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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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**STANDINGCOMMITTEEONCOPYRIGHT
ANDRELATEDRIGHTS**

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PROTECTIONOFNON-ORIGINALDATABASES

Proposals submittedbyKenya

According to the draft Treaty on Intellectual Property in Respect of Databases proposed at the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, in December 1996, "database" means a collection of independent works, data or other materials arranged in a systematic or methodological way and capable of being individually accessed by electronic or other means.

The Copyright Act in Kenya provides for the protection of original databases as literary works and includes data stored and embodied in electronic form. Unlike the European Union, there is no law that provides for the *suigeneris* protection of non-original databases.

Why should we protect non-original databases? These databases do not qualify for copyright protection but there is the investment aspect that needs to be protected. Currently, there are no international norms on the protection of non-original databases.

In 1998, the office of the Registrar General held some consultations with various stakeholders on the issue of the protection of non-original databases. They were of the considered opinion that the protection granted would make data that would otherwise be easily available, inaccessible to the users especially those in the developing countries. They were emphatic that the developing countries are basically users and rarely produce non-original databases. They did not support the idea of an international instrument for the protection of the non-original databases but said that the different national regimes were free to enact laws protecting the same.

Acknowledging the investment used to produce the data, the stakeholders said that some of the databases were actually compiled from data and copyright works in the developing countries.

However, the European Directive 96/9/EC, in its preamble gives reasons and the primary aims of the *suigeneris* protection of non-original databases as the need to protect the databases whose contents can be easily copied and rearranged electronically by unauthorized third parties and to safeguard the position of the makers of the databases against misappropriation of the results of the financial and professional investment made in obtaining and collection of the contents by protecting the whole or substantial parts of a database against certain acts by the user or competitor. The protection of the databases is thus important to protect the investors from the free riders but does not warrant an international instrument.

The Delegation of Kenya would like to request WIPO to assist in further roundtable discussions at regional level like into the one that was held in Cotonou so that the African countries can come up with regional position on the same.

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