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**SUMMARY ON EXISTING LEGISLATION CONCERNING INTELLECTUAL  
PROPERTY IN NON-ORIGINAL DATABASES**

*prepared by the Secretariat*

## I. INTRODUCTION

1. A document entitled "Existing National and Regional Legislation Concerning Intellectual Property in Databases" (DB/IM/2) was prepared by the Secretariat of the World Intellectual Property Organization (WIPO) and submitted to the Information Meeting on Intellectual Property in Databases, held in Geneva, from September 17 to 19, 1997. The convocation of the Information Meeting and the preparation of the above document followed the Recommendation concerning Databases (document CRNR/DC/100) adopted by the WIPO Diplomatic Conference on Certain Copyright and Neighboring Rights Questions which took place in Geneva from December 2 to 20, 1996, and the further decision made during the meetings of the WIPO Assemblies, held in Geneva on March 20 and 21, 1997 (document AB/XXX/4, paragraph 20).

2. The present document updates document DB/IM/2 in respect of national and regional legislation which specifically protects non-original databases in the Member States of WIPO, and in the European Community, as further legislative developments have taken place since 1997. It covers all the legislation concerned that was identified by the WIPO Secretariat as of August 1, 2002. It does not, however, cover the situation in a few countries where the laws, or recent amendments, were not available to the WIPO Secretariat in any of the working languages. The Member States of WIPO are invited to send additional information or corrections, if any, to the Secretariat.

3. Since copyright protection of databases that constitute intellectual creations by reason of their selection and arrangement of their contents is well established and harmonized through international treaties to that effect, such as the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the WIPO Copyright Treaty (WCT), the present document concentrates on protection of non-original databases that do not qualify for copyright protection.

4. This document examines laws that provide for explicit protection of databases, that are not sufficiently original to be protected under copyright, based on criteria such as the underlying investment or the volume of information contained therein. It is to be noted, however, that the threshold of originality that is required to qualify for copyright protection differs from country to country. While a particular kind of database might be protected under copyright in some countries, a similar database might not qualify for copyright protection in other countries.

5. The present document does not cover the protection of non-original databases through legislation on unfair competition or misappropriation. The protection under unfair competition law, however, may be useful in a number of cases relating to unauthorized use of non-original databases. The reason for which this document does not offer a description of protection through unfair competition rules is that those rules are very complex and they extend to a large body of legislation (in many countries, mainly through case law) which goes much beyond the field where non-original databases may be concerned. A detailed description of issues concerning unfair competition may be found in WIPO publication No. 725 (E, R, F, S) entitled "Protection against Unfair Competition. Analysis of the Present World Situation."

6. This document reviews legislation that extends protection to non-original databases in terms of (a) legal type of protection; (b) object of protection and criteria; (c) ownership of rights; (d) rights granted; (e) rights and obligations of lawful users; (f) exceptions and limitations; (g) terms of protection; (h) relation to copyright protection and other rights; (i) enforcement; (j) beneficiaries of protection; and (k) other features.

## II. INTERNATIONAL NORMS

7. There are no international norms on protection of non-original databases.

## III. REGIONAL LEGISLATION

8. The Directive 96/9/EC of the European Parliament and of the Council of March 11, 1996, on the legal protection of databases (hereinafter referred to as "the Database Directive") is binding for the 15 countries of the European Union, that is Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and United Kingdom, which were obliged to transpose its provisions into national legislation before January 1, 1998. The provisions of the Directive also apply as regards the countries of the European Economic Area which comprise, in addition to the countries of the European Union, Iceland, Liechtenstein and Norway.

### A. Legal Type of Protection

9. The Directive contains in its Chapter III provisions on *suigeneris* protection of databases. Chapter II of the Directive deals with the copyright protection of databases. Further provisions, relating to both databases subject to copyright protection and databases subject to *suigeneris* protection of databases, are contained in Chapters I and IV of the Directive.

10. The reasons for, and the primary aims of the *suigeneris* protection are explained in recitals (38) and (39) of the Preamble of the Directive which read as follows:

“(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 collecting the contents by protecting the whole or substantial parts of a database against certain acts by a user or competitor.”

