WIPO

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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 CONCERNING INTELLECTUAL PROPERTY IN DATABASES

*Memorandum prepared by the International Bureau*

## I. INTRODUCTION

1. The WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions which took place in Geneva from December 2 to 20, 1996, had among its documents a Basic Proposal for the Substantive Provisions of the Treaty on Intellectual Property in Respect of Databases to be Considered by the Diplomatic Conference (document CRNR/DC/6), but the Conference did not discuss that document. The Conference, did, however, on its last day, adopt a Recommendation concerning Databases (document CRNR/DC/100) with the following text:

> "The Delegations participating in the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions in Geneva,
>
> "*Recognizing* that databases are a vital element in the development of a global information infrastructure;
>
> "*Conscious* of the importance of encouraging further development of databases;
>
> "*Aware* of the need to strike a balance between the interests of the producers of databases in protection from unfair copying and the interests of users in having appropriate access to the benefits of a global information infrastructure;
>
> "*Expressing interest* in examining further the possible implications and benefits of a *sui generis* system of protection of databases at the international level;
>
> "*Noting* that a treaty on such a *sui generis* system was not negotiated or adopted at the Conference;
>
> "*Recommend* the convocation of an extraordinary session of the competent WIPO Governing Bodies during the first quarter of 1997 to decide on the schedule of further preparatory work on a Treaty on Intellectual Property in Respect of Databases."

2. The Recommendation (along with the Resolution concerning Audiovisual Performances also adopted by the Diplomatic Conference) was discussed at the thirtieth series of meetings of the Governing Bodies of WIPO, namely the General Assembly of WIPO, the WIPO Coordination Committee and the Assembly of the Berne Union, in Geneva on March 20 and 21, 1997.

3. The Governing Bodies took, *inter alia*, the following decisions (document AB/XXX/4, paragraph 20):

> "(i) A Committee of Experts on the protocol concerning audiovisual performances will be convened for September 15 and 16, 1997, and an Information Meeting concerning intellectual property in databases will be convened for September 17 and 18, 1997. September 19, 1997, will be reserved for the adoption of the reports of both the Committee of Experts and the Information Meeting.

> "(ii) The International Bureau will, separately for each of the two subjects, prepare a document on the existing national and regional laws and regulations. Furthermore, the International Bureau will invite the Governments of the Member States of WIPO and the European Community by circular to communicate to it in writing information on the *de facto* situation, particularly contractual practices, existing in their respective countries, as well as any statistics."

4. In harmony with the second part of item (ii) of the above-quoted decisions, the Director General of WIPO, in a circular letter dated April 1, 1997, invited the Governments of the Member States of WIPO and the European Community to communicate to the International Bureau the information mentioned in the said items, by May 31, 1997.

5. By the above-mentioned deadline, the International Bureau had received information from the Governments of the following countries: *China, Israel, Kyrgyzstan, Mexico, Norway, Republic of Moldova, Switzerland* and *Uruguay*. That information–as regards intellectual property in databases–is summarized in the following paragraphs, whereas the full text of the relevant parts of the countries' contributions is included in the Annex to this document. Information received after the above-mentioned deadline will be made available later.

## II. GENERAL INFORMATION ON THE *DE FACTO* SITUATION

6. Each of the responses received from the Governments mentioned in the preceding paragraph refers to the existing national legislation of the country concerned. The responses received from *China* and *Mexico* contain the text of the relevant provisions of the national laws (and those responses do not contain any further information), while the information received from *Israel, Kyrgyzstan, Norway, Republic of Moldova, Switzerland* and *Uruguay* sums up the relevant norms. 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."

## III. CONTRACTUAL PRACTICES

7. According to item (ii) of the decisions quoted in paragraph 3, above, the information requested on the *de facto* situation was to cover particularly contractual practices. Two of the eight above-mentioned responses refer to contractual practices.

8. The response received from *Israel* refers to the general freedom of the parties concerned to conclude contracts in harmony with the provisions of the law.

9. The response received from *Norway* simply states that no information is available on contractual practices between database authors and/or makers and their assignees, and it adds that, according to the legal tradition of the country, there is no statutory regulation concerning the transfer of rights from employees to employers in that field.

