Data and database rights in an AI driven world

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The EU Database Directive: 25 years of controversy

- Protection of database’s contents (copyright protected or not)
- Substantial investment
- Database maker
- Extraction and/or reutilisation of the whole or a substantial part of the database’s contents
The EU Database Directive: 25 years of controversy

Dangerous appropriation of information

Data ownership as a necessity
A new factor in the equation: the rise of AI

- Could or should the database sui generis right have a role in the legal protection of the data which are produced by an AI system?
The AI owner or user, a database maker?

No substantial obstacles appear to grant the legal status of the database maker to the natural or legal person who owns or uses the AI system which generates data, on the condition that a substantial investment has been made.

CJEU, 9 November 2004, British Horseracing Board v William Hill Organization, C-203/02

‘Creating'/inventing data cannot count towards 'investment' in the production of the database

“ The purpose of the protection by the sui generis right provided for by the directive is to promote the establishment of storage and processing systems for existing information and not the creation of materials capable of being collected subsequently in a database”.
The consequences of the CJEU’s findings

Collecting existing data = substantial investment

Creating data ≠ substantial investment
AI generated databases and sui generis right

AI observes and discovers patterns and correlations based on existing data/information

The information is already hidden in the pre-existing dataset

Investment in the AI and the investment (processing, time, energy) made by the AI concerns the creation of new information, of new data distinct from the existing raw material
Conclusion

Does the Database Directive have a role to play?

Unfortunately, no clear answers!

CV-Online Latvia v Melons, C-762/193, 3 June 2021 = A step towards a new future for the database sui generis right? (legitimate interests of users and competitors)

Data Act (European Commission, Inception impact assessment on the Data Act, May 2021)