

Infoterm

Christian Galinski
Jürgen W. Goebel

Guide to Terminology Agreements

ELRA

-

TermNet



Infoterm

**Christian Galinski
Jürgen W. Goebel**

Guide to Terminology Agreements

ELRA

-

TermNet

Vienna
1996

Die Deutsche Bibliothek - CIP-Einheitsaufnahme

Christian Galinski

Guide to Terminology Agreements

Christian Galinski; Jürgen W. Goebel; [Translation from German by Deborah Fry]

Paris: European Language Resources Association (ELRA);

Vienna: International Terminology Network (TermNet), 1996

ISBN 3-901010-18-1

NE: Dt. Ausgabe u.d.Ü.: Galinski, Christian; Goebel, Jürgen W.;

Leitfaden für Terminologievereinbarungen.

1996: International Information Centre for Terminology (Infoterm), Vienna

[Übersetzung ins Engl. von Deborah Fry]

ISBN 3-901010-17-3

© International Information Centre for Terminology (Infoterm)

1996

All rights reserved. No part of this document may be stored in a retrieval system, reproduced or transmitted in any form or by any means, including but not limited to electronic or mechanical, for any purpose, without the express written permission of the copyright holder.

Publisher: International Network for Terminology (TermNet),
Grüngasse 9/17, 1050 Vienna, Austria

Printed by: Anton Riegelnik
Piaristengasse 19, 1080 Vienna, Austria

PREFACE

Given the central importance of the availability of reliable terminologies in education, scientific and technical writing, and general specialist communication on the one hand, and the masses of information now being made available online on the other, a comprehensive solution to copyright problems in the field of terminology is urgently needed.

This Guide to Terminology Agreements, produced by Infoterm and published jointly by the European Language Resource Association (ELRA) and TermNet, represents the first results of a number of activities concerning legal issues to be supported and/or undertaken by ELRA as part of its brief to promote the language engineering industry in Europe, and to facilitate the widespread provision of high-quality resources in particular. Originally published in German, it has now been translated into English, French and Spanish and translations into a number of other European languages are planned.

The Guide represents the culmination of a long period of work by many experts, and provides an overview of current good practice in terminology which will be of considerable benefit to practitioners in the field. In addition, since many of the problems are similar to those faced in other areas of language engineering, the Guide will also be of considerable relevance beyond the terminology profession, and will form a nucleus for further, sector-neutral work.

We at ELRA would like to thank all those involved in the production of the Guide, and in particular the authors and our co-publishers, TermNet, for their efforts.

Antonio Zampolli †
President, ELRA Board

FOREWORD

A work like this Guide, which examines copyright problems from the perspective of terminology work and resources, naturally has a long gestation period and builds on the work of many others people.

Preparatory work

In October 1986, the International Information Centre for Terminology (Infoterm) convened an International Expert Workshop on Copyright in Terminology, the published results of which were later supplemented by a (draft) “Code of good practice - Copyright in terminology”. The latter was prepared in co-operation with a number of experts on the recommendation of the Joint Inter-Agency Meeting on Computer-Assisted Translation and Terminology (JIAMCATT), the relevant co-ordination group for the international organizations belonging to the UN system.

DTT Symposium

In 1992, the Deutscher Terminologie-Tag e.V. (German Association for Terminology) organized a Symposium on Intellectual Property Rights in Terminologies, which included a number of contributions on the difficulties of protecting property rights in terminological data. This Symposium made a significant contribution to raising awareness of copyright problems, both in the field of terminology and beyond.

TKE’93 Workshop

In addition, the Symposium paved the way for another International Workshop on Copyright in Terminology organized as part of the Third International Congress on Terminology and Knowledge Engineering (TKE’93) in Cologne in August 1993. This Workshop discussed a model contract for the exchange of terminologies drafted by Jürgen Goebel in close co-operation with Infoterm was discussed. The present “Guide to Terminology Agreements” is largely based on the results of these discussions.

KnowRight’95 Congress

Since then, an International Expert Meeting on Intellectual Property Rights in Information was held in Vienna, 23-24 March 1995, as a joint event organized by UNIDO, UNESCO, Infoterm and the Austrian Computer Society (OCG). In turn, this served as preparation for the First International Congress on Intellectual Property Rights for Specialized Information, Knowledge and New Technologies (KnowRight’95), held in Vienna, 21-25 August 1995. The pre-conference workshop on “Copyright in Terminology and Lexicography” organized by Infoterm provided further input.

Acknowledgements

In addition, individual experts from a number of subject fields have contributed to this document. In particular, we would like to thank (in alphabetical order) Ms. Jennifer Draskau, Ms. Deborah Fry, Mr. Pierre Lewalle, Mr. Michael Schaar, Mr. Klaus-Dirk Schmitz, Ms. Roberta Schwarz, Mr. Richard Strehlow, Mr. Louis-Claude Tremblay, Mr. David Walker, Mr. Malcolm Williams and Ms. Sue Ellen Wright for their assistance.

Financial support

Last but not least, we gratefully acknowledge the assistance of the European Language Resources Association (ELRA) and its CEO, Dr. Khalid Choukri, in supporting the finalization and production of the English and German versions of the Guide. Versions in other languages are planned for the future.

Dr. Christian Galinski
Director of Infoterm
Gymnasiumstrasse 50
1190 Vienna, Austria

Prof. Dr. Jürgen W. Goebel
Lawyer
Goebel & Scheller
Schöne Aussicht 30
61348 Bad Homburg v.d.H.
Germany

CALL FOR COMMENTS/AMENDMENTS

This Guide to Terminology Agreements offers a fresh approach to copyright problems in terminology in several ways:

(1)

It aims to enhance awareness of the latent problem of intellectual property rights in the field of terminology, and of the indirect and somewhat unexpected links between this problem and questions of product quality and product liability.

(2)

It tries to reconcile general ethical principles and legal provisions governing the respect for intellectual property on the one hand, and the need to prevent any undue restriction of terminological activities on the other.

(3)

It provides sample provisions and suggestions for items to be included in terminology agreements, thus helping to avoid clashes of interest with respect to terminological data (a subject which so far has largely eluded the attention of legislators).

This pragmatic approach should be of considerable value to practitioners in the field. However, it should not be forgotten that copyright issues, in general, and their application in terminology, in particular, are some of the most thorny problems facing the emerging information society. We would, therefore, ask our readers to use their influence to ensure that a satisfactory, comprehensive and pragmatic solution to the – by no means trivial – problem of copyright is reached as quickly as possible. Only if this is the case, can the uncertainty which hampers the provision of reliable terminologies be removed.

