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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INFORMATION MEETING ON INTELLECTUAL PROPERTY IN DATABASES

Geneva, September 17 to 19, 1997

INFORMATION RECEIVED FROM MEMBER STATES OF WIPO
AND FROM THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

Addendum prepared by the International Bureau

I. INTRODUCTION

1. The present document is an addendum to document DB/IM/3 containing the memorandum of the International Bureau entitled "Information Received from Member States of WIPO concerning Intellectual Property in Databases."

2. That document sums up, and, in its Annex, reproduces the full text of the information received from Member States of WIPO to a circular referred to in paragraphs 5(ii) and 6 of the document by the deadline–May 31, 1997–indicated in the circular.

3. The present document covers the information received after the above-mentioned deadline, but before June 30, 1997, from *Algeria, Argentina, Australia, Colombia, Croatia, the Czech Republic, the Holy See, Kazakstan, Slovenia, Spain, Sweden, Thailand* and *the European Community and its Member States*. The information is summarized in the following paragraphs, whereas the full text (in the case of the response received from Australia–for the reasons referred there– a detailed summary of and extracts from the text) of the information received is included in the Annex to this document.

II. GENERAL INFORMATION ON THE *DE FACTO* SITUATION

4. The responses received from *Algeria, Australia, Croatia, the Czech Republic, the Holy See, Kazakstan, Slovenia, Sweden, Thailand* and the *European Community and its Member States* refer to the relevant norms in the existing national and regional legislation, respectively. That information is reproduced in the Annex, and is also reflected in document DB/IM/2 on "Existing National and Regional Legislation concerning Intellectual Property in Databases."

5. The response received from *Algeria* also mentions that the National Copyright Office (*Office National du Droit d'Auteur* (ONDA)) is undertaking consultations with the interested sectors to examine the ways and means by which intellectual property protection might be granted for non-original databases, and indicates that, during the meeting for which this document is prepared, information will be given on the outcome of those consultations.

6. The response received from *Australia*, in addition to the above-mentioned reference to existing norms, includes, in an annex, an issues paper prepared, in March 1997, by the Attorney-General's Department on the draft WIPO Databases Treaty which had been submitted to, but had not been discussed at, the WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions (Geneva, December 2 to 20, 1996) (see WIPO document CRNR/DC/6). It deals particularly with four questions, namely: (i) whether there is a need for specific protection of non-original databases; (ii) if such protection is needed or proposed, how wide such protection should be; (iii) what is the appropriate period of protection for such databases, and; (iv) what are the appropriate exceptions and limitations. Furthermore, two parallel reports are annexed to the response about a consultation the Attorney-General's Department and the Australian Academy of Science held, in April 1997, with the representatives of the scientific and research community on the same issues.

7. The response received from *Colombia* outlines the results of a survey among the various sectors of industrial, commercial, academic and other activities, and states that all those sectors have manifested interest in the protection of databases, without specifying, however, the desirable legal nature of such protection.

8. The response received from *Croatia* offers general information, in addition to the reference to the existing legislation, also about certain existing databases in that country.

9. The response received from *the Czech Republic* also contains the statement that "the protection of databases is regarded in the Czech Republic of great importance in the light of contemporary ways of distribution and the commercial use of databases as a means of development of the information market."

10. The response received from *Kazakstan* also mentions that the Copyright Agency of that country maintains a registry which may be used by compilers if they desire so.

11. The response received from *Thailand* also states as follows: "At the moment, there is serious concern over the attempt to give protection to uncopyrighted data in databases. However, this attempt should be subject to further study since it could affect the interests of the rightholders and the users. It may also disrupt or distort the effective use of the so-called information superhighway."

12. The response received from *the European Community and its Member States* also refers to the draft WIPO Treaty on Intellectual Property in Databases mentioned above, and states as follows: "The European Community and its Member States would like to take this opportunity to explain the main considerations which have led it to the conclusion that this type of protection for databases is of world-wide interest and benefit. With a view to contributing to the preparation of the Information Meeting, we are ready to share our considerable experience in discussing this important issue with all participants". The submission then, discusses the following issues: (i) need for legal protection of databases; (ii) scope of the right envisaged; (iii) why copyright alone does not provide sufficient protection for makers of databases; (iv) why unfair competition rules and laws on confidentiality and trade secrets are not sufficient either, and; (v) for what reasons it is wrong to believe that database protection gives a monopoly on information or hampers teaching and scientific research. The submission is concluded by the following statements: "In the light of the above, the European Community and its Member States wish to reaffirm the greatest importance of the legal protection of databases in the future environment, while respecting the balance of rights and interests. We reiterate our attachment to the ongoing activities in the WIPO framework with a view to adopting an international instrument in this field".

13. The response received from *Spain* states that the position of that country is reflected in the response submitted by the European Community and its Member States.

