

INTELLECTUAL
PROPERTY RIGHTS
IN A NUTSHELL

Sui Generis
Database rights

Databases whose structure can be regarded as original may invoke **copyright protection**. The scope of protection however differs somewhat. The producer of a database for example cannot prevent acts of reproduction by 'lawful users' of the database which are necessary to access or make normal use of the contents of the database.

In addition, databases which have required substantial investment in their selection or arrangement of contents may also be protected by a special **sui generis database right**. The latter forms the subject of this section and will be discussed below.

01. What do sui generis database rights protect?

Sui generis database rights protect **the (substantial) investment underlying the creation of a database**.

A database can be defined as a **collection** of works, data or other **independent elements, systematically or methodically arranged** and accessible individually by **electronic** means or otherwise.

It is a **very comprehensive definition** which covers a broad scope (e.g. birth registries, trade mark registers, telephone directories, photo collections, etc.).

02. What are the requirements for sui generis database protection?

In order to enjoy sui generis database protection, the producer of a database must have made a **substantial investment** in the selection or arrangement of the contents thereof.

Any form of investment is eligible: money, time, effort, energy or a combination of these. The investment must however relate to the obtaining, verification or presentation of the content of the database:

- The investment in relation to **obtaining** the content of the database relates to the means used to obtain existing elements and to collect them in the database (i.e. the investment required for the storage and/or processing of the data). The resources used to create the elements constituting the content of the database are irrelevant and should not be taken into consideration.
- The investment in relation to the **verification** of the content of the database relates to the means used for verifying the accuracy of the elements sought in order to ensure the reliability of the information contained in the database. The resources used for verification during the stage of creation of the elements which are subsequently incorporated in a database are irrelevant and are not to be considered.
- The investment in relation to the **presentation** of the content of the database relates to the way in which the content of the database is presented to the user. Thus, the means used to allow data to be processed and to make such data accessible to the user in a systematic or methodical way shall be taken into consideration.

03. How can you obtain sui generis database protection?

Once a database meets the requirements for *sui generis* protection, the database producer is **automatically** entitled to protection for **15 years** starting from the date on which the database was created or first accessed by the public.

No other administrative formalities (registration) need to be fulfilled.

04. What rights do you have as the holder of a *sui generis* database right?

The holder of a sui generis database right is granted certain **exclusive economic rights** that are somewhat parallel with the economic rights under copyright law.

The right holder, on the one hand, has the exclusive right to permanently or temporarily transfer the contents ('**extracting**') of a database or a substantial part thereof onto another medium, by whatever means and in whatever form. On the other hand the right holder has the exclusive right to re-utilise the content of a database by distributing copies, online transmission, etc.

At the same time, the right holder will be able to **prohibit third parties** from extracting and re-utilising the content of the database concerned. It is important to note, however, that the right to prohibit the extraction and re-utilisation of the content of the database is limited to the extraction and re-utilisation of a substantial part of the database. "Substantial" can be interpreted both qualitatively – depending on the investment – and quantitatively – depending on the quantity of data. This means that when only a small part of the database is extracted or re-utilised but that small part represents a huge investment, it will be considered to be substantial. Vice versa, when a third party extracts or re-utilises a huge part of the database that does not represent a huge investment per se, it can still be considered substantial.

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