



Universiteit
Leiden
The Netherlands

Protection for databases : the European Database Directive and its effects in the Netherlands, France and the United Kingdom

Beunen, A.C.

Citation

Beunen, A. C. (2007, June 7). *Protection for databases : the European Database Directive and its effects in the Netherlands, France and the United Kingdom*. Wolf Legal Publishers, Nijmegen. Retrieved from <https://hdl.handle.net/1887/12038>

Version: Corrected Publisher's Version

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/12038>

Note: To cite this publication please use the final published version (if applicable).

Index

A

abuse

- of a dominant position | p. 13, 44, 130, 234, 235-240, 242-243, 245-249, 251, 257, 273-274
- of an information monopoly | p. 113, 133, 237, 248, 257, 260, 273-274
- of the *sui generis* right | p. 248-249, 261, 273, 280

access to information | p. 228-229, 232-233, 255, 263, 272, 281

also see freedom of information

access to public documents | p. 41, 224, 232, 255

also see governmental bodies, and: public authority

added value | p. 51, 128, 135, 157, 186, 246, 251, 253, 255, 258-259, 272-273, 281

agissements parasitaires | p. 277

amount of items in a database | p. 67-69, 188

anthology | p. 50, 61, 72

apport intellectuel | p. 81, 83, 102

archive(s) | p. 35, 63, 100, 103, 153, 219, 227-229, 270-271, 281

artistic work(s) | p. 49-50, 54, 61, 62, 73

audiovisual works *see* film(s)

Austria | p. 16, 180

autonomous works | p. 54, 56

B

book(s) | p. 55, 60-61, 63, 252

broadcasting corporation(s) | p. 14, 18, 109, 114, 171, 233, 247, 255

also see neighbouring right(s)

C

catalogue rule (Scandinavia) | p. 4, 68, 78, 226

CD(s) | p. 120, 123, 138, 247

CD-Rom(s) | p. 33, 54, 82, 110, 135, 144, 150, 153, 222, 226, 264, 278

collection | p. 49-52, 69, 71, 73

collective works | p. 25, 85-88, 102, 154

commissionee | p. 148-149, 153-154, 158

commissioning party | p. 148-153, 158, 230

commissioning situations | p. 148-150, 153-155, 158

also see subcontractor

competition law | p. 10, 13, 79, 133, 188, 233-261, 273-274, 280-281

also see European competition law

competitor(s) | p. 14, 21, 131, 195, 204, 206, 236-238, 259, 261, 270, 272, 277-278, 280-281

compilation | p. 6-7, 20, 25, 49, 51-52, 62, 68-69, 73-75, 78, 101, 120, 123, 138, 199

compulsory licensing | p. 7, 9, 11, 13, 45, 186, 233-234, 248-261, 273-274, 280-281

- compulsory licensing provision | p. 10, 13, 41, 44, 249, 257-261, 274, 280-281

- compulsory licence | p. 11, 133, 237, 239, 241-242, 256-257, 259-261, 280-281

- in the Directive's proposals | p. 249-256, 273

computer program(s) | p. 8, 18, 23-24, 59, 73, 76-77, 79, 84, 89-90, 131, 135-136, 163, 170, 209, 263, 267

