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INFORMATION MEETING ON INTELLECTUAL PROPERTY IN DATABASES

Geneva, September 17 to 19, 1997

OBSERVATIONS

*presented by the United Nations Educational,
Scientific and Cultural Organization (UNESCO)*

1. The question of the *sui generis* protection of databases at the international level was raised at the time of the February and March 1996 sessions of the Committee of Experts on a Possible Protocol to the Berne Convention, and has been of particular interest to the international community, and scientific circles in particular, since the WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, held in December 1996, was presented with a draft international treaty on the subject which, for want of time, was not considered.
2. During the general discussions at the December 1996 Diplomatic Conference, UNESCO had pointed to the need to consider the question with the utmost care and to involve the scientific community, which had a particular interest in the matter, in any process of international study of this very sensitive question.
3. The launch today of an open international debate on this set of problems within the framework of this WIPO Information Meeting is a good opportunity to provide useful insight into the possibilities of international protection for databases in the light of the part played by computer data in everyday life, and the specific characteristics of their use both at the national level and in international cooperation.
4. With the advent of the information society, competitive investment in the field of databases is quite capable of making a useful contribution towards promoting the retrieval, processing and dissemination of the computer data necessary for everyday life. It is therefore appropriate and indeed desirable that individual nations and the international community should give some thought to the rules that could afford them the best security both at the national level and in connection with inter-State cooperation.
5. The nature and scope of the protection to be given to the business of producing and distributing databases should however be determined with due regard to the role and purpose of the data disseminated within society in that form. In that respect the draft treaty submitted to the December 1996 Diplomatic Conference was given a focus that favored the *sui generis* approach to protection and gave particularly extensive prerogatives to database producers.

That focus aroused extensive concern on the part of the circles concerned, and especially the scientific community. It does not seem to take into proper consideration the role of data in the promotion of scientific research and the performance of tasks with a general bearing on the demands of social life.
6. In the opinion of the scientific community, the protection of the investments of database producers calls for a wide-ranging debate on the means of affording that protection, and on the scope of the prerogatives to be conferred on owners of rights, in the light of the challenges associated with the interests concerned.
7. It should first be made clear whether the protection of the legitimate interests of database producers could not be effectively ensured under existing ordinary legislation, in particular the rules applicable to unfair competition.

If, however, it should prove necessary to resort to the *sui generis* approach, the protection to be provided would have to strike a suitable balance between the need to ensure the security of the database producer's legitimate investment against unfair competition and the

need to ensure the free circulation of data in the interest of scientific research and the satisfaction of the pressing requirements of social life.

8. In this connection, when the rules that are to govern exchanges involving databases financed by the public funds of States or international organizations and databases in the field of commercial competition are worked out, due account should be taken of the nature and purpose of their use. Databases financed by States or by international cooperation institutions have a leading role to play in the public interest and in the promotion of science; this has been mentioned and emphasized by studies conducted by the scientific community ever since database protection became a matter for international discussion. The study published by the National Research Council of the United States of America, entitled "Bits of Power Issues in Global Access to Scientific Data," is particularly noteworthy in that respect.

9. Databases financed with public funds, whose purpose is the efficient accomplishment of public-interest missions (at both the national and the international level), cover a variety of very extensive fields. UNESCO and the World Meteorological Organization (OMM), for instance, produce this kind of database in connection with subjects like earth sciences, the environment, ecology, water, oceanography or space. These databases have been produced through cooperation between States, and their purpose is to protect life and property against natural disasters. Their success lies in the wide coverage that they can be given, together with the best conditions of access and effective use, without regard to commercial considerations.

Databases of great importance to education, the natural sciences, culture and information are also produced by UNESCO on both analog and digital materials, with a view to their being made available online on the Internet as a means of providing Member States, free of charge, with useful information that will help them conduct their public-service activities satisfactorily in those fields and also will facilitate inter-State cooperation.

10. The rules that will govern exchanges involving this type of database and databases produced for commercial purposes should not, therefore, be derived from the logic of competitive exploitation which is a feature of commerce.

11. For the scientific community, the public-interest mission underlying the *raison d'être* of databases produced by public institutions is sufficient in itself to make people acknowledge that their producers should be allowed free and full access, on a non-discriminatory basis, to all sources of data (in whatever form) that might be useful for updating the databases and improving their performance. This rule is all the more justified since databases produced with public finance are generally freely accessible to all users against payment only of production and distribution costs. The only exception to this rule is databases that have a bearing on national security and privacy.

12. The reproduction of these databases in their entirety for commercial purposes should nevertheless remain reserved. UNESCO already applies this restriction, moreover, with respect to databases produced in the various fields of its competence for the benefit of States. The reproduction of these databases as a result of initiatives taken for commercial purposes may be authorized or made subject to specific conditions, depending on the needs and implications involved and also the need to provide for the wide distribution of the data on the best possible economic terms for users.

13. Relations between the scientific community and database producers should also be made subject to specific rules. Those rules should be worked out with reference essentially to the need to facilitate the work involved in scientific research. As a source of knowledge and innovation, science is indeed essential to the progress of society. Its development is to a large extent dependent on the ability of researchers to gather, study and exchange the data fundamental to the effort to acquire new knowledge.

14. Data exchanges for the purposes of scientists should consequently conform to a specific model market based on rules of cooperation separate from those applicable to the commercial exploitation of databases. Scientists should be able to have free access to databases from all sources in exchange for mere participation in the cost of producing and communicating the data.

15. Educational, cultural and information circles should also be allowed to make free and fair use of databases in the discharge of their public-service duties.

16. The duration of the protection to be granted should be reasonable. It should be determined by concern to reconcile the need for sufficient time to amortize investment with the need to make the data available to users for such time as may be suitable for useful exploitation. The scientific community could contribute effectively to the establishment of an average duration that would accommodate both legitimate concerns.

17. These preoccupations of the scientific community regarding the possible nature and extent of any *sui generis* protection of databases arise from concern to enlighten international cooperation partners on the need to avoid international enactments that are not justified by a pressing need and would be liable to jeopardize not only fundamental scientific research but also the undertaking of salutary public-interest missions in the framework of international cooperation. We hope that these same preoccupations will capture attention in the course of the discussions of this Information Meeting in a spirit of healthy cooperation and in due deference to the legitimate interests involved.

18. This is of course a complex and sensitive set of problems that needs to be investigated still further. If, therefore, after this first discussion, there is a wide consensus on the need for international cooperation in the search for *sui generis* protection for databases, it seems desirable that the future international agenda provide for discussions at both the national and the international level with the full involvement of representatives of scientific circles. An appropriate evening-up of knowledge of the various aspects of the problem for the benefit of all the interests involved is necessary if there is to be a wide, balanced international consensus that makes allowance for the legitimate interests of the parties involved.

19. It also seems to us that the participation of the international institutions particularly concerned by this subject matter, such as UNESCO and the WMO, could contribute usefully to this effort and constitute a necessary motivating factor for the preparation of any international consensus that might emerge and for the subsequent work of administering and implementing it.

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