

Public consultation on the evaluation of the Database Directive 96/9/EC

Response from the Libraries and Archives Copyright Alliance (LACA)
15 August 2017

I Overview of the database market

* 1. Would you describe yourself, your company/organisation/body as a (several options possible):

- ☐ owner (as a rightholder) of database(s) - private sector
- ☐ owner (as a rightholder) of databases - public sector
- ☒ user of database(s) - private sector
- ☒ user of a database(s) - public sector
- ☐ other (please specify)

2. The database you own (as a rightholder) or use (as a user) exists (one answer):

- ☐ off-line only
- ☐ on-line only
- ☐ both off-line and on-line

3. The database(s) you own are used as / you use these types of databases (several options possible):

- ☐ personal data filing system
- ☐ telephone directories
- ☐ catalogues
- ☐ television programs
- ☐ classified ads (jobs, real estate, etc.)
- ☐ news and journal data
- ☐ financial data
- ☐ educational, scientific and research data
- ☐ mapping data
- ☐ sport data
- ☐ medical or pharmaceutical data
- ☐ collections of legal materials
- ☐ traffic data
- ☐ environmental/ climate data
- ☐ other

If other, please specify

4. As a user, what types of databases do you use?

	never	rarely	in half of the cases	in most of the cases	exclusively
Subscription	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pricing per item	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Free / open access database	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

II Impact on rightholders and users

It was expected that the Directive would improve the global competitiveness of the European database industry and increase the European production of databases. This section seeks to explore the extent to which the objectives of the Directive have been achieved. For more information please refer to the [background document](#)

1. To what extent have the provisions of the Database Directive achieved their objective to protect a wide variety of databases?

- ☐ To a limited extent
☐ To a large extent
☒ No opinion

Where expectations have not been met, what obstacles hindered their achievement?

The Directive has not had any significant impact on the EU's database industry, which has grown irrespective of the provisions of the Directive. We are surprised that another optional answer "To no extent at all" was not offered.

2. Based on your own experience (as a database producer/owner or user) please indicate your views on the statements below:

	strongly agree	agree	disagree	strongly disagree	no opinion
By creating the sui generis right, the Directive sufficiently protects the investments (whether human, technical or financial) made for the creation, updating or maintenance of a database	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
By securing protection to investments, the Directive encourages investments in					

advanced information processing systems related to databases and stimulates the production of databases.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The Directive has strengthened the position of the market leader in my sector.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The Directive achieves a good balance between the rights and interests of the rightholders and users.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The Directive has achieved harmonisation in its field and eliminated differences between Member States which has encouraged database owners to operate in other Member States.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
National contract law gives more legal certainty than sui generis protection when it comes to prevention of extracting or re-using database content.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The protection offered by the Database Directive still fit for purpose in an increasingly data-driven economy.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please indicate the reasons behind your answers.

The Directive has not helped the development of the database industry in Europe. The 1996 Directive was introduced with the aim of helping the EU database industry compete with the market leader, the United States. However, 21 years later the United States remains the market leader and the EU's intended competitive edge has failed to materialise. The Commission acknowledged this in its own evaluation report of 2005, finding that "the economic impact of the 'sui generis' right on database production is unproven." (http://ec.europa.eu/internal_market/copyright/docs/databases/evaluation_report_en.pdf, s.1.4 p.5).

Nor has the Directive helped users, because introduction of the sui generis right has made the protection of databases overly complicated. The exceptions demonstrate that the Directive has not adequately taken account of the needs of educators, researchers and private users. Concerning the exception for "extraction for the purposes of illustration for teaching or scientific research", the 2013 Open Aire study on research data found that, "It is not mandatory for this exception to be introduced into national legislation and it seems that every Member State has its own interpretation of the underlying directive. As it is drafted at the moment, the exception is to all intents and purposes useless." (<http://www.oapen.org/download?type=document&docid=611228>, p. 11). The exception that limits "reproduction/extraction for private purposes" to "non-electronic databases" was of limited meaning in 1996 and is all but obsolete now that digital is all-prevailing. Professor Bernt Hugenholtz's commented to the 2001 Nauta Dutilh study on the Directive for the Commission that, "Exclusions of private electronic use (e.g. on hard disk) is ludicrous,

impracticable [sic] and impossible to monitor.” (http://ec.europa.eu/internal_market/copyright/docs/studies/etd2001b53001e72_en.pdf, p.484).

Regarding harmonisation, the 2013 Open Aire study cited above found that “Despite European harmonisation, the perhaps surprising outcome of the analysis is that there are some areas of dis-harmonisation between the different Member States. One very significant example of dis-harmonisation is the “exception for scientific research” to the sui generis database right” (p.11).

