

Screening meeting
Acquis communautaire
Brussels, 6-7 February 2006

Chapter 7 : intellectual property
Directive 96/9/EC on the legal protection of
databases

Definition of « database » :

- « A collection of independent works, data or other materials arranged in a systematic or methodical way » (Article 1.2)
- This definition applies to both electronic and non-electronic databases

Protection under copyright

Object of protection:

- Databases which, by reason of the selection or arrangement of their contents, constitute the author's intellectual creation (Article 3.1)

Database authorship:

- The author of a database can be the natural or legal person(s) who created the base (Article 4.1)

Protection under copyright

Exclusive rights (Article 5):

- In respect of the expression of the database which is protectable by copyright, the author of a database shall have the following exclusive rights:
- Reproduction (temporary, permanent, in any means and any form, in whole or in part)
- Translation, adaptation, arrangement and any other alteration
- Distribution (+ EC exhaustion)
- Communication, display or performance to the public

Protection under copyright

Exceptions to the exclusive rights (Article 6):

- A lawful user of a database may perform any of the acts listed in Article 5 for the purposes of access to and normal use of the contents of a database (Article 6.1)
- Any contractual provision contrary to Article 6.1 is null and void (Article 15)
- a) Reproduction for private purposes of a non-electronic database
- b) Use for the purposes of illustration for teaching or scientific research
- c) Use for the purposes of public security or of an administrative or judicial procedure

Protection under copyright

Exceptions to the exclusive rights (Article 6):

- Any other exceptions to copyright which are traditionally authorised under national law, without prejudice to the optional exceptions listed under points a), b) and c) above
- Application of the « three-step-test » under the Berne Convention to the exceptions listed in Article 6

Screening meeting
acquis communautaire
Brussels, 6-7 February 2006

« Sui generis » right

Object of protection (Article 7):

A right is provided for the database maker which shows that there has been:

- a (qualitatively and/or quantitatively) substantial investment in either the obtaining, verifying or presenting the contents of a database
- to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database

Screening meeting
acquis communautaire
Brussels, 6-7 February 2006

« Sui generis » right

Object of protection (Article 7):

- « Extraction » means the permanent or temporary transfer of the contents of a database to another medium
- « Re-utilization » means any form of making available to the public of the contents of a database
- The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database implying acts which are contrary to the « three-step-test » are not permitted

« Sui generis » right:

Lawful users (Article 8):

- A lawful user of the database may extract and/or reutilize insubstantial parts of its contents for any purpose whatsoever
- A lawful user of a database may not perform acts which conflict with the « three-step-test »
- Any contractual provision contrary to Article 8 is null and void (Article 15)

Screening meeting
acquis communautaire
Brussels, 6-7 February 2006

« Sui generis » right

Exceptions to the « sui generis » right (Article 9):

- Lawful users of a database may extract or re-utilize a substantial part of its contents:
 - a) In the case of extraction for private purposes of the contents of a non-electronic database
 - b) In the case of extraction for the purposes of illustration for teaching or scientific research
 - c) In the case of extraction for the purposes of public security or of an administrative or judicial procedure

Screening meeting
acquis communautaire
Brussels, 6-7 February 2006

« Sui generis » right

Term of protection (Article 10):

- The « sui generis » right shall expire fifteen years from the first of January of the year following the date of completion
- Any substantial change to the contents of a database which would result in the database being considered to be a substantial new investment shall qualify the resulting database for its own term of protection

Screening meeting
acquis communautaire
Brussels, 6-7 February 2006

« Sui generis » right

Beneficiaries (Article 11(1) and (2)):

- Makers or rightholders who are EU nationals or have their habitual residence in the EC territory
- Companies and firms having their registered office, central administration or principal place of business within the Community

Application over time (Article 12):

The sui generis right shall also be available in respect of databases the making of which was completed not more than fifteen years prior to 1 January 1998 and which on that date fulfil the requirements of Article 7

Screening meeting
acquis communautaire
Brussels, 6-7 February 2006

Extension of the « Sui generis » right to the Isle of Man

- Under Article 11(3), the Council can conclude agreements extending the « sui generis » right to databases made in third countries and falling outside the conditions indicated above in Article 11(1) and (2)
- The first agreement concluded under Article 11(3) of the Directive is between the United Kingdom of Great Britain and Northern Ireland on behalf of the Isle of Man and the European Community (*OJ L 089 05.04.2003 p. 12*)
- This Agreement took effect on 1 November 2003.

European Commission 
Internal Market & Services DG

Screening meeting
acquis communautaire
Brussels, 6-7 February 2006

First evaluation of Directive 96/9

- The evaluation was published on 12/12/2005 as a DG Markt staff paper.
- The evaluation focuses on whether the introduction of the “sui generis” right led to an increase in the European database industry's rate of growth and in database production and presents 4 policy options:
 - 1) Repeal the whole Directive
 - 2) Repeal the "sui generis" right
 - 3) Amend the "sui generis" provisions
 - 4) Maintaining the status quo

First evaluation of Directive 96/9

- The paper invites stakeholders (until 12 March 2006) to provide further evidence on the economic impact of "sui generis" protection in stimulating the production of databases in Europe
- The consultation will be concluded with a final services assessment on whether legislative changes are needed or not