## B. Object of Protection and Criteria

11. Article 1(1) of the Database Directive states that it concerns the legal protection of databases “in any form.” This is clarified in recital (14) of the Preamble which states that “protection under this Directive should be extended to cover non-electronic databases.” A further clarification is given in the definition of the term “database” in Article 1(2) which 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.” In addition to that definition, Article 1(3) provides that protection under the Directive shall not apply to computer programs used in the making or operation of databases accessible by electronic means, and recital (20) states that protection under the Directive may also apply to the materials necessary for the preparation or consultation of certain databases, such as thesaurus and indexation systems. The definition is further elaborated by recital (21) which clarifies that the condition that the contents of the database are arranged systematically or methodically does not necessitate that it is physically stored in an organized manner. It is also clarified, in recital (22), that the term “electronic database” within the meaning of the Directive also may include devices such as CD-ROM and CD-i.

12. The object of protection under the *suigeneris* right is databases for which the maker “shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents.” (Article 7) This is clarified in recital (40) which states that “the object of this *suigeneris* 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,” and it adds that “such investment may consist in the deployment of financial resources and/or the expending of time, effort and energy.” Further clarification is offered in recital (19), according to which, as a rule, the compilation of several recordings of musical performances on a CD does not represent a substantial enough investment to be eligible under the *suigeneris* right.

## C. Ownership of the Rights

13. The original owner of the rights is, according to Article 7(1) “the maker of a database.” To this, recital (41) adds that “the maker of a database is the person who takes the initiative and the risk of investing,” and that “this excludes subcontractors in particular from the definition of maker.”

## D. Rights Granted

14. The rights granted are, according to Article 7(1), rights “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.” Certain terms used in that provision are defined in Article 7(2) which states that, for the purposes of Chapter III: “(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”; and “(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.” It is added that “public lending is not an act of extraction or re-utilization.” Furthermore, Article 7(5) states that “the repeated and systematic extraction and/or re-utilization of

in substantial 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." Recital (43) clarifies that "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."

15. Article 7(2)(b) states that "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."

16. Other clarifications regarding the right of distribution, which form part of the right of re-utilization, seem to follow from recital (33), which states that "[w]hereas 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 provides."

17. Further clarification of the rights granted is offered by recital (42) which reads as follows: "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." In addition, recital (44) states that "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."

18. Article 7(3) states that the *suigeneris* right may be transferred, assigned or granted under contractual licence.

#### E. Rights and Obligations of Lawful Users

19. As regards the position of the lawful user of a database, Article 8(1) states that "[t]he 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 in substantial 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." However, according to Article 8(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," and he "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 8(3)). Those provisions may be read in connection with recital (42) which states as follows: "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.” Article 15 provides that any contractual provision contrary to Article 8 shall be null and void.

#### F. Exceptions and Limitations

20. Exceptions and limitations of a general nature are contained in Article 9 which, in relation to databases which have been made available to the public in whatever manner, allow extraction or re-utilization of substantial parts thereof: “(a) in the case of extraction for private purposes of the contents of an on-line 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; and (c) in the case of extraction and/or re-utilization for the purposes of public security or an administrative or judicial procedure.” Recital (50) adds to this that “such operations must not prejudice the exclusive rights of the maker to exploit the database and their purpose must not become commercial,” and recital (51) clarifies that “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 institutions.” Also, recital (36) states that “the term ‘scientific research’ within the meaning of this Directive covers both the natural sciences and the human sciences.”

21. Certain, more specific, limitations follow from recital (52) which states that “those Member States which have specific rules providing for a right comparable to the *suigeneris* right provided for in this Directive should be permitted to retain, as far as the new right is concerned, the exception traditionally specified by such rules.” It may also be noted in this context that recital (47) states that “in the interests of competition between suppliers of information products and services, protection by the *suigeneris* 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.” It adds that, “therefore, the provisions of this Directive are without prejudice to the application of Community or national competition rules.”