also see software

- Computer Programs Directive | p. 10, 18, 26, 33, 76, 79, 84, 90, 267
- computer-generated | p. 64, 88-89
- concurrence déloyale* | p. 210, 232
- consolidation of legislation | p. 137, 222-223
- contract | p. 5, 28-29, 31-33, 43, 86, 94, 102, 130, 151, 154-156, 158, 186, 202, 213-216, 230, 233, 253, 274-275
- contract law | p. 274-275
- Copyright Directive | p. 27, 35, 40-41, 90-91, 95-100, 102-103, 160, 205, 215, 218-220, 227-229, 231-232, 272, 275, 281
- copyright in databases | p. 71-103
- intellectual creation | p. 7, 24, 50, 52, 57, 73, 76, 79-80, 84, 89, 101, 136, 264
 - original selection or arrangement | p. 7, 24-25, 51-52, 57-58, 76, 80-81, 83-85, 87, 91-92, 99, 101-102, 136, 223, 257
- creation of new contents | p. 107, 119-129, 131-132, 134, 139, 143-144, 146, 230, 234, 269, 273, 279
- also see obtaining*
- Crown and Parliamentary copyright (UK) | p. 88, 102
- Crown and Parliamentary database right (UK) | p. 20
- D**
- database definition | p. 23-24, 52-70
- data | p. 64-65
 - other materials | p. 65
 - works | p. 61-63
- database producer(s) | p. 31-32, 38-39, 146-158
- database right | p. 16, 20, 105, 119, 129-130, 216, 227
- also see sui generis right*
- dictionary | p. 5, 87, 135, 226
- dynamic databases | p. 37-38, 198, 200
- also see real-time databases*
- E**
- economic value | p. 139, 193-197, 203, 206, 231, 260, 270
- educational and scientific institutions | p. 218-219, 227, 228-229, 270-271, 281
- employee | p. 26, 82, 85, 102, 119, 144, 147, 152-153
- employer | p. 7, 26, 85-87, 102, 147
- encyclopaedia | p. 50, 61, 87, 135
- European competition law | p. 235-261, 274
- also see competition law*
- Evaluation Report 2005 | p. 128, 234, 266, 268-269, 273, 278-279
- also see review(s) of the Database Directive*
- exceptions to copyright | p. 11-12, 27-29, 31, 35, 45, 93-102, 133, 201, 205-207, 212, 275
- access and normal use | p. 28-29, 94
 - databases made by governmental bodies | p. 41, 224
 - libraries, museums and archives | p. 100, 103, 281
 - private purposes | p. 95-96
 - public security or legal procedures | p. 98
 - teaching or scientific research | p. 97-98
 - temporary reproductions | p. 27, 90, 160, 281
 - other exceptions | p. 99-101
- exceptions to the *sui generis* right | p. 11-12, 34-35, 41, 45, 133, 212-229, 232, 267-268, 271, 275
- databases made by a public authority | p. 221-225, 232, 281
 - insubstantial parts | p. 212
 - libraries, museums and archives | p. 228-229, 271-272, 281
 - private purposes | p. 217-218
 - public security or legal procedures | p. 220-221
 - teaching or scientific research | p. 218-220
 - temporary reproductions | p. 27, 90, 160, 281
 - other (desirable) exceptions | p. 225-229, 232, 271-272
- also see lawful user*

expertise | p. 106, 135
 extraction right *see sui generis* right

F

fair dealing | p. 95-96, 100, 102-103, 218
 fair use | p. 96
 film producer | p. 152-153
 film(s) | p. 54, 64, 152, 171-172
 Finland | p. 16, 122
 fixation | p. 58-59, 69-70, 159, 269
 fixture lists | p. 36, 122, 124, 139
 free competition | p. 44, 234, 253, 260, 267-268, 270, 272-273, 277, 280
 freedom of expression | p. 246-247
also see freedom of information
 freedom of information | p. 132-133, 186
also see access to information

G

geographic market | p. 235, 243, 252
 Germany | p. 16, 18, 45, 49-50, 62, 72, 76, 105, 116-117, 141, 151, 157-158, 162, 166, 176, 199, 208, 230, 239
geschriftenbescherming | p. 4, 77-80, 223, 225
 governmental bodies | p. 35, 41, 224
also see access to public documents, and: public authority

H

harm to the producer's investment | p. 21, 161, 182-183, 193-194, 197, 200-205, 207, 209-210, 278
also see unreasonable prejudice to the producer's interests
 harmonisation | p. 3-4, 6, 8, 14, 24, 26-28, 45-46, 49, 76, 101, 202, 245, 255, 263-266, 270, 276-277, 279
 holding | p. 127, 156
 hyper link(s) | p. 142, 175-178, 180-181
 · surface link(s) | p. 165, 173, 175-177, 179-180
 · deep link(s) | p. 131, 164-166, 173, 175-177, 179-180, 182, 189, 195, 208, 269

I

identifiable unity | p. 51, 69, 190
 implementation of the Database Directive | p. 14-20
 independence of the items in a database | p. 53-54
also see autonomous works
 index | p. 23, 55, 59, 189
 indexation system | p. 23, 190
 individual accessibility of the items | p. 53, 57, 59-60, 66, 125, 135
 information monopolies | p. 233-261
also see abuse of an information monopoly
 information purposes | p. 65-67, 69-70, 269
 initiative of investing in a database | p. 31, 146-150, 155-158, 230
 insubstantial parts | p. 9, 12-13, 31-33, 43, 119, 176-177, 182-183, 185-186, 197-199, 201-202, 208, 212, 231-232, 258
also see repeated use of insubstantial parts
 intermediary | p. 31, 163-165, 167, 173, 177, 179, 181-184, 208, 231, 269
 · liability | p. 31, 179, 181-184, 269
also see search engine
 International Organization for Standardization (ISO) | p. 64
 Internet service providers | p. 177-181, 183-184, 231, 269
 · liability rules | p. 179-181, 183-184, 231, 269
 intrinsic value | p. 194
 Ireland | p. 16, 76, 96, 140, 244
 Italy | p. 16, 25, 43, 45, 105, 151, 157-158, 170, 230

