

Public consultation on the evaluation of the Database Directive 96/9/EC

Fields marked with * are mandatory.

General information about you

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Fields marked with * are mandatory.

* I'm responding as:

- An individual in my personal capacity
- A representative of an organisation/company/institution

* Please provide your first name:

Vincent

* Please provide your last name:

Bonnet

* Please indicate your preference for the publication of your response on the Commission's website:

- Under the name given: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication.
- Anonymously: I consent to publication of all information in my contribution and I declare that none of it is subject to copyright restrictions that prevent publication.
- Please keep my contribution confidential. (it will not be published, but will be used internally within the Commission)

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* Please enter the name of your institution/organisation/business.

EBLIDA - European Bureau of Library, Information and Documentation Associations

What is your institution/organisation/business website, etc.?

www.eblida.org

* What is the primary place of establishment of the entity you represent?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

* If other please specify:

Europe

* My institution/organisation/business operates in: *(Multiple selections possible)*

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Italy
- Ireland
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other

* If other, please specify

Bosnia and Herzegovina, Georgia, Moldova, Montenegro, Norway, Serbia, Switzerland, Turkey

* Is your organisation registered in the [Transparency Register](#) of the European Commission and the European Parliament?

- Yes
- No

* Please indicate your organisation's registration number in the Transparency Register.

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Category of respondents

* Please indicate the type of organisation you represent (one answer).

- National administration
- National regulator
- Regional authority
- Civil society/ non-governmental organisation
- Trade association
- Consumer association
- Business
- Research body/ academia
- Other

* Please indicate the sector in which your business/ organisation/ institution mainly operates (one answer).

- Manufacturing
- IT services
- Agriculture and food
- Health and care
- Energy
- Automotive and transport
- Financial services/ banking/ insurance
- Retail/ electronic commerce
- Electronic communications
- Publishing
- Public sector
- Research, scientific, education
- Consumer protection group
- Other

If other, please specify

Library, Culture, Education, Cultural Heritage, Access to Knowledge

* The turnover of your company/organisation in 2016 was:

- < 2 million EUR
- 2-10 million EUR
- 11-50 million EUR
- > 50 million EUR
- Non-profit

* The size of your company/organisation in 2016 was:

- less than 10 employees
- between 10 and 50 employees
- between 51 and 250 employees
- more than 250 employees

* Your company/ organisation was created:

- within the past year
- between 1 and 5 years ago
- between 5 and 10 years ago
- more than 10 years ago

* Which of these statements apply to your organisation/ you (one answer):

- my organisation's/ my main activity is to produce, sell and/or license databases
- my organisation's/ my main activity is the production and/ or market commercialisation of products or services which generate data through their usage (e.g. internet platforms, search engines, social networks, sensor-equipped machines, tools, devices, etc.)
- my organisation's/ my main activity is to provide services for which I make data available upfront for the service to take place (e.g. e-commerce websites such as airlines, car rentals, etc.)
- none of the above

Questions

I Overview of the database market

* 1. Would you describe yourself, your company/organisation/body as a (several options possible):

- owner (as a rightholder) of database(s) - private sector
- owner (as a rightholder) of databases - public sector
- user of database(s) - private sector
- user of a database(s) - public sector
- other (please specify)

If other, please specify

Our members are both major users and also owners of their own databases. However, as a membership organisation representing European libraries, EBLIDA is not in a position to answer the questionnaire's detailed questions in Section 1 concerning the operation of our members' own databases.

II Impact on rightholders and users

It was expected that the Directive would improve the global competitiveness of the European database industry and increase the European production of databases. This section seeks to explore the extent to which the objectives of the Directive have been achieved. For more information please refer to the [background document](#)

1. To what extent have the provisions of the Database Directive achieved their objective to protect a wide variety of databases?

- To a limited extent
- To a large extent
- No opinion

Where expectations have not been met, what obstacles hindered their achievement?

The growth of the EU's database industry since the Directive came into force has neither been helped nor hindered by the legislation, i.e. the Directive has had little impact as the industry's growth would have happened anyway. This has not changed in the 12 years that have elapsed since the findings of the European Commission's 2005 Evaluation.

