

APPENDIX 13

Draft Treaty on Databases (Geneva Conference, 1996)  
Document CRNR/DC/6 (30 August 1996)

**Basic Proposal for the Substantive Provisions  
of the Treaty on Intellectual Property in  
Respect of Databases to be Considered  
by the Diplomatic Conference**

prepared by the Chairman of the Committees of Experts on a  
Possible Protocol to the Berne Convention and on a Possible  
Instrument for the Protection of the Rights of Performers  
and Producers of Phonograms

**Note:** The text of the draft treaty follows, but the accompanying commentary has been omitted.

*Preamble*

**The Contracting Parties,**

**Desiring** to enhance and stimulate the production, distribution and international trade in databases,

**Recognizing** that databases are a vital element in the development of a global information infrastructure and an essential tool for promoting economic, cultural and technological advancement,

**Recognizing** that the making of databases requires the investment of considerable human, technical and financial resources but that such databases can be copied or accessed at a fraction of the cost needed to design them independently,

**Desiring** to establish a new form of protection for databases by granting rights adequate to enable the makers of databases to recover the investment they have made in their databases and by providing international protec-

tion in a manner as effective and uniform as possible,

**Emphasizing** that nothing in this Treaty shall derogate from existing obligations that Contracting Parties may have to each other under treaties in the field of intellectual property, and in particular, that nothing in this Treaty shall in any way prejudice the rights granted to authors in the Berne Convention for the Protection of Literary and Artistic Works,

**Have agreed** as follows:

*Article 1*

[Scope]

(1) Contracting Parties shall protect any database that represents a substantial investment in the collection, assembly, verification, organization or presentation of the contents of the database.

(2) The legal protection set forth in this Treaty extends to a database regardless of the form or medium in which the database is embodied, and regardless of whether or not the database is made available to the public.

(3) The protection granted under this Treaty shall be provided irrespective of any protection provided for a database or its contents by copyright or by other rights granted by Contracting Parties in their national legislation.

(4) The protection under this Treaty shall not extend to any computer program as such, including without limitation any computer program used in the manufacture, operation or maintenance of a database.

## *Article 2* [Definitions]

For the purposes of this Treaty:

- (i) 'database' means a collection of independent works, data or other materials arranged in a systematic or methodical way and capable of being individually accessed by electronic or other means;
- (ii) 'extraction' means 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;
- (iii) 'maker of the database' means the natural or legal person or persons with control and responsibility for the undertaking of a substantial investment in making a database;
- (iv) 'substantial investment' means any qualitatively or quantitatively significant investment of human, financial, technical or other resources in the collection, assembly, verification, organization or presentation of the contents of the database;
- (v) 'substantial part', in reference to the contents of a database, means any portion of the database, including an accumulation of small portions, that is of qualitative or quantitative significance to the value of the database;
- (vi) 'utilization' means the making available to the public of all or a substantial part of the contents of a database by any means, including by the distribution of copies, by renting, or by on-line or other forms of transmission, including making the same

available to the public at a place and at a time individually chosen by each member of the public.

## *Article 3* [Rights]

(1) The maker of a database eligible for protection under this Treaty shall have the right to authorize or prohibit the extraction or utilization of its contents.

(2) Contracting Parties may, in their national legislation, provide that the right of utilization provided for in paragraph (1) does not apply to distribution of the original or any copy of any database that has been sold or the ownership of which has been otherwise transferred in that Contracting Party's territory by or pursuant to authorization.

## *Article 4* [Rightholders]

(1) The rights provided under this Treaty shall be owned by the maker of the database.

(2) The rights provided under this Treaty shall be freely transferable.

## *Article 5* [Exceptions]

(1) Contracting Parties may, in their national legislation, provide exceptions to or limitations of the rights provided in this Treaty in certain special cases that do not conflict with the normal exploitation of the database and do not unreasonably prejudice the legitimate interests of the rightholder.

(2) It shall be a matter for the national legislation of Contracting Parties to determine the protection that shall be granted to databases made by governmental entities or their agents or employees.

## *Article 6* [Beneficiaries of Protection]

(1) Each Contracting Party shall protect according to the terms of this Treaty makers of databases who are nationals of a Contracting Party.

(2) The provisions of paragraph (1) shall also apply to companies, firms and other legal entities formed in accordance with the laws of a Contracting Party or having their registered office, central administration or principal place of business within a Contracting Party; however, where such a company, firm or other legal entity has only its registered office in the territory of a Contracting Party, its operations must be genuinely linked on an on-going basis with the economy of a Contracting Party.

