



## Legal Protection Of Databases

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The requirement to harmonize Polish legislation with the standards pertaining in the European Union lead to the introduction of so-called non-author's databases (also referred to as „*sui generis*” databases) in Poland. In particular, Polish legislation must be harmonized with the Directive on Legal Protection of Databases of March 11, 1996. Consequently, the Database Act was enacted on July 27, 2001 (Journal of Laws of 2001, no.128, item 1402). Both the content and the form of this Act are concise - the Act comprises only several articles. Nevertheless, when the Act finally enters into force (this problem will be discussed below) it may once and for all change the rules under which Polish businesses conduct economic activity. This is probably the reason why the legislator provided for a long *vacatio legis* (of one year), i.e. the period between when the Act is published in the Journal of Laws and when it actually enters into force. The Act shall enter into force in November 2002, thus there is still some time for businesses to safely assess the influence it may have on the economic activity they conduct.

### Subject matter of protection

For many years various databases have been present in the lives of people. The increased complexity of people's activities in economic, cultural and social life requires the creation of various types of information sets, such as library lists, birth, marriage and death registers, year-books, rate schedules, timetables, lists of suppliers and clients, etc. The creation of such information sets often require a great deal of hard work as well as substantial expenditure, whereas the results could be of substantial value to others. Creators of databases were naturally concerned that the results of their work and investments were subject to adequate legal protection. This problem became even more acute with the development of information technology. Computers are incomparably better for sorting various types of data than any other traditional methods. By the strike of a key or click of a mouse a database can instantly be created according to a freely selected criteria. The development of information technology generated much faster circulation of information all over the world and, naturally, further databases were created. Except for the obvious advantages of the computer, it also

brought threats to the creators of databases. The results of lengthy efforts and serious expenditure can be copied and used by somebody else in an instant, whereas a database “collected” in this way may bring financial benefits to a person who uses it illegally.

### Methods of protecting databases

There is a growing demand for database protection under the existing legal system and through the introduction of new methods of protection. Protection was sought under the existing copyright law. Traditionally, the copyright law protected literary and artistic works only. In time it was realized that other wares - such as computer programs or said databases - also required protection. This is why there were attempts to include the said wares under legal and author's protection by way of extending the interpretation or amendment of existing laws. It was therefore demanded that computer programs be protected as “literary works” and that databases be protected in a same manner as compilations, anthologies and selections, in so far as the “*selection, arrangement or compilation thereof has a creative element*” (Art. 3 of the Act on Copyright and Related Rights). Therefore, until recently only creative compilation of data was subject to protection. The data itself was not subject to any legal or author's protection. When advising their clients under this regulatory environment, counsels and judges would consider whether a particular database had a “creative” element or not. The precedent verdicts published, concerning wares that did not have much in common with works within the traditional and initial meaning, such as timetables, catalogues, sets of forms, instruction manuals, did not help much as they failed to give enough protection in various situations which did not strictly fall within their scope. Moreover, particular databases - sometimes of a significant proprietary value (for example, exchange quotations or other similar types of business data compilation) more and more often turned out not to contain a creative element and yet deserved protection. European legislators realized this problem much earlier than their Polish counterparts, therefore the said Directive entered into force in 1996. The foregoing results naturally from the technological advantages of

Western European countries, where the problem arose much earlier than in Poland.

### **Right to databases**

Art. 6 of the Database Protection Act provides that „a database creator has an exclusive and transferable right to collect data and re-use the same in whole or in part in respect of its quality and quantity.” The said right, although allowing for certain exceptions such as, *inter alia*, use of databases for private, teaching or research purposes, is protected by civil and legal claims to which a database creator is entitled (claim to stop a breach, claims for indemnity or return of profits gained). Any infringement of the right to databases is subject to a fine. It should be noted that the right to databases, like other intellectual property rights, is limited by time and expires fifteen years from the end of the year in which a particular database was created. In addition, the legislator introduced a so-called exhaustion of the right to a database. This means that after a database has been legally sold for the first time, its creator loses the right to control the future trade in copies of the database. The quality of the Act has been criticized by experts, who claim that the Act is not fully harmonized with the Directive and unnecessarily regulates separately the legal status of author’s and non-author’s databases (the Act only protects non-author’s databases). We can only wait and see whether the Act is amended before it enters into force or whether its faults will need to be corrected in the course of practice and by judicial decisions.

### **Influence of the Act on economic activity**

The Database Protection Act shall influence, above all, businesses operating in the broad area of information exchange. However, such influence will be advantageous for some businesses (who will be relieved at finally having database protection) and disadvantageous for

others. The problem of database protection seems like a distant concern for the average business. On the contrary, many businesses will realize just how often databases are used and to what extent they are important to a modern economy. Those who professionally analyze various aspects of the market and create databases, rendering them accessible to others, will be content with the new Act. Their efforts and expenditure will be protected and they will be able to pursue their rights in court. The foregoing may lead to the formation of companies rendering access to economic information, the result of which in turn will be the emergence of new “information products”. Such products will assist businesses in the decision-making process. There is another side to the story. First, it will be necessary to pay for information which is presently „collected” or received free of charge in day-to-day economic life. This is because illegal copying of data created by someone else will be banned. Also, it is almost certain that Polish entrepreneurs will to a large extent be the importers of such protected information, rather than the sellers of such information abroad. It also seems that the market for non-licensed secondary economic information, including all kinds of guides, compilations and collections whose authors use information received from other sources and sell them as their “own” products, will be limited or else disappear. In addition, media (printed and electronic, including Internet) will not be allowed to use in their news programs information previously taken from their competitors. In summing up one can conclude that the Database Protection Act, regardless of the deficiencies mentioned, will bring more significant changes than was expected, whereas the time remaining to Act’s entry into force should be devoted to a complete analysis of the influence the new law may have on economic life.

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