES LEGISLATIONS DES ÉTATS MEMBRES CONCERNANT LES AGENCIES CONSERVÉS POUR LA PUBLICITÉ FAITE À LEUR EGARD.

COM/82/626

SYH 023

PROPOSITION DE DÉCRETE DU CONSEIL
PORTANT MODIFICATION DE LA DÉCLARATION 79/112/CEE RELATIVE AU RAPPROCHEMENT DES LEGISLATIONS DES ÉTATS MEMBRES CONCERNANT LES DENREES ALIMENTAIRES DESTINÉES AU CONSOMMATEUR FINAL AINSI QUE LA PUBLICITÉ FAITE À LEUR EGARD.

149/3/CEE; 150/4/CEE.

DOC.COM=COM82/626; PIH=222.

DG03=CHEF-DE FILE; DG11=CORESPONSABLE; DG06=ASSOCIE; PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; COMITE ÉCONOMIQUE ET SOCIAL=CONSEIL DE CONSULTER Ces=1982/10/21; DAT.DÉCISION CONSEIL DE CONSULTER FE=1982/10/21; DAT.AVIS FE=1982/10/21; REF.PUB=JOCE L 357 DU 21/12/1983 P.41; HUMER0=383L0636; REF.PUB=JOCE L 040 DU 11/02/1984 P.29; HUMER0=384L0086; REF.PUB=JOCE L 104 DU 17/04/1984 P.25; HUMER0=384L0223; REF.PUB=JOCE L 129 DU 15/05/1984 P.28; HUMER0=384L0261; REF.PUB=JOCE L 335 DU 30/11/1983 P.38; HUMER0=383L0585 DAT.DÉCISION CONSEIL DE CONSULTER... P.147 DAT.DÉCISION CONSEIL DE CONSULTER Ces=1982/10/21; DAT.AVIS CES=1983/03/24 REF.PUB=JOCE C 124 DU 09/05/1983 P.23.

1982/10/08

DG03=CHEF-DE FILE; DG11=CORESPONSABLE; DG06=ASSOCIE; PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; COMITE ÉCONOMIQUE ET SOCIAL=CONSEIL DE CONSULTER;
PROCEDURE DE COOPERATION; CHANGEMENT DE BASE JURIDIQUE PAR LET/87/0115S; RYDTER; BZKSCOR


DAT.DÉCISION CONSEIL DE CONSULTER FE=1982/12/09;

DÉCLARATION DANS LES LANGUES PRINCIPALES DES ETATS MEMBRES CONCERNANTS, 21èmes MODIFICATIONS DE LA DÉCLARATION 64/154/CEE.

1986/02/07

DG03=CHEF-DE FILE; DG11=CORESPONSABLE; DG06=ASSOCIE; PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; COMITE ÉCONOMIQUE ET SOCIAL=CONSEIL DE CONSULTER;
PROCEDURE DE COOPERATION; CHANGEMENT DE BASE JURIDIQUE PAR LET/87/0115S; RYDTER; BZKSCOR

DAT.ADOPTION DES LANGUES CONCERNEES=1986/02/08; DAT.DÉCISION CONSEIL DE CONSULTER FE=1986/02/08; DAT.DÉCISION CONSEIL DE CONSULTER CES=1986/02/08.

1988/12/15

DG03=CHEF-DE FILE; DG11=CORESPONSABLE; DG06=ASSOCIE; PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; COMITE ÉCONOMIQUE ET SOCIAL=CONSEIL DE CONSULTER;
PROCEDURE DE COOPERATION; CHANGEMENT DE BASE JURIDIQUE PAR LET/87/0115S; RYDTER; BZKSCOR


1990/01/01

DG03=CHEF-DE FILE; DG11=CORESPONSABLE; DG06=ASSOCIE; PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; COMITE ÉCONOMIQUE ET SOCIAL=CONSEIL DE CONSULTER;
PROCEDURE DE COOPERATION; CHANGEMENT DE BASE JURIDIQUE PAR LET/87/0115S; RYDTER; BZKSCOR

DAT.ADOPTION DES LANGUES CONCERNEES=1990/01/01; DAT.DÉCISION CONSEIL DE CONSULTER FE=1990/01/01; DAT.DÉCISION CONSEIL DE CONSULTER CES=1990/01/01.
PROPOSITION DE DIRECTIVE DU CONSEIL RELATIVE AU RAPPROCHEMENT DES LEGISLATIONS DES ETATS MEMBRES SUR LES DEGREES ET INGREDIENTS ALIMENTAIRES TRAITES PAR L’ACCORD UNIVERSEL DE 1983.

D’APRÈS LE MARCHE ET LE TRAVAIL, 1043/87/CE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

PROPOSITION DE DIRECTIVE DU CONSEIL PORTANT MODIFICATION DE LA DIRECTIVE 76/769/CEE CONCERNANT LE RAPPROCHEMENT DES DISPOSITIONS TÉLÉCOMMUNICATIONS ET D’ACCÈS À LA CONFIANCE DES ÉTATS MEMBRES RELATIVES À LA LIMITATION DE LA MISE EN VENTÉ ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 91/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

RELATIVES À LA LIMITATION DE LA MISE EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 92/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 93/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 94/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 95/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 96/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 97/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 98/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 99/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 00/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 01/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 02/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 03/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 04/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 05/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 06/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 07/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 08/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 09/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 10/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.

D’APRÈS LE MARCHE ET LE TRAVAIL, 11/228/CEE CONCERNANT LA RÉGLEMENTATION ET LA LIMITEATION DE LA MISÉ EN VENTE ET DE L’EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES.
PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT LE RAPPROCHEMENT DES DISPOSITIONS LEGISLATIVES, REGLEMENTAIRES ET ADMINISTRATIVES DES ETATS MEMBRES RELATIVES AUX BATEAUX DE PLAISANCE

ARTICLES UTILISES DANS LA MANAGEMENT, INTERDICTIONS, DÉROULEMENT DE VEHICULES A MOTION
CONCERNANT LE RAPPROCHEMENT DES LEGISLATIONS DES ETATS MEMBRES RELATIVES AU COMPORTEMENT AU FEU DES PROPOSITION DE DIRECTIVE DU CONSEIL

PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT LE RAPPROCHEMENT DES LEGISLATIONS DES ETATS MEMBRES RELATIVES À LA LIMITATION DE LA MISE SUR LE MARCHE ET DE L'EMPLOI DE CERTAINES SUBSTANCES ET PREPARATIONS DANGEREUSES PROPOSITION DE DIRECTIVE DU CONSEIL
PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT LE RAPPROCHEMENT DES LEGISLATIONS DES ETATS MEMBRES RELATIVES A L'ETIQUETAGE DES MATERIAUX UTILISES DANS LES PRINCIPAUX ELEMENTS DES ARTICLES CHAUSSANTS PROPOSES A LA VENTE AU CONSOMMATEUR.

DIRECTIVE/CEE/CS 112/79/ART.3; DIRECTIVE/CEE/CS 112/79/ART.7

PARLEMEHT EUROPEEN=CONSULTATION OBLIGATOIRE; COMITE ECONOMIQUE ET SOCIAL=CONSULTATION OBLIGATOIRE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL; PROCEDURE DE COOPERATION DATE DE DECISION CONSEIL DE CONSULTER PE=1992/05/11 DAT. AVIS CES=1992/10/22

PROPOSITION DE DIRECTIVE DU CONSEIL PORTANT MODIFICATION DE LA DIRECTIVE 79/112/CEE RELATIVE AU RAPPROCHEMENT DES LEGISLATIONS DES ETATS MEMBRES CONCERNANT L'ETIQUETAGE ET LA PRESENTATION DES ALIMENTAIRES ET DE LA PUBLICITE FAITE A LEUR EGARD.


PARLEMEHT EUROPEEN=CONSULTATION OBLIGATOIRE; COMITE ECONOMIQUE ET SOCIAL=CONSULTATION OBLIGATOIRE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL; PROCEDURE DE COOPERATION DATE DE DECISION CONSEIL DE CONSULTER PE=1992/03/06; DAT. DECISION CONSEIL DE CONSULTER PE=1992/03/06; DAT. AVIS CES=1992/07/02

PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT LE RAPPROCHEMENT DES LEGISLATIONS DES ETATS MEMBRES RELATIVES AUX ASCENSEURS.

DIRECTIVE/CEE/CS 112/79/ART.3; DIRECTIVE/CEE/CS 112/79/ART.7

PARLEMEHT EUROPEEN=CONSULTATION OBLIGATOIRE; COMITE ECONOMIQUE ET SOCIAL=CONSULTATION OBLIGATOIRE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL; PROCEDURE DE COOPERATION DATE DE DECISION CONSEIL DE CONSULTER PE=1992/05/11 DAT. AVIS CES=1992/10/22

SYN/31/0529

SYN/31/0536

SYN/31/0536

SYN/31/0536

SYN/31/0529
PROPOSITION DE DIRECTIVE DU CONSEIL MODIFIAIT LA DIRECTIVE 70/122/CEE CONCERNANT LE RAPPROCHEMENT DES LEGISLATIONS DES ETATS MEMBRES RELATIVES AUX MESURES DE SANTÉ RELATIVES AUX NON-VÉHICULES À MOTION.

PROPOSITION DE DIRECTIVE DU CONSEIL MODIFIAIT LA DIRECTIVE 70/122/CEE CONCERNANT LE RAPPROCHEMENT DES LEGISLATIONS DES ETATS MEMBRES RELATIVES AUX MESURES DE SANTÉ RELATIVES AUX NON-VÉHICULES À MOTION.
COM/92/0255-01
SYH 422
PROPOSITION DE DIRECTIVE DU CONSEIL MODIFIAIT LA DIRECTIVE 89/1107/CEE RELATIVE AU RAPPROCHEMENT DES LEGISLATIONS DES ETATS-MEMBRES POUR AIDER LES ADDITIFS POUVAIENT ETRE EMPLOYES DANS LES DEGREES DESTINEES A L'ALIMENTATION Humaine.

MODIFIE PAR=COM/92/0255-02
SYH 423
PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNAIT LES ADJUVANTS AUTRES QUE LES COLORANTS ET LES ADDITIFS ET LES EDUCOLOGIQUES UTILISES DANS LES DEGREES ALIMENTAIRES.

MODIFIE PAR=COM/92/0255-03
SYH 424
PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNAIT LES ADJUVANTS AUTRES QUE LES COLORANTS ET LES ADDITIFS ET LES EDUCOLOGIQUES UTILISES DANS LES DEGREES ALIMENTAIRES.
PROPOSITION DE DIRECTIVE DU CONSEIL RELATIVE AUX CONTRAINTES ET AUX RAISONS FAMILIALES

PROPOSITION DE DIRECTIVE DU CONSEIL RELATIVE AUX CONTRAINTES ET AUX RAISONS FAMILIALES

PROPOSITION DE DIRECTIVE DU CONSEIL RELATIVE AUX CONTRAINTES ET AUX RAISONS FAMILIALES
COM/88/0108-01


COM/88/0223-01

PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT LA CONSTRUCTION D'UN COMITÉ D'ENTREPRISE EUROPEENNE

LES ENTREPRISES OU LES GROUPES D'ENTREPRISES DE DIMENSION COMMUNAUTAIRE EN VUE D'INFORMER ET DE CONSULTER LES TRAVAILLEURS

COM/90/0581

CONCERNANT DES PRESCRIPTIONS MINIMALES VISAANT L'AMELIORATION DE LA MOBILITÉ ET LE TRANSPORT EN SECURITÉ SUR LE CHEMIN DE TRAVAIL DES TRAVAILLEURS A MOBILITÉ RÉDUITE.

COM/90/0588
PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT LES PRESCRIPTIONS MINIMALES DE SECURITÉ ET DE SÉCURITÉ RELATIVES À L'EXPOSITION DES TRAVAILLEURS AUX RISQUES DUS AUX AGENTS PHYSIQUES

COM/92/05.60
SYH 449

PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT LA PROTECTION DE LA SÉCURITÉ ET DE LA SÉCURITÉ DES TRAVAILLEURS CONTRE LES RISQUES LIÉS À L'EXPOSITION À DES AGENTS CHIMIQUES SUR LE LIEU DE TRAVAIL

COM/93/0153
SYH 459

PROPOSITION DE DÉCISION DU CONSEIL ET DES MINISTRES DE LA SÉCURITÉ DES ÉTATS MEMBRES REUNIS AU SEIN DU CONSEIL CONCERNANT LA PRODUCTION JUSQU'À LA FIN DE 1994 DU PLAN D'ACTION 1991-1993 ADOPTE DANS LE CADRE DU PROGRAMME "L'EUROPE CONTRE LE SIDA"

COM/93/0453
SYH 469
COM/92/0098


DOC.COM=COM/92/98FIHAL; DOC.CS=S67/92/TU

DG06=CHIEF DE FILE; DG01=ASSOCIÉ; DG19=ASSOCIÉ; DG21=ASSOCIÉ; DG23=ASSOCIÉ; SECRÉTAIRE GÉNÉRAL=ASSOCIÉ;

COM/93/0006

RÉCOMMENDATION DE DÉCISION DU CONSEIL CONCERNANT LA CONCLUSION D'UN ACCORD À VEOUS LA RECOGNITION MUTUELLE ET LA PROTECTION DES BOISSONS SPIRITueUSES 1993/01/14.

DOC.COM=COM/93/6FIHAL; DOC.CS=4404/93/AGRIORG10

DG06=CHIEF DE FILE; DG01=ASSOCIÉ; COSEIL=DESTINATAIRE POUR ACTE FORMEL;

COM/93/0304


DOC.COM=COM/93/304FIHAL

DG06=CHIEF DE FILE; DG01=ASSOCIÉ; DG03=ASSOCIÉ; DG19=ASSOCIÉ; DG20=ASSOCIÉ; COSEIL=DESTINATAIRE POUR ACTE FORMEL;

COM/94/0304


DOC.COM=COM/94/304FIHAL; DOC.CS=4404/94/AGRIORG10

DG06=CHIEF DE FILE; DG01=ASSOCIÉ; COSEIL=DESTINATAIRE POUR ACTE FORMEL;
CUM/86/023

RÉF. PROJET DE DIRECTIVE DU CONSEIL SUR DES PROCÉDURES UNIFORMES CONCERNANT L'APPLICATION DU RÈGLEMENT CEE À L'HARMONISATION DE CERTAINS TEXTES DE DROIT DU MARCHÉ INTERNE EN MATIÈRE SOCIALE" (CEE) N° 75/357 DU CONSEIL RELATIF AU DomAINE DES TRANSPORTS PAR ROUTE.

PROPOSITION PARTIELLE ADOPTEE EN RÉUNION DU CONSEIL LE 23 OCTOBRE 1988.

PROPOSITION DE DIRECTIVE DU CONSEIL RELATIVE À LA POSSESSION COMMUNE DEVANT ÊTRE ADOPTEE PAR LES ÉTATS MEMBRES AU MOMENT DE LA SIGNATURE ET DE LA RATIFICATION DE LA CONVENTION DES NATIONS UNIES SUR LES CONDITIONS D'IMMATRICULATION DES HABITANTS.

PROPOSITION DE DECISION DU CONSEIL RELATIVE À LA POSSÉSION COMMUNE DEVANT ÊTRE ADOPTEE PAR LES ÉTATS MEMBRES AU MOMENT DE LA SIGNATURE ET DE LA RATIFICATION DE LA CONVENTION DES NATIONS UNIES SUR LES CONDITIONS D'IMMATRICULATION DES HABITANTS.

CUM/88/0021-02.
COM/89/0266-02
PROPOSITION DE RÈGLEMENT DU CONSEIL
HÉBERGEANT UNE RÈGULATION COMMUNAUTAIRE DE LA NOTION D'ARMATEUR COMMUNAUTAIRE

COM/89/0266-04
PROPOSITION DE RÈGLEMENT DU CONSEIL
HÉBERGEANT UNE RÈGULATION COMMUNAUTAIRE DE LA NOTION D'ARMATEUR COMMUNAUTAIRE
MODIFICATIONS ET A CERTAINES AUTRES CARACTERISTIQUES TECHNIQUES DE CERTAINES VOITURES, AUX Dimensions ET A CERTAINES AUTRES PROPOSITION DE DIRECTIVE DU CONSEIL
COM/9010652-02 PROPOSITION DE DECISION DU COHSEIL CONCERNANT LE SYSTEME EUROPEEN D'OBSERVATION DES MARCHES DES TRANSPORTS TERRESTRES DE MARCHANDISES 75CEE DOC.COM=COM1901652F/HAL;DOC.CS=4451194/TRAHS141REF.PUB=JOCE C 029 DU 05/02/1991 ... P.531 DAT.DECISION COHSEIL DE CONSULTER CES=1991/01/27;DAT.AVIS CES=1991/05/07 REF.PUB=JOCE C 040 DU 15/07/1991 P.46

COM/9110004 PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT LA DESIGNATION ET LA QUALIFICATION PROFESSIONNELLE D'UN PREPOSÉ À LA PRÉVENTION DES RISQUES INHERENTS AUX TRANSPORTS DES MARCHANDISES DANGEREUSES DANS LES ENTREPRISES QUI EFFECTUENT CE GENRE DE TRANSPORT 75CEE;84CEE C 185 DU P.5; DOC.COM=COM/91.0004;MODIFIE PAR=COM192/327F/HAL 199106/11 DG07=CHEF D' ... COHSEIL DE CONSULTER PE=1992/10/05 REF.PUB=JOCE C 150 DU 15/06/1992 P.336 DAT.DECISION COHSEIL DE CONSULTER CES=1991/11/27 REF.PUB=JOCE C 040 DU 17/02/1992 P.46
C0M/93/043 9

SYH 469

PROPOSITION DE SEPTIEME DIRECTIVE DU CONSEIL COHCERHANT LES DISPOSITIONS RELATIVES A L'HEURE D'ETE

DOC.COM=COM/93/0439FIHALJDOC.CS=9465193/TRAHS120 1993/09/27 ..

DG07=CHEF DE FILE;DG23=ASSOCIE;PARLEMEHT EUROPEEH=CONSULTATION OBLIGATOIRE;COMITE ECOHOMIQUE ET SOCIAL=CONSULTATIOH OBLIGATOIRE;CONSEIL=DESTIHATAIRE POUR ACTE FORMEL OPOCE;PROCEDURE DE COOPERATIOH ·

SEC/90/2402-02

PROPOSITION DE DECISION

DU

CONSEIL RELATIVE AU DEVELOPPEMEHT D'UH RESEAU EUROPEEH DE TRAIHS A

GRANDE YITESSE 75CEE

DOC.COM=SEC/90/2402FIHAL;DOC.CS=46551'91/TRAHS20;REF.PUB=JOCE C 051

1991/02/22;DAT.DECISION CONSEIL DE CONSULTER PE=1991/02/22 DAT.AVIS PE=1991/02/22

DG07=CHEF DE FILE;DG03=ASSOCIE;PARLEMEHT EUROPEEH=CONSULTATION OBLIGATOIRE;COMITE ECOHOMIQUE ET SOCIAL=CONSULTATION OBLIGATOIRE;CONSEIL=DESTIHATAIRE POUR ACTE FORMEL DAT.DECISION CONSEIL DE CONSULTER PE=1991/02/22 JDAT.AVIS PE=1992/05/15

REF.PUB=JOCE C 150 DU 22/07/1991 P.22

COM/84/0524-01

RECOMMAHDATIOH DE DECISION DU CONSEIL CONCERHANT LA COHCLUSIOH DE

L'ACCORD IHTERHATIOHAL DE 1983 SUR

LES

BOIS TROPICAUX

113CEEJ116CEE

DOC.COM=COMl84/524FIHAL;DOC.CS=9459184/PROBA69

1984/09/25

DG08=CHEF DE FILE;DGOl=CORESPONSABLE;CONSEIL=DESTIHATAIRE POUR ACTE FORMEL
COM/91/0169 PROPOSITION DE RÈGLEMENT CEE

DU CONSEIL RELATIF À LA SÉCURITÉ DES SÉANCES CONÇUES À L'AIDE D'UN MANUSCRIT À MANUFRANCE

LES MOIS AVANT CSCEE

23 SCEE DOC.COM=COM/1911/68; DOC.CS=02192/1/2; REF.PUB=JOCE P.147 DU 06/06/1991 P.15; DOC.PE=-243/91; 19/j/100/160/0

DG08=CHIEF DE PROJET; DG01=ASSOCIÉ; DG02=ASSOCIÉ; DG03=ASSOCIÉ; CONSEIL=DÉTACHÉ POUR ACTE FORMEL

OCCUPATION DU SIGNEUR ET L'APPLICATION PROVISOIRE DE L'ACCORD INTÉRÉSSEMENT DE 1986 SUR LE CACAO

COM/93/462 FINAL

COM/93/462 PROPOSITION DE RÈGLEMENT (CEE) DU CONSEIL

COCNUNIH. COMMISSION, ACCOMPAGNE D'UNE PROPOSITION DE DÉCISION DU CONSEIL

D'ADOPTION DU 20/01/1992 P.466

PC

CE5

AFF. 160

AFF. 12

AFF. 112

AFF. 2188 542 3

AFF. JEO

PC

CE5
COM/83/0733-02 PROPOSITION DE DÉCISION DU CONSEIL COMPORANT LA SIGNATURE DU PROTOCOLE RELATIF À LA COOPERATION EN MATIÈRE DE LUTTE CONTRE LE DEVERSEMENT D’HYDROCARBURES DANS LA RÉGION DES CARAIBES ET QU’À LA CONCLUSION DE LA CONVENTION SUR LA PROTECTION ET LA MISE EN VALEUR DU MILIEU MARIN DANS LA RÉGION DES CARAIBES ET DE SON PROTOCOLE RELATIF À LA COOPERATION EN MATIÈRE DE LUTTE CONTRE LE DEVERSEMENT D’HYDROCARBURES DANS LA RÉGION DES CARAIBES

COM/86/0344 PROPOSITION DE DÉCISION DU CONSEIL COMPORANT LA CONCLUSION, AU NOM DE LA COMMUNAUTÉ, DE LA CONVENTION POUR LA PROTECTION, LA GESTION ET LA MISE EN VALEUR DU MILIEU MARIN ET DES ZONES COTIÈRES DE LA RÉGION DE L’AFRIQUE ORIENTALE, ÀINSI QUE DE SES DEUX PROTOCOLES ANNEXES

COM/88/0359 PROPOSITION DE DIRECTIVE DU CONSEIL COMPORANT L’ÉLI MinATION DES POLYCHLOROBIPHÉNYLES ET DES POLYCHLOROTÉRPHENYLES.
COM/88/0752 PROPOSITION DE DIRECTIVE DU CONSEIL MODIFIANT LES DIRECTIVES 80/1778/CEE CONCERNANT LES EAUX DESTINÉES À LA CONSOMMATION HUMAINE, 76/1160/CEE CONCERNANT LES EAUX DE Baignade, 75/1440/CEE CONCERNANT LES EAUX SUPERFICIELLES ET 79/1869/CEE RELATIVE AUX MÉTHODES DE MESURE ET À LA FREQUENCE D'AHALYSE DES EAUX SUPERFICIELLES.

1988/12/19 DG/1=chef de file; DG/3=associé; DG/5=associé; DG/7=associé; DG/13=associé; DG/15=associé; C 013 DU 17/01/1989 P. 7 MODIFIÉ PAR=COM/89/0178 FIHAL; DOC. CS=41841891 EHV3; REF. PUB=JO CE C 013 DU 17/01/1989 P. 7.

COM/88/0752 SYH 217 PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT LA RESPONSABILITÉ CIVILE POUR LES DOMMAGES CAUSÉS PAR LES DECHETS.

1989/09/15 DG/1=chef de file; DG/3=associé; DG/5=associé; DG/23=associé; PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; COMITÉ ÉCONOMIQUE ET SOCIAL=CONSULTATION OBLIGATOIRE; PROPOSITION DE DÉCISION DU CONSEIL DE CONSULTER PE=1989/01/16; DAT. DÉCISION PE=1989/01/16; DAT. AVIS PE=1989/10/26.

COM/89/0102 SYH 198 PROPOSITION DE DÉCISION DU CONSEIL PORTANT CONCLUSIOIN AU NOM DE LA COMMUNITÉ DE LA COMMISSION EUROPEENNE SUR LA PROTECTION DES ANIMAUX VERTEBRES UTILISÉS À DES FINS EXPERIMENTALES OU À D'AUTRES FINS SCIENTIFIQUES.

1989/07/10 DG/1=chef de file; DG/3=associé; DG/23=associé; PARLEMENT EUROPEEN=CONSULTATION OBLIGATOIRE; COMITÉ ÉCONOMIQUE ET SOCIAL=CONSULTATION OBLIGATOIRE; PROPOSITION DE DÉCISION DU CONSEIL DE CONSULTER PE=1989/07/26; DAT. DÉCISION PE=1989/07/26; DAT. AVIS PE=1989/10/19.

COM/92/0277
PROPOSITION DE DÉCISION DU CONSEIL
CONCERNANT LA SIGNATURE D'UN PROTOCOLE RELATIF À LA PROTECTION DE LA MER MÉDITERRANÉE CONTRE LA POLLUTION RESULTANT DU STOCKAGE ET DE L'EXPLOITATION DU PÂLE ET DU SOUS-SOL (CONVENTION DE BARCELONE)
DOC.COM = COM/92/0277 FINAL
REF. PUBL. JOCE C 152 DU 03/09/1993 P. 3
DAT. DÉCISION CONSEIL DE CONSULTER CES 1992/10/04
DAT. DÉCISION CONSEIL DE CONSULTER PE 1992/10/22
DAT. AVIS PE 1992/10/22
REF. PUBL. JOCE C 073 DU 15/03/1993 P. 6

COM/92/0277
SYNO 425
PROPOSITION DE DIRECTIVE DU CONSEIL
RELATIVE À LA PROTECTION DE LA MER MÉDITERRANÉE CONTRE LA POLLUTION RESULTANT DU STOCKAGE DU PETROLE ET DE SA DISTRIBUTION DES TERMIHAUX AUX STATIONS-SERVICES (DIRECTIVE "ETAGE")
DOC.COM = COM/92/0277 FINAL
REF. PUBL. JOCE C 194 DU 15/03/1993 P. 6

COM/92/0277
SYNO 425
PROPOSITION DE DIRECTIVE DU CONSEIL
RELATIVE À LA PROTECTION DE LA MER MÉDITERRANÉE CONTRE LA POLLUTION DES TERMIHAUX AUX STATIONS-SERVICES (DIRECTIVE "ETAGE")
DOC.COM = COM/92/0277 FINAL
REF. PUBL. JOCE C 194 DU 15/03/1993 P. 6
COM/93/10102

POSITION DE D!ClSlOH DU COHSeIL CONCERNAENT LA RATIFICATION DE L'AMEHDEMEHT DU PROTOCOLE DE MOHTREAL RELATIF A DES SUU5TAHCl!5.

APPAUVRISSEHT LA COUCHE D10ZOHE ADOPTE A COPEHHAGUE, EH NOVEMBRE 1992, PAR LES PARTIES AU PROTOCOLE.

PROPOSITION DE D!ClSlOH DU COHSeIL DE CONSULTER CES=1993/04/01 DAT.DECISION COHSEIL DE CONSULTER PE=1993/04/01; DAT.AVIS CES=1993/04/26

COM/93/1014

MODIFICATION A LA LIMITATION DES EMISSIONS SOURCES DES ENGINS.
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<td>COM/93/0202</td>
<td>Proposition de règlement CEE relatif à des substances qui appauvrisse la couche d'ozone</td>
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<td>1993/07/07</td>
<td>COM/93/284</td>
<td>Proposition de décision du Conseil concernant l'adhésion de la Communauté à la convention pour la protection de l'environnement marin de la zone de la mer Baltique (Conv. d'Helsinki révisée 1992)</td>
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<td>1993/07/26</td>
<td>COM/93/285</td>
<td>Proposition de décision du Conseil relative à l'adhésion, au nom de la Communauté, de la convention sur la protection de l'environnement marin de la zone de la mer Baltique (Conv. d'Helsinki révisée 1992)</td>
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</table>
COM/93/0069-03 PROPOSITION DE DÉCISION DU CONSEIL DESTINÉE À ANNULER L'ACTION PLURIAUPLAIRE COMMUNAUTAIRE SOUVENTANT LA MISE EN ŒUVRE DE RÉSEAUX TELEMATIQUES TRAVERSEURS DESTINÉS À L'ÉCHANGE DE DONNÉES ENTRE ADMINISTRATIONS (IDA) 1993/04/07

1993/09/30 DG13 = CHEF DE FILE; DG03 = ASSOCIÉ; DG04 = ASSOCIÉ; DG09 = ASSOCIÉ; DG15 = ASSOCIÉ; DG16 = ASSOCIÉ; DG19 = ASSOCIÉ; DG27 = ASSOCIÉ.

COM/93/0347-02 PROPOSITION DE DÉCISION DESTINÉE À ANNULER L'ACTION COMMUNAUTAIRE PLURIAUPLAIRE CONCERNANT LE DÉVELOPPEMENT DU RÉSEAU TRAVERSEUR CTEH-RHIS 1993/04/07

1993/09/30 DG13 = CHEF DE FILE; DG03 = ASSOCIÉ; DG04 = ASSOCIÉ; DG09 = ASSOCIÉ; DG15 = ASSOCIÉ; DG16 = ASSOCIÉ; DG19 = ASSOCIÉ; DG27 = ASSOCIÉ.
COM/93/0292-02

COM/93/0338-01

COM/93/0338-02
COM/90/582
SYN 363
PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT LA LIBERTÉ DE GESTION ET D'INVESTISSEMENT DES FONDS COLLECTÉS PAR LES INSTITUTIONS DE RETRAITE

COM/91/301
SYN 396
PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT LA PROTECTION DES DONNEES A CARACTÈRE PERSONNEL ET LA VIE PRIVÉE DANS LE contexte DES RÉSEAUX DE TÉLÉCOMMUNICATIONS HUMAINES PUBLICS, ET DES RÉSEAUX NUMÉRIQUES MOBILES PUBLICS ET PARTICULIERS DU RÉSEAU NUMÉRIQUE À INTEGRATION DES SERVICES CIVIQUES ET DES RÉSEAUX HUMAINS PUBLICS ET PRIVÉS.

COM/91/10301
SYN 363
PROPOSITION DE DIRECTIVE DU CONSEIL CONCERNANT L'ADHÉSION DES ÉTATS MEMBRES À LA CONVENTION DE BERNE POUR LA PROTECTION DES OEUVRES LITTÉRAIRES ET ARTISTIQUES DANS L'ACTE DE PARIS DU 24 JUILLET 1971 ET À LA CONVENTION INTERNAUIONALE DE ROMA SUR LES DROITS DES ARTISTES INTERPRÈTES OU EXÉCUTEURS, DES PRODUCTEURS DE PHOTOGRAMMES ET DES LIEUX DE PRESSE.
PROPOSITION DE DIRECTIVE DU CONSEIL SUR LES SYSTÈMES D’INDEMNISATION DES INVESTISSEMENTS

COM/93/381 FINAL SYN 471
CEG

La proposition de directive du Conseil prévoit des mesures appropriées à la situation de difficultés dans l'approvisionnement des hydrocarbures en raison de la crise actuelle. Elle vise à assurer un apport régulier et suffisant de ces matières premières, indispensables à l'industrie pétrolière. La directive vise à harmoniser les dispositions législatives, réglementaires et administratives relatives aux franchises des taxes sur le chiffre d'affaires et des accises perçues à l'importation dans le trafic international de voyageurs.

La proposition de directive est destinée pour acte formel avec une consultation facultative du Comité économique et social. Elle a été adoptée par le Conseil le 19/05/1992, après consultation des pairs et des avis du Comité économique et social.

La directive vise à prévenir des mesures appropriées à la situation de difficultés dans l'approvisionnement des hydrocarbures en raison de la crise actuelle. Elle vise à assurer un apport régulier et suffisant de ces matières premières, indispensables à l'industrie pétrolière. La directive vise à harmoniser les dispositions législatives, réglementaires et administratives relatives aux franchises des taxes sur le chiffre d'affaires et des accises perçues à l'importation dans le trafic international de voyageurs.

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DES
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L'ASSISTAHCEMUTUELLE
EH MATIEREDE RECOUVREMENT
CREAHCES
RESULTANT
D'OPERATIONSFAISANTPARTIE DU SYSTEMEDE FINANCEMEHT
DU FOHDSEUROPEEH
l>'ORIEHTATION ET DE OAU.NTIE AGRICOLE, t\IHSI QUE DE PRELEVEMEHTS AGRICOLES ET DE DROITS DE DOIJAHr,
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BLAHC
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PE=1990/l2/l0
PE=l990/l2/lO;DAT.AVIS
PE=l99l/OS/15
DAT.DECISIONCOHSEILDE CONSULTER

REF.PUB=JOCEC 158 DU 1710~/1991 P.58
DAT.DECISIONCOHSEILDE CONSULTER
CES=l9901l2110;DAT AVIS CES=l991102128
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COM/92/0036
PROPOSITIONDE DIRECTIVEDU COHSEIL
COHCER'HAHT
LE TAUXD'ACCISES APPLICABLEAux·CARBURAHTS
POURMOTEURD'ORIGIHE AGRICOLE
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DOC.COM=COMl92136FIHAL;REF.PUB=JOCE
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1992/02/28
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OBLIGATOIRE;COMITE
ECOHOMIQUE
ET SOCIAL=COHSULTATIOH
FACULTATIVE;CONSEIL=DESTIHATAIRE
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PE=l992/03/20
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DAT.DECISIONCOHSEILDE CONSULTER
CES=l992103120;DAT.AVIS CES=l992/05/26
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C 223 DU 31108/1992 P.1

COM/921~21S
PROPOSITIONDE DTRECTIVEDU CONSEIL
EH MATlERED'HARMOHISATIOH
DES LEGISLATIONSDES ETATSMEMBRES
RELATIVESAUXTAXESSUR LE CHIFFRE
D'AFFAIRES. SUPPRESSIONDE CERTAIHESDEROGATIONS
PREVUESA L'ARTICLE 28 PARAGRAPHE
3 DE LA DIRECTIVE
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PAR=COMl93/398FIHAL
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DG2l=CHEFDE FILE;DG03=ASSOCIE;DG07=ASSOCIE;DGlO=ASSOCIE;DG13=ASSOCIE;DG19=ASSOCIE;DG20=ASSOCIE;
DG23=ASSOCIE;PARLEMEHT
EUROPEEH=COHSULTATIOH
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ET SOCIAL=COHSULTATIOH
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CES=l992/08/lO;DAT.DECISIOH COHSEILDE CONSULTER
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DAT.DECISIONCONSEILDE CONSULTER
PE=l992/08/lO;DAT.AVIS PE=l993/0l/l9
REF.PUB=JOCEC 042 DU 15/02/1993 P.30
DAT.DECISIONCOHSEILDE CONSULTER
CES=l992/08/lO;DAT.AVIS CES=1992/l0122
REF.PUB=JOCEC 332 DU 16/12/1992 P.53

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PROPOSITION DE DIRECTIVE DU CONSEIL

COM/92/0226

PROPOSITION DE DIRECTIVE DU CONSEIL SUR LES EMISSIONS DE DIOXYDE DE CARBONE ET L'ÉNERGIE

99CEE; 130SCEE DOC.COM=COM/92/226 FI/HAL; REF. PUB=JOCE C 196 DU 03/10/1992 P.1

1992/05/27 DG21=CHEF DE FILE; PARLEMENT EUROPEEN=CONSULATATION OBLIGATOIRE; COMITE ÉCONOMIQUE ET SOCIAL=CONSULATATION FACULTATIVE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL.


COM/92/0416

PROPOSITION DE DIRECTIVE DU CONSEIL MODIFIANT LA DIRECTIVE 77/388/CEE RELATIVE À L'AVANCEMENT DE LA VALEUR AJOUTÉE APPLICABLE AUX TRANSPORTS DE PERSONNES

99CEE

77/388/CEE DOC.COM=COM/92/416 FI/HAL; DOC.COM=92/52/92/FISC154; DOC.PE=C3-440/92; REF. PUB=JOCE C 307 DU 25/11/1992 P.11

1992/10/27 DG21=CHEF DE FILE; DG02=ASSOCIÉ; DG03=ASSOCIÉ; DG15=ASSOCIÉ; DG19=ASSOCIÉ; DG20=ASSOCIÉ; DG23=ASSOCIÉ; PARLEMENT EUROPEEN=CONSULATATION OBLIGATOIRE; COMITE ÉCONOMIQUE ET SOCIAL=CONSULATATION FACULTATIVE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL.


COM/92/0416

PROPOSITION DE DIRECTIVE DU CONSEIL COMPLÉTEANT LE SYSTÈME DE TAXE SUR LA VALEUR AJOUTÉE ET MODIFIANT LA DIRECTIVE 77/388/CEE - RÉGIME PARTICULIER APPLICABLE À L'OR

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77/388/CEE DOC.COM=COM/92/416 FI/HAL; DOC.COM=92/52/92/FISC154; DOC.PE=C3-440/92; REF. PUB=JOCE C 307 DU 25/11/1992 P.11

1992/10/27 DG21=CHEF DE FILE; DG02=ASSOCIÉ; DG03=ASSOCIÉ; DG15=ASSOCIÉ; DG19=ASSOCIÉ; DG20=ASSOCIÉ; DG23=ASSOCIÉ; PARLEMENT EUROPEEN=CONSULATATION OBLIGATOIRE; COMITE ÉCONOMIQUE ET SOCIAL=CONSULATATION FACULTATIVE; CONSEIL=DESTINATAIRE POUR ACTE FORMEL.

Décret 1992/0120

Proposition de décision du Conseil portant conclusion de la Convention douanière relative à l'importation temporaire des véhicules routiers privés (New York 1954);

Proposition de décision du Conseil portant conclusion de la Convention douanière relative à l'importation temporaire des véhicules routiers commerciaux (Genève 1956);

Art. 112

Art. 288 § 2 - 3
Delegations will find attached a consolidated text, drawn up following the Working Party's first reading of the amended proposal.

The text of the Commission's amended proposal is set out on the left-hand pages; the text resulting from the Working Party's proceedings is set out on the right-hand pages.

The recitals have not yet been examined.
AMENDED PROPOSAL

CHAPTER I: DEFINITIONS

Article 1
Definitions

1. For the purposes of this Directive, "database" means a collection of data, works or other materials arranged, stored and accessed by 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 program used in the making or operation of the database.

2. "Owner of the rights in a database" means:

   (a) the author of a database or

   (b) the natural or legal person to whom the author has lawfully granted the right to prevent unauthorized extraction of material from a database, or

   (c) where the database is not eligible for protection by copyright the maker of the database.
CHAPTER I: DEFINITIONS

Article 1
Definitions

1. For the purposes of this Directive, "database" means a collection of data, works or other materials [arranged, stored and accessed by 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 program used in the making or operation of the database.

2. For the purposes of this Directive, "owner of the rights in a database" means:

(a) the author of a database or his successor in title;

(b) where the database is not eligible for protection by copyright, the maker of the database or his successor in title.
AMENDED PROPOSAL

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).

2. The definition of database in point 1 of Article 1 is without prejudice to the protection by copyright of collections of works or 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.

3. A database shall be protected by copyright if it is original in the sense that it is a collection of works or materials which, by reason of their selection or their arrangement, constitutes the author's own intellectual creation. No other criteria shall be applied to determine the eligibility of a database for this protection.

4. The copyright protection of a database given by this Directive shall not extend to the works or materials contained therein, irrespective of whether or not they are themselves protected by copyright; the protection of a database shall be without prejudice to any rights subsisting in those works or materials themselves.
CONSOLIDATED TEXT
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).

[2. 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 and national law.

3. A database shall be protected by copyright if it is original in the sense that it is a collection of data, works or other materials which, by reason of their selection or their arrangement, constitutes the author's own intellectual creation. No other criteria shall be applied to determine the eligibility of a database for this protection.

[3a. Protection by copyright in accordance with this Directive shall apply to the expression in any form of a database. Ideas and principles which underlie any element of a database are not protected by copyright under this Directive.]

4. The copyright protection of a database given by this Directive shall not extend to the data, works or other materials contained therein, irrespective of whether or not they are themselves protected by copyright; the protection of a database shall be without prejudice to any rights subsisting in those data, works or other materials themselves.
AMENDED PROPOSAL

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.
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.

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[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.]
Article 4
Entitlement to protection under copyright

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 on copyright applicable to literary works.

Article 5
Incorporation of Works or Materials into a Database

1. The incorporation into a database of any works or materials shall remain subject to the authorisation of the owner of any copyright or other rights acquired or obligations incurred therein.

2. The incorporation into a database of bibliographical references, abstracts (with the exception of substantial descriptions or summaries of the content or the form of existing works) or brief quotations, shall not require the authorization of the owners of rights in those works, provided the name of the author and the source of the quotation are clearly indicated in accordance with Article 10(3) of the Berne Convention.
Article 4
Entitlement to protection under copyright

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] on copyright applicable to literary works.

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.

2. The incorporation into a database of bibliographical references, abstracts made by the author of the database [with the exception of substantial descriptions or summaries of the content or the form of existing works] or [brief quotations, shall not require the authorization of the owners of rights in those works, provided the name of the author and the source of the quotation are clearly indicated in accordance with Article 10(3) of the Berne Convention.
AMENDED PROPOSAL

Article 6
Restricted Acts

The owner of the rights in a database 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:

a) the temporary or permanent reproduction of the database by any means and in any form, in whole or in part,

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 (a) or (b),

d) any form of distribution to the public, including the rental, 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, with the exception of the right to control further rental of the database or a copy thereof,

e) any communication, display or performance of the database to the public.
Article 6
Restricted Acts

[Notwithstanding any exclusive rights in the contents of the database] the author of a database or his successor in title shall have, in respect of:

- the selection or arrangement of the contents of the database, and
- the electronic material referred to in Article 1(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:

a) the temporary or permanent reproduction of the database by any means and in any form, in whole or in part,
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 [ (a) or ] (b),
d) any form of distribution to the public, including the rental, 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, with the exception of the right to control further rental of the database or a copy thereof,
e) any communication, display or performance of the database to the public.
AMENDED PROPOSAL

Article 7
Exceptions to the Restricted Acts
Copyright in the Selection or Arrangement

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 rightholder.

2. In the absence of any contractual arrangements between the rightholder and the user of a database in respect of its use, the performance by the lawful acquirer of a database 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 thereof shall not require the authorization of the rightholder.

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 works or materials contained in the database.
Article 7
Exceptions to the Restricted Acts
Copyright in the Selection or Arrangement

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 or his successor in title.

2. In the absence of any contractual arrangements between the author of a database or his successor in title and the user of that database in respect of its use, the performance by the lawful acquirer of the database 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 acquirer shall not require the authorization of the author or his successor in title.

[ In the absence of any contractual arrangements in respect of use of a database, 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 or his successor in title. ]

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.
AMENDED PROPOSAL

Article 8

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

1. Member States shall apply the same exceptions to any 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 utilisation 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 rights of the author of the database laid down in Article 6.

3. The provisions of paragraphs 1 and 2 above shall also apply in respect of owners of neighbouring rights attaching to materials contained in a database.
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 or his successor in title 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 or his successor in title 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 or his successor in title 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 or his successor in title, performance of such acts shall not be taken to infringe the rights of the author of the database or his successor in title laid down in Article 6.

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.
AMENDED PROPOSAL

Article 9
Terms of Protection

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

2. (a) 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 recognised in paragraph 1 of this Article. Such protection shall not prejudice existing rights in respect of the original database.

(b) For the purposes of the term of protection provided for in this Article "substantial change" means:

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.

3. (a) 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.

(b) For the purposes of the term of protection provided for in this Article, "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.
Article 9
Terms of Protection

[1. The term of copyright protection of the 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.]

2. 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 enjoy from that moment its own term of copyright protection, without prejudice to existing rights in respect of the original database.

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.

3. Deleted.

AMENDED PROPOSAL

CHAPTER III: SUI GENERIS RIGHT

Article 10
Object of Protection:
Right to Prevent Unauthorized Extraction from a Database

1. For the purposes of this Directive "right to prevent unauthorized extraction" means the right of the owner of the rights in a database to prevent acts of extraction and re-utilization of part or all of the material from that database.

2. Member States shall provide for a right for the owner of the rights in a database to prevent the unauthorized extraction or re-utilisation, from that database, of its contents, 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.
CHAPTER III: SUI GENERIS RIGHT

Article 10
Object of Protection:
Right to Prevent [ Unauthorized ] Extraction from a Database

[1. For the purposes of this Directive "right to prevent [ unauthorized ] extraction" means the right of the owner of the rights in a database to prevent acts of extraction and re-utilization of part or all of the material from that database.]

2. Member States shall provide for a right [ , hereinafter referred to as the "right to prevent [ unauthorized ] extraction" ] for the owner of the rights in a database to prevent acts of extraction and re-utilization of the contents of that database, in whole or in [ substantial ] 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 where these are works [ already ] 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. The right referred to in paragraph 2 shall be subject to the provisions of Article 11 concerning the extraction and re-utilization of substantial or insubstantial parts of the contents of the database. ]
AMENDED PROPOSAL

Article 11
Acts Performed in Relation to the Contents of a Database—Unauthorized Extraction of the Contents

1. Notwithstanding the right provided for in Article 10(2) to prevent the unauthorized extraction and re-utilisation 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-utilise, 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.

2. The right to extract and re-utilise 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.

3. For the purposes of this Article, databases shall not be deemed to have been made publicly available unless they may be freely interrogated.
Article 11
Acts Performed in Relation to the Contents of a Database—Exceptions to the Right to Prevent [Unauthorized] Extraction

1. Notwithstanding the right to prevent [unauthorized] extraction provided for in Article 10(2), if the data, works or other materials contained in a database which is made publicly available cannot be independently created or collected or cannot be obtained from any other source, the right to extract and re-utilize, in whole or substantial part, data, works or other 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 reasoned request on fair and non-discriminatory terms.

2. The right to extract and re-utilize the contents of a database shall also be licensed on reasoned request 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.

3. For the purposes of this Article, databases shall not be deemed to have been made publicly available unless they have been published in such a way that they may be interrogated by all potential users without any limitations and without any discrimination between potential users.
AMENDED PROPOSAL

4. Member States shall provide appropriate measures for arbitration between the parties in respect of such licences.

5. The lawful user of a database may, without authorization of the database maker, extract and re-utilize insubstantial parts or works or materials from a database for a commercial purposes provided that acknowledgement is made of the source.

6. 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.

7. For the purposes of this Article, "commercial purposes" means any use, which is not:

(a) private, personal, and
(b) for non-profit making purposes.

8. (a) For the purposes of paragraphs 5 and 6 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.
CONSOLIDATED TEXT

4. Member States shall provide appropriate measures for [ arbitration ] [ mediation ] between the parties in respect of such licenses, [ without prejudice to the access of parties to the courts ].

5. The lawful user of a published database may, without authorization of the owner of the rights in the database, extract and re-utilize insubstantial parts of data, works or other materials from a database for commercial [, research or educational ] purposes provided that acknowledgement is made of the source.

6. The lawful user of a [ published ] database may, without authorization of the owner of the rights in the database, and without acknowledgement of the source, extract and re-utilize [ insubstantial ] parts of data, works or other materials from that database for personal private use 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 owner of the rights in the database ].

[7. For the purposes of this Article, "commercial [, research or educational ] purposes" means any use, which is not:
   (a) private, personal, [ and ] [ or ]
   (b) for non-profit making purposes. ]

[8. (a) For the purposes of paragraphs 5 and 6 of this Article, "insubstantial parts" means parts of a published 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 the rights in that database to exploit the database.]
AMENDED PROPOSAL

(b) In both instances, it shall likewise be incumbent on the lawful user to demonstrate that the extraction and re-utilisation 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.

9. The provisions of this Article shall apply only to the extent that such extraction and re-utilization does not conflict with any other prior rights or obligations, including the legislation or international obligations of the Member States or of the Community in respect of matters such as personal data protection, privacy, security or confidentiality.
[(b) 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 the rights in that database to exploit the database, and that such practices are not carried out any more than is necessary to achieve the desired objective.]

9. The provisions of this Article shall apply only to the extent that such extraction and re-utilization does not conflict with any other [ prior ] [ existing ] rights or obligations, including the legislation or international obligations of the Member States or of the Community in respect of matters such as personal data protection, privacy, security or confidentiality.
AMENDED PROPOSAL

Article 12
Term of Protection

1. 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, or

(b) any substantial change to the database.

2. (a) 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.

(b) For the purposes of the term of protection provided for in this Article "substantial change" means 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.

3. (a) 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.

(b) For the purpose of the term of protection provided for in this Article "insubstantial change" means insubstantial additions, deletions or alterations which, taken together, do not substantially modify the contents of a databases
CONSOLIDATED TEXT

Article 12
Term of Protection

1. The right to prevent [ unauthorized ] extraction shall run from the date of creation of the database [ or from the date referred to in Article 16(1), whichever is the later ].

1a. In the case of a published database, the term of protection by this right shall expire [15] years from the first of January following:

(a) the date when the database was first published [ or the date referred to in Article 16(1), whichever is the later ], or

(b) the date of insertion, for each data item, provided that this date is not earlier than the date under (a) above.

Any subsequent substantial change to the contents of the database resulting from the successive accumulation of deletions or alterations which would result in the database being considered to be republished as a new database shall qualify that database for its own term of protection.

2. In the case of a published database 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 published shall be [50] years.

3. Deleted.
AMENDED PROPOSAL

Article 13
Beneficiaries of Protection under Right to Prevent Unauthorized Extraction from a Database

1. Protection granted pursuant to this Directive to the contents of a database against unauthorized extraction or re-utilization 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 legislation of a Member State and having their registered office, central administration or principal place of business within the Community. Should the company or firm formed in accordance with the legislation of a Member State have 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.

3. Agreements extending the right to prevent unauthorized 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 12(1).
Article 13

Beneficiaries of Protection under the Right to Prevent [Unauthorized] Extraction from a Database

1. The right to prevent [unauthorized] extraction 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.

3. Agreements extending the right to prevent [unauthorized] 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 12.
AMENDED PROPOSAL

CHAPTER IV: COMMON PROVISIONS

Article 14
Remedies

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

Article 15
Continued Application of other Legal Provisions

1. The provisions of this Directive shall be without prejudice to copyright or any other right subsisting in the works or 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. Protection pursuant to the provisions of this Directive as regards copyright and 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 date of publication of the Directive which on that date fulfilled the requirements laid down therein as regards the protection of databases. Such protection shall be without prejudice to any contracts concluded and rights acquired before that date.
CHAPTER IV: COMMON PROVISIONS

Article 14

Remedies

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

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 right 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).

Article 15a

Application in time

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

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 of implementation of this Directive and every two years thereafter the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive and, where necessary, shall submit proposals for its adjustment in line with developments in the area of databases.

Article 17

This Directive is addressed to the Member States.
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 of implementation of this Directive and every two years thereafter the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive and, where necessary, shall submit proposals for its adjustment in line with developments in the area of databases.

Article 17

This Directive is addressed to the Member States.
REPORT

from: Presidency

to: Permanent Representatives Committee

No. prev. doc.: 4256/94 PI 6 CULTURE 4
No. Cion prop.: 9219/93 PI 89 CULTURE 113

- Scope of the proposed Directive

A. Introduction

1. Under cover of a letter dated 15 April 1992, the Commission submitted to the Council a proposal for a Council Directive on the legal protection of databases\(^{(1)}\). The proposal is based on Articles 57(2), 66 and 100a of the Treaty.

2. The Economic and Social Committee gave its opinion on the proposal on 24 November 1992\(^{(2)}\). The European Parliament gave its opinion on 23 June 1993\(^{(3)}\). The Commission submitted an amended proposal on

3. The Working Party on Intellectual Property (Copyright) has conducted a first reading of the Commission's amended proposal and begun a second reading. At this stage in the proceedings, the Presidency considers that political guidance is necessary on the question whether the scope of the proposed Directive should be limited to electronic databases, or should be extended to cover non-electronic databases. It considers that other questions arising in connection with this proposal are not yet ripe for discussion at the political level.

B. Scope proposed and reactions expressed

4. The Commission's original proposal is limited to electronic databases, on the grounds that there is a need for harmonization within the Community of the legal protection of electronic databases, while a corresponding need in respect of databases in paper form is much less evident.

5. The Economic and Social Committee expressed concern that this limitation to electronic databases "will mean that different legal regimes will apply to the same database if it is stored both electronically and otherwise" (point 3.2. of its opinion).

6. The European Parliament, proposed no amendment in this respect.

7. While the Commission's amended proposal does not differ from its original proposal in this respect, the Commission services have indicated to the Council Working Party that if the Member States wish to extend the scope of the Directive to non-electronic databases, the Commission is prepared to consider such an extension with an open mind, as it had already indicated in the explanatory memorandum to its original proposal.

8. The German, Greek, Italian, Netherlands and United Kingdom delegations are in favour of extending the scope of the Directive to cover non-electronic databases.

The Belgian, French and Portuguese delegations are opposed to such an extension.

The Spanish, Irish and Luxembourg delegations while not expressing firm positions, have indicated a willingness to consider such an extension.

The Danish delegation has doubts in respect of such an extension.

9. The following arguments have been put forward in favour of extending the scope of the Directive to cover non-electronic databases:

(a) such a solution would be simpler, avoiding the need to draw a clear distinction between electronic databases and non-electronic databases;

(b) a database which was distributed in both electronic and non-electronic forms would enjoy the same protection for both forms;
(c) no distinction between electronic databases and non-electronic databases is made either by the corresponding provision of the GATT Agreement on trade-related aspects of intellectual property rights, including trade in counterfeit goods (Agreement on TRIPS)\(^5\), or in the ongoing work in the World Intellectual Property Organization (WIPO) on a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works\(^6\).

10. The following arguments have been put forward in favour of limiting the scope of the Directive to electronic databases:

(a) the national laws of the Member States already provide adequate protection for non-electronic databases and there is therefore no need for Community harmonization in this respect, whereas the national laws of Member States do not explicitly extend to electronic databases and it is therefore uncertain whether electronic databases are covered by the laws of some Member States;

(b) the specific problems which arise in relation to electronic databases, as a result of the ease with which the materials stored in them can be

\(^{5}\) Article 10(2) of the Agreement on TRIPS (11339/93 GATT 243) reads:

"Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself."

\(^{6}\) WIPO documents BCP/CE/I/2, points 40-44 and BCP/CE/I/4, points 89-95.
manipulated and accessed, do not arise in respect of non-electronic databases;

(c) a number of the provisions of the proposed Directive, while applicable to electronic databases, would not be applicable to non-electronic databases;

(d) such an extension would require reconsideration of the proposed definition of "databases".

11. A further suggestion, which might provide a compromise solution, but has not yet been discussed in depth by the Working Party, has been put forward in contacts between the Commission services and the Community's partners in the European Economic Area. Since the proposal for a Directive provides for protection of databases not only by a copyright right, but also by a sui generis right, the suggestion is that the provisions on copyright protection could be extended to databases in all forms, while the provisions concerning the sui generis right would be limited to electronic databases.

C. Action requested

12. The Permanent Representatives Committee is invited to examine, with a view to possible consideration by the Council (Internal Market) on 10 March, the question whether the scope of the Directive should be limited to electronic databases, or should be extended to cover non-electronic databases, either fully (i.e. by both the copyright right and the sui generis right) or partially (i.e. by the copyright right only).
EUROPEAN UNION
THE COUNCIL

Brussels, 1er mars 1994

5200/94
RESTREINT
PI 20
CULTURE 11

SUMMARY OF PROCEEDINGS

of: Permanent Representatives Committee (Part I)
on: 23 February 1994

No. prev. doc.: 4729/94 PI 12 CULTURE 6
No. Cion prop.: 9219/93 PI 89 CULTURE 113

Subject: Preparation of the Internal Market Council session on 10 March 1994


- Scope of the proposed Directive

I.

1. The Permanent Representatives Committee discussed this subject on the basis of the Presidency report in 4729/94 PI 12 CULTURE 6. The discussion of the Committee is summarized under point II below.

2. As several delegations expressed doubts as to the usefulness of a Council discussion of this item at this stage, the Chairman concluded that the Presidency would reflect further on whether the point would be maintained on the provisional agenda of the 10 March Internal Market Council(1).

(1) The Presidency decided subsequently to withdraw this item from the provisional agenda.
II.

3. The following views were expressed on the question whether the scope of the Directive should be limited to electronic databases or should be extended to cover non-electronic databases:

(a) the German, Greek, Spanish, Irish, Italian, Netherlands and United Kingdom delegations were in favour of extending the scope of the Directive to cover non-electronic databases;

(b) the French and Portuguese delegations were opposed to such an extension;

(c) the Belgian and Danish delegations had doubts in respect of such an extension;

(d) the Luxembourg delegation indicated an open position on this question;

(e) the Commission representative indicated that, while the scope of his Institution's original and amended proposals was limited to electronic databases, the Commission was prepared to consider an extension to non-electronic databases, the new element being the adoption of Article 10(2) of the Agreement on TRIPS referred to in point 9(c) of the Presidency report.

4. With regard to the suggestion referred to in point 11 of the Presidency report (extension of the provisions on copyright protection to cover non-electronic databases but limitation of the provisions concerning the sui generis right to electronic databases), the Committee concluded that it would be premature to put this suggestion to the Council before it had been examined more thoroughly at Working Party level.
NOTE

du : Secrétariat général

au : Groupe "Propriété intellectuelle" (droit d'auteur)

n° doc. préc. : 4256/94 PI 6 CULTURE 4
n° prop. Cion : 9219/93 PI 89 CULTURE 113

Objet : Proposition modifiée de directive du Parlement européen et du Conseil concernant la protection juridique des bases de données
- Deuxième texte consolidé


Les considérants n’ont pas encore été examinés.
CHAPITRE I : DEFINITIONS

Article premier
Définitions

1. Aux fins de la présente directive, on entend par "base de données" : une collection de données, d'œuvres ou d'autres matières [disposées, stockées et accessibles par des moyens électroniques] (1), [y compris les éléments nécessaires au fonctionnement de la base de données tels que le thésaurus et les systèmes d'indexation et de consultation de la base. Le terme ne s'applique pas aux logiciels utilisés dans la création ou le fonctionnement de la base de données] (2).

[2. Aux fins de la présente directive, on entend par "titulaire des droits sur une base de données" :

a) l'auteur de la base de données ou son ayant droit ;

b) lorsque la base de données ne peut bénéficier de la protection par le droit d'auteur, le fabricant de la base de données ou son ayant droit.] (3)

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(1) Les délégations allemande, espagnole, grecque, irlandaise, italienne et néerlandaise ainsi que la délégation du Royaume-Uni sont en faveur d'une extension du champ d'application de la directive aux bases de données non électroniques ; les délégations française et portugaise sont opposées à une telle extension ; les délégations belge et espagnole se sont déclarées sceptiques au sujet d'une telle extension ; la délégation luxembourgeoise a adopté une position ouverte à cet égard.

(2) Plusieurs délégations ont indiqué que ce libellé leur causait des problèmes et qu'il faudra peut-être le réexaminer si le champ d'application de la directive est étendu aux bases de données non électroniques.