Equally, the authors are fully aware that the Guide is only one step in an ongoing process that will eventually lead to a comprehensive solution. As a result, we regard the Guide as a living document and would welcome any suggestions for improvements or comments. In particular, we would like to encourage our readers to provide

- comments and suggestions for improving the Guide, and
- sample formulations from existing copyright clauses, or relevant contracts, for inclusion in future issues of the Guide.

Any such information should be sent to:

International Information Centre for Terminology (Infoterm)

Gymnasiumstrasse 50

1190 Vienna, Austria

Tel.: +43-1-4277 58026

Fax: +43-1-4277 58027

Email: infopoint@infoterm.org

<http://www.infoterm.info>

Guide to Terminology Agreements

TABLE OF CONTENTS

<i>Introduction:</i>	How to use this “Guide”	9
<i>Part 1:</i>	Aspects and Clauses of Terminology Agreements	10
<i>Part 2:</i>	Code of Good Practice	18
<i>Part 3:</i>	Glossary	21
<i>Part 4:</i>	Bibliography	23
<i>Part 5:</i>	Index	24
Annex:	Directive 96/9/EC of the European Parliament and of the Council on the Legal Protection of Databases	25

Introduction: How to use this Guide

The “Guide to Terminology Agreements” is the English translation of the German “Leitfaden für Terminologievereinbarungen” by the same authors, which was published in 1996. As such, it primarily reflects German copyright law. However, it also takes European developments into account, as well as drawing on the work of international terminology standardization activities, and on the terminology laid down in the relevant ISO standards. These supranational aspects, plus the general comparability of and uncertainty surrounding copyright problems throughout the world, makes the Guide valuable in other countries, and led to the wish to have it translated. In addition, it is hoped that subsequent versions of the Guide will be fully localised to take account of Anglo-Saxon copyright law and jurisdiction.

The Guide consists of five parts and an Annex:

Part 1: Aspects and clauses of terminology agreements

Part 1: “**Aspects and clauses of terminology agreements**” lists a large number of items and sample formulations that *may* be of relevance to many, if not most, agreements on the preparation, revision, processing, conversion, exchange, production and marketing of terminological data. Where a more simple agreement is required, irrelevant items may simply be omitted.

Sample provisions are printed on a grey background.

Part 2: Code of Good Practice

The continued rapid development of computer hardware and software, the increasing integration of information and communication technologies, and the vastly improved facilities for merging, converting and networking data are making the legal enforceability of copyright, and its technical enforcement, more and more difficult. Where legal provisions fail to offer a solution, more general principles should be invoked to provide guidance to the parties involved. This is the aim of Part 2: “**Code of Good Practice**”.

Part 3: Glossary

Part 3: “**Glossary**” defines the main concepts used in the Guide.

Part 4: Bibliography

Part 4: “**Bibliography**” offers selected bibliographic references to publications and other documents which can be consulted for further details, or which can supply background information.

Part 5: Index

Part 5: “**Index**” provides a quick list of references to the main points discussed in the Guide.

Annex: EC Directive

Shortly before going to print we were able to include **Directive 96/9/EC of the European Parliament and of the Council on the Legal Protection of Databases** (adopted on 11 March and published on 27 March 1996) as an Annex to this Guide.

PART 1

ASPECTS AND CLAUSES OF TERMINOLOGY AGREEMENTS

Table of Contents

1	<i>Parties to the contract</i>	11
2	<i>Preamble</i>	11
3	<i>Subject matter of the contract</i>	12
4	<i>Copyright and other similar rights</i>	12
5	<i>Contract details (including rights of the Supplier with regard to the subject matter of the contract)</i>	13
6	<i>Contract details (including rights of the User with regard to the subject matter of the contract)</i>	14
7	<i>Data</i>	15
8	<i>Payment</i>	15
9	<i>Prevention of improper use, protection of rights</i>	15
10	<i>Exceptions/fair use</i>	15
11	<i>Warranties and liability</i>	15
12	<i>Contractual period, notice of termination</i>	16
13	<i>Data protection, confidentiality</i>	16
14	<i>Scope of the contract</i>	16
15	<i>Application of national/international law</i>	16
16	<i>Written form</i>	17
17	<i>Choice of law, court of jurisdiction, arbitration</i>	17
18	<i>Concluding clause</i>	17

PART 1

ASPECTS AND CLAUSES OF TERMINOLOGY AGREEMENTS

1 Parties to the contract:

Agreement on the Preparation/Revision/Processing/Conversion/Exchange/ Production/Marketing/Compilation of Terminological Data

to be concluded:

between A: **Supplier** (e.g. originator - i.e. author, compiler, editor, reviser, copyright owner -, transmitter, terminology database operator, publishing house, licensor, etc.) or **Contractant**
and B: **User** (licensee for personal/international use or with a right or rights of re-use, such as publication, online provision, re-licensing...) or **Contractor**

for the purpose of the

- Preparation
- Revision
- Processing
- Conversion
- Exchange
- Production
- Marketing
- Compilation

of terminological data (and associated information).

2 Preamble

2.1 *General purpose of the contract and contractual relationship between A and B*

This agreement serves the general purpose of furthering the preparation of high-quality terminology by promoting co-operation between different parties and avoiding duplication of effort, and of making these terminological data and collections of data available to users in the best possible form. It defines the contractual relationship between A and B for the purpose of (*add description of the precise purpose here*) on the basis of existing supranational and national law.

2.2 *“Code of Good Practice” and arbitration in case of conflict*

Any interpretation of or additions to the following provisions which may become necessary in order to resolve cases of doubt shall be made on the basis of the Infoterm “Code of Good Practice”, which is an integral part of this agreement. National and international legislation shall only be invoked to solve such conflicts in the second instance. In addition, an arbitration procedure chaired by the International Information Centre for Terminology (Infoterm) may be invoked.

3 Subject matter of the contract

3.1 Detailed description of the activity or activities forming the subject of the contract

- Preparation (compilation, revision, etc.) of a terminology file or terminology database
- Entry of terminological data into an existing terminology file/database
- Processing of terminological data (for the purpose of.....)
- Conversion of terminological data (for the purpose of.....)
- Exchange of terminological data
- Access to (retrieval from, etc.) a terminology database (for the purpose of.....)
- Release of terminological data for further (commercial/non-commercial) use, e.g.
 - online retrieval
 - publication
 - transmission to third parties
 - information services

3.2 Detailed scope of the activity or activities forming the subject of the contract

- Purpose (in general terms)
- Subject fields/subfields
- Quality and quantity of the data
- Data alone or data plus software
- Language(s) in which the data are available
- Restrictions (regarding data structure, etc.)

