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AGENDA ITEM 4: PROTECTION OF DATABASES

SUBMISSION FROM GHANA*

prepared by the International Bureau

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INFORMATION FROM THE REPUBLIC OF GHANA ON THE PROTECTION OF DATABASES

What is a database?

Two different opinions were expressed on this item. One group of respondents defined database as a large collection of data that is stored in a computer system in such a way that it can easily be found by a computer user. The other group defined database simply as an information base.

Protection of databases

Most respondents agreed that it is necessary to protect databases. They contended that protection would prevent people from tampering with the contents and the confidentiality of the database.

Additionally, protection would provide exclusive right over the data to the producer as well as the money and efforts that the producer spent collecting the information. Protecting databases amounts to protecting the investment in collecting the data. A few respondents disagreed with the above proposition. This school of thought was of the view that protection should be left to the company or organization or the individual who developed the database.

The second school of thought indicated that a policy to protect investment in databases would retard progress in the developing countries such as ours.

Differing views were given as to how databases should be protected. Some respondents were of the view that databases should be protected as copyright work or an intellectual creativity. The reason for this view was that such protection would provide room for others to use the database with due recognition to the individual's effort in the collection of the data.

It was thought that protection would rekindle initiative and enable producers to recoup investments in data collection and processing.

Others believed that databases should be protected as an investment to help improve and update the data. Data should be protected as an investment because it would be an available resource to the producer in the future.

Some respondents believed that databases should not be protected at all. Others indicated that once the producer had made use of the data, the data should be released for further analysis.

Generally, respondents agreed that there was a need for a treaty or a specific (*sui generis*) system of protection for databases.

Need and justification for a *sui generis* system of protection

Respondents expressed differing views on this matter. Most of the respondents agreed that the *sui generis* system was sufficient to protect databases. A few expressed contrary views that the *sui generis* system of protection would not be adequate to protect databases.

Proponents of the *sui generis* system indicated that data producers would benefit from the increased level of protection. They believed it would guarantee the quality of databases produced and encourage the production of more databases.

Again, the increased level of protection meant that there would be flexibility in the use of the database by other persons.

Furthermore, the producer's effort would be rewarded and the user would benefit since protection would ensure data integrity and reliability.

Some respondents agreed that a *sui generis* system of protection would ensure increased investment in production and dissemination of data. They expressed the view that creativity and investment in databases would be greatly enhanced.

Furthermore, if databases were protected adequately it would be a recognition of the moral and economic rights in the database.

Most answers supported the fact that a *sui generis* system of protection would ensure economic and technological progress in data production.

It was also observed that database producers would not make available their productions in the information network if there were no guarantees for recouping their investments. Information or data collection and processing involved costs which needed to be recovered to enable data producers to remain in business.

Respondents with the contrary view expressed concern that stringent protection of databases would not encourage investment, since it would create unnecessary frustration to potential researchers who would wish to research into existing databases. Respondents further indicated that the *sui generis* system of protection would restrict the flow of information.

Possible alternatives to a *sui generis* system

Most respondents believed that *sui generis* and copyright protection for original databases might create duplication and unnecessary bottlenecks when administered. However, a few held the view that both should be implemented.

Other views suggested that market solutions or other modes such as protection against unfair competition or technical devices would adequately address the interest of database producers.

Some respondents believed that it would be better if the possibilities offered by the existing protection systems be exhausted before turning to any other system of protection.

It was also observed that *a priori* protection offered greater legal security particularly for small- and medium-sized industries, which did not have specialized legal units.

It was suggested that protection against unfair competition was not a sufficient basis for protection but what was needed was to protect the data against misappropriation.

Nature and extent of a possible *sui generis* system of protection

On the nature and extent of the *sui generis* system responses differed.

Some contended that the new protection system should be by domestic legislation and should address the needs of both data users and producers. Others contended that the protection system should protect databases against unlawful copying or reproduction for malicious purposes. Protection should ensure that data is affordable and easy to manipulate. Respondents proposed that the *sui generis* system should provide rights similar to neighboring or related rights.