III. CONTRACTUAL PRACTICES

14. According to item (ii) of the decisions quoted in paragraph 3 of document DB/IM/3, the information requested on the *de facto* situation was to cover particularly contractual practices. Two of the 13 responses mentioned in paragraph 3, above, contain information on or refer to such practices.

15. The response received from *Argentina* states that there are numerous databases offering information through telecommunication systems, including the Internet. Such information is made available, in general, at simple request by the user in response to which the information provider grants an access key. In many cases (particularly where the Internet is used for such service), no contract is made, except where an adhesion process is to be completed as a precondition. The remuneration to be paid is related either to the connection time or to the "items" to be downloaded. The tariffs differ; there are subscription fees on a monthly basis, there are flat fee systems and a number of databases are available free of charge.

16. The response received from *Slovenia* indicates that contractual practices correspond to the existing legal system (under which original databases enjoy copyright protection, while non-original databases are protected through contracts or by the law on unfair competition).

IV. STATISTICS

17. In harmony with the relevant part of item (ii) of the decisions quoted in paragraph 3 of document DB/IM/3, information was requested also on statistics concerning databases; however, none of the responses covered by this document contain any statistics.

[Annex follows]

ANNEX

RESPONSES RECEIVED FROM MEMBER STATES OF WIPO
AND FROM THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

(see paragraph 3 of the document)

ALGERIA

The matter of the intellectual property of rights in databases has been settled by Ordinance No. 97-10 of March 6, 1997, on the Rights of Authors and Neighboring Rights, which provides that they are protected in the same way as collections and anthologies of works that "are original in terms of the selection, coordination or arrangement of their subject matter," on the understanding that:

– protection is accorded without prejudice to the rights of the authors of the pre-existing original works;

– the data themselves are eligible for protection only in so far as they are original;

– databases that are not original do not qualify for legal protection under intellectual property law.

However, on the latter point, the ONDA intends to engage in consultations with the areas of activity concerned in order to ascertain what ways and means might make it possible to afford protection to non-original databases by means of intellectual property.

The results of this work will be announced at the Information Meeting Concering Intellectual Property in Databases scheduled for September 17 to 19, 1997.

ARGENTINA

There are a great many databases containing information that is offered to the public by remote communication, either in the form of "person-to-person" telephone communication, by direct-access public telephone networks, by BBS systems and on the Internet. The contractual structure of the relations between the user and the owner of the intellectual property rights in the database generally follows the following pattern:

– The system operates by means of a very simple request form, on which the user requests the service and the provider gives an access code. The references to intellectual property rights are usually no more than short reserved rights notices.

– In many cases (and as a general rule when the service is provided on the Internet) the contractual form is not used; instead the user's consent is sought to a subscription form which is made available to him, usually as a "link" on the home page.

– The cost of the service is generally determined by connection time or by downloaded items. Prices vary. Generally subscription payments are monthly. There are "base rates," and a number of databases that can be used free of charge.

– It is customary for the contract document or the actual text of the data to contain a sentence to the effect that the owner of the database declines liability for the information content and also the consequences of any use that might be made of it.

– There are no official statistics that can be mentioned, neither is there any record of database-related litigation having come before any Argentine jurisdiction.

AUSTRALIA

1. Information concerning the protection of databases in Australia is limited in so far as it seems that most databases would be protected as literary works in Australia. Information on current views and concerns in Australia with respect to the question of database protection is provided at Annexure B. This annexure consists of three documents. Document B.1 is an issues paper prepared in March 1997 by the Attorney-General's Department in relation to the WIPO Draft Databases Treaty. Document B.2 is a report of a consultation on the draft treaty conducted by the Attorney-General's Department and the Australian Academy of Science on 18 April 1997 with interested representatives of the scientific and research community. Document B.3 is also a report of that meeting but by a participant giving a different perspective of the consultation. Submission on the issues paper and the matter generally are expected to be received in the next few months before the Information Meeting in September.

Australia reserves its position in relation to both of these items. Please note that the annexures are provided purely for information purposes.

[The above text is the relevant part of the response received from Australia. The documents annexed are voluminous. Therefore, the International Bureau and the Information and Security Law Division of the Attorney-General's Department of Australia, which sent the response, have agreed that, in the present document, only a summary of documents B.1, B.2 and B.3 is presented and those parts of those documents are quoted which seem to be the most essential ones. The full text of the documents, in the original, English, version, is available, at request.]

2. [As indicated in the response, the document included in the annexure as attachment B.1. is an issues paper prepared in March 1997 by the Attorney-General's Department. The majority of the text of this document is reproduced in the following:]

[Introduction]

A draft treaty on the legal protection of databases, the WIPO Databases Treaty (the DBT) was due to be considered at the WIPO Diplomatic Conference held in Geneva from 2-20 December 1996. Although the DBT was not considered at the Conference, the Conference called for further work to be done on the draft DBT in early 1997. [...]

This paper provides an overview of some of the issues arising from the proposed DBT. The aim of this paper is to facilitate debate and discussion in relation to the implications of the DBT for Australia. It is in two parts: a general background and then matters for discussion/consideration.