Note: If necessary, the technical and organizational details pertaining to the subject matter of the contract can be recorded in an annex to the agreement. This avoids complicating the contract text unduly and allows flexible definitions of the subject matter (e.g. in the case of ongoing changes in the terminology database).

4 Copyright and other similar rights

4.1 Disclaimer

(Supplier) gives no warranty and assumes no liability for the correctness and/or completeness of the data forming the subject matter of the contract.

4.2 Exploitation rights

- Rights granted under the contract
- Contractual rights to take precedence over legal provisions
- Types of data (data categories, data elements, data fields)
- Types of use
- Frequency of use (by ... people at ... locations)
- (Type of) Reproduction
- Permissible modifications (e.g. omissions, additions, merging of specific data with/without obligation to notify other party)
- Transmission to third parties
- Data storage media

- Non-disclosure agreement
- Other uses
- (Type of) Dissemination
- Special provisions as stipulated in an annex to the contract (including concrete specification of tasks)

4.3 Declaration of ownership and other rights of disposition

Declaration of the Supplier that s/he is the owner of the copyright right or other rights to the data offered and that s/he can conclude an agreement of this kind (power of attorney/representation).

Note: In all cases, it should be clearly stated whether the contractor is being granted an exclusive or a non-exclusive right, whether this right is for a limited or unlimited period, and whether it applies globally or only to a particular territory. Where the copyrighted work is the result of the co-operation of a number of project partners with equal rights, the allocation and distribution of these rights should be explicitly noted in the contract; where this is not the case, joint copyright in the terminology/data collection exists.

5 Contract details (including rights of the Supplier with regard to the subject matter of the contract)

Subject matter as specified in 3.1 - 3.2 (for the purpose of/for re-use in)

5.1 Type of Data

- Linguistic data
- Non-linguistic data
- Associated information: - source
-

5.2 Type of Use (1) Purpose

- Main purpose
- Other purposes, if applicable
 - education and training
 - translation:
 - * human~
 - * computer-assisted~
 - * machine~
 - scientific/technical writing
 - technical documentation
 - scientific journalism
 - merging with other (types of) data to create:
 - * new tools
 - * new services
 - dissemination via radio and/or television broadcasts/data storage media/telecommunications, etc.

(2) (Mode of) Dissemination

- Sale
- Distribution

(3) Other types of use (specify)

- (Type of) Transfer
 - in full
 - in part
- Special provisions for specific types of data
 - registered names
 - other copyright holders (duty to inform)
 - non-linguistic information
 - * graphics
 - * illustrations
 - * sound
 - * film
- Full bibliographic references
- Different copyright rules for different data, etc.
- Exclusion of improper use
- ...

(4) Conditions (for each type of data, purpose,)

- Data storage medium } may be included
- Interchange procedures } in a technical annex,
- Interim procedures } if appropriate

Note: We recommend listing complex technical details in a separate technical annex (completed with notes to users, if appropriate).

(5) Insofar as transmission to third parties is permissible

- For a consideration
- Free of charge
- By exchange for other data

6 Contract details (including rights of the User with regard to the subject matter of the contract)

Subject matter as specified in 3.1 - 3.2 (for the purpose of/for re-use in)

- Exceptions
- Exclusion of improper use
- Accountability/product liability (of Supplier)
- Utilization only for own use/for specified purpose
- No transmission to third parties
- Technical precautions against improper use

7 **Data**

- Intended products and services
 - online database
 - CD-ROM
 - diskette
 - multimedia
- Data integrity (critical for multimedia)
- Exceptions to data integrity for typing errors and obvious mistakes

8 **Payment**

- Flat fee }
- Time-based fee } for third parties
- Usage-based fee }
- Free of charge in exchange-based relationships
- License fee payable to participatory interests
- Royalties payable to third parties
- Specific payment models
- Terms of payment
- Consequences of default
- Invoicing currency/exchange rate

9 **Prevention of improper use, protection of rights**

- Technical and organizational measures to prevent improper use
- No transmission to third parties above and beyond contractual provisions
- Infringements lead to:
 - disbarment from use
 - liability to claims for damages
 - termination of the agreement
 - contractual penalty

10 **Exceptions**

- *Fair use*
- Limited quotations as permitted by copyright law
- Research
- Educational purposes
- Presentations

11 **Warranties and liability**

- Rights under warranties (depending on product)
- Originators are liable for contents
- Liability limited to criminal intent and negligence
- Indemnity against third-party claims

- Subject to legal admissibility of limitation of liability
- No liability for processing errors on the part of the purchaser
- No liability for failure to meet intended purpose of the purchaser

12 Contractual period, notice of termination

- Beginning of contract
- Duration
- Renewal/prolongation
- Regular termination subject to agreed period of notice
- Immediate termination (without notice) and grounds for this (e.g. severe infringements of contract)
- Duty to return/purge data at the end of the contract (notification of purge)

13 Data protection, confidentiality

Personal data may be stored and processed to the extent required within the framework of the contractual relationship. Personal data may not be made available to third parties/may only be made available with the prior written consent of the party concerned. Any statutory obligation on the part of the partners to make the data available is not affected by this provision.

The parties to the contract agree to treat all information about each other as confidential.

If necessary, further stipulations covering the confidential use of corporate data, etc. may be added

14 Scope of the contract

The present agreement forms the whole and exclusive basis for the contractual relationship between the parties. The User's general terms and conditions are not part of the subject matter of the contract. No additional oral agreements subsist.

15 Application of national/international law

(1)

The User undertakes to observe all relevant national and international regulations when using the data/services.

(2)

Where the User culpably infringes against Paragraph (1), and where damage arises to the Supplier as a result of the User's infringement, the User shall make good the damages to the extent that such damage does not merely represent an indirect or consequential loss.

(3)

Where a third party acquires a claim or claims against the Supplier as the result of the User's infringement against Paragraph (1), the User shall indemnify the Supplier against all claims brought by the third party.

16 Written form

Alterations and additions to the contract and notice of its termination must be in writing.

If desired, notice to terminate the agreement by means of registered letter.

17 Choice of law, court of jurisdiction, arbitration

- Statement of the law to be used in cases of dispute and to supplement the provisions of the contract
- Insofar as permissible: stipulation of a court of jurisdiction
 - in the case of international organizations, the International Court of Justice (ICJ)
 - in the case of European institutions, the Court of Justice of the European Communities
- Alternatively: implementation of an arbitration procedure (in which an appropriate body acts as the arbitrator)
- Other provisions

(1)

The contracting parties undertake that, in the case of all differences of opinion in connection with this contract which they cannot resolve themselves, they will call on Infoterm's arbitration services to settle these differences in whole or in part, provisionally or finally.

