

Directive 96/9/EC of the European Parliament and of the  
Council of 11 March 1996 on the legal protection of databases

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<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with the procedure laid down in Article 189b of the Treaty<sup>(3)</sup>,

- (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 unharmonized 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;

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- (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;
- (13) 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;
- (14) Whereas protection under this Directive should be extended to cover non-electronic databases;
- (15) 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;
- (16) 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;
- (17) 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;
- (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

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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;

- (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 copyright protection 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 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 may 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 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<sup>(4)</sup>;
- (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<sup>(5)</sup>;
- (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<sup>(6)</sup>;
- (26) 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;
- (27) Whereas copyright in such works and related rights in subject matter 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 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;

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- (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 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 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,

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- 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;
- (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 qualitatively or quantitatively, to the investment;
- (43) 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;
- (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 does not in any way constitute 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

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of this Directive are without prejudice to the application of Community or national competition rules;

- (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 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<sup>(7)</sup>, 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;
- (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 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;
- (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;
- (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 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;
- (53) Whereas the burden of proof regarding the date of completion of the making 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 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;
- (55) Whereas a substantial new investment involving a new term of protection may include a substantial verification of the contents of the database;

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- (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 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;
- (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:

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- (1) [OJ No C 156, 23. 6. 1992, p. 4](#) and [OJ No C 308, 15. 11. 1993, p. 1.](#)
- (2) [OJ No C 19, 25. 1. 1993, p. 3.](#)
- (3) Opinion of the European Parliament of 23 June 1993 ([OJ No C 194, 19. 7. 1993, p. 144](#)), Common Position of the Council of 10 July 1995 ([OJ No C 288, 30. 10. 1995, p. 14](#)), Decision of the European Parliament of 14 December 1995 ([OJ No C 17, 22 1. 1996](#)) and Council Decision of 26 February 1996.
- (4) [OJ No L 122, 17. 5. 1991, p. 42.](#) Directive as last amended by Directive 93/98/EEC ([OJ No L 290, 24. 11. 1993, p. 9.](#))
- (5) [OJ No L 346, 27. 11. 1992, p. 61.](#)
- (6) [OJ No L 290, 24. 11. 1993, p. 9.](#)
- (7) [OJ No L 281, 23. 11. 1995, p. 31.](#)