Regarding the Directive’s fitness for purpose, the sui generis right exists only in the EU and is not replicated elsewhere. This strongly suggests it is an unnecessary and unwanted complication. The Directive limits extraction or re-utilisation of the whole or a substantial part of a database. Therefore, any copies of a database made for text and data mining (TDM) purposes outside the provisions of the forthcoming Digital Single Market (DSM) Directive would be infringing, particularly if the Commission’s proposals to limit the TDM exception to “reproductions and extractions made by research organisations” and “for the purposes of scientific research” stand. This would, in particular, exclude much of the work of tech start-ups and investigative journalism.

3. Based on your own experience (as a database producer/owner or user) please indicate your views on the impact of the sui generis right on the following:

	positive effect	no effect	negative effect	not relevant
legal certainty for database producers /owners	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
legal certainty for lawful users	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
costs of database protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
marketing of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
access to data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
re-use of data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
investment in databases	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
innovation	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
development of the data market	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please indicate the reasons behind your answers.

Legal certainty for database producers: This has been reduced on two accounts: (1) because of the complexity of the law and (2) because interpretation of the provisions regarding investment in collecting, verifying and presenting the data is complex and unclear. The Directive does not treat all database producers equally. In her published 2007 doctoral thesis, Dr Annemarie Beunen maintained that scientists and university database producers who produced and

collected primary data themselves are disadvantaged compared to those producers that collect and compile into a database existing data from published secondary sources (e.g. journal articles) (<https://openaccess.leidenuniv.nl/handle/1887/12038>, p.95). This is because the Court of Justice of the European Union (CJEU) ruled that the cost of data creation is not to be taken into account as part of the 'substantial investment' that grants sui generis protection. Data creators don't benefit from the sui generis protection whereas data compilers do (p.271 footnote 36).

Legal certainty for users: Users are also adversely affected because the sui generis right imposes a confusing extra layer of protection on top of copyright. In practice, users are therefore obliged to abide by contractual terms they have agreed to, irrespective of the available exceptions to the sui generis right. Beunen notes that the "sui generis right gives rise to many questions of interpretation, to which the Database Directive does not provide answers" (p. 270) and which the courts also find difficult: "an exclusive sui generis right with no clear boundaries creates legal uncertainty for both producers and users of databases and poses a threat to the public domain. The interpretations offered by the European Court of Justice are arguably only a poor consolation where an exclusive right is defectively demarcated in the first place."

Access to data: Beunen points out that the sui generis right "discriminates against both competitors and nonprofit users such as researchers, educational institutions, libraries, museums and archives" and "fails to balance the commercial interests of database producers against the public interests of society at large, such as the free flow of information" (p. 270-1).

Re-use of data: The exception for "illustration for teaching or scientific research" is limited to the extraction of data and only applies to non-commercial purposes. Limiting the exception to extraction presents real challenges and barriers for researchers, who need to re-use data as well as simply extract data. Limiting the exception to non-commercial use ignores the reality of increasing university and research organisation reliance on public-private research partnerships to offset public funding cuts. Likewise, this restriction limits knowledge transfer from universities to spin-off start-ups.

Innovation: Scholars are sceptical of claims that the Directive supports innovation. Beunen writes that an exclusive right such as the sui generis protection "grants a monopoly, which leads to a restriction of free competition" (<https://openaccess.leidenuniv.nl/bitstream/handle/1887/12038/06.pdf?sequence=9>, p. 268). In her 2001 JILT article Catherine Colston wrote that the Directive provides for "the strongest intellectual property protection other than a patent, and for subject matter (information) that carries none of the value-added originality nor novelty necessary for copyright or the grant of a patent" (https://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2001_3/colston/, s. 3.3 p8). In the Financial Times, Professor James Boyle wrote that "the theory was that this would help build European market share", but warned that "setting intellectual property rights too high can actually stunt innovation" (<https://www.ft.com/content/99610a50-7bb2-11da-ab8e-0000779e2340>, 02 January 2006).

4. Do you think the costs of application of the Directive are balanced compared to the benefits stemming from the protection the Directive offers?

- ☒ Costs are higher than benefits
- ☐ Costs and benefits are balanced
- ☐ Benefits are higher than costs
- ☐ No opinion

Please explain your answer and list the costs and/ or benefits you refer to.

The application of an additional sui generis layer of protection increases the burden on educators, learners and researchers (see answers to Q II(3) above on re-use of data) who wish to extract data or re-utilise extracted data because of the obligation to negotiate licences or clear rights. This hinders access to data and increases costs. There is no evidence that the sui generis right has produced benefits. Accordingly, it should be removed.