### Article 7

[National Treatment and  
Independence of Protection]

(1) The maker of a database shall enjoy in respect of the protection provided for in this Treaty, in Contracting Parties other than the Contracting Party of which he is a national, the rights which their respective laws do now or may hereafter grant to their nationals as well as the rights specially granted by this Treaty.

(2) Protection of a database in the Contracting Party of which the maker of the database is a national shall be governed by national legislation.

(3) The enjoyment and the exercise of rights under this Treaty shall be independent of the existence of protection in the Contracting Party of which the maker of a database is a national. Apart from the provisions of this Treaty, the extent of protection, as well as the means and extent of redress, shall be governed exclusively by the laws of the Contracting Party where protection is claimed.

(4) Makers of databases who are not nationals of a Contracting Party but who have their habitual residence in a Contracting Party shall, for the purposes of this Treaty, be assimilated to nationals of that Contracting Party.

### Article 8

[Term of Protection]

(1) The rights provided for in this Treaty shall attach when a database meets the requirements of Article 1(1) and shall endure for at least

*Alternative A:* 25  
*Alternative B:* 15

years from the first day of January in the year following the date when the database first met the requirements of Article 1(1).

(2) In the case of a database that is made available to the public, in whatever manner, before the expiry of the period provided for in paragraph (1), the term of protection shall endure for at least

*Alternative A:* 25  
*Alternative B:* 15

years from the first day of January in the year following the date when the database was first made available to the public.

(3) Any substantial change to the database, evaluated qualitatively or quantitatively, including any substantial change resulting from the accumulation of successive additions, deletions, verifications, modifications in organization or presentation, or other alterations, which constitute a new substantial investment, shall qualify the database resulting from such investment for its own term of protection.

### Article 9

[Formalities]

The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.

### Article 10

[Obligations concerning Technological  
Measures]

(1) Contracting Parties shall make unlawful the importation, manufacture or distribution of protection-defeating devices, or the offer or performance of any service having the same effect, by any person knowing or having reasonable grounds to know that the device or service will be used for, or in the course of, the exercise of rights provided under this Treaty that is not authorized by the rightholder or the law.

(2) Contracting Parties shall provide for appropriate and effective remedies against the unlawful acts referred to in paragraph (1).

(3) As used in this Article, 'protection-defeating device' means any device, product or

component incorporated into a device or product, the primary purpose or primary effect of which is to circumvent any process, treatment, mechanism or system that prevents or inhibits any of the acts covered by the rights under this Treaty.

### Article 11

[Application in Time]

(1) Contracting Parties shall also grant protection pursuant to this Treaty in respect of databases that met the requirements of Article 1(1) at the date of the entry into force of this Treaty for each Contracting Party. The duration of such protection shall be determined by the provisions of Article 8.

(2) The protection provided for in paragraph (1) shall be without prejudice to any acts concluded or rights acquired before the entry into force of this Treaty in each Contracting Party.

(3) A Contracting Party may provide for conditions under which copies of databases which were lawfully made before the date of the entry into force of this Treaty for that Contracting Party may be distributed to the public, provided that such provisions do not allow distribution for a period longer than two years from that date.

### Article 12

[Relation to Other Legal Provisions]

The protection accorded under this Treaty shall be without prejudice to any other rights in, or obligations with respect to, a database or its contents, including laws in respect of copyright, rights related to copyright, patent, trademark, design rights, antitrust or competi-

tion, trade secrets, data protection and privacy, access to public documents and the law of contract.

### Article 13

[Special Provisions on  
Enforcement of Rights]

(1) Special provisions regarding the enforcement of rights are included in the Annex to the Treaty.

(2) The Annex forms an integral part of this Treaty.

#### Alternative B

Contracting Parties shall ensure that the enforcement procedures specified in Part III, Articles 41 to 61, of the Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods, Annex 1C, of the Marrakesh Agreement Establishing the World Trade Organization, concluded on April 15, 1994 (the 'TRIPS Agreement'), are available under their national laws so as to permit effective action against any act of infringement of the rights provided under this Treaty, including expeditious remedies to prevent infringements, and remedies that constitute a deterrent to further infringements. To this end, Contracting Parties shall apply *mutatis mutandis* the provisions of Articles 41 to 61 of the TRIPS Agreement.

## ANNEX

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**Note:** The draft provisions on enforcement contained here are not set out as they were modelled largely upon those in articles 41–61 of the TRIPs Agreement.