(2)

The parties proceed on the assumption that the arbitration procedure is fair and balanced, that the arbitrators are unbiased, that the arbitration procedure does not represent a legal finding of fact and that the parties' right of recourse to the public courts is not affected. Information about arbitration procedures can be obtained at any time from: Infoterm, Gymnasiumstrasse 50, 1190 Vienna, Austria.

(3)

The arbitration procedure suspends the periods of limitation and preclusion for all claims arising from the matter under dispute during the period laid down in the arbitration rules.

18 Concluding clause

Should individual provisions of this contract be or become null and void or inoperable, this shall not affect the validity of the rest of this contract in any way. The contracting parties undertake to fill any lacunae that may arise in such a case with a provision which reflects as closely as possible the original economic intent and purpose of the provision in question, and of the contract as a whole.

PART 2

CODE OF GOOD PRACTICE FOR COPYRIGHT IN TERMINOLOGY

General observations

The importance of terminologies

Terminological data are important in a number of basic scientific and technical areas, such as

- Specialized communication
- Technical writing
- Subject field-specific education and training
- Recording, indexing and retrieval of specialist information, etc.

The preparation of reliable terminological data – a task worth promoting

As a rule, high-quality, reliable terminological data are prepared by teams of experts (e. g. working groups or subcommittees attached to learned societies, scientific and technical associations, research institutions or in terminology standardization bodies). Such preparation of terminological data in the areas of science and technology aims at unifying terminological usage in order to achieve clarity and consistency. In the social sciences and humanities, on the other hand, terminology work is more likely to aim at making conceptual differences transparent.

Co-operation in terminology work

Terminology work - and especially terminology standardization - is very labour-intensive and time-consuming. Co-operation between institutions and organizations active in the production of terminological data should therefore be encouraged as much as possible. Exchanging terminological data helps prevent duplication of effort and create consistent terminologies across national, linguistic and subject field boundaries.

Co-operation in terminology preparation, and the exchange of terminological data in particular, may entail:

- Taking over a greater or smaller number of terminological entries or subsets of data from one or more terminological entries;
- Exchanging terminological data for use as raw material for systematic terminology work;
- Merging terminological data from different sources to prepare new entries/ records, etc.

These activities should take place within the context of the requirements of copyright laws and other laws concerning intellectual property. They should aim both to avoid unduly impeding the exchange of ideas and to give due acknowledgement of the intellectual property of the originator of the data.

Applicability of intellectual property rights to terminology

While concepts, as “units of knowledge”, should be regarded as the intellectual property of all mankind, their representations as terms and definitions (or other kinds of concept description), as

graphical symbols, or as other kinds of non-linguistic representation must be considered to be the intellectual property of the originator (i.e. a single expert, group of experts or institution/organization), if this information has been conceived or prepared by the respective originator in the form of a terminological entry, a specific sub-section of an entry, or a collection of terminological data.

Call for the provision of terminologies

All institutions/organizations which prepare terminologies or which own terminological data should regard these as an important contribution to the intellectual property of mankind and should make them available to outside users on terms and conditions which reflect the nature of the terminologies in each case.

Code of Good Practice

Where no bilateral agreements have been concluded to the contrary, the following general provisions shall apply as a code of good practice when importing, entering, or exchanging terminological data:

1 Originators' intellectual property

- 1.1 Reference to the origin of terminological data shall be explicitly made whenever (all or subsets of) the data are reproduced (output) or passed on to third parties. This applies equally to individual items and to subsets of data from terminological entries or records.
- 1.2 Where the origin of large volumes of data is to be documented, a single reference to it may be all that is required when the data are reproduced or transferred. In this case, however, the provider must ensure that the recipient of the data agrees to give due acknowledgement to the originator of the data in all cases.
- 1.3 Where terminological data have been obtained from an originator who also markets the data him/herself, the originator's agreement shall be obtained where the data exchanged or taken over are made available to a third party in the form of complete entries or as parts of entries.
- 1.4 Data under copyright must not be passed on without the agreement of the originator. This does not refer to individual entries or a limited set of individual entries which are to be used for research or teaching purposes.
- 1.5 Agreements on licenses and royalties must be observed.
- 1.6 Institutions and organizations in which large numbers of users have access to terminological data from an external originator are responsible for taking all necessary measures against uncontrolled downloading/copying which violates any rights claimed by the originator.

2 Data integrity

- 2.1 Measures to protect data integrity must be strictly observed and must not be deliberately violated (e.g. by introducing minor changes or by taking certain data out of context).

However, the correction of typographic errors and obvious mistakes is permissible where justified.

- 2.2 In the case of highly sensitive terminological data (e.g. where safety issues are involved) the strict observance of data integrity with respect both to individual items of information and to data structures shall be obligatory.
- 2.3 Data marked as private or confidential must not be passed on without the prior consent of their owners in each case.

3 *Standardized terminology*

- 3.1 The exchange of terminological data among standards bodies and between standards bodies and relevant specialist institutions and organizations, in order to increase the volume and to improve the quality of standardized terminology, is not only permissible but should be encouraged.
- 3.2 In the case of terminological records, where no other agreement to the contrary has been made, the originating standards body shall be indicated in every individual item or set of terminological information taken over.
- 3.3 Standards bodies should promote active co-operation in terminological data by assigning authoritative foreign language equivalents (and - if possible - also definitions as well) to the entries received from sister organizations. If possible, this service should be provided free of charge (or on a reciprocal basis).
- 3.4 Standardized terminological data should be exchanged among standards bodies and between standards bodies and other institutions involved in terminology harmonization as much as possible.
- 3.5 Where one standards body markets its own terminology, and another standards body would like to market these or parts of it (whether as whole or partial entries or integrated into its own entries), then the latter standards body must negotiate an appropriate license agreement with the former.

4 *Limited quotations of terminological data for scientific, research, teaching and training purposes*

As a rule, these provisions

- need not be applied absolutely strictly in cases involving very limited extracts of individual terminological data,
- and
- do not apply to the use of individual items of terminological data or entries in scientific publications (limited quotation) and for teaching and training purposes, provided that no data integrity rules are violated and that correct citation is ensured wherever possible and applicable.

PART 3

GLOSSARY

Associated information:

Information pertaining to terminological data, e.g. creator/reviser, experts (e.g. standards bodies), (bibliographic and other source) references, date of preparation/revision.

Copyright holder:

Strictly speaking (i.e. in contrast to common usage), the holder of a copyright according to Anglo-American law.

