

DATABASE DIRECTIVE, DIRECTIVE 96/9/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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,

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(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;

(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;

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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 the protection of databases under the right provided for in paragraph 1 of the Directive of 1996.

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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.

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Done at Strasbourg, 11 March 1996.