(3) La majorité des délégations ont estimé que ce paragraphe était superflu compte tenu de la structure de la proposition modifiée de la Commission.
CHAPITRE II : DROIT D'AUTEUR

Article 2

Objet de la protection

1. Conformément aux dispositions de la présente directive, les États membres protègent les bases de données par le droit d'auteur en tant que collections au sens de l'article 2 paragraphe 5 de la Convention de Berne pour la protection des œuvres littéraires et artistiques (texte de l'Acte de Paris de 1971).\(^{(4)}\)

\[2.\text{La définition de base de données visée à l'article 1er paragraphe 1 est sans préjudice de la protection par le droit d'auteur des collections de données, d'œuvres ou d'autres matières disposées, stockées ou accessibles par des moyens non-électroniques, qui restent de ce fait protégées sous les conditions prévues à [l'article 2 paragraphe 5 de la Convention de Berne]}\(^{(5)}\) [par la législation nationale].\(^{(6)}\)\(^{(7)}\)

\(^{(4)}\) La délégation portugaise a indiqué qu'elle doutait de l'utilité de ce paragraphe.
\(^{(5)}\) Variante ayant la préférence des délégations française, italienne et néerlandaise.
\(^{(6)}\) Variante ayant la préférence des délégations danoise et irlandaise ainsi que de la délégation du Royaume-Uni.
\(^{(7)}\) Ce paragraphe serait supprimé si le champ d'application de la directive était étendu aux bases de données non électroniques.
Article 2 (suite)

[Variante 1 (8)]

3. Une base de données est protégée par le droit d'auteur si [elle est originale en ce sens qu’] (9) elle est une collection de données, d'œuvres ou d'autres matières qui [, par le choix ou la disposition des matières,] (10) constitue la création intellectuelle propre à son auteur. [Aucun autre critère ne s'applique pour déterminer si elle peut bénéficier d'une protection.] (11]

[Variante 2 (12)]

3. Une base de données qui, par le choix ou la disposition de son contenu constitue une création intellectuelle est protégée par le droit d'auteur comme telle.

[Variante 3 (13)]

3. Une base de données est protégée par le droit d'auteur si - par le choix des oeuvres, parties d'oeuvres ou matières - elle est originale en ce sens qu'elle constitue la création intellectuelle propre à son auteur. Aucun autre critère ne s'applique pour déterminer si elle peut bénéficier d'une protection.

(8) Variante correspondant à la proposition de la Commission.
(9) La délégation du Royaume-Uni préférerait que ces termes soient supprimés.
(10) La délégation irlandaise et la délégation du Royaume-Uni préféreraient que ces termes soient supprimés.
(11) La délégation irlandaise préférerait que ces termes soient supprimés.
(12) Variante correspondant à l'article 10 paragraphe 2 de l'accord TRIPS. Les délégations allemande et danoise ainsi que la délégation du Royaume-Uni préféreraient cette variante.
(13) Variante suggérée par la délégation italienne.
Article 2 (suite)

[3 bis] La protection par le droit d'auteur en vertu de la présente directive couvre l'expression d'une base de données mais pas les idées, procédures, méthodes de fonctionnement ou concepts mathématiques en tant que tels qui sont à la base de quelque élément que ce soit d'une base de données.\(^{(14)}\)

4. La protection de la base de données par le droit d'auteur accordée par la présente directive ne couvre pas son contenu et elle est sans préjudice des droits subsistant sur ledit contenu.

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\(^{(14)}\) Les délégations allemande, espagnole et néerlandaise ont émis des réserves d'examen sur l'utilité de ce paragraphe. Les délégations danoise et française ont estimé qu'il n'était pas indispensable.
Article 3

Qualité d'auteur de la base de données

1. L'auteur d'une base de données est la personne physique ou le groupe de personnes physiques ayant créé la base de données, ou, lorsque la législation de l'Etat membre concerné l'autorise, la personne morale considérée par cette législation comme étant le titulaire du droit (15).

2. Lorsque les œuvres collectives sont reconnues par la législation d'un Etat membre, la personne considérée par cette législation comme ayant créé l'œuvre (16) est réputée en être l'auteur.

3. Lorsqu'une base de données est créée en commun par plusieurs personnes physiques, les droits exclusifs sont détenus en commun par ces personnes.

[4. Lorsqu'une base de données est créée par un employé dans l'exercice de ses fonctions ou d'après les instructions de son employeur, seul l'employeur est habilité à exercer tous les droits patrimoniaux afférents à la base de données ainsi créée, sauf dispositions contractuelles contraires.] (17)

(15) Réserve d'examen de la délégation portugaise sur les termes "considérée comme étant le titulaire du droit".
(16) La délégation portugaise préférerait remplacer les termes "comme ayant créé l'œuvre" par les termes "comme étant le titulaire du droit".
(17) Réserves des délégations allemande, belge, danoise, française et irlandaise sur ce paragraphe.
Article 4
Bénéficiaires de la protection par le droit d'auteur

La protection par le droit d'auteur est accordée à tous les titulaires, tant personnes physiques que personnes morales, satisfaisant aux conditions prescrites par la législation nationale [ou par les conventions internationales] (18) relative[s] au droit d'auteur applicable aux œuvres littéraires. (19)

Article 5 (20)
Incorporation de données d'œuvres ou d'autres matières dans une base de données

1. L'inclusion dans une base de données de toute donnée, œuvre ou autre matière reste soumise à l'autorisation du titulaire du droit d'auteur, droits voisins ou autres droits et reste soumise à toutes les obligations à l'égard de cette donnée, œuvre ou matière. (21)

2. L'inclusion dans une base de données de références bibliographiques, de résumés faits par l'auteur de la base de données ou de [brèves] citations ne nécessite pas l'autorisation des titulaires des droits sur ces œuvres, à condition que soient clairement indiqués le nom de l'auteur et la source de l'extrait, conformément à l'article 10 paragraphe 3 de la Convention de Berne. (22)

(18) Les délégations danoise, espagnole, française, italienne, néerlandaise et portugaise ainsi que la délégation du Royaume-Uni sont opposées à ces termes.
(19) La délégation allemande estime que l'ensemble de l'article 4 est superflu.
(20) Réserves des délégations allemande, belge et danoise sur l'ensemble de l'article 5.
(21) Les délégations danoise, irlandaise et néerlandaise estiment que la teneur de ce paragraphe devrait être transférée dans un considérant.
(22) Réserves d'examen des délégations française et italienne sur ce paragraphe.
Article 6
Actes soumis à restriction (23)

[Nonobstant les droits exclusifs éventuels sur le contenu de la base de données] (24) l'auteur d'une base de données ou son ayant droit bénéficie, en ce qui concerne :

- [le choix ou la disposition du] (25) contenu de la base de données et

- la matière visée à l'article 1er paragraphe 1, qui sert à la construction ou au fonctionnement de la base de données (26),

du droit exclusif au sens de l'article 2 paragraphe 1 de faire ou d'autoriser :

a) la reproduction permanente ou provisoire d'une base de données, en tout ou en partie,

b) la traduction, l'adaptation, l'arrangement et toute autre transformation d'une base de données,

c) la reproduction des résultats obtenus des actes cités sous b),

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(23) Réserve d'examen de la délégation italienne sur cet article.
(24) Ajout suggéré par la délégation néerlandaise.
(25) Les délégations espagnole et irlandaise ainsi que la délégation du Royaume-Uni préféreraient que ces termes soient supprimés.
(26) Réserves d'examen de la délégation irlandaise et de la délégation du Royaume-Uni sur la première partie de l'article 6.
Article 6 (suite)

d) toute forme de distribution, y compris la location, au public (27) de l'original ou des copies de la base de données. La première vente d'une copie d'une base de données dans la Communauté par le titulaire du droit ou avec son consentement épuise le droit de distribution de cette copie dans la Communauté, à l'exception du droit de contrôler des locations ultérieures de la base de données ou d'une copie de celle-ci,

e) toute communication, exposition ou représentation de la base de données au public.

(27) La délégation française préférerait remplacer les termes "distribution au public" par les termes "communication au public".
Article 7
Exceptions aux actes soumis à restrictions :
Droit d'auteur relatif au choix ou à la disposition

1. L'utilisateur légitime d'une base de données peut effectuer tous les actes visés à l'article 6 qui sont nécessaires pour l'utilisation de la base de données conformément aux arrangements contractuels avec l'auteur ou son ayant droit (28).

2. En l'absence de dispositions contractuelles concernant l'utilisation d'une base de données, l'utilisateur légitime d'une base de données ou d'une copie de celle-ci peut effectuer tous les actes visés à l'article 6 qui sont nécessaires à l'accès au contenu de la base et à son utilisation par l'utilisateur légitime sans l'autorisation de l'auteur de la base ou de son ayant droit.

3. Les exceptions prévues aux paragraphes 1 et 2 concernent l'objet de protection cité à l'article 6 et sont sans préjudice des droits qui subsistent dans les données, œuvres ou autres matières contenues dans la base de données.

(28) Les délégations allemande et italienne considèrent que ce paragraphe est superflu. Les délégations irlandaise et néerlandaise ont également des doutes sur son utilité. La délégation allemande estime aussi que le reste de cet article est superflu.
Article 8
Exceptions aux actes soumis à restrictions relatives au droit d'auteur dans le contenu de la base de données

1. Si un Etat membre autorise des exceptions aux droits de l'auteur d'une œuvre ou de son ayant droit conformément à [l'article 9 paragraphe 2 ou à] (29) l'article 10 de la Convention de Berne (30), cet Etat membre autorise les mêmes exceptions lorsque l'œuvre concernée figure dans une base de données, nonobstant les droits de l'auteur de la base de données ou de son ayant droit prévus à l'article 6 (31).

2. Si la législation des Etats membres ou les dispositions contractuelles conclues avec l'auteur d'une œuvre contenue dans une base de données ou avec son ayant droit permettent à l'utilisateur de cette base de données d'effectuer certains actes qui sont autorisés en dérogation aux droits exclusifs de l'auteur de ladite œuvre ou de son ayant droit, l'exécution de ces actes ne constitue pas une violation des droits reconnus à l'auteur de la base de données ou à son ayant droit à l'article 6.

3. Les dispositions des paragraphes 1 et 2 ci-dessus s'appliquent également mutatis mutandis aux titulaires de droits voisins sur les matières contenues dans une base de données.

(29) Les délégations allemande, danoise, irlandaise, néerlandaise et portugaise sont pour l'inclusion de ces termes ; réserve du représentant de la Commission sur leur inclusion.
(30) Réserve d'examen de la délégation du Royaume-Uni sur la référence simultanée à l'article 9 paragraphe 2 et à l'article 10 de la Convention de Berne.
(31) Réserves d'examen des délégations espagnole et italienne sur l'utilité de ce paragraphe ; réserves d'examen des délégations allemande et française sur l'utilité de l'ensemble de cet article.
Article 9
Durée de protection (32)

1. La durée de protection de la base de données par le droit d'auteur est déterminée conformément à la directive 93/98/CEE du Conseil du 29 octobre 1993 relative à l'harmonisation de la durée de protection du droit d'auteur et de certains droits voisins. (*)

2. Un changement substantiel dans le choix ou la disposition du contenu d'une base de données donne lieu à la création d'une nouvelle base de données qui bénéficie dès ce moment de sa propre durée de protection par le droit d'auteur, sans préjudice des droits reconnus à la base de données d'origine.

2 bis Aux fins du paragraphe 2, on entend par "modification substantielle" tout ajout, suppression ou changement, impliquant une modification importante du choix ou de la disposition du contenu de la base de données et donnant lieu à une nouvelle édition qui remplit les critères énoncés à l'article 2.


(32) Le texte consolidé de cet article n'a pas encore été examiné par le groupe.
CHAPITRE III : DROIT SUI GENERIS (33)

Article 10

Objet de la protection :

Droit d'interdire l'extraction du contenu de la base de données (34)

1. Supprimé.

2. Les États membres prévoient un droit, ci-après dénommé "droit d'interdire l'extraction", pour le fabricant d'une base de données d'interdire l'extraction et/ou la réutilisation du contenu de cette base en tout ou en partie. Ce droit s'applique indépendamment de la possibilité pour cette base d'être protégée par le droit d'auteur. Ce droit ne s'applique pas au contenu d'une base de données dans la mesure où elle est composée d'œuvres protégées par un droit d'auteur ou d'éléments protégés par un droit voisin. [Aucun [autre] droit n'est créé sur les données, les œuvres ou autres matières en tant que telles.] (35)


(33) Réserves d'examen de la délégation allemande et de la délégation du Royaume-Uni sur le droit sui generis.

(34) Plusieurs délégations ont émis une réserve d'examen sur cet article.

(35) Les délégations allemande, italienne et néerlandaise estiment que cette phrase est superflue. Les délégations belge, danoise et irlandaise ainsi que la délégation du Royaume-Uni considèrent qu'elle est utile.
Article 11
Actes soumis à restrictions concernant le contenu
d'une base de données
Exceptions au droit d'interdire l'extraction (36)

1. Nonobstant le droit d'interdire l'extraction prévu à l'article 10, si le contenu d'une base de données rendue accessible au public ne peut être créé, rassemblé et obtenu d'une autre source, le droit d'extraction et de réutilisation de tout ou partie substantielle de cette base de données à des fins commerciales, [à des fins de recherche ou d'enseignement] (37) [mais non dans un but d'économie de temps, d'efforts ou d'investissements financiers] (38), devra faire l'objet de licences sur demande motivée, à des conditions équitables et non discriminatoires (39).

2. Des licences permettant d'extraire et de réutiliser tout le contenu d'une base de données ou une partie substantielle à des fins commerciales [, à des fins de recherche ou d'enseignement] (40) doivent également être accordées sur demande motivée, à des conditions équitables et non discriminatoires lorsque cette base de données a été rendue accessible au public par :

   a) les administrations publiques ou les firmes et organismes publics qui ont une obligation générale de rassembler et de diffuser l'information, ou qui sont créés dans ce but ou autorisés à le faire en vertu de la législation en vigueur,

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(36) Cet article a fait l'objet d'une réserve de la délégation portugaise, qui considère que les exceptions à ce droit devraient relever de la législation nationale. Les délégations allemande et danoise ainsi que la délégation du Royaume-Uni estiment que les exceptions à ce droit devraient, dans la mesure du possible, être alignées sur les exceptions au droit d'auteur.

(37) Réserves des délégations allemande, grecque, irlandaise, italienne et portugaise ainsi que de la délégation du Royaume-Uni sur l'inclusion de ces termes.

(38) Réserves de examen de la délégation italienne sur l'inclusion de ces termes.

(39) Réserves des délégations allemande, danoise et néerlandaise sur ce paragraphe. Réserves d'examen d'autres délégations.

(40) Cf. note 37 ci-dessus.
Article 11 (suite)

b) des entreprises ou firmes qui jouissent d'un monopole, en vertu d'une concession exclusive accordée par un organisme public. (41)

3. (Repris au paragraphe 10).

4. Les États membres prévoient des mesures appropriées permettant aux parties de recourir à la médiation en ce qui concerne les licences visées aux paragraphes 1 et 2 sans préjudice de l'accès des parties aux tribunaux. (42)

(41) Réserves des délégations allemande, danoise, espagnole et néerlandaise sur ce paragraphe. Réserves d'examen des autres délégations. La délégation du Royaume-Uni estime que ce paragraphe devrait être limité aux cas dans lesquels les informations en question ont été fournies par un tiers en vertu d'une obligation légale lui incombant.

(42) Réserve de la délégation allemande sur l'utilité de ce paragraphe. Réserve d'examen de la délégation grecque sur ce paragraphe.
Article 11 (suite)

5. L'utilisateur légitime d'une base de données qui est rendue accessible au public peut, sans autorisation du fabricant de la base de données, extraire et réutiliser des parties [non substantielles] (43) du contenu d'une base de données à des fins commerciales [, à des fins de recherche ou d'enseignement] (44), pour autant qu'il indique la source et [pour autant que l'extraction et la réutilisation ne soient pas en conflit avec une exploitation normale de la base de données et ne lèsent pas de manière injustifiée les intérêts légitimes du fabricant de la base de données] (45) [pour autant que l'on estime que la reproduction de ces parties, évaluées de façon qualitative et quantitative par rapport à la base de données dont elles sont extraites, ne porte pas préjudice aux droits exclusifs d'exploitation du fabricant de la base de données sur la base de données] (46), (47).

(43) Les délégations danoise, espagnole, irlandaise et néerlandaise sont pour la suppression des termes "non substantielles".
(44) La délégation allemande s'oppose à ce que l'on traite les fins de recherche et d'enseignement de la même manière que les fins commerciales. Les délégations grecque et irlandaise ont exprimé des doutes à cet égard. La délégation irlandaise et la délégation du Royaume-Uni préféreraient que les fins de recherche et d'enseignement soient traitées au paragraphe 6. La délégation portugaise estime qu'il devrait appartenir aux États membres de déterminer la nature de l'exception applicable aux fins de recherche et d'enseignement.
(45) Variante ayant la préférence de la majorité des délégations.
(46) Variante ayant la préférence de la Commission et de la délégation belge.
(47) Réserve de la délégation du Royaume-Uni sur ce paragraphe.
Article 11 (suite)

6. L'utilisateur légitime d'une base de données qui est rendue accessible au public peut, sans autorisation du fabricant de la base de données, et sans indiquer la source, extraire et réutiliser des parties [non substantielles] (48) du contenu de cette base de données pour son usage privé et personnel [à condition que l'extraction et la réutilisation ne soient pas en conflit avec une exploitation normale de la base et ne lèse pas de manière injustifiée les intérêts légitimes du fabricant de la base de données] (49) [pour autant que l'on estime que la reproduction de ces parties, évaluée de façon qualitative et quantitative par rapport à la base de données dont elles sont extraites, ne porte pas préjudice aux droits exclusifs d'exploitation du fabricant de la base de données sur la base de données] (50) (51).

7. Supprimé.

8. a) Supprimé.

[b) Aux fins des paragraphes 5 et 6, il revient à l'utilisateur légitime de prouver que l'extraction et la réutilisation de parties non substantielles ne portent pas préjudice aux droits exclusifs d'exploitation du fabricant de la base de données sur la base de données et que ces pratiques ne sont pas plus fréquentes que ne l'exige l'objectif recherché.] (52)

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(48) Cf. note 43 ci-dessus.
(49) Cf. note 45 ci-dessus.
(50) Cf. note 46 ci-dessus.
(51) La délégation belge estime que les paragraphes 5 et 6 devraient l'emporter sur toute disposition contractuelle contraire.
(52) Les délégations allemande, belge, danoise, française, grecque, irlandaise, italienne, néerlandaise et portugaise ainsi que la délégation du Royaume-Uni sont pour la suppression du paragraphe 8 point b). Le représentant de la Commission est contre cette suppression.
Article 11 (suite)

9. Les dispositions du présent article s'appliquent seulement dans la mesure où l'extraction et la réutilisation ne sont pas en conflit avec des droits ou des obligations [antérieurs] [existants] \(^{(53)}\), notamment \(^{(54)}\) en ce qui concerne la législation ou les engagements internationaux des Etats membres ou de la Communauté concernant la protection des données personnelles, le respect de la vie privée, la sécurité ou la confidentialité \(^{(55)}\).

10. Aux fins du présent article et de l'article 12, ne sont considérées comme rendues accessibles au public que les bases de données qui ont été publiées de manière telle qu'elles peuvent être interrogées par tous les utilisateurs potentiels sans aucune limitation ni discrimination entre ceux-ci \(^{(56)}\).

\(^{(53)}\) Les délégations belge, française, grecque et irlandaise sont pour la suppression des termes "antérieurs" et "existants".
\(^{(54)}\) La délégation irlandaise préférerait remplacer "notamment en ce qui concerne" par "découlant de".
\(^{(55)}\) Les délégations danoise, néerlandaise et portugaise estiment que ce paragraphe est superflu, compte tenu de l'article 15. Réserve de la délégation allemande sur ce paragraphe.
\(^{(56)}\) Réserve de la délégation allemande sur l'utilité de ce paragraphe. Réserve d'examen de plusieurs délégations sur ce paragraphe.
Article 12
Durée de protection

1. Le droit d'interdire l'extraction prévu à l'article 10 couvre une période qui commence à la création de la base (57) [ou à la date visée à l'article 16 paragraphe 1 si celle-ci est postérieure]. (58)

1 bis. Dans le cas d'une base de données qui a été rendue accessible au public, la durée de la protection par ce droit est de [15] [50] (59) ans à compter du 1er janvier de l'année qui suit la date à laquelle la base a été rendue accessible au public pour la première fois [ou la date visée à l'article 16 paragraphe 1 si celle-ci est postérieure] (60).

(57) Les délégations allemande, belge, espagnole, française, grecque, italienne, néerlandaise et portugaise doutent qu'il soit nécessaire que cette directive prévoie la protection par le droit sui generis des bases de données avant qu'elles ne soient rendues accessibles au public ; la délégation du Royaume-Uni est en faveur d'une telle disposition. Pour le cas où une telle disposition serait incluse dans la directive, les délégations allemande, danoise, espagnole, française, grecque, italienne et portugaise ainsi que la délégation du Royaume-Uni doutent que la durée de la protection par ce droit des bases de données qui n'ont pas été rendues accessibles au public doive être indéfinie ; la délégation du Royaume-Uni a préconisé une durée de protection de 50 ans à compter de la création de telles bases de données.

(58) Les délégations allemande, danoise, française, irlandaise, italienne, néerlandaise et portugaise ainsi que la délégation du Royaume-Uni estiment que la question de savoir si le droit sui generis doit s'appliquer à titre rétroactif aux bases de données existant à la date visée à l'article 16 paragraphe 1 devrait être traitée à l'article 15 bis.

(59) Les délégations belge, espagnole, française, italienne, néerlandaise et portugaise ainsi que la Commission sont pour une durée de protection de 15 ans. La délégation irlandaise et la délégation du Royaume-Uni sont pour une durée de 50 ans. Les délégations allemande, danoise et grecque sont disposées à envisager une durée de 15 à 50 ans.

(60) Cf. note 58 ci-dessus.
Article 12 suite

1 ter. Toute modification substantielle du contenu d'une base de données qui a été rendue accessible au public [, notamment toute modification substantielle] (61) résultant de l'accumulation successive [d'ajouts] (62) de suppressions ou de changements qui ferait considérer que la base de données est rendue accessible au public en tant que nouvelle base de données permet d'attribuer à cette base une durée de protection propre. (63)

[Première variante]

2. Dans le cas d'une base de données qui a été rendue accessible au public et dont le contenu n'est pas supprimé ou changé, mais à laquelle sont apportés des ajouts substantiels successifs, la durée de protection maximale des éléments originaux figurant dans la base de données lorsqu'elle a été rendue accessible au public pour la première fois est de [50 ans.] (64)

(61) La délégation danoise et la délégation du Royaume-Uni estiment que ce paragraphe devrait être d'application non seulement lorsqu'une modification substantielle résulte de l'accumulation successive de modifications mineures, mais aussi lorsqu'un changement massif est apporté en une fois au contenu d'une base de données.

(62) Les délégations irlandaise et italienne estiment que les ajouts devraient être inclus dans ce paragraphe. La Commission est opposée à leur inclusion.

(63) Réserve d'examen de la délégation néerlandaise sur ce paragraphe.

(64) Réserve d'examen des délégations allemande, danoise, grecque, irlandaise, italienne et néerlandaise ainsi que de la délégation du Royaume-Uni sur cette variante. Plusieurs de ces délégations estiment que les ajouts ne devraient pas suivre un régime différent de celui des suppressions et changements.
Article 12 (suite)

[Deuxième variante]

2. Dans les cas où le paragraphe 1 ter est d'application, la durée de protection des éléments contenus dans la première base de données lorsqu'elle a été rendue accessible au public pour la première fois et qui sont également contenus dans la nouvelle base de données est au plus de [50] ans à compter du 1er janvier qui suit la date à laquelle la base a été rendue accessible au public pour la première fois.\(^{(65)}\)

[2 bis. Par dérogation aux dispositions des paragraphes 1 bis, 1 ter et 2, dans le cas d'une base de données qui est rendue accessible au public et dont le contenu est constamment mis à jour, [si le fabricant de la base de données le souhaite]\(^{(66)}\) la durée de protection du droit prévu à l'article 10 est, pour chacune des données, [15] [50] ans à compter du 1er janvier de l'année qui suit la date d'insertion desdites données.]\(^{(67)}\)


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\(^{(65)}\) Cette variante, qui n'a pas encore été examinée par le groupe, vise à répondre aux préoccupations des délégations (B, IRL, NL, P, UK) qui estiment que le paragraphe 1 ter ne devrait pas donner lieu à une protection indéfinie des éléments figurant dans des bases de données successives.

\(^{(66)}\) La délégation irlandaise est pour l'inclusion de ces termes. La délégation néerlandaise a formulé une réserve d'examen sur leur inclusion.

\(^{(67)}\) Les délégations espagnole et irlandaise sont en faveur du principe de ce paragraphe. Les délégations danoise et italienne ainsi que la délégation du Royaume-Uni ont formulé des réserves sur ce principe, estimant que le droit sui generis devrait protéger le contenu de la base de données dans son ensemble et non pas les données prises individuellement. La délégation belge a émis une réserve d'examen.
Article 13
Bénéficiaires du droit d'interdire l'extraction
du contenu d'une base de données

1. Le droit d'interdire l'extraction prévu à l'article 10 s'applique aux bases de données dont les fabricants sont ressortissants d'un Etat membre ou qui ont leur résidence habituelle sur le territoire de la Communauté.

2. Lorsque les bases de données sont créées dans les conditions prévues à l'article 3 paragraphe 4, le paragraphe 1 s'applique également aux sociétés et aux entreprises constituées en conformité avec la législation d'un Etat membre et ayant leur siège statutaire, leur administration centrale ou leur principal établissement à l'intérieur de la Communauté ; néanmoins si une telle société ou entreprise n'a que son siège statutaire sur le territoire de la Communauté, ses opérations doivent avoir un lien réel et continu avec l'économie d'un Etat membre.]

3. Les accords étendant le droit prévu à l'article 10 aux bases de données créées dans des pays tiers et non couvertes par les dispositions des paragraphes 1 et 2 sont conclus par le Conseil sur proposition de la Commission. La durée de protection accordée à des bases de données en vertu de cette procédure ne dépasse pas celle prévue à l'article 12.

(68) La plupart des délégations n'ont pas encore arrêté de position définitive sur la question de savoir si le droit sui generis devait être soumis au principe de réciprocité ou au traitement national. Provisoirement du moins, les délégations danoise, espagnole, française, grecque, irlandaise et néerlandaise sont pour le principe de réciprocité. Le groupe n'a pas encore achevé le premier examen de cet article tel qu'il figure dans le doc. 4256/94.
CHAPITRE IV : DISPOSITIONS COMMUNES (69)

Article 14
Sanctions

Les Etats membres prévoient des sanctions appropriées contre la violation des droits prévus par la présente directive.

Article 15
Maintien d'autres dispositions

1. Les dispositions de la présente directive n'affectent pas le droit d'auteur, les droits voisins ou d'autres droits subsistants dans les données, les oeuvres ou les autres matières incorporées dans une base de données, ni les autres dispositions légales concernant notamment les brevets, les marques, les dessins et modèles, la concurrence déloyale, le secret des affaires, la confidentialité, la protection des données personnelles et le respect de la vie privée ou le droit des contrats applicable à la base de données et à son contenu.

2. (Repris à l'article 15 bis).

Article 15 bis
Application dans le temps

La protection prévue par les dispositions de la présente directive en ce qui concerne le droit d'auteur et le droit d'interdire l'extraction du contenu s'applique également aux bases de données créées avant la [date de publication de la directive] [date visée à l'article 16 paragraphe 1] et qui remplissent à cette date les exigences qui y sont énoncées en ce qui concerne la protection des bases de données. Cette protection est sans préjudice des actes conclus et des droits acquis avant cette date.

(69) Le groupe n'a pas encore examiné ce chapitre tel qu'il figure dans le doc. 4256/94.
Article 16
Dispositions finales

1. Les Etats membres mettent en vigueur les dispositions législatives, réglementaires et administratives nécessaires pour se conformer à la présente directive avant le [1er janvier 1995].

Lorsque les Etats membres adoptent ces dispositions, celles-ci contiennent une référence à la présente directive ou sont accompagnées d'une telle référence lors de leur publication officielle. Les modalités de cette référence sont arrêtées par les Etats membres.

2. Les Etats membres communiquent à la Commission le texte des dispositions de droit interne qu'ils adoptent dans le domaine régi par la présente directive.

3. Au plus tard à la fin de la cinquième année suivant la transposition de la présente directive, et ultérieurement tous les deux ans, la Commission transmet au Parlement européen, au Conseil et au Comité économique et social un rapport sur l'application de la présente directive. Elle présente, le cas échéant, des propositions visant à adapter la directive à l'évolution du secteur des bases de données.

Article 17

Les Etats membres sont destinataires de la présente directive.
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 and national law.6

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. ]\(^10\), \(^11\).

\(^7\) 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.]\(^{12}\)

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.

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 copyright

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 ] 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.

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Article 5 (continued)

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.\(^\text{24}\) \(^\text{25}\)

**Variant 2\(^\text{26}\)**

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.

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

\(^{25}\) 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.

\(^{26}\) 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]\(^3\) which is eligible for copyright protection in accordance with Article 2(3)\(^3\) 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,\(^4\)

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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\(^3\) 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.

\(^4\) Sub-variant of Variant 3 preferred by the Belgian, Danish and Spanish delegations. The United Kingdom delegation is opposed to this sub-variant.

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

\(^4\) 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, 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, with the exception of the right to control further rental of the database or a copy thereof.

e) any communication, display or performance of the database to the public.

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).

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.

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.

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

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. 40

2. In the absence of any contractual arrangements in respect of use of a database, 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. 42

39 The French delegation considers that the title should read: "Exceptions to the restricted acts".

40 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.

41 The United Kingdom delegation would prefer the wording: "In the absence of any contractual arrangements to the contrary, ".

42 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 6.46

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


46 Reservations by the Netherlands and United Kingdom delegations on this paragraph.

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 to the selection or arrangement 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.  

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.

3. Deleted.

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48 The Netherlands delegation considers that "substantial change" should be replaced by "original change".

49 Reservation by the Irish and United Kingdom delegations on the reference to selection or arrangement.

50 The Belgian, French, Irish and United Kingdom delegations doubt the need for paragraphs 2 and 2a. Reservation by the Netherlands delegation on these paragraphs.

51 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.

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

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.

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".

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

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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 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 purposes that are not for reasons such as economy of time, effort or financial investment shall be licensed on reasoned request on fair and non-discriminatory terms.

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.

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Article 11 (continued)

[Variant 2\(^61\)]

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:

\(^61\) 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.
Article 11 continued

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]\(^{65}\) parts of the contents of a database for commercial [research or educational]\(^{66}\) 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]\(^{67}\) [provided that the reproduction of those parts, evaluated qualitatively and quantitatively in

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\(^{65}\) 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.
Article 11 (continued)

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.  

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] parts of the contents of that database for personal private use [or for research or educational purposes] 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] [provided that the reproduction of those parts, evaluated quantitatively and qualitatively in relation to the database from

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68 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.

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

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.

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.\(^\text{72, 73}\)

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.\(^\text{74}\)


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 \([\text{against payment or free of charge}]\) \([\text{and unless the whole database may be interrogated}]\).\(^\text{75}\)

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\(^{72}\) See footnote 68 above.

\(^{73}\) 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.

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

\(^{75}\) Scrutiny reservation by several delegations on this paragraph.

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Article 12
Term of Protection

1. The right provided for in Article 10 shall run from the date of creation of the database.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].77

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.

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 ] 78 resulting from the successive accumulation of [ additions, ] 79 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. 80

[ 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

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 ] .

[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 ] 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. ]

3. Deleted.

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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.

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

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.

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Article 13

Beneficiaries of Protection under the Sui Generis Right

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.

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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\(^{15}\) 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.

\(^{16}\) 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;

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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 91

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.
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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95 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.
SUMMARY OF PROCEEDINGS

of: Working Party on Intellectual Property (Copyright)
on: 18 and 19 July 1994

No. prev. doc.: 7617/94 PI 37 CULTURE 39
No. Cion prop.: 9219/93 PI 89 CULTURE 113

1. The Working Party examined Articles 12, 14 and 15a on the basis of the third consolidated text set out in 7617/94 PI 37 CULTURE 39, then gave consideration to a number of issues which the Chairman suggested should be given particular attention at forthcoming meetings.(1)

2. Redrafts of Articles 12, 14 and 15a as well as of the accompanying footnotes, which take account of the Working Party's examination, are set out in Annex II.


3.1. The Chairman invited the Working Party to give particular attention to the question whether the Directive should be limited to electronic databases, as proposed by the Commission, or extended to cover non-electronic databases.

(1) The main observations of the representatives of the acceding countries are set out in Annex I.
The Commission representative indicated that, although her Institution's proposal was limited to electronic databases, the Commission services were prepared to show flexibility in this respect, since the database industry would prefer a single set of rules for databases in both electronic and non-electronic forms, and since the provisions of the TRIPS Agreement did not make any distinction of this nature; this flexibility concerned both the copyright part of the Directive and the sui generis part.

3.2. The Chairman asked the Working Party to consider whether the concept of "databases" should be used, as proposed by the Commission, or the concept of "collections" or "compilations" as used respectively in Article 2(5) of the Berne Convention and Article 10(2) of the TRIPS Agreement.

The Commission representative pointed out that her Institution's proposal was deliberately limited by the definition of "database" in Article 1 to those collections of data, works or other materials which were "arranged, stored and accessed by electronic means". For instance, a number of musical works on a phonogram might be considered to constitute a "collection", but would not fall under the concept of "database" as defined in the proposal for a Directive.

The Belgian and Spanish delegations indicated a preference for limiting the Directive to databases.

The United Kingdom delegation suggested that if the Directive were to be limited to databases, consideration should be given to indicating more clearly what was meant by "random access" to the contents of database.
4. **Simplification of the Directive**

4.1. The Chairman invited the Working Party to consider the possibility of dispensing with a number of provisions, the need for which had been questioned by some delegations, and which had given rise to difficulties. Specific mention was made of Articles 3, 4, 5, 7 and 8.

4.2. The Commission representative considered that Articles 3 and 4 were necessary for the coherence of the Directive as a whole.

The Portuguese delegation spoke in favour of keeping Article 3. (2)

4.3. The Chairman invited the Working Party to consider whether Article 5 was necessary in the light of Article 10 of the Berne Convention.

The Commission representative considered that it would not be sufficient to rely upon Article 10 of the Berne Convention, as certain provisions of that Article were interpreted in different ways by different Member States.

The Portuguese delegation spoke in favour of keeping Article 5.

The German and United Kingdom delegations reiterated their reservations in respect of this Article.

4.4. The Commission representative considered that Article 7 was necessary to ensure that the lawful user of a database was not subject to abusive practices by the author of the database, without the freedom to contract of the parties being limited, while Article 8 was necessary to ensure that the rights of the author of a database could not be used to impose restrictions on the use of a work protected by copyright which was

(2) The Portuguese delegation also lifted its scrutiny reservation on Article 3(1) (footnote 14 in 7617/94).
incorporated in the database where such restrictions could not be imposed on the use of that work outside the databases.

The German delegation was prepared to reconsider the need for these Articles in the light of the explanations given by the Commission representative.

The Irish delegation reiterated its doubts as to the need for these Articles.

5. The sui generis right

5.1. The Chairman invited the Working Party to give particular consideration to the question of non-voluntary licences in respect of the sui generis right and to the nature and the function of this right.

5.2. The Commission representative pointed out that the possible alternatives to the non-voluntary licensing provisions would be more detailed provisions concerning the function of the sui generis right, or an explicit reference to Articles 85 and 86 of the EEC Treaty.

The Spanish delegation, while accepting the need for non-voluntary licences in the context of Article 11(2), would prefer a reference to Article 86 of the EC Treaty or to the protection of the investment of the maker of the database in the context of Article 11(1).

The Danish delegation, while maintaining its reservation in respect of non-voluntary licensing, considered that it would be less difficult for it accept such licences if it were to be made clear that the object of protection by the sui generis right was the database as such, rather than the individual items of the contents of the database.
5.3. Delegations were invited to submit written observations concerning the nature and the function of the sui generis right.

The Commission representative, pointing out that under the present text the sui generis right would not apply to the contents of a database to the extent that these were works protected by copyright or subject matter protected by rights related to copyright (Article 10(2), third sentence), asked delegations to consider whether they would be in favour of extending the sui generis right to such works or subject matter. The initial reaction of the Danish and United Kingdom delegations to this question was favourable.
Main observations of the representatives of the acceding countries

Scope of the Directive

The representative of Finland indicated a preference for a single set of rules for all forms of databases, since many databases existed in both electronic and non-electronic forms.

Simplification of the Directive

The representatives of Austria and Finland joined those delegations which had reservations on Article 3(4) (footnote 17 in 7617/94).

With regard to Article 5, the representative of Finland considered that if the scope of the Directive were to be limited to electronic databases, harmonization of the way in which Article 10 of the Berne Convention was to be applied in respect of electronic databases, without corresponding harmonization in respect of the same databases in non-electronic form, could give rise to problems.
Articles 12, 14 and 15a

Term of Protection

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

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 ].\(^{(77)}\)

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\(^{(76)}\) 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 and Netherlands delegations also have doubts in this respect. The Irish delegation has an open mind 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, as is the French delegation to the extent that this right is not linked to Article 39 of the TRIPS Agreement. 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.

\(^{(77)}\) 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, supported by the Irish 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, evaluated quantitatively or qualitatively, to the contents of a database which has been made available to the public or 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 or put on the market as a new database, shall qualify that database for its own term of protection.\(^{(69)}\)

2. Where paragraph 1b applies, the inclusion of particular data, works or other materials in successive databases shall not result in those data, works or materials being protected by the right provided for in Article 10 for more than 15 years.\(^{(69)}\)

[2a. By way of derogation from paragraphs 1a, 1b and 2, in the case of a database which is made available to the public or put on the market and the contents of which are constantly updated, if the maker of the database so chooses 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.\(^{(69)}\)

3. Deleted.

\(^{(78)}\) The Netherlands delegation considers that this paragraph could be simplified.  
\(^{(79)}\) The German and Italian delegations have doubts on the need for this paragraph. The representative of Finland shares these doubts.  
\(^{(80)}\) The Spanish, Irish and Netherlands delegations are in favour of the principle of this paragraph. The Belgian, Danish, German, French, Italian, Portuguese and United Kingdom delegations have reservations on this principle, as they consider that it implies that the sui generis right protects individual data items rather than the contents of the database as a whole, and as some of these delegations consider that there would be insufficient legal certainty for third parties as to whether the term of protection of a particular database was to be calculated under this provision or under the provisions of paragraphs 1a, 1b and 2. The representatives of Austria, Finland and Sweden share these reservations.
CHAPTER IV: COMMON PROVISIONS

Article 14
Remedies

Member States shall provide appropriate remedies in respect of infringements of the rights provided for in this Directive.\(^{(87)}\)

\(^{(87)}\) The Belgian, German, Spanish, Italian, Netherlands and Portuguese delegations consider that this provision is sufficient. The French and United Kingdom delegations and the Commission representative have expressed interest in adding to this provision a number of elements based on parts of Article 7 of Council Directive 91/250/EEC (OJ No. L 122, 17.5.1991, p. 42).
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 referred to in Article 16(1) 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 or 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.

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(91) Reservation by the Commission on this date; it proposes the date of publication of the Directive.
(92) This sentence may have to be reviewed if the scope of the Directive is extended to cover non-electronic databases.
(93) The Spanish, Irish and United Kingdom delegations and the Commission are in favour of the principle of this paragraph. The other delegations have a scrutiny reservation on this principle, with the French delegation provisionally expressing a favourable position. The Portuguese delegation put forward the possibility of replacing 15 years by 10 years in this paragraph.
NOTE

from: Belgian delegation
dated: 25 August 1994
to: Working Party on Intellectual Property (Copyright)

No. prev. doc.: 8858/94 PI 55 CULTURE 49
No. Cion prop.: 9219/93 PI 89 CULTURE 113

Subject: Amended proposal for a Directive on the legal protection of databases

– Comments on the nature and function of the sui generis right
As shown by the recitals in the proposal for a Directive, the function of the sui generis right is to ensure a return on the investment made by the makers of databases (recitals Nos 6/7/9, and 12, Proposal for a Council Directive, COM (92) 24 final-SYN 393).

However, the definition of the object of the sui generis right and the legal description of the utilization of the contents of databases which is permitted without the authorization of the holder of the right appear to go beyond the function of the sui generis right to the detriment of the free movement of information.

1. Definition of the object of the sui generis right

   Article 10 of the amended proposal for a Directive gives the makers of databases the right to prevent acts of extraction and/or re-utilization of the contents of the database, in whole or in part.

   The addition of the expression "in whole or in part" in Article 10 extends the object of the sui generis right to the smallest part of the contents of the database. The holder of the right could therefore negotiate the extraction and/or re-utilization of each item of information. Such a prerogative seems to be out of all proportion to the objective of the sui generis right, which is to ensure a return on the investment made by the makers of databases.

   On the one hand, Article 11(5) and (6), which describes ways in which the contents of databases may be used without the authorization of the holder of the sui generis right, will not prevent that right from being extended to each item of information contained in the database.

   On the other hand, intellectual property rights are formulated so as not to confer a monopoly of exploitation on the information itself.

   The laws on unfair competition penalize conduct which does not comply with honest commercial practice, particularly acts of parasitic competition. Such acts consist in taking over elements of goods marketed by others which have required significant investment in order to avoid making such investments and without necessarily creating confusion with those goods (M. BUYDENS, "La sanction de la piraterie de produits par le droit de la concurrence déloyale", (Penalizing product piracy by the laws on unfair competition) J.T., 1993, No 5663). The theory of parasitic competition is not therefore an obstacle to the free movement of information, since it does not apply to taking over elements of other people's goods as long as there is no prejudice to the investment made by the maker of the goods.
Patent law also ensures that the free movement of information is not adversely affected. On the one hand, exclusive rights protect only inventions, i.e. designs resulting from inventive activity which may be exploited industrially. On the other hand, the counterpart of granting the monopoly on exploitation conferred by the patent is the publication of the description of the invention in such a manner that it can be studied by a specialist in that field.

As regards copyright, the conditions in respect of originality and form ensure the free movement of information.

The definition of sui generis protection of databases should also ensure that no monopoly on the exploitation of the information as such is granted.

For the reasons set out above, Belgium does not agree to the present wording of the first sentence in Article 10. It should be amended so as to give the makers of databases the right to prevent extraction and/or re-utilization of all or a substantial part of the contents of the database. This definition of the object of the sui generis right corresponds, moreover, to the one which appeared in the original proposal for a Directive (Article 2(5), COM (92) final-SYN 393).

2. Legal description of the utilization of the contents of databases permitted without the authorization of the holder of the sui generis right

Article 11(5) and (6) provides, subject to compliance with several conditions, that acts of extraction and/or re-utilization of an insubstantial part of the contents of a database are not subject to authorization by the holder of the sui generis right.

The question which arises is whether such acts of utilization are authorized on the grounds that they constitute exceptions to the sui generis right or, conversely, on the grounds that they lie outside the object of the right.

If they are exceptions to the sui generis right, the acts of utilization referred to in Article 11(5) and (6) will to all intents and purposes be subject to that right, which could be used as the legal basis for contractual clauses excluding such utilization by re-establishing the sui generis right over all or part of the contents.

If they are acts of utilization which are outside the object of the sui generis right, that right may not be extended contractually in order to prevent utilization of a part of the contents which, because of its subsidiary nature, is not likely to be prejudicial to the
interests of the makers of data bases.

The heading of Article 11 of the amended proposal for a Directive describes the acts of utilization referred to in Article 11(5) and (6) as "Exceptions to the Sui Generis Right". For the reasons set out above, Belgium cannot agree to this description. The heading of Article 11 should be amended in order to state that acts of utilization of an insubstantial part of the contents are permitted without the authorization of the maker of the database since they lie outside the object of the sui generis right.
SUMMARY OF PROCEEDINGS

of: Working Party on Intellectual Property (copyright)
on: 16 September 1994

No. prev. doc.: 8987/94 PI 58 CULTURE 50
No. Cion prop.: 9219/93 PI 89 CULTURE 113


1. The Working Party discussed questions 3 to 8 of the questionnaire contained in the invitation to the meeting, on the basis of the third consolidated text of the proposal.

   Question 3: Can Article 3(4) be dropped and national copyright rules continue to apply to the employer/employee relationship?

2. The Spanish and Italian delegations were in favour of keeping this provision. They pointed out that this provision corresponded to Article 2(3) of Directive 91/250/EEC, and considered that the absence of such a provision in this Directive would give rise to doubt as to the rule to be applied in the absence of contractual provisions regulating the employer/employee relationship.

(1) The Greek delegation was not represented at this meeting.
(2) The main observations of the representatives of the acceding countries are set out in the Annex.
(3) OJ No L 122, 17.5.1991, p. 42.
3. **The Danish, German, Irish, Luxembourg, Portuguese and United Kingdom delegations** were in favour of deleting this provision. The following reasons were put forward:

- problems had been encountered in implementing the corresponding provision of Directive 91/250/EEC, and it was preferable to avoid similar problems in the context of the present Directive;

- this provision interfered with well-established practices in the Member States;

- since there was no problem relating to the operation of the internal market which required harmonization of the rules in this respect, this matter was best left to national law;

- in the absence of contractual provisions in this respect, the presumption should be in favour of the employee, not the employer;

- if the scope of the Directive were to be extended to cover non-electronic databases, it would be even more difficult for these Member States to accept this provision;

- if the scope of the Directive were to remain restricted to electronic databases, application of this provision to a database in electronic form but not to the same database in paper form would give rise to considerable difficulties.

4. **The Belgian delegation** withdrew its reservation on this provision, without prejudice to the eventual solution to be found.

5. **The Netherlands delegation** was able to accept either retention or deletion of this provision.

6. **The French delegation** reserved its position at this stage.
7. The Danish, German, Italian, Netherlands, Portuguese and United Kingdom delegations were in favour of deletion of Article 5 for the following reasons:

- since this Article did not concern the legal protection of databases, it was out of place in this Directive;
- since it repeated the contents of Article 10 of the Berne Convention, it was unnecessary;
- to the extent that it attempted to provide harmonization beyond the contents of Article 10 of the Berne Convention it was dangerous.

8. A suggestion by the Italian delegation that the recitals to the Directive contain a reminder of the principles of Article 10 of the Berne Convention was welcomed favourably by the German and Portuguese delegations.

9. The French delegation, while agreeing that Article 5 was unnecessary to the extent that it repeated the contents of Article 10 of the Berne Convention, considered that an exception concerning brief quotations was worth further examination, provided that it did not jeopardize copyright protection and did not conflict with the provisions of the Berne Convention.

Other delegations expressed doubts as to the use of the term "brief quotations", which did not appear in the Berne Convention.

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exceptions to that right unless they were specifically provided for in the Directive. In the absence of any exceptions, a lawful user of the database would not be able to use the database without infringing the restricted acts set out in Article 6. It was therefore necessary for Article 7 to provide for exceptions to the exclusive right contained in Article 6.

11. Apart from the Spanish delegation, which indicated an open position, all delegations considered that Article 7(1) was unnecessary and should be deleted.

12. The German and United Kingdom delegations expressed a preference for the deletion of Article 7(2), as they were not aware that any problems had arisen in the Member States in cases where there had been no contractual arrangements in respect of the use of a database. They considered that if Article 7(2) were to be retained, its wording would have to be reconsidered from a number of aspects, including the drafting suggestion in footnote 41 in 7617/94.

13. The Belgian, Spanish, French, Irish and Italian delegations considered that Article 7(2) was a useful provision, but needed clarification. In particular, several of these delegations considered that the term "use of the database" should be clarified, possibly being replaced by "interrogation of the database".

14. The Belgian and German delegations considered that it should be made clear that the exception provided for in Article 7(2) was not the only possible exception to the exclusive rights of the author of the database.

15. The Netherlands and United Kingdom delegations pointed out that Article 7(2) would have to be reconsidered if the scope of the Directive were to be extended to cover non-electronic databases.

16. The Danish delegation considered that Article 7(2) could be subsumed into Article 8.
17. **For several delegations**, their position with regard to Article 7(3) was dependent upon the solution finally adopted for Article 7(2). At this stage, the Danish delegation was in favour of its deletion, while the Belgian and Italian delegations considered it useful. The German and Netherlands delegations expressed doubts in respect of this provision, as they considered that it would be practically impossible to distinguish between the contents of a database and their selection or arrangement.

18. **All delegations** expressed a preference for the deletion of Article 8. The Commission services reserved their position in respect of this deletion.

**Question 7:** What should the object of protection of the sui generis right be (Article 10)?

19. There was general agreement that the purpose of the sui generis right was to protect the investment made in compiling a database.

20. The Commission services, supported by the French and Irish delegations, considered that the object of protection of the sui generis right should be the contents of the database in whole or in part, with the exceptions to this right including exceptions in respect of insubstantial parts of the contents.

The Belgian, Danish, German, Italian, Portuguese and United Kingdom delegations on the other hand supported the view expressed in the note from the Belgian delegation (8987/94 PI 58 CULTURE 50) that the object of protection of this right should be the contents of the database in whole or in substantial part, since they considered that it would be out of proportion to the purpose of the right to extend protection to each item of information.

(4) This question was discussed before question 6.
21. The Netherlands delegation considered that the object of protection of the sui generis right should be the contents of the database in whole or in essential part.

The Spanish delegation considered that it was unclear what was meant by a substantial part of the contents of a database.

The United Kingdom delegation considered that substantiality should be evaluated both quantitatively and qualitatively.

22. The Danish, German, Irish, Italian and Netherlands delegations considered that the protection conferred by the sui generis right should cover not only commercial use but any use, although the German delegation pointed out that distinctions should be made in the exceptions to the right between commercial use and other uses.

The French delegation on the other hand supported the third sentence of Article 10(2), and indicated that it would have to reserve its position if this sentence were not maintained.

23. The Netherlands delegation considered that it should be made clear that it was not intended that Article 10 be implemented by provisions of criminal law.
Question 6: Do delegations consider it necessary to introduce compulsory licences under the sui generis right or is the existing system laid down in Articles 85 and 86 of the EC Treaty sufficient?

24. The Belgian, Danish, German, Spanish, Irish and Netherlands delegations were not in favour of compulsory licences under the sui generis right. The Belgian, German and Spanish delegations considered that the system laid down in Articles 85 and 86 of the EC Treaty was sufficient and more appropriate. The Irish and Netherlands delegations were not in favour of attempting to codify in the Directive the case-law of the Court of Justice as it stood at a particular time. The Danish delegation drew attention to the position it had expressed at the previous meeting (8858/94 PI 55 CULTURE 49, point 5.2.) and pointed out that this position would be strengthened if the scope of the sui generis right were to be extended to cover works protected by copyright contained in a database (see point 22 above).

The French and Italian delegations and the Commission services were in favour of introducing compulsory licences under the sui generis right. The Commission services considered that these would provide a more rapid and less costly mechanism than the system laid down in Articles 85 and 86. They also pointed out that there was no case-law in respect of a sui generis right which did not yet exist, and that the case-law of the Court of Justice in respect of copyright law would not necessarily be relevant to this sui generis right.

The United Kingdom delegation reserved its position on the question of compulsory licences at this stage.

25. The French delegation considered that if compulsory licences were to be introduced under the sui generis right, public and private bodies which were the sole source of the information concerned should be treated in exactly the same way.
Question 8: How should the question of protection under the sui generis right be set up, including the transitional question?

26. The Danish, French, Netherlands and United Kingdom delegations considered that protection under the sui generis right should begin when the database was created.

The Spanish and Italian delegations considered that this protection should not begin until the database was made available to the public. The Italian delegation considered that if this protection were to begin when the database was created, there would have to be a system of registration for reasons of legal security.

The German and Irish delegations were prepared to consider either solution at this stage.

27. The German, Spanish and French delegations were in favour of a term of protection of 15 years. The Netherlands delegation was also in favour of this term, but in the event of a majority of delegations favouring a longer term, it would be able to go along with that majority.

The Danish delegation considered that the term of protection should expire 15 years from the creation of the database; for a database which was made available to the public it should expire 10 years from when the database was made available to the public, but no later than 15 years from creation.

The Irish delegation was in favour of a term of 50 years, considering that 15 years would be too short.

The United Kingdom delegation was in favour of a term of 50 years from the creation of the database, or 50 years from the publication of the database provided that publication took place within 50 years from creation.
28. The Spanish delegation was in favour of a system of date-stamping which could be used for purposes of calculating term of protection.

   The German delegation considered that date-stamping should not be used for purposes of calculating term of protection.

   The Netherlands delegation considered that if date-stamping were to be used for purposes of calculating the term of protection of data items, it would be unnecessary to provide for a term of protection for the contents of the database as a whole.

29. The Danish, German and Irish delegations considered that where there was a substantial change to the contents of a database which would result in the database being considered to be a new database, there should be a new term of protection.

   The French delegation considered that there should be a new period of protection where there was a substantial change to the contents of the database; it also considered that the term of protection could be renewed where it was ascertained that the contents of the database were still valid, subject to a maximum of 45 years of protection.

   The Italian delegation considered that the only time at which it should be possible to renew the term of protection of the sui generis right should be shortly before the expiry of the term or after a minimum number of years.

   The United Kingdom delegation was not in favour of any possibility of renewing protection, in view of the length of the term which it proposed.
The Commission services pointed out that the problem which needed to be solved was not whether or not the term of protection under the sui generis right could be renewed, but under what circumstances the contents of a database had been changed to the extent that it could be considered that a new database had been created which qualified for its own term of protection.

30. The Spanish, Italian and United Kingdom delegations considered that when the Directive entered into force or was transposed, existing databases should enjoy a full term of protection from that date under the sui generis right.

The Danish delegation considered on the other hand that such databases should enjoy only the remainder of the normal term from that date. The Netherlands delegation shared this view on the assumption that date-stamping would be used for the purpose of calculating the term of the sui generis right.

The German delegation reserved its position on this question.
Main observations of the representatives of the acceding countries

Question 3

The representatives of Norway, Finland and Sweden were in favour of deleting Article 3(4) for the same reasons as those put forward by other delegations (point 3).

Question 4

The representative of Finland was in favour of deleting Article 5 for the same reasons as those put forward by other delegations (point 7) and for the reasons he had put forward at the Working Party’s previous meeting (Annex I to 8858/94 PI 55 CULTURE 49).

Question 5

The representative of Finland considered that Article 7 could be subsumed into Article 8. He was not aware of any problems which made necessary a provision such as Article 7(2). If that provision were to be retained, it should be made clear that it did not constitute the only possible exception to the rights of the author of the database.

The representative of Sweden considered that Article 7(1) and (3) were unnecessary and should be deleted. He reserved his position in respect of Article 7(2).

Question 7

The representative of Finland agreed with the other delegations as to the purpose of the sui generis right (point 19). He also considered that the protection of information was alien to intellectual property law.
Question 6

The representative of Sweden was not in favour of compulsory licences under the sui generis right, considering that the system laid down in Articles 85 and 86 of the EC Treaty was sufficient.

The representative of Finland, while indicating that the final position of his delegation would depend on the eventual scope of the sui generis right and on the exceptions to it, expressed a certain sympathy for introducing compulsory licensing provisions.

Question 8

The representative of Sweden agreed with the positions taken by the Danish delegation on the various aspects of this question.
1. The Working Party(1) discussed the questions whether the scope of the Directive should be extended to cover non-electronic databases, and whether the scope of the Directive should be extended to collections or should be restricted by means of the definition of database. It then examined the third consolidated text (7617/94 PI 37 CULTURE 39), taking into consideration the replies to these questions and to the questions considered at its previous meeting (9523/94 PI 67 CULTURE 54)(2).

Question 1: Should the scope of the Directive be extended to cover non-electronic databases?

2. The Belgian, Danish, German, Spanish, Irish, Italian, Netherlands and United Kingdom delegations were in favour of extending the scope of the Directive to cover non-electronic databases.

(1) The Greek delegation was not represented at this meeting.
(2) The main observations of the representatives of the acceding countries are set out in Annex I.
databases. The following reasons were put forward for such an extension:

(a) this would be in line with international commitments, in particular under Article 10(2) of the Agreement on trade-related aspects of intellectual property rights (TRIPS Agreement);

(b) a régime of protection which was specific to one particular technology (electronic databases) might well prove to be inappropriate as technology developed;

(c) the application of a régime of protection to electronic databases which was different from the régime applied to non-electronic databases could give rise to difficulties, since the same database could be produced in electronic and non-electronic versions, and could be converted easily from one form to the other.

3. The French delegation was opposed to the extension of the scope of the Directive to cover non-electronic databases. It gave the following reasons:

(a) there was a clear need to ensure protection for electronic databases, but a similar need in respect of non-electronic databases had not been proved;

(b) extension of the directive to cover non-electronic databases would delay unduly the adoption of the Directive.

4. Of those delegations which were in favour of extending the scope of the Directive to cover non-electronic databases,

- the Danish, Irish, Netherlands and United Kingdom delegations considered that this extension should apply
to both the copyright chapter and the sui generis chapter of the Directive;

- the German, Spanish and Italian delegations were not convinced that this extension should apply to the sui generis chapter;

- the Belgian delegation considered that this extension should not apply to the sui generis chapter.

The Irish and United Kingdom delegations pointed out that if the copyright chapter but not the sui generis chapter of the Directive were to be extended to non-electronic databases, many non-electronic databases which were at present protected in their countries would be deprived of protection; they therefore requested that provision be made for both chapters to be extended to cover non-electronic databases in their countries at least, even if there were to be no corresponding obligation in respect of the other Member States.

Question 2: Should the scope of the Directive be extended to collections or should it be restricted by means of the definition of database?

5. The Danish, German, Spanish and United Kingdom delegations considered that extension of the scope of the Directive to cover non-electronic databases would imply extension of the scope of the Directive to collections, on the understanding that the term "collections", used in Article 2(5) of the Berne Convention for the Protection of Literary and Artistic Works, was to be considered synonymous with the term "compilations", used in Article 10(2) of the TRIPS Agreement.

The Belgian, Italian and Netherlands delegations were not convinced that the scope of the Directive should be extended
to all collections, the Italian delegation preferring it to be limited to databases.

The French delegation, which was opposed to the extension of the scope of the Directive to non-electronic databases, was also opposed to its extension to collections.

6. Several delegations considered that if the scope of both chapters were to be extended to collections, consideration should be given to some limitation of the categories of collections to which the sui generis chapter should apply.

7. In the light of the discussion on questions 1 and 2, it was decided to continue work on the Directive on the working hypothesis that its scope would be extended to collections.

The Danish delegation expressed doubts concerning the need for the copyright chapter of the Directive on the basis of this working hypothesis.

The Commission representative drew attention to the desirability of Community rules harmonizing the copyright protection of collections beyond the minimum rules of the Berne Convention and the TRIPS Agreement.

Article 1

8. This Article was discussed after Article 2. In the light of the working hypothesis referred to in point 7 above, and in the light of the discussion of Article 2, the Working Party agreed provisionally that no definition of "collections" was necessary in Article 1, although a definition of "collections" for the purpose of sui generis protection might be necessary in the sui generis chapter.
Article 2

9. The Presidency suggested the following text which would combine paragraphs 1 and 3 of Article 2 of 7617/94 in a new paragraph 1, paragraph 2 being deleted and the contents of paragraph 3a being transferred to a recital:

"1. In accordance with the provisions of this Directive, collections of works, data or other materials which by reason of the selection or arrangement of their contents constitute intellectual creations [constitute the author's own intellectual creation] shall be protected by copyright as such. No other criteria shall be applied to determine their eligibility for this protection."

10. After discussion, it was agreed to redraft this paragraph as follows, subject to the reservations set out below:

"1. In accordance with the provisions of this Directive, collections in any form of works, data or other materials which by reason of the selection or arrangement of their contents constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for this protection."

11. The Belgian and French delegations expressed reservations and the Italian and Portuguese delegations expressed scrutiny reservations on this text.

12. The United Kingdom delegation expressed a reservation and the Spanish delegation expressed a scrutiny reservation on the words "the author's own intellectual creation", which depart from the wording of the TRIPS Agreement but correspond to the wording of Article 1(3) of Directive 91/250/EEC(3) and Article 6 of Directive 93/98/EEC(4).