#### G. Term of Protection

22. The *suigeneris* right runs, according to Article 10(1), from the date of completion of the making of the database until 15 years from January 1 of the year following the date of completion. In this respect, recital (53) provides that “the burden of proof regarding the date of completion of the making of a database lies with the maker of the database.” Paragraph (2) of that Article prolongs the protection of databases that have been made available to the public before the expiry of the term, provided for in paragraph (1), till 15 years from the year of the first making available to the public. Paragraph (3) states as follows: “Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial changes 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.” It follows from recital (54) that “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,” and from recital (55) that “a substantial new investment involving a new term of protection may include as a substantial verification of the contents of the database.”

#### H. Relation to Copyright Protection and Other Rights

23. The relation between copyright protection and the *suigeneris* right is dealt with in Article 7(4) which states that “the [ *suigeneris* right] 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 [t he *suigeneris* right] shall be without prejudice to rights existing in respect of their contents.” This is elaborated in recital (45) according to which “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,” and in recital (46), which states that “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 da tabase should not give rise to the creation of a new right in the works, data or materials themselves.” Also, recital (18) states as follows: “Whereas this Directive is without prejudice to the freedom of authors to decide whether, or in what manner, the y will allow their work to be included in a database, in particular whether or not the authorization given is exclusive; whereas the protection of databases, by the *suigeneris* right is without prejudice to existing rights over their contents, and where a sin 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 matters 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 e-utilized on the basis thereof.”

24. The relation to copyright protection — and other intellectual property rights, etc. — is also dealt with in Article 13 which, in relation to both copyright protection and the *suigeneris* right under the Directive, states that “[the] 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, trademarks, design rights, the protection of national treasures, law on restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, and the law of contract.”

#### I. Enforcement

25. The Directive does not contain detailed provisions concerning the enforcement of the protection, but Article 12 states that “Member States shall provide appropriate remedies in respect of infringements of the rights provided for in this Directive.”

J. Beneficiaries of Protection

26. The beneficiaries of protection under the *suigeneris* right are indicated in Article 11(1) and (2), according to which that right “shall apply to databases whose makers or right holders are national of a Member State or who have their habitual residence in the territory of the Community,” and 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.” Article 11(3) mandates the Council, acting on a proposal from the European Commission, to conclude agreements extending the *suigeneris* protection to databases made in third countries, which are not protected under the first two paragraphs of that Article. The Directive clarifies in that respect, that the term of any protection extended to databases by virtue of that procedure shall not exceed that available pursuant to Article 10, referred to above. Furthermore, recital (56) implies that agreements extending the protection should be concluded “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.”

K. Final Provisions

27. The *suigeneris* protection shall apply to all databases the making of which was completed not more than 15 years prior to January 1, 1998, and which on that date fulfil the requirements for protection under the *suigeneris* right.

IV. NATIONAL LEGISLATION

28. The provisions of the Database Directive shall be implemented into national legislation of the Member States of the European Union before January 1, 1998 (Article 16(1)). Member States of the European Union and the European Economic Area have adopted or amended legislation in order to implement the Database Directive. The legislation of Denmark, Finland, Iceland, Norway and Sweden, which had contained provisions on so-called catalog rules protecting items such as compilations of data and the like, that did not qualify for copyright protection, since 1960/1961, has also been amended in view of the adoption of the Directive.

29. In addition, the following candidate countries that are currently negotiating accession to the European Union have legislation that concerns protection of non-original databases: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

30. Apart from the above countries, the copyright law of Mexico protects non-original databases.

31. In this part, the legislation of the countries of the European Economic Area that are not members of the European Union, the above-mentioned candidate countries and Mexico is examined.

#### A. Legal Type of Protection

32. The provisions on the rights that extend to non-original databases (hereinafter referred to as "the database right") are contained in copyright laws of most countries examined except for Poland, which enacted separate legislation. In the copyright laws of Hungary, Iceland, Norway and Slovenia, the provisions on the protection of makers of databases are under sections dealing with related or neighboring rights. (In the law of Norway these rights are referred to as "other rights.") In the laws of the Czech Republic, Estonia, Latvia, Liechtenstein, Lithuania, Malta and Slovakia, provisions concerning the database right are placed in sections separate from those dealing with copyright or related rights. In the laws of the Czech Republic, Latvia, Liechtenstein, Lithuania, Malta and Slovakia, the term "*sui generis*" is used to describe the type of protection.