2. Based on your own experience (as a database producer/owner or user) please indicate your views on the statements below:

	strongly agree	agree	disagree	strongly disagree	no opinion
By creating the sui generis right, the Directive sufficiently protects the investments (whether human, technical or financial) made for the creation, updating or maintenance of a database	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
By securing protection to investments, the Directive encourages investments in advanced information processing systems related to databases and stimulates the production of databases.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The Directive has strengthened the position of the market leader in my sector.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The Directive achieves a good balance between the rights and interests of the rightholders and users.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The Directive has achieved harmonisation in its field and eliminated differences between Member States which has encouraged database owners to operate in other Member States.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
National contract law gives more legal certainty than sui generis protection when it comes to prevention of extracting or re-using database content.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The protection offered by the Database Directive still fit for purpose in an increasingly data-driven economy.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please indicate the reasons behind your answers.

The Commission acknowledged in its 2005 Evaluation that "the economic impact of the 'sui generis' right on database production is unproven." (s.1.4 p.5). The

EU had introduced the 1996 Directive intending to boost the EU database industry against competition from the United States, yet after 21 years, the US remains the market leader. While the EU database industry has grown, it cannot be said that such growth had anything much to do with the Database Directive.

The Directive hasn't helped users because its introduction of the sui generis right has made the protection of databases too complicated for users to understand. Its very limited exceptions demonstrate the Directive's inadequacy in face of the needs of private users, researchers and educators who have lawful access to the database in question.

Regarding harmonisation, the 2013 Open Aire study on research data www.oapen.org/download?type=document&docid=611228 found that "Despite European harmonisation, the perhaps surprising outcome of the analysis is that there are some areas of dis-harmonisation between the different Member States. One very significant example of dis-harmonisation is the "exception for scientific research" to the sui generis database right" (p.11)

Taking the exception for "extraction for the purposes of illustration for teaching or scientific research" as a major example, the above 2013 Open Aire study found that, "It is not mandatory for this exception to be introduced into national legislation and it seems that every Member State has its own interpretation of the underlying directive. As it is drafted at the moment, the exception is to all intents and purposes useless." (p. 11).

Another example is the exception limiting "reproduction/extraction for private purposes" to "non-electronic databases". It was pretty useless back in 1996, but now that virtually all databases are entirely digital, is even more so. Just five years after the Directive passed, Professor Bernt Hugenholtz (IViR, University of Amsterdam) scathingly responded to the EU Commission's 2001 study by Nauta Dutilh ec.europa.eu/internal_market/copyright/docs/studies/etd2001b53001e72_en.pdf: "Exclusions of private electronic use (e.g. on hard disk) is ludicrous, impracticable [sic] and impossible to monitor." (p.484).

As far as the Directive's fitness for purpose is concerned, note that in 21 years no other country has copied the EU and introduced sui generis protection for databases. This indicates that such protection for databases is an unwanted and unnecessary complication for most. It has, however, served as a handy tool for database owners in disputes concerning extraction and re-utilisation of data, though in the few cases that involve legal action this has primarily been between commercial enterprises in the fields of sports or commercial aviation.

The Directive limits extraction or re-utilisation of substantial parts of a database, so needs amendment to take account of text and data mining (TDM): any copies of a database made for TDM purposes outside the provisions of the draft DSM Directive, currently before the European Parliament, could still be infringing, especially if the Commission's original proposals to exclude commercial enterprises such as tech start-ups and investigative journalism by limiting the TDM exception to "reproductions and extractions made by research organisations" and "for the purposes of scientific research" are not amended.

3. Based on your own experience (as a database producer/owner or user) please indicate your views on the impact of the sui generis right on the following:

	positive effect	no effect	negative effect	not relevant
legal certainty for database producers /owners	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
legal certainty for lawful users	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
costs of database protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
marketing of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
access to data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
re-use of data	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
investment in databases	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
innovation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
development of the data market	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please indicate the reasons behind your answers.