Database:

A collection of data organized according to a conceptual structure describing the characteristics of these data and the relationships among their corresponding entities, supporting one or more application areas.

Data usage:

The use of terminological data (and additional information) for the User's own (or internal) and/or external commercial or non-commercial purposes, in the form of (selective or comprehensive):

- publication
- downloading
- retrieval
- printing out
- conversion
- electronic dissemination (e.g. via mailbox)
- dissemination

Originator:

The creator of an original intellectual work

Where the author is an expert interested in the free dissemination of his or her work, s/he is generally interested in being cited, although this is not always the case.

Where a number of people are involved in the production of a work, these can be joint originators, either as a group, or as an institution.

Organizations which are the originators of data are generally interested in complete control of copyright for both commercial and non-commercial reasons.

Quality of data:

The volume of data expressed via the types of data, data elements and data relationships selected.

Quantity of data:

The volume of data as expressed via the number of entries, from the entire database right down to small subsets of the data (including the use of specific software or parts of software programmes).

Subject field:

A section of human knowledge, the order lines of which are defined from a purpose-related point of view.

Supplier:

Supplier of terminological data and additional information to the User or re-user/supplier; the Supplier may be the author/originator or the copyright owner.

Terminology database:

A database containing terminological data.

PART 4

BIBLIOGRAPHY

Brunnstein, K; Sint, P.P. (ed.). **Intellectual Property Rights and New Technologies.** Proceedings of the KnowRight'95 Conference. Vienna/Munich: Oldenbourg, 1995; ISBN 3-486-23483-8, ISBN 3-7029-0408-5, ISBN 3-85403-082-7 (Publication series of the Austrian Computer Society 82)

UNIDO/UNESCO/Infoterm/OCG. **Report on the International Expert Meeting on Intellectual Property Rights in Information.** Vienna: United Nations Industrial Development Organization (UNIDO), 1995

Commission of the European Communities. Green Paper. **Copyright and related rights in the information society.** Luxembourg: CEC, 1995 [Brussels, 19.07.1995 COM(95) 382 final]

Council Directive 91/250/EEC of 14 May 1991 on the **legal protection of computer programs**

Council Directive 92/100/EEC of 19 November 1992 on **rental right and lending right and on certain rights related to copyright in the field of intellectual property**

Council Directive 93/98/EEC of 27 September 1993 on the **co-ordination of certain rules harmonising the term of protection of copyright and certain related rights**

Directive 96/9/EC of the European Parliament and of the Council of 11. March 1996 on the **legal protection of databases**

Lehman, B.A. (Chair). **Intellectual Property and the National Information Infrastructure.** The Report of the Working Group on Intellectual Property Rights. Washington: United States. Information Infrastructure Task Force. Working Group on Intellectual Property Rights, 1995

Arntz, R.; Mayer, F.; Reisen, U. (ed.). **Geistiges Eigentum an Terminologien** [terminology as intellectual property]. Köln, 11.-12. September 1992 [Proceedings of the Symposium on Intellectual Property for Terminologies. Cologne, 11/12 September 1992]. Cologne: Deutscher Terminologie-Tag e.V. (German Terminology Association), 1993

European Commission: Legal Advisory Board Meeting. **Legal aspects of multimedia and GIS.** Lisbon 27/28 October 1994.

British Standards Institution. **A code of practice for information security management.** U.K.: BSI, 1993; ISBN 0-580-22536-4

PART 5

INDEX

Arbitration	7, 16, 17
Claim	14, 16, 17, 22
Conflict	7
Conversion	2, 6, 8, 24
Copyright	iii, iv, vi, vii, viii, 2, 6, 9, 10, 12, 14, 18, 19, 21, 24, 25
Data integrity	13, 22, 23
Data storage medium	9, 11, 12, 1, 22, 24, 25
Data structure	8, 22
Disclaimer	9
ELRA	iii, v
Entry	8, 19
Exchange	iv, 2, 6, 8, 12, 13, 19, 21, 22
Improper use	12, 13, 14
Infoterm	iii, iv, v, vii, 7, 17, 26
Interchange	12
Language	iii, v, 8, 23
Law	2, 7, 14, 16, 19, 24
Liability	vi, 9, 13, 14
Licences	13, 21, 23
Limited quotations	14, 23
Originator	6, 14, 19, 2
Payment	13
Quality	iii, vi, 7, 8., 18, 22, 25
Re-use	6, 11, 13, 25
Software	2, 8, 25
Subject field	v, 8, 18, 19, 25
Supplier	8, 9, 11, 13, 16, 25
Terminology database	6, 8, 25
Translation	iii, iv, 2, 11
Types of data	9, 12, 25
User	6, 7, 12, 13, 15, 16, 20, 22, 24, 25

ANNEX

**DIRECTIVE 96/9/EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL ON
THE LEGAL PROTECTION OF DATABASES**

31996L0009

Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases

Official Journal L 077 , 27/03/1996 P. 0020 - 0028

DIRECTIVE 96/9/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 March 1996 on the legal protection of databases

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189b of the Treaty (3),

(1) Whereas databases are at present not sufficiently protected in all Member States by existing legislation; whereas such protection, where it exists, has different attributes;

(2) Whereas such differences in the legal protection of databases offered by the legislation of the Member States have direct negative effects on the functioning of the internal market as regards databases and in particular on the freedom of natural and legal persons to provide on-line database goods and services on the basis of harmonized legal arrangements throughout the Community; whereas such differences could well become more pronounced as Member States introduce new legislation in this field, which is now taking on an increasingly international dimension;

(3) Whereas existing differences distorting the functioning of the internal market need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the internal market or the development of an information market within the Community need not be removed or prevented from arising;

(4) Whereas copyright protection for databases exists in varying forms in the Member States according to legislation or case-law, and whereas, if differences in legislation in the scope and conditions of protection remain between the Member States, such unharmonized intellectual property rights can have the effect of preventing the free movement of goods or services within the Community;

(5) Whereas copyright remains an appropriate form of exclusive right for authors who have created databases;

(6) Whereas, nevertheless, in the absence of a harmonized system of unfair-competition legislation or of case-law, other measures are required in addition to prevent the unauthorized extraction and/or re-utilization of the contents of a database;

(7) Whereas the making of databases requires the investment of considerable human, technical and financial resources while such databases can be copied or accessed at a fraction of the cost needed to design them independently;