13. The Irish and United Kingdom delegations expressed a scrutiny reservation on the second sentence pending the outcome of discussions on the sui generis right.

14. The Working Party agreed that "database" should be replaced by "collection" in Article 2(4) of 7617/94, subject to a reservation by the French delegation and a scrutiny reservation by the Italian delegation.

**Article 3**

15. The German, Netherlands and United Kingdom delegations, while not being convinced of the need for Article 3(1) and (3), were prepared to accept these paragraphs if the majority of delegations were in favour of keeping them. The French delegation continued to consider them unnecessary.

16. The Italian delegation was prepared to support the suggestion by the Portuguese delegation that the terms "to have created the database" in paragraph 2 be replaced by the terms "to be the rightholder".

17. With regard to Article 3(4), it was noted that only the Netherlands and the United Kingdom had presumptions in their national law corresponding to that contained in this provision.

The Spanish, Italian and United Kingdom delegations were opposed to the deletion of this provision, the Belgian and Netherlands delegations were prepared to be flexible in this respect, and all the other delegations were in favour of its deletion.

**Article 4**

18. All Member States were in favour of deleting Article 4.
The Commission representative entered a reservation on this deletion.

**Article 5**

19. The French delegation stated that it was prepared to follow the majority position in favour of deletion of this Article.

The Commission representative entered a reservation on this deletion.

**Article 6**

20. Only the Netherlands delegation was in favour of opening this Article with the words "Notwithstanding any exclusive rights in the contents of the collection,"

21. The majority of delegations and the Commission representative were in favour of the introductory wording of this Article reading as follows (variant 2 of 7617/94):

"The author of a collection shall have, in respect of the copyrightable expression of the collection, the exclusive right within the meaning of Article 2(1) to do or to authorize:"

22. The Spanish delegation suggested the alternative wording:

"The author of a collection within the meaning of Article 2(1) shall have the exclusive right to do or to authorize:"

23. The Netherlands delegation expressed a reservation with regard to the reproduction right in subparagraph (a) to the extent that this right was applicable to the copyrightable expression of the collection but not to the contents of the collection, since it considered that it would be difficult to
distinguish between infringement of the selection or arrangement of a collection and infringement of its contents.

24. The Italian and United Kingdom delegations considered that "in whole or in part" in subparagraph (a) should read: "in whole or in substantial part".

25. The German delegation expressed doubts with regard to the possibility of reproducing part of the expression of a collection.

26. Several delegations considered that subparagraph (c) was superfluous. However, the Spanish and United Kingdom delegations were opposed to its deletion.

27. The Commission services put forward for consideration a non-paper suggesting new wording for subparagraph (d). This new wording is set out in Annex II. All delegations entered scrutiny reservations on this non-paper.

28. All delegations expressed considerable doubts as to the inclusion of on-line delivery or delivery in immaterial form under the distribution right. Most delegations would have preferred it to be left to Member States to decide under which right (reproduction, distribution or communication to the public) delivery in immaterial form could be included; the German delegation suggested that a recital be prepared to that effect.

The United Kingdom delegation considered that it was inappropriate to attempt a fundamental reinterpretation of the distribution right in such a small area of copyright, and drew attention to the danger of a contrario interpretation of previous Community directives in the copyright field. The Danish delegation felt that such an attempt should be left to a horizontal Directive covering the whole field of copyright.
Several delegations considered that distribution of a physical copy and delivery in immaterial form should not necessarily be subject to the same rules in respect of exhaustion of rights.

The Commission representative considered that, although it had been stated less clearly, delivery in immaterial form had been included under the distribution right in Directive 91/250/EEC.

29. The Spanish and Italian delegations considered that it was unnecessary to refer to rental in the first sentence of subparagraph (d), since rental was regulated by Directive 92/100/EEC.

30. The Danish, Spanish, Italian and Portuguese delegations would also like it to be made clear that public lending was outside the scope of this Directive.

31. The Belgian, Danish, Irish, Italian, Netherlands and Portuguese delegations expressed considerable doubts with regard to the last sentence of the non-paper. The German delegation expressed a scrutiny reservation in this respect.

The French delegation on the other hand agreed with the contents of this sentence.

32. Following discussion of this non-paper, the Commission services put forward a revised version (Annex III).

33. While several delegations welcomed the removal of references to rental from this provision, reactions in other respects were much the same as to the first version.

Most delegations maintained scrutiny reservations on this version too, while the Portuguese delegation entered a
The question whether subparagraphs (d) and (e) should be merged and the question whether broadcasting should be mentioned specifically in subparagraph (e) were left in abeyance pending further discussion of subparagraph (d).

Article 7

Following discussions at its previous meeting (9523/94, points 10 to 17), the Working Party agreed to delete Article 7(1) and (3).

The Commission representative suggested that, in the light of the working hypothesis referred to in paragraph 7 above, "use of the database" in Article 7(2) should be replaced by "examination of the collection".

The French delegation considered that "interrogation" was the appropriate term with regard to electronic databases (see 9523/94, point 13), and that Article 7(2) was irrelevant with regard to collections other than electronic databases.

The German and United Kingdom delegations maintained their doubts as to the need for Article 7(2).

Several delegations and the Commission representative were in favour of keeping Article 7(2).

The Belgian, Danish, Italian, Netherlands and Portuguese delegations considered that Article 7(2) should be supplemented by a provision allowing Member States to maintain other exceptions to the restricted acts listed in Article 6 which were permissible under the Berne Convention. The German and United Kingdom delegations would support this view if Article 7(2) were to be maintained. Mention was made of the
following possible exceptions: photocopying in return for remuneration; teaching purposes; judicial review; criticism or review of a collection; quotations; archives.

The Commission representative considered that any attempt to harmonize the optional exceptions permitted under the Berne Convention would delay unduly the adoption of the Directive.

39. In the event of Article 7(2) being maintained, the Danish delegation would support the suggestion by the United Kingdom delegation that the opening wording of this provision should read: "In the absence of any contractual arrangements to the contrary, ..." (footnote 41 in 7617/94).

Article 8

40. At the Working Party's previous meeting, all delegations had expressed a preference for the deletion of Article 8 and the Commission services had reserved their position in respect of this deletion (9523/94, point 18).

The Danish delegation pointed out that its agreement to the deletion of Article 8 was dependent upon Article 7 containing a reference to exceptions in national law permitted under the Berne Convention.

41. The Belgian delegation suggested that the contents of Article 8 be included in a recital. It was invited to draft a recital to that effect.

Article 9

42. The Working Party agreed provisionally to keep Article 9(1), as it had no harmful effect.

43. The Working Party agreed to delete Article 9(2) and (2a).
Article 10

44. The Commission services put forward a non-paper intended to clarify the text of Article 10(2) of 7617/94 (Annex IV).

45. There was general agreement that it should be made clear that the sui generis chapter covered collections of works, data or other materials.

46. The Danish delegation suggested that "collections" be defined in exactly the same way for the sui generis chapter as for the copyright chapter.

The Commission representative pointed out that the purpose of the sui generis chapter was to provide protection for certain collections which failed to qualify for protection under the copyright chapter; this purpose would be defeated if exactly the same definition were to be used for both chapters.

47. The French delegation considered that there was no need for the sui generis chapter to extend to collections other than electronic databases.

The Danish delegation on the other hand considered that the scope of the sui generis chapter should be the same as that of the copyright chapter.

The Irish and United Kingdom delegations drew attention to their position set out under point 4 above.

48. The Belgian and German delegations considered that the words "in whole or in substantial part" should be added to point 10.1 of the non-paper.
The Irish delegation was prepared to accept point 10.1 of the non-paper without that addition in the light of point 10.2, provided that it was made clear in Article 11 that exceptions were allowed in respect of unsubstantial parts.

The Commission representative pointed out that the exceptions to the sui generis right were regulated in Article 11.

49. The German, Italian and Netherlands delegations considered that the sui generis right should be a right to prevent acts of extraction or reutilization, rather than acts of extraction and/or reutilization.

The Spanish delegation considered that it should be a right to prevent acts of extraction and reutilization.

50. The Danish delegation considered that it would be preferable to replace the terms "extraction" and "reutilization" by terms familiar in copyright law, such as "reproduction" and "distribution", in order to make it easier to apply the exceptions provided for in the Berne Convention to these acts.

The Commission representative pointed out that, since the sui generis right was intended to be distinct from a copyright right, it was preferable to avoid terminology which could lead to confusion between the two rights.

51. The Danish and Italian delegations considered that point 10.2 of the non-paper was unnecessary.

The French, Irish and Netherlands delegations considered it useful.
52. The Danish, German, Spanish, Irish, Italian and Netherlands delegations were in favour of point 10.3 of the non-paper, including the contents of the square brackets.

The Belgian and French delegations on the other hand were opposed to the contents of the square brackets. The French delegation considered that the sui generis protection should apply solely to those works contained in a database which were not protected by copyright or a related right; if the same work were to be protected by both a copyright right and the sui generis right, problems would arise as to which rightholder could act in the event of infringement.

53. The Spanish, Irish and United Kingdom delegations agreed to the criterion of investment as proposed in point 10.4 of the non-paper.

The Belgian and German delegations doubted whether this criterion was sufficient, since they considered that it would not be easy to assess how much investment a collection demonstrated.

The Danish delegation considered that the main criterion should be the quantity of works, data or other material contained in a collection.

The Belgian delegation preferred a combination of quantitative and qualitative criteria.

The Italian delegation considered that in addition to the investment criterion, there should be a further criterion of the contents of a database being selected or arranged in such a way that they could be accessed easily and rapidly.
54. The German and Netherlands delegations questioned whether the contents of point 10.4 should not be in a recital rather than in the body of the Directive.

55. The French delegation suggested that points 10.1 and 10.4 might be combined in a single provision.

56. The Belgian, Danish, German, Spanish, Italian and Netherlands delegations considered that the contents of point 10.5 of the non-paper would be placed more appropriately in a recital.

The French and Irish delegations took an open position in this respect.

57. The German and United Kingdom delegations considered that the reference to lawful accessing in point 10.5 was inappropriate.

Article 11

58. The Commission services put forward a non-paper replacing Article 11(1) to (4) and (10) (Annex V).

59. The Portuguese delegation maintained its reservation on Article 11 on the grounds that the exceptions to the sui generis right should be left to national law.

60. The French, Italian and United Kingdom delegations as well as the Commission representative were in favour of provisions concerning compulsory licensing in respect of the sui generis right, as they considered that recourse to Articles 85 and 86 of the Treaty would not be sufficient for this purpose.
The Spanish delegation indicated a flexible position in this respect.

Other delegations referred to their positions as recorded in 9523/94, point 24.

61. The Irish delegation suggested that "could not have been created" in point 11.1 of the non-paper should read "could not have been or cannot be created".

The Commission representative was prepared to accept this change.

62. The French delegation suggested that the words "whatever the means of dissemination" be added at the end of point 11.1, as proposed by the French delegation in Variant 2 of 11(1) in 7617/94.

63. The Portuguese delegation considered that the second part of point 11.2 of the non-paper was superfluous in the light of the last part of point 11.1.

64. The French and Netherlands delegations expressed reservations on the need for a specific provision relating to public bodies (point 11.4 in the non-paper).

The United Kingdom delegation would prefer a different criterion to be applied, namely that the information concerned has been supplied by a third party under a legal obligation to do so.

65. The Portuguese delegation entered a reservation in respect of point 11.4, on the grounds that competition and liberalization of the information market were not the purposes of this Directive.
It considered that if a provision of this nature were to be maintained, provision should be made for exceptions on the grounds of "ordre public" and security.

The Commission representative drew attention in this respect to Article 11(9) of the Commission's amended proposal (9219/93), which in the view of the Commission services should still form part of Article 11.

66. The Spanish delegation considered that point 11.5 of the non-paper should be deleted.

The Commission representative considered on the other hand that it should not be possible to grant compulsory licences in respect of collections which had not been made publicly available.

67. The Belgian delegation asked whether a contractual clause disapplying Article 11 would be valid.

The Commission representative stated that such a clause would not be valid.

The Netherlands delegation expressed reservations in respect of such a situation.
Main observations of the representatives of the acceding countries

Question 1

1. The representatives of Norway, Finland and Sweden were in favour of extending the scope of the Directive to cover non-electronic databases (point 2 of the main report).

   The representative of Austria expressed an open position on this question.

2. The representatives of Norway and Finland considered that this extension should apply to both the copyright chapter and the sui generis chapter of the Directive (point 4).

   The representative of Austria expressed doubts whether this extension should apply to the sui generis chapter.

Question 2

3. The representative of Austria considered that extension of the scope of the Directive to cover non-electronic databases would imply extension of the scope of the Directive to collections, but that if the scope of both chapters were to be so extended, consideration should be given to some limitation of the categories of collections to which the sui generis chapter should apply (points 5 and 6).

Article 3

4. The representatives of all the acceding countries were in favour of the deletion of Article 3(4) (point 17).
Article 6

5. The representative of Austria expressed doubts whether "translation" in subparagraph (b) was relevant to databases, and considered that subparagraph (c) was superfluous (point 26).

6. The representatives of all the acceding countries entered scrutiny reservations on the wording for subparagraph (d) set out in the non-paper reproduced in Annex II (point 27).

The representative of Austria expressed considerable doubts as to the inclusion of on-line delivery in immaterial form under the distribution right, preferring that it be left to Member States to decide under which right delivery in immaterial form could be included (point 28).

The representative of Austria considered that distribution of a physical copy and delivery in immaterial form should not necessarily be subject to the same rules in respect of exhaustion of rights.

The representatives of Austria and Sweden expressed considerable doubts with regard to the last sentence of the non-paper (point 31).

Article 7

7. The representative of Austria considered that Article 7(2) should be supplemented by a provision allowing Member States to maintain other exceptions to the restricted acts listed in Article 6 which were permissible under the Berne Convention (point 38).
Article 10

8. The representative of Austria agreed with the Danish delegation that "collections" be defined in exactly the same way for the sui generis chapter as for the copyright chapter (point 46).

9. The representative of Finland agreed with the Belgian and German delegations that the words "in whole or in substantial part" should be added to point 10.1 of the non-paper reproduced in Annex IV (point 48).

10. The representative of Austria considered that the sui generis right should be a right to prevent acts of extraction or reutilization (point 49).

11. The representative of Finland agreed with the Danish delegation that it would be preferable to replace the terms "extraction" and "reutilization" by terms familiar in copyright law, such as "reproduction" and "distribution" (point 50).

12. The representative of Austria considered that point 10.2 of the non-paper was unnecessary (point 51).

13. The representative of Austria was in favour of point 10.3 of the non-paper, including the contents of the square brackets (point 52).

14. The representatives of Austria and Finland considered that the criterion of investment proposed in point 10.4 of the non-paper should be combined with a quantitative criterion (point 53).
15. The representative of Austria considered that the contents of point 10.5 of the non-paper would be placed more appropriately in a recital (point 56).

**Article 11**

16. The representative of Austria agreed with the Portuguese delegation that the second part of point 11.2 of the non-paper in Annex V was superfluous in the light of the last part of point 11.1 (point 63).
New text for Article 6 (paragraph d)

d) any form of distribution to the public, including [the on-line delivery] [delivery in immaterial form] and the rental of the database or of copies thereof. The first sale in the Community of a copy of the database by the right holder or with his consent, including the sale of a right for the receiver of [an on-line delivery] [a delivery in immaterial form] of a work to make a copy, shall exhaust the author's right to control further re-sale of that copy within the Community. It shall not exhaust his right to control all other forms of distribution, including the rental and the [on-line delivery] [delivery in immaterial form] to third parties. The distribution right within the Community shall not be exhausted by any act of distribution committed outside the Community, including acts committed with the rightholder's consent.
New text for Article 6 (paragraph d) - 2nd version

d) any form of distribution to the public, including making available in immaterial form 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, including the sale of a right for the person to whom the database is made available to make a copy, shall exhaust the author's right to control further re-sale of that copy within the Community.

It shall not exhaust his right to control all other forms of distribution, including the making available in immaterial form to third parties.

The distribution right within the Community shall not be exhausted by any act of distribution committed outside the community, including acts committed with the rightholder's consent.

Rental and lending of databases remain exclusively dealt with in Directive 92/100.
New text for Article 10(2) clarifying existing text

10.1 Member States shall provide for a right for the maker of a collection to prevent acts of extraction and/or re-utilisation of the contents of that collection.

10.2 This right is subject to the limitations set out in Article 11.

10.3 It shall apply irrespective of the eligibility of the collection for protection under copyright [and irrespective of the eligibility of the contents of the collection for protection by copyright or by other rights].

10.4 [The right to prevent acts of extraction and/or re-utilisation shall apply only to those collections which demonstrate an investment in either the obtaining, verification or presentation of their contents].

10.5 [The purpose of the right shall be to ensure protection of that investment for the limited duration of the right by preventing the use of the contents of that collection to make competing products and by preventing acts by users going beyond lawful accessing, examination and limited re-utilisation of the contents of that collection].
Nex text of Article 11 incorporating text of French delegation

11.1 Notwithstanding the right provided for in Article 10 a licence for commercial, research or educational purposes relating to the whole or substantial part of the works, data or other materials shall be granted if those works, data or other materials could not have been created, collected or obtained from any other source.

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

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

11.4 Licences shall also be granted in the same circumstances and under the same terms and conditions by public authorities or public corporations or bodies which are either established or authorised to assemble or to disclose information pursuant to legislation, or are under a general duty to do so, and by firms or entities enjoying a monopoly status by virtue of a concession by a public body.

11.5 The licences referred to in this Article shall only be granted where the collection has been made publicly available in the sense that it may be [interrogated] [examined] by anyone [against payment or free of charge] and the whole collection may be so [interrogated] [examined].
11.6 Member States shall provide appropriate measures for making mediation available to the parties in respect of licences provided for in accordance with this Article, without prejudice to the access of parties to the courts.

Paragraphs 5 and 6 on pages 22 and 23 of consolidated text 7617/94 of 22/6/94 remain.

New paragraph 6bis

6bis The repeated or systematic extraction and/or re-utilisation of insubstantial parts of the contents of the collection amounting to acts which conflict with a normal exploitation of the collection or which unreasonably prejudice the legitimate interests of the maker of the collection shall not be permitted.
RESUME DES TRAVAUX

du : Groupe "Propriété intellectuelle" (Droit d'auteur) en date des : 7 et 8 novembre 1994

Objet : Proposition modifiée de directive du Parlement européen et du Conseil concernant la protection juridique des bases de données

1. Le Groupe(1) a poursuivi son examen du troisième texte consolidé (doc. 7617/94 PI 37 CULTURE 39) et a réexaminé certains aspects des articles 2 et 6(2).

   Article 11

2. Le Groupe a continué son examen de cet article, entamé lors de sa réunion précédente (doc. 9845/94, points 58 à 67), sur la base du troisième texte consolidé ainsi que du texte repris à l'annexe V du document 9845/94.

3. Le Groupe a approuvé le paragraphe 11.6 du texte repris à l'annexe V du document 9845/94, moyennant des réserves quant

(1) La délégation hellénique n'était pas représentée lors de cette réunion.
(2) Les principales observations des représentants des Etats adhérents figurent à l'Annexe.
au principe de licences non volontaires de la part des délégations danoise et allemande, et d'une réserve d'examen de la délégation britannique.

4. Pour ce qui concerne les paragraphes 5 et 6 de l'article 11 du troisième texte consolidé, les délégations danoise, allemande et portugaise ont exprimé l'avis que les exceptions au droit sui generis devraient s'aligner sur les exceptions au droit d'auteur.

5. Les délégations belge et irlandaise ont exprimé une réserve à l'égard de ces paragraphes dans la mesure où ils ne s'appliquent qu'aux bases de données rendues accessibles au public.

6. Les délégations danoise et allemande se sont prononcées en faveur de la suppression des termes "non substantielles" aux paragraphes 5 et 6.

La délégation italienne pourrait accepter la suppression de ces termes pourvu que la condition figurant à la fin de ces paragraphes soit maintenue.

La délégation espagnole a rappelé sa suggestion figurant à la note 65 en bas de la page 22 du troisième texte consolidé.

7. La majorité des délégations et le représentant de la Commission ont exprimé une préférence pour la seconde variante de la condition figurant à la fin des paragraphes 5 et 6, sous réserve des observations rédactionnelles suivantes :

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- pour la délégation néerlandaise, les termes "de façon qualitative et quantitative" devraient se lire : "de façon qualitative ou quantitative" ;

- pour les délégations irlandaise et italienne, les termes "ne porte pas préjudice" devraient se lire : "ne porte pas préjudice de manière injustifiée" ;

- pour la délégation néerlandaise il conviendrait d'éviter le terme "droits exclusifs" dans le contexte du droit sui generis.

8. La grande majorité des délégations s'est ralliée au point de vue que l'indication de la source devrait être exigée en ce qui concerne l'extraction et la réutilisation à des fins de recherche ou d'enseignement.

Cependant, les délégations danoise et irlandaise ont été d'avis que l'extraction et la réutilisation à des fins de recherche ou d'enseignement devraient faire l'objet d'un paragraphe distinct de celui qui traite de l'extraction et la réutilisation à des fins commerciales.

La délégation espagnole pour sa part a exprimé des doutes quant à l'opportunité d'appliquer l'exception prévue à l'article 11 paragraphe 5 à l'extraction et la réutilisation à des fins commerciales.

9. La délégation allemande a été d'avis qu'il conviendrait de préciser dans le cadre de l'article 11 paragraphe 5 que le droit sui generis n'a pas pour effet d'empêcher le prêt public du contenu d'une base de données.
Le représentant de la Commission a précisé que le droit sui generis ne couvre ni le prêt public, ni toute autre forme de distribution de copies d'une base de données.

Dans ce contexte, les délégations danoise et portugaise ont demandé que le terme "réutilisation" soit précisé.

Le représentant de la Commission a expliqué que le terme "extraction" signifie le transfert et le stockage, sous quelque forme que ce soit, d'une partie du contenu d'une base de données; le terme "réutilisation" signifie la mise à la disposition d'un tiers de ce qui a été ainsi transféré et stocké.

10. La délégation portugaise a exprimé l'avis que l'exception permettant à un utilisateur légitime d'extraire et réutiliser le contenu d'une base de données pour son usage privé et personnel, sans l'autorisation du fabricant (article 11 paragraphe 6) ne devrait pas être limitée à des parties non substantielles de ce contenu. Elle a suggéré une nouvelle formulation de cette disposition :

"L'utilisateur légitime d'une base de données qui est rendue accessible au public ne requiert pas l'autorisation du fabricant de la base de données pour extraire et réutiliser le contenu de cette base en tout ou en partie pour son usage privé et personnel."

11. Pour ce qui concerne le nouveau paragraphe 6 bis de l'article 11 figurant à l'annexe V du document 9845/94, les délégations danoise et allemande ont exprimé une réserve d'attente en attendant le résultat des travaux concernant les exceptions au chapitre droit d'auteur.

Les délégations néerlandaise et portugaise ont également exprimé des réserves à l'égard de ce paragraphe.
Pour les déléguations belge et italienne, ce paragraphe était superflu, compte tenu de la condition figurant à la fin des paragraphes 5 et 6. La délégation belge était disposée à envisager la reprise du contenu de ce paragraphe dans un considérant.

Les délégations espagnole et française ont demandé le maintien de ce paragraphe, la délégation espagnole étant disposée toutefois à envisager le transfert de son contenu dans un considérant.

12. La grande majorité des délégations s'est exprimée en faveur de la suppression du paragraphe 8 lettre b) de l'article 11, la délégation espagnole exprimant une réserve et le représentant de la Commission une réserve d'examen à l'égard de cette suppression.

13. Le Groupe a confirmé la suppression du paragraphe 9 de l'article 11, moyennant l'insertion dans l'article 15 des mots "la sécurité" après "la confidentialité". La délégation portugaise a émis une réserve d'examen à l'égard de cette insertion.

14. Le Groupe a examiné la question de savoir si la définition de "rendu accessible au public" (article 11 paragraphe 10) devrait s'appliquer à l'ensemble des exceptions prévues à l'article 11, ou devrait se limiter aux exceptions concernant les licences non volontaires, comme c'est le cas de la version alternative figurant au paragraphe 11.5 à l'annexe V du document 9845/94.

Les délégations italienne et néerlandaise et le représentant de la Commission ont exprimé l'avis que cette définition devrait s'appliquer à l'ensemble des exceptions prévues à l'article 11, étant entendu que les modalités de l'extraction et de la réutilisation du contenu de bases de
donnees qui ne correspondent pas à cette définition devraient faire l'objet d'arrangements contractuels entre les parties concernées.

Les délégations belge, espagnole et irlandaise par contre ont estimé que cette définition devrait se limiter aux exceptions concernant les licences non volontaires. À leur avis, soit la condition que la base de données soit rendue accessible au public devrait être supprimée des paragraphes 5 et 6 de l'article 11, soit des conditions différentes d'accessibilité devraient figurer dans ces paragraphes.

15. La délégation italienne a exprimé des doutes quant à l'inclusion dans le paragraphe 10 des termes "et qui peut être interrogée dans son intégralité".

Les délégations allemande, néerlandaise et britannique et le représentant de la Commission se sont prononcés en faveur du maintien de ces termes.

**Article 12** (doc. 8858/94, Annexe II)

16. Le président a suggéré une solution de compromis pour l'article 12 qui comporterait les éléments suivants :

a) la protection des bases de données par le droit sui generis commencerait à la création de la base ;

b) cette protection serait limitée dans le temps, et plus précisément à une durée de 15 ans ;

c) si la base de données était rendue accessible au public pendant les quinze ans qui suivaient sa création, elle bénéficierait d'une nouvelle durée de protection de 15 ans à partir de la date à laquelle elle était rendue accessible au public ;
d) si une ou plusieurs modifications du contenu de la base de données avaient pour conséquence que celle-ci pouvait être considérée une nouvelle base de données, cette dernière bénéficierait d'une durée de protection propre ;

e) les dispositions figurant aux paragraphes 2 et 2 bis de l'article 12 seraient supprimées ;

f) il serait précisé que chacune des durées mentionnées serait calculée à partir du 1er janvier de l'année qui suit le fait générateur.

La majorité des délégations et le représentant de la Commission ont réagi favorablement à cette suggestion de compromis dans ses grandes lignes. Les observations concernant les différents éléments de cette suggestion sont résumées ci-après.

17. La grande majorité des délégations et le représentant de la Commission ont marqué leur accord pour que la protection des bases de données par le droit sui generis commence à la création de la base. Seule la délégation italienne a exprimé des doutes à l'égard d'une protection qui commencerait avant que la base de données ne soit rendue accessible au public ; elle a suggéré que, au cas où ce principe était admis, le fabricant de la base de données devrait être obligé de notifier la date de sa création. Plusieurs délégations ont réagi défavorablement à cette dernière suggestion.
Les délégations belge et italienne ont demandé que la notion de "création" soit précisée. Une suggestion a été avancée de remplacer cette notion par celle de la "fabrication" de la base de données.

18. **Toutes les délégations** se sont prononcées en faveur d'une limitation dans le temps de la protection à partir de la création de la base. *Le représentant de la Commission* a indiqué qu'il l'examinera de manière positive.

19. **La grande majorité des délégations** ont marqué leur accord pour que la durée de cette protection soit de 15 ans.

La délégation britannique s'est prononcée en faveur d'une durée de 50 ans, par analogie avec la durée de protection des phonogrammes prévue à la directive 93/98/EEC.

20. **Les délégations belge, allemande, néerlandaise et portugaise** ont exprimé un préjugé favorable à l'élément de la proposition du président selon lequel une base de données rendue accessible au public pendant les quinze ans qui suivaient sa création bénéficierait d'une nouvelle durée de protection de 15 ans à partir de la date à laquelle elle était rendue accessible au public.

Les délégations danoise, française, irlandaise et luxembourgeoise se sont prononcées en faveur du principe d'une nouvelle durée de protection à partir de la date à laquelle la base de données était rendue accessible au public, mais ont émis des réserves d'examen quant à la durée de 15 ans : la délégation danoise aurait préféré que cette nouvelle durée soit de 10 ans ; la délégation française aurait préféré que la durée totale maximale de protection à partir de la création
de la base soit de 45 ans ; et les délégations irlandaise et luxembourgeoise auraient préféré que la durée totale maximale de protection à partir de la création de la base soit supérieure à 30 ans.

La délégation britannique, ayant préconisé une durée de protection de 50 ans à partir de la création de la base de données, s'est opposée au principe d'une nouvelle durée de protection à partir de la date à laquelle elle était rendue accessible au public.

21. Les délégations belge, danoise, allemande et française ainsi que le représentant de la Commission se sont déclarés disposés à accepter l'élément mentionné au point 16 lettre d) ci-dessus.

Les délégations espagnole et néerlandaise ont exprimé des réserves à cet égard.

La délégation britannique a réservé sa position en attendant que la question du ou des critères auxquels doit répondre une base de données pour bénéficier de la protection par le droit sui generis, soit réglée (voir doc. 9845/94, point 53). Elle a fait valoir notamment que, dans le cas où une nouvelle base de données résulte d'ajouts au contenu d'une base de données, sans que des changements soient apportés au contenu initial, la durée de protection accordée à cette nouvelle base ne devrait pas s'étendre au contenu de la première base repris dans la nouvelle base. Les délégations danoise, allemande et italienne par contre ont été d'avis que dans un tel cas, c'est le contenu de la nouvelle base de données dans son ensemble, repris sans changement de la première base, qui devrait bénéficier d'une nouvelle durée de protection. La délégation belge a évoqué la possibilité de prévoir une exception qui permettrait à l'utilisateur légitime de la nouvelle base de données, dans un tel cas, d'utiliser,
sans l'autorisation du fabricant, la partie du contenu de cette nouvelle base qui a déjà été contenue dans une base précédente depuis plus de quinze ans à partir de la date à laquelle cette base précédente avait été rendue accessible au public.

Le président a proposé que cette question soit laissée en suspens en attendant le règlement de la question du ou des critères de la protection par le droit sui generis.

22. Plusieurs délégations ont déclaré pouvoir accepter la suppression des paragraphes 2 et 2 bis de l'article 12. Le représentant de la Commission a subordonné son acceptation de cette suppression à l'adoption de l'élément mentionné au point 16 lettre d) ci-dessus.

La délégation néerlandaise aurait préféré maintenir un système de marquage de la date ("date-stamping") comme prévu à l'article 12 paragraphe 2 bis.

Le représentant de la Commission, ayant constaté que la majorité des délégations n'étaient pas en faveur d'un système de marquage de la date aux fins du calcul de la durée de protection, a évoqué la possibilité de mentionner dans un considérant la faculté de marquer la date d'insertion d'un élément dans une base de données comme moyen de preuve de cette date.

23. Aucune délégation ne s'est opposée à ce que chacune des durées mentionnées soit calculée à partir du 1er janvier de l'année qui suit le fait générateur.

**Article 13** (doc. 7617/94)

24. Les délégations belge, espagnole, française, néerlandaise et portugaise ainsi que le représentant de la Commission ont
été d'avis que le principe de la réciprocité devrait s'appliquer à l'égard des pays tiers pour ce qui concerne le droit sui generis.

La délégation allemande a émis de forts doutes à l'égard de l'opportunité d'appliquer le principe de la réciprocité, et a préconisé la prise en considération du principe du traitement national.

La délégation britannique a proposé une solution selon laquelle le droit sui generis serait soumis au principe du traitement national, mais la Commission serait habilitée à proposer au Conseil de retirer le bénéfice du traitement national à un pays tiers déterminé au cas où, de l'avis de la Commission, le pays concerné n'accordait pas une protection suffisante aux fabricants communautaires de bases de données. De l'avis de cette délégation, une telle solution aurait l'avantage d'éviter la nécessité de conclure une série d'accords avec les pays tiers, tout en indiquant à ceux-ci l'intérêt de fournir une protection adéquate aux fabricants de bases de données. Le représentant de la Commission a réservé sa position à l'égard d'une telle solution. Le président a invité la délégation du Royaume-Uni à soumettre une proposition écrite en vue de la prochaine réunion du groupe.

25. Le Groupe est convenu de supprimer à l'article 13 paragraphe 2 les termes "Lorsque les bases de données sont créées dans les conditions prévues à l'article 3 paragraphe 4".

26. La délégation française a réservé sa position à l'égard de l'article 13 paragraphe 2.

27. Les délégations allemande et néerlandaise ont émis des doutes à l'égard de la seconde partie de ce paragraphe, en
faisant valoir que la rédaction actuelle ne couvrirait pas le cas d'une entreprise qui n'a qu'une succursale sur le territoire de la Communauté.

Le représentant de la Commission a indiqué que ce paragraphe était conforme à la jurisprudence de la Cour de justice.

28. La délégation portugaise, appuyée par la délégation espagnole, a suggéré de compléter le paragraphe 3 de l'article 13 par la notion de la réciprocité matérielle.

Article 14

29. Le Groupe a accepté cet article tel que rédigé au document 8858/94, Annexe II.

Article 15 (doc. 7617/94)

30. Dans le cadre de la discussion de l'article 11, le Groupe était convenu d'insérer dans l'article 15 les mots "la sécurité" après "la confidentialité" (voir point 13 ci-dessus).

31. La délégation néerlandaise a demandé que le texte de l'article 15 soit aligné autant que possible sur celui de l'article 9 paragraphe 1 de la directive 91/250/CEE concernant la protection juridique des programmes d'ordinateur(3).

32. Les délégations belge, danoise, allemande, française et néerlandaise ont maintenu une réserve d'examen à l'égard de la mention du droit des contrats.

La délégation irlandaise a suggéré que cette mention soit

(3) JO n° L 122 du 17.5.1991, p. 42.
remplacée par une disposition analogue à la dernière phrase de l'article 9 paragraphe 1 de la directive 91/250/CEE, selon laquelle toute disposition contractuelle contraire aux exceptions prévues à l'article 11 paragraphes 5 et 6 serait nulle et non avenue.

33. **La délégation belge** a demandé qu'il soit précisé à l'article 15 que les dispositions de l'article 11 relatives aux licences non volontaires sont des dispositions contraignantes auxquelles il ne peut pas être dérogé par voie de contrat.

34. **La délégation belge** a posé la question de savoir quelle serait la valeur juridique d'une disposition d'un contrat conclu entre un ressortissant d'un État membre et un ressortissant d'un pays tiers, selon laquelle le droit applicable au contrat, y compris en ce qui concerne la titularité, serait le droit du pays tiers, dans l'hypothèse où le droit du pays tiers en matière de titularité était incompatible avec celui de l'État membre concerné.

**Le représentant de la Commission** a indiqué que cette question relève du droit international privé, qui n'est pas affecté par les dispositions de la directive.

35. **La délégation allemande** a demandé que les dispositions légales énumérées à l'article 15 soient complétées par une mention des dispositions anti-trust. Le **représentant de la Commission** a fait valoir qu'un tel ajout pourrait avoir pour effet de rendre inopérant les dispositions de la directive en matière de licences non volontaires. Toutefois, il a indiqué qu'il serait disposé à examiner la possibilité de tenir compte de la question soulevée par la délégation allemande en précisant, éventuellement dans un considérant, qu'il serait possible d'appliquer le cas échéant, outre les dispositions des articles 85, 86 et 90 du Traité et les dispositions de la
directive relatives aux licences non volontaires, les dispositions nationales anti-trust.

Article 15 bis (doc. 8858/94, Annexe II)

36. La délégation française a fait remarquer que le paragraphe 1 de l'article 15 bis pourrait avoir pour effet de faire bénéficier de la protection par le droit d'auteur des bases de données ou des collections existantes qui n'étaient pas éligibles à une telle protection avant la prise d'effet de la directive, au moins dans certains États membres. Elle a demandé si la protection par le droit d'auteur de telles bases ou de telles collections aurait un effet rétroactif.

Le représentant de la Commission a déclaré que la directive n'aurait pas d'effet rétroactif, et a attiré l'attention sur la dernière phrase de l'article 15 bis paragraphe 1.

37. La délégation néerlandaise a demandé que la rédaction de la dernière phrase du paragraphe 1 de l'article 15 bis soit alignée sur celle de la deuxième partie du paragraphe 2 de l'article 9 de la directive 91/250/CEE.

38. La délégation irlandaise a fait observer que des bases de données qui sont actuellement protégées par un régime de droit d'auteur dans certains États membres ne seraient pas éligibles à la protection par le droit d'auteur telle que proposée dans la directive. Cette délégation, appuyée par la délégation britannique, a demandé que le paragraphe 1 de l'article 15 bis soit complété de manière à prévoir que les bases de données qui bénéficient d'un tel régime à la date visée à l'article 16 paragraphe 1 continuent à bénéficier de ce régime jusqu'à l'expiration de la durée normale. En l'absence d'un tel complément, ces délégations ont exprimé une réserve sur l'ensemble de l'article 15 bis.
Le représentant de la Commission a déclaré que son Institution n'avait pas l'intention d'accepter cette demande. Il a fait remarquer que le paragraphe 2 de l'article 15 bis était conçu pour tenir compte de la situation évoquée par les délégations irlandaise et britannique.

39. La délégation allemande a émis une réserve d'examen à l'égard du paragraphe 2 de l'article 15 bis, compte tenu notamment de la position des délégations irlandaise et britannique.

Les délégations danoise, néerlandaise et portugaise ont exprimé des réserves à l'égard du paragraphe 2 de l'article 15 bis ; à leur avis, les bases de données existantes au moment de la transposition de la directive ne devraient pas bénéficier d'une durée de protection par le droit sui generis de 15 ans à partir de cette date, mais seulement de la partie de cette durée qui restait à courir à cette date.

Le représentant de la Commission a fait remarquer qu'aucun Etat membre ne dispose actuellement d'un droit sui generis tel que prévu par la directive, et que par conséquent aucune durée de protection par un tel droit n'aura commencée à courir au moment de la transposition de la directive.

Les délégations belge et italienne ont déclaré pouvoir accepter le paragraphe 2 de l'article 15 bis.

La délégation française a exprimé une réserve d'examen positive à l'égard de ce paragraphe.

Article 16 (doc. 7617/94)

40. Le Groupe est convenu de reporter la fixation de la date prévue au paragraphe 1 à un stade ultérieur.
Article 2 (docs 7617/94 et 9845/94)

41. Le président a rappelé sa proposition de remplacer les paragraphes 1, 2, 3 et 3 bis de l'article 2 du texte consolidé par le nouveau paragraphe 1 figurant au point 10 du document 9845/94.

42. Les délégations belge, française et portugaise ont exprimé une réserve de fond sur l'extension du champ d'application de la directive au-delà des bases de données électroniques.

La délégation italienne, tout en acceptant l'extension du champ d'application aux bases de données sous quelque forme que ce soit, a exprimé une réserve sur l'extension aux collections.

La délégation espagnole a rappelé que, tout en acceptant l'extension du champ d'application du chapitre "droit d'auteur" aux collections, elle s'opposait à l'extension du champ d'application du chapitre "sui generis" au-delà des bases de données électroniques.

43. Dans ce contexte, les délégations française, italienne et britannique ont souhaité maintenir une définition à l'article 1er qui s'appliquerait à la fois au chapitre "droit d'auteur" et au chapitre "sui generis".

44. La délégation espagnole a rappelé sa réserve d'examen mentionnée au point 12 du document 9845/94.

45. Le Groupe a approuvé le paragraphe 4 de l'article 2 du troisième texte consolidé, en remplaçant le terme de "base de données" par celui de "collections", sous réserve de la position des délégations belge, française et portugaise et de celle de la délégation italienne indiquées au point 42 ci-
46. Le président a proposé de compléter l'article 2 par un nouveau paragraphe libellé comme suit :

"La protection des collections par le droit d'auteur visée au paragraphe 1 est, en ce qui concerne la location et le prêt, réglée exclusivement par le chapitre I de la directive 92/100/CEE."

Le Groupe a approuvé ce paragraphe, sous réserve de la position des délégations belge, française, portugaise et italienne sur le terme "collections".

**Article 6 lettre d)** (docs 7617/94 et 9845/94)

47. Compte tenu des réactions négatives qu'avaient suscitées les nouveaux textes pour la lettre d) de l'article 6 repris aux annexes II et III du document 9845/94, le président a suggéré que le groupe reprenne l'examen de cette disposition sur la base du troisième texte consolidé.

Etant donné que la question de la location a été couverte par le nouveau paragraphe de l'article 2 (point 46 ci-dessus), et à la lumière des discussions précédentes, le représentant de la Commission a suggéré que le texte de la lettre d) du troisième texte consolidé soit adapté comme suit :

- suppression des termes "y compris la location" ;

- remplacement des termes "épuise le droit de distribution de cette copie" par "épuise le droit de contrôler la revente de cette copie" ;

- suppression des termes "à l'exception du droit de contrôler des locations ultérieures de la base de données ou d'une copie de celle-ci".

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Le Groupe est convenu d'examiner ces suggestions lors de sa prochaine réunion.

48. Le président a suggéré l'ajout d'un nouveau considérant relatif à l'article 6 :

"considérant que la protection des collections par le droit d'auteur comprend la mise à disposition de collections sous une forme immatérielle ;".

La délégation espagnole ayant exprimé des objections à l'égard des termes "mise à disposition ... sous une forme immatérielle", le président a indiqué sa disponibilité à rechercher une formulation alternative, par exemple "... la mise à disposition de collections sous une autre forme que par la distribution de copies".

Le Groupe est convenu d'examiner ce nouveau considérant lors de sa prochaine réunion.
Principales observations des représentants des pays adhérents

Article 11

1. La délégation finlandaise s'est ralliée à la position des délégations danoise et allemande reprise au point 6 du résumé des travaux.

2. Les délégations finlandaise et suédoise se sont associées à la demande de précision du terme "réutilisation" (point 9 du résumé des travaux).

Article 12

3. La délégation autrichienne

- a marqué son accord pour que la protection des bases de données par le droit sui generis commence à la création de la base, et a réagi défavorablement à la suggestion de la délégation italienne (point 17 du résumé des travaux);

- s'est déclarée disposée à accepter l'élément mentionné au point 16 lettre d) du résumé des travaux;

- a déclaré pouvoir accepter la suppression des paragraphes 2 et 2 bis de l'article 12 (point 22 du résumé des travaux).

Article 13

4. La délégation autrichienne s'est prononcée à titre
provisoire en faveur du principe de la réciprocité, tandis que la délégation suédoise a indiqué une préférence pour le principe du traitement national (point 24 du résumé des travaux).

5. La délégation autrichienne a exprimé l'avis que l'article 13 paragraphe 3 devrait s'étendre aux bases de données créées dans un État membre et non couvertes par les dispositions des paragraphes 1 et 2 de cet article.

**Article 15 bis**

6. La délégation autrichienne a exprimé des doutes quant à l'utilité des termes "qui remplissent à cette date les exigences énoncées dans la présente directive en ce qui concerne la protection des bases de données" au paragraphe 1 de l'article 15 bis.
A. Introduction

1. In a letter of 15 April 1992, the Commission submitted to the Council a proposal for a Directive on the legal protection of databases (\(^1\)). The proposal is based on Articles 57(2), 66 and 100a of the Treaty.


\(^1\) 6919/92 PI 64 CULTURE 61, published in OJ No C 156, 23.6.1992, p. 4.
\(^2\) OJ No C  19, 25.1.1993, p.  3.
\(^3\) OJ No C 194, 19.7.1993, p. 144.
3. The Permanent Representatives Committee has already considered the scope of the proposed Directive (†). At the time, the Committee thought it too soon for conclusive discussion of whether the scope of the Directive should also extend to non-electronic databases.

4. The Working Party on Intellectual Property (Copyright) has completed a third reading of the amended Commission proposal. At this stage in discussions, the Presidency feels it would be helpful for the Permanent Representatives Committee or the Internal Market Council to take note of the outcome of the Working Party's proceedings to date and confirm that the Working Party should continue its discussions accordingly.

A policy debate on the entire proposal for a Directive would not, in the Presidency's view, serve any useful purpose at present since progress in discussions on the different parts has been too varied.

B. Copyright part of the Directive

5. The Working Party has almost completed a revised version of the copyright provisions of the Directive (the present Chapter II). Those provisions are annexed to this report.

6. The original Commission proposal only covers electronic databases; however, Commission officials have informed the Council Working Party that they can agree to the scope being extended to non-electronic databases and, in the light of recent technological developments and of the adoption of Article 10(2) of the GATT Agreement on Trade-Related Aspects of Intellectual Property Rights

(†) 5200/94 PI 20 CULTURE 11.
(the TRIPs Agreement), they are in favour of such extension.

7. **Most delegations** are in favour of extending the scope of the copyright part of the Directive to non-electronic databases or to collections.

The Belgian, French and Portuguese delegations are opposed to extension.

The Italian delegation can agree to extension to non-electronic databases but is opposed to extension to collections.

For the pros and cons of extending the scope, reference should be made to 4729/94 PL 12 CULTURE 6, points 9 and 10.

8. **Article 2** is worded in such a way that the copyright provisions of the Directive apply not only to electronic databases but also to collections generally. It thus incorporates the terminology used in the Berne Convention and the TRIPs Agreement. At the same time copyright is subject to a criterion of originality, which already appeared in the amended Commission proposal.

9. The Working Party has formulated the exclusive right in the revised version of Article 6 (see Annex). That version is welcomed by **all delegations**. Some delegations still have scrutiny reservations regarding the wording of the recital relating to Article 6, which is also set out in the Annex. Those scrutiny reservations extend in some cases to whether the recital should not be included in the enacting terms of the Directive (Article 6).
10. The Working Party has drawn up the annexed wording of Article 7 on permissible exceptions to the restricted acts. **All delegations** have in principle accepted the wording of the amended Commission proposal for Article 7(2). They are also unanimously in favour of exceptions under Article 10 of the Berne Convention being possible. **All delegations apart from the French delegation** are in addition calling for a provision that Member States may also apply to collections under this Directive exceptions which they have laid down for collections in national law in accordance with Article 9(2) of the Berne Convention. However, some delegations and the Commission think restrictions necessary in this respect in certain specific cases. A final decision on the exceptions in the copyright part is to be taken when the exceptions in the sui generis part are also settled.

11. **Articles 4, 5 and 8 of the amended Commission proposal are considered redundant by all delegations** and have therefore been deleted in the revised version.

12. **The French, Belgian, Italian and Portuguese delegations,** which have reservations on the extension of the scope in the copyright part of the Directive, include in those reservations all wordings in the revised version referring to "collections".

C. **Sui generis part of the Directive**

13. Delegations agree that copyright protection should be supplemented by a second level of legal protection (a sui generis right), safeguarding the investment in producing a collection of database. Some delegations consider the creation of
such secondary protection to be inseparably bound up with the form taken by copyright protection. Discussions on some important specific points concerning the sui generis rights have not yet been completed in the Working Party.

14. **Several delegations, in particular the Danish and United Kingdom delegations, are calling for the scope of the Directive in any event also to be extended in the sui generis part.** The Spanish delegation expressly wants extension confined to the copyright part. Various other delegations still have scrutiny reservations regarding the scope in the case of the sui generis right.

D. Further proceedings

15. With a view to possible discussion at the Internal Market Council meeting on 8 December 1994, the Permanent Representatives Committee is requested to:

- consider whether the scope of the Directive in the copyright part should be worded as in the revised version of Article 2(1);

- take note of and confirm the Working Party's findings on the copyright part, particularly as regards the object of protection (Article 2), the restricted acts (Article 6), the principles set out in point 10 for exceptions to the restricted acts (Article 7) and the deletion of Articles 4, 5 and 8;

- confirm the need for copyright protection to be supplemented by a sui generis right;

- instruct the Working Party to continue its discussions, particularly as regards the sui generis part, on the basis of the above findings.
CHAPTER II: COPYRIGHT
(as at 16 November 1994)

Article 2
Object of protection

1. In accordance with the provisions of this Directive, collections in any form of works, data or other materials which by reason of the selection or arrangement of their contents constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for this protection.

2. deleted.

3. deleted.

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

5. deleted.

6. The copyright protection of collections as mentioned in paragraph 1 above shall, as far as rental and lending are concerned, be exclusively regulated by Chapter I of Directive 92/100/EEC.

Article 3
Authorship

1. The author of a collection shall be the natural person or group of natural persons who created the collection 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 work shall be deemed to be its author.

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

[4. Where a collection 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 collection so created, unless otherwise provided by contract.] (6)

Article 4
Entitlement to protection under copyright

- deleted – (7)

Article 5
Incorporation of data, works or other materials into a database

- deleted – (8)

(6) Most delegations were in favour of deleting this paragraph. The Spanish, Italian and United Kingdom delegations are opposed to its deletion.

(7) Reservation by the Commission on the deletion of this Article.

(8) Reservation by the Commission on the deletion of this Article.
Article 6

Restricted acts

The author of a collection within the meaning of Article 2(1) shall have the exclusive right to do or to authorize in respect of the copyrightable expression:

(a) the temporary or permanent reproduction of the collection by any means and in any form, in whole or in part;

(b) the translation, adaptation, arrangement and any other alteration of the collection;

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

(d) any form of distribution to the public of the collection or of copies thereof. The first sale in the Community of a copy of the collection by the rightholder or with his consent shall exhaust the right to control further resale within the Community of that copy;

(e) any communication, display or performance of the collection to the public. (9)

(9) New recital relating to Article 6:
"Whereas the copyright protection of collections includes making collections available by means other than by distributing copies;"
Article 7

Exceptions to the restricted acts

1. deleted.

2. The performance by the lawful user of a collection or of a copy thereof of any of the acts listed in Article 6 which is necessary for the purposes of access to the contents of the collection and use of the collection by the lawful user shall not require the authorization of the author of the collection.

3. deleted.

4. for the record (10).

Article 8

Exceptions to the restricted acts in relation to the copyright in the contents

– deleted – (11)

(10) A provision is to be added to this Article to the effect that Member States may apply exceptions under Article 10 of the Berne Convention. The extent to which Member States may also apply to collections under this Directive exceptions which they have laid down for collections in national law in accordance with Article 9(2) of the Berne Convention is still under discussion.

(11) Reservation by the Commission on the deletion of this Article. Consideration is being given to whether the content of the Article should be transferred to a recital.
Article 9

Term of protection


2. deleted.

3. deleted.
SUMMARY OF PROCEEDINGS

of : Permanent Representatives Committee (Part 1)
on : 2 December 1994

No. prev. doc.: 11135/94 PI 84 CULTURE 67 CODEC 66
No. Cion prop.: 9219/94 PI 89 CULTURE 113

Subject: Preparation for the Internal Market Council meeting on 8 December 1994

1. The Committee held a discussion on the basis of the Presidency report in 11135/94 PI 84 CULTURE 67 CODEC 66.

Scope of the copyright part of the Directive

2. Most delegations and the Commission representative agreed to the scope of the part on copyright being extended to cover collections in any form of works, data or other materials, as provided for in the new version of Article 2(1) annexed to the Presidency report.

3. The Belgian, French and Portuguese delegations maintained their reservations on any extension of the scope beyond electronic databases.
4. While agreeing to extend the scope of this part to databases in any form, the Italian and Spanish delegations entered reservations on the term "collection", which they considered too vague. The Italian delegation intended to put forward a definition of the term "database" at Working Party level.

5. The Irish delegation entered a provisional reservation on the last sentence of Article 2(1).

Article 6

6. The Committee approved Article 6 as annexed to the Presidency report, noting two comments by the Belgian delegation, first that it regarded subparagraph (c) as superfluous and secondly that it could agree to subparagraph (e) provided that "display" and "performance" were not distinct from "communication to the public".

The Committee instructed the Working Party to look into whether the substance of the footnote should be incorporated in a recital or in Article 7.

Article 7

7. The Committee approved the principles laid down in point 10 of the Presidency report, although the ideas contained in footnote 5 on page 9 would have to be examined in greater detail at Working Party level.

Articles 4, 5 and 8

8. The Committee agreed to delete these Articles.
Sui generis right

9. The Committee confirmed the need for copyright protection to be supplemented by a sui generis right, noting the view of the Belgian, Spanish, French and Portuguese delegations that the scope of the part relating to the sui generis right should be confined to electronic databases, and the opinion of the Danish delegation that the criterion to be adopted for entitlement to that right should be more specific than that of investment by the producer of the database.

Further work

10. In the light of the discussion the Committee agreed to delete this item from the agenda for the Internal Market Council meeting on 8 December 1994 and to instruct the Working Party to continue its discussion.
OUTCOME OF PROCEEDINGS

of: Working Party on Intellectual Property (Copyright)
on: 16 and 17 January 1995

No. prev. doc.: 5205/95 PI 10 CULTURE 7 CODEC 20
No. Cion prop.: 9219/93 PI 89 CULTURE 113


1. The Working Party reexamined Chapters III (Sui generis right) and IV (Common provisions) of the proposal.

Chapter III

2. The Presidency pointed out that the Permanent Representatives Committee had confirmed, at its meeting on 2 December 1994 (12347/94 PI 102 CULTURE 68 CODEC 97), the need for copyright protection of databases to be supplemented by a sui generis right.

In the German delegation's view, the question of whether Member States could transpose the sui generis right in the form of a copyright-related right remained open.

3. The Working Party agreed that the definition of a database (or collection) (') for the purposes of the Chapter on the sui generis right would be addressed at its next meeting as part of a discussion on the scope of the Directive and on

') Pending the settling of the Directive's scope, the term "database" is used in this note.
definitions.

Article 10 (9845/94, Annex IV)

4. The Working Party agreed to combine 10.1 and 10.4 into a single provision, subject to some doubts on the part of the Netherlands delegation.

5. The Working Party asked the Commission representatives to make it clear either in Article 10 or in a recital that the sui generis right was designed to provide protection both against acts by a lawful user of a database going beyond the conditions of use of the base and against acts by a competitor making a parasitic competing product.

The German and Finnish delegations would prefer to stipulate that the right applied to commercial uses of the database.

6. The Working Party asked the Commission representatives to make it clear that the investment by the database manufacturer must be considered not just financially but also in terms of the time, effort or energy spent in making the base.

7. The Belgian delegation repeated its call for the sui generis right to cover the extraction and/or reutilization of all or a substantial part of the contents of a database.

Several delegations took the view that, if that request were accepted, a substantial part would have to be assessed qualitatively and/or quantitatively.

The Danish and Finnish delegations gave a reminder of their position that there was no call to protect individual data.
8. Several delegations called for clarification of "extraction and/or reutilization", particularly as to whether this covered viewing the contents of a database.

The Danish and Finnish delegations suggested that the phrase be replaced by familiar copyright terms, but other delegations and the Commission representatives were opposed to that suggestion.

The United Kingdom delegation suggested that restricted acts be laid down, e.g. storage of the contents of a database without its manufacturer's permission, supplying its contents to third parties without the manufacturer's permission or circumventing devices designed to restrict access to a database.

9. Some delegations voiced doubts as to the point of 10.2.

10. Ten delegations were in favour of the phrase in square brackets in 10.3.

The Belgian delegation was opposed to that phrase.

The French delegation could agree to the phrase, provided it was made clear that the compulsory licences in Article 11 did not affect copyright or any related right in respect of a work contained in a database.

The Greek, Luxembourg and Portuguese delegations entered scrutiny reservations on the matter.
11. The Working Party was in favour of transferring the content of 10.5 to a recital. However, the Danish and Netherlands delegations entered scrutiny reservations on the content itself.

Article 11 (9845/94, Annex V, and 7617/94)

12. The Danish, German, Netherlands and Swedish delegations were opposed to the principle of compulsory licences. The other delegations could agree to that principle.

13. Those delegations which agreed to the principle of compulsory licences approved the idea of dealing with compulsory licences and with exceptions as regards rights of lawful use in separate Articles.

14. With regard to 11.1 and Annex V to 9845/94 PI 73 CULTURE 61 CODEC 49, the Portuguese delegation wondered whether the same conditions should apply to a licence for commercial purposes as to a licence for research or educational purposes (see also point 18 below).

15. The Danish and Austrian delegations voiced doubts about the term "works" in 11.1, arguing that a compulsory licence should not apply to a work protected by copyright.

16. The United Kingdom delegation proposed the replacement of "could not have been created ..." by "cannot and could not have been created ...". The Spanish and Irish delegations supported that proposal; other delegations were dubious.
17. The French delegation proposed the addition of "irrespective of the medium of distribution" at the end of 11.1 in order to avoid any doubt as to whether an electronic database and the same base distributed in paper form constituted a single source.

18. In the Danish, Irish, Italian and Portuguese delegations' view, the undertakings referred to in 11.2 should not be required of a person requesting a licence for research or educational purposes; the Belgian, German, Spanish and Netherlands delegations thought that the undertaking to add value should not be required of such a person.

Moreover, the Irish, Italian and Austrian delegations felt that the second part of 11.2 was superfluous in view of the requirement in 11.1 that the works, data or other materials in question could not have been created, collected or obtained from any other source.

The Danish, Italian, Netherlands, Swedish and United Kingdom delegations were prepared to consider deleting 11.2 altogether.

19. The German delegation pointed out that it was not clear whether payment was included in the fair terms referred to in 11.3; the Working Party asked the Commission representatives to deal with that aspect in a recital.

20. The Belgian delegation suggested that 11.4, drawing on Article 90(2) of the Treaty, include a condition similar to the one in that provision ("insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them").
21. **The Portuguese delegation** entered a reservation on 11.4, which it felt might be prejudicial to databases held by national armed services or to databases such as commercial registers.

The Commission representatives referred to Article 15, in which it had been agreed to insert a reference to security (4229/95 PI 2 CULTURE 2 CODEC 3, point 13). In the case of commercial registers, they said that 11.4 would be applicable only if the database had been made publicly available (11.5), meaning that it had been marketed.

The Belgian delegation entered a reservation on the latter point inasmuch as the wording did not seem to tally with the explanation given by the Commission representatives.

22. **The German and Netherlands delegations** remained dubious as to the need for 11.4.

The United Kingdom delegation wondered whether the paragraph could not be couched in simpler terms.

23. **The Working Party** agreed that 11.5, containing a condition for the granting of a licence, should be placed between 11.1 and 11.2.

24. **The Working Party** agreed to delete "against payment or free of charge" in 11.5.

25. **The Netherlands delegation** entered a reservation on 11.6 inasmuch as it provided for mediation and not arbitration.

26. **The Irish and United Kingdom delegations** entered scrutiny reservations on the phrase "without prejudice to the access of parties to the courts".
27. The German delegation also entered a scrutiny reservation on 11.6.

28. The Working Party accepted the basic difference between Article 11(5) and (6) (7617/94 PI 37 CULTURE 39), i.e. a requirement that the source be acknowledged in the case of commercial, research or educational purposes and no such requirement in the case of extraction and reutilization for the personal private use of a lawful user.

29. The Irish and Portuguese delegations took the view that the possibility of extracting and reutilizing the contents of a database for research or educational purposes should not be confined to insubstantial parts.

Other delegations reserved their positions on the word "insubstantial", pending a final version of Article 10 (see point 7 above).

30. Nine delegations (A/B/DK/FIN/GR/IRL/I/P/S) preferred the first alternative to the second at the end of Article 11(5) and (6).

The Spanish and United Kingdom delegations stated a preference for the second alternative, feeling the wording "evaluated quantitatively and qualitatively in relation to the database from which they are copied" to be clearer. They entered scrutiny reservations on the majority view.

The Netherlands delegation voiced doubts about both alternatives if reutilization for commercial purposes were to be allowed without payment.

31. Eight delegations (B/DK/E/FIN/F/IRL/P/S) and the Commission representatives took the view that any contract clause contrary to paragraphs 5 and 6 should be null and void.
The German, Greek, Netherlands, Austria and United Kingdom delegations entered scrutiny reservations in this respect, feeling that the matter should be left to national contract law.

32. The Danish, Italian, Netherlands and Portuguese delegations entered scrutiny reservations on Article 11(6a)(Annex V to 9845/94).

33. The United Kingdom delegation suggested replacing "shall not be permitted" by a wording to the effect that the acts mentioned in that paragraph would constitute an infringement of the sui generis right.