Dr Annemarie Beunen comments in her published 2007 doctoral thesis <https://openaccess.leidenuniv.nl/handle/1887/12038> that: “an exclusive sui generis right with no clear boundaries creates legal uncertainty for both producers and users of databases and poses a threat to the public domain. The interpretations offered by the European Court of Justice are arguably only a poor consolation where an exclusive right is defectively demarcated in the first place.”

Legal certainty for database producers/owners has been undermined because of the law is now so complex. Interpretation of the provisions regarding investment in collecting and verifying and presenting the data is both complicated and unclear as is the concept as to what is an ‘original’ as opposed to an ‘unoriginal’ database. Beunen argues in her thesis that data compilers benefit from the sui generis protection at the expense of data creators (p.271 footnote 36) because the CJEU had ruled that the cost of the creation of data should not be taken into account as part of the ‘substantial investment’ that grants the sui generis protection. Thus database producers who themselves produce and collect their own primary data, e.g. from their own research findings, are disadvantaged compared to those producers that collect and compile existing data from published secondary sources (e.g. journal articles) into a database (p.95).

There is no effective legal certainty for users since the sui generis right has applied an extra confusing and unclear layer of protection on top of copyright. Rather than try to get their heads round this, in practice users find themselves obliged to abide by the contractual terms of the licences giving them access, but these are mostly ‘business-to-business’ contracts, so in most

cases no consumer protection is available. This means that the contract may contain terms that seek to undermine the Directive's limitations and exceptions (apart from Articles 6(1) and 8 which are protected from contract override by Article 15). More and more countries are prohibiting contract terms from undermining copyright exceptions but this is not yet EU-wide and the Commission needs to introduce such measures. Additionally better and immediate protection (i.e not relying on often cumbersome and lengthy national appeal systems provided under Information Society Directive Article 6(4) which is in many cases are utterly toothless) of the Database Directive's copyright and sui generis right limitations and exceptions from being undermined by technological protection measures (TPMs) is essential, so that users can benefit from the statutory exceptions in their country, including access to databases by people with disabilities and the conduct of TDM.

The exception for “extraction for the purposes of illustration for teaching or scientific research” is limited to extraction only for non-commercial purposes. The non-commercial purposes requirement fails to acknowledge university and research organisation reliance on public-private research partnerships and the need for knowledge transfer from universities to spin-off start-ups. The exceptions to the sui generis right in Article 9 are optional, not mandatory, so have not been harmonised throughout the Union. Where not implemented by a Member State, the needs that educators, learners and researchers have to make substantial extractions and re-utilise data are unmet.

It would seem doubtful that the Directive actually supports innovation. Beunen's thesis referenced above tells us that the sui generis protection “grants a monopoly, which leads to a restriction of free competition” (p. 268). Professor James Boyle wrote in the Financial Times 02/01/06 <https://www.ft.com/content/99610a50-7bb2-11da-ab8e-0000779e2340> that “the theory was that this would help build European market share”, but “setting intellectual property rights too high can actually stunt innovation”.

4. Do you think the costs of application of the Directive are balanced compared to the benefits stemming from the protection the Directive offers?

- Costs are higher than benefits
- Costs and benefits are balanced
- Benefits are higher than costs
- No opinion

Please explain your answer and list the costs and/ or benefits you refer to.

There is no evidence that the sui generis right has in itself produced much in the way of benefits. Rather, the Directive's sui generis protection adds another layer of burdens on educators, learners and researchers (see above on re-utilisation of data) wishing to extract or re-utilise extracted data as their institutions and libraries must negotiate licences or clear rights, hindering their access to data and increasing costs to the public purse. The sui generis right should go.

III Application of the Database Directive and possible needs of adjustment

The original objective of the Directive was to harmonise the protection of a wide variety of databases in the information age. In doing so, the Directive aimed at protecting the investment of database makers while at the same time ensuring protection of users' interests. In the context of the Commission's vision related to building a European data, these objectives translate into increasing legal certainty for database producers/ owners and users and enhancing the re-use of data.