## IV. STATISTICS

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

[Annex follows]

# ANNEX

## RESPONSES RECEIVED FROM MEMBER STATES OF WIPO

(see paragraph 5 of the document)

### CHINA

The Copyright Law of China does not have direct provisions on the protection of databases, however, it has the following provisions on compilations:

Copyright Law

Article 14. The copyright in a work created by compilation shall be enjoyed by the compiler, provided that the exercise of such copyright shall not prejudice the copyright in the preexisting works included in the compilation.

The authors of such works included in a compilation as can be exploited separately shall be entitled to exercise their copyright in their works independently.

Implementing Regulations

Article 5(11). Compilation is the creation of a work by assembling a number of selected preexisting works, in whole or in part, according to an arrangement designed for a specific purpose.

International Copyright Treaties Implementing Rules

Article 8. Foreign works created by compiling non-protected materials shall be protected in accordance with Article 14 of the Copyright Law, provided that originality is shown in the selection and arrangement of such materials. Such protection, however, shall not prevent another person from using the same materials to create works of compilation.

### ISRAEL

1. Contractual practices concerning intellectual property in databases

Here also, parties are free to contract as they consider fit taking due note, where applicable, of the relevant provisions of the copyright legislation and Contracts Law.

[We] should add that there is no registration system at this office [the Patent Office] regarding contracts in the areas referred to in your letter.

2. Statistics

To the best of [our] knowledge no statistics are maintained by any governmental institution.

KYRGYZSTAN

The draft Law on Legal Protection of Computer Programs and Databases has been elaborated. The legal protection of databases is included into the draft Law in the form of separate articles.

"The Provisional Regulations on Legal Protection of Computer Programs and Databases" have been elaborated and approved, which provides for database protection either separately from programs or together with them.

"The Provisional Rules of Writing, Filing and Examination of an Application for the Official Registration of Computer Programs and Databases" have been elaborated and approved, under which the databases are examined either separately or together with computer programs.

At present, an analysis of existing databases used on the territory of the Kyrgyz Republic is being conducted. Officially registered are eight computer programs; as for databases, for the time being there are no databases officially registered.

MEXICO

[The text of the relevant provisions of the Federal Law on Copyright (published on December 24, 1996), included in the response:]

TITLE III

Transfer of Economic Rights

CHAPTER I

General Provisions

Article 30. The owner of the economic rights may freely, subject to the provisions of this Law, transfer his economic rights or grant exclusive or non-exclusive licenses for use.

Any transfer of economic rights shall be for consideration and temporary. In the absence of agreement on the amount of remuneration or the procedure for setting it, or on the time limits for the payment thereof, the competent courts shall decide.

Acts, agreements and contracts by which economic rights are transferred and licenses granted shall invariably be concluded in writing, failing which they shall be null and void as of right.

Article 31. Any transfer of economic rights shall provide for the grant to the author or to the owner of the economic rights, as the case may be, a proportional share in the proceeds from the exploitation concerned, or a predetermined, fixed amount of remuneration. That right shall be unrenounceable.

Article 32. The acts, agreements and contracts by which economic rights are transferred shall be entered in the Public Copyright Register in order to be binding on third parties.

Article 33. In the absence of any express provision, any transfer of economic rights shall be deemed to be for a term of five years. A term of more than 15 years may only be agreed upon in exceptional cases where dictated by the nature of the work or the scale of the required investment.

Article 34. Future production may only be the subject of a contract in the case of a specific work the characteristics of which have to be laid down in the said contract. The global transfer of future works shall be null and void, as shall any provisions whereby the author undertakes not to create any works.

Article 35. Any license affording exclusive rights shall be expressly granted as such and shall give the licensee, where not otherwise agreed, the right to exploit the work to the exclusion of any other person, and also the right to grant non-exclusive authorizations to third parties.

Article 36. The license affording exclusive rights shall oblige the licensee to take whatever action is necessary for the licensed exploitation to be effective, depending on the nature of the work and the customs and practices prevailing in the professional, industrial or commercial activity concerned.

Article 37. Acts, agreements and contracts concerning economic rights that are executed before a notary, public broker or any authenticating official and are entered in the Public Copyright Register, shall be considered properly executed.

Article 38. Copyright shall not be conditional on the ownership of the physical object in which the work is embodied. Unless expressly agreed otherwise, the disposal by the author or his successor in title of the material medium containing a work shall not constitute transfer to the acquirer of any of the economic rights in the said work.

Article 39. Authorization to broadcast a protected work by radio, television or any other similar medium shall not include the right to rebroadcast it or exploit it.