Article 12

34. The Presidency submitted a working document containing a new version of Article 12, drawn up on the basis of the compromise suggested by the previous Presidency in November 1994 (4229/95 PI 2 CULTURE 2 CODEC 3, point 16). The working document is annexed hereto.

35. The Portuguese delegation entered a reservation on Article 12 as a whole. It preferred the original Commission proposal (6919/92 PI 64 CULTURE 61, Article 9(3) and (4)).

36. Most delegations and the Commission representatives continued to agree that the protection of databases by the sui generis right should run from the creation of the database.

The Belgian, Spanish and Portuguese delegations, however, thought that such protection should not begin until the base was made available to the public.

The Italian delegation, which took the same line in principle, could agree to the majority view, provided the database manufacturer was required to provide proof of the date of its creation.
37. Most delegations agreed that the term in 12.1 in the Presidency working document should be 15 years. The Irish and United Kingdom delegations were in favour of a 50-year term.

38. A large majority of delegations preferred not to use the wording "put on the market" in 12.2. Some delegations could agree to "made available to the public"; others asked the Commission representatives to try to find a different form of words from that used in Article 11.

39. Having advocated 50 years' protection from the creation of the database, the Irish and United Kingdom delegations were opposed to the principle of a further term of protection from the date on which the base was made available to the public (12.2).

The Danish delegation thought that protection by the sui generis right should expire ten years from the first of January following the date when the database was first made available to the public, in accordance with the original Commission proposal.

40. The Chairman wondered whether, in view of the Irish and United Kingdom delegation's position, any other delegations would be prepared to contemplate protection for longer than 15 years.

The Belgian delegation said it might be prepared to consider this and the French delegation pointed out that it had already said it could agree to a total term of not more than 45 years from the creation of the database.

41. The German, Irish, Netherlands and United Kingdom delegations took the view that the principle in 12.3 should apply even if the database concerned had not yet been made available to the public.
Only the Belgian delegation and the Commission representatives were opposed to that view.

42. The Netherlands delegation, seconded by the Irish delegation, argued that verification of the contents of a database might necessitate substantial investment, even if it did not give rise to any substantial change to the base; they thought that such investment would warrant application of the principle in 12.3 in such a case.

The Commission representatives replied that, if verification did not give rise to a new edition of the base, there would be no grants for a fresh term of protection.

43. The Netherlands and United Kingdom delegations asked whether material already contained in an initial database and then incorporated in a new edition of the base would qualify for the fresh term of protection for the new base.

The Commission representatives said that, in their view, the fresh term of protection would be for the contents of the new base as a whole, including parts of the contents taken over from an earlier base.

In this connection the Portuguese delegation raised the case of a database distributed in CD-ROM form; it asked whether, once protection of the CD-ROM had expired, the purchaser could use its contents without any restriction, even if some parts of its contents had since been included in a new database distributed in a new CD-ROM.

The Commission representatives replied that they could, since the object of protection was the contents of the database and not particular parts as such.
Article 13

44. The Belgian, Greek, Spanish, French, Luxembourg and Portuguese delegations and the Commission representatives were in favour of the principle of reciprocity vis-à-vis third countries.

The German, Austrian, Spanish and United Kingdom delegations were in favour of the principle of national treatment.

The Danish, Italian, Netherlands and Finnish delegations entered scrutiny reservations at this stage.

45. The German delegation could consider the proposal put forward by the United Kingdom delegation (Annex V to 5018/95 PI 8 CULTURE 6 CODEC 19) as a compromise.

The Commission representatives entered reservations on that proposal, arguing that the possibility of private rights being withdrawn by a political decision might give rise to legal uncertainty.

Article 14 (8858/94, Annex II)

46. The Working Party agreed to the Article as set out in Annex II to 8858/94 PI 55 CULTURE 49.

47. The Chairman here drew the Working Party's attention to the Presidency memorandum on penalties for breaches of Community law and its effective implementation (4180/95 JUR 4).
Article 15 (7617/94)

48. Several delegations wanted the wording of this Article to be reexamined, particularly with regard to contract law (see also points 21 and 31 above). Alignment of this Article on Article 9(1) of Directive 91/250/EEC (2) was called for.

Article 15a (8858/94, Annex II)

49. The Irish and United Kingdom delegations’ reservations on this Article, as reported in 4229/95, point 38, still stood. The Netherlands delegation joined them in those reservations.

In this connection the German delegation pointed out that it should be made clear whether "rights acquired" at the end of paragraph 1 applied only to rights acquired by third parties or whether rights acquired by a database manufacturer enjoying national copyright protection were also covered.

50. The Commission representatives upheld their reservation on the date referred to in Article 15a(1) and their proposal that the date in question should be the date of publication of the Directive.

Member States upheld their positions on this point.

51. The German delegation still had a scrutiny reservation on paragraph 2, arguing that databases in existence at the time of transposition of the Directive should not qualify for a term of protection by the sui generis right of 15 years from that date, but only for the part of that term still to run as of that date.

Other delegations made the point that there was not at present any sui generis right of the kind provided for by the Directive and therefore no term of protection by any such right would be in operation at the time of transposition of the Directive.

While dubious about the paragraph, the Danish and Netherlands delegations were prepared to give it favourable consideration as part of an overall compromise.

Articles 16 and 17 (7617/94)

52. These Articles did not prompt any comment at this stage (see 4229/95, point 40).
EUROPEAN UNION
THE COUNCIL

ANNEX

Brussels, 17 January 1995

PRESIDENCY
WORKING DOCUMENT

New version of Article 12

12-1. The right provided for in Article 10 shall run from the creation of the [database] [collection]. It shall expire 15 years from the first of January following the date of creation of the [database] [collection].

12-2. In the case of a [database] [collection] which is [made available to the public] [put on the market] before the expiry of the term provided for in paragraph 1, the term of protection by this right shall expire 15 years from the first of January following the date when the [database] [collection] was first [made available to the public] [put on the market].

12-3. Any substantial change, evaluated quantitatively or qualitatively, to the contents of a [database] [collection] 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] [collection] being considered to be [made available to the public] [put on the market] as a new [database] [collection], shall qualify that [database] [collection] for its own term of protection.
NOTE

from: Council Secretariat

to: Working Party on Intellectual Property (Copyright)

No. prev. doc.: 5018/95 PI 8 CULTURE 6 CODEC 19
No. Com. prop.: 9219/93 PI 89 CULTURE 113

– Fourth consolidated text

Delegations will find attached a fourth consolidated text, which takes account of the Working Party's discussions up to the end of February 1995.

The recitals have not yet been examined. However, some changes (additions, deletions, rewording) have been suggested to the recitals given in the amended proposal (9219/93 PI 89 CULTURE 113).
CHAPTER I: SCOPE

Article 1
Scope (\(^{(1)}\))

1. This Directive concerns the legal protection of databases in any form. (\(^{(2)}\))

2. For the purposes of this Directive, "database" means a collection of works, data or other materials arranged in a systematic and methodical way and capable of being assessed by electronic or other means.

3. The protection granted by this Directive includes the materials necessary for the operation and consultation of a database such as its thesaurus and indexing systems. (\(^{(3)}\))

4. This protection shall apply neither to phonograms (\(^{(4)}\)) nor to computer programs used in the making or operation of databases which are capable of being accessed by electronic means.

\(^{(1)}\) Delete recital No 19 (as "paper" databases have been included) and replace it by the following recital:
"19. Whereas the protection given by this Directive should not be taken to extend to phonograms within the meaning of Article 3(b) of the Convention of Rome;".

\(^{(2)}\) The United Kingdom delegation was in favour of extending the scope of the Directive to cover collections. The French delegation on the other hand would like to limit the scope to electronic databases and databases using another medium which are derived from electronic databases.

\(^{(3)}\) Scrutiny reservations from the Belgian, Danish, Netherlands, Portuguese, Finnish, Swedish and United Kingdom delegations on this paragraph.

\(^{(4)}\) The French and Netherlands delegations proposed adding "and videograms".
Article 1a
Limitations of the scope (c)

This Directive shall apply without prejudice to Community provisions relating to:

(a) the legal protection of computer programs;

(b) rental right, lending right and certain rights related to copyright in the field of intellectual property;

(c) the term of protection of copyright and certain related rights.

(c) Add the following recitals:
"19a. Whereas the rental and lending of databases are governed exclusively by Directive 92/100/EEC;

19b. Whereas the term of copyright is already governed by Directive 93/98/EEC;".
CHAPTER II: COPYRIGHT

Article 2
Object of protection

1. In accordance with the provisions of this Directive, databases which by reason of the selection or arrangement of their contents constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for this protection. (6)

2. Deleted.

3. Deleted.

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

5. Deleted.

6. Deleted.

(6) Scrutiny reservations from the Irish and United Kingdom delegations on this second sentence.
Article 3
Authorship

1. The author of a database shall be the natural person or group of natural persons who created the base 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 work 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 base so created, unless otherwise provided by contract.] (7)

Article 4
Entitlement to protection under copyright

Deleted (8)

Article 5
Incorporation of data, works or other materials into a database

Deleted (9)

(7) Most delegations were in favour of deleting this paragraph. The Spanish, Italian and United Kingdom delegations were opposed to its deletion.

(8) Reservation from the Commission on the deletion of this Article.

(9) Reservation from the Commission on the deletion of this Article.
Article 6
Restricted acts (10)

The author of a database shall have the exclusive right to do or to authorize in respect of copyrightable expression:

(a) temporary or permanent reproduction by any means and in any form, in whole or in part;

(b) translation, adaptation, arrangement and any other alteration;

(c) Deleted.

(d) any form of distribution to the public of the base 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 right to control further resale within the Community of that copy;

(10) Add the following recitals:
"23a. Whereas the copyright protection of databases includes making databases available by means other than by the distribution of copies;

23b. Whereas Member States are required to ensure that their national provisions are at least materially equivalent in the case of such acts subject to restrictions as are provided for by this Directive;

23c. Whereas the question of exhaustion of copyright does not arise in the case of on-line databases in the field of provision of services; whereas, unlike the cases of CD-ROM or CD-i where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which will have to be subject to authorization where the copyright so provides;".
(e) any communication, display or performance to the public;

(f) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).

Article 7

Exceptions to the restricted acts (\(^{(1)}\))

1. Deleted.

2. 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 for the purposes of access to the contents of the database and use of the collection by the lawful user shall not require the authorization of the author of the base.

3. Deleted.

4. Member States shall have the option of providing for limitations on the rights set out in Article 6 in the following cases:

   (a) in the case of reproduction for private purposes giving rise to equitable remuneration of all rightholders; (\(^{(12)}\))

   (b) where there is use for the sole purposes of illustration for teaching or scientific research, to the extent justified by the non-commercial purpose.

\(^{(1)}\) Add the following recital:
"26a. Whereas Member States may maintain their legal arrangements concerning reprography and private copying;".

\(^{(12)}\) Reservations from several delegations on the link between the option of providing for this limitation and the obligation to provide for equitable remuneration.
Article 8
Exceptions to the restricted acts in relation to the copyright in the contents

Deleted

Article 9
Term of protection

Deleted
CHAPTER III: SUI GENERIS RIGHT

Article 10

Object of protection (13)

(13) Recitals 28 to 30 should be reworded as follows:

"28. Whereas, in addition to protecting the copyright in the original selection or arrangement of the contents of a database, this Directive seeks to safeguard the position of manufacturers of databases against misappropriation of the results of the financial and professional investment incurred in obtaining and collecting the contents by providing that certain acts done by the user or a competitor in relation to the whole or substantial parts of a database are subject to restriction;

28a. Whereas the object of this sui generis right is to ensure protection of any investment in obtaining, verifying or presenting the contents of a database for the limited duration of the right; whereas such investment may consist of the implementation of financial resources and/or the expending of time, effort and energy;

29. Whereas the objective of the sui generis right is to give the manufacturer of a database the option of preventing the unauthorised extraction and/or re-utilization of the contents of that database;

29a. Whereas the special right to prevent unauthorized extraction relates to acts by the user which go beyond his legitimate rights and thereby harm the investment; whereas the right to prohibit re-utilization of all or a substantial part of the contents relates to competitors who manufacture a parasitical competing product;

29b. Whereas the right to prevent unauthorized extraction and/or re-utilization is not to be considered in any way as an extension of copyright protection to mere facts or data;

30. Whereas the existence of a right to prevent the extraction and/or re-utilization ... of the whole or a substantial part of works, data or materials from a given database should not give rise to the creation of any independent right in the works, data or materials themselves;".
1. Deleted.

2. Member States shall provide for a right for the manufacturer of a database which shows that there has been quantitatively and/or qualitatively a [substantial] investment in either the obtaining, verification or presentation of the contents, to prevent acts of extraction and/or re-utilization of the contents of that database.

3. This right shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. [Moreover, it shall apply irrespective of the eligibility of the contents of that database for protection by copyright or by other rights.]

4. The repeated or systematic extraction and/or re-utilization of insubstantial parts of the contents of the database amounting to acts which conflict with a normal exploitation of that base or which unreasonably prejudice the legitimate interests of the maker of the base shall not be permitted.
Article 11
Legal licence for commercial purposes (14),(15)

_____________________
(14) Reservations from the Danish, German, Netherlands and Swedish delegations on the principle of legal licences.

(15) Recitals 31 to 35 should be reworded as follows:

31. Whereas in the interests of competition between suppliers of information products and services, the maker of a database which is commercially distributed whose database is the sole possible source of a given work, data or other materials should make that work, data or other materials available under licence for use by others, providing that the works, data or other materials so licensed are not the object of protection by copyright or by rights related to copyright and are used in the independent creation of new works ...;

32. Whereas licences granted in such circumstances should be fair and non-discriminatory under conditions to be agreed with the rightholder; whereas such conditions may include remuneration;

33. Whereas such licences should not be requested for reasons of commercial expediency such as economy of time, effort or financial investment; whereas, where it is seen that the granting of a licence is not followed by the adding of value to works, data or other materials thus obtained, this may lead to remedies and in particular withdrawal of the licence;

34. Whereas, in the event that licences are refused or the parties cannot reach agreement on the terms to be concluded, a system of mediation or arbitration should be provided for by the Member States;

35. Whereas licences may not be refused in respect of the extraction and re-utilization of works, data or materials contained in a database accessible to the public and created by a public body providing that such acts do not infringe the legislation or international obligations of Member States or the Community in respect of matters such as personal data protection, privacy, security or confidentiality;".
1. Notwithstanding the right provided for in Article 10, a licence for commercial purposes relating to the whole or substantial part of the data or other materials, and to works which are not protected by copyright or related to copyright, shall be granted if those works, data or other materials cannot be obtained from any other source at the time when the licence is requested. (13)

2. The licences referred to in this Article shall only be granted where the database has been made accessible to the public in the sense that it may be interrogated by anyone and the whole base may be so interrogated.

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

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

5. Licences shall also be granted in the same circumstances and under the same terms and conditions as those referred to in paragraphs 1 to 4 by 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, and by firms or entities enjoying a monopoly status by virtue of a concession by a public body. (14)

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(13) The United Kingdom delegation proposed adding the criterion that such works, data or other materials could not have been obtained from another source at the time when the database was created.

(14) In addition to the delegations with a reservation on the principle of legal licences, the Belgian and Portuguese delegations entered a reservation on this paragraph.
6. Member States shall provide for appropriate measures for mediation or arbitration between the parties in respect of licences provided for in accordance with this Article, without prejudice to the access of parties to the courts.

**Article 11a**

*Legal licence for scientific research or educational purposes*

The provisions of Article 11, with the exception of paragraph 3 thereof, shall apply to licences for scientific research or educational purposes.
Article 11b
Rights of the lawful user

1. The lawful user of a database which is made accessible to the public within the meaning of Article 11(2) may, without authorization of the maker of that base, extract and re-utilize insubstantial parts, evaluated qualitatively and/or quantitatively of the contents of that base for commercial, scientific research or educational (15) 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 that base.

2. The lawful user of a database which is made accessible to the public within the meaning of Article 11(2) may, without authorization of the maker of that base, and without acknowledgement of the source, extract and re-utilize insubstantial parts, evaluated qualitatively and/or quantitatively, of the contents of that base for personal private use 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 that base.

(15) The Irish and Portuguese delegations thought that, for scientific research or educational purposes, the right provided for in this paragraph should not be limited to insubstantial parts of the contents of a database.
Article 12

Term of protection (16)

1. The right provided for in Article 10 shall run from the date of completion of manufacture of the database. It shall expire 15 years from the first of January of the year following the date of completion. (17)

1a. In the case of a database which is made available to the public before expiry of the period provided for in paragraph 1, the term of protection by this right shall expire 15 years from the first of January of the year following the date when the database was first made available to the public. (18)

2. Any substantial change, evaluated quantitatively and/or qualitatively, to the contents of a database [which has been made available to the public] (19), including any substantial change resulting from the successive accumulation of additions, deletions or alterations, which would result in the base being considered to be new, shall qualify that database for its own term of protection. (20)

3. Deleted.

(16) Reservation from the Portuguese delegation on this Article; it would prefer the Commission's original proposal.
(17) The United Kingdom and Irish delegations thought that the term of protection should be fifty years from the date of completion of manufacture.
(18) The United Kingdom and Irish delegations thought there was no need to provide for a further term from the date when the database was made available to the public, in view of the term proposed by these delegations from the date of completion of manufacture.
(19) The German, Irish, Netherlands and United Kingdom delegations thought that this paragraph should also apply to the case of a database which had not been made available to the public.
(20) Add the following recital: "37a. Whereas the burden of proof that the criteria exist for concluding that a substantial amendment to the contents of a database is involved lies with the manufacturer of that database;"
Article 13

Beneficiaries of protection under the sui generis right

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. 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.

3. Agreements extending the right provided for in Article 10 to databases manufactured 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. (21)

(21) The German, Austrian, Swedish and United Kingdom delegations would rather apply national treatment than reciprocity. The United Kingdom delegation proposed a compromise wording, which would involve permission for national treatment provided that the Council, on a Commission proposal, had the power to withdraw such permission from any third country which did not adequately protect databases of Community origin.
CHAPTER IV: COMMON PROVISIONS

Article 14
Remedies

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

Article 15
Continued application of other legal provisions

The provisions of this Directive shall be without prejudice to other legal provisions concerning copyright, rights related to copyright or any other rights or obligations subsisting in the data, works or other materials incorporated into a database, patent rights, trade marks, design rights, unfair competition, trade secrets, security, confidentiality, data protection and privacy, and the law of contract. Any contractual provision contrary to Articles 7, 11, 11a and 11b shall be null and void.
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 manufactured prior to the date referred to in Article 16(1) (22) 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. (23)

2. In the case of a database which has already been made available to the public 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. (24)

(22) Reservation from the Commission on this date; it proposed the date of publication of the Directive.
(23) The Irish, Netherlands and United Kingdom delegations had reservations on this paragraph owing to the fact that databases which were currently protected by national copyright arrangements would no longer be protected by such arrangements after the date in Article 16(1).
(24) Scrutiny reservation from the German delegation on this paragraph.
Article 16

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before ... .  (25)

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.

(25) Date to be fixed at a later stage.
REPORT

from: Presidency

to: Permanent Representatives Committee

No. prev. doc.: 5750/95 PI 15 CULTURE 12 CODEC 25
No. Cion prop.: 9219/93 PI 89 CULTURE 113


I. Introduction

1. In a letter of 15 April 1992, the Commission submitted to the Council a proposal for a Directive on the legal protection of databases (1). The proposal is based on Articles 57(2), 66 and 100a of the Treaty.

   This proposal provides for the protection of databases both by copyright and by a sui generis right.

2. The Economic and Social Committee delivered its Opinion on 24 November 1992 (2). The European Parliament delivered its Opinion on

(2) OJ No C 19, 25.1.1993, p. 3.

3. On 2 December 1994 the Permanent Representatives Committee discussed the proposed Directive on the basis of a report from the Presidency (11135/94 PI 84 CULTURE 67 CODEC 66). (5)

4. The Working Party on Intellectual Property (Copyright) continued its proceedings in the light of the Permanent Representatives Committee's discussions. The Presidency considers that the time has come to put before the Permanent Representatives Committee a number of questions which the Working Party has been unable to resolve.

These problems, set out in section II, are as follows:

A. Scope of the Directive
B. Databases created by employees
C. Reproduction of a database for private purposes
D. Scope of the sui generis right
E. Non-voluntary licences
F. Term of protection under the sui generis right
G. Databases made in third countries
H. Binding nature of certain provisions.

5. The text of the proposal for a Directive as it emerged from the Working Party's proceedings is set out in the Annex to this report. However, since a further Working Party meeting is scheduled for 21 April 1995, a number of provisions remain outstanding in this text; the Committee may well have several supplementary questions referred to it following that meeting.

(5) The outcome of this discussion is summarized in 12347/94 PI 102 CULTURE 68 CODEC 97.
II. Problems outstanding

A. Scope of the Directive (Article 1(1))

6. Both the Commission's original proposal and its amended proposal are limited to electronic databases.

The European Parliament proposed no amendment in this respect. The Economic and Social Committee expressed concern that this limitation to electronic databases "will mean that different legal regimes will apply to the same database if it is stored both electronically and otherwise" (point 3.2. of its opinion).

7. Most delegations favoured an extension of the scope of the Directive to all types of database on the following grounds:

(a) such a solution would be simpler, avoiding the need to draw a clear distinction between electronic databases and non-electronic databases;

(b) a database which was distributed in both electronic and non-electronic forms would enjoy the same protection for both forms;

(c) no distinction between electronic databases and non-electronic databases is made either by the corresponding provision of the GATT Agreement on trade-related aspects of intellectual property rights TRIPS Agreement, or in the ongoing work in the World Intellectual Property Organization (WIPO) on a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works.

However, the Belgian, French and Portuguese delegations thought the
Directive's scope should be limited to electronic databases and extended to cover databases in another medium only where they were derived from electronic databases, on the following grounds:

(a) the national laws of the Member States already provide adequate protection for non-electronic databases and there is therefore no need for Community harmonization in this respect, whereas the national laws of Member States do not explicitly extend to electronic databases and it is therefore uncertain whether electronic databases are covered by the laws of some Member States;

(b) the specific problems which arise in relation to electronic databases, as a result of the ease with which the materials stored in them can be manipulated and accessed, do not arise in respect of non-electronic databases;

(c) general extension to non-electronic databases would require reconsideration of several provisions of the proposed Directive.

8. The Presidency asks the Permanent Representatives Committee whether it can confirm the majority approach in favour of extending the Directive's scope to cover databases of all types.

B. Databases created by employees (Article 3(4))

9. The Commission proposal includes the following provision in the chapter on copyright:

"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 base so created, unless otherwise provided by contract."

10. Most delegations favoured the deletion of this provision on the grounds that no harmonization was necessary in this respect and in any event such harmonization would be limited inasmuch as the employer and the employee were at liberty to resolve matters otherwise in a contract.

However, the Spanish, Italian and United Kingdom delegations advocated retention of this provision.

These delegations pointed out that there was a similar provision in Article 2(3) of Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programmes (6), and that the same rule should apply to both databases and computer programmes.

11. The Presidency asks the Permanent Representatives Committee whether it can confirm the majority position in favour of deleting this provision.

C. Reproduction of a database for private purposes (Article 7(4)(a))

12. Article 6 of the proposed Directive lists the acts which may not be performed without the authorization of the author of a database protected by copyright; Article 7 lays down the exceptions to the obligation to obtain authorization to perform a number of these acts.

One of the restricted acts is "temporary or permanent reproduction by any means and in any form, in whole or in part" (Article 6(a)).

On the question of exceptions to this right of reproduction (Article 7(4)), the Working Party agreed that Member States should remain at liberty to regulate at national level the question of the reproduction for private purposes of non-electronic databases.

However, where the reproduction for private purposes of electronic databases was concerned:

- the Spanish, Irish, Italian, Netherlands and United Kingdom delegations took the view that this should be prohibited under the Directive both for on-line databases and for databases in the form of CD-ROM and CD-i; the French delegation was favourably inclined towards this approach;

- the Belgian, German, Luxembourg and Austrian delegations (7) reserved their positions on whether such reproduction should be prohibited with respect to all electronic databases or only on-line ones (which would leave Member States free to regulate the reproduction of CD-ROM and CD-i databases);

- the Danish, Portuguese, Finnish and Swedish delegations thought

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(7) The Greek delegation was not represented when this question was discussed.
Member States should remain free to regulate this question (as in the case of non-electronic databases).

13. In this context the Danish, Portuguese, Finnish and Swedish delegations thought Article 7(4) of the Directive should be confined to a reference to the exceptions laid down in Article 9(2) and Article 10 of the Berne Convention for the Protection of Literary and Artistic Works, rather than laying down specific exceptions.

The Commission representatives were opposed to a solution of this type.

They argued firstly that the rights provided for in Article 6 of the Directive applied depending on the selection or arrangement of the contents of the database and that as a result the exceptions laid down in the Berne Convention could not automatically apply to them; secondly they thought that, given the specific nature of databases, it was not advisable to apply these exceptions to them without any restriction.

Most delegations agreed with the Commission.

14. The Presidency invites the Permanent Representatives Committee:

- to consider whether the Directive should prohibit reproduction for private purposes with respect to all electronic databases or only with respect to on-line databases;

- to confirm the majority position in favour of specific exceptions instead of a
D. Scope of the sui generis right (Articles 10 and 11b)

15. The major innovation in this proposal for a Directive is the introduction of a new sui generis right alongside the copyright protection of databases.

The purpose of this new right is to protect the financial investment of a database maker against acts by a competitor or user of the database which conflict with a normal exploitation of that base or which unreasonably prejudice the legitimate interests of the maker.

While the principle of this right is not questioned, the Working Party has been unable to reach agreement on its scope.

As far as the Commission is concerned, this right must extend to the entire contents or (substantial or insubstantial) parts of the database (Article 10), and be accompanied by certain exceptions regarding the use of the whole or a substantial part of the contents for commercial purposes (Article 11), the use of the whole or a substantial part for scientific research or educational purposes (Article 11a) and the use of insubstantial parts (Article 11b).

The Commission considers that this structure is necessary in order to give the database maker a substantial right, balanced by clear rights for the user of the database.

The Belgian and French delegations in particular shared this point of view.
On the other hand, the Danish, German, Austrian, Portuguese, Finnish and Swedish delegations thought it was enough for the sui generis right to cover the whole or a substantial part of the contents of the database, which would allow the exceptions in Article 11b regarding the use of insubstantial parts to be dropped (8).

These delegations thought that the use of insubstantial parts could not conflict with normal exploitation of the base or unreasonably prejudice the maker's legitimate interests.

The Irish and Portuguese delegations also thought that a lawful user should be able to use the contents of a database for scientific research or educational purposes or for his personal private use without any restriction, and in particular that such use should not be confined to insubstantial parts.

The Commission and the Belgian and French delegations thought that, in certain circumstances, the use of insubstantial parts of a database might conflict with normal exploitation of the base or unreasonably prejudice the maker's legitimate interests.

This, in their view, justified extending protection under the sui generis right to the extraction and/or reutilization of the contents in whole or in part, and providing for specific exceptions with regard to insubstantial parts. Moreover, they thought these exceptions were necessary in

(8) On the question of the exceptions provided for in Articles 11 and 11a, see Section E below.
order to lay down the obligation for lawful users reutilizing insubstantial parts of
the contents for commercial purposes, scientific research or educational purposes to
acknowledge the database as their source.

The Spanish and Italian delegations preferred the Commission approach but would be
prepared to consider the solution advocated by the second group of delegations.

16. The Presidency invites the Permanent Representatives Committee to consider whether the sui
generis right should extend to use of the contents of the database in whole or in part and be
accompanied by specific exceptions regarding insubstantial parts, or whether it should be
confined to use of the whole contents or a substantial part thereof and contain no restriction
on the use of insubstantial parts.

E. Non-voluntary licences (Articles 11 and 11a)

17. The Commission proposed that, where a database is the sole source for works, data or other
materials it contains, the sui generis rightholder should be obliged to grant a non-voluntary
licence to a third party wishing to use all or a substantial part of these contents for
commercial purposes (Article 11) or for scientific research or educational purposes
(Article 11a).

The aim of this obligation is to balance the substantial sui generis right by measures
precluding the rightholder's abuse of his monopoly.

Most delegations supported this principle.
The Danish, German, Netherlands, Finnish and Swedish delegations on the other hand opposed the principle of any obligation to grant non-voluntary licences under the sui generis right.

These delegations thought that Articles 85 and 86 of the Treaty together with national legislation on unfair competition were an adequate safeguard against the abuse of a monopoly position.

18. The Presidency requests the Permanent Representatives Committee to rule on this principle.

F. Term of protection under the sui generis right (Article 12)

19. In its original proposal, the Commission suggested a 10-year term of protection under the sui generis right. In the light of the European Parliament's first-reading Opinion, the Commission suggested a 15-year term in its amended proposal. Most delegations supported this amended proposal.

The Irish and United Kingdom delegations proposed increasing the term of protection under this right to 50 years.

While they agreed that a 15-year term was adequate for "dynamic" databases whose content was regularly updated, these delegations thought it was clearly too short to enable the maker of a "static" database, whose contents by definition were unlikely to change, to recover his investment in making the base.

These two delegations were prepared to review their position on the subject in the context of an overall compromise which would incorporate a satisfactory solution for
databases currently protected under national copyright arrangements but likely to lose copyright protection once the Directive came into effect. This latter problem is still being studied by the Working Party.

20. The Presidency asks the Permanent Representatives Committee whether it can confirm the majority approach in favour of a term of protection of 15 years under the sui generis right.

G. Databases made in third countries (Article 13)

21. The Commission had proposed that the sui generis right be extended to databases made in third countries on the basis of reciprocal agreements so as to encourage third countries to grant adequate protection in their countries to databases made by Community nationals.

The Commission justified this approach on the grounds that the sui generis right was a new right which did not yet exist anywhere and which was therefore not covered by any international agreement (Berne Convention, TRIPS Agreement) which made provision for national treatment (9).

A majority of delegations supported the Commission's approach.

The German, Austrian, Swedish and United Kingdom delegations on the other hand advocated the application of national treatment with respect to the

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(9) With respect to the copyright protection of databases created in third countries, Articles 3, 5 and 6(1) of the Berne Convention apply (national treatment).
sui generis right, since this was an intellectual property right and the procedures for concluding reciprocal agreements were very cumbersome.

The United Kingdom delegation, with the support of the German delegation, suggested a compromise wording which would involve the grant of national treatment although the Council, acting on a proposal from the Commission, could be authorized to withdraw it vis-à-vis any third country which failed adequately to protect databases of Community origin.

The Commission representatives had reservations on this proposal on the grounds that the possibility of withdrawing rights of a private nature by means of a political decision might create legal uncertainty.

22. The Presidency asks the Permanent Representatives Committee whether it can confirm the majority approach in favour of reciprocal arrangements.

H. Binding nature of certain provisions (Article 15, last sentence)

23. At the request of several delegations, the last sentence of Article 15 specifies that any contractual provision contrary to certain provisions of the Directive (Article 7(2), Articles 11, 11a and 11b) will be null and void.

These delegations take the view that the provisions in question in the Directive protect important rights for the users of databases and that as a result it should not be possible to derogate from them by contractual means.
The German delegation entered a substantive reservation on this sentence, given its opposition to non-voluntary licences as provided for in Articles 11 and 11a (section F above).

The Danish, Finnish, Swedish and United Kingdom delegations entered scrutiny reservations on this sentence pending finalization of the provisions concerned.

These delegations argued that a rightholder who was forbidden to derogate by contractual means from an exception to his right could find himself in a less favourable position than if he had not had the right, since in the absence of the right he would have been at liberty to negotiate with the other party.

The Austrian delegation also entered a scrutiny reservation.

This delegation commented that if this provision were to be retained it should not be included in Article 15 but in a separate Article.

24. The Presidency requests the Permanent Representatives Committee to decide whether Articles 7(2), 11, 11a and 11b should be binding provisions from which no derogation by contractual means should be possible.
AMENDED PROPOSAL FOR A EUROPEAN PARLIAMENT
AND COUNCIL DIRECTIVE ON THE LEGAL PROTECTION
OF DATABASES

CHAPTER I: SCOPE

Article 1
Scope

1. This Directive concerns the legal protection of databases in any form. (10)

2. }
4. }

Article 1a
Limitations of the scope (11)

This Directive shall apply without prejudice to Community provisions relating to:

(a) the legal protection of computer programs;

(b) rental right, lending right and certain rights related to copyright in the field of intellectual property;

(10) The question of the scope of the Directive is covered in section A of the report.
(11) Add the following recitals:
"19a. Whereas the rental and lending of databases in the field of copyright and related rights are governed exclusively by Directive 92/100/EEC;

19b. Whereas the term of copyright is already governed by Directive 93/98/EEC;".
(c) the term of protection of copyright and certain related rights.

CHAPTER II: COPYRIGHT

Article 2
Object of protection

1. In accordance with the provisions of this Directive, databases which by reason of the selection or arrangement of their contents constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection. (12)

2. Deleted.

3. Deleted.

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

5. Deleted.

6. Deleted.

(12) Scrutiny reservations from the Irish and United Kingdom delegations on this second sentence.
Article 3

Authorship

1. The author of a database shall be the natural person or group of natural persons who created the base 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 economic rights shall be owned by the person holding the copyright.

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 base so created, unless otherwise provided by contract.] (13)

Article 4

Entitlement to protection under copyright

Deleted (14)

Article 5

Incorporation of data, works or other materials into a database

Deleted (15)

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(13) See Section B of the report.
(14) Reservation from the Commission on the deletion of this Article.
(15) Reservation from the Commission on the deletion of this Article.
Article 6

Restricted acts (16)

The author of a database shall have the exclusive right to do or to authorize in respect of copyrightable expression:

(a) temporary or permanent reproduction by any means and in any form, in whole or in part;

(b) translation, adaptation, arrangement and any other alteration;

(c) Deleted.

(16) Add the following recitals:

"23a. Whereas the copyright protection of databases includes making databases available by means other than by the distribution of copies;

23b. Whereas Member States are required to ensure that their national provisions are at least materially equivalent in the case of such acts subject to restrictions as are provided for by this Directive;

23c. Whereas the question of exhaustion of the distribution right does not arise in the case of on-line databases in the field of provision of services; whereas that applies equally to a hard copy of such a database made by the user of that service with the consent of the rightholder; whereas, unlike the cases of CD-ROM or CD-i where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in effect an act which will have to be subject to authorization where the copyright so provides;".
(d) any form of distribution to the public of the base 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 right to control further resale within the Community of that copy;

(e) any communication, display or performance to the public;

(f) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b). ({17})

Article 7

Exceptions to the restricted acts

1. Deleted.

2. 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 for the purposes of access to the contents of the database and normal use of the contents by the lawful user shall not require the authorization of the author of the base.

3. Deleted.

4. Member States shall have the option of providing for limitations on the rights set out in Article 6 in the following cases:

   (a) in the case of reproduction for private purposes of a non-electronic database, save in the case of on-line databases; ({18})

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({17}) Scrutiny reservation from the German delegation on (f).

({18}) See section C of the report.
(b) where there is use for the sole purposes of illustration for teaching or scientific research, to the extent justified by the non-commercial purpose.

(c) (Provision being examined by the Working Party).

Article 8

Exceptions to the restricted acts in relation to the copyright in the contents

Deleted

Article 9

Term of protection

Deleted
CHAPTER III: SUI GENERIS RIGHT

Article 10

Object of protection (19)

1. Deleted.

2. Member States shall provide for a right for the maker of a database which shows that there has been quantitatively and/or qualitatively a substantial investment in either the obtaining, verification or presentation of the contents, to prevent acts of extraction and/or reutilization [of the whole of or a substantial part, evaluated qualitatively and/or quantitatively,] of the contents of that database. (20)

   (a) This right may be transferred, assigned or granted under contractual licence.

3. This right shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of the eligibility of the contents of that database for protection by copyright or by other rights. (21)

4. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database amounting to acts which conflict with a normal exploitation of that base or which unreasonably prejudice the legitimate interests of the maker of the base shall not be permitted. (22)

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(19) Certain aspects of Article 10 and the corresponding recitals are still being examined by the Working Party.

(20) See section D of the report.

(21) Scrutiny reservations from the Belgian, French and Portuguese delegations on this last sentence.

(22) Scrutiny reservation from the Portuguese delegation on this paragraph.
Article 11
Non-voluntary licence for commercial purposes

Article 11a
Non-voluntary licence for scientific research
or educational purposes

(The question of the principle of the licences provided for in Articles 11 and 11a is discussed in Section E of the report. Several other aspects of these Articles and the corresponding recitals are still being examined by the Working Party).
Article 11b

Rights of the lawful user \(^{(23)}\)

1. The lawful user of a database which is made available to the public in whatever manner may, without authorization of the maker of that base, extract and re-utilize insubstantial parts, evaluated qualitatively and/or quantitatively, of the contents of that base for commercial, scientific 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 that base or of the holder of a copyright or related right covering the works or material contained in that base.

2. The lawful user of a database which is made available to the public in whatever manner may, without authorization of the maker of that base, and without acknowledgement of the source, extract and re-utilize insubstantial parts, evaluated qualitatively and/or quantitatively, of the contents of that base for personal private use 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 that base or of the holder of a copyright or related right covering the works or material contained in that base.

\(^{(23)}\) The question of the need for this Article is discussed in Section D of the report. Some other aspects of the Article are still being examined by the Working Party.
Article 12
Term of protection (24)

1. The right provided for in Article 10 shall run from the date of completion of the making of the database. It shall expire 15 years from the first of January of the year following the date of completion. (25)

1a. In the case of a database which is made available to the public in whatever manner before expiry of the period provided for in paragraph 1, the term of protection by that right shall expire 15 years from the first of January of the year following the date when the database was first made available to the public.

2. Any substantial change, evaluated quantitatively and/or qualitatively, to the contents of a database, including any substantial change resulting from the successive accumulation of additions, deletions or alterations, which would result in the base being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the base resulting from that investment for its own term of protection.

3. Deleted.

(24) Add the following recitals:

"37a Whereas the burden of proof of the date of completion of the making of a database lies with its maker;

37b Whereas the burden of proof that the criteria exist for concluding that a substantial amendment to the contents of a database is to be regarded as a substantial new investment lies with the maker of that database;

37c Whereas a substantial new investment qualifying for a new term of protection may involve substantial verification of the contents of the database;"

(25) The question of the term of protection is discussed in Section F of the report.
Article 13

Beneficiaries of protection under the sui generis right \[^{(26)}\]

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 in the territory of the Community.

2. 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.

3. Agreements extending the right provided for in Article 10 to databases manufactured 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 that procedure shall not exceed that available pursuant to Article 12.

\[^{(26)}\] The question of whether reciprocity or national treatment should be applied to databases made in third countries is discussed in Section G of the report.
CHAPTER IV: COMMON PROVISIONS

Article 14
Remedies

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

Article 15
Continued application of other legal provisions

The provisions of this Directive shall be without prejudice to other legal provisions concerning in particular copyright, rights related to copyright or any other rights or obligations subsisting in the data, works or other materials incorporated into a database, patent rights, trade marks, design rights, the protection of national treasures, unfair competition, trade secrets, security, confidentiality, data protection and privacy, and the law of contract. Any contractual provision contrary to Articles 7(2), 11, 11a and 11b shall be null and void. (27)

(27) This last sentence is discussed in Section H of the report.
Article 15a
Application in time

(This Article is still being examined by the Working Party)

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 1998].

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down 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 third 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 in particular of the provisions on multimedia works. Where necessary, it shall submit proposals for adjustment of the Directive in line with developments in the area of databases.

Article 17

This Directive is addressed to the Member States.
ADDITION TO REPORT

from: Presidency

to: Permanent Representatives Committee


1. Following the meeting of the Working Party on Intellectual Property (Copyright) on 21 April 1995, further details should be given on some points in the Presidency report.

I. Reproduction of a database for private purposes

(Article 7(4)(a) - section C of the report)

2. On the option for Member States to impose restrictions on the right of reproduction in the case of reproduction for private purposes (point 12 in the report), Member States' positions emerged more clearly as follows:

– the Portuguese delegation urged that Member States should have that option, irrespective of the form of database or the means of distribution;

– the Commission representatives and the Belgian delegation were opposed to Member States being left that option, at any rate in the case of on-line
databases; the French, Netherlands and United Kingdom delegations were sympathetic towards the latter position;

– the other delegations had an open mind on the matter.

The question to be put to the Permanent Representatives Committee (first indent in point 14 of the report) could therefore be reworded as follows:

The Presidency invites the Permanent Representatives Committee to consider whether Member States should be able to permit reproduction for private purposes, irrespective of the form of database or the means of distribution, or whether the Directive should prohibit the reproduction for private purposes of on-line databases. (1)

3. On the questions raised in point 13 of the report, the Working Party arrived at a compromise for which a wording would be established at a forthcoming meeting.

The question put to the Permanent Representatives Committee in this respect (second indent in point 14 of the report) is therefore now redundant.

(1) Article 7(4)(a) could read as follows:

"4. Member States shall have the option of providing for limitations on the rights set out in Article 6 in the following cases:

(a) in the case of reproduction for private purposes [, save in the case of on-line databases]."
II. **Term of protection under the sui generis right (Article 12) and transitional provisions (Article 15a - section F of the report)**

4. As stated in the report (point 19), the Irish and United Kingdom delegations' positions on the term of protection under the sui generis right were linked to the question of databases at present enjoying national copyright protection but liable to lose copyright protection once the Directive took effect since the eligibility criteria for such national protection were less stringent than the Directive's criteria for copyright protection. Such situations were likely to arise as a result of the current national systems in Ireland, the Netherlands and the United Kingdom, where the term of copyright protection was at present 50 years post mortem auctoris and would be 70 years post mortem auctoris as from the transposition of Directive 93/98/EEC (\(^2\)). The majority of the databases concerned would probably be eligible for protection under the sui generis right; however, the term of protection conferred by that right as proposed by the Commission and supported by most delegations was only 15 years.

The Working Party took note of a Council Legal Service opinion on some aspects of the matter (6611/95 JUR 87 PI 22 CULTURE 37 CODEC 39) and considered the possibility of making provision for an exception to allow the Member States

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affected to continue to protect the databases concerned under the present system until the end of the current protection term (³).

The German delegation was opposed to such an exception, arguing firstly that it would prevent full harmonization of the legal protection of databases for a lengthy transitional period and secondly that there was insufficient justification for it.

The Commission representatives were favourable inclined towards such an exception as a compromise, making the point that the number of databases concerned would be limited and moreover that most of them would soon be obsolete.

The other delegations entered scrutiny reservations, with the Irish, Netherlands and United Kingdom delegations favourably inclined, while the Danish and French delegations emphasized that such an exception could be considered only as part of an overall compromise on the Directive as a whole.

In view of the above, the following question could be added to the one put in point 20 of the report:

The Presidency asks the Permanent Representatives Committee whether provision should be made for an exception to allow certain Member States to continue to afford national copyright protection to databases so protected on the date of

(³) A draft Article 15a (1aa) and a draft accompanying recital are annexed hereto.
publication of the Directive which do not fulfil the eligibility criteria for copyright protection laid down in Article 2(1), until the end of the term of protection then current.
Article 15a
Application in time

1. Protection pursuant to the provisions of this Directive as regards copyright shall also be available in respect of databases created prior to the date referred to in Article 16(1) (4) which on that date fulfil the requirements laid down in this Directive as regards copyright protection of databases.

[1aa. Notwithstanding paragraph 1, where a database protected under a copyright system in a Member State on the date of publication of this Directive does not fulfil the eligibility criteria for copyright protection laid down in Article 2(1), this Directive shall not result in any curtailing in that Member State of the remaining term of protection afforded under that system.] (5)

(4) Reservation by the Commission on the date; it proposed the date of publication of the Directive.
(5) This paragraph would be accompanied by the following recital:

"Whereas some Member States at present afford copyright protection to databases not fulfilling the eligibility criteria for copyright protection laid down in this Directive; whereas, even if the databases concerned are eligible for protection under the right laid down by the Directive to prevent unauthorized extraction and reutilization of their contents, the term of protection under the latter right is significantly less than that which they enjoy under the present national systems; whereas harmonization of the criteria applied to determine whether a database is to be protected by copyright cannot result in a reduction in the term of protection at present enjoyed by the holders of the rights concerned; whereas provision should be made for an exception to that effect; whereas the effects of that exception must be confined to the territory of the Member States concerned;".
1a. Protection pursuant to the provisions of this Directive as regards the right provided for in Article 10 shall also be available in respect of databases the manufacture of which was completed not more than 15 years prior to the date referred to in Article 16(1) (6) and which on that date fulfil the requirements laid down in Article 10 of this Directive.

1b. The protection provided for in paragraphs 1 and 1a shall be without prejudice to any acts accomplished and rights acquired before the date referred to in those paragraphs.

2. In the case of a database the manufacture of which was completed not more than 15 years 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.

(6) See footnote 4.
SUPPLEMENTARY REPORT

from: Presidency

to: Permanent Representative Committee

No. prev. doc.: 6414/95 PI 21 CULTURE 32 CODEC 34 + ADD 1
No. Cion prop.: 9219/93 PI 89 CULTURE 113


I. INTRODUCTION

1. On 26 April 1995 the Permanent Representatives Committee held a preliminary exchange of views on the questions put to it in the Presidency report of 12 April 1995 (6414/95 PI 21 CULTURE 32 CODEC 34 + ADD 1 of 24 April), noting clear positions on certain questions, and instructed the Working Party to continue examining others.

Following the Working Party's meetings on 8 and 15 May 1995, this supplementary report takes stock of progress.

The text of the proposal for a Directive as it now stands is set out in an Addendum to this report.
II. Questions put to the Permanent Representatives Committee

A. Scope of the Directive
   (Article 1(1))

2. Most delegations and the Commission were in favour of extending the scope of the Directive to all types of database, for the reasons set out in 6414/95, point 7.

   At the Committee's meeting on 26 April the French delegation stated that it was willing to agree to such an extension as part of an overall compromise.

   Only the Belgian and Portuguese delegations maintained their opposition to such extension, for the reasons set out in 6414/95, point 7.

   The Working Party did not further examine this question.

3. The Presidency asks the Permanent Representatives Committee whether it can confirm a majority position in favour of extending the scope of the Directive to all types of database.

B. Databases created by employees
   (Article 3(4))

4. At the Committee's meeting on 26 April the Spanish, Italian and United Kingdom delegations continued to advocate retaining this provision, which most delegations
wished to delete (points 9 and 10 of 6414/95).

5. The Working Party agreed unanimously to delete this provision and replace it by the following recital:

"22a. Whereas the arrangements applicable to databases created by employees are left to the discretion of the Member States; whereas, however, nothing in this Directive prevents Member States from stipulating in their legislation that 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 base so created, unless otherwise provided by contract."

6. The Presidency calls upon the Permanent Representatives Committee to take note of the agreement reached on this point.

C. Reproduction of a database for private purposes
(Article 7(4)(a))

7. At the Committee's meeting on 26 April a majority of the delegations was in favour of prohibiting the reproduction of on-line databases for private purposes, with the Commission representative advocating extension of that ban to all electronic databases, irrespective of the means of dissemination, whereas the Portuguese and Swedish delegations maintained their view that Member States should remain free to regulate reproduction of any database, whether electronic or
not and whatever the means of dissemination, for private purposes.

8. A majority of the Working Party was in favour of prohibiting the reproduction for private purposes of all electronic databases, whatever the means of dissemination (on-line, CD-ROM, CD-i).

The German and Finnish delegations reserved their positions on the matter, and the Portuguese and Swedish delegations maintained the position set out above.

There was unanimous agreement that Member States should remain free to regulate at national level the question of the reproduction for private purposes of non-electronic databases.

9. The Presidency asks the Permanent Representatives Committee whether it can confirm the majority position that the prohibition by the Directive of reproduction for private purposes should encompass all electronic databases.

D. Scope of the sui generis right (Article 10) and non-voluntary licences (Articles 11 and 11a)

10. The Committee recorded, at its meeting on 26 April, that opinion was divided both on whether the sui generis right should extend to the entire contents or (substantial or insubstantial) parts of the database or should be restricted to the whole or a substantial part of those contents and on the question of principle of non-voluntary licences.
11. As opinion remained divided on those issues, the Presidency proposed a compromise solution involving the following:

– the scope of the sui generis right would be limited to the whole or a substantial part of the contents of the database (Article 10);

– that right would consequently no longer cover the insubstantial parts of the contents, and it would no longer be necessary to provide for exceptions in respect of the extraction and/or re-utilization of those parts (deletion of Article 11b);

– provisions would be laid down specifying the rights and obligations of the legitimate database-user (Article 10a);

– the principle of non-voluntary licences would be accepted (Articles 11 and 11a);

– the United Kingdom delegation's concern that innovation should not be penalized by non-voluntary licences would be taken into account through the level of the fee to be paid for the licence (Article 11(4)).

12. The Presidency invites the Permanent Representatives Committee to adopt a position on this compromise solution.
E. Application of the sui generis right where the contents of a database are protected by copyright or by a related right (Article 10(3))

13. In its proposal the Commission laid down that the sui generis right would not apply to the contents of a database composed of works protected by copyright or of services protected by a related right. Most delegations ultimately acknowledged that there were no convincing grounds for excluding that type of database from protection under the sui generis right, and Article 10 was amended accordingly.

The Belgian and Portuguese delegations maintained scrutiny reservations on the matter.

14. The Presidency asks the Permanent Representatives Committee whether it can confirm the majority position in favour of applying the sui generis right to all databases, notwithstanding the possibility for the contents of a database to be protected by copyright or a related right.

F. Exceptions to the sui generis right (Article 10b)

15. A large majority of delegations agreed to an exception to the sui generis right which, by analogy with the corresponding provision in the Chapter on copyright (Article 7(4)(a), see section C above), leaves Member States the option of regulating the extraction and/or re-utilization for private purposes of a substantial part of the contents of a non-electronic database (Article 10b(1)).
The Spanish and French delegations entered scrutiny reservations on such an exception.

The Portuguese delegation felt that the exception should cover all databases, whether or not electronic.

16. A majority of delegations could also agree to an exception to the sui generis right which leaves Member States the option of regulating the extraction and/or re-utilization for scientific research or educational purposes of a substantial part of the contents of a database (Article 10b(2)).

Adoption of this solution would entail the deletion of the present Article 11a, which provides for non-voluntary licences for scientific research and educational purposes on easier conditions than those applicable in the case of licences for commercial purposes.

The German delegation entered a scrutiny reservation on this exception.

The Spanish, French and Netherlands delegations and the Commission representative felt that this exception, if introduced, should be restricted to non-electronic databases; other delegations reserved their positions.

17. The Presidency asks the Permanent Representatives Committee:

(a) whether it can confirm the majority position in favour of an exception to
the sui generis right with regard to private purposes, as described in point 15 above;

(b) whether it can confirm the majority position in favour of an exception to the sui generis right with regard to scientific research or educational purposes, as described in point 16 above;

(c) to adopt a position on whether the exception referred to in (b) above should be restricted to non-electronic databases or encompass all databases.

G. Databases made in third countries (Article 13)

18. At the Committee's meeting on 26 April the delegations maintained the positions set out in point 21 of 6414/95. The Presidency asked the delegations which were not party to the majority position on this question to continue considering the matter.

This question was not discussed further by the Working Party.

19. The Presidency asks the Permanent Representatives Committee whether it can confirm the majority position in favour of reciprocal arrangements.
H. **Term of protection under the sui generis right (Article 12) and transitional provisions (Article 15a)**

20. At the Committee's meeting on 26 April the Irish and United Kingdom delegations stated that they would be prepared to endorse the majority position in favour of a 15-year term of protection under the sui generis right as part of an overall compromise which included a solution, as outlined in point 4 of the Addendum to 6414/95, to the problem of the transitional provisions.

Most delegations were prepared to consider such a solution.

The German delegation confirmed its position on the matter, stating that it was willing to help find a solution.

The Working Party's discussion of this issue confirmed the above situation.

21. The Presidency asks the Permanent Representatives Committee whether it can confirm the majority position in favour of a 15-year term of protection under the sui generis right and in favour of the derogation described in the Addendum to 6414/95.
I. Binding nature of certain provisions (Article 15b)

22. At its meeting on 26 April the Permanent Representatives Committee deferred examination of this question (point 23 of 6414/95) pending progress on the Articles referred to in the provision concerned.

It was agreed in the Working Party that this provision would be incorporated in a separate Article (Article 15b).

The Danish, German and Finnish delegations entered reservations on the reference to Articles 11 and 11a in this provision, taking the view that those Articles did not contain provisions from which it should be possible to derogate by contractual means.

Most delegations and the Commission felt that a reference to those Articles was indispensable.

23. The Presidency asks the Permanent Representatives Committee whether it can confirm the majority position that any contractual provision contrary to Articles 7(2), 10a, 11 and 11a should be null and void.
ADDENDUM TO THE SUPPLEMENTARY REPORT

from: Presidency

to: Permanent Representatives Committee


– Text of the proposal

The Permanent Representatives Committee will find attached the latest text of the proposal.
Amended proposal for
on the legal protection of databases

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57(2), 66 and 100a thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

1. Whereas databases are at present not sufficiently protected in all Member States by existing legislation and such protection, where it exists, has different attributes;

2. Whereas such differences in the legal protection offered by the legislation of the Member States have direct negative effects on the establishment and functioning of the single market as regards databases and in particular on the freedom of individuals and companies to provide on-line database goods and services on an equal legal basis throughout the Community; whereas such differences could well become more pronounced as Member States introduce new legislation on this subject, which is now taking on an increasingly international dimension;

3. Whereas existing differences having a distorting effect on the establishment and functioning of the single market need to be removed and new ones prevented from arising, while differences not at the present time adversely affecting the establishment and functioning of the single market or the development of an information market within the Community need not be addressed in this Directive;

4. Whereas copyright protection for databases exists in varying forms in the Member States according to legislation or case-law, and whereas such unharmonized intellectual property rights can have the effect of preventing the free movement of goods or services within the Community if differences in the scope and conditions of protection remain between the legislation of the Member States;
5. Whereas copyright remains an appropriate form of exclusive right for authors who have created databases;

5a. Whereas in addition, however, in the absence of a harmonized system of unfair competition legislation or of case-law, other measures are required to prevent the extraction and/or unauthorized re-utilization of the contents of a database;

6. Whereas database manufacture requires the investment of considerable human, technical and financial resources while such databases can be copied or accessed at a fraction of the cost needed to develop them independently;

7. Whereas the extraction and/or re-utilization of the contents of a database constitute acts which can have serious economic and technical consequences;

8. Whereas databases are a vital tool in the development of an information market within the Community; whereas this tool will also be of use in many other fields;

9. Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry requires investment in all the Member States in advanced information management systems;

10. (deleted)

11. Whereas there is at present a great imbalance in the level of investment in the database sector both as between the Member States and between the Community and the world's largest database-producing third countries;

12. Whereas such an investment in modern information storage and retrieval systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of database manufacturers;

13. Whereas this Directive protects collections, sometimes called compilations, of works, of data or other materials whose arrangement, storage and access is performed by means which include electronic, electromagnetic or electro-optical processes or analogous processes;

13a. Whereas protection under this Directive should be extended to cover non-electronic databases; (1)

(1) Reservations by the Belgian and Portuguese delegations.
14. Whereas the criteria by which a database should be eligible for protection by copyright should be
confined to the fact that the selection or the arrangement of the contents of the database is the
author's own intellectual creation; whereas such protection should cover the structure of the
database;

15. Whereas no other criterion than originality in the sense of intellectual creation should be applied to
determine the eligibility of the database for copyright protection, and in particular no aesthetic or
qualitative criteria should be applied;

15a. (deleted)

16. Whereas the term database should be understood to include collections of works, whether literary,
artistic, musical or other, or of other material such as texts, sounds, images, numbers, facts, data
[or combinations of any of these] (\(^2\)); whereas it should cover collections of works, data or other
independent materials which are systematically or methodically arranged and can be individually
accessed; whereas this means that the recording of audiovisual, cinematographic, literary or
musical works as such does not fall within the scope of this Directive;

16a. Whereas this Directive is without prejudice to the freedom of authors to decide whether, or in what
manner, they will allow their works to be included in a database, in particular whether or not the
authorization given is exclusive;

16b. Whereas as a rule the compilation of several recordings of musical performances on a CD does not
come within the scope of the Directive, both because, as a compilation, it does not meet the
conditions for protection under copyright and because it does not represent a substantial enough
investment to be eligible under the sui generis right;

17. Whereas protection under this Directive may also apply to the materials necessary for the
operation or consultation of certain databases such as the thesaurus and indexation systems;

17a. Whereas the protection provided for in this Directive relates to databases in which works, data or
other materials have been arranged systematically or methodically; whereas it is not necessary for
those materials to have been physically stored in an organized manner;

\(^2\) Reservation by the German delegation on this phrase; Commission reservation on its deletion.
18. Whereas the term database should not be taken to extend to computer programs used in the construction or operation of a database, which are protected by Council Directive 91/250/EEC;

19. (deleted)

19a. Whereas the rental and lending of databases in the field of copyright and related rights are governed exclusively by Directive 92/100/EEC;

19b. Whereas the term of copyright is already governed by Directive 93/98/EEC;

20. Whereas works protected by copyright and services protected by related rights, which are incorporated into a database, remain the object of the respective exclusive rights and may not be incorporated into or reproduced from the database without the permission of the rightholder or his successors in title;

21. Whereas copyright in such works and related rights in services thus incorporated into a database are not in any way affected by the existence of a separate right in the selection or arrangement of these works and services in a database;

22. Whereas the moral rights of the natural person who has created the database should be owned and exercised according to the legislation of the Member States and the provisions of the Berne Convention, and remain therefore outside the scope of this Directive;

22a. Whereas the arrangements applicable to databases created by employees are left to the discretion of the Member States; whereas, however, nothing in this Directive prevents Member States from stipulating in their legislation that 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 base so created, unless otherwise provided by contract;

23. Whereas the author's exclusive rights should include the right to determine the way in which his work is exploited and by whom, and in particular to control the distribution of his work to unauthorized persons;

23a. Whereas the copyright protection of databases includes making databases available by means other than the distribution of copies;
23b. Whereas Member States are required to ensure that their national provisions are at least materially equivalent in the case of such acts subject to restrictions as are provided for by this Directive;

23c. Whereas the question of exhaustion of the right of distribution does not arise in the case of on-line databases in the field of provision of services; whereas this also applies with regard to a material copy of such a database made by the user of such a service with the consent of the rightholder; whereas, unlike the cases of CD-ROM or CD-i where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which will have to be subject to authorization where the copyright so provides;

24. Whereas nevertheless once the rightholder has chosen to make available a copy of the database to a user, whether by an on-line service or by other means of distribution, that lawful user must be able to access and use the database for the purposes and in the way set out in the agreement with the rightholder, even if such access and use necessitate performance of otherwise restricted acts;

25. (deleted)

26. (deleted)

26a. Whereas a list should be drawn up of exceptions to restricted acts, taking into account the fact that copyright as covered by this Directive applies only to the selection or arrangement of the contents of a database; whereas Member States should be given the option of providing for such exceptions in certain cases; whereas, however, this option should be exercised in accordance with the provisions of the Berne Convention and to the extent that the exceptions relate to the structure of the database; whereas a distinction should be drawn between exceptions for private use and reproduction for private purposes, which concerns provisions under national legislation of some Member States on taxes on unused media or recording equipment;

26b. Whereas Article 10(1) of the Berne Convention is not affected by this Directive;
27. Whereas the increasing use of digital recording technology exposes the database maker to the risk that the contents of his database may be downloaded and rearranged electronically without his authorization to produce a database of identical content but which does not infringe any copyright in the arrangement of his database;

28. Whereas, in addition to protecting the copyright in the original selection or arrangement of the contents of a database, this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment incurred in obtaining and collecting the contents by providing that certain acts done by the user or a competitor in relation to the whole or substantial parts of a database are subject to restriction;

28a. Whereas the object of this sui generis right is to ensure protection of any investment in obtaining, verifying or presenting the contents of a database for the limited duration of the right; whereas such investment may consist of the implementation of financial resources and/or the expending of time, effort and energy;

29. Whereas the objective of the sui generis right is to give the maker of a database the option of preventing the unauthorized extraction and/or re-utilization of all or a substantial part of the contents of that database; whereas the maker of a database is the person who takes the initiative and the risk of investing; whereas this excludes subcontractors in particular from the definition of maker;

29a. Whereas the special right to prevent unauthorized extraction and/or re-utilization relates to acts by the user which go beyond his legitimate rights and thereby harm the investment; whereas the right to prohibit extraction and/or re-utilization of all or a substantial part of the contents relates not only to the manufacture of a parasitical competing product but also to any user who, through his acts, causes significant detriment, evaluated quantitatively or qualitatively to the investment;
29aa. Whereas in cases of on-line transmission the right to prohibit re-utilization is not exhausted either as regards the database or as regards a material copy of the database or of part thereof made by the addressee of the transmission with the consent of the rightholder;

29aaa. Whereas when on-screen display of the contents of a database necessitates the permanent or temporary transfer of all or a substantial part of such contents to another medium, that act should be subject to authorization by the rightholder; (1)

29b. Whereas the right to prevent unauthorized extraction and/or re-utilization is not to be considered in any way as an extension of copyright protection to mere facts or data;

30. Whereas the existence of a right to prevent the extraction and/or re-utilization of the whole or a substantial part of works, data or materials from a database should not give rise to the creation of a new right in the works, data or materials themselves;

31. Whereas in the interests of competition between suppliers of information products and services, the maker of a database which is commercially distributed and whose database is the sole possible source of a work, data or other materials should make that work, data or other materials available under licence for use by others, provided that the works, data or other materials are intended to be used in the independent creation of new and substantially different products and insofar as the works or services contained in the database are not the subject of protection by copyright or a related right; whereas the purpose of this obligation is to prevent abuse of a dominant position, whether resulting from a monopoly or an oligopoly, and it does not affect the application of Community or national competition law;

31a. Whereas the concept of a sole source also applies to the situation where a single undertaking or body makes a database accessible to the public in various forms;

(1) Scrutiny reservation by the German delegation.
32. Whereas licences granted in such circumstances should be fair and non-discriminatory under conditions to be agreed with the rightholder; whereas such conditions may include remuneration; whereas account should be taken in particular, when deciding on the remuneration, of the possibility which the person requesting the licence had, prior to making his request, of access to another source;

33. Whereas such licences should not be requested principally for reasons of commercial expediency such as economy of time, effort or financial investment, and whereas they could be refused in such cases; whereas without prejudice to the existing moral right the person requesting the licence should add value to the materials obtained; whereas such added value may be intellectual, documentary or technical, economic or commercial; whereas, where it is established that the granting of a licence is not followed by the adding of value to works, data or other materials thus obtained, this may lead to remedies and in particular withdrawal of the licence;

34. Whereas, in the event that licences are refused or the parties cannot reach agreement on the terms to be concluded, a system of mediation or arbitration should be provided for by the Member States;

35. Whereas the granting of a licence should not prevent the de jure or de facto performance of the duties entrusted to undertakings responsible for managing a service of general interest, inter alia by jeopardizing the economic balance, nor constitute an infringement of the legislation or international obligations of Member States or the Community in respect of personal data protection, privacy, security or confidentiality;

36. Whereas the objective of this Directive, which is to afford an appropriate and uniform level of protection of databases as a means to secure the remuneration of the maker of the database, is different from the aims of the proposal for a Directive concerning the protection of individuals in relation to the processing of personal data (OJ No C 277, 5.11.1990, p. 3) which are to guarantee free circulation of personal data on the basis of a harmonized standard of rules designed to protect the fundamental rights, notably the right to privacy which is recognized in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas the provisions of this Directive are without prejudice to data protection legislation;
37. Whereas, notwithstanding the right to prevent extraction and/or re-utilization of all or a substantial part of a database, it should be laid down that the maker of a database or his successor in title may not prevent a legitimate user of the database from extracting and re-utilizing insubstantial parts; whereas, however, such user may not unreasonably prejudice either the legitimate interests of the holder of the sui generis right or the holder of copyright or a related right in respect of the works or services contained in the database;

37a. Whereas the burden of proof regarding the date of completion of manufacture of a database lies with the maker of the database;

37b. Whereas the burden of proof that the criteria exist for concluding that a substantial amendment to the contents of a database is to be regarded as a substantial new investment lies with the maker of that database;

37c. Whereas a substantial new investment involving a new term of protection may include a substantive verification of the contents of the database;

38. Whereas the right to prevent unauthorized extraction and/or re-utilization in respect of a database should only apply to databases whose makers are nationals or habitual residents of third countries or to those produced by companies or firms not established in a Member State of the Community within the meaning of the Treaty if such third countries offer comparable protection to databases produced by nationals or habitual residents of the Community;

38a. for the record

39. Whereas, in addition to remedies provided under the legislation of the Member States for infringements of copyright or other rights, Member States should provide for appropriate remedies against unauthorized extraction and/or re-utilization of the contents of a database;

40. Whereas, in addition to the protection given under this Directive to the structure of the database by copyright, and to its contents against unauthorized extraction and/or re-utilization under the sui generis right, other legal provisions in the Member States relevant to the supply of database goods and services continue to apply;
40a. Whereas this Directive is without prejudice to the application to databases composed of audiovisual works of any rules recognized by a Member State's legislation concerning the broadcasting of audiovisual programmes; (4)

41. Whereas some Member States currently protect under copyright arrangements databases which do not meet the criteria for eligibility for copyright protection laid down in this Directive; whereas, even if the databases concerned are eligible for protection under the right laid down in this Directive to prevent unauthorized extraction and/or re-utilization of their contents, the term of protection under that right is considerably shorter than that which they enjoy under the national arrangements currently in force; whereas harmonization of the criteria for determining whether a database is to be protected by copyright may not have the effect of reducing the term of protection currently enjoyed by the rightholders concerned; whereas a derogation should be laid down to that effect; whereas the effects of such derogation must be confined to the territories of the Member States concerned,

(4) Scrutiny reservations by the German and Netherlands delegations.
CHAPTER I: SCOPE

Article 1
Scope

1. This Directive concerns the legal protection of databases in any form. (\(^{5}\))

2. For the purposes of this Directive, "database" means a collection of works, data or other independent materials arranged in a systematic or methodical way and capable of being individually accessed by electronic or other means.