Most respondents did not consider it justified to regard database production as intellectual property especially in cases where there was no intellectual creation but only investment. A few, however, believed any system of protection should give recognition to databases as intellectual creativity.

The impact of a possible *sui generis* system on the access to databases

Concerning the impact of a *sui generis* protection on the use and exchange of information, most respondents showed that it would retard development and slow down the rate of use and exchange of information. Others indicated that protection would ensure security to database producers. Protection would also enable producers to monitor databases that they licensed to prospective users.

Other views were expressed in the affirmative that it was good and that the impact would be positive.

Others reiterated that such protection should not restrict or result in the restriction of access to non-commercial information, like meteorological data and public-financed databases.

Respondents believed that the *sui generis* protection should not restrict but should give protection against abuse of vital data. Other respondents believed that the ability of a *sui generis* system of protection to restrict or increase the availability of information depended on the type of information. Some respondents believed that protection of databases would restrict the availability of information.

Opinions differed on whether scientists should obtain licenses or create their own databases when they needed information relating to their fields of study.

Some persons expressed the view that scientists should be given unrestricted permission to use scientific data, since creating their own databases would be expensive.

Other respondents agreed that a *sui generis* system of protection would lead to the denial of access to data necessary for global development. Respondents expressed the opinion that databases be evaluated periodically to create access to information that would be necessary for global development.

A few respondents expressed contrary views and stated that *sui generis* protection would not prevent access to data necessary for global development.

According to some respondents, the *sui generis* system of protecting databases in developing countries would help these countries to develop their own databases. Others shared the opinion that it would limit or delay scientific research and other academic work in developing countries.

Respondents suggested that the *sui generis* system of protection should provide for measures to balance the needs of data producers with the needs of users.

Main elements of a protection system

Respondents indicated that the subject matter of a *sui generis* system of protection should be against unlawful copying or reproduction. Additionally, protection should be based on the subject matter in the data. Most responses showed that the *sui generis* protection should extend to both original and non-original databases. A few respondents believed that the *sui generis* system should extend to non-original databases only.

A *sui generis* system should be designed to have a complete description of the area (structure and content) of the database. The data should also be the object of protection.

Respondents conceded that substantial investment was necessary for database production. However, the consideration as to what amounted to substantial investment must be made relative to the level of development of each member country.

Right holders

Respondents stated that the owner of the database or the right holder in a *sui generis* protection should be the producer of the database. For individuals working on their own, it should be the individual, but for persons working for an organization, the right should be vested in the organization.

Views expressed on the matter suggested that the “maker of database” is the person who compiled the material. Others indicated that the “maker of database” is the person or establishment that collected the raw facts/data and organized the materials into a given format.

Rights to be granted

The producer(s) of the database should have the exclusive right to reproduce and add value to the database.

In addition, the producer(s) of the database should have distribution and rental rights.

Exemptions

Respondents were of the view that exemptions should be allowed for the under-listed uses:

- private use,
- scientific research,
- judicial and government purposes,
- education.

However, respondents agreed that there should be a partial exemption for public libraries, in that they should be made to pay a minimal fee to have access to the database.

On the question of specific exemptions for developing countries, respondents were of the view that there should be specific exemptions for users of databases from developing countries to aid in the general development of these countries.

Duration of protection

Most respondents were of the view that the duration of protection for databases should be within the range of two to ten years. However, the licensor/licensee should be given the option to extend the duration of protection after the expiration of the initial ten years.

Exercise and infringement of rights

Respondents expressed the view that producers of the database could exercise the following rights or authorize others to exercise any of the following rights:

1. reproduction,
2. distribution,
3. rental,
4. to add value to the database,

and that where a person did any of the above acts (No. 1. – 4.) without the prior authorization of the producer(s) of the database, the same would amount to an infringement of the rights of the producer of the database.

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