Article 40. The owners of authors' economic rights and neighboring rights may claim compensatory remuneration for any copying or reproduction done without their permission and not covered by any of the limitations provided for in Articles 148 and 151 of this Law.

Article 41. Economic rights may not be either attached or pledged, but the benefits and products derived from the exercise thereof may be so used.

## CHAPTER II

### Contract for the Publication of a Literary Work

Article 42. A publishing contract exists where the author or the owner of the economic rights, as the case may be, undertakes to deliver a work to a publisher, who in turn undertakes to reproduce it, distribute it and sell it against payment of the agreed amounts to the owner of the economic rights.

The parties may agree that distribution and sale shall be carried out by others, and they may agree on the contents of the publishing contract, except where there are unrenounceable rights laid down in this Law.

Article 43. Notwithstanding the provisions of Article 33 of this Law, the period during which the rights in a literary work are assigned shall not be subject to any limitation.

Article 44. The publishing contract shall not constitute transfer of the other economic rights of the owner of the work.

Article 45. The publisher may not publish the works with abridgements, additions, deletions or any other alterations without the written consent of the author.

Article 46. The author shall retain the right such corrections, amendments, additions and improvements to his work as he considers appropriate before it goes to press.

Where amendments make publication more costly, the author is obliged to compensate for any expenditure incurred on that account, unless otherwise agreed.

Article 47. The publishing contract shall contain at least the following particulars:

(i) the number of editions or reprints where applicable, that it covers;
(ii) the number of copies constituting each edition;
(iii) whether or not the material is delivered with exclusive rights;
(iv) the remuneration payable to the author or to the owners of the economic rights.

Article 48. Unless otherwise agreed, the cost of publication, distribution, promotion, advertising, publicity or any other such action shall be payable by the publisher.

Article 49. The publisher who has produced a given edition of a work shall have a preferential right to produce the following edition on the same conditions.

Article 50. Where there is no agreement on the price that should be set on the copies for sale, the publisher shall have the right to set it.

Article 51. Unless otherwise agreed, the right to publish one or more works by the same author separately does not give the publisher the right to publish them together. The right to publish an author's works together does not give the publisher the right to publish them separately.

Article 52. The obligations of the author or owner of the economic rights shall be the following:

(i) to deliver the work to the publisher by the time limits and on the conditions specified in the contract;
(ii) to be responsible to the publisher for the authorship and originality of the work, and for the undisturbed exercise of the rights transferred to him.

Article 53. The publisher shall give the following particulars of the works that he publishes in a visible form and place on the said works:

(i) his name, designation or business style and domicile;
(ii) the year of the edition or reprint;
(iii) the ordinal number corresponding to the edition or reprint, where possible;
(iv) the International Standard Book Number (ISBN), or the International Standard Serial Number (ISSN) in the case of periodical publications;

Article 54. The printer shall display in a visible form and place on works that he prints:

(i) his name, designation or business style;
(ii) his address;
(iii) the date on which printing was completed.

Article 55. Where the publishing contract does not specify the term within which the edition is to be completed and copies are to be placed on sale, it shall be understood that the period is one year following the delivery of the work ready for printing. If that period expires without the publisher having produced the edition, the owner of the economic rights may choose between demanding the fulfillment of the contract or terminating it by serving written notice on the publisher. In either case, the publisher shall indemnify the owner of the economic rights for damages and prejudice caused.

The time limit for placing the copies on sale may not exceed two years, counted from the time at which the work was made available to the publisher.

Article 56. The publishing contract shall end, regardless of its envisaged term, if the edition to which it relates is out of print, without prejudice to any actions brought under the contract itself, or if the publisher does not distribute the work on the agreed conditions. An

edition shall be considered out of print when the publisher lacks sufficient copies thereof to meet the needs of the public.

Article 57. Any person, whether natural person or legal entity, who publishes a work is obliged to state the author's name or pseudonym, as the case may be. If the work is anonymous, it shall be so stated. In the case of translations, compilations, adaptations or other versions, the name of the maker thereof shall also be given.

## CHAPTER III

### Contract for the Publication of Musical Works

Article 58. A music publishing contract is a contract under which the author or owner of the economic rights, as the case may be, assigns the right of reproduction to the publisher and entitles him to carry out the fixation and phonographic reproduction of the work, its audiovisual synchronization, communication to the public, translation, arrangement or adaptation, and any other form of exploitation provided for in the contract; the publisher, for his part, undertakes to disclose the work by all means available to him, receiving in return a share in the economic profits realized through the exploitation of the work, according to the agreed conditions.