This section seeks to assess the relevance of the objectives of the Directive and of each of its articles, taking into account technological, social and legal developments. For more information please refer to the [background document](#).

1. In your opinion, are the original objectives of the Database Directive still in line with the needs of the EU?

- Yes
- No
- No opinion

Please explain.

The Database Directive was never “in line with the needs of the EU” as stated in the question. It adds unnecessary legal complexity for both database creators and users. There is still no evidence that the Directive has done anything to enhance the ability of the EU database market to compete with the United States, who remain the world leaders in the field. The Directive is so flawed it hasn't led to a stable and uniform legal protection regime: e.g. the over-broad definition of a database as “a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means”, the potential for the repeat renewing of the 15 year duration of sui generis protection to enable the sui generis right to persist in perpetuity as long as the database is periodically ‘updated’ (even if the update consists of merely correcting the accuracy of the data) and whether linking or deep-linking is a communication to the public – a live issue not addressed by legislation that is repeatedly being wrestled with in the courts and the CJEU.

The Commission's own 2005 evaluation report stated that the sui generis protection had not achieved the objectives of the Directive (p. 25), but had “revealed itself to be an instrument that is ineffective at encouraging growth in the European database industry and, due to its largely untested legal concepts, given rise to significant litigation in national and European courts. Empirical data underlying this evaluation show that its economic impact is unproven. In addition, no empirical data that proves that its introduction has stimulated significant growth in the production of EU databases could be submitted so far.” There does not seem to be any subsequent evidence pointing to this situation having changed in the intervening 12 years.

The scope of the Directive is defined by its articles 1 and 2. Article 1(1) provides for that the Directive concerns the legal protection of databases. Article 1(2) of the Directive defines a database as a collection of independent works, data or other materials arranged in a systematic or methodological way and individually accessible by electronic or other means. Article 1(3) specifies that the Directive shall, to some extent, not apply to computer programs. Finally, Article 2 provides for the limitations of the scope. The aim of this section is to gather information on the scope of the Directive.

2. Do you consider that the scope of the Directive is:

- too narrow
- satisfactory
- too broad
- unclear
- outdated
- I don't know

On the copyright protection

Articles 3 to 6 of the Directive concern the copyright protection of databases. Articles 3 and 4 specify the object of protection and authorship. Article 5 provides for the list of restricted acts. Article 6 provides for the exceptions to these restricted acts. The aim of this section is to gather information on the use and adequacy of the copyright protection of databases, in particular as regards exceptions to the restricted acts.

3. As regards exceptions provided for by Article 6 of the Directive, have you already relied on/been confronted to, one or several of the following exceptions?

	yes, often	yes, sometimes	no	no opinion (no transposition in my country)
Acts necessary for access and normal use (Art. 6.1)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Private purpose (Art. 6(2)(a))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Teaching and scientific research (Art. 6(2)(b))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public security, administrative or judicial procedure (Art. 6(2)(c))	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
National traditional exceptions (Art. 6(2)(d))	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Please describe your experience and explain specific problems you may have faced and the means you relied on to deal with them.

The mandatory protection of the Article 6(1) exception from being undermined by contract terms should be extended to prevent the use of TPMs to undermine the users' ability to make use of the exceptions. The interference of TPMs with users' access to copyright and database right exceptions is a major problem.

One example was a case referred to the UK government two years ago where the database TPM is being used to prevent TDM (for which there is an exception in UK law since 2014) https://www.cilip.org.uk/sites/default/files/media/document/2017/notice_of_complaint_to_the_secretary_of_state_-_test_case_1_0.pdf. Additionally, if the Database Directive is not to be withdrawn, it will need amendment to accommodate the new EU-wide cross-border TDM exception coming via the DSM Directive, though it needs to be available for both non-commercial and commercial purposes.