3. Deleted.

4. Protection under this Directive shall not apply to computer programs used in the manufacture or operation of databases which can be accessed by electronic means.

Article 1a
Limitations of the scope

This Directive shall apply without prejudice to Community provisions relating to:

(a) the legal protection of computer programs;

(b) rental right, lending right and certain rights related to copyright in the field of intellectual property;

(c) the term of protection of copyright and certain related rights.

\(^{5}\) Reservations by the Belgian and Portuguese delegations.
CHAPTER II: COPYRIGHT

Article 2
Object of protection

1. In accordance with the provisions of this Directive, databases which by reason of the selection or arrangement of their contents constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.

2. Deleted.

3. Deleted.

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

5. Deleted.

6. Deleted.
Article 3
Authorship

1. The author of a database shall be the natural person or group of natural persons who created the base 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 economic rights shall be owned by the person holding the copyright.

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

4. Deleted.

Article 4
Entitlement to protection under copyright

Deleted (6)

Article 5
Incorporation of works, data or other materials into a database

Deleted (7)

(6) Reservation by the Commission on the deletion of this Article.
(7) Reservation by the Commission on the deletion of this Article.
Article 6
Restricted acts

The author of a database shall have the exclusive right to do or to authorize in respect of copyrightable expression:

(a) temporary or permanent reproduction by any means and in any form, in whole or in part;

(b) translation, adaptation, arrangement and any other alteration;

(c) Deleted.

(d) any form of distribution to the public of the base 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 right to control further resale within the Community of that copy;

(e) any communication, display or performance to the public;

(f) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).
Article 7

Exceptions to the restricted acts

1. Deleted.

2. 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 for the purposes of access to the contents of the database and normal use of the contents by the lawful user shall not require the authorization of the author of the base.

3. Deleted.

4. Member States shall have the option of providing for limitations on the rights set out in Article 6 in the following cases:

   (a) in the case of reproduction for private purposes [, save in the case of on-line databases] [of a non-electronic database]; (8)

   (b) where there is use for the sole purposes of illustration for teaching or scientific research, to the extent justified by the non-commercial purpose;

   (c) where there is use for the purposes of public security or for the purposes of the proper performance of an administrative or judicial procedure;

   (d) where other exceptions to copyright which are traditionally permitted by the Member State concerned are involved, without prejudice to points (a), (b) and (c).

(8) See section C of 7192/95.
5. In accordance with the provisions of the Berne Convention for the protection of Literary and Artistic Works, this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with a normal exploitation of the database.

**Article 8**

*Exceptions to the restricted acts in relation to the copyright in the contents*

Deleted

**Article 9**

*Term of protection*

Deleted
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 which shows that there has been quantitatively and/or qualitatively a substantial investment in either the obtaining, verification or presentation of the contents, to prevent acts of extraction and/or re-utilization of the whole of or a substantial part (9), evaluated qualitatively and/or quantitatively, of the contents of that database.

2a. For the purposes of this Chapter:

(a) "extraction" means the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

(b) "re-utilization" means any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, renting, on-line transmission or in other forms. The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control further resale within the Community of that copy;

(c) public lending is not an act of extraction or re-utilization.

2b. This right may be transferred, assigned or granted under contractual licence.

(9) See section D of 7192/95.
3. The right provided for in this Article shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of the eligibility of the contents of that database for protection by copyright or by other rights (10). Protection of databases under the right granted under this Article shall be without prejudice to rights existing in respect of their contents.

4. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database which would have the result of performing acts which conflict with a normal exploitation of that base or which unreasonably prejudice the legitimate interests of the maker of the base shall not be permitted. (11)

(10) Scrutiny reservations on this sentence by the Belgian and Portuguese delegations.
(11) Scrutiny reservation on this paragraph by the Portuguese delegation.
Article 10a (replaces the former Article 11a)

Rights and obligations of legitimate users \(^{(12)}\)

1. The maker of a database which is made available to the public in whatever manner may not prevent a legitimate user of the base from extracting and re-utilizing insubstantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever.

2. A legitimate user of a database which is made available to the public in whatever manner may not perform acts which conflict with a normal exploitation of the base or unreasonably prejudice the legitimate interests of the maker of the base.

3. A legitimate user of a database which is made available to the public in any manner may not cause prejudice to the holder of a copyright or related right in respect of the works or services contained in the base.

\(^{(12)}\) See section D of 7192/95.
Article 10b

Exceptions to the sui generis right (13)

1. Member States shall have the option to lay down that legitimate users of a non-electronic database which is made available to the public in whatever manner may, without the authorization of its maker, extract or re-utilize a substantial part of its contents for private purposes.

2. Member States shall have the option to lay down that legitimate users of a [non-electronic] database which is made available to the public in whatever manner may, without the authorization of its manufacturer, extract or re-utilize a substantial part of its contents for the purposes of illustration for teaching or scientific research, to the extent justified by the non-commercial purpose.

(13) See section F of 7192/95.
Article 11
Non-voluntary licence for commercial purposes

1. Notwithstanding the right provided for in Article 10, a licence for commercial purposes relating to the whole or substantial part of the works, data or other materials shall be granted if those works, data or other materials cannot be obtained from any other source at the time when the licence is requested. Copyright or related rights in works or services contained in a database shall not be affected by this provision.

2. The licences referred to in this Article shall only be granted where the database has been made accessible to the public in the sense that it may be interrogated by anyone and the whole base may be so interrogated.

3. The person requesting the licence shall undertake to add value to the works, data or other materials thus obtained and not to have made the request principally for reasons of economy of time, effort or financial investment. (15)

4. The licence shall be granted on fair and non-discriminatory terms. Such terms shall take into account in particular the possibility which the person requesting the licence had, prior to making his request, of access to a source other than the database.

5. Insofar as their grant does not prevent the de facto or de jure performance of a task of general interest, licences shall also be granted in the same circumstances and under the same terms and conditions as those referred to in paragraphs 1 to 4 by public authorities or public corporations or bodies which are either established or authorized to

(14) See section D of 7192/95.
(15) Scrutiny reservation by the Danish delegation.
assemble or to disclose information pursuant to legislation, or are under a general duty to do so, and by firms or entities enjoying a monopoly status by virtue of a concession by a public body.

6. Member States shall provide for appropriate measures for mediation or arbitration between the parties in respect of licences provided for in accordance with this Article, without prejudice to the access of parties to the courts.

Article 11a
Non-voluntary licence for scientific research
or educational purposes

The provisions of Article 11, with the exception of paragraph 3 thereof, shall apply to licences for scientific research or educational purposes or for other non-commercial purposes pursued by foundations or public bodies.

Article 11b
– Deleted (see new Article 10a) –

(16) If Article 10b(2) applies to all databases, this Article should be deleted; if it applies only to non-electronic databases, this Article should be retained in respect of electronic databases.

(17) The Swedish delegation proposed that "scientific" be deleted.

(18) The Danish delegation felt that the proviso that the database be the sole source should not apply for the purposes of this Article.

(19) Scrutiny reservation by the French delegation on the last part of this sentence.
Article 12

Term of protection

1. The right provided for in Article 10 shall run from the date of completion of the making of the database. It shall expire 15 years (20) from the first of January of the year following the date of completion.

1a. In the case of a database which is made available to the public in whatever manner before expiry of the period provided for in paragraph 1, the term of protection by that right shall expire 15 years from the first of January of the year following the date when the database was first made available to the public.

2. Any substantial change, evaluated quantitatively and/or qualitatively, to the contents of a database, including any substantial change resulting from the successive accumulation of additions, deletions or alterations, which would result in the base being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the base resulting from that investment for its own term of protection.

3. Deleted.

(20) See section H of 7192/95.
Article 13

Beneficiaries of protection under the sui generis right (21)

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 in the territory of the Community.

2. 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.

3. Agreements extending the right provided for in Article 10 to databases manufactured 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 that procedure shall not exceed that available pursuant to Article 12.

(21) See section G of 7192/95.
CHAPTER IV: COMMON PROVISIONS

Article 14
Remedies

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

Article 15
Continued application of other legal provisions

The provisions of this Directive shall be without prejudice to other legal provisions concerning in particular copyright, rights related to copyright or any other rights or obligations subsisting in the data, works or other materials incorporated into a database, patent rights, trade marks, design rights, the protection of national treasures, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, and the law of contract.
Article 15a

Application in time

1. Protection pursuant to the provisions of this Directive as regards copyright shall also be available in respect of databases created prior to the date referred to in Article 16(1) (22) which on that date fulfil the requirements laid down in this Directive as regards copyright protection of databases.

1aa. Notwithstanding paragraph 1, where a database protected under a copyright system in a Member State on the date of publication of this Directive does not fulfil the eligibility criteria for copyright protection laid down in Article 2(1), this Directive shall not result in any curtailing in that Member State of the remaining term of protection afforded under that system. (23)

1a. Protection pursuant to the provisions of this Directive as regards the right provided for in Article 10 shall also be available in respect of databases the manufacture of which was completed not more than 15 years prior to the date referred to in Article 16(1) (24) and which on that date fulfil the requirements laid down in Article 10 of this Directive.

1b. The protection provided for in paragraphs 1 and 1a shall be without prejudice to any acts accomplished and rights acquired before the date referred to in those paragraphs.

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(22) Commission reservation on this date; it proposed the date of publication of the Directive.
(23) See section H of 7192/95.
(24) See footnote 22.
2. In the case of a database the manufacture of which was completed not more than 15 years 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.

Article 15b

Binding nature of certain provisions (25)

Any contractual provision contrary to Articles 7(2), 10a, 11 [and 11a] shall be null and void.

(25) See section 1 of 7192/95.
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 1998].

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down 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 third 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 in particular of the provisions on multimedia works. Where necessary, it shall submit proposals for adjustment of the Directive in line with developments in the area of databases.

Article 17

This Directive is addressed to the Member States.
SUMMARY OF PROCEEDINGS

of: Permanent Representatives Committee (Part 1)
on: 19 May 1995

No. prev. doc.: 7192/95 PI 30 CULTURE 45 CODEC 55 + ADD 1
No. Cion prop.: 9219/93 PI 89 CULTURE 113


1. The Committee continued looking at the issues still outstanding, on the basis of 7192/95 PI 30 CULTURE 45 CODEC 55 + ADD 1.

   Scope of the Directive (Article 1(1))

2. The Belgian delegation said it could go along with the majority, subject to the arrangement decided on as regards Articles 7 and 10 and recital 19a.

   Only the Portuguese delegation still had a reservation on this point.

   Databases created by employees (Article 3(4))

3. The Committee approved the arrangement in recital 22a, with the word "however"
being replaced by "therefore".

**Reproduction of a database for private purposes (Article 7(4)(a))**

4. **The German delegation** went along with the majority view.

The **Portuguese and Swedish delegations** still had reservations, favouring freedom for Member States to regulate reproduction for private purposes in the case of both electronic non-electronic databases.

While agreeing to the prohibition by the Directive of reproduction for private purposes in the case of on-line databases, the **Irish and Finnish delegations** entered reservations on such prohibition in the case of electronic databases distributed in other forms.

The **Presidency** appealed to those delegations still have reservations to consider the majority approach again.

5. In this connection, the **United Kingdom delegation** wanted it made clear in a recital, to avoid any doubt, that CD-ROMs constituted electronic databases.

The **Presidency** was prepared to entertain that request.

6. **The Danish delegation** called for the deletion of the phrase "to the extent justified by
the non-commercial purpose" in Article 7(4)(b).

The Presidency pointed out that the matter had already been discussed at length and it intended to keep to the present wording.

**Scope of the sui generis right (Article 10) and non-voluntary licences (Articles 11 and 11a)**

7. The Presidency emphasized that the arrangement put forward in point 11 of 7192/95 represented a compromise.

The Commission representative said that the Commission would have preferred the sui generis right to be broader in scope; however, in view of the provisions of Article 10a, it could agree to the compromise put forward by the Presidency.

The Danish, German, Netherlands, Finnish and Swedish delegations could agree to the coverage of the sui generis right being confined to the whole or a substantial part of the contents of a database, excluding insubstantial parts, but remained opposed to the principle of non-voluntary licences.

The Belgian, Spanish, French and Italian delegations and the Commission representative could agree to the compromise as a whole, arguing that retention of the principle of non-voluntary licences formed an essential part of that whole.

The Presidency concluded that everyone should given the matter further thought, with the Presidency compromise being left as it stood at this stage.
8. By way of reacting to the Presidency compromise, the German delegation expressed concern that Article 10a was broader than Article 7(2).

9. In the same context, the Finnish delegation said it would have preferred to see the term "lawful user" in Article 10a replaced by "lawful acquirer" the term used in Article 5(1) of Directive 91/250/EEC (1).

10. The French delegation also called for the deletion in Article 11a of "by foundations or public bodies".

    The Presidency was willing to entertain this request.

    **Application of the sui generis right where the contents of a database are protected by copyright or a related right (Article 10(3))**

11. The Portuguese delegation withdrew its scrutiny reservation on this point.

    The Belgian delegation was prepared to withdraw its scrutiny reservation, subject to inclusion of a new recital as set out in Annex I.

    The Committee would consider that new recital.

    **Exceptions to the sui generis right (Article 10b)**

12. As regards extraction and/or reutilization for private purposes of a substantial part of

(1) OJ No L 122, 17.5.1991, p. 42.
the contents of a database, the Spanish and French delegations withdrew their scrutiny reservations.

The Portuguese and Swedish delegations upheld their position in favour of extending this exception to any database, in line with their position on Article 7(4)(a) (point 4 above).

The Finnish and Irish delegations took the view that this exception should not apply to on-line databases, in keeping with their position on Article 7(4)(a).

13. As regards the exception in Article 10b(2), the Danish, Greek, Italian, Portuguese, Swedish and United Kingdom delegations were in favour of it applying to all databases, electronic or non-electronic, in line with Article 7(4)(b).

The Spanish, French and Netherlands delegations, however, wanted it restricted to non-electronic databases.

The Presidency asked the latter delegations to give the matter further thought in the light of the majority view.

14. The French delegation, supported by the Spanish and United Kingdom delegations, wanted the exception in Article 10b(2) to be coupled with a requirement that the source be acknowledged.

The Presidency was prepared to entertain that request.

15. The United Kingdom delegation, supported by the Swedish delegation, wanted the term
"scientific research" spelt out so as to preclude any interpretation confining it to the natural sciences.

The Presidency was prepared to accommodate that concern.

16. The Danish delegation wanted to add to Article 10a provisions corresponding to Article 7(4)(c) and (d).

The Presidency was prepared to act on that request as regards a provision equivalent to (c) but pointed out that, since the sui generis right was a new right, there were no exceptions customarily made by Member States to that right; hence, a provision equivalent to (d) would be pointless.

Databases made in third countries (Article 13)

17. The Committee noted that there was no change in positions on this point.

Term of protection under the sui generis right (Article 12) and transitional provisions (Article 15a)

18. The German delegation was prepared, for the sake of compromise, to agree to a transitional period of 30 years or, as a last resort, 50 years.

The Italian delegation shared the German delegation's concern reported in 6414/95 ADD 1.

The Irish, Netherlands and United Kingdom delegations were unable to agree to the
transitional period proposed by the German delegation.

19. The Greek delegation confirmed its support for a term of protection under the sui generis right of 15 years.

**Mandatory nature of certain provisions (Article 15b)**

20. The Danish, Netherlands and Finnish delegations entered reservations on this Article as regards all the provisions referred to in it.

The German and United Kingdom delegations could agree to the Article as regards the reference to Article 7(2) and Article 10a, but were opposed to the reference to Articles 11 and 11a.

21. The United Kingdom delegation also specified that its agreement to the reference to Article 7(2) and Article 10a in Article 15b was subject to the additions to those Articles proposed in Annex II, in order to make allowances for the case of a CD-ROM containing a two-part database, only one part of which was intended to be used by each and every purchaser.

22. The Portuguese delegation wanted the exceptions for scientific research and educational purposes also to be mandatory.

The Presidency pointed out that it would be difficult for provisions leaving Member States an option to be made mandatory.

23. The Presidency stated its intention of continuing with discussions at a forthcoming
meeting of the Committee, with a view to the adoption of a common position at the Internal Market Council meeting on 6 June 1995.
New recital proposed by the Belgian delegation concerning the works protected by copyright and performances protected by a related right contained in a database

Under Article 10(3) of the text before Coreper, the sui generis right is to apply irrespectively of the eligibility of the contents of the database for protection by copyright or by other rights.

The Belgian delegation has a reservation on that provision on the grounds that it may prevent authors and related right holders from having power of disposal over their works and performances once they have been included in a database protected by a sui generis right.

To give an example, an author of photographic works allows some of his works to be included in a database. The contract between the author and the manufacturer takes the form of a non-exclusive licence.

The question is whether the author can allow a third party to reproduce the same works without the database manufacturer being able to invoke his sui generis right against the third party, assuming those works form a substantial part of the contents of the database.

The answer to the question would seem to be that he can.

Firstly, the last sentence of Article 10(3) of the Directive makes it clear that sui generis right protection is without prejudice to rights in respect of the contents. A more explicit recital explains that the Directive is without prejudice to authors' freedom to decide whether or how they allow their works to be included in a database, in particular whether the permission given is or is not exclusive.

Secondly, the sui generis right applies only to the extraction and/or reutilization of the contents of the database. The words "extraction and reutilization" seem to imply that the sui generis right is not infringed unless the third party takes and uses the same contents from the database. In our example, therefore, the third party allowed by the author to use photographic works which also form a substantial part of the contents of the database is not in breach of the sui generis right as long as the works are not extracted or reutilized from the database.

However, to make sure this interpretation of Article 10 of the Directive is correct, a new recital should be inserted, reading as follows:

 Whereas protection of databases by the sui generis right is without prejudice to rights in respect of their contents and whereas, in particular, where an author or a related right holder allows some of his works or performances to be included in a database under a non-exclusive licence contract, a third party may use those works or performances with the requisite permission from the author or related right holder without the database maker's sui generis right being invoked against him, provided that those works or performances are not extracted or reutilized from the database.
Amendments to Article 7(2) and Article 10a(1) proposed by the United Kingdom delegation

**Article 7(2)**

The performance by the lawful user of a database or a copy thereof of any of the acts listed in Article 6 which is necessary for the purposes of access to the contents of the database and normal use of the database by the lawful user to the extent of his lawful use shall not require the authorization of the author of the database.

**Article 10a(1)**

The maker of a database which is made available to the public in whatever manner cannot prevent the lawful user of that database to the extent of his lawful use from extracting and reutilizing insubstantial parts, evaluated qualitatively and/or quantitatively, of its contents for any purpose.
RAPPORTE

de la Présidence
au Comité des Représentants Permanents (1ère partie)

n° doc. préc. : 7366/95 PI 32 CULTURE 50 CODEC 59
n° prop. Cion : 9219/93 PI 89 CULTURE 113

Objet : Préparation de la session du Conseil (Marché intérieur)
du 6 juin 1995
- Proposition modifiée de directive du Parlement européen et du Conseil concernant la protection juridique des bases de données

I. INTRODUCTION


L'Annexe au présent rapport fait état des modifications à apporter, à la suite des dernières réunions, au texte de la directive figurant à l'Addendum au document 7192/95 PI 30 CULTURE 45 CODEC 55.
II. QUESTIONS OUVERTES A L'ISSU DE LA REUNION DU COMITE DU 24 MAI 1995

A. Licences non volontaires

2. A la dernière réunion du Comité, plusieurs délégations (DK, D, NL, FIN, S) ont continué à s'opposer au principe des licences non volontaires. D'autre part, quatre délégations (B, IRL, I, P) se sont opposées à l'idée de renoncer aux licences non volontaires au stade actuel, moyennant l'insertion d'une clause selon laquelle la Commission, dans le cadre d'un rapport sur l'application de la directive, examinerait si l'application du droit sui generis aurait entraîné des entraves à la libre concurrence qui justifieraient la mise en place d'un régime de licences non volontaires.

A la réunion des Attachés le 29 mai, la Présidence a relevé que, compte tenu des différentes limitations apportées au droit sui generis (limitation de son étendue, exceptions prévues à l'article 10 ter), la justification des licences non volontaires en tant que contrepoids à un droit sui generis fort avait sensiblement diminué ; en outre, la présence de telles licences en plus de ces limitations risquait de créer un déséquilibre en faveur des utilisateurs de bases de données et contre leurs fabricants. Dans ces conditions, la Présidence a proposé une dernière solution qui comporte les éléments suivants :

- il sera renoncé aux licences non volontaires au stade actuel (suppression des articles 11 et 11 bis, des considérants 31 à 35 et de la mention des articles 11 et 11 bis à l'article 15 ter) ;
- il sera précisé dans un nouveau considérant (40 ter) que les dispositions de la directive sont sans préjudice de l'application des règles de la concurrence, qu'elles soient communautaires ou nationales;

- une clause de révision sera incluse dans l'article 16 paragraphe 3 dans le sens indiqué ci-dessus au premier alinéa du point 2.

Les délégations belge, irlandaise, italienne et portugaise ont maintenu une réserve sur cette solution, en indiquant que leur position définitive sur cette question sera déterminée par la configuration du paquet global final sur l'ensemble de la directive.

3. La Présidence invite le Comité des Représentants Permanents à accepter la solution esquissée ci-dessus.

B. Exceptions au droit sui generis

4. A la dernière réunion du Comité des Représentants Permanents, il avait été convenu de supprimer les termes "et/ou réutilisation" aux lettres a) et b) de l'article 10 ter. En outre, les délégations espagnole et française avaient proposé de nouveaux considérants relatifs à cet article.

5. Les Attachés ont confirmé l'accord sur la suppression des termes "et/ou réutilisation" aux lettres a) et b) de l'article 10 ter et sur une modification correspondante du considérant 37a (voir Annexe), moyennant une réserve d'examen de la délégation danoise sur cette suppression.
6. L'explication a été fournie à cette délégation que, compte tenu de la définition de la réutilisation à l'article 10 paragraphe 2 bis, selon laquelle elle signifie toute forme de mise à la disposition du public de la totalité ou d'une partie substantielle du contenu d'une base de données, la réutilisation ainsi définie serait en contradiction avec une utilisation à des fins privées et dépasserait des fins de l'illustration de l'enseignement ou de la recherche scientifique. Cette délégation et les services de la Commission ont été invités à approfondir les éléments subsistants de la préoccupation de cette délégation sur un plan bilateral.

Les Attachés ont examiné les deux nouveaux considérants ad article 10 ter proposés par la délégation française. Pour ce qui concerne le premier, ils ont approuvé le considérant 37a bis tel que formulé dans l'Annexe, moyennant une réserve d'examen de la délégation néerlandaise.

7. Le deuxième considérant proposé par la délégation française, rédigé comme suit :

"considérant qu'en cas de conflit, en ce qui concerne les exceptions au droit sui generis, entre la loi de l'État applicable au fabricant de la base de données et celle de l'État dont ressort l'utilisateur légitime, la loi de l'État applicable au fabricant prévaut ;"

a donné lieu à des réserves de la part des délégations belge, danoise, allemande, irlandaise, néerlandaise et celle du Royaume-Uni, ainsi que des représentants de la Commission, qui sont d'avis que la question du conflit des lois est trop complexe pour l'aborder de cette manière dans le cadre de cette directive.
La Présidence a invité la délégation française à revoir la nécessité de ce considérant.

8. Les Attachés ont également examiné le nouveau considérant proposé par la délégation espagnole et rédigé comme suit :

"considérant que l'extraction à des fins d'illustration de l'enseignement au sens de la présente directive ne concerne que la partie du contenu de la base de données qui est strictement nécessaire pour atteindre l'objectif éducatif visé dans les lieux où cet enseignement est dispensé; que l'extraction à des fins de recherche scientifique au sens de la présente directive ne s'étend pas à l'utilisation en réseau de l'information extraite de la base de données en dehors de l'établissement de recherche concerné;".

Ce considérant a suscité des réserves d'examen de la part de plusieurs délégations.

La Présidence a invité la délégation espagnole à revoir la nécessité de ce considérant, notamment à la lumière de la suppression de la mention de la réutilisation à la lettre b) de l'article 10 ter.

9. La délégation portugaise a proposé, à la lumière des modifications apportées à l'article 10 ter et des adaptations aux considérants, la suppression de la mention de l'illustration à la lettre b) de l'article 10 ter.

Les autres délégations et la Commission se sont opposées à cette suppression en raison du parallélisme entre cette disposition et la lettre b) du paragraphe 4 de l'article 7, qui reprend les termes de l'article 10 paragraphe 2 de la Convention de Berne.
10. La Présidence invite le Comité des Représentants Permanents :

- à approuver l'article 10 ter ainsi que les considérants 37a et 37a bis comme repris en Annexe ;

- à recommander aux délégations française et espagnole de renoncer aux considérants mentionnés aux points 7 et 8 ci-dessus ;

- à examiner toute solution qui pourrait être proposée à la suite des contacts entre la délégation danoise et la Commission mentionnés au point 5 ci-dessus.

C Autres réserves

11. Compte tenu de la solution proposée par la Présidence en matière de licences non volontaires, celle-ci a indiqué sa détermination à maintenir les textes figurant en Annexe pour ce qui concerne les articles 13, 15 bis et 15 ter.

La délégation du Royaume-Uni a levé sa réserve d'examen concernant l'article 13. Les délégations allemande, autrichienne et suédoise ont toujours une réserve sur cet article.

La délégation allemande a toujours une réserve sur l'article 15 bis.

Les délégations danoise, néerlandaise et finlandaise ont toujours des réserves sur l'article 15 ter.
12. La délégation allemande a retiré ses réserves d'examen concernant les considérants 29 bis bis bis et 40 bis, et la délégation portugaise a retiré sa réserve d'examen concernant le paragraphe 4 de l'article 10.

13. Par ailleurs, les réserves suivantes restent :
- réserve de la délégation portugaise sur le champ d'application de la directive ;
- réserve des délégations irlandaise, portugaise, finlandaise et suédoise sur la reproduction à des fins privées ;
- réserve d'examen de la délégation finlandaise sur le considérant 14, qu'elle estime être en contradiction avec l'article 2.

14. La Présidence invite le Comité des Représentants Permanents à confirmer l'orientation majoritaire sur les dispositions mentionnées aux points 11 et 13 ci-dessus.

III. CONCLUSIONS

15. La Présidence invite le Comité des Représentants Permanents à recommander au Conseil (Marché intérieur) d'enregistrer un accord politique sur la solution d'ensemble telle qu'elle se dégage du présent rapport, la position commune formelle devant être adoptée en point "A" lors d'une des dernières sessions du Conseil sous Présidence française.
ANNEXE

Modifications à apporter à l'Addendum au document 7192/95

1. Supprimer toutes les notes en bas de page.

2. Reformuler le considérant 16 comme suit :

"16. considérant que le terme base de données doit être compris comme s'appliquant à tout recueil d'œuvres littéraires, artistiques, musicales ou autres, ou de matières telles que textes, sons, images, chiffres, faits, données ; qu'il doit s'agir de recueils d'œuvres, de données, ou d'autres éléments indépendants disposés de manière systématique ou méthodique et individuellement accessibles ; que ceci implique qu'une fixation d'une œuvre audiovisuelle, cinématographique, littéraire ou musicale en tant que telle n'entre pas dans le champ d'application de la présente directive;".

3. Reformuler le considérant 16 bis comme suit :

"16 bis considérant que la présente directive est sans préjudice de la liberté des auteurs de décider si, ou de quelle manière, ils permettent l'inclusion de leurs œuvres dans une base de données, notamment si l'autorisation donnée est de caractère exclusif ou non ; que la protection des bases de données par le droit sui generis est sans préjudice des droits existant sur leur contenu et que notamment lorsqu'un auteur ou un titulaire de droit voisin autorise l'insertion de certaines de ses œuvres ou de ses prestations dans une base de données en exécution d'un contrat de licence non exclusive, un tiers peut exploiter ces œuvres ou ces prestations moyennant l'autorisation requise de l'auteur ou du titulaire de droit voisin sans se voir opposer le droit sui generis du fabricant de la base de données à condition que ces œuvres ou prestations ne soient ni extraites de la base de données ni réutilisées à partir de celle-ci;".
4. Ajouter un considérant 17 ter comme suit :

"17 ter considérant que les bases de données électroniques au sens de la présente directive comprennent également des dispositifs tels que les CD-ROM et les CD-i;".

5. Reformuler le considérant 22 bis comme suit :

"22 bis considérant que le régime applicable à la création salariée est laissé à la discrétion des États membres ; que dès lors rien dans la présente directive n'empêche les États membres de préciser dans leur législation que lorsqu'une base de données est créée par un employé dans l'exercice de ses fonctions ou d'après les instructions de son employeur, seul l'employeur est habilité à exercer tous les droits patrimoniaux afférents à la base ainsi créée, sauf dispositions contractuelles contraires;".

6. Ajouter un considérant 26 bis bis comme suit :

"26 bis bis considérant que le terme "recherche scientifique" au sens de la présente directive couvre à la fois les sciences de la nature et les sciences humaines;".

7. Supprimer les considérants 31 à 35.

8. Ajouter entre le considérant 37 et le considérant 37 bis, les nouveaux considérants suivants et supprimer le considérant 38 bis :

"37a considérant qu'il est opportun de donner aux États membres la faculté de prévoir des exceptions au droit d'empêcher l'extraction et/ou la réutilisation d'une partie substantielle du contenu d'une base de données lorsqu'il s'agit d'une extraction à des fins privées, d'illustration de l'enseignement ou de recherche scientifique et lorsqu'il s'agit d'une extraction et/ou réutilisation à des fins de sécurité publique ou de bon déroulement d'une procédure administrative ou juridictionnelle ; qu'il importe que ces opérations soient dépourvues de but commercial et ne portent pas préjudice aux droits exclusifs du fabricant d'exploiter la base de données ;".

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37a bis considérant que les États membres, lorsqu'ils font usage de la faculté d'autoriser l'utilisateur légitime d'une base de données à en extraire une partie substantielle du contenu à des fins de l'illustration de l'enseignement ou de recherche scientifique, peuvent limiter cette autorisation à certaines catégories d'établissement d'enseignement ou de recherche scientifique ;".

9. Ajouter un considérant 40 ter comme suit :

"40 ter considérant que les dispositions de la présente directive sont sans préjudice de l'application des règles de concurrence, qu'elles soient communautaires ou nationales ;".

10. Reformuler le paragraphe 2 de l'article 7 comme suit :

"2. L'utilisateur légitime d'une base de données ou de copies de celle-ci peut effectuer tous les actes visés à l'article 6 qui sont nécessaires à l'accès au contenu de la base de données et à son utilisation normale par celui-ci sans l'autorisation de l'auteur de la base. Dans la mesure où l'utilisateur légitime est autorisé à utiliser une partie seulement de la base de données, cette disposition s'applique seulement à cette partie."

11. Reformuler la lettre a) du paragraphe 4 de l'article 7 comme suit :

"a) lorsqu'il s'agit d'une reproduction à des fins privées d'une base de données non électronique ;".

12. Reformuler le paragraphe 1 de l'article 10 bis comme suit :

"1. Le fabricant d'une base de données qui est mise à la disposition du public de quelque manière que ce soit, ne peut pas empêcher l'utilisateur légitime de cette base d'extraire et de réutiliser des parties non substantielles de son contenu, évaluées de façon qualitative et/ou quantitative, à quelque fin que ce
soit. Dans la mesure où l'utilisateur légitime est autorisé à extraire et/ou réutiliser une partie seulement de la base de données, cette disposition s'applique seulement à cette partie."

13. Reformuler l'article 10 ter comme suit :

"Article 10 ter
Exceptions au droit sui generis

Les États membres ont la faculté de prévoir que l'utilisateur légitime d'une base de données qui est mise à la disposition du public de quelque manière que ce soit peut, sans autorisation du fabricant de la base, extraire et/ou réutiliser une partie substantielle du contenu de celle-ci :

a) lorsqu'il s'agit d'une extraction à des fins privées du contenu d'une base de données non électronique ;

b) lorsqu'il s'agit d'une extraction à des fins de l'illustration de l'enseignement ou de recherche scientifique, pour autant qu'il indique la source et dans la mesure justifiée par le but non commercial à atteindre ;

c) lorsqu'il s'agit d'une extraction et/ou réutilisation à des fins de sécurité publique ou aux fins du bon déroulement d'une procédure administrative ou juridictionnelle."


15. Reformuler le paragraphe 1 de l'article 13 comme suit :

"1. le droit prévu à l'article 10 s'applique aux bases de données dont le fabricant ou son ayant droit sont ressortissants d'un État membre ou qui ont leur résidence
habituelle sur le territoire de la Communauté."

16. Reformuler l'article 15 ter comme suit :

"Toute disposition contractuelle contraire aux articles 7 paragraphe 2 et 10 bis sera nulle et non avenue."

17. Reformuler le paragraphe 3 de l'article 16 comme suit :

"3. Au plus tard à la fin de la troisième année suivant la date visée au paragraphe 1, et ultérieurement tous les trois ans, la Commission transmet au Parlement européen, au Conseil et au Comité économique et social un rapport sur l'application de la présente directive, dans lequel elle examinera notamment si l'application du droit sui generis a entraîné des entraves à la libre concurrence qui justifieraient les mesures appropriées, notamment la mise en place d'un régime de licences non volontaires. Elle présente, le cas échéant, des propositions visant à adapter la directive à l'évolution du secteur des bases de données."
I. INTRODUCTION

1. In a letter of 15 April 1992 the Commission submitted to the Council a proposal for a Directive on the legal protection of databases (1). The proposal is based on Articles 57(2), 66 and 100a of the Treaty.

   This proposal provides for the protection of databases both by copyright and by a sui generis right.

2. The Economic and Social Committee delivered its Opinion on 24 November 1992 (2). The European Parliament delivered its Opinion

(1) 6919/92 PI 64 CULTURE 61, proposal published in OJ No C 156, 23.6.1992, p. 4.
(2) OJ No C 19, 25.1.1993, p. 3.

3. Following its examination of the proposal the Permanent Representatives Committee was able to reach very broad agreement on the basis of an overall compromise proposal from the Presidency, the text of which appears in Addendum 1 to 7192/95 PI 30 CULTURE 45 CODEC 55, as amended by the Annex hereto. However, some reservations still remain which are set out in Part II below.

II. Remaining reservations

A. Absence of non-voluntary licences under the sui generis right

4. The Commission proposal provided for a strong sui generis right, offset by the possibility of granting a non-voluntary licence where a database was the only source of the information it contained. During the negotiations the scope of the sui generis right was limited and exceptions were provided for which did not appear in the Commission proposal. In view of these limitations, the justification for the non-voluntary licences as a counter-balance to a strong sui generis right was considerably reduced and most delegations agreed to the deletion of the provisions introducing them, subject to inclusion of a revision clause in Article 16(3) of the Directive to the effect that, in a report on the application of the Directive, the Commission could introduce such licences if application of the sui generis right so justified.

The Irish and Italian delegations still have provisional reservations and the Portuguese delegation has a reservation on the deletion of the provisions concerning non-voluntary licences.

The Presidency asks the Council to confirm the majority position on this matter.

B. Exceptions to the sui generis right

5. Article 10b of the proposal for a Directive gives Member States the possibility of providing for a number of exceptions to the sui generis right, which correspond mutatis mutandis to the copyright exceptions established in Article 7(4). The Italian delegation would like it to be made clear that this possibility is subject to application of the review clause contained in Article 16(3).

Most delegations and the Commission preferred to include a specific reference to Article 10b in Article 16(3).

The Italian delegation tabled a scrutiny reservation on this solution and the German delegation also entered a reservation on the wisdom of mentioning Article 10b in Article 16(3).

The Presidency asks the Council to confirm the majority position on this matter.

6. Since 1960 the Nordic countries have had specific national legislation on the protection of catalogues, paintings and other works, some aspects of which resemble the sui generis right provided for in the proposal for a Directive. In view of the fact that the exceptions to the sui generis right provided for in Article 10b
of the Directive do not cover all the exceptions allowed in that legislation, the majority of
degolutions and the Commission accept the need for a recital to take account of that situation.

The German delegation entered a reservation on this subject.

Delegations have not yet had an opportunity to comment on the text of recital 37a b as proposed
by the Presidency.

The Presidency asks the Council to confirm the majority position on this matter and to state its
position on the proposed text.

7. The Portuguese delegation would like Article 10b to be worded in such a way as to allow
considerably broader exceptions for educational purposes and scientific research. It proposed in
particular that the word "illustration" be deleted in subparagraph (b). The other delegations and
the Commission oppose this deletion.

The Presidency asks the Council to confirm the majority position on this matter.

C. Scope of the Directive

8. The Commission proposal limited the scope of the Directive to electronic databases. The
majority of delegations and the Commission are in favour of extending the scope to all databases,
whether or not electronic (Article 1).

The Portuguese delegation has a reservation on such an extension.
The Presidency asks the Council to confirm the majority position on this matter.

D. Reproduction of a database for private purposes

9. The majority of delegations and the Commission propose leaving Member States the option of regulating the reproduction of non-electronic databases for private purposes, while the reproduction of electronic databases is an act subject to restrictions under the Directive (Article 7(4)(a)).

The Irish and Swedish delegations still have provisional reservations and the Portuguese delegation a reservation on this provision; the Irish delegation wants to extend Member States' option to any database other than on-line databases, while the Portuguese and Swedish delegations would extend it to all databases without restriction.

The Presidency asks the Council to confirm the majority position on this matter.

E. Rights of the lawful user of a database

10. During the negotiations the scope of the sui generis right was limited to the entire contents of a database or a substantial part thereof. To avoid any misunderstanding it was stated in Article 10a(1) that the maker of the base could not prevent the lawful user of that base from extracting and re-utilising non-substantial parts of its contents.
The German delegation entered a reservation on this provision which it thought was wider than Article 7(2); it would prefer in particular that the reference to "re-utilizing" in Article 10a(1) be deleted.

The Presidency asks the Council to confirm the majority position on this matter.

F. Databases made in third countries

11. The majority of delegations and the Commission are in favour of extending the sui generis right to databases made in third countries on the basis of reciprocal agreements (Article 13). The German and Swedish delegations, on the other hand, advocate the application of national treatment.

The Presidency asks the Council to confirm the majority position on this matter.

G. Access to public documents

12. Article 15 stipulates that the provisions of the Directive do not affect other legal provisions in a whole series of areas. At the request of the Swedish delegation, the majority of delegations and the Commission agreed to include in this list provisions concerning access to public documents.

The German delegation entered a reservation on the latter reference.

The Presidency asks the Council to confirm the majority position on this matter.
H. Transitional provision

13. In some Member States there are databases which are currently protected by national copyright but which might no longer be so protected once the Directive becomes effective because of the difference between the eligibility criteria in the Directive and those in the national arrangements. Although the databases concerned will be eligible for protection by the sui generis law, the term of such protection would be considerably shorter than that enjoyed under national copyright. The majority of delegations and the Commission agreed to a derogation designed to take account of this situation (Article 15a(1aa)).

The German delegation still has a reservation on this derogation.

The Presidency asks the Council to confirm the majority position on this matter.

I. Binding nature of certain provisions

14. Under Article 15b of the Directive it will not be possible to derogate by contractual means from the provisions of Articles 7(2) and 10a.

The Netherlands delegation still has a reservation on this Article.

The Presidency asks the Council to confirm the majority position on this matter.
III. Conclusions

15. The Presidency asks the Council to record political agreement on the proposal for a Directive as it stands in Addendum 1 to 7192/95, amended by the Annex hereto. The formal common position would be adopted as an "A" item at one of the last meetings of the Council under the French Presidency. It stresses that the solution which it is proposing constitutes an overall compromise.
Amendments to be made to Addendum 1 to 7192/95

1. Delete all footnotes.

2. Redraft recital 16 as follows:

"16. Whereas the term database should be understood to include collections of works, whether
literary, artistic, musical or other, or of other material such as texts, sounds, images, numbers,
facts, data; whereas it should cover collections of works, data or other independent materials
which are systematically or methodically arranged and can be individually accessed; whereas
this means that the recording of audiovisual, cinematographic, literary or musical works as such
does not fall within the scope of this Directive;".

3. Redraft recital 16a as follows:

"16a. Whereas this Directive is without prejudice to the freedom of authors to decide whether, or in
what manner, they will allow their works to be included in a database, in particular whether
or not the authorization given is exclusive; whereas the protection of databases by the sui
generis right is without prejudice to existing rights over their contents, and whereas in
particular where an author or the holder of a related right permits some of his works or
services to be included in a database pursuant to a non-exclusive agreement, a third party
may make use of those works or services subject to the required consent of the author or of
the holder of the related right without the sui generis right of the maker of the database
being invoked to prevent him doing so, on condition that those works or services are neither
extracted from the database nor re-utilized on the basis thereof;".
4. Add a recital 17b as follows:

"17b. whereas electronic databases within the meaning of this Directive also include devices such as CD-ROM and CD-i;".

5. Redraft recital 22a as follows:

"22a. Whereas the arrangements applicable to databases created by employees are left to the discretion of the Member States; whereas, therefore, nothing in this Directive prevents Member States from stipulating in their legislation that 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 base so created, unless otherwise provided by contract;"

6. Add a recital 26aa as follows:

"26aa. whereas the term "scientific research" within the meaning of this Directive covers both the natural sciences and the human sciences;"

7. Replace recitals 31 to 35 by the new recital 31 as follows:

"31. Whereas in the interests of competition between suppliers of information products and services, protection by the sui generis right must not be afforded in such a way as to facilitate abuses of a dominant position, in particular as regards the creation and distribution of new products and services which have an intellectual, documentary, technical, economic or commercial added value; whereas, therefore, the provisions of this Directive are without prejudice to the application of Community or national rules of competition;"
8. Add between recital 37 and recital 37a the following new recitals and delete recital 38a:

"37A. whereas the Member States should be given the option of providing for exceptions to the right to prevent extraction and/or re-utilization of a substantial part of the contents of a database in the case of extraction for private purposes, for the purposes of illustration for teaching or scientific research, or where there is extraction and/or re-utilization for the purposes of public security or the proper performance of an administrative or judicial procedure; whereas such operations must have no commercial purpose and must not prejudice the exclusive rights of the maker to exploit the database;

37Aa. whereas the Member States, where they avail themselves of the option to permit a lawful user of a database to extract a substantial part of the contents for the purposes of illustration for teaching or scientific research, may limit that permission to certain categories of teaching or scientific research institution;

37Ab. whereas those Member States which already have specific national legislation providing for a right which is similar to the sui generis right provided for in this Directive may retain the exceptions to that right traditionally permitted by that legislation;”.

9. Redraft Article 7(2) as follows:

"2. 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 for the purposes of access to the contents of the database and normal use of the contents by the lawful user shall not require the authorization of the author of the base. Where the lawful user is authorized to use only part of the database, this provision shall apply only to that part.”
10. Redraft Article 7(4)(a) as follows:

"(a) in the case of reproduction for private purposes of a non-electronic database;".

11. Redraft Article 10a(1) as follows:

"1. The maker of a database which is made available to the public in whatever manner may not prevent a legitimate user of the base from extracting and re-utilizing non-substantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever. Where the lawful user is authorized to extract and/or re-utilize only part of the database, this provision shall apply only to that part."

12. Redraft Article 10b as follows:

"Article 10b
Exceptions to the sui generis right

1. Member States shall have the option to lay down that legitimate users of a database which is made available to the public in whatever manner may, without the authorization of its maker, extract and/or re-utilize a substantial part of its contents:

(a) in the case of extraction for private purposes of the contents of a non-electronic database;

(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose;

14. Redraft Article 13(1) as follows:

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

15. Redraft Article 15 as follows:

"Article 15
Continued application of other legal provisions

The provisions of this Directive shall be without prejudice to other legal provisions concerning in particular copyright, rights related to copyright or any other rights or obligations subsisting in the data, works or other materials incorporated into a database, patent rights, trade marks, design rights, the protection of national treasures, law on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, and the law of contract."

16. Redraft Article 15b as follows:

"Any contractual provision contrary to Articles 7(2), and 10a shall be null and void."
17. Redraft Article 16(3) as follows:

"3. Not later than at the end of the third year after the date referred to in paragraph 1, and every three 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, in which, inter alia on the basis of specific information supplied by the Member States, it shall examine in particular whether application of the sui generis right, including Article 10b, has led to abuse of a dominant position or other interference with free competition which would justify appropriate measures being taken, in particular the establishment of non-voluntary licensing arrangements. Where necessary, it shall submit proposals for adjustment of the Directive in line with developments in the area of databases."
EUROPEAN UNION
THE COUNCIL

Brussels, 13 July 1995 (12.09)

(OR. f)

7779/95

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DRAFT
MINUTES
of the 1851st meeting of the Council
(Internal Market)

held in Luxembourg on 6 June 1995
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1. **Adoption of the agenda**  
   *(7645/95 OJ/CONS 29 MI 47)*  
   The Council adopted the abovementioned agenda.

2. **Approval of the list of "A" items**  
   *(7646/95 PTS A 27)*  
   The Council approved the "A" items as listed in 7646/95 PTS A 28 with the exception of item 2: "European cooperative society".

   The German delegation made the following statement on this item:

   "The German delegation hereby reiterates that the text of the Regulation as it now stands continues to arouse misgivings from the viewpoint of subsidiarity which should be taken into account in the subsequent examination of the project.".

As regards **item 3** on the list: "**Proposal for a Regulation on the Community design**", the **Belgian delegation** made the following statement:

"The Belgian delegation states that at this stage the advisability of amending the legal basis for the proposal for a Regulation on the Community design is still the subject of internal consultations.".
3. **White Paper on approximation of the laws of the CCEE in the field of the Internal Market**
   - Examination of the White Paper
   - Preparation for the joint meeting with the CCEE
     (7221/95 MI 60 PECOS 84 + ADD 1 (en)
     7433/95 MI 43 PECOS 93

   The Council examined the White Paper on "The preparation of the associated countries of Central and Eastern Europe for integration into the Internal Market of the Union", which represents a major factor in the pre-accession strategy of the States concerned. It also prepared for the joint meeting with the representatives of those countries, including the Baltic countries.

**PREPARATORY MEETING**

At the preparatory meeting the President stated that the draft conclusions set out in 7433/95 MI 43 PECOS 93, of which the General Affairs Council had taken note at its meeting on 29 May, would be adjusted in the light of the discussions of the Internal Market Council, including those in the context of the joint meeting with the associated countries, before being forwarded to the General Affairs Council to be held on 12 June 1995, which would prepare final draft conclusions to be submitted to the Cannes European Council.

Commissioner MONTI said that the Commission wanted to see the text of the draft conclusions improved on three points: the benefits of the Internal Market for the associated countries, the encouragement given by the Council to the associated countries to implement national programmes designed to align their legislation and structures on those of the Internal Market along with a request for a report to the Commission with a view to the forthcoming meeting of the European Council and, lastly, a more positive emphasis on coordinating the technical assistance of the Community and the Member States.
All the delegations expressed their appreciation for the quality of the White Paper submitted by the Commission. The Greek delegation highlighted the particular importance that the future accession of the associated countries had for Greece on account of its geographical location.

As regards the draft conclusions submitted to the Council, the Luxembourg delegation, supported by seven other delegations, (Belgium, Denmark, Finland, Italy, Ireland, Portugal and Sweden) suggested inserting in paragraph 4 a reference to the social dimension and protecting the environment and consumers in the process of aligning the legislation and structures of the associated countries on those of the Internal Market, in accordance with the link established by the Copenhagen European Council between the internal market and those flanking policies. The Swedish delegation recalled that such a link had been established in the 1984 Ministerial Declaration for the EFTA countries.

The German, Spanish, Netherlands and United Kingdom delegations were unable to accept the Luxembourg delegation's suggestion and wanted to adhere strictly to the rules having an impact upon the free movement of goods, so as not to weigh down the process of adjustment by the associated countries to the Internal Market. The Commission stated that although the amendment suggested did not pose any particular problem for the Commission, the Commission's purpose in drafting the White Paper had been to concentrate on measures concerning the integrity of the Internal Market.

The German, Greek and Swedish delegations also stressed the importance of sound coordination of technical assistance missions.
Lastly the President insisted on the need to avoid creating a hierarchy among the measures provided for in the White Paper, but stated that in his oral speech at the joint meeting he would emphasize the link between the Internal Market and certain flanking policies such as the social dimension and protecting the environment and consumers.

**JOINT MEETING WITH THE ASSOCIATED COUNTRIES**

After welcoming the representatives of the associated countries and stressing the importance of this joint meeting taking place in the framework of the "structured dialogue" defined by the Copenhagen European Council, the President recalled that:

- the purpose of the meeting was to present the White Paper officially to the Ministers of the associated countries and to record their comments, including on how those countries planned to approximate their legislation to the Internal Market "acquis";

- an initial outline of the White Paper had already been given by Commissioner Van den Broek at the Foreign Affairs Council meeting on 10 April 1995 and an initial general debate had been held at the last ECOFIN Council.
The President then presented the position of the Council on the White Paper. He stressed in particular that the Internal Market presupposed not only implementation of the four freedoms but also of the competition policy, while not ruling out other policies, and emphasized the importance of monitoring structures and follow-up using the possibilities offered by the structured dialogue and the association agreements.

The Austrian and German Ministers described the experience of their respective countries, as a new Member State in the case of Austria, and the experience gained from reunification in the case of Germany. The Ministers of the associated countries stressed the White Paper's value as a guide and reported in detail on what measures their countries were already implementing to approximate their legislation to the rules of the Internal Market. They also drew attention to the scale of their technical assistance needs and wanted the White Paper to be translated into their respective languages.

Following the meeting the President noted that:

– all the participants welcomed the White Paper;

– a consensus had emerged on the status of the White Paper which was part of the strategy for preparing for accession without creating new conditions for the future negotiations on the accession of the associated countries. The White Paper was intended to orient the efforts of the associated countries, which had already begun to make preparations for integration into the Internal Market;
– the "acquis communautaire" as a whole would apply to a new Member State only after its accession;

– there was agreement on the approach adopted by the White Paper, particularly as regards the following principles: no hierarchy among the sectors of legislation concerned, but identification within each sector of essential measures which must be adopted as a matter of priority as well as types of structures for implementation and monitoring to be set up. It was up to each of the associated countries to adopt its own implementation programme, depending on its national context and taking into account the general framework defined by the association agreements;

– the associated countries had expressed their willingness to draw up national programmes to implement the recommendations of the White Paper. At the same time the Union was also prepared to provide to that end appropriate assistance which was coordinated between the Community and the Member States.

Lastly, the President said that the Presidency would convey the feelings of the Internal Market Council on the White Paper, together with the reactions of the associated countries, to the General Affairs Council, as a contribution to the report which that Council was to draw up for the Cannes European Council.

4. **Operation of the Internal Market**

   – Commission communication

   The Council noted the information supplied by the Commission on

   – the report on the operation of the Internal Market in 1994;
– the progress of incorporation of Community legislation into national law.

Commissioner Monti said that although the amount of legislation transposed had reached a high level, the situation concerning certain sectors (public contracts, insurance, free movement of persons) was far from satisfactory. Without a rapid improvement in that situation the Commission would reserve the right to bring infringement proceedings against Member States which had not taken the necessary transposition measures.

Commissioner Monti also said that the Commission intended to:

– submit shortly a report on administrative cooperation, including cooperation on contact points, further to the Council Resolution of 16 June 1994 on the subject. In that context the Commission announced, with a view to further improving administrative cooperation, two initiatives, one designed to set up points of access to national administrations to which persons or undertakings meeting difficulties with the rules on the internal market could apply and the other designed to make better use of the resources available under the Karolus programme;

– complete at the beginning of 1996 studies on the impact of the internal market started further to the Council Resolution of 7 December 1992.

Lastly he referred to an initiative entitled "Citizens First" which would deal with citizens' rights and would be confirmed by means of an information campaign in the Member States, to be carried out in cooperation with the latter.
In the course of the exchange of views following the presentation of this information by the Commission:

- the Netherlands delegation, supported by several other delegations (A/DK/FIN/P/S), stressed the need to ensure that undertakings took part in the internal market under the same conditions throughout the territory of the Community. It was therefore important to ensure, on the one hand, the quality of both Community legislation and its implementation and, on the other hand, the correct application and strengthening of the principle of mutual recognition;

- it was also important to examine within the Council the reports and analyses produced in Denmark, the Netherlands and the United Kingdom which had showed up certain shortcomings in the operation of the internal market, which could lead to a loss of confidence in the internal market.

Lastly, the Netherlands delegation, supported by the United Kingdom delegation, recalled the idea it had put forward at the meeting of Ministers responsible for the internal market in Biarritz, to carry out a study, Member State by Member State, to evaluate how citizens perceived the internal market. It declared that it would explore this idea in greater depth with the Commission departments;

- the Portuguese and United Kingdom delegations stressed in particular the need to strengthen administrative cooperation, not only between Member States, but also between the Member States and the Commission.

Moreover, in the context of the examination of this item, the idea that the Economic and Social Committee might play the role of permanent observer in following up legislation on the Internal Market was warmly received by the Council.
5. **Legislative and administrative simplification**
   – **Information from the Commission on progress of the proceedings of the Molitor Group.**

The Council took note of the information provided by the Commission on the progress of the proceedings of the Molitor Group.

The Molitor Group had focused its work on Community legislation, examining national legislation only in cases of difficulties in implementing Community legislation.