III Application of the Database Directive and possible needs of adjustment

The original objective of the Directive was to harmonise the protection of a wide variety of databases in the information age. In doing so, the Directive aimed at protecting the investment of database makers while at the same time ensuring protection of users' interests. In the context of the Commission's vision related to building a European data, these objectives translate into increasing legal certainty for database producers/ owners and users and enhancing the re-use of data.

This section seeks to assess the relevance of the objectives of the Directive and of each of its articles, taking into account technological, social and legal developments. For more information please refer to the [background document](#).

1. In your opinion, are the original objectives of the Database Directive still in line with the needs of the EU?

- ☐ Yes
- ☒ No
- ☐ No opinion

Please explain.

The protection of databases is better achieved through copyright law. The Database Directive adds unnecessary legal complexity for both database creators and users. There is no evidence that the Directive has done anything to enhance the ability of the EU database market to compete with the United States, which remains the world leader in the field.

The Commission acknowledged in its 2005 evaluation report under "Option 2: Withdraw the 'sui generis' right" that the sui generis protection (p. 25) had not achieved the objectives of the Directive. Instead the Directive had "revealed itself to be an instrument that is ineffective at encouraging growth

in the European database industry and, due to its largely untested legal concepts, given rise to significant litigation in national and European courts. Empirical data underlying this evaluation show that its economic impact is unproven. In addition, no empirical data that proves that its introduction has stimulated significant growth in the production of EU databases could be submitted so far."

The Directive hasn't created a stable and uniform legal protection regime. It is flawed on multiple levels, including the definition of what constitutes a database, the renewable duration of the sui generis protection and whether and when linking or deep-linking amount to communication to the public.

The Directive's over-broad definition of a database is "a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means". As noted by Associate Professor Tatiana Synodinou, the CJEU "has continually and clearly adopted a wide and teleological definition of the concept of 'database', with emphasis on the function of a 'database' and the purpose of the legal protection established by the Database Directive".

(<http://kluwercopyrightblog.com/2015/12/15/20-years-after-the-birth-of-the-database-directive-still-mapping-eu-database-law/>)

The Directive provides a 15 year duration for the sui generis protection. However, protection can readily become permanent so long as a database is periodically 'updated', even if the update merely equates to correcting the accuracy of the data. Such potential for permanent protection is a considerable threat to the exchange of information and the public domain.

The question of whether and when linking and deep-linking is a communication to the public is currently a live issue that is repeatedly coming before national courts and the CJEU, but is not dealt with in the Directive.

On the scope of the Directive

The scope of the Directive is defined by its articles 1 and 2. Article 1(1) provides for that the Directive concerns the legal protection of databases. Article 1(2) of the Directive defines a database as a collection of independent works, data or other materials arranged in a systematic or methodological way and individually accessible by electronic or other means. Article 1(3) specifies that the Directive shall, to some extent, not apply to computer programs. Finally, Article 2 provides for the limitations of the scope. The aim of this section is to gather information on the scope of the Directive.

2. Do you consider that the scope of the Directive is:

- ☐ too narrow
- ☐ satisfactory
- ☒ too broad
- ☐ unclear
- ☐ outdated
- ☐ I don't know

On the copyright protection

Articles 3 to 6 of the Directive concern the copyright protection of databases. Articles 3 and 4 specify the object of protection and authorship. Article 5 provides for the list of restricted acts. Article 6 provides for the exceptions to these restricted acts. The aim of this section is to gather information on the use and adequacy of the copyright protection of databases, in particular as regards exceptions to the restricted acts.

3. As regards exceptions provided for by Article 6 of the Directive, have you already relied on/been confronted to, one or several of the following exceptions?

	yes, often	yes, sometimes	no	no opinion (no transposition in my country)
Acts necessary for access and normal use (Art. 6.1)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Private purpose (Art. 6(2)(a))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Teaching and scientific research (Art. 6(2)(b))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public security, administrative or judicial procedure (Art. 6(2)(c))	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
National traditional exceptions (Art. 6(2)(d))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please describe your experience and explain specific problems you may have faced and the means you relied on to deal with them.

A new cross-border exception for Text and Data Mining (TDM), for both non-commercial and commercial purposes is required. This is particularly essential for the education and research sectors. The mandatory protection of the Article 6 exceptions from being undermined by contract terms should be extended to prevent the use of technical protection measures (TPMs) to undermine users' enjoyment of the exceptions.