Existing protection for databases and its limitations

At an international level, countries who are bound by relevant international conventions concerning copyright are required to accord protection to databases that meet the minimum requirements for protection as "literary works"; that is, as a consequence of the selection or arrangement of the content of the database it can be described as an "intellectual creation", displaying an element of creativity in its arrangement. [...]

Such protection is given to the database as a whole, independently of any protection available to the underlying materials comprising the database.

Under existing Australian law databases being compilations of various kinds of information or data are protected by copyright law. However, consistently with international requirements in order to attract this protection a database must be "original."

Originality requires that the database itself must not be copied and that there be sufficient labor and skill involved in the compiling, selection and arrangement of the information in the database. [...]

Difference between proposed DBT protection and copyright

The fundamental difference between existing copyright protection and the protection to be afforded by the proposed DBT is that there is no requirement that a database be original for it to attract protection under the DBT.

The proposed DBT protects and rewards the investment of time, money and effort involved in creating a database rather than the intellectual property associated with an innovative database. It provides rights against unfair use of the database. The preamble to the DBT (paras 3 and 4) clarifies this purpose.

If the DBT were adopted and implemented in Australia, legal protection would be given by a legislative scheme suited to non-original databases (i.e., not original in the copyright sense) but the proposal would also cover "original" databases. This would be a *sui generis* regime, separate from existing copyright protection (Art. 1(3)), but would overlap with

copyright protection if a particular database would also qualify for copyright protection by having a sufficient level of originality in the selection and arrangement of the material in it. ...

Issues for consideration

For the purposes of this consultation, the following discussion focuses on the draft databases treaty issued by the World Intellectual Property Organization but comments suggesting other approaches are welcome. The issues for determination appear to fall under four broad categories as follows.

- Is there a need for specific protection of non-original databases (need)?
- If needed or proposed, how wide should such protection be (scope)?
- What is the appropriate period of protection for such databases (duration)?
- What are the appropriate exceptions and limitations (limitations)?

Need for protection (Preamble)

Background

One of the rationales for giving protection to non-original databases is that, without appropriate protection, database producers will be disinclined to continue their investment. Note 1.05 to the DBT states:

> "In all countries, continued investment is an essential factor for the development and refinement of databases. Such investment will not take place unless a stable and uniform regime of legal protection is established to protect the rights of makers of databases."

This statement parallels that of recital 12 of the EC Directive on the Legal Protection of Databases.

Discussion points / questions

- Is there currently in Australia under-investment in the creation of non-original databases because of the lack of protection?
- What evidence is there of investment or under-investment?
- What type of protection is appropriate? Is copyright law protection the only form of protection that can be considered? What about other legal forms of protection such as confidential information (for unpublished databases), laws of unfair competition or contract?
- Will technology provide for protection?

Scope of the DBT (Article 1(1))

Background

The DBT's aim is to protect investment in databases. It is extremely broad in its proposed application and the only precondition to protection is that a database "represents a substantial investment in the collection, assembly, verification, organization or presentation of the contents of the database" (Art. 1(1)). As distinct from existing copyright protection, sufficient investment alone will qualify a database for protection without the need for innovation or creativity.

Given the wide definition of the term "database", all kinds of collections of materials will be granted protection and it is immaterial how the database is stored or accessed (Art. 2(i)).

Substantial investment is further defined (Art. 2(iv)) to mean "any qualitatively or quantitatively significant investment of human, financial, technical or other resources" to make the database.

Protection by virtue of the draft DBT will apply regardless of any other forms of protection given to a database (Art. 1(3)) and whether or not the database is made available to the public or kept private.

Discussion points / questions

- Is the scope of the DBT wide enough or too wide? Are there any concerns in relation to the definition of "substantial investment"?

- What should be the criteria to determine whether a particular investment is substantial and therefore whether a particular database is protected?

- Should any overlap in protection of databases by copyright and the proposed DBT be eliminated?

- Should a distinction be drawn between commercial access, public interest access and databases kept private and the corresponding level of protection offered to each?

Term of protection (Article 8)

Background

The DBT proposal puts forward alternative periods of initial protection for databases of 25 and 15 years, respectively, both to be calculated from the date when the database becomes eligible for protection, *i.e.*, from when the database represents a substantial investment. The alternative terms are based on prior US and EC proposals. See note 8.02 accompanying the

draft text of the DBT regarding the determination of the proper duration of any form of intellectual property protection.

A commentator on databases protection has noted that the length of protection should only be as long as is necessary to provide adequate incentive to produce the work, explaining that, for instance, given the volatility of on-line databases, 25 and 50 years of protection is too long as the residual value of the database in that time will be zero.

Importantly, extensions of the initial term of protection are possible if a database is made but sometime later "made available to the public" or, if substantial changes are made to the database. [...]