The sectors analyzed as a priority by the Group, which in particular examined the impact of legislation on SMEs, were:

- standards for machinery;
- foodstuffs;
- employment and social policy;
- the environment.

The Group's report was to be adopted on 10 June 1995 with a view to its forwarding to the Cannes European Council.

The Italian delegation stressed the importance that it attached to the work of the Molitor Group and said it hoped that the report could be examined carefully by the Internal Market Council.

6. **Uniform and effective implementation of Community law and penalties for breaches of Community law provisions in the field of the Internal Market**
   – **Commission communication to the Council**
   – **Draft Council Resolution**

   (7439/95 MI 44 JUR 121 + EXT 1 (fin,s)
   4180/95 JUR 4
   6969/95 MI 36 JUR 108)

The Council signified its agreement to:

- the draft Resolution annexed to 7439/95, subject to the following amendments:
(a) The end of the first recital should read as follows:

"... that Community rules are uniformly and effectively implemented, in accordance with the conclusions of the Essen European Council;"

(b) The beginning of the fourth recital should read as follows:

"Whereas, pursuant to declaration No 19 on the implementation of Community law, annexed to the final act of the Treaty on European Union, while recognizing ..."

(c) The following text should be added to the end of the twelfth recital:

"..., in accordance with the Conclusions of the Edinburgh European Council;"

(d) The text of the twelfth recital of the paragraph beginning "AGREES" and of point (e) under "ENCOURAGES" should read:

"... to ensure that penalties guarantee equally effective application of the law throughout the Union ...".

– entry in its minutes of the following statements:
"The German and Luxembourg delegations state that the fact that they agree to the Council Resolution cannot be understood as meaning that a possibility for case-by-case monitoring of national decisions on penalties can be opened at Community level."

"The Commission states that it is not the purpose of this Resolution to deal with the way national administrations and/or national tribunals apply their national provisions on sanctions in individual cases. Obviously each individual decision by a national administration or tribunal can be challenged according to the national provisions of each individual Member State."

It was agreed that the Resolution would be submitted for adoption as an "A" item on the agenda for a forthcoming Council meeting following finalization of the texts by the Working Party of Legal/Linguistic Experts.

7. Amended proposal for a Regulation of the European Parliament and of the Council on novel food ingredients

– Common position

(11294/93 AGRILEG 331
7557/95 AGRILEG 102 CODEC 63
8050/92 AGRILEG 234 + COR 1 (f,d,en)

Following a debate, the President noted that there was no political agreement on the Presidency compromise and invited the Permanent Representatives Committee to continue examination of the matter on the basis of a suggestion from the Commission.

8. Proposal for a European Parliament and Council Decision establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods within the Community

– Common position

(7556/95 MI 46 + EXT 1 (fin, s)

The Council reached an agreement, by a qualified majority with the German and Netherlands delegations voting against, on the draft Decision contained in Annex 1 to 7556/95 and on the statements contained in Annex II thereto.
It was agreed that the common position would be submitted for adoption as an "A" item on the agenda for a forthcoming Council meeting following finalization of the texts by the Working Party of Legal/Linguistic Experts.

The explanations of vote of the German and Netherlands delegations are given below:

"The German delegation remains unconvinced of the need for the proposal for a Decision establishing a procedure for the exchange of information on national measures derogating from the principle of the free movement of goods.

Indeed it fears that the amount of red tape involved in applying this Decision would far outweigh the actual benefit derived. The interest of economic operators are already adequately served by the many compulsory notification procedures which exist at Community level and by the ability of undertakings to complain about national measures directly to the Commission or to their national governments."

"The Netherlands delegation today voted against the draft Decision. The Netherlands delegation endorses the aim of the draft Decision, which is to contribute to the proper implementation of the principle of mutual recognition and thus the proper operation of the Internal Market. The Decision is not the appropriate way of achieving that objective as it overlaps with existing procedures and red tape that it involves for the Member States outweighs the benefits which the procedure is supposed to produce.".
   - **Progress report**
     (6506/95 UD 39 + COR 1 (en) + COR 2 7655/95 UD 54)

The Council noted the proposal for a Decision of the European Parliament and of the Council adopting an action programme for Community customs (Customs 2000), and the progress of proceedings on it.

The Council recognized the importance of this proposal for a Decision as a way of improving the operation of the Internal Market.

Furthermore, it stressed the priority which should be given to the work in progress, which should be continued so that the Customs 2000 programme could be adopted in good time for its entry into force on 1 January 1996.

    - **Common position**
      (7192/95 PI 30 CULTURE 45 CODEC 55 ADD 1 7657/95 PI 37 CULTURE 53 CODEC 65)

The Portuguese delegation having indicated its intention of abstaining when the Council adopted the common position, and the Finnish delegation having expressed a parliamentary scrutiny reservation at this juncture, the Council:

- noted that there was political agreement on the common position;

- instructed the Permanent Representatives Committee to arrange for the legal/linguistic finalization of the text in accordance with the customary procedure;
– decided to enter this item in Part "A" of the agenda for the Council meeting on 29 June 1995 with a view to its adoption;

– signified its agreement to the entry in the minutes of the abovementioned Council meeting of the statements made at the meeting by the Italian and Swedish delegations and by the Commission, which are given in Annexes I, II and III respectively to these minutes.

11. **Draft Convention on insolvency procedures**

   – **Political agreement**
     
     (6994/95 DRS 10 + COR 1 (f) + COR 2  
     7552/95 DRS 16  
     7651/95 DRS 17 JUR 129)

Following a brief debate the Council:

– noted the agreement of fourteen delegations on the current draft text;

– invited the Belgian delegation to consider if there was any way that it could move its position closer to that of the other fourteen delegations;

– instructed the Permanent Representatives Committee to continue its proceedings and seek bases for rapprochement with the Belgian delegation and to prepare the explanatory report for final approval by the Council.
Explanation of vote by the Italian delegation

While the Italian delegation is voting in favour of the text of the common position, it feels it must draw attention to the importance of the problems – which are already in existence and probably bound to increase in future as a result of technological developments – surrounding the issue of compulsory licences as the only mechanism able to contain the possibility of abuse of dominant positions, not only between competing undertakings but also, in particular, in respect of science, education and the freedom of information, which could be subjected to undue restrictions.

The Italian delegation therefore expects the Commission will perform to the full its customary duty of verifying the implementation of the Directive and make timely proposals for adjusting to developments in the sector and eliminating abuse.
Statement for entry in the Council minutes when the Directive is finally adopted

Sweden supports a decision on a common position for a Directive on the legal protection of databases. The Directive represents an important contribution to the harmonization of rules in this area. However, we consider that the Directive should have been framed in such a way as not to exclude copying of electronic databases for individual use. Sweden believes that the Directive should have left latitude to allow consumers to make isolated copies of a database for use only among their immediate family and friends. It has always been a basic rule of Swedish copyright law that rightholders must not be able to interfere in the purely private domain. Admittedly, the distribution of privately produced copies causes rightholders economic damage. However, such distribution is already prohibited under other rules and there is no reason in our view for anyone buying, say, a database to be banned altogether from making a copy for his own use or for other members of his family.
re item 10 of the agenda

- **Statement by the Commission re Article 16(3)**

"In the framework of the report provided for in Article 16(3), the Commission undertakes to examine:

(a) the advisability of further harmonization of the exceptions to copyright and sui generis right, in particular in the light of the use made by the Member States of the possibilities offered in this respect by this Directive;

(b) the effects of Article 15b on the respective interests of the parties concerned."
"I"/"A" ITEM NOTE

from: Council Secretariat

to: Permanent Representatives Committee/Council


1. At its 1851st meeting held in Luxembourg on 6 June 1995, the Internal Market Council signified its political agreement on a common position concerning the above Directive, with the Portuguese delegation stating its intention to abstain on the vote and the Finnish delegation entering a parliamentary scrutiny reservation.

2. The text of this common position, as finalized by the Legal/Linguistic Experts, is given in 7934/95 PI 40 CULTURE 56 CODEC 72.

3. The Permanent Representatives Committee is asked to suggest that the Council:

   – adopt the common position as set out in 7934/95 PI 40 CULTURE 56 CODEC 72 as an "A" item at a forthcoming meeting, and

   – enter the attached statements in the minutes.
ANNEX

Statements for entry in the Council minutes

1. Statement by the Italian delegation

While the Italian delegation is voting in favour of the text of the common position, it feels it must draw attention to the importance of the problems – which are already in existence and will probably increase in future as a result of technological developments – surrounding the issue of compulsory licences as the only mechanism able to contain the possibility of abuse of dominant positions, not only between competing undertakings but also, in particular, in respect of science, education and the freedom of information, which could be subjected to undue restrictions.

The Italian delegation therefore expects the Commission to perform to the full its customary duty of verifying the implementation of the Directive and make timely proposals for adjusting to developments in the sector and eliminating abuse.

2. Statement by the Swedish delegation

Sweden supports a decision on a common position for a Directive on the legal protection of databases. The Directive represents an important contribution to the harmonization of rules in this area. However, we consider that the Directive should have been framed in such a way as not to exclude copying of electronic databases for individual use. Sweden believes that the Directive should have left latitude to allow consumers to make isolated copies of a database for use only among their immediate family and friends. It has always been a basic rule of Swedish copyright law that
rightholders must not be able to interfere in the purely private domain. Admittedly, the distribution of privately produced copies causes rightholders economic damage. However, such distribution is already prohibited under other rules and there is no reason in our view for anyone buying, say, a database to be banned altogether from making a copy for his own use or for other members of his family.

3. **Statement by the Commission re Article 16(3)**

Within the framework of the report provided for in Article 16(3), the Commission undertakes to examine:

(a) the desirability of further harmonization of the exceptions to the copyright and sui generis right, in particular in the light of the use made by the Member States of the options offered in this respect by this Directive;

(b) the effects of Article 15 on the respective interests of the parties concerned.
EUROPEAN UNION
THE COUNCIL

Brussels, 21 June 1995

7934/95

LIMITE

PI 40
CULTURE 56
CODEC 72

COMMON POSITION (EC) No /95
ADOPTED BY THE COUNCIL ON ...............
WITH A VIEW TO ADOPTING
DIRECTIVE 95/ /EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON THE LEGAL PROTECTION OF DATA BASES
DIRECTIVE 95/---/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of
on the legal protection of databases

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2), 66 and 100a thereof,

Having regard to the proposal from the Commission (1),

Having regard to the Opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure referred to in Article 189b of the Treaty (3),

(2) OJ No C 19, 25.1.1993, p. 3.
(1) Whereas databases are at present not sufficiently protected in all Member States by existing legislation; whereas such protection, where it exists, has different attributes;

(2) Whereas such differences in the legal protection of databases offered by the legislation of the Member States have direct negative effects on the functioning of the internal market as regards databases and in particular on the freedom of natural and legal persons to provide on-line database goods and services on an equal legal basis throughout the Community; whereas such differences could well become more pronounced as Member States introduce new legislation on this subject, which is now taking on an increasingly international dimension;

(3) Whereas existing differences having a distortive effect on the functioning of the internal market need to be removed and new ones prevented from arising, while differences not at the present time adversely affecting the functioning of the internal market or the development of an information market within the Community need not be dealt with in this Directive;

(4) Whereas copyright protection for databases exists in varying forms in the Member States according to legislation or case-law, and whereas such unharmonized intellectual property rights can have the effect of preventing the free movement of goods or services within the Community if differences in the scope and conditions of protection remain between the legislation of the Member States;

(5) Whereas copyright remains an appropriate form of exclusive right for authors who have created databases;
(6) Whereas, nevertheless, in the absence of a harmonized system of unfair competition legislation or of case-law, other measures are required in addition to prevent the unauthorized extraction and/or re-utilization of the contents of a database;

(7) Whereas database manufacture requires the investment of considerable human, technical and financial resources while such databases can be copied or accessed at a fraction of the cost needed to develop them independently;

(8) Whereas the unauthorized extraction and/or re-utilization of the contents of a database constitute acts which can have serious economic and technical consequences;

(9) Whereas databases are a vital tool in the development of an information market within the Community; whereas this tool will also be of use in many other fields;

(10) Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry requires investment in all the Member States in advanced information management systems;

(11) Whereas there is at present a great imbalance in the level of investment in the database sector both as between the Member States and between the Community and the world's largest database-producing third countries;

(12) Whereas such an investment in modern information storage and retrieval systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of database manufacturers;
(13) Whereas this Directive protects collections, sometimes called compilations, of works, of data or other materials whose arrangement, storage and access is performed by means which include electronic, electromagnetic or electro-optical processes or analogous processes;

(14) Whereas protection under this Directive should be extended to cover non-electronic databases;

(15) Whereas the criteria by which a database should be eligible for protection by copyright should be confined to the fact that the selection or the arrangement of the contents of the database is the author's own intellectual creation; whereas such protection should cover the structure of the database;

(16) Whereas no other criterion than originality in the sense of the author's intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular no aesthetic or qualitative criteria should be applied;

(17) Whereas the term database should be understood to include collections of works, whether literary, artistic, musical or other, or of other material such as texts, sounds, images, numbers, facts, and data; whereas it should cover collections of works, data or other independent materials which are systematically or methodically arranged and can be individually accessed; whereas this means that the recording of audiovisual, cinematographic, literary or musical works as such does not fall within the scope of this Directive;
(18) Whereas this Directive is without prejudice to the freedom of authors to decide whether, or in what manner, they will allow their works to be included in a database, in particular whether or not the authorization given is exclusive; whereas the protection of databases by the sui generis right is without prejudice to existing rights over their contents, and whereas in particular where an author or the holder of a related right permits some of his works or services to be included in a database pursuant to a non-exclusive agreement, a third party may make use of those works or services subject to the required consent of the author or of the holder of the related right without the sui generis right of the maker of the database being invoked to prevent him doing so, on condition that those works or services are neither extracted from the database nor re-utilized on the basis thereof;

(19) Whereas, as a rule, the compilation of several recordings of musical performances on a CD does not come within the scope of this Directive, both because, as a compilation, it does not meet the conditions for protection under copyright and because it does not represent a substantial enough investment to be eligible under the sui generis right;

(20) Whereas protection under this Directive may also apply to the materials necessary for the operation or consultation of certain databases such as the thesaurus and indexation systems;

(21) Whereas the protection provided for in this Directive relates to databases in which works, data or other materials have been arranged systematically or methodically; whereas it is not necessary for those materials to have been physically stored in an organized manner;

(22) Whereas electronic databases within the meaning of this Directive also include devices such as CD-ROM and CD-i;
(23) Whereas the term database should not be taken to extend to computer programs used in the construction or operation of a database, which are protected by Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programmes (4);

(24) Whereas the rental and lending of databases in the field of copyright and related rights are governed exclusively by Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (5);

(25) Whereas the term of copyright is already governed by Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (6);

(26) Whereas works protected by copyright and services protected by related rights, which are incorporated into a database, remain nevertheless the object of the respective exclusive rights and may not be incorporated into, or reproduced from, the database without the permission of the rightholder or his successors in title;

(27) Whereas copyright in such works and related rights in services thus incorporated into a database are in no way affected by the existence of a separate right in the selection or arrangement of these works and services in a database;


(28) Whereas the moral rights of the natural person who created the database belong to the author and should be exercised according to the legislation of the Member States and the provisions of the Berne Convention for the protection of Literary and Artistic Works; whereas such moral rights remain outside the scope of this Directive;

(29) Whereas the arrangements applicable to databases created by employees are left to the discretion of the Member States; whereas, therefore, nothing in this Directive prevents Member States from stipulating in their legislation that 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;

(30) Whereas the author's exclusive rights should include the right to determine the way in which his work is exploited and by whom, and in particular to control the distribution of his work to unauthorized persons;

(31) Whereas the copyright protection of databases includes making databases available by means other than the distribution of copies;

(32) Whereas Member States are required to ensure that their national provisions are at least materially equivalent in the case of such acts subject to restrictions as are provided for by this Directive;
(33) Whereas the question of exhaustion of the right of distribution does not arise in the case of on-line databases in the field of provision of services; whereas this also applies with regard to a material copy of such a database made by the user of such a service with the consent of the rightholder; whereas, unlike the cases of CD-ROM or CD-i, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which will have to be subject to authorization where the copyright so provides;

(34) Whereas, nevertheless, once the rightholder has chosen to make available a copy of the database to a user, whether by an on-line service or by other means of distribution, that lawful user must be able to access and use the database for the purposes and in the way set out in the agreement with the rightholder, even if such access and use necessitate performance of otherwise restricted acts;

(35) Whereas a list should be drawn up of exceptions to restricted acts, taking into account the fact that copyright as covered by this Directive applies only to the selection or arrangement of the contents of a database; whereas Member States should be given the option of providing for such exceptions in certain cases; whereas, however, this option should be exercised in accordance with the Berne Convention and to the extent that the exceptions relate to the structure of the database; whereas a distinction should be drawn between exceptions for private use and reproduction for private purposes, which concerns provisions under national legislation of some Member States on taxes on unused media or recording equipment;
(36) Whereas the term "scientific research" within the meaning of this Directive covers both the natural sciences and the human sciences;

(37) Whereas Article 10(1) of the Berne Convention is not affected by this Directive;

(38) Whereas the increasing use of digital recording technology exposes the database maker to the risk that the contents of his database may be copied and rearranged electronically without his authorization to produce a database of identical content but which does not infringe any copyright in the arrangement of his database;

(39) Whereas, in addition to protecting the copyright in the original selection or arrangement of the contents of a database, this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment incurred in obtaining and collecting the contents by providing that certain acts done by the user or a competitor in relation to the whole or substantial parts of a database are subject to restriction;

(40) Whereas the object of this sui generis right is to ensure protection of any investment in obtaining, verifying or presenting the contents of a database for the limited duration of the right; whereas such investment may consist of the implementation of financial resources and/or the expending of time, effort and energy;
(41) Whereas the objective of the sui generis right is to give the maker of a database the option of preventing the unauthorized extraction and/or re-utilization of all or a substantial part of the contents of that database; whereas the maker of a database is the person who takes the initiative and the risk of investing; whereas this excludes subcontractors in particular from the definition of maker;

(42) Whereas the special right to prevent unauthorized extraction and/or re-utilization relates to acts by the user which go beyond his legitimate rights and thereby harm the investment; whereas the right to prohibit extraction and/or re-utilization of all or a substantial part of the contents relates not only to the manufacture of a parasitical competing product but also to any user who, through his acts, causes significant detriment, evaluated quantitatively or qualitatively to the investment;

(43) Whereas, in cases of on-line transmission, the right to prohibit re-utilization is not exhausted either as regards the database or as regards a material copy of the database or of part thereof made by the addressee of the transmission with the consent of the rightholder;

(44) Whereas, when on-screen display of the contents of a database necessitates the permanent or temporary transfer of all or a substantial part of such contents to another medium, that act should be subject to authorization by the rightholder;

(45) Whereas the right to prevent unauthorized extraction and/or re-utilization is not to be considered in any way as an extension of copyright protection to mere facts or data;
(46) Whereas the existence of a right to prevent the unauthorized extraction and/or re-utilization of the whole or a substantial part of works, data or materials from a database should not give rise to the creation of a new right in the works, data or materials themselves;

(47) Whereas, in the interests of competition between suppliers of information products and services, protection by the sui generis right must not be afforded in such a way as to facilitate abuses of a dominant position, in particular as regards the creation and distribution of new products and services which have an intellectual, documentary, technical, economic or commercial added value; whereas, therefore, the provision of this Directive are without prejudice to the application of Community or national rules of competition;

(48) Whereas the objective of this Directive, which is to afford an appropriate and uniform level of protection of databases as a means to secure the remuneration of the maker of the database, is different from the aims of Directive 95/ ... of the European Parliament and of the Council of on the protection of individuals with regard to the processing of personal data and on the free movement of such data, (7) which are to guarantee free circulation of personal data on the basis of a harmonized standard of rules designed to protect the fundamental rights, notably the right to privacy which is recognized in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas the provisions of this Directive are without prejudice to data protection legislation;

(7) OJ No of , p. .
(49) Whereas, notwithstanding the right to prevent extraction and/or re-utilization of all or a substantial part of a database, it should be laid down that the maker of a database or his successor in title may not prevent a lawful user of the database from extracting and re-utilizing insubstantial parts; whereas, however, such user may not unreasonably prejudice either the legitimate interests of the holder of the sui generis right or the holder of copyright or a related right in respect of the works or services contained in the database;

(50) Whereas the Member States should be given the option of providing for exceptions to the right to prevent the unauthorized extraction and/or re-utilization of a substantial part of the contents of a database in the case of extraction for private purposes, for the purposes of illustration for teaching or scientific research, or where there is extraction an/or re-utilization for the purposes of public security or the proper performance of an administrative or judicial procedure; whereas such operations must not prejudice the exclusive rights of the maker to exploit the database and their purpose must not have a commercial nature;

(51) Whereas the Member States, where they avail themselves of the option to permit a lawful user of a database to extract a substantial part of the contents for the purposes of illustration for teaching or scientific research, may limit that permission to certain categories of teaching or scientific research institution;

(52) Whereas those Member States which already have specific national legislation providing for a right which is similar to the sui generis right provided for in this Directive may retain the exceptions to that right traditionally permitted by that legislation;
(53) Whereas the burden of proof regarding the date of completion of manufacture of a database lies with the maker of the database;

(54) Whereas the burden of proof that the criteria exist for concluding that a substantial amendment to the contents of a database is to be regarded as a substantial new investment lies with the maker of that database;

(55) Whereas a substantial new investment involving a new term of protection may include a substantive verification of the contents of the database;

(56) Whereas the right to prevent unauthorized extraction and/or re-utilization in respect of a database should apply to databases whose makers are nationals or habitual residents of third countries or to those produced by companies or firms not established in a Member State, within the meaning of the Treaty, only if such third countries offer comparable protection to databases produced by nationals of a Member State or who have their habitual residence in the territory of the Community;

(57) Whereas, in addition to remedies provided under the legislation of the Member States for infringements of copyright or other rights, Member States should provide for appropriate remedies against unauthorized extraction and/or re-utilization of the contents of a database;

(58) Whereas, in addition to the protection given under this Directive to the structure of the database by copyright, and to its contents against unauthorized extraction and/or re-utilization under the sui generis right, other legal provisions in the Member States relevant to the supply of database goods and services continue to apply;
(59) Whereas this Directive is without prejudice to the application to databases composed of audiovisual works of any rules recognized by a Member State's legislation concerning the broadcasting of audiovisual programmes;

(60) Whereas some Member States currently protect under copyright arrangements databases which do not meet the criteria for eligibility for copyright protection laid down in this Directive; whereas, even if the databases concerned are eligible for protection under the right laid down in this Directive to prevent unauthorized extraction and/or re-utilization of their contents, the term of protection under that right is considerably shorter than that which they enjoy under the national arrangements currently in force; whereas harmonization of the criteria for determining whether a database is to be protected by copyright may not have the effect of reducing the term of protection currently enjoyed by the rightholders concerned; whereas a derogation should be laid down to that effect; whereas the effects of such derogation must be confined to the territories of the Member States concerned,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

Scope

Article 1

Scope

1. This Directive concerns the legal protection of databases in any form.
2. For the purposes of this Directive, "database" shall mean a collection of works, data or other independent materials arranged in a systematic or methodical way and capable of being individually accessed by electronic or other means.

3. Protection under this Directive shall not apply to computer programs used in the manufacture or operation of databases which can be accessed by electronic means.

Article 2

Limitations of the scope

This Directive shall apply without prejudice to Community provisions relating to:

(a) the legal protection of computer programs;

(b) rental right, lending right and certain rights related to copyright in the field of intellectual property;

(c) the term of protection of copyright and certain related rights.
CHAPTER II

Copyright

Article 3

Object of protection

1. In accordance with this Directive, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.

2. The copyright protection of databases provided for by this Directive shall not extend to their contents and shall be without prejudice to any rights subsisting in those contents themselves.

Article 4

Authorship

1. The author of a database shall be the natural person or group of natural persons who created the base or, where the legislation of the Member States so 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 economic rights shall be owned by the person holding the copyright.

3. In respect of a database created by a group of natural persons jointly, the exclusive rights shall be owned jointly.
Article 5

Restricted acts

The author of a database shall have the exclusive right to do or to authorize in respect of the expression of the database which is protectable by copyright:

(a) temporary or permanent reproduction by any means and in any form, in whole or in part;

(b) translation, adaptation, arrangement and any other alteration;

(c) any form of distribution to the public 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 right to control resale within the Community of that copy;

(d) any communication, display or performance to the public;

(e) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).

Article 6

Exceptions to the restricted acts

1. The performance by the lawful user of a database or of a copy thereof of any of the acts listed in Article 5 which is necessary for the purposes of access to the contents of the database and normal use of the contents by the lawful user shall not require the authorization of the author of the database. Where the lawful user is authorized to use only part of the database, this provision shall apply only to that part.
2. Member States shall have the option of providing for limitations on the rights set out in Article 5 in the following cases:

(a) in the case of reproduction for private purposes of a non-electronic database;

(b) where there is use for the sole purposes of illustration for teaching or scientific research, to the extent justified by the non-commercial purpose;

(c) where there is use for the purposes of public security or for the purposes of the proper performance of an administrative or judicial procedure;

(d) where other exceptions to copyright which are traditionally permitted by the Member State concerned are involved, without prejudice to points (a), (b) and (c).

3. In accordance with the Berne Convention for the protection of Literary and Artistic Works, this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with a normal exploitation of the database.
CHAPTER III

Sui generis right

Article 7

Object of protection

1. Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents, to prevent acts of extraction and/or re-utilization of the whole of or a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.

2. For the purposes of this Chapter:

(a) "extraction" shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

(b) "re-utilization" shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control resale within the Community of that copy;

Public lending is not an act of extraction or re-utilization.

3. The right referred to in paragraph 1 may be transferred, assigned or granted under contractual licence.
4. The right provided for in paragraph 1 shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of the eligibility of the contents of that database for protection by copyright or by other rights. Protection of databases under the right referred to in paragraph 1 shall be without prejudice to rights existing in respect of their contents.

5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database which would have the result of performing acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.

**Article 8**

Rights and obligations of legitimate users

1. The maker of a database which is made available to the public in whatever manner may not prevent a lawful user of the database from extracting and/or re-utilizing insubstantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever. Where the lawful user is authorized to extract and/or re-utilize only part of the database, this paragraph shall apply only to that part.

2. A lawful user of a database which is made available to the public in whatever manner may not perform acts which conflict with a normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.

3. A lawful user of a database which is made available to the public in any manner may not cause prejudice to the holder of a copyright or related right in respect of the works or services contained in the database.
Article 9

Exceptions to the sui generis right

Member States shall have the option to lay down that lawful users of a database which is made available to the public in whatever manner may, without the authorization of its maker, extract or re-utilize a substantial part of its contents:

(a) in the case of extraction for private purposes of the contents of a non-electronic database;

(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be attained;

(c) in the case of extraction and/or re-utilization for the purposes of public security or the proper performance of an administrative or judicial procedure.

Article 10

Term of protection

1. The right provided for in Article 7 shall run from the date of completion of the making of the database. It shall expire fifteen years from the first of January of the year following the date of completion.

2. In the case of a database which is made available to the public in whatever manner before expiry of the period provided for in paragraph 1, the term of protection by that right shall expire fifteen years from the first of January of the year following the date when the database was first made available to the public.
3. Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.

Article 11

Beneficiaries of protection under the sui generis right

1. The right provided for in Article 7 shall apply to databases whose makers or successors in title are nationals of a Member State or who have their habitual residence in the territory of the Community.

2. Paragraph 1 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.

3. Agreements extending the right provided for in Article 7 to databases manufactured 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 that procedure shall not exceed that available pursuant to Article 10.
CHAPTER IV

Common provisions

Article 12

Remedies

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

Article 13

Continued application of other legal provisions

This Directive shall be without prejudice to provisions concerning in particular copyright, rights related to copyright or any other rights or obligations subsisting in the data, works or other materials incorporated into a database, patent rights, trade marks, design rights, the protection of national treasures, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, and the law of contract.

Article 14

Application in time

1. Protection pursuant to this Directive as regards copyright shall also be available in respect of databases created prior to the date referred to Article 16(1) which on that date fulfil the requirements laid down in this Directive as regards copyright protection of databases.
2. Notwithstanding paragraph 1, where a database protected under a copyright system in a Member State on the date of publication of this Directive does not fulfil the eligibility criteria for copyright protection laid down in Article 3(1), this Directive shall not result in any curtailing in that Member State of the remaining term of protection afforded under that system.

3. Protection pursuant to the provisions of this Directive as regards the right provided for in Article 7 shall also be available in respect of databases the manufacture of which was completed not more than fifteen years prior to the date referred to in Article 16(1) and which on that date fulfil the requirements laid down in Article 7.

4. The protection provided for in paragraphs 1 and 3 shall be without prejudice to any acts accomplished and rights acquired before the date referred to in those paragraphs.

5. In the case of a database the manufacture of which was completed not more than fifteen years prior to the date referred to in Article 16(1), the term of protection by the right provided for in Article 7 shall expire fifteen years from the first of January following that date.
Article 15

Binding nature of certain provisions

Any contractual provision contrary to Articles 6(1) and 8 shall be null and void.

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 1998.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive.
3. Not later than at the end of the third year after the date referred to in paragraph 1, and every three 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, in which, inter alia on the basis of specific information supplied by the Member States, it shall examine in particular the application of the sui generis right, including Articles 8 and 9, and especially whether the application of this right has led to abuse of a dominant position or other interference with free competition which would justify appropriate measures being taken, in particular the establishment of non-voluntary licensing arrangements. Where necessary, it shall submit proposals for adjustment of this Directive in line with developments in the area of databases.

Article 17

This Directive is addressed to the Member States.

Done at,

For the European Parliament
The President

For the Council
The President
"A" ITEM NOTE

from: Council Secretariat

to: Council

Subject: Adoption in the official languages of the Communities of the Council's common position with a view to adopting a European Parliament and Council Directive on the legal protection of databases

1. At its 1851st meeting held in Luxembourg on 6 June 1995, the Internal Market Council signified its political agreement on a common position concerning the above Directive, with the Portuguese delegation stating its intention to abstain on the vote and the Finnish delegation entering a parliamentary scrutiny reservation.

2. The Finnish delegation has in the meantime said that it intends voting for the common position, while the Portuguese delegation has confirmed its intention of abstaining.

3. The text of this common position, as finalized by the Legal/Linguistic Experts, is given in 7934/95 PI 40 CULTURE 56 CODEC 72 + COR 1(d) + COR 2(nl) + COR 3(d).
4. The Permanent Representatives Committee suggests that the Council:

– adopt the common position as set out in 7934/95 PI 40 CULTURE 56 CODEC 72 + COR 1(d) + COR 2(nl) + COR 3(d) as an "A" item at a forthcoming meeting; and

– enter the attached statements in its minutes.
ANNEX

Statements for entry in the Council minutes

1. **Statement by the Italian delegation**

While the Italian delegation is voting in favour of the text of the common position, it feels it must draw attention to the importance of the problems – which are already in existence and will probably increase in future as a result of technological developments – surrounding the issue of compulsory licences as the only mechanism able to contain the possibility of abuse of dominant positions, not only between competing undertakings but also, in particular, in respect of science, education and the freedom of information, which could be subjected to undue restrictions.

The Italian delegation therefore expects the Commission to perform to the full its customary duty of verifying the implementation of the Directive and to make timely proposals for adjusting to developments in the sector and eliminating abuse.

2. **Statement by the Swedish delegation**

Sweden supports a decision on a common position for a Directive on the legal protection of databases. The Directive represents an important contribution to the harmonization of rules in this area. However, we consider that the Directive should have been framed in such a way as not to exclude copying of electronic databases for individual use. Sweden believes that the Directive should have left latitude to allow consumers to make isolated copies of a database for use only among their immediate
family and friends. It has always been a basic rule of Swedish copyright law that rightholders must not be able to interfere in the purely private domain. Admittedly, the distribution of privately produced copies causes rightholders economic damage. However, such distribution is already prohibited under other rules and there is no reason in our view for anyone buying, say, a database to be banned altogether from making a copy for his own use or for other members of his family.

3. **Statement by the Portuguese delegation**

Databases are one of the main instruments of the information market, which is still in its infancy.

The Portuguese delegation approves the Directive's final objective of providing effective protection for databases.

However, granting exclusive new rights must not substantially alter the conditions of access to that vital product, information.

We therefore consider that the interests of users and of certain specific sectors, such as teaching and research, should be reflected in a more balanced manner in the common position.

We consider that a greater restriction of the powers conferred on the database producer would better meet these concerns and would be compatible with the goal sought, i.e. creating a European database industry.
In these circumstances the Portuguese delegation will abstain when the Council's common position on the Directive on the legal protection of databases is approved.

4. **Statement by the Finnish delegation**

Finland now approves and votes for the adoption of the common position of the Council on a Directive harmonizing legislation on the legal protection of databases. In certain respects, however, fully satisfactory solutions for Finland have not been achieved.

Firstly, the common position is not clear enough as regards the distinction between the protected database and the selection or arrangement of its contents by reason of which the base is protected. Finland points out that recitals 15, 27, 35, 38, 39 and 58 do not fully match the substance of the relevant Articles of the Directive.

Secondly, Finland emphasizes that private copying of electronic databases ought to be allowed. At least it should be made clear that a lawful acquirer of a database is allowed to copy the database in order to be able to use it. This would correspond to the solution adopted in the Directive on the legal protection of computer programs.

Thirdly, Finland would have preferred the Directive to leave the parties full contractual freedom in all respects.

Fourthly, the restricted acts under the sui generis right, in particular extraction, should have been defined more clearly.
Finally, Finland emphasizes the importance of the legislative measures of the European Union in the field of databases.

5. **Statement by the Commission re Article 16(3)**

Within the framework of the report provided for in Article 16(3), the Commission undertakes to examine:

(a) the desirability of further harmonization of the exceptions to the copyright and sui generis right, in particular in the light of the use made by the Member States of the options offered in this respect by this Directive;

(b) the effects of Article 15 on the respective interests of the parties concerned.
EUROPEAN UNION
THE COUNCIL

Brussels, 30 June 1995 (18.07)
(OR. f)

7934/95
ADD 1

LIMITE

PI 40
CULTURE 56
CODEC 72

COMMON POSITION (EC) No /95
ADOPTED BY THE COUNCIL ON .................
WITH A VIEW TO ADOPTING
DIRECTIVE 95/ /EC
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON THE LEGAL PROTECTION OF DATA BASES

DRAFT STATEMENT OF THE COUNCIL'S REASONS
I. INTRODUCTION

1. On 15 April 1992 the Commission submitted a proposal, based on Articles 57(2), 66 and 100a of the Treaty, on the legal protection of databases (\textsuperscript{1}).

2. The European Parliament delivered its Opinion at first reading on 23 June 1993 (\textsuperscript{2}). Further to that Opinion the Commission forwarded an amended proposal for a Directive on 4 October 1993 (\textsuperscript{3}).

   The Economic and Social Committee delivered its Opinion on 24 November 1992 (\textsuperscript{4}).

3. The Council adopted its common position in accordance with Article 189b of the Treaty on ........

II. OBJECTIVE

4. The purpose of the Commission proposal is to lay down harmonized provisions for the legal protection of databases. The proposal follows on from the Green Paper on Copyright and the Challenge of Technology (\textsuperscript{5}), Chapter 6 of which proposed harmonization measures in the field of the legal protection of databases. As a harmonizing framework it takes Member States’ provisions on copyright as applied to databases and in conformity with the Berne Convention for the Protection of Literary and Artistic Works, to which all Member States are parties. In addition to

\textsuperscript{1} OJ No C 156, 23. 6.1992, p. 4.
\textsuperscript{2} OJ No C 194, 19. 7.1993, p. 144.
\textsuperscript{3} OJ No C 308, 15.11.1993, p. 1.
\textsuperscript{4} OJ No C 19, 25. 11.1993, p. 3.
\textsuperscript{5} COM(88) 172 final.
copyright protection, the proposal provides for the protection of databases by a sui generis right.

III. THE COMMON POSITION

General comments

5. Regarding the structure of the Directive, the Council accepted the regrouping proposed by the Commission in its amended proposal of all Articles relating to copyright protection in a Chapter II and of the Articles relating to the sui generis right in a Chapter III. The Council considered that this separation helped make the text more comprehensible.

6. The Council deleted four Articles of the Commission's amended proposal, considering them superfluous. These are:

(a) Article 4 of the amended proposal: the insertion of this Article was proposed by the European Parliament (European Parliament Amendment No 12); it was purely declaratory and in the Commission's view was not to be considered "as implying any new obligation on the Member States or as requiring any acts of compliance with international agreements in respect of copyright.";

(b) Article 5 of the amended proposal (Article 4 of the original proposal): as this Article does not concern the legal protection of databases, the Council considered its inclusion in this Directive to be inadvisable and unnecessary;
(c) Article 8 of the amended proposal (Article 7 of the original proposal): since this Article does not have the effect of harmonizing Member States' laws, the Council preferred to delete it as redundant;

(d) Article 9 of the amended proposal: following adoption of Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (⁶), paragraph 1 of this Article has become purely declaratory and has been deleted by the Council as redundant. The other paragraphs of the Article relate closely to paragraph 1 and have likewise been deleted.

Recitals

7. The Council has inserted, deleted or amended a number of recitals, in particular to reflect amendments to Articles of the enacting terms.

Articles of the proposal

8. Article 1

Both the Commission's original proposal and its amended proposal covered electronic databases only. The Council's common position extends the scope of the Directive to all databases in any form (paragraph 1); the reasons are as follows:

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The Council has adapted the definition of "database" (paragraph 2) to reflect the broadening of the Directive's scope. It has accepted the European Parliament amendment consisting in adding "data" alongside "works" and "other materials". However, it has not accepted, for the same reasons as the Commission, the European Parliament amendment which sought to include in the definition of database "a large number" of works, data or other material: this amendment would have given rise to problems of interpretation and is inconsistent with the definition in the TRIPS Agreement and with the discussions in progress in the WIPO on a possible protocol to the Berne Convention.

The Council considered that the point that the Directive does not apply to computer
programs used in the manufacture or operation of databases should be placed in a separate paragraph (paragraph 3).

The Council, like the Commission, has rejected the European Parliament's proposed definition of "author (créateur) of a database" (Amendment No 4). It considered it preferable not to introduce such a definition for databases when there is no internationally agreed definition of an "author" (créateur) of other literary or artistic works.

The Council has not accepted the definition of "owner of a database" proposed by the European Parliament (Amendment No 5), which was adapted and incorporated by the Commission in its amended proposal. It has opted to retain "author of a database" for copyright protection and "maker of a database" for protection under the sui generis right.

9. **Article 2**

To avoid any uncertainty, the Council considered it advisable to insert a new Article specifying that the Directive applies without prejudice to Directives 91/250/EEC, 92/100/EEC and 93/98/EEC.

10. **Article 3** (Article 2 of the amended proposal)

The Council has merged into one paragraph (paragraph 1) the content of paragraphs 1 and 3 of the Commission proposal.

Paragraph 2 of the Commission proposal ceases to be relevant by virtue of the extension
of the scope of the Directive to non-electronic databases.

The Council has simplified the wording of paragraph 2 (paragraph 4 of the Commission proposal).

11. **Article 4** (Article 3 of the amended proposal)

The Council chose to leave to Member States' discretion the question of who exercises economic rights where a database is created by an employee in the execution of his duties. Paragraph 4 has therefore been deleted and recital 29 added.

12. **Article 5** (Article 6 of the amended proposal)

The Council has edited this Article, in particular to take account of the amendments to Article 1. All references to rental have been deleted in view of Article 2(b).

13. **Article 6** (Article 7 of the amended proposal)

The Council has merged the content of paragraphs 1 and 2 of the Commission proposal into a single paragraph (paragraph 1). It regarded this provision as setting out a minimum right of the lawful user of a database from which there should be no possibility of derogating by contract (see Article 15).

The Council has deleted paragraph 3 of the Commission proposal as being redundant, in the light of Article 3(2) in particular.
The Council has added a new paragraph 2, which allows Member States the option of providing for exceptions to the restricted acts listed in Article 5. It considered that no exception should be allowed for reproduction for private purposes of electronic databases, in particular in view of the ease with which they can be reproduced, but accepted the possibility of such exceptions for non-electronic databases.

So that the exceptions under paragraphs 1 and 2 do not unduly upset the balance between the rights of the author of the database and those of the lawful user, the Council has added a paragraph 3, which is based on Article 6(3) of Directive 91/250/EEC.

14. Article 7 (Article 10 of the amended proposal)

The Council thought that more detailed provisions on the sui generis right and the object of its protection were needed.

It considered that Article 10(1) and the first sentence of Article 10(2) of the amended proposal overlapped. Article 7(1) of the common position contains two significant changes to those provisions:

(a) The Council considered that the purpose of the sui generis right should be to safeguard the position of makers of databases against misappropriation of the results of investment in obtaining and collecting the contents of the database; it has accordingly restricted the enjoyment of that right to cases where the obtaining,
verification or presentation of the contents is shown to have involved substantial qualitative and/or quantitative investment.

(b) Under the amended Commission proposal, the sui generis right covered the contents of the database in whole or in substantial or insubstantial parts, with exceptions regarding the insubstantial parts being provided for in Article 11(5), (6) and (8). In its common position the Council has chosen to restrict the extent of the protection afforded by the sui generis right to the whole of or a substantial part of the contents of the database, evaluated qualitatively and/or quantitatively, on the grounds that the extraction and/or re-utilization of insubstantial parts of those contents was unlikely adversely to affect the maker's investment; it has accordingly deleted the exceptions relating to insubstantial parts. However, to ensure that the lack of protection of the insubstantial parts does not lead to their being repeatedly and systematically extracted and/or re-utilized, paragraph 5 of this Article in the common position introduces a safeguard clause.

In the interests of clarity, the Council has defined the terms "extraction" and "re-utilization" in paragraph 2.

The sui generis right is a new right and the Council thought it wise to specify that it may be transferred, assigned or granted under contractual licence (paragraph 3).

The first sentence of paragraph 4 of the common position corresponds to the second sentence of Article 10(2) of the amended proposal. The Council does not however
agree with the approach embodied in the third sentence of that paragraph of the amended proposal: it sees no valid reason for the sui generis right not to apply to the contents of a database consisting of works already protected by copyright or of objects protected by other rights; this could lead to anomalies where a database consisted, for example, partly of works protected by copyright and partly of other material protected by no other right. The Council has therefore provided for the sui generis right to apply irrespective of the eligibility of the contents of the database for protection by copyright or by other rights; at the same time it is specified that protection under the sui generis right is without prejudice to copyright or to other rights existing in respect of works or other material forming part of the contents of the database (second and third sentences of paragraph 4).

15. **Non-voluntary licences**

The Commission proposal made provision for obtaining non-voluntary licences in certain circumstances notwithstanding the sui generis right. This was meant to offset the substantial sui generis right which applied not only to the entirety and a substantial part of the contents of the database but also to insubstantial parts of it. Given that the scope of that right has been restricted to the whole of or a substantial part of the contents of the database, and in view of the exceptions to that right under Article 9 of the common position, the Council concluded that a proper balance between the rights of the maker of a database and the rights of the users no longer hinged on the
possibility of obtaining such licences and it has deleted the provisions allowing for it. It nevertheless judged it useful to state that the sui generis right must not be exercised in such a way as to facilitate abuses of a dominant position and that competition rules continue to apply (recital 47). In addition, the Council has added a specific reference to this issue in the clause on the review of the Directive (Article 16(3)).

16. **Article 8**

As the sui generis right is a new right, the Council felt it advisable to include in its common position an Article on the rights and obligations of lawful users of databases in the context of that right (Article 8). It is therefore specified in paragraph 1 that the sui generis right does not allow its holder to prevent a lawful user from extracting and/or re-utilizing insubstantial parts of its contents. Concerning the obligations of the lawful user, this Article stipulates that he may not cause prejudice either to the legitimate interests of the holder of the sui generis right (paragraph 2) nor to the holder of a copyright or related right in respect of the works or services contained in the database (paragraph 3). The Council also considers that it should not be possible to derogate from the provisions of this Article by contractual means (see Article 15).
17. **Article 9**

In view of the amendment by the Council to the scope of the sui generis right and the deleting of the provisions on non-voluntary licences, the exceptions to the sui generis right provided for in Article 11 of the amended proposal are no longer relevant.

The Council has introduced new exceptions (Article 9 of its common position), modelled on the exceptions to copyright provided for in Article 6(2), as it was concerned that the exceptions to the two rights should correspond as far as possible. No corresponding exception to that laid down in Article 6(2)(d) is found in Article 9, since no Member State has a national right having all the features of the sui generis right laid down by this proposal for a Directive. However, as the legislation in some Member States already provides for a right akin to the sui generis right, it was accepted that those Member States could retain the exceptions to that right traditionally permitted by the legislation in question (recital 52).

18. **Article 10** (Article 12 of the amended proposal)

The Council has accepted the proposal of the European Parliament (Amendment No 24), reproduced by the Commission in its amended proposal, which was to lay down a period of 15 years' protection under the sui generis right (paragraph 1).

For reasons of clarity, the Council preferred to place in two separate paragraphs the statement that protection under this right will run from the date of completion of the
making of the database (paragraph 1) and the statement that, where a database is made available to the public, the expiry of the term of protection will be calculated from the date on which this was done (paragraph 2).

The Council accepted the substance of the European Parliament's amendment providing that any substantial change to the content of a database would give rise to a fresh period of protection by the sui generis right (Amendment No 24(b) and Amendment No 26). In view of the link established in Article 7 between the sui generis right and substantial investment on the part of the maker of the database, the Council made the point that this fresh period had to arise from a new substantial investment (paragraph 3).

In the light of paragraph 3 of its common position, the Council considered Article 12(3) of the amended proposal to be redundant and deleted it.

19. **Article 11** (Article 13 of the amended proposal)

Article 11 of the common position corresponds to Article 13 of the amended proposal, with some drafting adjustments.

The Council did not however accept the new paragraph proposed by the European Parliament (Amendment No 28(2a)(new)), which refers to the provisions of the international agreements. The Council, like the Commission, considered that this provision would lead to confusion, since the sui generis right created by this proposal for a Directive is not linked to any existing international convention of any kind.
20. **Article 12** (Article 14 of the amended proposal)

   Article 12 of the common position corresponds to Article 14 of the amended proposal.

21. **Article 13** (Article 15(1) of the amended proposal)

   Article 13 of the common position corresponds to Article 15(1) of the amended proposal. Apart from some drafting adjustments, the Council supplemented the non-exhaustive list in this Article with a reference to protection of national treasures, laws on restrictive practices, security and access to public documents.

22. **Article 14** (Article 15(2) of the amended proposal)

   The Commission accepted the substance of Amendments No 29 and 30 of the European Parliament extending the benefit of protection to all databases, whether already in existence on the date of entry into force of the Directive or created subsequently (Article 15(2) of the Commission's amended proposal); the Council also accepted them in Article 14 of its common position.

   For the sake of clarity, the Council made a distinction here between copyright (paragraph 1) and the sui generis right (paragraph 3). In these two paragraphs, the Council replaced as the reference date the date of publication of the Directive by the deadline for its transposition, to prevent transposition measures having to apply retroactively.
The European Parliament had proposed stating that protection by the Directive of databases existing on the date of the Directive's entry into force would be without prejudice to any contracts concluded or rights acquired before that date (Amendment No 30). The Council specified that this applied both for copyright protection and for protection by the sui generis right (paragraph 4 of the common position).

Paragraph 2 of this Article in the common position was added by the Council with the aim of settling the question of databases at present protected by national copyright arrangements but which may no longer be protected by copyright once the Directive comes into effect, since the eligibility criteria for protection by such national arrangements are less exacting than the criteria of the Directive for copyright protection. Such situations may arise under national arrangements now applying in three Member States, in which the term of copyright protection is at present 50 years post mortem auctoris, and will be 70 years post mortem auctoris with effect from the transposition of Directive 93/98/EEC. It is likely that most of the databases concerned will be eligible for protection by the sui generis right; however, the term of protection by this right is only 15 years. To solve this problem, the Council introduced a derogation allowing the Member States concerned to continue to protect these databases under the present arrangements until the term of protection remaining at the date of the Directive's publication expires.

Since the period of protection by the sui generis right is 15 years, the Council considered it opportune to state that the protection of already existing databases by this right
applied only if their manufacture had been completed in the fifteen years preceding transposition of the Directive (paragraph 3 of the common position).

To avoid any uncertainty as to whether the fifteen years of protection by the sui generis right of databases already in existence on the date of the Directive's transposition are to run from that date or from the date of completion of their manufacture, the Council stated that the first of the alternatives would be applied (paragraph 5 of the common position). The reason for this choice was that the sui generis right was a new right and therefore no database would have had the benefit of any identical right before transposition of the Directive.

23. **Article 15**

As already noted at points 13 and 16 above, the Council considers the provisions of Article 6(1) and Article 8 to be so fundamental that it must not be possible to derogate from them by contractual means.

24. **Article 16**

In its amended proposal, the Commission had accepted the proposal of the European Parliament (Amendment No 31) changing the deadline for transposition of the Directive to 1 January 1995 (first subparagraph of paragraph 1). As that date has already been passed, the Council has replaced it by 1 January 1998 in order to give the Member States a period of nearly two years for transposition, as from the date of final adoption.
of the Directive.

The Council has accepted the proposal of the European Parliament (Amendment No 32), incorporated by the Commission into its amended proposal (Article 16(3)), including a review clause in the Directive. In view of the rapidity of developments in this field, it has brought forward the time of the first Commission report to three years after the date of transposition of the Directive. Because of the innovative nature of the sui generis right, the Council has further stipulated that the Commission will examine in particular the right's application, and that the examination will inter alia be based on specific information supplied by the Member States.
CORRIGENDUM TO "A" ITEM NOTE

Subject: Adoption in the official languages of the Communities of the Council's common position with a view to adopting a European Parliament and Council Directive on the legal protection of databases

1. On page 1 in point 3, instead of "7934/95 PI 40 CULTURE 56 CODEC 72 + COR 1(d) + COR 2(d)", read:

"7934/95 PI 40 CULTURE 56 CODEC 72 + COR 1(d) + COR 2(nl) + COR 3(d) + COR 4(dk) + REV 1(s)"

2. On page 2 in point 4, first indent, instead of "7934/95 PI 40 CULTURE 56 CODEC 72 + COR 1(d) + COR 2(d)", read:

"7934/95 PI 40 CULTURE 56 CODEC 72 + COR 1(d) + COR 2(nl) + COR 3(d) + COR 4(dk) + REV 1(s)"
EUROPEAN UNION

THE COUNCIL

Brussels, 7 July 1995 (11.07)

8798/95

LIMITE

PTS A 40

LIST OF "A" ITEMS submitted to the Council

for : 1863rd meeting of the COUNCIL OF THE EUROPEAN UNION

(Economic and Financial Questions)

Brussels, Monday 10 July 1995

1. Adoption in the official languages of the Communities of a Council Decision abrogating the Decision on the existence of an excessive deficit in Germany
   8723/95 UEM 34
   8392/95 UEM 15
   approved by Coreper, Part 2, on 5.7.1995

2. Adoption in the official languages of the Communities of Council Decisions on the existence of an excessive deficit in Austria, in Finland and in Sweden
   8722/95 UEM 33
   8393/95 UEM 16
   8394/95 UEM 17
   8395/95 UEM 18
   approved by Coreper, Part 2, on 5.7.1995

3. Proposal for transfer of appropriations No 7/95 between chapters within the Commission's budget estimates for the financial year 1995
   (Section III - Commission - Part B - NCE)
   7817/95 FIN 222 PE-L 37
   approved by Coreper, Part 2, on 14.6.1995

4. Proposal for transfer of appropriations No 13/95 between chapters within the Commission's budget estimates for the financial year 1995 (Section III - Commission - Part B - NCE)
   8261/95 FIN 296 PE-L 51
approved by Coreper, Part 2, on 5.7.1995
5. Written Questions put to the Council by Members of the European Parliament
   - No 246/95 by Mr RAFFARIN - Single European currency
     7135/95 PE-QE 164
     approved by Coreper, Part 1, on 30.5.1995
   - No 258/95 by Jean-Pierre RAFFARIN - French Presidency and regional policy
     6553/95 PE-QE 144
     approved by Coreper, Part 1, on 14.6.1995
   - No 250/95 by Jean-Pierre RAFFARIN - Road transport
     6343/95 PE-QE 138
     + COR 1
   - Nos 955/95 and 957/95 by Mark WATTS - Animal test restrictions - Animal testing for cosmetics
     7314/95 PE-QE 193
   - No 1083/95 by Michel EBNER - Freedom of movement between Union Member States
     7310/95 PE-QE 189
   - No 1096/95 by Glyn FORD - France's administration of the Convention on the Transfer of Sentenced Persons
     7311/95 PE-QE 190
   - No 1168/95 by Yannos KRANIDIOITIS - Reorganization of the Greek textiles industry
     7312/95 PE-QE 191
     approved by Coreper, Part 1, on 6.7.1995

6. Cooperation procedure
   - Request by the European Parliament for extension of the period laid down in Article 189c(g) of the Treaty
     8829/95 PE 40 PRO-COOP 23
     approved by Coreper, Part 2, on 5.7.1995

7. Advisory Committee on Safety, Hygiene and Health Protection at Work:
   replacement of:
   - Mr J.M. LEITÃO RIBEIRO ARENGA, member, who has resigned
     8038/95 SOC 185 + EXT 1 (fi,s)
   - Mr M. FARREO FRAZÃO CAETANO, alternate member, who has resigned
     8039/95 SOC 186 + EXT 1 (fi,s)
     approved by Coreper, Part 1, on 28.6.1995

8. Adoption in the official languages of the Communities of a Decision of the European Parliament and of the Council establishing 1996 as the "European Year of Lifelong Learning"
   8656/95 EDUC 48 SOC 226 CODEC 92
   PE-CONS 3611/95 EDUC 46 SOC 221 CODEC 86
   approved by Coreper, Part 1, on 28.6.1995
   - Adoption of a common position
     7934/95 PI 40 CULTURE 56 CODEC 72
     + COR 1 (d)
     + COR 2 (nl)
     + COR 3 (d)
     + COR 4 (dk)
     + REV 1 (s)
     7964/1/95 PI 42 CULTURE 58 CODEC 77 REV 1
     + COR 1 (f)
     + COR 2
   approved by Coreper, Part 2, on 22.6.1995

10. ACP rum
    - Adoption in the official languages of the Communities of a Council Regulation opening and providing for the administration of a Community tariff quota for rum, arrack and tafia originating in the ACP States (2nd half of 1995)
     8363/95 ACP 71 AGRIORG 179
     + COR 1 (f)
     8429/95 ACP 73 AGRIORG 181
     approved by Coreper, Part 2, on 29.6.1995

11. Relations with the ACP States
    - Adjustment of the remuneration and categories of taxation provided for in the Conditions of Employment applicable to staff of the Centre for the Development of Industry
     8081/95 ACP 66
     ACP-CE 2137/95
     approved by Coreper, Part 2, on 5.7.1995

12. Antidumping
    - Adoption in the official languages of the Communities of a Council Regulation extending the provisional anti-dumping duty on imports of disodium carbonate originating in the United States of America
     8714/1/95 COMER 90 REV 1
     8286/95 COMER 87
     approved by Coreper, Part 2, on 5.7.1995
COMMON POSITION (EC) No 20/95
adopted by the Council on 10 July 1995
with a view to adopting Directive 95/... on the legal protection of databases
(95/C 288/02)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure referred to in Article 189b of the Treaty (3),

1. Whereas databases are at present not sufficiently protected in all Member States by existing legislation; whereas such protection, where it exists, has different attributes;

2. Whereas such differences in the legal protection of databases offered by the legislation of the Member States have direct negative effects on the functioning of the internal market as regards databases and in particular on the freedom of natural and legal persons to provide on-line database goods and services on a equal legal basis throughout the Community; whereas such differences could well become more pronounced as Member States introduce new legislation on this subject, which is now taking on an increasingly international dimension;

3. Whereas existing differences having a distortive effect on the functioning of the internal market need to be removed and new ones prevented from arising, while differences not at the present time adversely affecting the functioning of the internal market or the development of an information market within the Community need not be dealt with in this Directive;

4. Whereas copyright protection for databases exists in varying forms in the Member States according to legislation or case-law, and whereas such unharmonized intellectual property rights can have the effect of preventing the free movement of goods or services within the Community if differences in the scope and conditions of protection remain between the legislation of the Member States;

5. Whereas copyright remains an appropriate form of exclusive right for authors who have created databases;

6. Whereas, nevertheless, in the absence of a harmonized system of unfair competition legislation or of case-law, other measures are required in addition to prevent the unauthorized extraction and/or re-utilization of the contents of a database;

7. Whereas database manufacture requires the investment of considerable human, technical and financial resources while such databases can be copied or accessed at a fraction of the cost needed to develop them independently;

8. Whereas the unauthorized extraction and/or re-utilization of the contents of a database constitute acts which can have serious economic and technical consequences;

9. Whereas databases are a vital tool in the development of an information market within the Community; whereas this tool will also be of use in many other fields;

10. Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry requires investment in all the Member States in advanced information management systems;

11. Whereas there is at present a great imbalance in the level of investment in the database sector both as between the Member States and between the Community and the world's largest database-producing third countries;

(2) OJ No C 19, 25. 1. 1993, p. 3.
12. Whereas such an investment in modern information storage and retrieval systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of database manufacturers;

13. Whereas this Directive protects collections, sometimes called compilations, of works, of data or other materials whose arrangement, storage and access is performed by means which include electronic, electromagnetic or electro-optical processes or analogous processes;

14. Whereas protection under this Directive should be extended to cover non-electronic databases;

15. Whereas the criteria by which a database should be eligible for protection by copyright should be confined to the fact that the selection or the arrangement of the contents of the database is the author's own intellectual creation; whereas such protection should cover the structure of the database;

16. Whereas no other criterion than originality in the sense of the author's intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular no aesthetic or qualitative criteria should be applied;

17. Whereas the term database should be understood to include collections of works, whether literary, artistic, musical or other, or of other material such as texts, sounds, images, numbers, facts, and data; whereas it should cover collections of works, data or other independent materials which are systematically or methodically arranged and can be individually accessed; whereas this means that the recording of audiovisual, cinematographic, literary or musical works as such does not fall within the scope of this Directive;

18. Whereas this Directive is without prejudice to the freedom of authors to decide whether, or in what manner, they will allow their works to be included in a database, in particular whether or not the authorization given is exclusive; whereas the protection of databases by the *sui generis* right is without prejudice to existing rights over their contents, and whereas in particular where an author or the holder of a related right permits some of his works or services to be included in a database pursuant to a non-exclusive agreement, a third party may make use of those works or services subject to the required consent of the author or of the holder of the related right without the *sui generis* right of the maker of the database being invoked to prevent him doing so, on condition that those works or services are neither extracted from the database nor re-utilized on the basis thereof;

19. Whereas, as a rule, the compilation of several recordings of musical performances on a CD does not come within the scope of this Directive, both because, as a compilation, it does not meet the conditions for protection under copyright and because it does not represent a substantial enough investment to be eligible under the *sui generis* right;

20. Whereas protection under this Directive may also apply to the materials necessary for the operation or consultation of certain databases such as the thesaurus and indexation systems;

21. Whereas the protection provided for in this Directive relates to databases in which works, data or other materials have been arranged systematically or methodically; whereas it is not necessary for those materials to have been physically stored in an organized manner;

22. Whereas electronic databases within the meaning of this Directive also include devices such as CD-ROM and CD-i;

23. Whereas the term database should not be taken to extend to computer programs used in the construction or operation of a database, which are protected by Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programmes (1);

24. Whereas the rental and lending of databases in the field of copyright and related rights are governed exclusively by Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (2);

25. Whereas the term of copyright is already governed by Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (3);

26. Whereas works protected by copyright and services protected by related rights, which are incorporated into a database, remain nevertheless the object of the respective exclusive rights and may not be incorporated into, or reproduced from, the database without the permission of the rightholder or his successors in title;

(2) OJ No L 346, 27. 11. 1992, p. 61.
27. Whereas copyright in such works and related rights in services thus incorporated into a database are in no way affected by the existence of a separate right in the selection or arrangement of these works and services in a database;

28. Whereas the moral rights of the natural person who created the database belong to the author and should be exercised according to the legislation of the Member States and the provisions of the Berne Convention for the protection of Literary and Artistic Works; whereas such moral rights remain outside the scope of this Directive;

29. Whereas the arrangements applicable to databases created by employees are left to the discretion of the Member States; whereas, therefore, nothing in this Directive prevents Member States from stipulating in their legislation that 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;

30. Whereas the author's exclusive rights should include the right to determine the way in which his work is exploited and by whom, and in particular to control the distribution of his work to unauthorized persons;

31. Whereas the copyright protection of databases includes making databases available by means other than the distribution of copies;

32. Whereas Member States are required to ensure that their national provisions are at least materially equivalent in the case of such acts subject to restrictions as are provided for by this Directive;

33. Whereas the question of exhaustion of the right of distribution does not arise in the case of on-line databases in the field of provision of services; whereas this also applies with regard to a material copy of such a database made by the user of such a service with the consent of the rightholder; whereas, unlike the cases of CD-ROM or CD-i, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which will have to be subject to authorization where the copyright so provides;

34. Whereas, nevertheless, once the rightholder has chosen to make available a copy of the database to a user, whether by an on-line service or by other means of distribution, that lawful user must be able to access and use the database for the purposes and in the way set out in the agreement with the rightholder, even if such access and use necessitate performance of otherwise restricted acts;

35. Whereas a list should be drawn up of exceptions to restricted acts, taking into account the fact that copyright as covered by this Directive applies only to the selection or arrangement of the contents of a database; whereas Member States should be given the option of providing for such exceptions in certain cases; whereas, however, this option should be exercised in accordance with the Berne Convention and to the extent that the exceptions relate to the structure of the database; whereas a distinction should be drawn between exceptions for private use and reproduction for private purposes, which concerns provisions under national legislation of some Member States on taxes on unused media or recording equipment;

36. Whereas the term 'scientific research' within the meaning of this Directive covers both the natural sciences and the human sciences;

37. Whereas Article 10 (1) of the Berne Convention is not affected by this Directive;

38. Whereas the increasing use of digital recording technology exposes the database maker to the risk that the contents of his database may be copied and rearranged electronically without his authorization to produce a database of identical content but which does not infringe any copyright in the arrangement of his database;

39. Whereas, in addition to protecting the copyright in the original selection or arrangement of the contents of a database, this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment incurred in obtaining and collecting the contents by providing that certain acts done by the user or a competitor in relation to the whole or substantial parts of a database are subject to restriction;

40. Whereas the object of this sui generis right is to ensure protection of any investment in obtaining,
verifying or presenting the contents of a database for the limited duration of the right; whereas such investment may consist of the implementation of financial resources and/or the expending of time, effort and energy;

41. Whereas the objective of the *sui generis* right is to give the maker of a database the option of preventing the unauthorized extraction and/or re-utilization of all or a substantial part of the contents of that database; whereas the maker of a database is the person who takes the initiative and the risk of investing; whereas this excludes subcontractors in particular from the definition of maker;

42. Whereas the special right to prevent unauthorized extraction and/or re-utilization relates to acts by the user which go beyond his legitimate rights and thereby harm the investment; whereas the right to prohibit extraction and/or re-utilization of all or a substantial part of the contents relates not only to the manufacture of a parasitical competing product but also to any user who, through his acts, causes significant detriment, evaluated quantitatively or qualitatively, to the investment;

43. Whereas, in cases of on-line transmission, the right to prohibit re-utilization is not exhausted either as regards the database or as regards a material copy of the database or of part thereof made by the addressee of the transmission with the consent of the rightholder;

44. Whereas, when on-screen display of the contents of a database necessitates the permanent or temporary transfer of all or a substantial part of such contents to another medium, that act should be subject to authorization by the rightholder;

45. Whereas the right to prevent unauthorized extraction and/or re-utilization is not to be considered in any way as an extension of copyright protection to mere facts or data;

46. Whereas the existence of a right to prevent the unauthorized extraction and/or re-utilization of the whole or a substantial part of works, data or materials from a database should not give rise to the creation of a new right in the works, data or materials themselves;

47. Whereas, in the interests of competition between suppliers of information products and services, protection by the *sui generis* right must not be afforded in such a way as to facilitate abuses of a dominant position, in particular as regards the creation and distribution of new products and services which have an intellectual, documentary, technical, economic or commercial added value; whereas, therefore, the provisions of this Directive are without prejudice to the application of Community or national rules of competition;

48. Whereas the objective of this Directive, which is to afford an appropriate and uniform level of protection of databases as a means to secure the remuneration of the maker of the database, is different from the aims of Directive 95/26/EC of the European Parliament and of the Council of ... on the protection of individuals with regard to the processing of personal data and on the free movement of such data (1), which are to guarantee free circulation of personal data on the basis of a harmonized standard of rules designed to protect the fundamental rights, notably the right to privacy which is recognized in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas the provisions of this Directive are without prejudice to data protection legislation;

49. Whereas, notwithstanding the right to prevent extraction and/or re-utilization of all or a substantial part of a database, it should be laid down that the maker of a database or his successor in title may not prevent a lawful user of the database from extracting and re-utilizing insubstantial parts; whereas, however, such user may not unreasonably prejudice either the legitimate interests of the holder of the *sui generis* right or the holder of copyright or a related right in respect of the works or services contained in the database;

50. Whereas the Member States should be given the option of providing for exceptions to the right to prevent the unauthorized extraction and/or re-utilization of a substantial part of the contents of a database in the case of extraction for private purposes, for the purposes of illustration for teaching or scientific research, or where there is extraction and/or re-utilization for the purposes of public security or the proper performance of an administrative or judicial procedure; whereas such operations must not prejudice the exclusive rights of the maker to exploit the database and their purpose must not have a commercial nature;

51. Whereas the Member States, where they avail themselves of the option to permit a lawful user of a

(1) OJ No L ...
database to extract a substantial part of the contents for the purposes of illustration for teaching or scientific research, may limit that permission to certain categories of teaching or scientific research institution;

52. Whereas those Member States which already have specific national legislation providing for a right which is similar to the *sui generis* right provided for in this Directive may retain the exceptions to that right traditionally permitted by that legislation;

53. Whereas the burden of proof regarding the date of completion of manufacture of a database lies with the maker of the database;

54. Whereas the burden of proof that the criteria exist for concluding that a substantial amendment to the contents of a database is to be regarded as a substantial new investment lies with the maker of that database;

55. Whereas a substantial new investment involving a new term of protection may include a substantive verification of the contents of the database;

56. Whereas the right to prevent unauthorized extraction and/or re-utilization in respect of a database should apply to databases whose makers are nationals or habitual residents of third countries or to those produced by companies or firms not established in a Member State, within the meaning of the Treaty, only if such third countries offer comparable protection to databases produced by nationals of a Member State or who have their habitual residence in the territory of the Community;

57. Whereas, in addition to remedies provided under the legislation of the Member States for infringements of copyright or other rights, Member States should provide for appropriate remedies against unauthorized extraction and/or re-utilization of the contents of a database;

58. Whereas, in addition to the protection given under this Directive to the structure of the database by copyright, and to its contents against unauthorized extraction and/or re-utilization under the *sui generis* right, other legal provisions in the Member States relevant to the supply of database goods and services continue to apply;

59. Whereas this Directive is without prejudice to the application to databases composed of audiovisual works of any rules recognized by a Member State's legislation concerning the broadcasting of audiovisual programmes;

60. Whereas some Member States currently protect under copyright arrangements databases which do not meet the criteria for eligibility for copyright protection laid down in this Directive; whereas, even if the databases concerned are eligible for protection under the right laid down in this Directive to prevent unauthorized extraction and/or re-utilization of their contents, the term of protection under that right is considerably shorter than that which they enjoy under the national arrangements currently in force; whereas harmonization of the criteria for determining whether a database is to be protected by copyright may not have the effect of reducing the term of protection currently enjoyed by the rightholders concerned; whereas a derogation should be laid down to that effect; whereas the effects of such derogation must be confined to the territories of the Member States concerned;

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE

Article 1

Scope

1. This Directive concerns the legal protection of databases in any form.

2. For the purposes of this Directive, ‘database’ shall mean a collection of works, data or other independent materials arranged in a systematic or methodical way and capable of being individually accessed by electronic or other means.