J

Japan | p. 5-6, 45
 joint right holders
 · copyright | p. 25, 85-88, 102
 · *sui generis* right | p. 39, 148, 154-156, 158, 230

K

know-how | p. 106

L

- law databases | p. 137, 222-223, 281, 256
- lawful user | p. 11-12, 27-29, 32-35, 93-94, 186, 201, 212-217, 232, 275
also see exceptions to the sui generis right
- library | p. 35, 63, 100, 103, 219, 227-229, 270-271, 281
- licence | p. 29, 85, 94, 98, 127, 130, 138, 157, 204, 213-214, 216-217, 224, 229, 235-237, 239, 240, 242-246, 248-252, 256-261, 275
 - refusal | p. 85, 235-237, 239-240, 242-243, 245, 247-248, 257, 261, 274, 280
 - licensing | p. 12, 20, 30, 119, 158, 161, 224, 229, 237, 239, 241, 245, 247, 250-251, 274, 277, 280
- also see compulsory licensing*
- literary work(s) | p. 49-50, 53-54, 60-62, 71, 73-74, 83-84, 95, 98, 100-101
- Luxembourg | p. 16, 224

M

- money and/or time, effort and energy | p. 30, 106, 191, 267
- museum(s) | p. 35, 100, 103, 153, 154, 219, 227-229, 270-271, 281
- music | p. 54, 56, 63, 71, 120, 123, 138, 171-173, 180
- musical works | p. 53-54, 60, 73
- neighbouring right(s) | p. 5, 8, 12, 16, 18-19, 98, 217, 221, 253, 264
 - of phonogram producers | p. 4, 14, 16, 18, 45, 121, 138, 152
 - of broadcasting corporations | p. 14, 18

N

- newspaper(s)
 - article(s) 176-177, 189
 - in paper form | p. 55-56, 99, 189, 238, 247
 - job vacancies subsection | p. 55, 189-190
 - web site | p. 166-167, 176-177, 189-190, 199, 208

- non-electronic databases | p. 5-6, 11-12, 23, 27, 34, 48, 59-60, 63, 69, 93, 95, 110, 137, 212, 217
- normal exploitation of a database | p. 31, 33, 99, 167, 176, 201, 203-208, 219, 231-232

O

- obtaining | p. 12, 29, 106-111, 114, 117, 120-128, 132-134, 137, 139, 145-146, 192, 230, 234, 269
 - approach of the European Court of Justice | p. 121-129, 132-133
- also see creation of new contents*
- on-the-spot reference use | p. 225-227

P

- phonogram | p. 4, 138
- phonogram producer | p. 4, 14, 16, 18, 45, 121, 138, 152-153
also see neighbouring right(s)
- photograph(s) | p. 24, 54, 62, 64, 153
- Portugal | p. 15, 25
- potential competitor(s) | p. 237, 259, 261, 277, 280
also see competitor(s)
- presentation | p. 29, 105-108, 110, 114, 124-125, 127, 132-137, 153, 157, 187, 230, 234
- product market | p. 235, 243, 252
- public authority | p. 137, 221-224, 232, 250, 254, 256, 281
also see access to public documents, and: governmental bodies
- public domain | p. 4, 188, 210, 268, 270-272, 278

R

- real-time databases | p. 135, 198, 200
also see dynamic databases
- reciprocity | p. 38-39
- remedies for infringement | p. 40
- repeated use of insubstantial parts | p. 9, 12, 31, 119, 159, 176-177, 182-183, 185, 197-199, 201-202, 204, 208-209, 231
- representation(s) | p. 64
- reutilisation right *see sui generis right*

review(s) of the Database Directive
| p. 13, 27, 264

also see Evaluation Report 2005

rights management information
| p. 40-41

risk of investing in a database

- associative risk | p. 152
- financial risk | p. 150, 152-154, 156, 230
- organisational risk | p. 152-154, 156-157, 230
- production risk | p. 151-153