33. Provisions that extend protection to non-original databases in the copyright law of Mexico are contained in a chapter dealing with computer programs and databases under a section entitled "Copyright Protection."

#### B. Object of Protection and Criteria

34. The legislation of the following countries introduced the criterion of substantial investments in production of the database as a basis for protection: the Czech Republic, Estonia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Poland, Slovakia and Slovenia. The law of Latvia provides that a substantial qualitative or quantitative investment could be in the form of financial resources or consumption of time and energy. The law of Lithuania indicates that the investment could be intellectual, financial or organizational.

35. Under the law of Norway the object of protection is a formula, catalogue, table, program, database or a similar work in which a large number of items of information has been compiled, or which is the result of a substantial investment. The law of Iceland refers to lists, tables, forms, databases and similar works which contain a substantial collection of information, or which are the result of considerable investment.

36. The laws of Estonia, Iceland, Poland and Slovenia explicitly indicate that the database right does not apply to computer programs used in the making or operation of databases.

37. According to the law of Mexico, databases that are not original shall nevertheless be protected. No explicit provision on criteria for protection is found in the law reviewed.

#### C. Owner of the Rights

38. According to the laws of Hungary, Latvia, Poland and Slovakia, the maker of a database who shall be the original owner of the rights is the person who takes the initiative and/or the risk of investment. When the law of Poland refers to the maker of a database, that is specified to also include his legal successor. The laws of Estonia and Lithuania provide that the person who has made the substantial investment owns the rights. The laws of Latvia, Poland and Slovakia specify that the maker includes both a natural and a legal person. The laws of Iceland, Liechtenstein, Malta, Norway and Slovenia mention that the person who produces a database and the like should have the rights. The law of the Czech Republic defines the

maker of the database to be the natural person of legal entity who, on his own responsibility, has compiled the database, or who has had a database compiled by another person or entity.

39. The law of Slovenia states that where a database is made by an employee in the execution of his duties or following the instructions given by his employer, or where it is made by a person under a contract for hire, it shall be deemed that the exclusive right to such database are exclusively and without limitations assigned to the employer or to the ordering party, unless otherwise provided by contract.

40. The law of Mexico states that databases that are not original shall be protected for the exclusive use of the person who developed them.

#### D. Rights Granted

41. The laws of the following countries grant the maker of a database the right to prevent extraction and/or re-utilization of the whole or of a substantial part of the contents of that database: the Czech Republic, Estonia, Latvia, Liechtenstein, Malta, Poland and Slovakia. The laws of the Czech Republic, Latvia, Liechtenstein, Malta, Poland and Slovakia spell out that a "substantial part" is evaluated qualitatively and/or quantitatively. The law of Lithuania grants the maker of a database the right to perform or authorize 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, and 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.

42. The legislation of Iceland and Norway grants the maker of a database the exclusive right to dispose of the product in question as a whole or a substantial part thereof by making copies of it and by publishing or making it available to the public.

43. The law of Hungary indicates that the authorization of the producer of a database shall be sought for where all or a substantial part of the content of the database (a) is reproduced by making copies (thereinafter referred to as "extraction"), or (b) is made available to the public by the distribution of copies of the database or by communication to the public (thereinafter referred to as "re-utilization"). Distributions shall mean the putting into circulation by sale or transfer of ownership in any other form, importation into the country with the purpose of putting into circulation, and rental.

44. The law of Slovenia indicates that the maker of a database shall have the exclusive right to reproduce, distribute copies, rent copies, make available to the public and other forms of communication to the public of his database. The protection shall apply to the whole contents of a database or every qualitatively and quantitatively substantial part of its contents.

45. Furthermore the legislation of the Czech Republic, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Norway, Poland, Slovakia and Slovenia provides that 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.

46. The laws of the following countries indicate that the database protection does not extend to public lending: the Czech Republic, Estonia, Latvia, Liechtenstein, Malta and Slovakia. The law of Poland states that the rental of databases shall not constitute the extraction or re-utilization of data.