However, in order to carry out audiovisual synchronization, adaptation for advertising purposes, translation, arrangement or adaptation, the publisher must in each specific case have the express permission of the author or his successors in title.

Article 59. The following shall cause the contract to be terminated without exposing the author or owner of the economic rights to any liability:

(i) where the publisher has not started to disclose the work within the period specified in the contract;
(ii) where the publisher fails at any time, without just reason, to disseminate the work;
(iii) where the work to which the contract relates has not generated economic benefits for the parties in the space of three years, in which case the publisher shall likewise not be liable.

Article 60. The provisions on publishing contracts for literary works shall apply to music publishing contracts in so far as they are not at variance with the provisions of this Chapter.
[...]

TITLE IV

Protection of Copyright

[...]

CHAPTER IV

Computer Programs and Databases

Article 101. Computer program means the original expression in any form, language or code of a set of instructions which, by virtue of a particular sequence, structure and organization, are intended to make a computer or other device carry out a specific task or function.

Article 102. Computer programs shall be protected on the same terms as literary works. The said protection shall extend to both operating programs and application problems, whether in source code or object code form. Computer programs whose purpose is to have a harmful effect on other programs or devices are excluded.

Article 103. Unless otherwise agreed, the economic rights in a computer program and its documentation, where they have been created by one or more employees in the course of their duties or on instructions from their employer, shall belong to the latter.

As an exception to the provisions of Article 33 of this Law, the period for the assignment of rights in connection with computer programs shall not be subject to any limitation.

Article 104. As an exception to the provisions of Article 27(iv), the owner of the copyright in a computer program or database shall retain the right to authorize or prohibit the lending of copies thereof, even after the sale of the said copies. This principle shall not apply where the copy of the computer program does not in itself constitute an essential element of the license for use.

Article 105. The lawful user of a computer program may make as many copies of the program as the license granted by the owner of the copyright allows him, or a single copy, provided that the copy is:

(i) essential for the use of the program;
(ii) intended solely as a back-up copy to replace the legitimately acquired copy when the latter cannot be used owing to damage or loss; the back-up copy shall be destroyed when the user's right to make use of the computer program comes to an end.

Article 106. The economic rights in a computer program include the right to authorize or prohibit:

(i) the permanent or temporary reproduction of all or part of the program in any medium and form;
(ii) the translation, adaptation, arrangement or any other modification of a program, and the reproduction of the resulting program;
(iii) any form of distribution of the program itself or of a copy, including rental;

(iv) decompilation, reverse engineering processes and disassembly.

Article 107. Databases or other materials in machine-readable or otherwise decipherable form which, on account of the selection and arrangement of their contents, constitute intellectual creations shall be protected as compilations. Such protection shall not extend to the data and materials in themselves.

Article 108. Databases that are not original shall nevertheless be protected during a period of five years for the exclusive use of the person who developed them.

Article 109. Access to information of private character concerning persons that is contained in the databases referred to in the foregoing Article, and also the publication, reproduction, disclosure, communication to the public and transmission of such information, shall require prior authorization by the persons concerned.

The foregoing shall not apply to investigations by the authorities responsible for the administration and enforcement of justice according to the relevant legislation, or to access to public archives on the part of persons authorized by the law, provided that the access is had according to the relevant procedures.

Article 110. The owner of the economic rights in a database shall have the exclusive right, with respect to the form of expression of the structure of the said database, to authorize or prohibit:

(i) its permanent or temporary reproduction, either wholly or in part, by any means and in any form;
(ii) its translation, adaptation, rearrangement or modification in any other way;
(iii) distribution of the original or copies;
(iv) its communication to the public;
(v) reproduction and distribution or communication to the public of the results of the operations mentioned in subparagraph (ii) of this Article.

Article 111. Electrically operated programs that contain visual, sound, three-dimensional or animated elements shall be protected by this Law with respect to their own original features.

Article 112. It is prohibited to import, manufacture, distribute and use apparatus, or render services, whose purpose is to remove the technical protection of computer programs, transmissions by electromagnetic waves and over telecommunication networks, and programs containing electronic elements as mentioned in the foregoing Article.

