

WIPO



DB/IM/7

ORIGINAL: English

DATE: November 18, 1997

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INFORMATION MEETING ON INTELLECTUAL PROPERTY IN DATABASES

Geneva, September 17 to 19, 1997

ANALYTIC TABLE OF QUESTIONS RAISED

prepared by the International Bureau

INTRODUCTION

The Information Meeting on Intellectual Property in Databases, held in Geneva, from September 17 to 19, 1997, adopted the following recommendation (document DB/IM/6, paragraph 12(i)): “the International Bureau, when it makes available the detailed summary of the discussions in the Information Meeting, as a draft annex to the report of the meeting, should add a document summing up, in an analytic table, the questions raised during the Information Meeting.”

The WIPO General Assembly approved this recommendation during its Twenty-First Session (document WO/GA/XXI/13, paragraph 205).

The following analytic table of questions has been prepared on the basis of the Report of the Information Meeting (document DB/IM/6) and on the basis of the Draft Annex to the Report reflecting the interventions of Delegations and representatives of observer organizations—document DB/IM/6, Annex (Prov.). The questions are included in a form as close as possible to that in which they were raised. They have been only transformed for the sake of a better structured presentation and of avoiding repetitions.

NEED AND JUSTIFICATION OF A *SUI GENERIS* SYSTEM OF PROTECTION

Is there a need for a treaty on a *sui generis* system of protection for databases?

What are the justifications for such a system?

Is there presently sufficient incentive in domestic legislation and international law for investment in, and use of, databases, without additional intellectual property protection?

Would makers and/or users benefit from the increased level of protection?

Would there be more or less investment into the production and dissemination of databases if a *sui generis* system of protection would be applied?

Would this encourage or discourage value-added uses?

Would such a system advance or retard economic and technological progress?

Would database producers make available their productions in the information networks if there were not guarantees for recouping their investments on the basis of a *sui generis* protection system?

What are the proofs that more stringent protection for databases would spur investment considering the great number of databases available without such protection?

POSSIBLE ALTERNATIVES FOR A *SUI GENERIS* SYSTEM

How many databases do not qualify for copyright protection; consequently how many databases might fall only under the *sui generis* system?

In some countries, the originality test has been established at a very low level, and, thus, the overwhelming majority of databases is protected by copyright; is this, however, sufficient for the protection of such databases in an international context?

Should there be a parallel protection by a *sui generis* system also for original databases protected by copyright?

Can market solutions or other legal models, such as protection against unfair competition or technical means, adequately address the interests of database producers in protecting the non-copyright aspects of database productions?

Would not certain notions, such as those suggested in the draft treaty submitted to the December 1996 Diplomatic Conference—for example, in relation to “substantiality”—create greater uncertainty than protection against unfair competition?

Is protection against unfair competition sufficiently safe considering its case-by-case approach?

Would it not be more appropriate to consider whether the possibilities offered by the existing systems have been fully taken into account and exhausted before trying to establish a new system?

Is it sufficient to use *a posteriori* protection, such as protection against unfair competition or against parasitic uses, rather than an *a priori* intellectual property system like the proposed *sui generis* protection?

Would not *a priori* protection offer greater legal security, particularly for small and medium size industries, which do not have specialized legal units?

Is protection against unfair competition sufficient as a basis for licensing practices?

Is protection also needed against misappropriation for other than competitive purposes?

NATURE AND EXTENT OF A POSSIBLE *SUI GENERIS* SYSTEM OF PROTECTION

What should be the nature and extent of any new protection system for databases?

Would the proposed *sui generis* rights be similar in nature to the so-called related (or neighboring) rights or different from them?

Is it justified to speak about intellectual property in cases where there is no intellectual creation but only investment?

Could it not be considered as a minimum intellectual effort what was the criterion included in the draft treaty submitted to the December 1996 Diplomatic Conference, namely, arrangement of works, data or other materials in a systematic or methodological way?

Would it not be more appropriate to only identify the subject matter of protection, the acts in respect of which protection should be granted and the exceptions allowed, and to leave to national legislation choosing the legal regime—a *sui generis* or “related” right, protection against unfair competition or penal measures—to grant such protection, that is, to apply the same solution as the one included in the Phonograms Convention?

THE IMPACT OF A POSSIBLE *SUI GENERIS* SYSTEM ON THE ACCESS TO DATABASES

What is the foreseeable impact of a *sui generis* protection on the use and exchange of information?

Would such protection aim to restrict, or result in restriction of, certain non-commercial information, for example, meteorological data, and, in general, publicly financed databases?

Would such protection restrict or increase the availability of information?

Scientists need full databases relating to their fields. Would a *sui generis* system mean that they could only obtain the necessary data through licenses? Or should they create their databases from scratch?

Would a *sui generis* system not lead to denial of access to data necessary for global development?

How would such a system affect scientific research and education, particularly in developing countries?

MAIN ELEMENTS OF A PROTECTION SYSTEM

Subject matter and criteria of protection

What should be the subject matter of protection of a *sui generis* system?

What should be the definition of “database”?

Should such a definition—and thus the *sui generis* protection—extend to both original and non-original databases?

Should the protection extend both to the structure and the contents of databases?

How could a database protection system be designed to ensure that it does not extend protection to data *per se*?

What level of investment is necessary so that the investment may be considered “substantial”?

Right holders

Who should be the right holder in a possible *sui generis* system?

If the “maker of the database” is the right holder, how may this concept be defined?

Rights to be granted

What rights should be granted in respect of the non-copyright aspects of databases?

Is it not sufficient to grant a right of reproduction?

If “extraction” and “re-use” are covered by any right, how should these notions be defined?

If “substantial part” is relevant in determining the nature and extent of protection, how this concept should be defined?

If users only use a part of a database, how may they know whether or not that part is “substantial”?

Exceptions

How should exceptions be granted in domestic law and how should they be dealt with at the international level?

Would general or specific exceptions be justified?

What exceptions may be necessary for

- private use,
- scientific research,
- education,
- public libraries,
- public security,
- judicial and government purposes, and
- handicapped people.

Should there be specific exceptions for developing countries?

Duration of protection

How long should the duration of *sui generis* protection be?

Should the term of protection be renewable?

If the term is renewable, when may renewal take place and on what basis?

National treatment

How may the principle of national treatment be applied for a *sui generis* system?

Application in time

Should any protection for non-copyright aspects of databases apply for all existing databases at the moment of the entry into force of a possible treaty?

EXERCISE AND INFRINGEMENT OF RIGHTS

How may any new right be exercised in a digital context?

What means may be available against infringements?

How may infringements be identified?

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