47. The law of Liechtenstein stipulates that the first sale of a copy of a database within a member state under the Agreement on the European Economic Area by the right holder or with his consent shall exhaust the right to control resale of that copy within the European Economic Area. Estonia, Lithuania, Malta and Norway provide for general exhaustion of the right to control resale of that copy or the right of distribution after the first sale or transfer. The law of Norway further states that the right of rental does not exhaust. The laws of Estonia and Poland state that the provisions on regional exhaustion of the right to control the resale of the databases shall become effective after accession to the European Union by the countries. The law of the Czech Republic specifies that the right of distribution, except for the rights of rental and lending, is exhausted within the country after the first sale or other transfer of property right. The law of Hungary provides for the exhaustion of the right of distribution without, however, prejudice to the rights of rental, lending and importation. The law of Iceland allows the sale, loan, rental or other means of distribution to the public of copies of published databases. The law of Latvia specifies that the right to control the resale of the database in that country shall be exhausted after the first sale. The law of Slovenia provides for general exhaustion of the right of distribution after the first sale of the copy within the country, without prejudice to the right of importation.

48. The laws of the following countries explicitly state that the rights of the maker of a database may be transferred, assigned or granted under contractual license: the Czech Republic, Estonia, Liechtenstein, Lithuania, Malta, Poland, Slovakia and Slovenia.

49. According to the law of Mexico, the rights granted are, with respect to the form of expression of the structure of the database, exclusive rights to authorize or prohibit the following: (1) permanent or temporary reproduction, either wholly or in part, by any means and in any form; (2) translation, adaptation, rearrangement or modification in any other way; (3) distribution of the original or copies; (4) communication to the public; (5) reproduction and distribution or communication to the public of the results of the operations mentioned in subparagraph (2) above. The provision of the law regarding exhaustion of the distribution right indicates that the right of distribution for databases is exhausted by the first authorized sale of the original or copies, except for the right of lending. The owner of the economic rights may freely, subject to the provision of that law, transfer his economic rights or grant exclusive or non-exclusive licenses for use.

#### E. Rights and Obligations of Lawful Users

50. The laws of the following countries contain provisions on rights of a lawful user: the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Norway, Poland, Slovakia and Slovenia. Most of those laws also provide for the obligations of a lawful user.

## F. Exceptions and Limitations

51. The laws of the following countries incorporate exceptions and limitations on the rights of the maker of a database (a) for private use of the content of an on-line electronic database; (b) 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; and (c) for the purposes of public security or an administrative or judicial procedure: the Czech Republic, Estonia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Poland and Slovakia.

52. In addition, the law of the Czech Republic excludes from the database protection an official work, such as a legal regulation, decision, public charter, publicly accessible register and the collection of its records, and also an official draft of an official work and other preparatory official documentation including the official translation of such work, Chamber of Deputies and Senate publications, a memorial chronicle of a municipality (municipal chronicle), a state symbol and symbol of a regional self-governing unit, and others such works where there is public interest in their exclusion.

53. Legal statutes, administrative regulations, court decisions and other decisions by public authorities are not protected by the Copyright Act of Norway. This is also the case with proposals, reports and other statements which concern the public exercise of authority, and which are made by a public authority, a publicly appointed council or committee, or published by the public authorities. Similarly, official translations of such texts are not protected by that Act. Otherwise, the limitations and exceptions to the database right in the legislation of Iceland and Norway are established through reference to the provisions in the laws regarding copyright, which apply *mutatis mutandis*. In this respect, the law of Iceland refers to all the provisions in Chapter 2 of the law which deals with exceptions and limitations, whereas the provisions of the law of Norway refer to a number of specified provisions. The limitations and exceptions differ to a certain extent between the two laws, but those which are contained in both laws concern reproduction for private use except in electronic form, certain reproduction in educational activities, certain reprographic and other reproduction, certain reproduction in libraries and archives, reproduction for the disabled, compilation for educational use, certain exhibition of copies, certain public performances, quotation, current news reporting, certain public administrative or judicial procedure and certain broadcasting. Limitations concerning fixations in health institutions, etc., are found only in the law of Norway.

54. No exceptions or limitations that are specific to the rights of makers of databases are found in the reviewed laws of Mexico and Slovenia.

## G. Term of Protection

55. Under the laws of the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Norway, Poland, Slovakia and Slovenia the term of protection is fifteen years from completion; in the case of a database which is made available to the public in whatever manner before expiry of the period of fifteen years, the term of protection by that right shall be fifteen years from the first making available to the public.

