

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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INFORMATION MEETING ON INTELLECTUAL PROPERTY IN DATABASES

Geneva, September 17 to 19, 1997

OBSERVATIONS

submitted by the World Meteorological Organization (WMO)

I. INTRODUCTION

The Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions (Geneva, 2 to 20 December 1996) had in its agenda a draft treaty on Intellectual Property in Respect of Databases. The Conference eventually did not negotiate nor adopt a treaty on this subject. However, it adopted a Recommendation regarding the convening of an extraordinary session of the competent WIPO Governing Bodies during the first quarter of 1997 to decide on a schedule of further preparatory work.

This session was convened in Geneva from 20 to 21 March 1997. It decided on the holding of an Information Meeting on intellectual property in databases to be held in September 1997. It was also suggested that the World Meteorological Organization (WMO), among others, provide a contribution to the Information Meeting.

It is in this context that this discussion paper has been prepared. It is submitted in the hope of identifying some of the relevant aspects that need to be addressed in the course of the discussion of the databases protection issue, particularly in the light of the need to ensure the full and open access to scientific and technological data, in general, and to meteorological data, in particular.

II. WMO AND DATA EXCHANGE

A basic requirement and fundamental feature of international cooperation in meteorology, coordinated by the WMO, is the free and unrestricted¹ exchange of meteorological data and products. This goes back to the time of WMO's predecessor organization, the International Meteorological Organization (IMO) which was established in 1873 and has served as the foundation for building modern day meteorology. For over a century, the nations of the world through their national Meteorological or Hydrometeorological Services (NMSs), have cooperated in this full and open exchange of data and products to the immense benefit of the peoples of the world.

Such exchange of meteorological data and products, coordinated by WMO, is essential to the effective and efficient provision of meteorological services to protect life and property especially against floods, droughts, and other natural disasters; safeguard the environment such as in relation to climate change and ozone layer depletion; and contribute to sustainable development in diverse areas such as agriculture, transport, energy, water resources, health and tourism.

Consequently, maintaining this free and unrestricted exchange of data and products, and the cooperative basis upon which it functions, have been of the highest priority for the Members of WMO.

¹See footnote on the next page.

During recent decades, the science of meteorology and its applications have progressed significantly. Advances in technology, such as satellite observations, high-speed computers capable of operating numerical ocean and atmosphere models, and dedicated dissemination systems, contributed to enhanced accuracy, resolution, and timeliness resulting in increases in the value and the variety of the available meteorological information.

WMO has addressed the question of safeguarding the interests of those who provide the meteorological data, yet maintaining their free and unrestricted exchange. WMO is aware that this is an important and crucial issue. The World Meteorological Congress, the highest policy-making body of the Organization consisting of all the Members (presently 185), considered this matter during its twelfth session in 1995. It adopted Resolution 40 (Cg-XII) on “WMO Policy and Practice for the Exchange of Meteorological and Related Data and Products including Guidelines on Relationships in Commercial Meteorological Activities”, which contained the following policy: *“As a fundamental principle of the WMO and in consonance with the expanding requirements for its scientific and technical expertise, WMO commits itself to broadening and enhancing the free and unrestricted² international exchange of meteorological and related data and products.”*

The availability and exchange of meteorological and related data is a basic requirement for and fundamental to the role of WMO in assisting countries, through their national Meteorological or Hydrometeorological Services (NMSs), to provide appropriate and timely weather and climate services. WMO’s World Weather Watch (WWW) Programme has been in place for nearly thirty years to facilitate the development and operation of an effective worldwide integrated system for the collection, communication, processing and rapid exchange of meteorological and related environmental data, analyses and forecasts.

The WWW has three main components - the Global Observing System (GOS), Global Telecommunication System (GTS) and the Global Data-Processing System (GDPS) (see box 1, last page). This integrated system has provided the framework for the international exchange of meteorological and related data and products which are vital to the well-being of people around the world. *If the free and unrestricted exchange of meteorological data is not assured, the provision of services such as weather forecasts and warnings to the public and various sectors like aviation and shipping will be adversely affected.*

In addition, another WMO system - the Global Atmosphere Watch (GAW) is providing data for the monitoring of the changing chemical composition of the atmosphere, including the ozone layer and the greenhouse gases linked with climate change. In turn, both the WWW and GAW form major components of the Global Climate Observing System (GCOS) which is co-sponsored by WMO, Unesco and its IOC (Intergovernmental Oceanographic Commission), UNEP and ICSU (International Council of Scientific Unions). GCOS is foreseen as a global system to respond to the scientific need for understanding and detecting climate change, monitoring its variability, and predicting its evolution. In relation to water resources management, the establishment of a World Hydrological Cycle Observing System (WHYCOS),

² “Free and unrestricted” means non-discriminatory and without charge. “Without charge”, in the context of this resolution, means at no more than the cost of reproduction and delivery, without charge for data and products themselves.

supported by the World Bank, will enable the real-time analysis of the flow and quality of the world's major rivers.

WMO would also draw attention to a number of international legal instruments relating to environmental areas of concern which have emphasized the importance of the free and unrestricted exchange of relevant data and information. Many countries have ratified these instruments. As an example, certain Articles of the United Nations Framework Convention on Climate Change (UN/FCCC) such as Article 4 (Commitments) and Article 5 (Research and Systematic Observation) refer to the promotion of and co-operation in the understanding of climate change, through the free and prompt exchange of relevant information.