3. Protection under this Directive shall not apply to computer programs used in the manufacture or operation of databases which can be accessed by electronic means.

Article 2

Limitations of the scope

This Directive shall apply without prejudice to Community provisions relating to:

(a) the legal protection of computer programs;

(b) rental right, lending right and certain rights related to copyright in the field of intellectual property;

(c) the term of protection of copyright and certain related rights.
CHAPTER II

COPYRIGHT

Article 3

Object of protection

1. In accordance with this Directive, databases which, by reason of the selection or arrangement of their contents, constitute the author’s own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.

2. The copyright protection of databases provided for by this Directive shall not extend to their contents and shall be without prejudice to any rights subsisting in those contents themselves.

Article 4

Authorship

1. The author of a database shall be the natural person or group of natural persons who created the base or, where the legislation of the Member States so 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 economic rights shall be owned by the person holding the copyright.

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

Article 5

Restricted acts

The author of a database shall have the exclusive right to do or to authorize in respect of the expression of the database which is protectable by copyright:

(a) temporary or permanent reproduction by any means and in any form, in whole or in part;
(b) translation, adaptation, arrangement and any other alteration;
(c) any form of distribution to the public 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 right to control resale within the Community of that copy;
(d) any communication, display or performance to the public;
(e) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).

Article 6

Exceptions to the restricted acts

1. The performance by the lawful user of a database or of a copy thereof of any of the acts listed in Article 5 which is necessary for the purposes of access to the contents of the database and normal use of the contents by the lawful user shall not require the authorization of the author of the database. Where the lawful user is authorized to use only part of the database, this provision shall apply only to that part.

2. Member States shall have the option of providing for limitations on the rights set out in Article 5 in the following cases:

(a) in the case of reproduction for private purposes of a non-electronic database;
(b) where there is use for the sole purposes of illustration for teaching or scientific research, to the extent justified by the non-commercial purpose;
(c) where there is use for the purposes of public security or for the purposes of the proper performance of an administrative or judicial procedure;
(d) where other exceptions to copyright which are traditionally permitted by the Member State concerned are involved, without prejudice to points (a), (b) and (c).

3. In accordance with the Berne Convention for the Protection of Literary and Artistic Works, this article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder’s legitimate interests or conflicts with a normal exploitation of the database.
CHAPTER III

SUI GENERIS RIGHT

Article 7

Object of protection

1. Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents, to prevent acts of extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.

2. For the purposes of this chapter:

(a) 'extraction' shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

(b) 're-utilization' shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control resale within the Community of that copy.

Public lending is not an act of extraction or re-utilization.

3. The right referred to in paragraph 1 may be transferred, assigned or granted under contractual licence.

4. The right provided for in paragraph 1 shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of the eligibility of the contents of that database for protection by copyright or by other rights. Protection of databases under the right referred to in paragraph 1 shall be without prejudice to rights existing in respect of their contents.

5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database which would have the result of performing acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.

Article 8

Rights and obligations of legitimate users

1. The maker of a database which is made available to the public in whatever manner may not prevent a lawful user of the database from extracting and/or re-utilizing insubstantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever. Where the lawful user is authorized to extract and/or re-utilize only part of the database, this paragraph shall apply only to that part.

2. A lawful user of a database which is made available to the public in whatever manner may not perform acts which conflict with a normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.

3. A lawful user of a database which is made available to the public in any manner may not cause prejudice to the holder of a copyright or related right in respect of the works or services contained in the database.

Article 9

Exceptions to the sui generis right

Member States shall have the option to lay down that lawful users of a database which is made available to the public in whatever manner may, without the authorization of its maker, extract or re-utilize a substantial part of its contents:

(a) in the case of extraction for private purposes of the contents of a non-electronic database;

(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be attained;

(c) in the case of extraction and/or re-utilization for the purposes of public security or the proper performance of an administrative or judicial procedure.

Article 10

Term of protection

1. The right provided for in Article 7 shall run from the date of completion of the making of the database. It shall expire 15 years from 1 January of the year following the date of completion.
2. In the case of a database which is made available to the public in whatever manner before expiry of the period provided for in paragraph 1, the term of protection by that right shall expire 15 years from 1 January of the year following the date when the database was first made available to the public.

3. Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.

**Article 11**

**Beneficiaries of protection under the sui generis right**

1. The right provided for in Article 7 shall apply to databases whose makers or successors in title are nationals of a Member State or who have their habitual residence in the territory of the Community.

2. Paragraph 1 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.

3. Agreements extending the right provided for in Article 7 to databases manufactured 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 that procedure shall not exceed that available pursuant to Article 10.

**CHAPTER IV**

**COMMON PROVISIONS**

**Article 12**

**Remedies**

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

**Article 13**

**Continued application of other legal provisions**

This Directive shall be without prejudice to provisions concerning in particular copyright, rights related to copyright or any other rights or obligations subsisting in the data, works or other materials incorporated into a database, patent rights, trade marks, design rights, the protection of national treasures, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, and the law of contract.

**Article 14**

**Application in time**

1. Protection pursuant to this Directive as regards copyright shall also be available in respect of databases created prior to the date referred to in Article 16 (1) which on that date fulfil the requirements laid down in this Directive as regards copyright protection of databases.

2. Notwithstanding paragraph 1, where a database protected under a copyright system in a Member State on the date of publication of this Directive does not fulfil the eligibility criteria for copyright protection laid down in Article 3 (1), this Directive shall not result in any curtailing in that Member State of the remaining term of protection afforded under that system.

3. Protection pursuant to the provisions of this Directive as regards the right provided for in Article 7 shall also be available in respect of databases the manufacture of which was completed not more than 15 years prior to the date referred to in Article 16 (1) and which on that date fulfil the requirements laid down in Article 7.

4. The protection provided for in paragraphs 1 and 3 shall be without prejudice to any acts accomplished and rights acquired before the date referred to in those paragraphs.

5. In the case of a database the manufacture of which was completed not more than 15 years prior to the date referred to in Article 16 (1), the term of protection by the right provided for in Article 7 shall expire 15 years from 1 January following that date.

**Article 15**

**Binding nature of certain provisions**

Any contractual provision contrary to Articles 6 (1) and 8 shall be null and void.
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 1998.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

3. Not later than at the end of the third year after the date referred to in paragraph 1, and every three 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, in which, inter alia on the basis of specific information supplied by the Member States, it shall examine in particular the application of the sui generis right, including Articles 8 and 9, and especially whether the application of this right has led to abuse of a dominant position or other interference with free competition which would justify appropriate measures being taken, in particular the establishment of non-voluntary licensing arrangements. Where necessary, it shall submit proposals for adjustment of this Directive in line with developments in the area of databases.

Article 17

This Directive is addressed to the Member States.

Done at, ...

For the European Parliament
The President

For the Council
The President
STATEMENT OF THE COUNCIL’S REASONS

I. INTRODUCTION

1. On 15 April 1992 the Commission submitted a proposal, based on Articles 57 (2), 66 and 100a of the Treaty, on the legal protection of databases (1).

2. The European Parliament delivered its opinion at first reading on 23 June 1993 (2). Further to that opinion the Commission forwarded an amended proposal for a Directive on 4 October 1993 (3). The Economic and Social Committee delivered its opinion on 24 November 1992 (4).

3. The Council adopted its common position in accordance with Article 189b of the Treaty on 10 July 1995.

II. OBJECTIVE

4. The purpose of the Commission proposal is to lay down harmonized provisions for the legal protection of databases. The proposal follows on from the Green Paper on Copyright and the Challenge of Technology (5), Chapter 6 of which proposed harmonization measures in the field of the legal protection of databases. As a harmonizing framework it takes Member States' provisions on copyright as applied to databases and in conformity with the Berne Convention for the Protection of Literary and Artistic Works, to which all Member States are parties. In addition to copyright protection, the proposal provides for the protection of databases by a *sui generis* right.

III. THE COMMON POSITION

General comments

5. Regarding the structure of the Directive, the Council accepted the regrouping proposed by the Commission in its amended proposal of all Articles relating to copyright protection in a Chapter II and of the Articles relating to the *sui generis* right in a Chapter III. The Council considered that this separation helped make the text more comprehensible.

6. The Council deleted four Articles of the Commission’s amended proposal, considering them superfluous. These are:

(a) Article 4 of the amended proposal: the insertion of this Article was proposed by the European Parliament (European Parliament amendment 12); it was purely declaratory and in the Commission’s view was not to be considered 'as implying any new obligation on the Member States or as requiring any acts of compliance with international agreements in respect of copyright';

(b) Article 5 of the amended proposal (Article 4 of the original proposal): as this Article does not concern the legal protection of databases, the Council considered its inclusion in this Directive to be inadvisable and unnecessary;

1 OJ No C 156, 23. 6. 1992, p. 4.
4 OJ No C 19, 25. 1. 1993, p. 3.
5 COM(88) 172 final.
(c) Article 8 of the amended proposal (Article 7 of the original proposal); since this Article does not have the effect of harmonizing Member States' laws, the Council preferred to delete it as redundant;

(d) Article 9 of the amended proposal: following adoption of Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (1), paragraph 1 of this article has become purely declaratory and has been deleted by the Council as redundant. The other paragraphs of the article relate closely to paragraph 1 and have likewise been deleted.

Recitals

7. The Council has inserted, deleted or amended a number of recitals, in particular to reflect amendments to articles of the enacting terms.

Articles of the proposal

8. Article 1

Both the Commission's original proposal and its amended proposal covered electronic databases only. The Council's common position extends the scope of the Directive to all databases in any form (paragraph 1); the reasons are as follows:

(a) this solution is simpler, as it obviates the need to draw a clear distinction between electronic and non-electronic databases;

(b) it is inappropriate for a database distributed in both electronic and non-electronic forms not to enjoy the same protection in both forms;

(c) no distinction between electronic databases and non-electronic databases is made either by the corresponding provision of the GATT Agreement on trade-related aspects of intellectual property rights (Trips Agreement), or in the ongoing discussions in the World Intellectual Property Organization (WIPO) on a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works.

The Council has adapted the definition of 'database' (paragraph 2) to reflect the broadening of the Directive's scope. It has accepted the European Parliament amendment consisting in adding 'data' alongside 'works' and 'other materials'. However, it has not accepted, for the same reasons as the Commission, the European Parliament amendment which sought to include in the definition of database 'a large number' of works, data or other material: this amendment would have given rise to problems of interpretation and is inconsistent with the definition in the Trips Agreement and with the discussions in progress in the WIPO on a possible protocol to the Berne Convention.

The Council considered that the point that the Directive does not apply to computer programs used in the manufacture or operation of databases should be placed in a separate paragraph (paragraph 3).

The Council, like the Commission, has rejected the European Parliament's proposed definition of 'author (créateur) of a database' (amendment 4). It considered it

preferable not to introduce such a definition for databases when there is no internationally agreed definition of an 'author' (créateur) of other literary or artistic works.

The Council has not accepted the definition of 'owner of a database' proposed by the European Parliament (amendment 5), which was adapted and incorporated by the Commission in its amended proposal. It has opted to retain 'author of a database' for copyright protection and 'maker of a database' for protection under the sui generis right.

9. Article 2

To avoid any uncertainty, the Council considered it advisable to insert a new article specifying that the Directive applies without prejudice to Directives 91/250/EEC, 92/100/EEC and 93/98/EEC.

10. Article 3 (Article 2 of the amended proposal)

The Council has merged into one paragraph (paragraph 1) the content of paragraphs 1 and 3 of the Commission proposal.

Paragraph 2 of the Commission proposal ceases to be relevant by virtue of the extension of the scope of the Directive to non-electronic databases.

The Council has simplified the wording of paragraph 2 (paragraph 4 of the Commission proposal).

11. Article 4 (Article 3 of the amended proposal)

The Council chose to leave to Member States' discretion the question of who exercises economic rights where a database is created by an employee in the execution of his duties. Paragraph 4 has therefore been deleted and recital 29 added.

12. Article 5 (Article 6 of the amended proposal)

The Council has edited this article, in particular to take account of the amendments to Article 1. All references to rental have been deleted in view of Article 2 (b).

13. Article 6 (Article 7 of the amended proposal)

The Council has merged the content of paragraphs 1 and 2 of the Commission proposal into a single paragraph (paragraph 1). It regarded this provision as setting out a minimum right of the lawful user of a database from which there should be no possibility of derogating by contract (see Article 15).

The Council has deleted paragraph 3 of the Commission proposal as being redundant, in the light of Article 3 (2) in particular.

The Council has added a new paragraph 2, which allows Member States the option of providing for exceptions to the restricted acts listed in Article 5. It considered that no exception should be allowed for reproduction for private purposes of electronic databases, in particular in view of the ease with which they can be reproduced, but accepted the possibility of such exceptions for non-electronic databases.

So that the exceptions under paragraphs 1 and 2 do not unduly upset the balance between the rights of the author of the database and those of the lawful user, the Council has added a paragraph 3, which is based on Article 6 (3) of Directive 91/250/EEC.
14. Article 7 (Article 10 of the amended proposal)

The Council thought that more detailed provisions on the *sui generis* right and the object of its protection were needed.

It considered that Article 10 (1) and the first sentence of Article 10 (2) of the amended proposal overlapped. Article 7 (1) of the common position contains two significant changes to those provisions:

(a) The Council considered that the purpose of the *sui generis* right should be to safeguard the position of makers of databases against misappropriation of the results of investment in obtaining and collecting the contents of the database; it has accordingly restricted the enjoyment of that right to cases where the obtaining, verification or presentation of the contents is shown to have involved substantial qualitative and/or quantitative investment.

(b) Under the amended Commission proposal, the *sui generis* right covered the contents of the database in whole or in substantial or insubstantial parts, with exceptions regarding the insubstantial parts being provided for in Article 11 (5), (6) and (8). In its common position the Council has chosen to restrict the extent of the protection afforded by the *sui generis* right to the whole of or a substantial part of the contents of the database, evaluated qualitatively and/or quantitatively, on the grounds that the extraction and/or re-utilization of insubstantial parts of those contents was unlikely adversely to affect the maker's investment; it has accordingly deleted the exceptions relating to insubstantial parts. However, to ensure that the lack of protection of the insubstantial parts does not lead to their being repeatedly and systematically extracted and/or re-utilized, paragraph 5 of this article in the common position introduces a safeguard clause.

In the interests of clarity, the Council has defined the terms 'extraction' and 're-utilization' in paragraph 2.

The *sui generis* right is a new right and the Council thought it wise to specify that it may be transferred, assigned or granted under contractual licence (paragraph 3).

The first sentence of paragraph 4 of the common position corresponds to the second sentence of Article 10 (2) of the amended proposal. The Council does not however agree with the approach embodied in the third sentence of that paragraph of the amended proposal: it sees no valid reason for the *sui generis* right not to apply to the contents of a database consisting of works already protected by copyright or of objects protected by other rights; this could lead to anomalies where a database consisted, for example, partly of works protected by copyright and partly of other material protected by no other right. The Council has therefore provided for the *sui generis* right to apply irrespective of the eligibility of the contents of the database for protection by copyright or by other rights; at the same time it is specified that protection under the *sui generis* right is without prejudice to copyright or to other rights existing in respect of works or other material forming part of the contents of the database (second and third sentences of paragraph 4).

15. Non-voluntary licences

The Commission proposal made provision for obtaining non-voluntary licences in certain circumstances notwithstanding the *sui generis* right. This was meant to offset the substantial *sui generis* right which applied not only to the entirety and a
substantial part of the contents of the database but also to insubstantial parts of it. Given that the scope of that right has been restricted to the whole of or a substantial part of the contents of the database, and in view of the exceptions to that right under Article 9 of the common position, the Council concluded that a proper balance between the rights of the maker of a database and the rights of the users no longer hinged on the possibility of obtaining such licences and it has deleted the provisions allowing for it. It nevertheless judged it useful to state that the *sui generis* right must not be exercised in such a way as to facilitate abuses of a dominant position and that competition rules continue to apply (recital 47). In addition, the Council has added a specific reference to this issue in the clause on the review of the Directive (Article 16 (3)).

16. Article 8

As the *sui generis* right is a new right, the Council felt it advisable to include in its common position an article on the rights and obligations of lawful users of databases in the context of that right (Article 8). It is therefore specified in paragraph 1 that the *sui generis* right does not allow its holder to prevent a lawful user from extracting and/or re-utilizing insubstantial parts of its contents. Concerning the obligations of the lawful user, this article stipulates that he may not cause prejudice either to the legitimate interests of the holder of the *sui generis* right (paragraph 2) nor to the holder of a copyright or related right in respect of the works or services contained in the database (paragraph 3). The Council also considers that it should not be possible to derogate from the provisions of this article by contractual means (see Article 15).

17. Article 9

In view of the amendment by the Council to the scope of the *sui generis* right and the deleting of the provisions on non-voluntary licences, the exceptions to the *sui generis* right provided for in Article 11 of the amended proposal are no longer relevant.

The Council has introduced new exceptions (Article 9 of its common position), modelled on the exceptions to copyright provided for in Article 6 (2), as it was concerned that the exceptions to the two rights should correspond as far as possible. No corresponding exception to that laid down in Article 6 (2) (d) is found in Article 9, since no Member State has a national right having all the features of the *sui generis* right laid down by this proposal for a Directive. However, as the legislation in some Member States already provides for a right akin to the *sui generis* right, it was accepted that those Member States could retain the exceptions to that right traditionally permitted by the legislation in question (recital 52).

18. Article 10 (Article 12 of the amended proposal)

The Council has accepted the proposal of the European Parliament (amendment 24), reproduced by the Commission in its amended proposal, which was to lay down a period of 15 years' protection under the *sui generis* right (paragraph 1).

For reasons of clarity, the Council preferred to place in two separate paragraphs the statement that protection under this right will run from the date of completion of the making of the database (paragraph 1) and the statement that, where a database is made available to the public, the expiry of the term of protection will be calculated from the date on which this was done (paragraph 2).
The Council accepted the substance of the European Parliament's amendment providing that any substantial change to the content of a database would give rise to a fresh period of protection by the *sui generis* right (amendment 24 (b) and amendment 26). In view of the link established in Article 7 between the *sui generis* right and substantial investment on the part of the maker of the database, the Council made the point that this fresh period had to arise from a new substantial investment (paragraph 3).

In the light of paragraph 3 of its common position, the Council considered Article 12 (3) of the amended proposal to be redundant and deleted it.

19. **Article 11** (Article 13 of the amended proposal)

Article 11 of the common position corresponds to Article 13 of the amended proposal, with some drafting adjustments.

The Council did not however accept the new paragraph proposed by the European Parliament (amendment 28 (2a) (new)), which refers to the provisions of the international agreements. The Council, like the Commission, considered that this provision would lead to confusion, since the *sui generis* right created by this proposal for a Directive is not linked to any existing international convention of any kind.

20. **Article 12** (Article 14 of the amended proposal)

Article 12 of the common position corresponds to Article 14 of the amended proposal.

21. **Article 13** (Article 15 (1) of the amended proposal)

Article 13 of the common position corresponds to Article 15 (1) of the amended proposal. Apart from some drafting adjustments, the Council supplemented the non-exhaustive list in this Article with a reference to protection of national treasures, laws on restrictive practices, security and access to public documents.

22. **Article 14** (Article 15 (2) of the amended proposal)

The Commission accepted the substance of amendments 29 and 30 of the European Parliament extending the benefit of protection to all databases, whether already in existence on the date of entry into force of the Directive or created subsequently (Article 15 (2) of the Commission's amended proposal); the Council also accepted them in Article 14 of its common position.

For the sake of clarity, the Council made a distinction here between copyright (paragraph 1) and the *sui generis* right (paragraph 3). In these two paragraphs, the Council replaced as the reference date the date of publication of the Directive by the deadline for its transposition, to prevent transposition measures having to apply retroactively.

The European Parliament had proposed stating that protection by the Directive of databases existing on the date of the Directive's entry into force would be without prejudice to any contracts concluded or rights acquired before that date (amendment 30). The Council specified that this applied both for copyright protection and for protection by the *sui generis* right (paragraph 4 of the common position).

Paragraph 2 of this article in the common position was added by the Council with the aim of settling the question of databases at present protected by national copyright arrangements but which may no longer be protected by copyright once the Directive comes into effect, since the eligibility criteria for protection by such national
arrangements are less exacting than the criteria of the Directive for copyright protection. Such situations may arise under national arrangements now applying in three Member States, in which the term of copyright protection is at present 50 years post mortem auctoris, and will be 70 years post mortem auctoris with effect from the transposition of Directive 93/98/EEC. It is likely that most of the databases concerned will be eligible for protection by the *sui generis* right; however, the term of protection by this right is only 15 years. To solve this problem, the Council introduced a derogation allowing the Member States concerned to continue to protect these databases under the present arrangements until the term of protection remaining at the date of the Directive’s publication expires.

Since the period of protection by the *sui generis* right is 15 years, the Council considered it opportune to state that the protection of already existing databases by this right applied only if their manufacture had been completed in the 15 years preceding transposition of the Directive (paragraph 3 of the common position).

To avoid any uncertainty as to whether the 15 years of protection by the *sui generis* right of databases already in existence on the date of the Directive’s transposition are to run from that date or from the date of completion of their manufacture, the Council stated that the first of the alternatives would be applied (paragraph 5 of the common position). The reason for this choice was that the *sui generis* right was a new right and therefore no database would have had the benefit of any identical right before transposition of the Directive.

23. **Article 15**

As already noted at points 13 and 16 above, the Council considers the provisions of Article 6 (1) and Article 8 to be so fundamental that it must not be possible to derogate from them by contractual means.

24. **Article 16**

In its amended proposal, the Commission had accepted the proposal of the European Parliament (amendment 31) changing the deadline for transposition of the Directive to 1 January 1995 (first subparagraph of paragraph 1). As that date has already been passed, the Council has replaced it by 1 January 1998 in order to give the Member States a period of nearly two years for transposition, as from the date of final adoption of the Directive.

The Council has accepted the proposal of the European Parliament (amendment 32), incorporated by the Commission into its amended proposal (Article 16 (3)), including a review clause in the Directive. In view of the rapidity of developments in this field, it has brought forward the time of the first Commission report to three years after the date of transposition of the Directive. Because of the innovative nature of the *sui generis* right, the Council has further stipulated that the Commission will examine in particular the right’s application, and that the examination will *inter alia* be based on specific information supplied by the Member States.
EUROPEAN UNION
THE COUNCIL

Brussels, 22 September 1995 (18.01)

(OR. f)

8947/95

LIMITE

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ECOFIN 124

DRAFT

MINUTES

of the 1863rd meeting of the Council
(Economic and Financial Questions)

held in Brussels on Monday 10 July 1995
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1. Adoption of the agenda
8796/95 OJ/CONS 43 ECOFIN 118

The Council adopted the above agenda.

2. Approval of the list of “A” items
8797/95 PTS A 39
8798/95 PTS A 40

The Council adopted the “A” items contained in 8797/95 PTS A 39, 8798/95 PTS A 40, with the exception of item 10, and 8798/95 ADD 1.

3. Presentation of the Presidency’s programme in the economic and financial sphere (public debate)

In open session, the President outlined the main features of the Spanish Presidency’s programme in the economic and financial sphere.

This was followed by a discussion in which the other members of the Council commented on the Presidency’s approach.

4. Follow-up to the Cannes European Council
   – Employment

   The Council requested

   = the Member States to submit their multi-annual programmes by the beginning of October

   = the Chairman of the Economic Policy Committee to decide, together with the Chairman of the Working Party of Senior Officials on Employment, on the form to be taken by the single Council report to be submitted to the Madrid Summit and the procedures for coordinating the work of the ECOFIN and Social Affairs Councils
the Commission and the Economic Policy Committee to prepare all the special reports on employment which the Council had been asked to draw up by the Cannes European Council. These concerned the effects of fiscal and aid arrangements on employment supply and demand, the inter-relationship between growth and the environment and the mutually reinforcing effect of increased coordination of economic and structural policies.

–EMU

As regards the definition of the scenario for introducing the single currency, the Council asked, for the informal meeting in Valencia on 29 and 30 September,

–the President of the EMI to make an oral report

–the Monetary Committee to study the question of the reference scenario and the effects of monetary volatility on the internal market.

The Commission said that it was prepared to draw up a joint report with the EMI on the scenario with a view to the Madrid European Council.

The Presidency undertook to establish the necessary contacts with the Monetary Committee and the Commission in order to decide on the procedures to be adopted for examining the legal questions and the consequences for public authorities of introduction of the single currency, in particular by setting up an ad hoc Working Party.
In this connection, the Commission announced that it would be sending a questionnaire to the Member States before August.

**–Fight against fraud**

The Commission undertook to submit a summary report by 1 November 1995 for examination by an ad hoc Working Party to be set up by the Permanent Representatives Committee.

**5.Council Recommendation for the broad guidelines of the economic policies of the Member States and of the Community**

8724/95 UEM 35  
8639/95 UEM 20  
+ COR 1(d) + REV 1(fin)

The Council formally adopted the text of the Recommendation approved by the Cannes European Council and decided to forward it to the European Parliament.

**6.Excessive government deficit procedure**

–Council Recommendations  
8728/95 EMU 36

The Council approved twelve Recommendations designed to put an end to the excessive government deficits in the Member States concerned.

Three Member States (Spain, Portugal, Greece) said that they were against the draft Recommendations concerning them.
Since the Treaty precludes a Member State from voting on the Recommendation of which it is the subject, each of these three States said that it intended to vote against the Recommendations relating to the other two Member States when they were formally adopted.

The statements for the Council minutes by the three Member States referred to above and the statement made on the same occasion by Germany are annexed to 8877/95.

7. Proposal for a Regulation on harmonized indices of consumer prices
8726/95 ECOFIN 116
8855/95 ECOFIN 121
7629/95 ECOFIN 83

Pending the Opinion of the European Parliament, the Council recorded its agreement in principle to the draft Regulation given in 7629/95 with the amendment indicated in 8726/95, point 4, and to inclusion of the statements annexed to 8855/95 in the minutes of the Council meeting at which this Regulation was formally adopted.

The German delegation stated its intention of voting against when the Regulation was adopted.
The Council first looked at the question of limiting the scope of the Directive to certain transfers, namely transfers not exceeding a ceiling to be determined. By way of compromise, the Presidency suggested introducing two ceilings:

– a general ceiling of ECU 25 000 for the transfers to be covered, and

– a specific ceiling of ECU 7 500 for the application of Article 7.

This proposal prompted the following reactions:

– agreement on the Presidency’s compromise (Irish, Luxembourg and Austrian delegations);

– agreement on the principle of introducing two ceilings, subject to the following amounts being stipulated:

= ECU 7 500 for Article 7 and ECU 20 000 for the rest of the Directive (French delegation);
ECU 5 000 for Article 7 and ECU 20 000 for the rest of the Directive (German, Belgian and Portuguese delegations; the Portuguese delegation however said that it would be able to accept a ceiling of ECU 7 500 for Article 7 provided that application of the whole Directive was limited to consumers and SMEs);

request for a ceiling of a single amount applicable to the whole Directive, which should be:

at least ECU 50 000 (Swedish delegation, which would also prefer to limit the scope of the Directive to individuals and SMEs);

ECU 50 000 (Italian and United Kingdom delegations: the United Kingdom delegation would have preferred not to limit the scope of the Directive in any way, while the Italian delegation said that it was prepared to show a certain degree of flexibility);

a large (unspecified) amount (Finnish and Greek delegations; the Greek delegation said that the amount should be sufficiently large to cover transfers by consumers and SMEs);

flexible position as part of a reasonable compromise (Danish and Netherlands delegations: the Netherlands delegation said that it would prefer a single amount of ECU 10 000, while the Danish delegation advocated an amount that was as large as possible).
The Commission maintained its reservation on the principle of limiting the scope of the Directive since it thought that full harmonization of cross-border transfers was essential for the proper functioning of the internal market.

The President therefore instructed the Permanent Representatives Committee to continue examining the matter and in particular to consider the possibility of introducing a dual ceiling with amounts which were not lower than the figures proposed by the Presidency. He requested the Commission to examine an approach based on a dual ceiling.

9. VAT

–Commission report on the approximation of rates
–Taxing agricultural products
6172/95 FISC 32
4079/95 FISC 1

After a brief exchange of views on this item, the Council noted that the proposal for a Directive on taxing agricultural products was opposed by the Belgian, Danish, Italian and United Kingdom delegations. The President therefore said that he was prepared to seek a solution to the difficulties encountered through bilateral talks.

Regarding the Commission report on the approximation of rates, the Council took note of a statement by the Netherlands delegation pointing out the importance of including footwear and clothing repairs and environmental aspects in the list of reduced VAT rates.
CORRIGENDUM to

No corrigendum is required to the English version of point II.4.
LIST OF "A" ITEMS

for: 1866th meeting of the COUNCIL OF THE EUROPEAN UNION
(Budget)

Brussels, Monday 24 July 1995

1. Proposal for transfer of appropriations No 8/95 between Chapters within the Commission's budget estimates for the financial year 1995 (Section III - Commission - Part B - NCE)
   8953/95 FIN 324 PE-L 65
   approved by Coreper, Part 2, on 19.7.1995

2. Proposal for transfer of appropriations No 12/95 between Chapters within the Commission's budget estimates for the financial year 1995 (Section III - Commission - Part A - NCE)
   8954/95 FIN 325 PE-L 66
   approved by Coreper, Part 2, on 19.7.1995

3. Proposal for transfer of appropriations No 17/95 concerning Section III - Commission - of the general budget for the financial year 1995 (CE) (Guarantee Funds)
   8952/95 FIN 323
   approved by Coreper, Part 2, on 19.7.1995

4. Proposal for transfer of appropriations No 18/95 between Chapters within the Commission's budget estimates for the financial year 1995 (Section III - Commission - Part B - NCE)
   8955/95 FIN 326 PE-L 67
   approved by Coreper, Part 2, on 19.7.1995

5. Proposal for transfer of appropriations No 19/95 between Chapters within the Commission's budget estimates for the financial year 1995 (Section III - Commission - Part B -
8956/95 FIN 327 PE-L 68
approved by Coreper, Part 2, on 19.7.1995
6. Proposal for transfer of appropriations No 20/95 between Chapters within the Commission's budget estimates for the financial year 1995 (Section III - Commission - Part B - NCE)

8957/95 FIN 328 PE-L 69
approved by Coreper, Part 2, on 19.7.1995

7. Proposal for transfer of appropriations No 21/95 between Chapters within Section VI - Economic and Social Committee and Committee of the Regions - of the general budget for the financial year 1995 (NCE)

8958/95 FIN 329 PE-L 70
approved by Coreper, Part 2, on 19.7.1995

8. Proposal for transfer of appropriations No 22/95 between Chapters within the Commission's budget estimates for the financial year 1995 (Section III - Commission - Part B - NCE)

8959/95 FIN 330 PE-L 71
approved by Coreper, Part 2, on 19.7.1995

9. Proposal for transfer of appropriations No 23/95 between Chapters within the Commission's budget estimates for the financial year 1995 (Section III - Commission - Part B - NCE)

8960/95 FIN 331 PE-L 72
approved by Coreper, Part 2, on 19.7.1995

10. Request for a transfer of appropriations within Section II - Council - of the general budget for the financial year 1995, (increasing budget heading 204 - fitting-out of premises (ECU 500 000), by drawing on Article 202 (water, gas and electricity)

9074/95 FIN 351
approved by Coreper, Part 2, on 19.7.1995

11. Adoption in the official languages of the Communities of Council Recommendations with a view to bringing an end to the situation of an excessive government deficit

8877/95 UEM 37 RESTREINT
in Belgium

8640/95 UEM 21 RESTREINT
in Denmark

8661/95 UEM 22 RESTREINT
in Greece

8662/95 UEM 23 RESTREINT + COR 1 (gr)

8663/95 UEM 24 RESTREINT
in Spain

8664/95 UEM 25 RESTREINT
in France

8665/95 UEM 26 RESTREINT
in Italy
8665/95 UEM 26 RESTREINT
in the Netherlands
8666/95 UEM 27 RESTREINT
in Austria
8667/95 UEM 28 RESTREINT
12. Advisory Committee on Freedom of Movement for Workers:
replacement of Mr L.S. RIETEMA, an alternate member who has resigned

8740/95 SOC 232
+ COR 1 (f)
+ EXT 1 (fi,s)
approved by Coreper, Part 1, on 19.7.1995

13. Advisory Committee on Social Security for Migrant Workers:
replacement of Mr T.G. HARRINGTON, a member who has resigned

8885/95 SOC 242
+ EXT 1 (fi,s)
approved by Coreper, Part 1, on 19.7.1995

14. Advisory Committee on Vocational Training: replacement of
- Mr R. MOLLOY

8883/95 SOC 240
+ EXT 1 (fi,s)
- Ms C. CARROLL

8884/95 SOC 241
+ EXT 1 (fi,s)
members who have resigned
approved by Coreper, Part 1, on 19.7.1995

15. Adoption in the official languages of the Communities of a Council Decision appointing the Austrian, Finnish and Swedish members and alternates of the Committee of the European Social Fund

8718/95 SOC 228
8720/95 SOC 229
approved by Coreper, Part 1, on 19.7.1995

16. Extension of the term of office of the full and alternate members of the Committee of the European Social Fund

9133/95 SOC 247
approved by Coreper, Part 1, on 19.7.1995
17. Adoption in the official languages of the Communities of Council conclusions on the importance and implications of the quality of vocational training
   8259/95 SOC 202 EDUC 45
   + COR 1 (dk)
   approved by the Council (Labour and Social Affairs) on 29.6.1995

18. Adoption in the official languages of the Communities of a common position of the Council with a view to adopting a Directive amending Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC)
   9136/95 SOC 248 PRO-COOP 26
   8606/95 SOC 224 PRO-COOP 17
   + COR 1 (dk)
   + COR 2 (f,d,i,nl,en,dk,gr,es,p)
   + COR 3 (d)
   + COR 4 (en)
   + COR 5 (fi)
   + ADD 1
   approved by Coreper, Part 1, on 13.7.1995

19. Advisory Committee on Nursing Training: appointment of the Italian, Austrian, Finnish and Swedish members
   8580/95 ETS 15
   8581/95 ETS 16
   + COR 1
   approved by Coreper, Part 1, on 19.7.1995

20. United Nations World Conference on Women
   8890/95 PE 41 INST 48
   approved by Coreper, Part 2, on 19.7.1995

21. United Nations World Conference on Women: participation of the Economic and Social Committee
   9089/95 CES 23
   approved by Coreper, Part 2, on 19.7.1995

22. Public access to information
   - Confirmatory application by Mr BROUWER
   8851/95 INF 17 API 10 JUR 183
   approved by Coreper, Part 2, on 19.7.1995

23. Draft Council Recommendation on the principles for the drafting of protocols on the implementation of readmission agreements
   8202/95 ASIM 195
   approved by Coreper, Part 2, on 19.7.1995
24. Consultative Commission on Racism and Xenophobia
   - Prolongation of the mandate
     8964/95 RAXEN 33
   - Reimbursement of subsistence expenses
     8934/95 RAXEN 32 FIN 321 RESTREINT
     approved by Coreper, Part 2, on 19.7.1995

25. Adoption in the official languages of the Communities of the
     Regulations opening and providing for the administration of:
     - Community tariff quotas bound in GATT for certain
       agricultural, industrial and fisheries products and
       establishing the detailed provisions for adapting these
       quotas
     - Community tariff quotas and ceilings and establishing
       Community surveillance for certain fish and fishery
       products originating in the Faroe Islands and establishing
       the detailed provisions for adapting these quotas
       5182/95 UD 21 PECHE 56 GATT 49 TEXT 13 AGRI 22
       4977/95 UD 16 PECHE 40 GATT 40 TEXT 11 AGRI 19
       + COR 1 (f,d,i,nl,en,dk,gr,es,p)
       + COR 2 (en)
       5147/95 UD 20 PECHE 53
       + COR 1 (f,d,i,nl,en,dk,gr,es,p)
     approved by Coreper, Part 1, on 8.3.1995

26. Adoption in the official languages of the Communities of the
     the approximation of the laws of the Member States relating
     to the burning behaviour of materials used in the interior
     construction of certain categories of motor vehicles
     7821/95 ENT 71
     + EXT 1 (fin,s)
     11524/94 ENT 176 CODEC 79
     approved by Coreper, Part 1, on 16.6.1995

     approximation of the laws of the Member States relating to
     lifts
     - Statement providing for a recommendation to Member States
       on making buildings accessible to the disabled
       8637/95 ENT 86 CODEC 90
       + COR 1 (s)
       + COR 2
     approved by Coreper, Part 1, on 6.7.1995

28. Adoption in the official languages of the Communities of a
     Council Regulation opening and providing for the
     administration of Community tariff quotas for certain
     agricultural, industrial and fisheries products and amending
     Regulation (EC) No 2878/94 opening and providing for the
     administration of Community tariff quotas for certain
     agricultural and industrial products (fourth series 1995)
9163/95 UD 88
9050/95 UD 83
approved by Coreper, Part 1, on 19.7.1995
29. Adoption in the official languages of the Communities of a Council Decision on the acceptance of Resolution No 49 concerning short-term measures to ensure the safety and efficient operation of TIR transit arrangements
   8914/95 CID 16 TRANS 108
   8913/95 CID 15 TRANS 107
   approved by Coreper, Part 1, on 19.7.1995

30. Adoption in the official languages of the Communities of a Recommendation for a Council Decision on the participation of the European Community in negotiations with a view to drawing up an Agreement on the conservation of African-Eurasian migratory waterbirds
   7663/95 ENV 115
   approved by Coreper, Part 1, on 7.6.1995

31. Adoption in the official languages of the Communities of a Council Decision on the conclusion, on behalf of the Community, of the Convention on the protection and use of transboundary watercourses and international lakes
   10384/94 ENV 263
   + COR 1 (f,d,i,nl,en,dk,gr,es,p)
   + COR 2 (f,d,i,nl,en,dk,gr,es,p,fi)
   + COR 3 (fin)
   + COR 4 (gr)
   9973/1/94 ENV 252 REV 1
   + ADD 1
   approved by Coreper, Part 1, on 13.7.1995

32. Adoption in the official languages of the Communities of a Council Regulation (EC) amending for the 17th time Regulation (EEC) No 3094/86 laying down certain technical measures for the conservation of fishery resources
   5390/95 PECHE 67
   + COR 1
   + COR 2
   8692/95 PECHE 274
   approved by Coreper, Part 1, on 16.6.1995

33. Adoption of a Council Decision authorizing the Commission to negotiate in the framework of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks
   8819/95 PECHE 289
   approved by Coreper, Part 1, on 13.7.1995

34. EC-Turkey Association
   - Draft Decision to be adopted by the EC-Turkey Association Council (amendment of Decision No 1/94 - application of Article 3 of the Additional Protocol/countervailing levy)
   8786/95 NT 16
   CE-TR 118/95
   approved by Coreper, Part 2, on 12.7.1995
35. Croatia
   - Recommendation for a Council Decision authorizing the
     Commission to open negotiations with a view to concluding
     a textiles agreement with Croatia
     8809/95 TEXT 47
     approved by Coreper, Part 2, on 19.7.1995

36. Adoption in the official languages of the Communities of a
Council Regulation completing the Annex to Regulation (EEC)
No 1461/93 concerning access to public contracts for
tenderers from the United States of America
   8848/95 GATT 145 MAP 14
   8849/95 GATT 146 MAP 15
   approved by Coreper, Part 2, on 12.7.1995

37. ACP Rum
   - Adoption in the official languages of the Communities of a
     Council Regulation opening and providing for the
     administration of a Community tariff quota for rum, arrack
     and tafia originating in the ACP States (2nd half of 1995)
     8363/95 ACP 71 AGRIORG 179
     + COR 1 (f)
     8429/95 ACP 73 AGRIORG 181
     approved by Coreper, Part 2, on 29.6.1995

38. Written questions put to the Council by members of the
European Parliament
   - Nos 316/95, 522/95 by Peter TRUSCOTT and 524/95 by
     Christine BARTHET-MAYER - Veal crates and the export of
     livestock - Veal crates and the export of livestock -
     Intensive battery production of farm animals for slaughter
     8054/95 PE-QE 215
   - No 504/95 by José GIL-ROBLES GIL-DELGADO - Situation of
     managerial staff in the European Community
     8045/95 PE-QE 206
   - No 622/95 by Ilona GRAENITZ - Standards for EU projects
     with non-member countries
     6564/1/95 PE-QE 155 REV 1
   - No 1091/95 by Wolfgang KREISSL-DÖRFLER - The right of
     foreign nationals to vote at municipal elections
     7315/1/95 PE-QE 194 REV 1
   - No 1214/95 by Anita POLLACK - Sustainability and oceans
     8047/95 PE-QE 208
   - No 1487/95 by Jesús CABEZÓN ALONSO and
     Juan COLINO SALAMANCA - Schengen Agreement
     8053/95 PE-QE 214
   - Nos 1546/95 and 1879/95 by Antonio TAJANI - Infringement
     of the European Convention for the Protection of Human
     Rights and Fundamental Freedoms - Violation of the
     European Convention on Fundamental Rights and Freedoms
     8052/95 PE-QE 213
     approved by Coreper, Part 1, on 19.7.1995
7934/95 PI 40 CULTURE 56 CODEC 72 ADD 1
+ COR 1
approved by Coreper, Part 1, on 19.7.1995

40. Case C-179/95 (Kingdom of Spain v. Council)
- Authorization for the Council's agents to produce a Council document before the Court of Justice
9044/95 JUR 193 PECHE 301
approved by Coreper, Part 1, on 19.7.1995

41. Draft minutes of the 1821st Council meeting (Fisheries) on 19, 20 and 22 December 1994
12404/94 PV/CONS 93 PECHE 488
+ COR 1 (p)
12404/1/94 PV/CONS 93 PECHE 488 REV 1 (f,i,dk)
+ COR 1 (f)
approved by Coreper, Part 1, on 19.7.1995

42. Draft minutes
Council
- 1790th meeting (General Affairs) - 4 and 5 October 1994
9780/94 PV/CONS 64
+ COR 1 (f)
- 1796th meeting (General Affairs) - 31 October 1994
10575/94 PV/CONS 69
+ COR 1 (en)
- 1805th meeting (Development) - 25 November 1994
11384/94 PV/CONS 78 DEVGEN 85
+ COR 1 (f,es,p)
+ ADD 1
- 1806th meeting (General Affairs) - 28 and 29 November 1994
11699/94 PV/CONS 79
+ COR 1 (en)
- 1812th meeting (Ecofin) - 5 December 1994
11707/94 PV/CONS 85 ECOFIN 174
- 1820th meeting (General Affairs) - 19 and 20 December 1994
11982/94 PV/CONS 92
Representatives of the Governments of the Member States:
- 31 October 1994 (within the framework of the 1796th meeting of the General Affairs Council)
12410/94 PV/RGEM 6
- 14 December 1994 (within the framework of the 1816th meeting of the Agriculture Council)
12411/94 PV/RGEM 7
approved by Coreper, Part 2, on 19.7.1995
COMMON POSITION (EC) No /95
ADOPTED BY THE COUNCIL ON 10 JULY 1995
WITH A VIEW TO ADOPTING
DIRECTIVE 95/ /EC
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON THE LEGAL PROTECTION OF DATA BASES

DRAFT STATEMENT OF THE COUNCIL'S REASONS
I. INTRODUCTION

1. On 15 April 1992 the Commission submitted a proposal, based on Articles 57(2), 66 and 100a of the Treaty, on the legal protection of databases (1).


The Economic and Social Committee delivered its Opinion on 24 November 1992 (4).

3. The Council adopted its common position in accordance with Article 189b of the Treaty on 10 July 1995.

II. OBJECTIVE

4. The purpose of the Commission proposal is to lay down harmonized provisions for the legal protection of databases. The proposal follows on from the Green Paper on Copyright and the Challenge of Technology (5), Chapter 6 of which proposed harmonization measures in the field of the legal protection of databases. As a harmonizing framework it takes Member States' provisions on copyright as applied to databases and in conformity with the Berne Convention for the Protection of Literary and Artistic Works, to which all Member States are parties. In addition to

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(4) OJ No C 19, 25. 1.1993, p. 3.
(5) COM(88) 172 final.
copyright protection, the proposal provides for the protection of databases by a sui generis right.

III. THE COMMON POSITION

General comments

5. Regarding the structure of the Directive, the Council accepted the regrouping proposed by the Commission in its amended proposal of all Articles relating to copyright protection in a Chapter II and of the Articles relating to the sui generis right in a Chapter III. The Council considered that this separation helped make the text more comprehensible.

6. The Council deleted four Articles of the Commission's amended proposal, considering them superfluous. These are:

   (a) Article 4 of the amended proposal: the insertion of this Article was proposed by the European Parliament (European Parliament Amendment No 12); it was purely declaratory and in the Commission's view was not to be considered "as implying any new obligation on the Member States or as requiring any acts of compliance with international agreements in respect of copyright.";

   (b) Article 5 of the amended proposal (Article 4 of the original proposal): as this Article does not concern the legal protection of databases, the Council considered its inclusion in this Directive to be inadvisable and unnecessary;
(c) Article 8 of the amended proposal (Article 7 of the original proposal): since this Article does not have the effect of harmonizing Member States' laws, the Council preferred to delete it as redundant;

(d) Article 9 of the amended proposal: following adoption of Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (6), paragraph 1 of this Article has become purely declaratory and has been deleted by the Council as redundant. The other paragraphs of the Article relate closely to paragraph 1 and have likewise been deleted.

Recitals

7. The Council has inserted, deleted or amended a number of recitals, in particular to reflect amendments to Articles of the enacting terms.

Articles of the proposal

8. Article 1

Both the Commission's original proposal and its amended proposal covered electronic databases only. The Council's common position extends the scope of the Directive to all databases in any form (paragraph 1); the reasons are as follows:

(a) this solution is simpler, as it obviates the need to draw a clear distinction between electronic and non-electronic databases;

(b) it is inappropriate for a database distributed in both electronic and non-electronic forms not to enjoy the same protection in both forms;

(c) no distinction between electronic databases and non-electronic databases is made either by the corresponding provision of the GATT Agreement on trade-related aspects of intellectual property rights (TRIPS Agreement), or in the ongoing discussions in the World Intellectual Property Organization (WIPO) on a possible protocol to the Berne Convention for the Protection of Literary and Artistic Works.

The Council has adapted the definition of "database" (paragraph 2) to reflect the broadening of the Directive's scope. It has accepted the European Parliament amendment consisting in adding "data" alongside "works" and "other materials". However, it has not accepted, for the same reasons as the Commission, the European Parliament amendment which sought to include in the definition of database "a large number" of works, data or other material: this amendment would have given rise to problems of interpretation and is inconsistent with the definition in the TRIPS Agreement and with the discussions in progress in the WIPO on a possible protocol to the Berne Convention.

The Council considered that the point that the Directive does not apply to computer
programs used in the manufacture or operation of databases should be placed in a separate paragraph (paragraph 3).

The Council, like the Commission, has rejected the European Parliament's proposed definition of "author (créateur) of a database" (Amendment No 4). It considered it preferable not to introduce such a definition for databases when there is no internationally agreed definition of an "author" (créateur) of other literary or artistic works.

The Council has not accepted the definition of "owner of a database" proposed by the European Parliament (Amendment No 5), which was adapted and incorporated by the Commission in its amended proposal. It has opted to retain "author of a database" for copyright protection and "maker of a database" for protection under the sui generis right.

9. **Article 2**

To avoid any uncertainty, the Council considered it advisable to insert a new Article specifying that the Directive applies without prejudice to Directives 91/250/EEC, 92/100/EEC and 93/98/EEC.

10. **Article 3** (Article 2 of the amended proposal)

The Council has merged into one paragraph (paragraph 1) the content of paragraphs 1 and 3 of the Commission proposal.

Paragraph 2 of the Commission proposal ceases to be relevant by virtue of the
extension of the scope of the Directive to non-electronic databases.

The Council has simplified the wording of paragraph 2 (paragraph 4 of the Commission proposal).

11. **Article 4** (Article 3 of the amended proposal)

   The Council chose to leave to Member States’ discretion the question of who exercises economic rights where a database is created by an employee in the execution of his duties. Paragraph 4 has therefore been deleted and recital 29 added.

12. **Article 5** (Article 6 of the amended proposal)

   The Council has edited this Article, in particular to take account of the amendments to Article 1. All references to rental have been deleted in view of Article 2(b).

13. **Article 6** (Article 7 of the amended proposal)

   The Council has merged the content of paragraphs 1 and 2 of the Commission proposal into a single paragraph (paragraph 1). It regarded this provision as setting out a minimum right of the lawful user of a database from which there should be no possibility of derogating by contract (see Article 15).

   The Council has deleted paragraph 3 of the Commission proposal as being redundant, in the light of Article 3(2) in particular.

   The Council has added a new paragraph 2, which allows Member States the option
of providing for exceptions to the restricted acts listed in Article 5. It considered that no exception should be allowed for reproduction for private purposes of electronic databases, in particular in view of the ease with which they can be reproduced, but accepted the possibility of such exceptions for non-electronic databases.

So that the exceptions under paragraphs 1 and 2 do not unduly upset the balance between the rights of the author of the database and those of the lawful user, the Council has added a paragraph 3, which is based on Article 6(3) of Directive 91/250/EEC.

14. **Article 7** (Article 10 of the amended proposal)

The Council thought that more detailed provisions on the sui generis right and the object of its protection were needed.

It considered that Article 10(1) and the first sentence of Article 10(2) of the amended proposal overlapped. Article 7(1) of the common position contains two significant changes to those provisions:

(a) The Council considered that the purpose of the sui generis right should be to safeguard the position of makers of databases against misappropriation of the results of investment in obtaining and collecting the contents of the database; it has accordingly restricted the enjoyment of that right to cases where the obtaining,
verification or presentation of the contents is shown to have involved substantial qualitative and/or quantitative investment.

(b) Under the amended Commission proposal, the sui generis right covered the contents of the database in whole or in substantial or insubstantial parts, with exceptions regarding the insubstantial parts being provided for in Article 11(5), (6) and (8). In its common position the Council has chosen to restrict the extent of the protection afforded by the sui generis right to the whole of or a substantial part of the contents of the database, evaluated qualitatively and/or quantitatively, on the grounds that the extraction and/or re-utilization of insubstantial parts of those contents was unlikely adversely to affect the maker's investment; it has accordingly deleted the exceptions relating to insubstantial parts. However, to ensure that the lack of protection of the insubstantial parts does not lead to their being repeatedly and systematically extracted and/or re-utilized, paragraph 5 of this Article in the common position introduces a safeguard clause.

In the interests of clarity, the Council has defined the terms "extraction" and "re-utilization" in paragraph 2.

The sui generis right is a new right and the Council thought it wise to specify that it may be transferred, assigned or granted under contractual licence (paragraph 3).

The first sentence of paragraph 4 of the common position corresponds to the second sentence of Article 10(2) of the amended proposal. The Council does not however
agree with the approach embodied in the third sentence of that paragraph of the amended proposal: it sees no valid reason for the sui generis right not to apply to the contents of a database consisting of works already protected by copyright or of objects protected by other rights; this could lead to anomalies where a database consisted, for example, partly of works protected by copyright and partly of other material protected by no other right. The Council has therefore provided for the sui generis right to apply irrespective of the eligibility of the contents of the database for protection by copyright or by other rights; at the same time it is specified that protection under the sui generis right is without prejudice to copyright or to other rights existing in respect of works or other material forming part of the contents of the database (second and third sentences of paragraph 4).