Extension to the term of protection of a database that is subsequently modified will only arise where there is a "substantial change ... evaluated qualitatively or quantitatively, including any substantial change resulting from the accumulation of successive additions, deletions, verifications, modifications in organization or presentation, or other alterations, which constitute a new substantial investment" (Art. 8(3)). [...]

Existing databases that meet the originality threshold in Australia will generally be protected by copyright for the life of the author of the database and 50 years after their death.

Discussion points / questions

- Should the act of making the database available to the public have the effect of extending the term of protection of the database (while noting this is not as extensive as where a database is changed substantially)? What should "made available to the public" mean here? [...]

- Should substantial change to a database also have the effect of extending the term of protection of a database? What criteria should be used to determine whether a substantial change has occurred, particularly if the database is added to automatically on a regular basis?

- What, if any, limits on perpetual protection of databases should be imposed?

Exceptions and limitations (Article 5)

Background

The DBT allows countries to provide in their own legislation, exceptions or limitations to the rights provided in the DBT and to make special allowances, if they choose, for databases made by government. It is worth repeating the important elements of Article 5(1) which provides:

> "Contracting Parties may, in their national legislation, provide exceptions to or limitations of the rights provided in this Treaty *in certain special cases* that do *not conflict with the normal exploitation of the database* and do *not unreasonably prejudice the legitimate interests of the rightholder*" (emphasis added).

As note 5.01 to the draft DBT states, the wording used requires that all the criteria be met by governments wishing to allow for exceptions. There must exist a "special case"; next, any exception must not conflict with a normal exploitation of a database and, finally, and in addition to the second requirement, the exception must not unreasonably impair or prejudice the legitimate interests, including economic interests, of the rightholder of the database.

Article 5(1) is modeled on a provision in the Berne Convention which has enabled governments flexibility in legislating domestically so that certain activities do not infringe the rights of owners of copyright (known as the 3-step test). [...] There is quite a degree of latitude in the provision because of the general nature of the language and in reality it only serves as a guideline for countries. The Berne Convention (and other intellectual property treaties) sets minimum standards and countries are free to apply higher standards if they wish.

Without attempting to list exhaustively all such exemptions occurring in Australia's existing legislation, what follows is an indication of the types of exemptions that are possible, but that are still considered to accord with the international obligation imposed by the Berne Convention (see further below, where 1996 Diplomatic Conference agreed such exceptions were instances of the more general formulation of the 3-step test).

Fair dealing provisions in the *Copyright Act 1968* allow in specified circumstances for, for instance, the copying of works by individuals for personal research and study, for the criticism and review of a work, to report the news, to give professional legal advice and copying for the purposes of a judicial proceeding. [...] As the need has arisen, additional exceptions have been introduced as illustrated by the addition in 1984 of a right to make a back-up copy of a computer program. [...]

The recently adopted WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty contain provisions with the same wording and purpose as Article 5 of the DBT and were the subject of some discussion and elucidation at the Diplomatic Conference in December 1996. As is noted above, the language of the exemption provision is general. The Conference states that they can cover a multitude of specific instances of exemptions to any rights granted. The Conference adopted an agreed statement to the effect that exceptions and limitations which have been considered acceptable under the Berne Convention can be implemented into the digital environment and that there has been no change to the ambit of the Berne Convention provision. While this statement specifically applies to these two adopted treaties, it is fair to use it as a valid basis for interpretation of Article 5 of the DBT.

Australia's copyright law as it stands does not contain any exemptions that grant special status to the interests of the science or general research communities. However, the exceptions allowing copying of works for research and study and extensive provisions for educational institutions and libraries may have some indirect benefit for these groups. [...]

The absence of such a specific provision in the draft DBT may be attributed to the fact that the drafter of the databases proposal held the view that the general nature of Article 5 could embrace an exemption along the lines of the EC Directive.

Discussion points / questions

- To what extent, if any, does a specific statement need to be made regarding the exemptions that would apply for the scientific and research communities?

- What criteria should be applied if a "special case" was introduced to enable limited use of databases for scientific research?

- How well does the draft DBT sit with existing private agreements that allow for the sharing of information - e.g. World Meteorological Resolution that allows free flow of meteorological and related data?

- What special position if any should government-made databases occupy vis a vis private sector databases?

Other issues - Nature of the rights proposed (Article 3)

Background

The extent of the rights proposed to be granted to makers of databases by the DBT is central to any discussion of the treaty. The rights granted are to authorize or prohibit the extraction or utilization of the contents of a database. The article has followed the language of the EC Directive on the Legal Protection of Databases but added the "right to prohibit" and the concept of "extraction." [...] It is not clear at this stage why the additional right to prohibit has been expressly included.

The full meaning of the article must be determined by reading the definitions of extraction and utilization in Article 2. Broadly stated, the proposal gives two rights to the maker of a database; the right to control the transfer, either permanently or temporarily, of all or a substantial part of the contents of a database, and the right to make all or a substantial part of the contents of a database "available to the public."