- (8) Whereas the unauthorized extraction and/or re-utilization of the contents of a database constitute acts which can have serious economic and technical consequences;
- (9) Whereas databases are a vital tool in the development of an information market within the Community; whereas this tool will also be of use in many other fields;
- (10) Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry calls for investment in all the Member States in advanced information processing systems;
- (11) Whereas there is at present a very great imbalance in the level of investment in the database sector both as between the Member States and between the Community and the world's largest database-producing third countries;
- (12) Whereas such an investment in modern information storage and processing systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of makers of databases;
- (13) Whereas this Directive protects collections, sometimes called 'compilations', of works, data or other materials which are arranged, stored and accessed by means which include electronic, electromagnetic or electro-optical processes or analogous processes;
- (14) Whereas protection under this Directive should be extended to cover non-electronic databases;
- (15) Whereas the criteria used to determine whether a database should be protected by copyright should be defined to the fact that the selection or the arrangement of the contents of the database is the author's own intellectual creation; whereas such protection should cover the structure of the database;
- (16) Whereas no criterion other than originality in the sense of the author's intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular no aesthetic or qualitative criteria should be applied;
- (17) Whereas the term 'database' should be understood to include literary, artistic, musical or other collections of works or collections of other material such as texts, sound, images, numbers, facts, and data; whereas it should cover collections of independent works, data or other materials which are systematically or methodically arranged and can be individually accessed; whereas this means that a recording or an audiovisual, cinematographic, literary or musical work as such does not fall within the scope of this Directive;
- (18) Whereas this Directive is without prejudice to the freedom of authors to decide whether, or in what manner, they will allow their works to be included in a database, in particular whether or not the authorization given is exclusive; whereas the protection of databases by the sui generis right is without prejudice to existing rights over their contents, and whereas in particular where an author or the holder of a related right permits some of his works or subject matter to be included in a database pursuant to a non-exclusive agreement, a third party may make use of those works or subject matter subject to the required consent of the author or of the holder of the related right without the sui generis right of the maker of the database

being invoked to prevent him doing so, on condition that those works or subject matter are neither extracted from the database nor re-utilized on the basis thereof;

(19) Whereas, as a rule, the compilation of several recordings of musical performances on a CD does not come within the scope of this Directive, both because, as a compilation, it does not meet the conditions for copyright protection and because it does not represent a substantial enough investment to be eligible under the sui generis right;

(20) Whereas protection under this Directive may also apply to the materials necessary for the operation or consultation of certain databases such as thesaurus and indexation systems;

(21) Whereas the protection provided for in this Directive relates to databases in which works, data or other materials have been arranged systematically or methodically; whereas it is not necessary for those materials to have been physically stored in an organized manner;

(22) Whereas electronic databases within the meaning of this Directive may also include devices such as CD-ROM and CD-i;

(23) Whereas the term 'database` should not be taken to extend to computer programs used in the making or operation of a database, which are protected by Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (4);

(24) Whereas the rental and lending of databases in the field of copyright and related rights are governed exclusively by Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (5);

(25) Whereas the term of copyright is already governed by Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (6);

(26) Whereas works protected by copyright and subject matter protected by related rights, which are incorporated into a database, remain nevertheless protected by the respective exclusive rights and may not be incorporated into, or extracted from, the database without the permission of the rightholder or his successors in title;

(27) Whereas copyright in such works and related rights in subject matter thus incorporated into a database are in no way affected by the existence of a separate right in the selection or arrangement of these works and subject matter in a database;

(28) Whereas the moral rights of the natural person who created the database belong to the author and should be exercised according to the legislation of the Member States and the provisions of the Berne Convention for the Protection of Literary and Artistic Works; whereas such moral rights remain outside the scope of this Directive;

(29) Whereas the arrangements applicable to databases created by employees are left to the discretion of the Member States; whereas, therefore nothing in this Directive prevents Member States from stipulating in their legislation that where a database is created by an employee in the execution of his duties or following the instructions given by his employer, the employer exclusively shall be entitled to

exercise all economic rights in the database so created, unless otherwise provided by contract;

(30) Whereas the author's exclusive rights should include the right to determine the way in which his work is exploited and by whom, and in particular to control the distribution of his work to unauthorized persons;

(31) Whereas the copyright protection of databases includes making databases available by means other than the distribution of copies;

(32) Whereas Member States are required to ensure that their national provisions are at least materially equivalent in the case of such acts subject to restrictions as are provided for by this Directive;

(33) Whereas the question of exhaustion of the right of distribution does not arise in the case of on-line databases, which come within the field of provision of services; whereas this also applies with regard to a material copy of such a database made by the user of such a service with the consent of the rightholder; whereas, unlike CD-ROM or CD-i, where the intellectual property is incorporated in a material medium, namely an item of goods, every on-line service is in fact an act which will have to be subject to authorization where the copyright so provides;

(34) Whereas, nevertheless, once the rightholder has chosen to make available a copy of the database to a user, whether by an on-line service or by other means of distribution, that lawful user must be able to access and use the database for the purposes and in the way set out in the agreement with the rightholder, even if such access and use necessitate performance of otherwise restricted acts;

(35) Whereas a list should be drawn up of exceptions to restricted acts, taking into account the fact that copyright as covered by this Directive applies only to the selection or arrangements of the contents of a database; whereas Member States should be given the option of providing for such exceptions in certain cases; whereas, however, this option should be exercised in accordance with the Berne Convention and to the extent that the exceptions relate to the structure of the database; whereas a distinction should be drawn between exceptions for private use and exceptions for reproduction for private purposes, which concerns provisions under national legislation of some Member States on levies on blank media or recording equipment;

(36) Whereas the term 'scientific research' within the meaning of this Directive covers both the natural sciences and the human sciences;

(37) Whereas Article 10 (1) of the Berne Convention is not affected by this Directive;

(38) Whereas the increasing use of digital recording technology exposes the database maker to the risk that the contents of his database may be copied and rearranged electronically, without his authorization, to produce a database of identical content which, however, does not infringe any copyright in the arrangement of his database;

(39) Whereas, in addition to aiming to protect the copyright in the original selection or arrangement of the contents of a database, this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment made in obtaining and collection the contents by protecting the whole or substantial parts of a database against certain acts by a user or competitor;

(40) Whereas the object of this sui generis right is to ensure protection of any investment in obtaining, verifying or presenting the contents of a database for the limited duration of the right; whereas such investment may consist in the deployment of financial resources and/or the expending of time, effort and energy;

(41) Whereas the objective of the sui generis right is to give the maker of a database the option of preventing the unauthorized extraction and/or re-utilization of all or a substantial part of the contents of that database; whereas the maker of a database is the person who takes the initiative and the risk of investing; whereas this excludes subcontractors in particular from the definition of maker;