Moreover, should the copyright provisions remain in the Database Directive, then the Directive should stipulate that Member States must ensure that all their national copyright exceptions should equally apply to databases whose selection or arrangement is protected by copyright. It is not clear now whether Article 6(2)(d) implies that existing national copyright exceptions automatically apply to copyrighted databases, or whether this provision requires national legislators to actively implement their exceptions explicitly for databases (Beunen, p. 99).

4. Is in your opinion the Database Directive coherent with the EU legislation and priorities in the following fields:

	strongly agree	agree	disagree	strongly disagree	don't know
EU copyright acquis	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
PSI Directive	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
EU open access policies regarding research activities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Data Economy Package objectives [e.g. making data easily accessible and usable to facilitate development of new products and services]	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please describe your relevant experience and explain specific problems you may have faced with regard to compliance with other laws that interact with the Database Directive.

The sui generis right adds a complicated and unnecessary layer to already comprehensive copyright protection given by the EU Copyright Acquis to original works and compilations held in databases that few can comprehend or cope with on a day to day basis.

The Directive's sui generis right creates legal uncertainty around the re-use of Public Sector Information because a conflict of rights can arise. Primavera De Filippi and Lionel Maurel's view https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2725355 is that while re-use of public sector information can take precedence over the sui generis right, "sometimes, the 'sui-generis' right for databases might actually go counter the right to re-use public sector information". They quote Legifrance <https://www.legifrance.gouv.fr/> as an example of a large publicly accessible government database comprising the

French legislative corpus that is protected from substantial extraction or reproduction of content by the sui generis right (p. 6) even though the content can be said to 'belong' in the public domain. They also say that "the subjectivity involved in assessing these operations might dissuade people from legitimately using (or reusing) a public dataset, to avoid the risk of potential liability" (p. 22).

Mireille van Eechoud and Brenda van der Wal's research https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1096564 also raises the issue of the 'substantial investment' criterion causing uncertainty when applying sui generis protection to public sector databases (p. 26) and that "considering the broad scope of copyright and database protection, prior permission will be required for the re-use of much public sector information" (p. 68) adding several more layers of complexity because (as anyone who has cleared rights knows) "copyright or database rights in public sector information does not necessarily rest with one public legal person(s)" (p. 20).

The sui generis right is by nature an antithesis to EU Open Access policies since its exceptions in Article 9 are merely optional and not harmonised throughout the Union. Where not implemented by a Member State, educators, learners and researchers are denied the ability to make substantial extractions and re-use of data that they need, particularly when it comes to TDM and rightholders' use of TPMs to thwart it. Without harmonisation of all the Directive's limitations and exceptions and their protection from override by contracts and also the introduction of full protection from override by TPMs alongside their extension to permit cross-border uses, it will be impossible to establish a digital infrastructure that would properly meet the needs of TDM for the purpose of scientific research in Europe.

The sui generis right hinders a European data economy that can only thrive if data is easily accessible and reusable, so it needs to go. If it stays, EU legislators need to widen the beneficiaries of the proposed TDM exception to all persons with legal access to a database (including the Web itself) regardless of their purposes, to avoid stunting the development of European tech and research enterprises.

On the sui generis right

Articles 7 to 11 of the Directive provide for the sui generis protection of databases. Article 7 provides for the object of protection (including the restricted acts). Article 8 specifies the rights and obligations of lawful users while Article 9 provides for the list of exceptions to restricted acts. Article 10 provides for the term of protection. Finally, Article 11 indicates the beneficiaries of the protection. The aim of this section is to gather information on these different provisions, how they have been applied and used in practice and whether they are relevant and adapted to the current environment.

5. According to Article 7 of the Directive, the sui generis protection will apply to databases which show that there has been qualitatively and/ or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents. Do you consider that the scope of the sui generis right is:

too narrow

- satisfactory
- too broad
- unclear
- no opinion

6. Under the sui generis right, the maker of a database can prevent extraction and/ or re-utilization of the whole or substantial part, evaluated qualitatively and/ or quantitatively, of the contents of that database. Do you consider that such rights are:

- too narrow
- satisfactory
- too broad
- unclear
- no opinion

7. Sui generis protection only benefits those producers who made a substantial investment in either the obtaining, verification or presentation of the database. Such substantial investment must be proved by the claiming rightholder. Do you consider that the notion of substantial investment is:

- unclear and difficult to use in practice
- clear and easy to apply in practice
- no opinion

8. Have you experienced difficulties proving such substantial investment in the framework of enforcement of your rights, including judicial proceedings?

