

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(93) 464 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)

### EXPLANATORY MEMORANDUM

On 13 May 1992 the Commission presented to the Council its proposal for a Council Directive harmonising the legal protection of databases.

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.

COMMENTARY ON THE PREAMBLE

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;

- 38a. Whereas distributors of databases should make appropriate provision in their contracts as regards the unauthorised re-utilization of the contents of the database by the lawful user where such re-utilization is for strictly private purposes or for the purposes of teaching or research, provided such re-utilization is not carried out for commercial purposes and does not prejudice the exclusive rights of the maker of the database to exploit that database;
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 PROPOSALArticle 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 1993CHAPTER I : DEFINITIONSArticle 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;

Deleted

[re-inserted 10(1)]

Deleted

[re-inserted 11(8)]

Deleted

[re-inserted 12(3)]

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).   | Unchanged |
| 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.                                 | Unchanged |
| 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. | Unchanged |
| 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.         | Unchanged |

**Article 2****Object of Protection:**

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.

Deleted  
[re-inserted 10(2)]

### Article 3

#### Authorship : Copyright

### 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.

Unchanged

Unchanged

Unchanged

Unchanged

**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****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 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 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.

Unchanged

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.

Unchanged

#### 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.  
Deleted  
[re-inserted 11(1)]
  
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.  
Deleted  
[re-inserted 11(2)]
  
3. Member States shall provide appropriate measures for arbitration between the parties in respect of such licences.  
Deleted  
[re-inserted 11(4)]
  
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.  
Deleted  
[re-inserted 11(5)]
  
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.  
Deleted  
[re-inserted 11(6)]

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.

Deleted

[re-inserted 11(9)]

### 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 data base, 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.

Deleted

[re-inserted 12(1)]

(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.

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.

Deleted

[re-inserted 12(3)]

#### Article 10

#### Remedies

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

Deleted

[re-inserted 14]



**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-utilisation shall apply to databases whose makers are nationals of a Member State or who have their habitual residence on the territory of the Community.

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 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 databascs.

**Article 14**

This Directive is addressed to the Member States.

**Article 17**

Unchanged.

ISSN 0254-1475

COM(93) 464 final

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Catalogue number : CB-CO-93-509-EN-C

ISBN 92-77-59625-2

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Office for Official Publications of the European Communities  
L-2985 Luxembourg