(42) Whereas the special right to prevent unauthorized extraction and/or re-utilization relates to acts by the user which go beyond his legitimate rights and thereby harm the investment; whereas the right to prohibit extraction and/or re-utilization of all or a substantial part of the contents relates not only to the manufacture of a parasitical competing product but also to any user who, through his acts, causes significant detriment, evaluated qualitatively or quantitatively, to the investment;

(43) Whereas, in the case of on-line transmission, the right to prohibit re-utilization is not exhausted either as regards the database or as regards a material copy of the database or of part thereof made by the addressee of the transmission with the consent of the rightholder;

(44) Whereas, when on-screen display of the contents of a database necessitates the permanent or temporary transfer of all or a substantial part of such contents to another medium, that act should be subject to authorization by the rightholder;

(45) Whereas the right to prevent unauthorized extraction and/or re-utilization does not in any way constitute an extension of copyright protection to mere facts or data;

(46) Whereas the existence of a right to prevent the unauthorized extraction and/or re-utilization of the whole or a substantial part of works, data or materials from a database should not give rise to the creation of a new right in the works, data or materials themselves;

(47) Whereas, in the interests of competition between suppliers of information products and services, protection by the sui generis right must not be afforded in such a way as to facilitate abuses of a dominant position, in particular as regards the creation and distribution of new products and services which have an intellectual, documentary, technical, economic or commercial added value; whereas, therefore, the provisions of this Directive are without prejudice to the application of Community or national competition rules;

(48) Whereas the objective of this Directive, which is to afford an appropriate and uniform level of protection of databases as a means to secure the remuneration of the maker of the database, is different from the aim of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (7), which is to guarantee free circulation of personal data on the basis of harmonized rules designed to protect fundamental rights, notably the right to privacy which is recognized in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; whereas the provisions of this Directive are without prejudice to data protection legislation;

(49) Whereas, notwithstanding the right to prevent extraction and/or re-utilization of all or a substantial part of a database, it should be laid down that the maker of a database or rightholder may not prevent a lawful user of the database from extracting and re-utilizing insubstantial parts; whereas, however, that user may not unreasonably prejudice either the legitimate interests of the holder of the sui generis right or the holder of copyright or a related right in respect of the works or subject matter contained in the database;

(50) Whereas the Member States should be given the option of providing for exceptions to the right to prevent the unauthorized extraction and/or re-utilization of a substantial part of the contents of a database in the case of extraction for private purposes, for the purposes of illustration for teaching or scientific research, or where extraction and/or re-utilization are/is carried out in the interests of public security or for the purposes of an administrative or judicial procedure; whereas such operations must not prejudice the exclusive rights of the maker to exploit the database and their purpose must not be commercial;

(51) Whereas the Member States, where they avail themselves of the option to permit a lawful user of a database to extract a substantial part of the contents for the purposes of illustration for teaching or scientific research, may limit that permission to certain categories of teaching or scientific research institution;

(52) Whereas those Member States which have specific rules providing for a right comparable to the sui generis right provided for in this Directive should be permitted to retain, as far as the new right is concerned, the exceptions traditionally specified by such rules;

(53) Whereas the burden of proof regarding the date of completion of the making of a database lies with the maker of the database;

(54) Whereas the burden of proof that the criteria exist for concluding that a substantial modification of the contents of a database is to be regarded as a substantial new investment lies with the maker of the database resulting from such investment;

(55) Whereas a substantial new investment involving a new term of protection may include a substantial verification of the contents of the database;

(56) Whereas the right to prevent unauthorized extraction and/or re-utilization in respect of a database should apply to databases whose makers are nationals or habitual residents of third countries or to those produced by legal persons not established in a Member State, within the meaning of the Treaty, only if such third countries offer comparable protection to databases produced by nationals of a Member State or persons who have their habitual residence in the territory of the Community;

(57) Whereas, in addition to remedies provided under the legislation of the Member States for infringements of copyright or other rights, Member States should provide for appropriate remedies against unauthorized extraction and/or re-utilization of the contents of a database;

(58) Whereas, in addition to the protection given under this Directive to the structure of the database by copyright, and to its contents against unauthorized extraction and/or re-utilization under the sui generis right, other legal provisions in

the Member States relevant to the supply of database goods and services continue to apply;

(59) Whereas this Directive is without prejudice to the application to databases composed of audiovisual works of any rules recognized by a Member State's legislation concerning the broadcasting of audiovisual programmes;

(60) Whereas some Member States currently protect under copyright arrangements databases which do not meet the criteria for eligibility for copyright protection laid down in this Directive; whereas, even if the databases concerned are eligible for protection under the right laid down in this Directive to prevent unauthorized extraction and/or re-utilization of their contents, the term of protection under that right is considerably shorter than that which they enjoy under the national arrangements currently in force; whereas harmonization of the criteria for determining whether a database is to be protected by copyright may not have the effect of reducing the term of protection currently enjoyed by the rightholders concerned; whereas a derogation should be laid down to that effect; whereas the effects of such derogation must be confined to the territories of the Member States concerned,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE

Article 1

Scope

1. This Directive concerns the legal protection of databases in any form.
2. For the purposes of this Directive, 'database' shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.
3. Protection under this Directive shall not apply to computer programs used in the making or operation of databases accessible by electronic means.

Article 2

Limitations on the scope

This Directive shall apply without prejudice to Community provisions relating to:

- (a) the legal protection of computer programs;
- (b) rental right, lending right and certain rights related to copyright in the field of intellectual property;
- (c) the term of protection of copyright and certain related rights.

CHAPTER II

COPYRIGHT

Article 3

Object of protection

1. In accordance with this Directive, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.

2. The copyright protection of databases provided for by this Directive shall not extend to their contents and shall be without prejudice to any rights subsisting in those contents themselves.

Article 4

Database authorship

1. The author of a database shall be the natural person or group of natural persons who created the base or, where the legislation of the Member States so permits, the legal person designated as the rightholder by that legislation.
2. Where collective works are recognized by the legislation of a Member State, the economic rights shall be owned by the person holding the copyright.
3. In respect of a database created by a group of natural persons jointly, the exclusive rights shall be owned jointly.

Article 5

Restricted acts

In respect of the expression of the database which is protectable by copyright, the author of a database shall have the exclusive right to carry out or to authorize:

- (a) temporary or permanent reproduction by any means and in any form, in whole or in part;
- (b) translation, adaptation, arrangement and any other alteration;
- (c) any form of distribution to the public of the database or of copies thereof. The first sale in the Community of a copy of the database by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;
- (d) any communication, display or performance to the public;
- (e) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).