56. The laws of the Czech Republic, Estonia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Poland, Slovakia and Slovenia provide that any substantial change to the content of a

database which would result in the database being considered to be a substantial new investment shall qualify the database resulting from that investment for its own term of protection.

57. The term of protection under the law of Mexico is five years. The Law does not explicitly state from which time that term is calculated, but the context may seem to indicate that it is from the making of the database.

#### H. Relation to Copyright Protection and Other Rights

58. The laws of the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Malta, Norway, Slovakia and Slovenia indicate that the database right shall apply irrespective of the eligibility of that database or the contents of that database for protection by copyright or by other rights.

59. The laws of the Czech Republic, Hungary, Iceland, Liechtenstein, Lithuania, Norway and Slovenia provide that the database right shall be without prejudice to rights existing in respect of their contents.

60. The law of Poland indicates that the special database protections shall cover databases, excluding those that constitute works in the meaning of the Law on Copyright and Related Rights. Furthermore, the right to the databases shall not infringe upon the protection of the database content extended pursuant to the Law on Copyright and Related Rights or the protection of any elements comprising the database, extended pursuant to the regulations on inventions, trademarks, industrial designs, designations of the origin, regulations on combating unfair competition, legally protected secrets, protection of personal data, civil law and labor law.

#### I. Enforcement

61. The laws of the following countries contain provisions concerning enforcement of the database right: the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Norway, Poland and Slovenia.

#### J. Beneficiaries of Protection Outside the Country

62. The following countries grant the database right to makers of databases who are nationals of, or who have their habitual residence in, a Member State of the European Community or the European Union or of a Contracting State to the Agreement on the European Economic Area: Iceland, Liechtenstein, Norway and Poland.

63. The law of Estonia indicates that the database protection will be extended to the Member States of the European Union and in the territory of the European Economic Area upon accession to the European Union by that country.

64. The laws of the following countries indicate that databases could also be protected by virtue of international treaties or agreements, or on the basis of reciprocity: the Czech

Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Norway, Poland, Slovakia and Slovenia.

65. The law of Mexico contains no specific provisions on the international scope of protection regarding non-original databases.

K. Registration

66. The laws of Mexico and Slovenia provide for the possibility of registering a database or depositing a copy of a database with a government or other public agency.

*67. The Standing Committee is invited to take note of the information contained in this document and send additional information or corrections, if any, to the Secretariat.*

[Annex follows]

ANNEX

LIST OF NATIONAL LAWS REVIEWED

CZECH REPUBLIC: Law No. 121/2000 Coll. of April 7, 2000, on Copyright, Rights Related to Copyright and on the Amendment of Certain Laws (Copyright Act)

ESTONIA: Copyright Act (of November 11, 1992, as last amended by the Act of May 6, 2002)

HUNGARY: Act No. LXXVI of 1999 on Copyright, amended by the Act No. XLVIII of 2001 on Designs and the Act LXXVII of 2001

ICELAND: The Copyright Act, No. 73, of 29 May 1972, as last amended by Act No. 60, of 19 May 2000

LATVIA: Copyright Law (of April 6, 2000)

LIECHTENSTEIN: Law of 19 May 1999 regarding the Copyright and Neighboring Rights (Copyright Law)

LITHUANIA: Law on Copyright and Related Rights (No. VIII - 1185 of May 18, 1999, as amended by Law No. VIII - 1886, of July 20, 2000)

MALTA: Copyright, Act, 25/04/2000, No. XIII

MEXICO: Federal Law on Copyright (Entry into force: 24 March 1997)

NORWAY: Act No. 2 of 12 May 1961 relating to Copyright in Literary, Scientific and Artistic Works, et c., with subsequent amendments, latest of 16 April 1999

POLAND: Law dated July 27, 2001, on the Protection of Databases

SLOVAK REPUBLIC: Copyright Act, Act No. 383/1997 of December 5, 1997, as changed and amended by Act No. 234/2000 of June 20, 2000

SLOVENIA: Copyright and Related Rights Act of April 7, 1995, as supplemented and amended in January and April 2001

[End of Annex and of document]