4. Is in your opinion the Database Directive coherent with the EU legislation and priorities in the following fields:

	strongly agree	agree	disagree	strongly disagree	don't know
EU copyright acquis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
PSI Directive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
EU open access policies regarding research activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>



Please describe your relevant experience and explain specific problems you may have faced with regard to compliance with other laws that interact with the Database Directive.

The EU Copyright Acquis: As stated in our responses to questions above, the sui generis right adds a complicated layer to already comprehensive copyright protection of original works. This is an unneeded complication that few understand.

The PSI Directive: Scholars believe that the Directive's sui generis protection may create legal uncertainty around the re-use of public sector information, because of a conflict of rights. Primavera De Filippi's and Lionel Maurel's view is that, although the right to re-use public sector information can trump sui generis protection, "sometimes, the 'sui-generis' right for databases might actually go counter the right to re-use public sector information" citing www.legifrance.gouv.fr as an example of a large publicly accessible government database wherein substantial extraction or reproduction of content is curtailed by the sui generis right (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2725355, p. 6). The authors also state that when sui generis protection applies, "the subjectivity involved in assessing these operations might dissuade people from legitimately using (or reusing) a public dataset, to avoid the risk of potential liability" (p. 22). Mireille van Eechoud and Brenda van der Wal additionally maintain that the 'substantial investment' criterion raises uncertainty when applying sui generis protection to public sector databases (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1096564, p. 26), warning that "considering the broad scope of copyright and database protection, prior permission will be required for the re-use of much public sector information" (p. 68). This could add several more layers of complexity as "copyright or database rights in public sector information does not necessarily rest with one public legal person(s)" (p. 20).

EU Open Access (OA) policies regarding research activities: The sui generis right is an antithesis to EU OA policies, in particular because of the narrowness of the exceptions to the right. Open access to content and reuse of data held in OA databases and repositories is currently only achievable through open licences, such as Creative Commons licences. The Directive provides Member States with the option to provide a narrow exception to the sui generis right for "extraction for the purposes of illustration for teaching or scientific research" for non-commercial purposes, as referenced in our answer to QII(2), but Member State implementation of exceptions is not fully harmonised. Without harmonisation, it will not be possible to establish a digital infrastructure to meet current and future needs for TDM and education or scientific research in Europe.

Data economy package objectives: The sui generis right hinders a European data economy, which will only thrive if data are easily accessible and reusable. If EU legislators do not widen the beneficiaries of the proposed text and data mining exception to all persons with legal access, regardless of their

purposes, European technology and research endeavours will be held back by the Directive.

On the sui generis right

Articles 7 to 11 of the Directive provide for the sui generis protection of databases. Article 7 provides for the object of protection (including the restricted acts). Article 8 specifies the rights and obligations of lawful users while Article 9 provides for the list of exceptions to restricted acts. Article 10 provides for the term of protection. Finally, Article 11 indicates the beneficiaries of the protection. The aim of this section is to gather information on these different provisions, how they have been applied and used in practice and whether they are relevant and adapted to the current environment.

5. According to Article 7 of the Directive, the sui generis protection will apply to databases which show that there has been qualitatively and/ or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents. Do you consider that the scope of the sui generis right is:

- ☐ too narrow
- ☐ satisfactory
- ☒ too broad
- ☐ unclear
- ☐ no opinion

6. Under the sui generis right, the maker of a database can prevent extraction and/ or re-utilization of the whole or substantial part, evaluated qualitatively and/ or quantitatively, of the contents of that database. Do you consider that such rights are:

- ☐ too narrow
- ☐ satisfactory
- ☒ too broad
- ☐ unclear
- ☐ no opinion

7. Sui generis protection only benefits those producers who made a substantial investment in either the obtaining, verification or presentation of the database. Such substantial investment must be proved by the claiming rightholder. Do you consider that the notion of substantial investment is:

- ☒ unclear and difficult to use in practice
- ☐ clear and easy to apply in practice
- ☐ no opinion

8. Have you experienced difficulties proving such substantial investment in the framework of enforcement of your rights, including judicial proceedings?

- ☐ yes
- ☐ no

Please explain.

Not applicable

9. According to the case law of the Court of Justice of the European Union (CJEU), investment in creating the data (i.e. the resources used for the creation of content) should not be taken into account when determining whether a database can be protected under the sui generis right. On the contrary, the resources used to seek out content and collect it in a database are taken into account when determining sui generis protection. Based on your experience, how would you describe the effect of this case law on the following issues:

	strongly positive	positive	negative	strongly negative	don't know
Scope of the protection of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Balance between rights and interests of database producers/owners and users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Production of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Use of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain.