The definition of "substantial part" is in turn provided in Article 2(v) and is explained in the accompanying notes (2.09-2.10). There are 2 important points to note about the definition of "substantial part." Firstly, a judgment about whether a part of a database is a substantial part would be made by assessing whether the part is in terms of quality or quantity of "significance to the value of the database." This is a different test to that applied in Australian copyright law to determine whether use of part of a work is substantial and therefore requires the permission of the copyright owner. In Australia, to determine substantiality, the focus is on the quality of the part of the work taken, not just the quantity. The proposal in the DBT by its inclusion of qualitative and quantitative tests of substantiality may require a different balancing when adjudicating rights under any *sui generis* regime.

Note 2.10 highlights the second point about the definition, that it specifically applies to accumulations of small portions of the database. As note 2.10 explains:

> "In practice, repeated or systematic use of small portions of the contents of a database may have the same effect as extraction or utilization of a large, or substantial, part of the

contents of a database. This construction is intended to ensure the effective functioning of the right and to avoid misappropriation."

Discussion points / questions

• What rights, in your opinion, should makers of databases have to effectively control their use? Does the proposal in the DBT accord with your view? If not, why not?

3. [The title of attachment B.2 is "Summary of proceedings of joint Attorney-General's/ Australian Academy of Science, workshop on the draft WIPO Database Treaty held at the Australian Academy of Science in April 1997." The document contains three parts: a short introduction, an Executive Summary and a General Report. In the following, the short introduction and the Executive Summary is reproduced:]

[Introduction]

This half-day seminar/workshop was called to provide information and to debate the draft WIPO proposal on the legal protection of databases - particularly in its application to the scientific community.

The workshop was attended by approximately 40 participants comprising about 1/2 from the science community and a range of others from interested Government Departments and the legal, academic and library sectors.

Executive Summary

While some bodies felt they were either not affected by, or could benefit from, the proposed treaty, most scientific commentators felt that their research activities could be compromised by the adoption of such a treaty. While not denying the legitimacy of the desire for some form of protection to collections of valuable data, the view of the majority of participants was that the proposed Treaty was a case of the cart having been put before the horse. A solution has been given before clearly defining the nature of the problem and the objectives to be achieved by the proposal. In this regard all possibilities in responding to the proposal should be considered.

These responses could include:

• a fundamental rethink of the terms of the proposal whereby, for example, Australian copyright law as it stands might suffice;
• a reshaping of the WIPO proposal, paying particular regard to, and studying in greater depth the terms of and origins of the EC Directive;

• including protocols that would significantly alter the balance or ethos of the proposals; or

- seek particular exemptions for certain data collecting and sharing activities.

4. [Attachment B.3 is a note prepared by a representative of the Australia New Zealand Land Information Council (ANZLIC) of the meeting covered by the summary included as attachment B.2 (see above). The result of the meeting is summed up in the note under the title "Major Positions." This part of the note is reproduced in the following:]

As reported after an earlier briefing on this treaty, there are two major lines of thought on this treaty and this workshop did not reveal very much additional information on those positions.

On the one hand there is the academic and scientific community who are largely opposed to the treaty because they believe that it will adversely affect the flow of information and ideas. [...]

The other point of view comes from owners of databases who wish to better protect their property from commercial use by others. The general comment from this community is that the treaty is not mandatory; that is, if a database owner chooses to give the data away then there is nothing in the treaty to discourage that. It does, however, offer a level of protection not currently offered by copyright law. The Hydrographer, RAN, for example, is supportive of the treaty as a means of protecting their copyright, not only for commercial reasons but also for reasons of liability. The Australian Electoral Commission is keen to exercise better control over their database, not so much for commercial gain but to have some say in how it is used. (An escort agency in Melbourne currently markets a database that it claims is one of the best available and which is based on the electoral roll.) Those in medical research would like to have better control over use of knowledge about things such as the human genome, having seen private companies make huge profits from information placed in the public domain and even have access to that information subsequently restricted through the application of patents. [...]

COLOMBIA

On receipt of Note C.L. 1268-082-50, this Directorate engaged in consultations with a group representing various sectors of industrial, commercial, academic, associative and institutional activity on the subject of databases. [...]

The result of our consultations was as follows:

(i) Within the group of bodies consulted, there were some that did not respond to our request, but which we know to be interested in the subject.

(ii) Some replied that they had databases, but that they were already protected by copyright.

(iii) Others informed us that they were in the process of developing documentary databases, mainly in the tax, customs and currency exchange fields.

(iv) One announced that it marketed its databases subject to control over the use made of them by the acquirers.

(v) Another pointed to the importance of protecting databases against damage, data alteration and fraud, and against violation of reserved rights and the confidentiality of the information.

(vi) Still another assimilated the subject of databases to that of privacy and the principles of “habeas data” and good name via the regulation of the (computerized or manual) processing and use of personal data.