S

Scandinavia | p. 4, 68, 78, 226

scientific data | p. 191, 193

scientific research | p. 12, 27, 30, 34-35, 93, 96-98, 191, 212, 216, 218-220, 228

search engine | p. 131, 159, 163-167, 173-177, 179-183, 195-196, 209, 231, 269

also see intermediary

single-source database | p. 234, 251, 253, 258-259, 281

single-source producer | p. 133, 299, 233-234, 244-245, 252-253, 259-261, 273, 280

software | p. 23, 33, 47, 110, 131, 135-136, 153-154, 172-173, 183, 191

also see computer program(s)

Spain | p. 16, 25

spin-off database(s) | p. 108-111, 113-116, 121, 125, 128, 132, 189, 230

spin-off theory | p. 107-118, 120-121, 125, 131-134, 142, 146, 230, 269

structure of a database | p. 24-25, 77-78, 83, 85, 87-88, 93, 100-101, 259

subcontractor | p. 148-151, 154-155, 157, 230

subset | p. 189-191

subsidiary company | p. 39, 127, 137, 156

substantial investment | p. 9, 29-30, 36, 45, 68, 72, 80, 101, 105-147, 151, 157-158, 189-193, 201, 222, 230, 233-234, 269, 272-273, 279

also see obtaining

substantial part(s) | p. 9, 30-31, 35, 45, 68-69, 91, 93, 100, 119, 166, 176-177, 182-183, 185-198, 200-202, 204-205, 209, 212, 217, 219, 221, 224, 227-228, 231-232, 259, 269, 272, 278

· quantitatively | p. 187-191, 231

· qualitatively | p. 166, 191-197, 231

sui generis right | p. 9, 12, 14-20, 29-43, 45, 105-232, 233-234, 242-261, 263-281

· extraction right | p. 30-31, 158-167, 230-231

· reutilisation right | p. 30-31, 158, 168-174, 230-231

sweat of the brow doctrine | p. 6, 83-84, 101, 140, 145, 264

Sweden | p. 16, 122, 204

systematic or methodical arrangement
| p. 55, 57-58, 63, 69, 110, 125, 135

T

take-over of a company | p. 156

teaching | p. 12, 27, 34-35, 93, 96-98, 212, 216, 218-220, 228

technological measures | p. 40-41, 176, 183, 215, 229, 274-275

technology-(in)dependent | p. 6, 48, 174

telephone directory | p. 5-6, 108-109, 111, 114, 116, 127, 137, 143, 163, 170, 233, 247, 255

temporary extractions | p. 27, 167, 182, 228, 231-232, 281

temporary reproductions | p. 27, 89-90, 102, 160, 167, 173, 182, 228, 231-232, 281

term of protection

· copyright | p. 24, 26, 42

· *sui generis* right | p. 14, 36-38, 42-43, 127, 135, 212, 278

· unfair extraction right | p. 7, 9-10

· unfair competition | p. 9, 212, 278

thesaurus | p. 23, 59, 135, 190

three-dimensional material | p. 54, 61-63, 65-67, 69

three-step test of art. 9(2) BC | p. 28, 31, 201, 205-207, 231

TV listings | p. 108-109, 114, 121, 143, 237, 245, 247, 252, 233
 two-step test of arts. 7(5) and 8(2) Database Directive | p. 201-208, 231-232
also see normal exploitation of a database, and: unreasonable prejudice to the producer's interests

U

unfair competition | p. 1, 5, 7-9, 14, 39, 41, 45, 79, 204, 209-212, 232, 251, 263-264, 276-278, 280
 unfair extraction right | p. 6-10
 United States | p. 4-6, 20-21, 36, 39, 45, 141, 264-266
 unlawful act | p. 41, 172, 174, 177-184, 209, 211
 unreasonable prejudice to the producer's interests | p. 31, 33, 99, 176, 185, 198, 201, 203-207, 219, 232, 276, 278
also see harm to the producer's investment
 U.S. bills on database protection | p. 274

V

verification | p. 12, 29, 37, 105-108, 110, 114, 123-125, 127, 132-135, 137, 139, 157, 230, 234

W

work(s) of art | p. 54, 61-63, 67, 83, 144
 works of collaboration | p. 86-88, 102
 World Intellectual Property Organisation (WIPO) | p. 3, 6, 20, 266
 · WIPO Draft Database Treaty | p. 20-22, 30, 32, 36, 39-41, 46, 169, 193, 266, 274
 World Trade Organisation (WTO) | p. 205
 · Dispute Settlement Body of the WTO | p. 205