Article 6

Exceptions to restricted acts

1. The performance by the lawful user of a database or of a copy thereof of any of the acts listed in Article 5 which is necessary for the purposes of access to the contents of the databases and normal use of the contents by the lawful user shall not require the authorization of the author of the database. Where the lawful user is authorized to use only part of the database, this provision shall apply only to that part.
2. Member States shall have the option of providing for limitations on the rights set out in Article 5 in the following cases:
 - (a) in the case of reproduction for private purposes of a non-electronic database;
 - (b) where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
 - (c) where there is use for the purposes of public security or for the purposes of an administrative or judicial procedure;
 - (d) where other exceptions to copyright which are traditionally authorized under national law are involved, without prejudice to points (a), (b) and (c).

3. In accordance with the Berne Convention for the protection of Literary and Artistic Works, this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the rightholder's legitimate interests or conflicts with normal exploitation of the database.

CHAPTER III

SUI GENERIS RIGHT

Article 7

Object of protection

1. Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents 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.

2. For the purposes of this Chapter:

(a) 'extraction' shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

(b) 're-utilization' shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;

Public lending is not an act of extraction or re-utilization.

3. The right referred to in paragraph 1 may be transferred, assigned or granted under contractual licence.

4. The right provided for in paragraph 1 shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of eligibility of the contents of that database for protection by copyright or by other rights. Protection of databases under the right provided for in paragraph 1 shall be without prejudice to rights existing in respect of their contents.

5. The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.

Article 8

Rights and obligations of lawful users

1. The maker of a database which is made available to the public in whatever manner may not prevent a lawful user of the database from extracting and/or re-utilizing insubstantial parts of its contents, evaluated qualitatively and/or quantitatively, for any purposes whatsoever. Where the lawful user is authorized to extract and/or re-utilize only part of the database, this paragraph shall apply only to that part.

2. A lawful user of a database which is made available to the public in whatever manner may not perform acts which conflict with normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database.

3. A lawful user of a database which is made available to the public in any manner may not cause prejudice to the holder of a copyright or related right in respect of the works or subject matter contained in the database.

Article 9

Exceptions to the sui generis right

Member States may stipulate that lawful users of a database which is made available to the public in whatever manner may, without the authorization of its maker, 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, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;

(c) in the case of extraction and/or re-utilization for the purposes of public security or an administrative or judicial procedure.

Article 10

Term of protection

1. The right provided for in Article 7 shall run from the date of completion of the making of the database. It shall expire fifteen years from the first of January of the year following the date of completion.

2. In the case of a database which is made available to the public in whatever manner before expiry of the period provided for in paragraph 1, the term of protection by that right shall expire fifteen years from the first of January of the year following the date when the database was first made available to the public.

3. Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.

Article 11

Beneficiaries of protection under the sui generis right

1. The right provided for in Article 7 shall apply to database whose makers or rightholders are nationals of a Member State or who have their habitual residence in the territory of the Community.

2. Paragraph 1 shall also apply to companies and firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community; however, where such a company or firm has only its registered office in the territory of the Community, its operations must be genuinely linked on an ongoing basis with the economy of a Member State.

3. Agreements extending the right provided for in Article 7 to databases made in third countries and falling outside the provisions of paragraphs 1 and 2 shall be concluded by the Council acting on a proposal from the Commission. The term of

any protection extended to databases by virtue of that procedure shall not exceed that available pursuant to Article 10.

CHAPTER IV

COMMON PROVISIONS

Article 12

Remedies

Member States shall provide appropriate remedies in respect of infringements of the rights provided for in this Directive.

Article 13

Continued application of other legal provisions

This Directive shall be without prejudice to provisions concerning in particular copyright, rights related to copyright or any other rights or obligations subsisting in the data, works or other materials incorporated into a database, patent rights, trade marks, design rights, the protection of national treasures, laws on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, and the law of contract.

Article 14

Application over time

1. Protection pursuant to this Directive as regards copyright shall also be available in respect of databases created prior to the date referred to in Article 16 (1) which on that date fulfil the requirements laid down in this Directive as regards copyright protection of databases.
2. Notwithstanding paragraph 1, where a database protected under copyright arrangements in a Member State on the date of publication of this Directive does not fulfil the eligibility criteria for copyright protection laid down in Article 3 (1), this Directive shall not result in any curtailing in that Member State of the remaining term of protection afforded under those arrangements.
3. Protection pursuant to the provisions of this Directive as regards the right provided for in Article 7 shall also be available in respect of databases the making of which was completed not more than fifteen years prior to the date referred to in Article 16 (1) and which on that date fulfil the requirements laid down in Article 7.
4. The protection provided for in paragraphs 1 and 3 shall be without prejudice to any acts concluded and rights acquired before the date referred to in those paragraphs.
5. In the case of a database the making of which was completed not more than fifteen years prior to the date referred to in Article 16 (1), the term of protection by the right provided for in Article 7 shall expire fifteen years from the first of January following that date.

Article 15

Binding nature of certain provisions

Any contractual provision contrary to Articles 6 (1) and 8 shall be null and void.

Article 16

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1998.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the provisions of domestic law which they adopt in the field governed by this Directive.

3. Not later than at the end of the third year after the date referred to in paragraph 1, and every three years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive, in which, *inter alia*, on the basis of specific information supplied by the Member States, it shall examine in particular the application of the *sui generis* right, including Articles 8 and 9, and shall verify especially whether the application of this right has led to abuse of a dominant position or other interference with free competition which would justify appropriate measures being taken, including the establishment of non-voluntary licensing arrangements. Where necessary, it shall submit proposals for adjustment of this Directive in line with developments in the area of databases.

Article 17

This Directive is addressed to the Member States.

Done at Strasbourg, 11 March 1996.

For the European Parliament

The President

K. HÄNSCH

For the Council

The President

L. DINI

(1) OJ No C 156, 23. 6. 1992, p. 4 and

OJ No C 308, 15. 11. 1993, p. 1.

(2) OJ No C 19, 25. 1. 1993, p. 3.

(3) Opinion of the European Parliament of 23 June 1993 (OJ No C 194, 19. 7. 1993, p. 144), Common Position of the Council of 10 July 1995 (OJ No C 288, 30. 10. 1995, p. 14), Decision of the European Parliament of 14 December 1995 (OJ No C 17, 22 1. 1996) and Council Decision of 26 February 1996.

(4) OJ No L 122, 17. 5. 1991, p. 42. Directive as last amended by Directive 93/98/EEC (OJ No L 290, 24. 11. 1993, p. 9.)

(5) OJ No L 346, 27. 11. 1992, p. 61.

(6) OJ No L 290, 24. 11. 1993, p. 9.

(7) OJ No L 281, 23. 11. 1995, p. 31.