(vii) One of them, involved with meteorological concerns, emphasized the importance of reconciling two interests. On the one hand there was the need to ensure the free and unrestricted flow of information at the national and the international level, and on the other hand there was the importance of protecting the effort that went into the making of a database.

Briefly, therefore, all stated that they had an interest in securing protection for databases, without actually specifying the legal nature of that protection.

CROATIA

Databases are not specially regulated by the Copyright Law, but copyright protection of work collections and other material exists, if, with regard to the selection and arrangement of their content, they represent individual creations. [Enclosed, please find the provision of Article 4 of the Copyright Law - Enclosure 3].

Otherwise, the National and University Library in Zagreb has a collection of data comprising:

- CROLIST (see Enclosure 4),
- ISBN System for Croatia - data on 2038 publishers in Croatia,
- ISMN System for Croatia - data on 49 music publishers in Croatia.

The use of all the bases is free of charge.

There are more bases available in Croatia:

- Biomedicine dated from 1986 - the Croatian authors in the field of biomedicine published in any kind of publications, and foreign authors in the field of medicine published in Croatia.

- The project Natural Sciences dated from 1995.

Enclosure 3

Article 4.

Intellectual works also include collections of intellectual works, such as encyclopedias, compilations, anthologies, musical and photographic collections, and the like, which, by reason of the selection and arrangement of material, constitute independent creations.

Intellectual works also include collections of creations of folk literature and art, of documents, of court decisions or of other similar material which do not, of themselves, constitute protected intellectual works, if such collections, by reason of the selection, arrangement and method of presentation of material, constitute independent creations.

The provisions of the first and second paragraphs of this Article shall not affect the rights of the authors of the individual works making up the collections referred to therein.

Enclosure 4

CROLIST computerized library management system

CROLIST is an online library system totally integrated in all aspects. Single data entry eliminates duplication and erroneous data. Information is entered and corrected in real time. The system is modular, so that an institution can easily decide to use only those components that are relevant to its needs. CROLIST can handle multiple applications and libraries within one implementation or support networks of libraries on different locations. The system communcations enable users to access all libraries defined in the network in a transparent mode.

- CROLIST is a software product planned, designed and developed for small, medium-sized and large libraries.

- CROLIST was designed as a user-oriented system to provide easy access together with sophisiticated information retrieval capabilities using SQL - Structured Query Language.

- CROLIST can be adapted to many types of institutions such as: libraries, museums, archives, data centers, etc.

- CROLIST can be used for catalogization of any type of material, e.g. books, serials, articles, reports, publications, slides, drawings, stamps, microforms, personnel files, etc.

- CROLIST operates on a wide range of computers, from servers under UNIX with hundreds of terminals, to independent users of a personal computer.

CROLIST functions

Searching and retrieval (OPAC)

- Types of search: Browsing through catalogs, scrolling forward and backward, SQL searching.

- Types of access to the database: Authorities (e.g. authors, corporate bodies, uniform titles, series, subject headings, publishers): Indexes (e.g. call numbers, ISSN, ISBN, UDC, other classification schemes); Title words.

- Display format levels:

  Alphabetized list of entries from authority database or words from text inversion of selected fields.

  Short bibliographic data display.

  List of physical copies, their locations and availability.

Acquisition

- Relevant order information: vendor, order date, estimated arrival date, price, etc.

- Acquisition related correspondence (orders, claims and others).

- Information, control and follow-up procedures: settlement of invoices, budget, etc.

- Check-in procedures.

Serials control

- Acquisition of subscription copies and individual items.

- Renewal of subscription.

- Provision for recording frequency in order to enable the system to predict forthcoming issues and to identify missing or overdue issues.

- Creation and maintenance of routing list, including priority levels.

- Report of completed volumes ready for binding and handling binding details.

Cataloging

- The CROLIST database is totally UNIMARC formatted.

- Authority control during cataloging in the following fields: authors, collective authors, uniform titles, subject headings.

- Cataloging is interactive and done in real time, which means that bibliographic data are immediately searchable by users.

- Various classification systems.

- Possibility to transfer records to be used as a basis for new bibliographic records.

- Provisions for different types of material (books, serials, etc.).

Authority file and subject headings maintenance

- Creating references (see, see also, see from, broader term, narrower term, etc.).

Holdings

- Volumes, copies. Each physical item is identified by a system number, copy number (bar code) and call number.

Circulation and loan management

- Circulation policies are reflected in due dates, quotas of books, copy statuses, readers privileges, etc. All these parameters are defined in a parameter table in order to allow for maximum flexibility and different library loan policies.

- CROLIST allows the management of all circulation functions: check-out, check-in, renewal, reservation, printing of overdue document notices, statistical and management reports, etc.

- Users and items can be issued a bar coded label to facilitate entering transaction information.

- Management of loan and return transactions.

- Management of item related activities.

- Management of reader related activities.

Interlibrary loan management

- Loan policy for interlibrary loan is defined by the library.