- yes
- no

Please explain.

In the experience of libraries that have approached users of their own databases concerning abuse of the user terms and conditions, the issue of proving 'substantial investment' generally does not arise.

9. According to the case law of the Court of Justice of the European Union (CJEU), investment in creating the data (i.e. the resources used for the creation of content) should not be taken into account when determining whether a database can be protected under the sui generis right. On the contrary, the resources used to seek out content and collect it in a database are taken into account when determining sui generis protection. Based on your experience, how would you describe the effect of this case law on the following issues:

	strongly positive	positive	negative	strongly negative	don't know
Scope of the protection of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Balance between rights and interests of database producers/owners and users	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Production of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Use of databases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Other (please specify below)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please explain.

CJEU rulings haven't done much to clarify and simplify understanding of sui generis right which remains too complicated a concept. How is a user to be able to judge whether the resources used to seek out and collect content in a database is sufficient to qualify it for sui generis right?

10. Do you think that the current application of the sui generis right is appropriate when it comes to the following databases:

	apropriate	not apropriate	no opinion
databases produced by public sector bodies or financed with public money	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
databases which contain automatically collected and/ or machine-generated data	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Please explain your answer by providing concrete examples and possible alternatives to the current application you are referring to.

In our view, anyone should be able to extract substantive amounts of data from publicly accessible databases produced by public bodies and re-utilise it for any legitimate purpose without restriction in accordance with the Union's Public Sector Information (PSI) provisions, so such databases should not be protected by a sui generis right, if it is retained.

However, in line with PSI provisions, unauthorised extraction and re-utilisation of any copyright protected third party content not created by a public body, that is held in publicly accessible public body databases should continue to be in accordance with the copyright exceptions, even if the database itself is not protected by a sui generis database right.

Databases that automatically collect all their data or primarily contain machine-generated data are unlikely to qualify as ones in which there has been substantial investment, so should not qualify for protection by a sui generis right, if it is retained.

11. Extraction and re-utilisation rights are defined by referring to the notion of "substantial parts of the content of a database". Have you experienced difficulties when applying, interpreting and/ or enforcing these rights?

- yes
- no

Please explain.

The term ‘substantial part’ is unclear in both Directive and case law and should be clarified if the sui generis right is not abolished. How is a user able to judge whether the part he or she wishes to re-utilise is qualitatively or quantitatively a ‘substantial part’ or not? Assessing this has become even more complicated since the CJEU ruled in its Apis/Lakorda decision that databases can consist of sub-databases which may themselves merit sui generis right.

12. Database makers may prohibit the repeated and systematic use of insubstantial parts of the database (Art.7.5). In your opinion, this:

- insufficiently protects the rightholder
- sufficiently protects the rightholder
- excessively protects the rightholder

13. As regards the right provided in Art. 8 and the exceptions provided for by Article 9 of the Directive, have you already relied on/been confronted to, one or several of the following provisions?

	yes, often	yes, sometimes	no	no opinion (no transposition in my country)
Extraction and re-use of insubstantial parts (Art. 8.1)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Private purpose (Art. 9(a))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Teaching and scientific research (Art. 9 (b))	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public security, administrative or judicial procedure (Art. 9(c))	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please describe your experience and explain specific problems (e.g. determination of 'insubstantial parts', contractual clauses restricting use of the exceptions) you may have faced and the means you relied on to deal with them.

Please refer to our answers above. The CJEU rulings on what is “substantial” haven’t helped as now just a few words could be treated as “substantial” depending on their qualitative value. Database users won’t understand this on a day to day basis and aren’t in a position to be able to judge which words or combination of words might be construed as ‘substantial’.

