



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

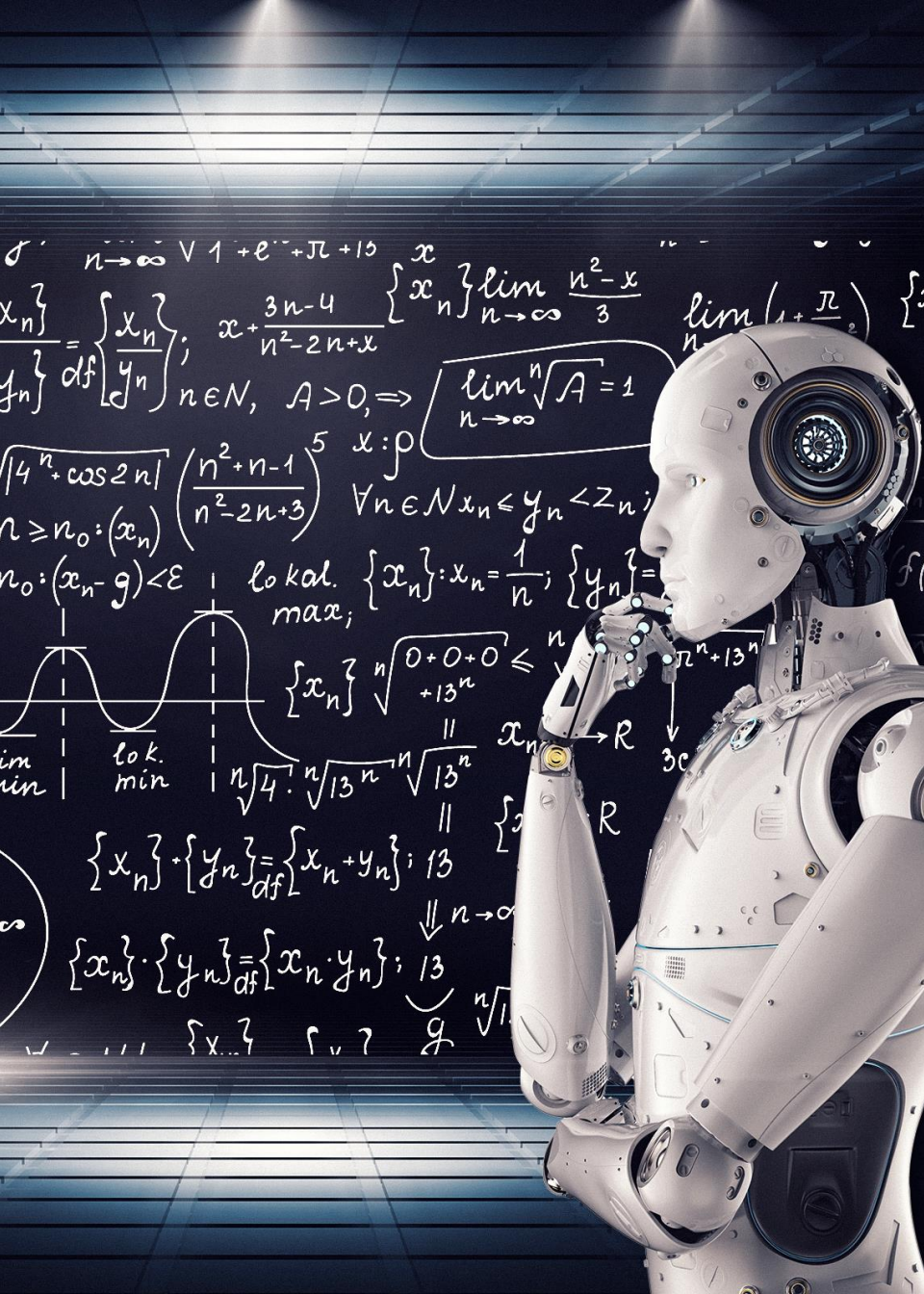
Extraction and
/or reutilisation
of the whole or
a substantial
part of the
database's
contents

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?

AUTHORSHIP IS NOT AN OBSTACLE!

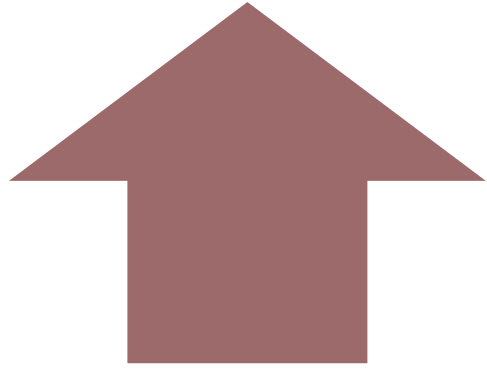
No substantial obstacles appear to grant the legal status of the database maker to the natural or legal person who owns or uses the AI system which generates data, on the condition that a substantial investment has been made

BUT,...ANOTHER MAJOR OBSTACLE!

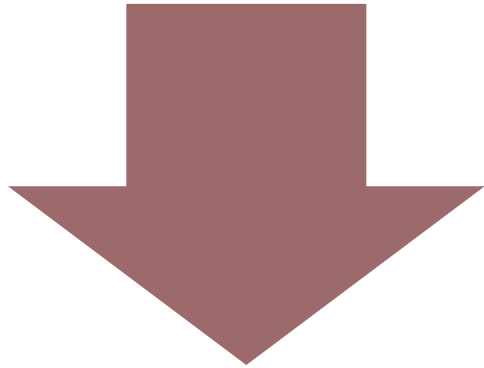
CJEU, 9 November 2004, British Horseracing Board v William Hill Organization, C-203/02

'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” .



Collecting existing data =
substantial investment



Creating data \neq
substantial investment

The consequences of the CJEU's findings

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*)