- Remote libraries can display their holdings information.

- Orders and requests for holdings or photocopy delivery from remote libraries are transferred in a transparent mode.

Import and export utilities

- The use of the international communication format UNIMARC provides highly professional and standardized records and the best possible compatibility in the exchange of information.

CROLIST allows freedom of choice in hardware selection. As a portable library automation software it runs on computers that support the UNIX operating system (DOS for PC).

CZECH REPUBLIC

Provided the way of selection, arrangement and classification of information in a database meets the criteria of a work of authorship, then such a database is regarded as an original work of authorship and is as such subject to protection by the Czech copyright law, irrespective of the ongoing development of database protection on international or regional scale.

The Copyright Act thus provides protection to databases as original works while facilitating their protection in concrete cases also as part of collective, i.e. secondary works.

The protection of databases is regarded in the Czech Republic of great importance in the light of the contemporary ways of distribution of works of authors and the commercial use of databases as a means of development of the information market.

HOLY SEE

In the matter of [...] intellectual property in databases, the Vatican City State is regulated by its Law on the Rights of Authorship N.XII, of 12th January 1960 (cf. enclosure). Furthermore, the Vatican City State adopted Italian norms in the question of the protection of the right of authorship and of other rights connected with its exercise, and did so on the same date, in the same sense and within the limitations specified by those norms; the main disposition referred to is Law N. 633, of 23rd April 1941.

No. XII - Copyright Law
of January 12, 1960

Article 1. In the Vatican City, as far as matters of copyright in respect of intellectual works are concerned, the legislation of the Italian State shall be observed, including the Regulations in force on the entry into force of this Law, provided that the provisions of the said legislation are not contrary to the precepts of divine law or to the general principles of canon law, or to the terms of the Treaty and Concordat concluded between the Holy See and the Italian State on February 11, 1929, and provided also that, in relation to the actual situation obtaining in the Vatican City, they are susceptible of application.

Article 2. The provisions relating to the protection of copyright shall apply to the texts of laws and of official acts published by the Holy See and by the State of the Vatican City.

Article 3. Paragraph 2(c) of Article 20 of the Law on the Sources of Law of June 7, 1929, No. II, published in the Supplement to the "Acta Apostolicae Sedis" of June 8, 1929, is repealed.

Article 4. This Law shall enter into force on the date of its publication.

KAZAKSTAN

In accordance with the Law of the Republic of Kazakstan "on copyright and neighboring rights," intellectual property in databases belongs to the objects of copyright (point 2, item 3, article 7). At present, the Agency on copyright is keeping registration and distribution of corresponding document at compiler's desire according to item 4, article 9 of the aforesaid Law.

SLOVENIA

In Slovenia, original databases (consisting of works or other material) enjoy copyright protection (Article 8 of the Copyright and Related Rights Act). Non-original databases are protected through contracts or by the law on unfair competition.

The *de facto* situation, including contractual practices, corresponds to this legal system.

No official statistics are available on this matter.

SPAIN

With reference to your Note of April 1, 1997, on the submission to the International Bureau of WIPO of information on the factual situation prevailing in Spain concerning especially contractual practices and available official statistics [...] concerning the intellectual property in databases, I wish to inform you that the reply of Spain to that request will be incorporated in the reply that will be submitted to the International Bureau by the Commission of the European Communities and the Presidency of the Council of the same institution on behalf of the European Union and its Member States.

SWEDEN

As regards the protection of databases, it should only be mentioned that Sweden–like the other Nordic countries– since 1960 in its Copyright Act has a special provision on the protection of collections of information (which will now have to be amended in view of the implementation of the European Community so-called Data Base Directive). The provision, contained in Article 49 of the Act, reads in its most important part: "A catalogue, a table or another similar production in which a large number of information items have been compiled may not be reproduced without the authorization of the producer until ten years have elapsed from the year in which the production was published." That provision has worked well over the years. It has been considered by the Supreme Court only in one case, in 1985 (Supreme Court Cases, 1985, page 813). The Court found that compilations of information items about pot-plants contained in 64 separate cards published by a magazine was actually protected against another magazine's use of the same information arranged in a similar way.

THAILAND

Regarding intellectual property in databases, Section 12 of the [Copyright] Act protects the compilation or composition of data readable by machine or other apparatus. It is already in line with TRIPS requirements. At the moment, there is serious concern over the attempt to give protection to uncopyrighted data in databases. However, this attempt should be subject to further study since it could affect the interests of the rightholders and the users. It may also disrupt or distort the effective use of the so-called information superhighway.

EUROPEAN COMMUNITY AND ITS MEMBER STATES

An International Treaty on the Protection of Databases

1. Background

The question of the adoption of an international treaty on the legal protection of databases was first raised in the context of the work in the World Intellectual Property

Organization on a possible protocol to the Berne Convention in connection with the scope of copyright protection for databases. As a result, the issue has been the subject of discussion at two sessions of WIPO Committees of Experts in 1996[1]. The issue was included on the agenda of the Diplomatic Conference held by WIPO in December, 1996 but, to the regret of the European Community, there was no opportunity for discussing the issue.

