

EuroGeographics Briefing Paper

Evaluation of the Database Directive 96/9/EC

- National Mapping, Cadastral and Land Registration authorities license rights in their geospatial databases to a wide variety of users
- In many cases licensing income ensures the sustainable provision of authoritative data
- The Database Directive has provided welcome certainty about the rights associated with geospatial information held in databases
- The Directive remains fit for purpose

1 Purpose

This briefing is provided in response to the European Commission's 2017 public consultation on the evaluation of the Database Directive 96/9/EC.

2 Context

EuroGeographics' members are mapping, cadastral and land registration authorities; many of whom depend wholly or in part on income from licensing to fund the collection, maintenance and dissemination of the authoritative geographical information on which government, businesses and citizens depend. They are rightsholders of extensive geospatial databases, depending on protection of their intellectual property to safeguard their continuing investments.

The Database Directive addresses directly the forms of intellectual property protection that apply to maps, geospatial databases and their content. It provides protection for the authors of databases in two distinct ways.

1. It grants copyright protection to the structure and design of databases which, 'by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation'.
2. In recognition of the limitations of copyright in relation to the *contents* of databases, the Directive introduces the *sui generis* right which prevents extraction and re-use of substantial parts of the contents of a database, provided that there has been a substantial investment of time or money in obtaining, verifying or presenting the contents.



3 How the Database Directive helps producers of mapping and geospatial data

The Database Directive has provided welcome certainty for EuroGeographics members and their users about the rights associated with geospatial information held in databases. This has been a crucial development in support of the digital economy, as the geospatial data industry has moved rapidly from paper maps to the use of geospatial data in database form to support a burgeoning variety of software applications.

While in some cases maps themselves may be considered within the scope of copyright protection as artistic works, digitisation and advances in technology have increased the use of standardised database structures and interoperability tools to such an extent that the scope to demonstrate creativity is markedly reduced. Geospatial databases thus exemplify the need for protection under the *sui generis* right, which alone protects investment in acquiring, managing and presenting data to meet users' needs.

The question has arisen as to whether the detailed content of a published map qualifies for protection under the *sui generis* right. The CJEU judgment in Case C-490/14 (Verlag Esterbauer) affirmed that it does, stating (para 29) that:

Article 1(2) of Directive 96/9 must be interpreted as meaning that geographical data extracted from a topographic map in order that a third party may produce and market another map retain, after extraction, sufficient informative value to be held to be 'independent materials' of a 'database' within the meaning of that provision.

Thus the *sui generis* right allows our members to prevent third parties from extracting or re-utilising individual elements of official maps without permission.

4 The Database Directive remains fit for purpose

The Directive protects the investments of our members and Member State governments, and enables a flow of licensing income that ensures the sustainability of authoritative geospatial data for the benefit of all. Licensed users are assured of a dependable source of information whose provenance is assured.

It is important that the scope of the Directive covers databases in any form rather than being constrained to certain technologies.

In relation to the questions posed in the Commission's online questionnaire we find that:

- The protection provided by the Directive encourages investments in advanced information processing systems related to databases and stimulates innovation
- The Directive achieves a good balance between the rights and interests of the rightsholders and users
- The protection offered by the Database Directive remains fit for purpose in an increasingly data-driven economy
- The scope of the *sui generis* right is satisfactory
- Application of the *sui generis* right is appropriate when it comes to databases produced by public sector bodies or financed with public money



5 About EuroGeographics

EuroGeographics, an international non-profit organisation based in Brussels, is the membership association and representative body of the European National Mapping, Cadastre and Land Registry Authorities. We currently bring together 63 organisations from 46 countries, delivering benefits for each regardless of the geographical, technical, political, organisational, linguistic and business parameters in which they work.

By providing a single point of contact, the Association's main activities focus on representing members' interests.

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