

EUROPEAN UNION DATABASE DIRECTIVE SETS DANGEROUS PRECEDENT FOR LIBRARIANS WORLDWIDE

Delegates to IFLA '97 should take notice of a series of developments that threaten the libraries' communities traditional role as promoters of public access to information resources.

European Database Directive --- In early 1996, the European Union adopted a Directive to provide new legal protections for databases. This Directive provided two levels of protection. First, it provided copyright protection for original selection and arrangement of facts in a database. Second, it provided *sui generis* protection for non-original databases, prohibiting the unfair extraction of a substantial part of any database reflecting significant investment. Under the Directive, a database could simultaneously receive both types of protection: copyright protection for the expression - the selection and arrangement of data; and *sui generis* protection against the extraction of a qualitatively substantial part of the data itself. The *sui generis* protection lasts 15 years, while the copyright protection lasts for the life of the author plus 70 years. Member states of the EU are now in the process of implementing the Directive.

The Directive includes the notion that databases created in non-EU countries will not be granted legal protection, thus a fear of lack of reciprocity is prompting certain segments of the information industry in other nations to advocate new protections outside the EU.

WIPO Consideration --- During the diplomatic conference in December 1996 that resulted in the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, the delegates specifically decided not to consider a draft database treaty similar to the EU Database Directive. Delegates did not engage in discussions on the draft treaty for several reasons: lack of time, strong concerns and opposition from many delegations, and insufficient time to discuss the need for the proposal prior to the December conference. This last point is particularly important. Although this topic has been debated in the EU for several years, there had been no comparable discussion elsewhere. The delegates did recommend that a Committee of Experts be convened for an information exchange during the first quarter of 1997. This information meeting occurred in March 1997. A second Committee of Experts meeting is scheduled to convene September 17-19, 1997.

New Threats and Opportunities --- The implementation of the EU Database Directive and the upcoming WIPO meeting provides opportunities for librarians worldwide to communicate their concerns regarding *sui generis* database protection to their relevant national officials.

- European Union librarians are urged to promote the inclusion of the broadest possible exemptions for libraries, education and science when legislation to implement the EU Directive is considered by their respective states.
- All IFLA '97 delegates are urged to write to the new Secretary General of IFLA to encourage IFLA participation in both the EU implementation process and the WIPO Committee of Experts meeting.
- All IFLA '97 delegates should urge their nations' delegates to the WIPO Committee of Experts meeting to not take any action that could result in the adoption of a database-related agreement before full consideration is given to all related issues.
- All IFLA '97 delegates should encourage their national library organizations to contact the Director General of WIPO and express their concerns about proposals for a *sui generis* database protection treaty.

KEY CONCERNS FOR LIBRARIANS RELATED TO DATABASE PROTECTION PROPOSALS

To date, the EU Directive and WIPO and US congressional proposals to provide *sui generis* protection for databases share the following problems:

Proposals protect investment not creativity -- Protection would be available for any database which is the result of an investment of human, technical, financial or other resources in the creation of the database. No creativity is required.

Proposals create new legal regimes -- They fail to guarantee the balance between the rights of information owners and the rights of users which is provided for in existing legal regimes such as copyright. Many proponents of *sui generis* protection are on record as opposing exemptions for education, library or research activities.

Proposals provide exclusive right to control uses of databases -- The proposed protection in essence flips the predominant model from full and open exchange to pay per view. This approach would severely impact the budgets of all institutions, educational, research or library, that rely on access to data.

Proposals define databases too broadly -- The definition of database is applicable to both print and electronic formats and would cover most directories, anthologies, CD-ROMs and online databases, reference works, and more.

Proposals extend term of protection -- Once a "database" is updated, this would extend the protection beyond the original 15 or 25 years. Dynamic compilations in electronic form would, in effect, be granted perpetual protection.

Radical new regime not necessary -- There has been no demonstration of market failure or lack of incentive to invest in databases that would require the implementation of such radical new protections for databases.

thoughtful discussion and evaluation of proposals required

Before any action is taken by WIPO or non-EU nations, and as the EU Database Directive is implemented, careful consideration must be given to whether significant additional legal protections are necessary. If, as is the case with the EU, new database protections are deemed necessary, then exemptions must be granted to assure the full and open exchange of information for non-commercial use by the library, education and scientific communities.

This memorandum was prepared by five American library organizations - American Association of Law Libraries, American Library Association, Association of Research Libraries, Medical Library Association, and the Special Libraries Association. For further information, please visit the ARL website at <http://www.arl.org>.

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Last Modified: May 21, 1998