Following the recommendation of the Diplomatic Conference held in December 1996, and the subsequent decision of the extraordinary meeting of the Governing Bodies held in March this year, the issue will now be discussed at an Information Meeting to be held on 17 and 18 September 1997[2].

The European Community and its Member States would like to take this opportunity to explain the main considerations which have led it to the conclusion that this type of protection for databases is essential and that an international treaty on the protection of databases is of world-wide interest and benefit. With a view to contributing to the preparation of the Information Meeting, we are ready to share our considerable experience in discussing this important issue with all participants[3].

2. Need for legal protection

While improvements in global communications and electronic access to information have led to huge amounts of data being more easily accessible ("the information explosion"), our ability to use that data becomes hampered by the sheer amount available. It is for this reason that many people and organizations expend significant amounts of time and money in obtaining, verifying and presenting information in the form of databases which can be used more easily than the original source data. Similar considerations encourage the production of databases of collections of works or other items, including those which are themselves protected by copyright. Databases may be accessible for example, on-line, on CD-ROM or in paper copy, but whatever their form they are becoming used more and more widely throughout society. All sectors of industry are involved, but communications, publishing and trade in goods and services are areas gaining considerable advantages from the making and use of databases.

Since, without legal protection, any third party may copy the whole or a substantial part of such a database without having to contribute anything to the effort put in by the person who made the database, it seems imperative to us that makers of databases should benefit from legal protection covering the work done in obtaining, verification and presenting material in a

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1 See WIPO Documents: BCP/CE/VI/16 and INR/CE/V/14 of 9 February, 1996, containing the reports of the sixth session of the Committee of Experts on a Possible Protocol to the Berne Convention and fifth session of the Committee on a Possible Instrument for the Protection of the Rights of Performers and Producers of Phonograms, at paras 237 - 265. INR/CE/VI/4 of 5 August, 1996, containing the report of the sixth session of the Committee of Experts on a Possible Instrument for the Protection of Performances and Producers of Phonograms.

2 Documents CRNR/DC/100 of 23 December, 1996 and AB/XXX/4 of 21 March, 1997.

3 In this field the European Union has adopted Directive 96/9/EC on the legal protection of databases (OJEC No L 77, 27.3.96, p 20).

database on which they have expended a substantial investment. (Such an investment could be in terms of human, technical, financial or other resources.) Otherwise third parties can take unfair advantage of the efforts of database makers, and makers will have a reduced incentive to continue putting resources into the making of databases.

3. Scope of the right envisaged

The purpose of the right being considered is to protect the maker of a database against the misappropriation of the results of their efforts, which would occur if a third party copied the whole or a substantial part of the database. Such a right would therefore offer protection from unauthorized extraction or re-use of the whole or substantial parts of the database, provided that the maker of the database had put substantial resources into its production. The right would not prevent the use of insubstantial parts of the database, nor would it prevent independent production of the same database from the initial source material, or any other use of that source material.

The commercial lifespan of a database will depend very much on the type of material it contains, and whether that material is itself subject to change over time, for example stock market prices. It therefore seems reasonable, just as for other comparable Intellectual Property Rights, to set a term of protection which is limited in time.

4. Some questions and answers

(a) Doesn't copyright provide sufficient protection for makers of databases?

In cases where there is insufficient intellectual creation in the selection or arrangement of contents, copyright will not apply, even though a substantial effort may have been made. Moreover, in those cases where a database is protected under copyright by reason of the arrangement of contents, a third party may still extract the contents, rearrange them and sell them without infringing copyright in the database.

(b) What about unfair competition rules?

Apart from the fact that not all jurisdictions have them, unfair competition rules only come into play once an act has taken place. They do not provide an economic right with clear scope which can be freely transferred.

(c) Don't laws on confidentiality and trade secrets protect such databases?

Like unfair competition rules, these vary from country to country. While they may protect certain items contained in a database, they do not protect the database itself, and in many cases the contents are not trade secrets or protected under confidentiality rules.

(d) Won't database protection give a monopoly on information?

The right envisaged would not prevent the extraction of insubstantial amounts from the database, nor would it apply to the source material used to make the database.

Such source material can be freely used unless it is itself the subject of some other type of protection for example copyright, related rights, confidentiality, trade secrets, etc.

(e) Won't the protection of databases hamper teaching and scientific research?

It would be possible to provide for exceptions in order to safeguard the free flow of information in areas such as these.

5. Conclusion

In the light of the above, the European Community and its Member States wish to reaffirm the greatest importance of the legal protection of databases in the future environment, while respecting the balance of rights and interests. We reiterate our attachment to the ongoing activities in the WIPO framework with a view to adopting an international instrument in this field.

[End of Annex and of document]