14. Sui generis protection lasts for 15 years as from completion (or making available within this term) of the database (see Article 10.1-2). In your opinion, this term is:

- too long
- satisfactory
- too short

15. Which provisions of the Directive as transposed in your national law have had the strongest impact on your business and why?

EBLIDA is a pan-European organisation so cannot comment on individual national transpositions of the Directive, but on an EU-wide basis it can be said that the protection provided by Article 15 to the mandatory exception in Article 6 (1) and the provisions of Article 8 from override by contract terms is very positive for libraries and their users. However the same protection should be extended to the optional limitations and exceptions in Article 6(2) and Article 9. Indeed these optional limitations and exceptions should be made mandatory. The lack of protection for all the Directive's provisions for limitations and exceptions from override by TPMs is very negative for libraries and their users since TPMs can be used to reduce the effect of limitations and exceptions where contracts cannot and the provisions of Article 6(4) of the Information Society Directive 2001/29/EC are useless when access to the database is granted by a negotiated licence. Assuming that an EU-wide cross-border TDM exception will be implemented by the DSM Directive currently before the European Parliament, as the use of TDM expands, without protection from override by both contracts and TPMs, the potential for conflict between that exception, copyright and the sui generis right will increase.

16. Have you experienced difficulties due to the national implementation of the Directive in the Member States (e.g. divergent national implementation, implementation going further than what is required under the Directive, etc.)? If so, could you please explain?

In this context the difficulty for libraries, education and research lies in that there is still no cross-border application of the as yet unharmonised national applications of the Directive's optional exceptions and limitations in Articles 6(2) and 9.

17. What is the added value of the EU intervention vis-a-vis national or regional interventions in the fields covered by the Database Directive?

If the Directive is not to be withdrawn, EU intervention will be needed to harmonise all the limitations and exceptions to the sui generis right and copyright in relation to databases to facilitate cross-border uses and to introduce an exception for TDM to the sui generis right. Additionally, EU intervention is needed to make mandatory the limitations and exceptions in Articles 6(2) and 9, to extend the protection of Article 15 to Articles 6(2) and 9 and to protect all the Directive's limitations and exceptions from override by TPMs.

18. Which provisions of the Directive may need further adjustment to usefully apply to digital/ online/ on demand databases and why?

The Commission's own 2005 evaluation of Directive 96/9/EC (section 5 Analysis, p23) concluded that "From the outset, there have been problems associated with the "sui generis" right: the scope of the right is unclear; granting protection to "non-original" databases is perceived as locking up information, especially data and information that are in the public domain; and its failure to produce any measurable impact on European database production."

The situation has only been slightly ameliorated since then and only by involving the courts, which have struggled to define the meaning and scope of the sui generis right. It and the Directive should be withdrawn. However, EU intervention to withdraw the whole Directive or just the sui generis right, would be needed to remove any or all of the Directive's provisions from Member State laws.

19. Which of the following approaches would, in your opinion, be most appropriate to achieve an adequate balance between database owners' rights and users' needs?

- no policy change
- guidance to Member States on the sui generis protection
- amend the sui generis protection
- other (please specify)

Please explain your choice and the impact it would have on you/ your clients/ the market (free text).

Withdraw the sui generis right. Harmonise the Directive's limitations and exceptions and protect all of them from override by contracts and TPMs.

Any other comments

Please see our answers to all the questions above.

Submission of questionnaire

End of survey. Please submit your contribution below.

Useful links

[Web page consultation \(https://ec.europa.eu/info/content/public-consultation-database-directive-application-and-impact-0_en\)](https://ec.europa.eu/info/content/public-consultation-database-directive-application-and-impact-0_en)

[Roadmap \(https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2543859_en\)](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-2543859_en)

Background Documents

[Dclaration de confidentialit \(/eusurvey/files/24a13bef-f6b8-42d1-b8e2-2de6ac5a0b5c\)](/eusurvey/files/24a13bef-f6b8-42d1-b8e2-2de6ac5a0b5c)

Contact

CNECT-CONSULTATION-DATABASEDIRECTIVE@ec.europa.eu