Article 113. Works and performances transmitted by electronic means across the electromagnetic field and over telecommunication networks, and the results obtained from such transmission, are protected by this Law.

Article 114. The transmission of works protected under this Law by cable, electromagnetic waves, satellite and other similar means shall be brought into conformity with Mexican legislation and shall in all cases and at all times comply with the provisions on the subject.

TITLE V

Neighboring Rights

CHAPTER I

General Provisions

Article 115. The protection provided for in this Title shall leave intact and in no way affect the protection of the copyright in literary and artistic works. Consequently, none of the provisions of this Title may be interpreted in a manner that detracts from that protection.
[...]

CHAPTER III

Book Publishers

Article 123. A book is any unitary, non-periodical publication of literary, artistic, scientific, technical, educational, informatory or recreational character that is printed in any medium, the issue of which takes place entirely in one operation, either in one volume or in two or more volumes or pamphlets issued at intervals. It shall also include complementary material in any kind of medium, including electronic media, that constitutes a unitary whole with the book and cannot be marketed separately.

Article 124. The book publisher is the person, whether natural person or legal entity, who chooses or plans a publication and carries out the production thereof either himself or through third parties.

Article 125. Book publishers shall have the right to authorize or prohibit:

(i) the direct or indirect reproduction of all or part of their books, and the exploitation thereof;
(ii) the importation of copies of their books without their authorization;
(iii) the first distribution to the public of the original and each copy of their books by sale or other means.

Article 126. Book publishers have exclusive rights in the typeface and graphic features of each book in so far as they are original.

Article 127. The protection referred to in this Chapter shall be for 50 years as from the first publication of the book concerned.

Article 128. Periodical publications shall benefit from the same protection as this Chapter grants to books.

NORWAY

When it comes to databases, our copyright act provides for two separate regimes of protection. Copyright protection is awarded to databases fulfilling the traditional criteria for such protection. Whether the contents of the database in themselves are works or not, is irrelevant. Copyright protection is awarded if the selection and arrangement of the data contained in the base passes the originality test which defines a protectable "work" within the meaning of our copyright act. If the database consists of other works, it is regarded as a collection. If the database does not meet the criteria for copyright protection, our copyright act section 43 provides for a so called catalogue-protection against the imitation of compilations of information. There is a requirement of substantiality in the amount of information to be compiled in order to be protected by section 43. The maker of the compilation is the beneficiary for section 43–protection. The term of protection is 10 years after the end of the year of publication of the compilation. Section 43–protection is awarded irrespective of the compilation's copyrightability.

We do not possess any relevant information on ... contractual practices between database authors/database makers and their assignees. According to our legislative tradition, we do not have statutory regulations of the transfer of rights from employee to employer in such situations. These questions are governed by traditional contractual principles, and employment contract will in many cases be considered to implicitly include the transfer of authorship to a database created by an employee in the normal course of his duties.

As regards statistics, we are not quite sure of the nature of information requested. To our knowledge, there are no official, national statistics on e.g. remuneration levels, contractual practices or other information on the exercise of rights in ... databases.

REPUBLIC OF MOLDOVA

Under the Law No. 293-XIII of November 23, 1994 (Articles 3 and 6) computer programs and databases are protected as literary works.

The decree No. 494 of the Government of the Republic of Moldova, dated July 17, 1995, establishes the National Computer Programs Register. Due to the lack of capacities in the Agency [the State Copyright Agency of the Republic of Moldova] this work was temporary entrusted to the Ministry of Informatics and Communications. As of May 15, 1997, 9 original programs were registered and 3 applications are being examined.

SWITZERLAND

As for databases, the LDA [the Swiss Law on Copyright and Neighboring Rights] provides for the protection of collections where they are intellectual creations of an individual nature with regard to the selection or arrangement of their contents (Art. 4 LDA). It is also possible to invoke the Unfair Competition Law (LDC) for the protection of databases. For instance, Article 5(c) of the LCD considers it unfair for a person to take, by means of technical reproduction processes and without a corresponding effort of his own, the marketable results

of the work of another person and to exploit them as such. For the time being, however, Swiss law does not have any *sui generis* protection for databases.

URUGUAY

There is very little contractual activity in connection with databases, so what information can be provided is of no great significance.

There are no express provisions on the subject in legal terms, even though original databases are in fact protected by the general provisions on the protection of copyright.

As one might expect, there are no official statistics of any kind.

[End of Annex and of document]