Our answers to this question are all 'Strongly Negative' because case law has largely served to muddy the waters. Rulings of the CJEU have not clarified or simplified understandings of what is an overly-complicated concept. The already complex sui generis right has been made more complicated, without providing any particular benefits.

10. Do you think that the current application of the sui generis right is appropriate when it comes to the following databases:

	appropriate	not appropriate	no opinion
databases produced by public sector bodies or financed with public money	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
databases which contain automatically collected and/ or machine-generated data	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please explain your answer by providing concrete examples and possible alternatives to the current application you are referring to.

11. Extraction and re-utilisation rights are defined by referring to the notion of "substantial parts of the content of a database". Have you experienced difficulties when applying, interpreting and/ or enforcing these rights?

- ☒ yes
☐ no

Please explain.

The term 'substantial parts' is unclear in both the Directive and case law and should be clarified if the sui generis right is to be retained.

12. Database makers may prohibit the repeated and systematic use of insubstantial parts of the database (Art.7.5). In your opinion, this:

- ☐ insufficiently protects the rightholder
- ☐ sufficiently protects the rightholder
- ☒ excessively protects the rightholder

13. As regards the right provided in Art. 8 and the exceptions provided for by Article 9 of the Directive, have you already relied on/been confronted to, one or several of the following provisions?

	yes, often	yes, sometimes	no	no opinion (no transposition in my country)
Extraction and re-use of insubstantial parts (Art. 8.1)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Private purpose (Art. 9(a))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Teaching and scientific research (Art. 9 (b))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public security, administrative or judicial procedure (Art. 9(c))	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please describe your experience and explain specific problems (e.g. determination of 'insubstantial parts', contractual clauses restricting use of the exceptions) you may have faced and the means you relied on to deal with them.

Please refer to our answers to Q II(2) above

14. Sui generis protection lasts for 15 years as from completion (or making available within this term) of the database (see Article 10.1-2). In your opinion, this term is:

- ☒ too long
- ☐ satisfactory
- ☐ too short

15. Which provisions of the Directive as transposed in your national law have had the strongest impact on your business and why?

The protection of the exceptions in Article 6 from override by contract terms (licence terms) has a positive impact.

Lack of protection for the exceptions from override by TPMs has a strong negative impact. The inability of researchers and educators to re-utilise insubstantial extracts of data under the exception for illustration for

teaching or scientific research likewise has a negative impact. The lack of cross-border application of exceptions has a negative impact.

16. Have you experienced difficulties due to the national implementation of the Directive in the Member States (e.g. divergent national implementation, implementation going further than what is required under the Directive, etc.)? If so, could you please explain?

No, but only because as yet there is no cross-border application of the unharmonised national applications of the exceptions to the sui generis right.

17. What is the added value of the EU intervention vis-a-vis national or regional interventions in the fields covered by the Database Directive?

This question is unclear. EU intervention has ensured that contracts may not override the Directive's exceptions, which is important. If the Directive is retained or replaced, there is a need for harmonisation of exceptions to facilitate cross-border uses and the introduction of an exception for TDM to the sui generis right, requiring EU intervention.

18. Which provisions of the Directive may need further adjustment to usefully apply to digital/ online/ on demand databases and why?

The sui generis right complicates the situation without assisting the database industry. It should be removed and the Directive withdrawn. Removal of the Directive's provisions from Member State laws will require EU intervention.

19. Which of the following approaches would, in your opinion, be most appropriate to achieve an adequate balance between database owners' rights and users' needs?

- ☐ no policy change
- ☐ guidance to Member States on the sui generis protection
- ☐ amend the sui generis protection
- ☒ other (please specify)

Please explain your choice and the impact it would have on you/ your clients/ the market (free text).

'Other' response: Delete sui generis provisions or withdraw the Directive without replacement.

At the time the Commission first proposed sui generis protection, prior to the 1996 Directive, its Legal Advisory Board warned that such extra protection was unnecessary for assisting the development of databases in the EU and would over-complicate matters without any benefit to the EU database industry or its users. Despite this warning, the Commission pressed on with such protection by means of the sui generis right. We believe that the Legal Advisory Board was correct in its assessment and that the sui generis right should now be removed.

Any other comments

Submission of questionnaire

End of survey. Please submit your contribution below.

Useful links

Web page consultation (https://ec.europa.eu/info/content/public-consultation-database-directive-application-and-impact-0_en)

Roadmap (https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2543859_en)

Background Documents

Dclaration de confidentialit (/eusurvey/files/24a13bef-f6b8-42d1-b8e2-2de6ac5a0b5c)

Contact

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