15. **Non-voluntary licences**

The Commission proposal made provision for obtaining non-voluntary licences in certain circumstances notwithstanding the sui generis right. This was meant to offset the substantial sui generis right which applied not only to the entirety and a substantial part of the contents of the database but also to insubstantial parts of it. Given that the scope of that right has been restricted to the whole of or a substantial part of the contents of the database, and in view of the exceptions to that right under Article 9 of the common position, the Council concluded that a proper balance between the rights of the maker of a database and the rights of the users no longer hinged on the
possibility of obtaining such licences and it has deleted the provisions allowing for it. It nevertheless judged it useful to state that the sui generis right must not be exercised in such a way as to facilitate abuses of a dominant position and that competition rules continue to apply (recital 47). In addition, the Council has added a specific reference to this issue in the clause on the review of the Directive (Article 16(3)).

16. **Article 8**

As the sui generis right is a new right, the Council felt it advisable to include in its common position an Article on the rights and obligations of lawful users of databases in the context of that right (Article 8). It is therefore specified in paragraph 1 that the sui generis right does not allow its holder to prevent a lawful user from extracting and/or re-utilizing insubstantial parts of its contents. Concerning the obligations of the lawful user, this Article stipulates that he may not cause prejudice either to the legitimate interests of the holder of the sui generis right (paragraph 2) nor to the holder of a copyright or related right in respect of the works or services contained in the database (paragraph 3). The Council also considers that it should not be possible to derogate from the provisions of this Article by contractual means (see Article 15).
17. **Article 9**

In view of the amendment by the Council to the scope of the sui generis right and the deleting of the provisions on non-voluntary licences, the exceptions to the sui generis right provided for in Article 11 of the amended proposal are no longer relevant.

The Council has introduced new exceptions (Article 9 of its common position), modelled on the exceptions to copyright provided for in Article 6(2), as it was concerned that the exceptions to the two rights should correspond as far as possible. No corresponding exception to that laid down in Article 6(2)(d) is found in Article 9, since no Member State has a national right having all the features of the sui generis right laid down by this proposal for a Directive. However, as the legislation in some Member States already provides for a right akin to the sui generis right, it was accepted that those Member States could retain the exceptions to that right traditionally permitted by the legislation in question (recital 52).

18. **Article 10** (Article 12 of the amended proposal)

The Council has accepted the proposal of the European Parliament (Amendment No 24), reproduced by the Commission in its amended proposal, which was to lay down a period of 15 years' protection under the sui generis right (paragraph 1).

For reasons of clarity, the Council preferred to place in two separate paragraphs the statement that protection under this right will run from the date of completion of the
making of the database (paragraph 1) and the statement that, where a database is made available to the public, the expiry of the term of protection will be calculated from the date on which this was done (paragraph 2).

The Council accepted the substance of the European Parliament's amendment providing that any substantial change to the content of a database would give rise to a fresh period of protection by the sui generis right (Amendment No 24(b) and Amendment No 26). In view of the link established in Article 7 between the sui generis right and substantial investment on the part of the maker of the database, the Council made the point that this fresh period had to arise from a new substantial investment (paragraph 3).

In the light of paragraph 3 of its common position, the Council considered Article 12(3) of the amended proposal to be redundant and deleted it.

19. **Article 11** (Article 13 of the amended proposal)

Article 11 of the common position corresponds to Article 13 of the amended proposal, with some drafting adjustments.

The Council did not however accept the new paragraph proposed by the European Parliament (Amendment No 28(2a)(new)), which refers to the provisions of the international agreements. The Council, like the Commission, considered that this provision would lead to confusion, since the sui generis right created by this proposal for a Directive is not linked to any existing international convention of any kind.
20. **Article 12** (Article 14 of the amended proposal)

Article 12 of the common position corresponds to Article 14 of the amended proposal.

21. **Article 13** (Article 15(1) of the amended proposal)

Article 13 of the common position corresponds to Article 15(1) of the amended proposal. Apart from some drafting adjustments, the Council supplemented the non-exhaustive list in this Article with a reference to protection of national treasures, laws on restrictive practices, security and access to public documents.

22. **Article 14** (Article 15(2) of the amended proposal)

The Commission accepted the substance of Amendments No 29 and 30 of the European Parliament extending the benefit of protection to all databases, whether already in existence on the date of entry into force of the Directive or created subsequently (Article 15(2) of the Commission's amended proposal); the Council also accepted them in Article 14 of its common position.

For the sake of clarity, the Council made a distinction here between copyright (paragraph 1) and the sui generis right (paragraph 3). In these two paragraphs, the Council replaced as the reference date the date of publication of the Directive by the deadline for its transposition, to prevent transposition measures having to apply retroactively.
The European Parliament had proposed stating that protection by the Directive of databases existing on the date of the Directive's entry into force would be without prejudice to any contracts concluded or rights acquired before that date (Amendment No 30). The Council specified that this applied both for copyright protection and for protection by the sui generis right (paragraph 4 of the common position).

Paragraph 2 of this Article in the common position was added by the Council with the aim of settling the question of databases at present protected by national copyright arrangements but which may no longer be protected by copyright once the Directive comes into effect, since the eligibility criteria for protection by such national arrangements are less exacting than the criteria of the Directive for copyright protection. Such situations may arise under national arrangements now applying in three Member States, in which the term of copyright protection is at present 50 years post mortem auctoris, and will be 70 years post mortem auctoris with effect from the transposition of Directive 93/98/EEC. It is likely that most of the databases concerned will be eligible for protection by the sui generis right; however, the term of protection by this right is only 15 years. To solve this problem, the Council introduced a derogation allowing the Member States concerned to continue to protect these databases under the present arrangements until the term of protection remaining at the date of the Directive's publication expires.

Since the period of protection by the sui generis right is 15 years, the Council
considered it opportune to state that the protection of already existing databases by this right applied only if their manufacture had been completed in the fifteen years preceding transposition of the Directive (paragraph 3 of the common position).

To avoid any uncertainty as to whether the fifteen years of protection by the sui generis right of databases already in existence on the date of the Directive's transposition are to run from that date or from the date of completion of their manufacture, the Council stated that the first of the alternatives would be applied (paragraph 5 of the common position). The reason for this choice was that the sui generis right was a new right and therefore no database would have had the benefit of any identical right before transposition of the Directive.

23. **Article 15**

As already noted at points 13 and 16 above, the Council considers the provisions of Article 6(1) and Article 8 to be so fundamental that it must not be possible to derogate from them by contractual means.

24. **Article 16**

In its amended proposal, the Commission had accepted the proposal of the European Parliament (Amendment No 31) changing the deadline for transposition of the Directive to 1 January 1995 (first subparagraph of paragraph 1). As that date has already been passed, the Council has replaced it by 1 January 1998 in order to give the Member States a period of nearly two years for transposition, as from the date
of final adoption of the Directive.

The Council has accepted the proposal of the European Parliament (Amendment No 32), incorporated by the Commission into its amended proposal (Article 16(3)), including a review clause in the Directive. In view of the rapidity of developments in this field, it has brought forward the time of the first Commission report to three years after the date of transposition of the Directive. Because of the innovative nature of the sui generis right, the Council has further stipulated that the Commission will examine in particular the right's application, and that the examination will inter alia be based on specific information supplied by the Member States.
CORRIGENDUM

to the
DRAFT MINUTES
of the 1851st meeting of the Council
(Internal Market)

held in Luxembourg on 6 June 1995

Item 4: Operation of the internal market
    – Commission communication

Page 10 of 7779/95 should be replaced by the following:
In the course of the exchange of views following the presentation of this information by the Commission:

– the Netherlands delegation, supported by several other delegations (A/DK/FIN/P/S), stressed the need to ensure that undertakings took part in the internal market under the same conditions throughout the territory of the Community. It was therefore important to:

= ensure, on the one hand, the quality of both Community legislation and its implementation and, on the other hand, the correct application and strengthening of the principle of mutual recognition;
= examine within the Council the reports and analyses produced in Denmark, the Netherlands and the United Kingdom which had showed up certain shortcomings in the operation of the internal market, which could lead to a loss of confidence in the internal market.

Lastly, the Netherlands delegation, supported by the United Kingdom delegation, recalled the idea it had put forward, at the meeting of Ministers responsible for the internal market in Biarritz, to carry out a study, Member State by Member State, to evaluate how citizens perceived the internal market. It declared that it would explore this idea in greater depth with the Commission departments;

– the Portuguese and United Kingdom delegations stressed in particular the need to strengthen administrative cooperation, not only between Member States, but also between the Member States and the Commission.

Moreover, in the context of the examination of this item, the idea that the Economic and Social Committee might play an observer role in following up legislation on the internal market was warmly received by the Council.
TRANSLATION OF LETTER

from: European Commission, signed by Ms Anita GRADIN

dated: 15 September 1995

to: Mr Javier SOLANA, President of the Council of the European Union

No. prev. doc.: 7934/2/95 PI 40 CULTURE 56 CODEC 72 REV 2

Subject: Communication from the Commission to the European Parliament regarding the Council’s common position on the proposal for a Directive on the legal protection of databases

Sir,


(Complimentary close).

(s.) Anita GRADIN

Encl.: SEC(95) 1430 final - COD 393
COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT

pursuant to the second subparagraph of Article 189 b (2) of the EC-Treaty

Common position adopted by the Council with a view to adopting a
1. Background

- Transmission of the proposal to Parliament and to the Council: 13.5.1992
- Parliament's opinion on first reading: 23.6.1993
- Transmission of the amended proposal: 4.10.1993
- Adoption of the common position: 10.7.1995
- Opinion of the Economic and Social Committee: 24.11.1992

2. Subject of the Commission proposal

The Commission proposal seeks to harmonize national copyright provisions as applied to the structure (selection or arrangement of the contents) of databases.

The protection will be without prejudice to any existing right of protection for the different elements of the contents. Harmonization of this aspect of copyright involves, among other things, transposing the international obligations under Article 10(2) of the TRIPs agreement.

Alongside copyright protection, the proposal for a Directive introduces a sui generis right to grant effective protection to investments associated with the production of databases.

3. Commentary on the common position

3.1 General comments

The Council has deemed it appropriate to include in its common position a chapter on the scope and limitations of the scope of the Directive (Chapter I) rather than simple definitions, and accepted the regrouping, proposed by the Commission in its amended proposal, of provisions dealing with copyright protection in a second chapter (Chapter II), and those concerning the sui generis right in a third chapter (Chapter III). The Commission agrees with the Council that this new structure helps to make the text easier to understand.
The Council has also deleted a number of articles in the "copyright" chapter, either because they were merely declaratory or because they were inappropriate to the objective pursued by the proposal for a Directive.

Article 4 (Amendment No 12) of the amended proposal, on entitlement to protection under copyright, no longer seems necessary. The reference to requirements laid down in national legislation or international agreements does not provide any additional harmonization. The question on Article 9(1) (Amendment No 21) concerning the duration of protection has since been harmonized at Community level by Directive 93/98/EEC.

In addition, the Council has deleted Articles 5 and 8 on the incorporation of contents into a database and on exceptions to the restricted acts in relation to the material contained in a database because retaining them could have brought about only a small degree of harmonization and contributed little towards achieving the Directive's objectives.

Lastly, the Council has added, amended and deleted a number of recitals in order to give more emphasis to a number of key provisions. The Commission takes the view that some of the additions make the text clearer and ensure better understanding of the delicate balance that the Directive seeks to establish between the different interests concerning databases.

3.2 Amendments adopted by Parliament on first reading

(a) Amendments accepted by the Commission and included in the common position

In accordance with Parliament's opinion, the Commission had introduced one substantive amendment into its amended proposal and had made a number of other changes to the wording.

In its common position the Council has accepted the single substantive amendment proposed by Parliament concerning the extension of the term of protection by the sui generis right (Amendment No 24, Article 12 of the amended proposal, Article 10(1) of the common position). Consequently, the term of protection has been extended from ten years to fifteen years once the database has been completed.

The Council has also accepted the idea, set out in Amendment No 26, of renewing protection by the sui generis right where there is a substantial change to the contents of a database (Article 10(3) of the common position).

Like Parliament, the Council has preferred the terms "unauthorized extraction and/or re-utilization" to "unfair extraction" throughout the text, since the sui generis right, as an economic right, is clearly quite distinct from the field of unfair competition (Amendment No 6, recitals 41 and 42 of the common position, etc.).
In accordance with Parliament's Amendment No 8 and the Commission's amended proposal, the Council has deleted the definition of an "insubstantial part" of a database. The common position is also based on Amendment No 10 with regard to substantive changes (Article 7(5)).

Amendment No 13 on authorization to incorporate into a database works or materials prompted the Council to include Recital No 18.

Most of the lawful user's minimum rights proposed by Amendment No 15 have been included in Articles 6(1) and 8(1) of the common position. The Council even went further on consumer protection, making these provisions mandatory (ius cogens) (Article 14(1) and (3)).

The idea behind Amendment No 30, which seeks to protect rights acquired before the entry into force of the Directive, was taken into account by the Council when drafting Article 14(2).

Lastly, the Council accepted a review clause which largely uses the wording called for by Recital No 32 (Article 16(3)).

(b) Amendments accepted by the Commission but not included in the common position

The Council thought it appropriate not to include Parliament's Amendments Nos 18 and 33 and to change the approach pursued by the Commission proposal, which provided for non-voluntary licensing arrangements for the sui generis right in order to establish a counterbalance to this substantial right with a view to promoting the interests of competition, SMFs and consumers.

(c) Differences between the Commission's amended proposal and the Council's common position

The rejection of the system of non-voluntary licences provided for in Article 11 of the amended proposal has led the Council to restrict the scope of protection by the sui generis right on two levels. In this respect, it should be noted that the sui generis right now covers all or a substantial part of the contents of a database, whereas the Commission proposal covered the insubstantial parts too (Article 7(1)).

In addition, unlike the Commission's amended proposal, the Council has drawn up a non-exhaustive list of optional exceptions covering the substantial part of the contents of a database (Article 9).

Moreover, the common position provides for a large degree of parallelism in terms of exceptions between the chapter on copyright and that on the sui generis right (Articles 6(2) and 9).
The Council has also preferred to redefine the object of the *sui generis* right, namely protection of a substantial investment evaluated qualitatively or quantitatively (Article 7(1) of the common position).

The Council has deemed it appropriate to provide a list of acts subject to restrictions under the *sui generis* right, specifying the exact scope of this legal innovation (Article 7(2)).

The Commission welcomes the basis and the desirability of the compromise formula which the Council has produced on these last two points.

Under the common position, the *sui generis* right is no longer a subsidiary right and can now be applied irrespective of whether protection is available under other rights (Article 7(4)). In view of this overlapping of rights, it seems logical that the Council has thought it necessary to ensure that the rules applied to copyright and to the *sui generis* right were as uniform as possible.

Lastly, it should be stressed that the Council has revised the definition of the term "database" by including collections of works within the meaning of Article 2(5) of the Berne Convention. It has added a number of recitals with a view to reassuring holders of existing rights as to the different elements of the contents of a database (Recital 17 et seq.).

3.3 Commission position with regard to the deletion of the provisions on the non-voluntary licence

Although the Commission takes the view that the common position as a whole is a balanced compromise, it would have preferred to retain the non-voluntary licensing arrangements advocated in its own proposal for a Directive.

Whilst it is true that, in the final analysis, the reduced scope of the *sui generis* right is likely to meet with the legitimate expectations of consumers and of the public since the insubstantial parts of the contents of a database are now in the public domain, it cannot be doubted that the inclusion within the Directive of precise criteria could have resolved, in this field, potential conflicts between exercising intellectual property rights and competition law rights.

In the first place, competitors of the right holder, in particular S.M.E.s as well as users in general, could have relied on specific rules in order to obtain the necessary material without having to invoke national or Community competition law. Moreover, this probably would have strengthened their position as against the right holder. Secondly, the inclusion of precise criteria would have led to an increase in the general level of legal certainty. This would no doubt have been in the interest of all the parties concerned, including the right holder himself.
That is why the Commission undertook, when the Council adopted the common position, to examine in particular in its report on the application of the Directive (Article 16(3)) whether the application of the *sui generis* right has led to abuse of a dominant position or other interference with free competition which would justify appropriate measures being taken, in particular the establishment of non-voluntary licensing arrangements.

4. **Conclusions**

In the Commission's view, the common position, which was adopted by a very broad consensus, represents remarkable progress in the effort to create a harmonious legal environment with regard to databases. This compromise text is of great importance in the context of the information society since most of the new products and services will operate from databases.

The harmonized system as established by the eventual Directive will enable the doctrine of copyright to be brought closer to that of *droit d'auteur* in this crucial sector. This in itself will undoubtedly have a non-negligible effect on the work of the international bodies responsible for harmonizing intellectual property law at global level.

The high degree of protection afforded by the text, and its application throughout the single market, will help to strengthen investment in this key sector and to create jobs.

In relation to these advantages, the deletion of the non-voluntary licensing arrangements and the partial harmonization of the exceptions to copyright and to the *sui generis* right seem acceptable. Accordingly, the Commission supports the Council's common position while making the following statement:

As part of the report provided for by Article 16(3), the Commission undertakes to examine:

(a) the case for further harmonization of the exceptions to copyright and to the *sui generis* right, in particular in the light of the use made by the Member States of the options available to them under the Directive;

(b) the effects of Article 15 on the respective interests of the parties concerned.
INFORMATION NOTE

from: General Secretariat of the Council

Subject: Proposal for a Directive of the European Parliament and of the Council on the legal protection of databases (00/0393 (COD))

In the discussion in plenary session on the recommendation for second reading, the rapporteur, Mrs PALACIO VALLELERSUNDI, acknowledged that the Council’s common position, which took account of a large number of the amendments proposed by the European Parliament at first reading, reflected the various interests present in what was a balanced document.

The amendments proposed by the rapporteur and voted for in plenary session were therefore of a strictly editorial nature (see Annex).

Commissioner MONTI confirmed that the Commission could agree to these technical amendments. Once adopted, the Directive would, he stressed, establish a high degree of legal protection for databases – providing as it did protection for database investments – and would place the European Union ahead of its competitors in this area.
4. Legal protection of databases

A4-0290/95

Decision on the common position adopted by the Council with a view to adopting a European Parliament and Council directive on the legal protection of databases (C4-0370/95 - 00/0393(COD))

(Codetermination procedure: second reading)

The European Parliament,

- having regard to the common position of the Council, C4-0370/95 - 00/0393(COD),
- having regard to its opinion at first reading¹ on the Commission proposal to the Council (COM(92)0024)²,
- having regard to the amended Commission proposal, COM(93)0464³,
- having regard to Article 189b(2) of the EC Treaty,
- having regard to Rule 72 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on Legal Affairs and Citizens' Rights (A4-0290/95),

1. Amends the common position as follows;

2. Calls on the Commission to support Parliament's amendments in the opinion it is required to deliver pursuant to Article 189b(2)(d) of the EC Treaty;

3. Calls on the Council to approve all Parliament's amendments, amend its common position accordingly and definitively adopt the act;

4. Calls for the Conciliation Committee to be convened, pursuant to Article 189b(3) of the EC Treaty, should the Council not adopt the act;

5. Instructs its President to forward this decision to the Council and Commission.

Common position of the Council

Amendments by Parliament

(12) Recital 22

Whereas electronic databases within the meaning of this Directive also include devices such as CD-ROM and CD-I;

(12) Recital 49

Whereas, notwithstanding the right to prevent extraction and/or re-utilization of all or a substantial part of a database, it should be laid down that the maker of a database or his successor in


13110/95 rob/SMS/pj
A lawful user of the database may not prevent a lawful user of the database from extracting and re-utilizing insubstantial parts; whereas, however, such user may not unreasonably prejudice either the legitimate interests of the holder of the sui generis right or the holder of copyright or a related right in respect of the works or services contained in the database.

(Annex)

13110/95

(Annex)

 rob/SMS/pj

EN

3
(d) where other exceptions to copyright which are traditionally permitted by the Member State concerned are involved, without prejudice to points (a), (b) and (c).

5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database which would have the result of performing acts which conflict with normal exploitation of that database or which unjustifiably prejudice the legitimate interests of the maker of the database shall not be permitted.

(Article 7(5))

Member States may stipulate that lawful users of a database which is made available to the public in whatever manner may, without the authorization of its maker, extract or re-utilize a substantial part of its contents:

(a) in the case of extraction for private purposes of the contents of a non-electronic database;
(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
(c) in the case of extraction and/or re-utilization for the purposes of public security or the proper performance of an administrative or judicial procedure.

(Article 11(1))

1. The right provided for in Article 7 shall apply to databases whose makers or successors in title are nationals of a Member State or who have their habitual residence in the territory of the Community.

13110/95 (ANNEX)  rob/SMS/pj  EN 4
OPINION OF THE COMMISSION
pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
on the legal protection of databases

AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 189 a (2) of the EC Treaty
EXPLANATORY MEMORANDUM

By virtue of the entry into force of the Treaty on European Union on 1 November 1993, this proposal for a Directive is subject to the codecision procedure (Article 189b of the EC Treaty).

Article 189b(2)(d) provides for the Commission to deliver an opinion on the second reading amendments proposed by Parliament.

Below the Commission sets out its opinion on the 11 amendments proposed by Parliament. Pursuant to Article 189a(2) of the Treaty, it encloses an amended proposal incorporating the Parliament amendments it accepted.

1. BACKGROUND


(b) On 24 November 1992 the Economic and Social Committee delivered a favourable opinion.

(c) On 23 June 1993 Parliament adopted a resolution endorsing the Commission proposal (first reading), subject to 37 amendments.

(d) On 4 October 1993 the Commission adopted an amended proposal for a Directive pursuant to Article 149(3) of the EEC Treaty (COM(93) 464 final) which incorporated 32 of these amendments in full or in part.

(e) On 10 July 1995 the Council adopted a common position.

(f) On 14 September 1995 the Commission accepted this common position and transmitted its opinion to Parliament (SEC(95) 1430 final).

(g) During the second reading debate on 14 December 1995 Parliament discussed 11 amendments to the common position but had to vote on only 8, the remaining 3 being purely linguistic.

2. PURPOSE OF THE DIRECTIVE

The proposal for a Directive on the legal protection of databases has two main objectives:

- to harmonize copyright provisions applicable to the structure of databases in whatever form, on-line and off-line (CD-ROM, CD-i);

- to introduce a new economic right, a sui generis right protecting the substantial investments associated with the production of databases.
COMMISSION OPINION ON PARLIAMENT'S AMENDMENTS

After examining the amendments put forward by Parliament (second reading), the Commission can support all of them.

Three amendments out of 11, designed to ensure that certain language versions tallied more closely, were not put to the vote (Nos 4, 5 and 7).

The amendments voted through by Parliament are divided into two categories:

(a) **amendments altering the wording of certain recitals:**

(i) amendment No 9 (22nd recital);  
(ii) amendment No 11 (49th recital);  
(iii) amendment No 1 (50th recital);  
(iv) amendment No 2 (52nd recital).

The amendments provide additional clarification for interpretation of the provisions concerned but do not alter the substance of the respective articles in any way.

(b) **amendments altering the wording of certain articles:**

(i) Amendment No 3 (Article 6(2)). This amendment concerns exceptions to copyright and incorporates an obligation to indicate the source where there is use for the purposes of teaching or scientific research, in compliance with the Berne Convention.

(ii) Amendment No 6 (Article 7(5)). This amendment concerns provisions on acts incompatible with the normal exploitation of databases. The initial wording has been slightly altered and improved.

(iii) Amendment No 8 (Article 9). This amendment slightly alters the wording of provisions concerning exceptions to the *sui generis* right and does not affect the substance thereof in any way.

(iv) Amendment No 10 (Article 11(1)). This amendment, concerning the rules determining who is covered by the *sui generis* right, substitutes the term "rightholders" for "successors in title".

**CONCLUSION**

In conclusion, the Commission considers that Parliament's proposed amendments to the common position improve the wording of the text and clarify certain points and that they are fully compatible with the objectives of the proposal for a Directive.

The amended proposal incorporates all of these amendments.
Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the legal protection of databases

(presented by the Commission pursuant to
Article 189a(2) of the EC Treaty)
EXPLANATORY MEMORANDUM

By virtue of the entry into force of the Treaty on European Union on 1 November 1993, this proposal for a Directive is subject to the codecision procedure (Article 189b of the EC Treaty).

Article 189b(2)(d) of the EC Treaty provides for the Commission to deliver an opinion on the amendments proposed by Parliament to the Council common position. The Commission has accepted Parliament's amendments for the reasons set out in point 1 of the enclosed opinion.

The Commission hereby presents an amended proposal pursuant to Article 189a(2)(d) of the EC Treaty incorporating those of Parliament's amendments to the Council common position which it accepted.
Council common position

(Amendment 9)

Recital 22

(22) Whereas electronic databases within the meaning of this Directive also include devices such as CD-ROM and CD-i;

Parliament’s amendments

(Amendment 11)

Recital 49

(22) Whereas electronic databases within the meaning of this Directive may also include devices such as CD-ROM and CD-i;

(49) Whereas, notwithstanding the right to prevent extraction and/or re-utilization of all or a substantial part of a database, it should be laid down that the maker of a database or his successor in title may not prevent a lawful user of the database from extracting and re-utilizing insubstantial parts; whereas, however, such user may not unreasonably prejudice either the legitimate interests of the holder of the sui generis right or the holder of copyright or a related right in respect of the works or services contained in the database;
(Amendment 1)
Recital 50

(50) Whereas the Member States should be given the option of providing for exceptions to the right to prevent the unauthorized extraction and/or re-utilization of a substantial part of the contents of a database in the case of extraction for private purposes, for the purposes of illustration for teaching or scientific research, or where there is extraction and/or re-utilization for the purposes of public security or the proper performance of an administrative or judicial procedure; whereas such operations must not prejudice the exclusive rights of the maker to exploit the database and their purpose must not be commercial;

(Amendment 2)
Recital 52

(52) Whereas those Member States which already have specific national legislation providing for a right which is similar to the sui generis right provided for in this Directive may retain the exceptions to that right traditionally permitted by that legislation;

(50) Whereas the Member States should be given the option of providing for exceptions to the right to prevent the unauthorized extraction and/or re-utilization of a substantial part of the contents of a database in the case of extraction for private purposes, for the purposes of illustration for teaching or scientific research, or where extraction and/or re-utilization are/is carried out in the interests of public security or for the purposes of an administrative or judicial procedure; whereas such operations must not prejudice the exclusive rights of the maker to exploit the database and their purpose must not be commercial;
(Amendment 3)
Article 6(2) (b) to (d)

(b) where there is use for the sole purposes of illustration for teaching or scientific research, to the extent justified by the non-commercial purpose;

(c) where there is use for the purposes of public security or for the purposes of the proper performance of an administrative and judicial procedure;

(d) where other exceptions to copyright which are traditionally permitted by the Member State concerned are involved, without prejudice to points (a), (b) and (c).

(b) where there is use for the sole purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

(c) where there is use for the purposes of public security or for the purposes of an administrative and judicial procedure;

(d) where other exceptions to copyright which are traditionally authorized under national law are involved, without prejudice to points (a), (b) and (c).

(Amendment 6)
Article 7(5)

5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database which would have the result of performing acts which conflict with normal exploitation of that database or which unjustifiably prejudice the legitimate interests of the maker of the database shall not be permitted.

5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database entailing acts inconsistent with normal exploitation of that database or causing unjustifiable damage to the legitimate interests of the maker of the database shall not be permitted.
Member States shall have the option to lay down that lawful users of a database which is made available to the public in whatever manner may, without the authorization of its maker, extract or re-utilize a substantial part of its contents:

(a) in the case of extraction for private purposes of the contents of a non-electronic database;

(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

(c) in the case of extraction and/or re-utilization for the purposes of public security or the proper performance of an administrative or judicial procedure.

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DOCUMENTS

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L-2985 Luxembourg
Madam,

Please find enclosed:


(Complimentary close).

(s.) Mario MONTI

Encl.: COM(96) 2 final COD 393
OPINION OF THE COMMISSION
pursuant to Article 189 b (2) (d) of the EC Treaty,
on the European Parliament's amendments
to the Council's common position regarding the
proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
on the legal protection of databases

AMENDING THE PROPOSAL OF THE COMMISSION
pursuant to Article 189 a (2) of the EC Treaty
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By virtue of the entry into force of the Treaty on European Union on 1 November 1993, this proposal for a Directive is subject to the codecision procedure (Article 189b of the EC Treaty).

Article 189b(2)(d) provides for the Commission to deliver an opinion on the second reading amendments proposed by Parliament.

Below the Commission sets out its opinion on the 11 amendments proposed by Parliament. Pursuant to Article 189a(2) of the Treaty, it encloses an amended proposal incorporating the Parliament amendments it accepted.

1. BACKGROUND

(a) On 13 May 1992 the Commission presented to the Council a proposal for a Directive (COM(92) 24 final - SYN 393).

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(e) On 10 July 1995 the Council adopted a common position.

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Three amendments out of 11, designed to ensure that certain language versions tallied more closely, were not put to the vote (Nos 4, 5 and 7).

The amendments voted through by Parliament are divided into two categories:

(a) amendments altering the wording of certain recitals:

(i) amendment No 9 (22nd recital);
(ii) amendment No 11 (49th recital);
(iii) amendment No 1 (50th recital);
(iv) amendment No 2 (52nd recital).

The amendments provide additional clarification for interpretation of the provisions concerned but do not alter the substance of the respective articles in any way.

(b) amendments altering the wording of certain articles:

(i) Amendment No 3 (Article 6(2)). This amendment concerns exceptions to copyright and incorporates an obligation to indicate the source where there is use for the purposes of teaching or scientific research, in compliance with the Berne Convention.

(ii) Amendment No 6 (Article 7(5)). This amendment concerns provisions on acts incompatible with the normal exploitation of databases. The initial wording has been slightly altered and improved.

(iii) Amendment No 8 (Article 9). This amendment slightly alters the wording of provisions concerning exceptions to the sui generis right and does not affect the substance thereof in any way.

(iv) Amendment No 10 (Article 11(1)). This amendment, concerning the rules determining who is covered by the sui generis right, substitutes the term "rightholders" for "successors in title".

CONCLUSION

In conclusion, the Commission considers that Parliament's proposed amendments to the common position improve the wording of the text and clarify certain points and that they are fully compatible with the objectives of the proposal for a Directive.

The amended proposal incorporates all of these amendments.
Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the legal protection of databases

(presented by the Commission pursuant to
Article 189a(2) of the EC Treaty)
EXPLANATORY MEMORANDUM

By virtue of the entry into force of the Treaty on European Union on 1 November 1993, this proposal for a Directive is subject to the codecision procedure (Article 189b of the EC Treaty).

Article 189b(2)(d) of the EC Treaty provides for the Commission to deliver an opinion on the amendments proposed by Parliament to the Council common position. The Commission has accepted Parliament's amendments for the reasons set out in point 1 of the enclosed opinion.

The Commission hereby presents an amended proposal pursuant to Article 189a(2)(d) of the EC Treaty incorporating those of Parliament's amendments to the Council common position which it accepted.
Council common position

Parliament's amendments

(Amendment 9)
Recital 22

(22) Whereas electronic databases within the meaning of this Directive also include devices such as CD-ROM and CD-i;

(Amendment 11)
Recital 49

(49) Whereas, notwithstanding the right to prevent extraction and/or re-utilization of all or a substantial part of a database, it should be laid down that the maker of a database or his successor in title may not prevent a lawful user of the database from extracting and re-utilizing insubstantial parts; whereas, however, such user may not unreasonably prejudice either the legitimate interests of the holder of the sui generis right or the holder of copyright or a related right in respect of the works or services contained in the database;
(Amendment 1)
Recital 50

(50) Whereas the Member States should be given the option of providing for exceptions to the right to prevent the unauthorized extraction and/or re-utilization of a substantial part of the contents of a database in the case of extraction for private purposes, for the purposes of illustration for teaching or scientific research, or where extraction and/or re-utilization are carried out in the interests of public security or for the purposes of an administrative or judicial procedure; whereas such operations must not prejudice the exclusive rights of the maker to exploit the database and their purpose must not be commercial;

(52) Whereas those Member States which have specific rules providing for a right comparable to the sui generis right provided for in this Directive should be permitted to retain, as far as the new right is concerned, the exceptions traditionally specified by that legislation;

(Amendment 2)
Recital 52

(50) Whereas the Member States should be given the option of providing for exceptions to the right to prevent the unauthorized extraction and/or re-utilization of a substantial part of the contents of a database in the case of extraction for private purposes, for the purposes of illustration for teaching or scientific research, or where extraction and/or re-utilization are/is carried out in the interests of public security or for the purposes of an administrative or judicial procedure; whereas such operations must not prejudice the exclusive rights of the maker to exploit the database and their purpose must not be commercial;

(52) Whereas those Member States which already have specific national legislation providing for a right which is similar to the sui generis right provided for in this Directive may retain the exceptions to that right traditionally permitted by that legislation;
(Amendment 3)
Article 6(2) (b) to (d)

(b) where there is use for the sole purposes of illustration for teaching or scientific research, to the extent justified by the non-commercial purpose;

(c) where there is use for the purposes of public security or for the purposes of the proper performance of an administrative and judicial procedure;

(d) where other exceptions to copyright which are traditionally permitted by the Member State concerned are involved, without prejudice to points (a), (b) and (c).

(Amendment 6)
Article 7(5)

5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database which would have the result of performing acts which conflict with normal exploitation of that database or which unjustifiably prejudice the legitimate interests of the maker of the database shall not be permitted.

5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database entailing acts inconsistent with normal exploitation of that database or causing unjustifiable damage to the legitimate interests of the maker of the database shall not be permitted.
Member States shall have the option to lay down that lawful users of a database which is made available to the public in whatever manner may, without the authorization of its maker, extract or re-utilize a substantial part of its contents:

(a) in the case of extraction for private purposes of the contents of a non-electronic database;

(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

(c) in the case of extraction and/or re-utilization for the purposes of public security or the proper performance of an administrative or judicial procedure.

Member States may stipulate that lawful users of a database which is made available to the public in whatever manner may, without the authorization of its maker, extract or re-utilize a substantial part of its contents:

(a) in the case of extraction for private purposes of the contents of a non-electronic database;

(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

(c) in the case of extraction and/or re-utilization for the purposes of public security or an administrative or judicial procedure.

1. The right provided for in Article 7 shall apply to databases whose makers or successors in title are nationals of a Member State or who have their habitual residence in the territory of the Community.

1. The right provided for in Article 7 shall apply to databases whose makers or rightholders are nationals of a Member State or who have their habitual residence in the territory of the Community.

1. On 15 April 1992 the Commission submitted a proposal for a Directive, based on Articles 57(2), 66 and 100a of the Treaty, on the legal protection of databases (1).


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(4) OJ No C 19, 25. 1.1993, p. 3.

5. On 10 January 1996 the Commission sent the Council its opinion on Parliament's amendments. The Commission supports all of those amendments and has included them in an amended proposal (7).

6. At its meeting on 11 January 1996, the Working Party on Intellectual Property (Copyright) agreed to all of the amendments proposed by the European Parliament.

7. The Permanent Representatives Committee could therefore advise the Council to adopt the Directive, as set out after editing by the Legal/Linguistic Experts in PE-CONS 3602/96 PI 4 CULTURE 6 CODEC 30, as an "A" item at its next meeting, in accordance with Article 189b of the Treaty.

(6) 13110/95 PI 81 CULTURE 118 CODEC 265.
(7) 4266/96 PI 2 CULTURE 3 CODEC 11.
ADDENDUM TO "I/A" ITEM NOTE

from: General Secretariat
to : Coreper/Council

No. prev. doc.:  13110/95 PI 81 CULTURE 118 CODEC 265
No. Cion props:  9219/93 PI 89 CULTURE 113

4266/96 PI  2 CULTURE   3 CODEC 11 – COM(96) 2 final COD 393


1. The Portuguese delegation, which abstained during the vote on the Council's common position, announced that it intended to abstain when the Council adopted the Directive.

2. The Italian, Swedish, Portuguese and Finnish delegations and the Commission requested that the unilateral statements set out in the Annex be entered in the Council's minutes.

3. The Permanent Representatives Committee could therefore suggest that the Council enter these statements in the minutes of the meeting at which the Directive is adopted and that it decide that the statements may be released to the public.
Statements for entry in the Council minutes

1. Statement by the Italian delegation (*)

While the Italian delegation is voting in favour of the text of the Directive, it feels it must draw attention to the importance of the problems – which are already in existence and will probably increase in future as a result of technological developments – surrounding the issue of compulsory licences as the only mechanism able to contain the possibility of abuse of dominant positions, not only between competing undertakings but also, in particular, in respect of science, education and the freedom of information, which could be subjected to undue restrictions.

The Italian delegation therefore expects the Commission to perform to the full its customary duty of verifying the implementation of the Directive and to make timely proposals for adjusting to developments in the sector and eliminating abuse.

(*) This statement for the minutes is not confidential and may therefore be released to the public.
2. **Statement by the Swedish delegation** (*)

Sweden supports a decision adopting a Directive on the legal protection of databases. The Directive represents an important contribution to the harmonization of rules in this area. However, we consider that the Directive should have been framed in such a way as not to exclude copying of electronic databases for individual use. Sweden believes that the Directive should have left latitude to allow consumers to make isolated copies of a database for use only among their immediate family and friends. It has always been a basic rule of Swedish copyright law that rightholders must not be able to interfere in the purely private domain. Admittedly, the distribution of privately produced copies causes rightholders economic damage. However, such distribution is already prohibited under other rules and there is no reason in our view for anyone buying, say, a database to be banned altogether from making a copy for his own use or for other members of his family.

(*) This statement for the minutes is not confidential and may therefore be released to the public.
3. **Statement by the Portuguese delegation** (*)

Databases are one of the main instruments of the information market, which is still in its infancy.

The Portuguese delegation approves the Directive's final objective of providing effective protection for databases.

However, granting exclusive new rights must not substantially alter the conditions of access to that vital product, information.

We therefore consider that the interests of users and of certain specific sectors, such as teaching and research, should be reflected in a more balanced manner in the Directive.

We consider that a greater restriction of the powers conferred on the database producer would better meet these concerns and would be compatible with the goal sought, i.e. creating a European database industry.

In these circumstances the Portuguese delegation will abstain when the Council adopts the Directive on the legal protection of databases.

(*) This statement for the minutes is not confidential and may therefore be released to the public.
4. **Statement by the Finnish delegation (*)**

Finland approves and votes for the adoption of the Directive on the legal protection of databases. In certain respects, however, fully satisfactory solutions for Finland have not been achieved.

Firstly, the Directive is not clear enough as regards the distinction between the protected database and the selection or arrangement of its contents by reason of which the base is protected. Finland points out that recitals 15, 27, 35, 38, 39 and 58 do not fully match the substance of the relevant Articles of the Directive.

Secondly, Finland believes that the Directive should have been formulated so that it does not exclude private copying of electronic databases. At least the Directives have made it clear that a lawful acquirer of an electronic database is allowed to copy the database in order to be able to use it. This would correspond to the solution adopted in the Directive on the legal protection of computer programs.

Thirdly, Finland would have preferred the Directive to leave the parties full contractual freedom in all respects.

Fourthly, the restricted acts under the sui generis right, in particular extraction, should have been defined more clearly.

Finally, Finland emphasizes the importance of the legislative measures of the European Union in the field of databases.

(*) This statement for the minutes is not confidential and may therefore be released to the public.
5. **Statement by the Commission re Article 16(3) (¹)**

Within the framework of the report provided for in Article 16(3), the Commission undertakes to examine:

(a) the desirability of further harmonization of the exceptions to the copyright and sui generis right, in particular in the light of the use made by the Member States of the options offered in this respect by this Directive;

(b) the effects of Article 15 on the respective interests of the parties concerned.

(¹) This statement for the minutes is not confidential and may therefore be released to the public.
ADDENDUM

to the

DRAFT

MINUTES (*)

of the 1904th Council meeting
(Agriculture)

held in Brussels on 26 February 1996

(*) The information from the Council minutes which is contained in this Addendum is not confidential and may be released to the public.
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Agenda items relating to the final adoption of Council acts released to the public

"A" items: (list: 5207/96)

At the time of the final adoption of the "A" items relating to legislative acts, the Council agreed to enter the following information in these minutes:

PE-CONS 3602/96 PI 4 CULTURE 6 CODEC 30

The Council adopted this Directive by a qualified majority; the Portuguese delegation abstained.

Statements

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While the Italian delegation is voting in favour of the text of the Directive, it feels it must draw attention to the importance of certain problems – which are already in existence and which will probably become more acute in future as a result of technological developments – surrounding the issue of compulsory licences as the only mechanism able to contain the possibility of abuse of dominant positions, not only between competing undertakings but also, in particular, in respect of science, education and the freedom of information, which could be subjected to undue restrictions in their normal development.

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(b) the effects of Article 15 on the respective interests of the parties concerned.
DIRECTIVE 96/9/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 11 March 1996
on the legal protection of databases

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189b of the Treaty (3),

(1) Whereas databases are at present not sufficiently protected in all Member States by existing legislation; whereas such protection, where it exists, has different attributes;

(2) Whereas such differences in the legal protection of databases offered by the legislation of the Member States have direct negative effects on the functioning of the internal market as regards databases and in particular on the freedom of natural and legal persons to provide on-line database goods and services on the basis of harmonized legal arrangements throughout the Community; whereas such differences could well become more pronounced as Member States introduce new legislation in this field, which is now taking on an increasingly international dimension;

(3) Whereas existing differences distorting the functioning of the internal market need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the internal market or the development of an information market within the Community need not be removed or prevented from arising;

(4) Whereas copyright protection for databases exists in varying forms in the Member States according to legislation or case-law, and whereas, if differences in legislation in the scope and conditions of protection remain between the Member States, such un harmonized intellectual property rights can have the effect of preventing the free movement of goods or services within the Community;

(5) Whereas copyright remains an appropriate form of exclusive right for authors who have created databases;

(6) Whereas, nevertheless, in the absence of a harmonized system of unfair-competition legislation or of case-law, other measures are required in addition to prevent the unauthorized extraction and/or re-utilization of the contents of a database;

(7) Whereas the making of databases requires the investment of considerable human, technical and financial resources while such databases can be copied or accessed at a fraction of the cost needed to design them independently;

(8) Whereas the unauthorized extraction and/or re-utilization of the contents of a database constitute acts which can have serious economic and technical consequences;

(9) Whereas databases are a vital tool in the development of an information market within the Community; whereas this tool will also be of use in many other fields;

(10) Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry calls for investment in all the Member States in advanced information processing systems;

(11) Whereas there is at present a very great imbalance in the level of investment in the database sector both as between the Member States and between the Community and the world’s largest database-producing third countries;

(12) Whereas such an investment in modern information storage and processing systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of makers of databases;
Whereas this Directive protects collections, sometimes called 'compilations', of works, data or other materials which are arranged, stored and accessed by means which include electronic, electromagnetic or electro-optical processes or analogous processes;

Whereas protection under this Directive should be extended to cover non-electronic databases;

Whereas the criteria used to determine whether a database should be protected by copyright should be defined to the fact that the selection or the arrangement of the contents of the database is the author's own intellectual creation; whereas such protection should cover the structure of the database;

Whereas no criterion other than originality in the sense of the author's intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular no aesthetic or qualitative criteria should be applied;

Whereas the term 'database' should be understood to include literary, artistic, musical or other collections of works or collections of other material such as texts, sound, images, numbers, facts, and data; whereas it should cover collections of independent works, data or other materials which are systematically or methodically arranged and can be individually accessed; whereas this means that a recording or an audiovisual, cinematographic, literary or musical work as such does not fall within the scope of this Directive;

Whereas this Directive is without prejudice to the freedom of authors to decide whether, or in what manner, they will allow their works to be included in a database, in particular whether or not the authorization given is exclusive; whereas the protection of databases by the *sui generis* right is without prejudice to existing rights over their contents, and whereas in particular where an author or the holder of a related right permits some of his works or subject matter to be included in a database pursuant to a non-exclusive agreement, a third party may make use of those works or subject matter subject to the required consent of the author or of the holder of the related right without the *sui generis* right of the maker of the database being invoked to prevent him doing so, on condition that those works or subject matter are neither extracted from the database nor re-utilized on the basis thereof;

Whereas, as a rule, the compilation of several recordings of musical performances on a CD does not come within the scope of this Directive, both because, as a compilation, it does not meet the conditions for copyright protection and because it does not represent a substantial enough investment to be eligible under the *sui generis* right;

Whereas protection under this Directive may also apply to the materials necessary for the operation or consultation of certain databases such as thesaurus and indexation systems;

Whereas the protection provided for in this Directive relates to databases in which works, data or other materials have been arranged systematically or methodically; whereas it is not necessary for those materials to have been physically stored in an organized manner;

Whereas electronic databases within the meaning of this Directive may also include devices such as CD-ROM and CD-i;

Whereas the term 'database' should not be taken to extend to computer programs used in the making or operation of a database, which are protected by Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (*);

Whereas the rental and lending of databases in the field of copyright and related rights are governed exclusively by Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (*);

Whereas the term of copyright is already governed by Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (*);

Whereas works protected by copyright and subject matter protected by related rights, which are incorporated into a database, remain nevertheless protected by the respective exclusive rights and may not be incorporated into, or extracted from, the database without the permission of the right-holder or his successors in title;

Whereas copyright in such works and related rights in subject matter thus incorporated into a database

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(2) OJ No L 346, 27. 11. 1992, p. 61.
are in no way affected by the existence of a separate right in the selection or arrangement of these works and subject matter in a database;

(28) Whereas the moral rights of the natural person who created the database belong to the author and should be exercised according to the legislation of the Member States and the provisions of the Berne Convention for the Protection of Literary and Artistic Works; whereas such moral rights remain outside the scope of this Directive;

(29) Whereas the arrangements applicable to databases created by employees are left to the discretion of the Member States; whereas, therefore nothing in this Directive prevents Member States from stipulating in their legislation that 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;

(30) Whereas the author's exclusive rights should include the right to determine the way in which his work is exploited and by whom, and in particular to control the distribution of his work to unauthorized persons;

(31) Whereas the copyright protection of databases includes making databases available by means other than the distribution of copies;

(32) Whereas Member States are required to ensure that their national provisions are at least materially equivalent in the case of such acts subject to restrictions as are provided for by this Directive;

(33) Whereas the question of exhaustion of the right of distribution does not arise in the case of on-line databases, which come within the field of provision of services; whereas this also applies with regard to a material copy of such a database made by the user of such a service with the consent of the right-holder; whereas, unlike CD-ROM or CD-i, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which will have to be subject to authorization where the copyright so provides;

(34) Whereas, nevertheless, once the right-holder has chosen to make available a copy of the database to a user, whether by an on-line service or by other means of distribution, that lawful user must be able to access and use the database for the purposes and in the way set out in the agreement with the right-holder, even if such access and use necessitate performance of otherwise restricted acts;

(35) Whereas a list should be drawn up of exceptions to restricted acts, taking into account the fact that copyright as covered by this Directive applies only to the selection or arrangements of the contents of a database; whereas Member States should be given the option of providing for such exceptions in certain cases; whereas, however, this option should be exercised in accordance with the Berne Convention and to the extent that the exceptions relate to the structure of the database; whereas a distinction should be drawn between exceptions for private use and exceptions for reproduction for private purposes, which concerns provisions under national legislation of some Member States on levies on blank media or recording equipment;

(36) Whereas the term 'scientific research' within the meaning of this Directive covers both the natural sciences and the human sciences;

(37) Whereas Article 10 (1) of the Berne Convention is not affected by this Directive;

(38) Whereas the increasing use of digital recording technology exposes the database maker to the risk that the contents of his database may be copied and rearranged electronically, without his authorization, to produce a database of identical content which, however, does not infringe any copyright in the arrangement of his database;

(39) Whereas, in addition to aiming to protect the copyright in the original selection or arrangement of the contents of a database, this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment made in obtaining and collection the contents by protecting the whole or substantial parts of a database against certain acts by a user or competitor;

(40) Whereas the object of this sui generis right is to ensure protection of any investment in obtaining, verifying or presenting the contents of a database for the limited duration of the right; whereas such investment may consist in the deployment of financial resources and/or the expending of time, effort and energy;
Whereas the objective of the *sui generis* right is to give the maker of a database the option of preventing the unauthorized extraction and/or re-utilization of all or a substantial part of the contents of that database; whereas the maker of a database is the person who takes the initiative and the risk of investing; whereas this excludes subcontractors in particular from the definition of maker;

Whereas the special right to prevent unauthorized extraction and/or re-utilization relates to acts by the user which go beyond his legitimate rights and thereby harm the investment; whereas the right to prohibit extraction and/or re-utilization of all or a substantial part of the contents relates not only to the manufacture of a parasitical competing product but also to any user who, through his acts, causes significant detriment, evaluated qualitatively or quantitatively, to the investment;

Whereas, in the case of on-line transmission, the right to prohibit re-utilization is not exhausted either as regards the database or as regards a material copy of the database or of part thereof made by the addressee of the transmission with the consent of the rightholder;

Whereas, when on-screen display of the contents of a database necessitates the permanent or temporary transfer of all or a substantial part of such contents to another medium, that act should be subject to authorization by the rightholder;

Whereas the right to prevent unauthorized extraction and/or re-utilization does not in any way constitute an extension of copyright protection to mere facts or data;

Whereas the existence of a right to prevent the unauthorized extraction and/or re-utilization of the whole or a substantial part of works, data or materials from a database should not give rise to the creation of a new right in the works, data or materials themselves;

Whereas, in the interests of competition between suppliers of information products and services, protection by the *sui generis* right must not be afforded in such a way as to facilitate abuses of a dominant position, in particular as regards the creation and distribution of new products and services which have an intellectual, documentary, technical, economic or commercial added value; whereas, therefore, the provisions of this Directive are without prejudice to the application of Community or national competition rules;

Whereas the objective of this Directive, which is to afford an appropriate and uniform level of protection of databases as a means to secure the remuneration of the maker of the database, is different from the aim of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (*OJ No L 281, 23. 11. 1995, p. 31*), which is to guarantee free circulation of personal data on the basis of harmonized rules designed to protect fundamental rights, notably the right to privacy which is recognized in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas the provisions of this Directive are without prejudice to data protection legislation;

Whereas the Member States should be given the option of providing for exceptions to the right to prevent extraction and/or re-utilization of all or a substantial part of the contents of a database in the case of extraction for private purposes, for the purposes of illustration for teaching or scientific research, or where extraction and/or re-utilization are/is carried out in the interests of public security or for the purposes of an administrative or judicial procedure; whereas such operations must not prejudice the exclusive rights of the maker to exploit the database and their purpose must not be commercial;

Whereas the Member States, where they avail themselves of the option to permit a lawful user of a database to extract a substantial part of the contents for the purposes of illustration for teaching or scientific research, may limit that permission to certain categories of teaching or scientific research institution;

Whereas, notwithstanding the right to prevent extraction and/or re-utilization of all or a substantial part of a database, it should be laid down that the maker of a database or rightholder may not prevent a lawful user of the database from extracting and re-utilizing insubstantial parts; whereas, however, that user may not unreasonably prejudice either the legitimate interests of the holder of the *sui generis* right or the holder of copyright or a related right in respect of the works or subject matter contained in the database;
Whereas those Member States which have specific rules providing for a right comparable to the *sui generis* right provided for in this Directive should be permitted to retain, as far as the new right is concerned, the exceptions traditionally specified by such rules;

Whereas the burden of proof regarding the date of completion of the making of a database lies with the maker of the database;

Whereas the burden of proof that the criteria exist for concluding that a substantial modification of the contents of a database is to be regarded as a substantial new investment lies with the maker of the database resulting from such investment;

Whereas a substantial new investment involving a new term of protection may include a substantial verification of the contents of the database;

Whereas the right to prevent unauthorized extraction and/or re-utilization in respect of a database should apply to databases whose makers are nationals or habitual residents of third countries or to those produced by legal persons not established in a Member State, within the meaning of the Treaty, only if such third countries offer comparable protection to databases produced by nationals of a Member State or persons who have their habitual residence in the territory of the Community;

Whereas, in addition to remedies provided under the legislation of the Member States for infringements of copyright or other rights, Member States should provide for appropriate remedies against unauthorized extraction and/or re-utilization of the contents of a database;

Whereas, in addition to the protection given under this Directive to the structure of the database by copyright, and to its contents against unauthorized extraction and/or re-utilization under the *sui generis* right, other legal provisions in the Member States relevant to the supply of database goods and services continue to apply;

Whereas this Directive is without prejudice to the application to databases composed of audiovisual works of any rules recognized by a Member State's legislation concerning the broadcasting of audiovisual programmes;

Whereas some Member States currently protect under copyright arrangements databases which do not meet the criteria for eligibility for copyright protection laid down in this Directive; whereas, even if the databases concerned are eligible for protection under the right laid down in this Directive to prevent unauthorized extraction and/or re-utilization of their contents, the term of protection under that right is considerably shorter than that which they enjoy under the national arrangements currently in force; whereas harmonization of the criteria for determining whether a database is to be protected by copyright may not have the effect of reducing the term of protection currently enjoyed by the rightholders concerned; whereas a derogation should be laid down to that effect; whereas the effects of such derogation must be confined to the territories of the Member States concerned,

WHEREAS, etc.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE

Article 1

Scope

1. This Directive concerns the legal protection of databases in any form.

2. For the purposes of this Directive, 'database' shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.

3. Protection under this Directive shall not apply to computer programs used in the making or operation of databases accessible by electronic means.

Article 2

Limitations on the scope

This Directive shall apply without prejudice to Community provisions relating to:

(a) the legal protection of computer programs;

(b) rental right, lending right and certain rights related to copyright in the field of intellectual property;

(c) the term of protection of copyright and certain related rights.
CHAPTER II

COPYRIGHT

Article 3

Object of protection

1. In accordance with this Directive, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.

2. The copyright protection of databases provided for by this Directive shall not extend to their contents and shall be without prejudice to any rights subsisting in those contents themselves.

Article 4

Database authorship

1. The author of a database shall be the natural person or group of natural persons who created the base or, where the legislation of the Member States so 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 economic rights shall be owned by the person holding the copyright.

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

Article 5

Restricted acts

In respect of the expression of the database which is protectable by copyright, the author of a database shall have the exclusive right to carry out or to authorize:

(a) temporary or permanent reproduction by any means and in any form, in whole or in part;

(b) translation, adaptation, arrangement and any other alteration;

(c) any form of distribution to the public 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 right to control resale of that copy within the Community;

(d) any communication, display or performance to the public.

(e) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).

Article 6

Exceptions to restricted acts

1. The performance by the lawful user of a database or of a copy thereof of any of the acts listed in Article 5 which is necessary for the purposes of access to the contents of the databases and normal use of the contents by the lawful user shall not require the authorization of the author of the database. Where the lawful user is authorized to use only part of the database, this provision shall apply only to that part.

2. Member States shall have the option of providing for limitations on the rights set out in Article 5 in the following cases:

(a) in the case of reproduction for private purposes of a non-electronic database;

(b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

(c) where there is use for the purposes of public security or for the purposes of an administrative or judicial procedure;

(d) where other exceptions to copyright which are traditionally authorized under national law are involved, without prejudice to points (a), (b) and (c).

3. In accordance with the Berne Convention for the protection of Literary and Artistic Works, this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with normal exploitation of the database.

CHAPTER III

SUI GENERIS RIGHT

Article 7

Object of protection

1. Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.
2. For the purposes of this Chapter:

(a) 'extraction' shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

(b) 're-utilization' shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;

Public lending is not an act of extraction or re-utilization.

3. The right referred to in paragraph 1 may be transferred, assigned or granted under contractual licence.

4. The right provided for in paragraph 1 shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of eligibility of the contents of that database for protection by copyright or by other rights. Protection of databases under the right provided for in paragraph 1 shall be without prejudice to rights existing in respect of their contents.

5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.

Article 8

Rights and obligations of lawful users

1. The maker of a database which is made available to the public in whatever manner may not prevent a lawful user of the database from extracting and/or re-utilizing insubstantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever. Where the lawful user is authorized to extract and/or re-utilize only part of the database, this paragraph shall apply only to that part.

2. A lawful user of a database which is made available to the public in whatever manner may not perform acts which conflict with normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.

3. A lawful user of a database which is made available to the public in any manner may not cause prejudice to the holder of a copyright or related right in respect of the works or subject matter contained in the database.

Article 9

Exceptions to the sui generis right

Member States may stipulate that lawful users of a database which is made available to the public in whatever manner may, without the authorization of its maker, extract or re-utilize a substantial part of its contents:

(a) in the case of extraction for private purposes of the contents of a non-electronic database;

(b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

(c) in the case of extraction and/or re-utilization for the purposes of public security or an administrative or judicial procedure.

Article 10

Term of protection

1. The right provided for in Article 7 shall run from the date of completion of the making of the database. It shall expire fifteen years from the first of January of the year following the date of completion.

2. In the case of a database which is made available to the public in whatever manner before expiry of the period provided for in paragraph 1, the term of protection by that right shall expire fifteen years from the first of January of the year following the date when the database was first made available to the public.

3. Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.

Article 11

Beneficiaries of protection under the sui generis right

1. The right provided for in Article 7 shall apply to database whose makers or rightholders are nationals of a Member State or who have their habitual residence in the territory of the Community.
2. Paragraph 1 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 be genuinely linked on an ongoing basis with the economy of a Member State.

3. Agreements extending the right provided for in Article 7 to databases made 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 that procedure shall not exceed that available pursuant to Article 10.

CHAPTER IV

COMMON PROVISIONS

Article 12

Remedies

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

Article 13

Continued application of other legal provisions

This Directive shall be without prejudice to provisions concerning in particular copyright, rights related to copyright or any other rights or obligations subsisting in the data, works or other materials incorporated into a database, patent rights, trade marks, design rights, the protection of national treasures, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, and the law of contract.

Article 14

Application over time

1. Protection pursuant to this Directive as regards copyright shall also be available in respect of databases created prior to the date referred to in Article 16 (1) which on that date fulfil the requirements laid down in this Directive as regards copyright protection of databases.

2. Notwithstanding paragraph 1, where a database protected under copyright arrangements in a Member State on the date of publication of this Directive does not fulfil the eligibility criteria for copyright protection laid down in Article 3 (1), this Directive shall not result in any curtailing in that Member State of the remaining term of protection afforded under those arrangements.

3. Protection pursuant to the provisions of this Directive as regards the right provided for in Article 7 shall also be available in respect of databases the making of which was completed not more than fifteen years prior to the date referred to in Article 16 (1) and which on that date fulfil the requirements laid down in Article 7.

4. The protection provided for in paragraphs 1 and 3 shall be without prejudice to any acts concluded and rights acquired before the date referred to in those paragraphs.

5. In the case of a database the making of which was completed not more than fifteen years prior to the date referred to in Article 16 (1), the term of protection by the right provided for in Article 7 shall expire fifteen years from the first of January following that date.

Article 15

Binding nature of certain provisions

Any contractual provision contrary to Articles 6 (1) and 8 shall be null and void.

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 1998.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

3. Not later than at the end of the third year after the date referred to in paragraph 1, and every three 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, in which, inter alia, on the basis of specific information supplied by the Member States, it shall examine in particular the application of the sui generis right, including Articles 8 and 9, and shall verify especially whether the application of this right has led to abuse of a dominant position or other interference with free competition which would justify appropriate measures being taken, including the establishment of non-voluntary licensing arrangements. Where necessary, it shall submit proposals for adjustment of this Directive in line with developments in the area of databases.
Article 17

This Directive is addressed to the Member States.

Done at Strasbourg, 11 March 1996.

For the European Parliament
The President
K. HÄNSCH

For the Council
The President
L. DINI