Similar provisions are also contained in Article 16 (Information Collection, Analyses and Exchange) of the International Convention to Combat Desertification, as well as in Article 3 (Research and Systematic Observation) of the Vienna Convention for the Protection of the Ozone Layer. These and other relevant international legal instruments should be taken into account. In addition, Agenda 21, the blueprint for action which came out from the United Nations Conference on Environment and Development (UNCED) also carried the message of the importance of the free exchange of data and information.

Any database protection mechanism should take into account the essence of these commitments and promote the international collaboration efforts in this regard. *Scientific, technical and technological progress thrive on the spirit of free inquiry and exchange.*

III. DATA EXCHANGE AND GLOBAL ISSUES

There is increasing awareness of the linkages between various natural phenomena being observed in various parts of the world. People have become more aware of the global commons, the global environment. Issues such as climate variability, climate change, drought and desertification, natural disaster mitigation and ozone layer depletion have to be addressed globally.

To address global environmental issues, sound scientific understanding of the Earth's system is essential. The required understanding comes about through the studies that have been and continue to be undertaken. Such studies, in turn, are critically dependent on data and information about the various aspects of the system as gathered and made available from all parts of the planet. In this light, an internationally agreed system for the exchange of relevant data and information is very vital.

Studies of the global environment transcend national frontiers, as indeed the elements which constitute that environment such as the atmosphere, the oceans and other water systems, the land surfaces, and the biosphere. Hence, international collaboration is needed because global data and information are required, and co-operation results in greater cost-effectiveness than competing or acting independently. For this approach to be viable, there must be an understanding of how to deal with data exchange at the international level.

IV. DATABASE PROTECTION - SOME CONSIDERATIONS

WMO recognizes the legitimate concerns of database producers and the need to reflect the interests of the other sectors, including those in the scientific, education and research communities. WMO followed closely the developments related to the proposed *sui generis* treaty and viewed with attention the seemingly fast pace of these developments. It may be recalled that the objective of the proposed treaty as contained in its preamble was “to enhance and stimulate the production, distribution and international trade in databases”. The possible stimulation of international trade and the accompanying competition for meteorological and related databases that could affect the provision of the appropriate and timely meteorological and related services merited attention. *The activities espoused by WMO for the overall benefit of countries and peoples have required and thrived on co-operation primarily, not on competition.*

The recent events leading to the WIPO Information Meeting has helped to identify certain aspects of the database protection issue which the WIPO Information Meeting and subsequent fora should give consideration to. Some of the questions that need to be addressed are the following:

1. What should be the objective and rationale for an international database protection mechanism?
2. What should be the guiding principles/framework?
3. What are the advantages and disadvantages of a *sui generis* treaty?
4. Are there other alternative protection mechanisms?
5. What are the implications of the various options (e.g., cost/ benefit) to the various stakeholders?
6. What would be the appropriate definition of “database”?
7. What should be the nature, extent and duration of the protection?
8. Should there be exceptions identified at the global level?
9. Should databases made by governments, especially those in direct support of the provision of vital public services, be outside the scope of the protection?

This paper does not propose to respond to all of these questions. Nonetheless, the following are offered for the meeting’s consideration:

1. The principle of the full and open exchange of data and information vital to the protection of life and property, safeguarding the environment and addressing global issues should be a recognized principle and contained in any international database protection mechanism.

2. In particular, the free and unrestricted exchange³ of meteorological and related data should be assured, especially those relating to natural disaster mitigation activities such as severe weather warnings.
3. The recognition of the legitimate concerns of and incentives for commercial database producers should not lead to disincentives and undue restrictions for the scientific community in their legitimate pursuits which are of immense value to society.
4. The continued and full operation of the WMO World Data Centres and related institutions should be preserved.
5. An appropriate analytical framework should be considered for scientific activities including research and training, where co-operation is an essential mechanism for progress.
6. The concepts of “public good” and “fair use” should also be recognized.
7. The eventual availability in the public domain of protected databases should be possible, after a reasonable period.
8. There should be an extended and extensive participatory process at the national and international levels to help ensure that the concerns and interests of the various sectors and stakeholders are well-ventilated.

V. CLOSING REMARKS

The international exchange of meteorological and other environmental data should be unfettered. This should be addressed in any databases protection mechanism at an international level where it, as well as other global environmental issues, rightly belong.

This WIPO Information Meeting will be an important opportunity for the various stakeholders' views to be presented. WMO is grateful for this opportunity to expound on the concerns and interests of the global meteorological community vis-a-vis the databases protection issue. WMO considers that this issue provides a challenge to and an opportunity for international co-operation. WMO is prepared to continue to collaborate in the further elaboration of this issue.

WMO believes that this meeting will provide a fora for a better mutual understanding of the various views on this issue, one which has vital implications to the economic and social well-being of humankind.

³ As defined in footnote 2 and referred to on page 2.

| GLOBAL OBSERVING SYSTEM | GLOBAL TELECOMMUNICATION SYSTEM | GLOBAL DATA-PROCESSING SYSTEM |
|---|---|---|
| <p>About 10 000 observation stations, 900 of which monitor the upper atmosphere</p> <p>Information is also gathered from 7 000 ships, 3 000 aircraft, more than 600 radar stations and some 220 fixed and drifting buoys</p> <p>A space-based observing system comprising geostationary and polar-orbiting satellites</p> | <p>Links world, regional and national weather centres</p> <p>Collects observed data and distributes globally</p> <p>Distributes analyses and forecasts from data-processing centres</p> | <p>World Meteorological Centres (Washington, Moscow and Melbourne)</p> <p>Regional Specialized Meteorological Centres (34)</p> <p>National Meteorological Centres</p> |

Box 1

The Components of WMO's World Weather Watch

[September 1997]

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