

QUESTION 182

Database protection at national and international level

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Q182

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AIPPI

Considering that:

- a) databases greatly facilitate access to a vast amount and wide range of information and, as a result, have and continue to acquire increasing commercial significance;
- b) in today's information age, databases are important for the functioning and development of society and therefore legislators should provide incentives for the making of databases;
- c) the making of databases often requires the investment of considerable human, technical and financial resources whilst such databases can be copied or accessed at a fraction of the cost needed to make them;
- d) not all countries have specific legislation dealing with databases;
- e) virtually all countries provide for copyright protection for databases which is limited to the original selection or arrangement of their contents;
- f) unfair competition law and contract law play a limited role in most countries in achieving the protection of databases;
- g) databases can be readily copied or accessed without regard to national boundaries;
- h) there is large consensus on the need to improve protection of databases, the making of which requires substantial investment, by means of harmonised international and/or local legislation.

And whereas:

- a) the purpose of this harmonised legislation is to ensure protection of the investment made in databases against misappropriation and such legislation should be based upon a proprietary right (a sui generis right or any other proprietary right);
- b) such proprietary right should not extend to the information and data contained in the database;
- c) virtually all countries that protect databases do so for both electronic and non-electronic databases;

- d) noting that this question did not address the issue of technical measures;
- e) some Groups prefer to have a registration system and others do not;
- f) WIPO has undertaken efforts to provide a basic proposal for provisions of an international treaty for the protection of databases through a sui generis right.

Adopts the following Resolution:

- 1) AIPPI recommends that all countries provide for the protection of databases which require substantial investment by means of the sui generis right or other proprietary right subject to the provisions set out below.
- 2) AIPPI supports the efforts WIPO has undertaken in drafting a basic proposal for the substantive provisions of a treaty on intellectual property in respect of databases (1996) and calls for further efforts to be made to pursue a harmonised proposal in line with this Resolution.
- 3) The definition of database as set out in the European Database Directive: "a collection of independent works, data or other materials which are arranged in a systematic or methodical way, and are individually accessible by electronic or other means" is comprehensive and may be followed by other legislators.
- 4) This protection should only be granted when qualitatively and/or quantitatively substantial investment has been made in the obtaining, verification or presentation of the contents of the database.
- 5) Harmonised protection for databases achieved through a sui generis right or other proprietary right should be available irrespective of any copyright protection.
- 6) Harmonised protection achieved through a sui generis right or other proprietary right should cover both electronic and non-electronic databases.
- 7) Countries may choose to provide for a registration system or not but registration should not be a requirement for this protection.
- 8) The right holder of a protected database should have the right to prohibit reproduction or transfer to another medium (extraction) and making available (re-utilisation) of the whole or a qualitatively or quantitatively substantial part of the contents of the database. Collection of information or data from sources other than the protected database should not be prohibited on this basis.
- 9) Limitations to protection through a sui generis right or other proprietary right should be provided such as for private use, scientific research, educational use, public security.
- 10) The term of duration should be at least ten years from the date of completion of the making of the database.
- 11) Any changes to the contents of a database as a result of a substantial new investment should trigger a new term of protection for the resulting database.

Further study:

AIPPI should study the interface between anti-trust law issues and sui generis or other proprietary rights for databases.