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From the Physical Secretary and Vice-President Professor JE Enderby CBE FRS

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I welcome the intention of the Patent Office to contribute to the European Commission's review of the implementation and effects of the European Database Directive. The new legislation implementing the *sui generis* right causes anxiety to many in the scientific community.

The scientific community worldwide has very serious concerns about the effect of legislation derived from this Directive and has been very vocal in preventing this type of legislation from being implemented outside Europe and through WIPO. The central concern is that the Directive constrains access and limits the open use of data and information for scientific and educational purposes and thereby reduces the public benefit that might otherwise be derived.

The ways in which scientists have traditionally used data for the public good will certainly be impeded by the new laws. There is no case law in the period under review relating to scientific information, but that may be because the new laws have been largely (presumably inadvertently) ignored by the scientific community, and the laws have not been enforced.

The problems mainly arise where the new database law differs significantly from those covering traditional copyright, in part because scientific data are different in many ways from that which the new law was designed to cover. The balance between the value of creativity and investment on the one hand and public good on the other has previously been achieved well. Printed compilations of scientific facts and data were very valuable, widely used, and apparently remunerative for their investors.

A fundamental difficulty arises from the extension in the *sui generis* right to the protection of the facts themselves. Copyright does not of course do this and a user can extract and utilise facts from copyright material. The new restriction is bizarre in the case of scientific databases where the initial facts will almost certainly have been determined by someone other than the database creator, and moreover obtained at a cost many orders of magnitude greater than the



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investment in compiling the database. Indeed, much has been funded by the taxpayer who should not be asked to pay again, directly or indirectly. Yet with a small extra effort the database creator can inhibit the valuable re-use of this information. This is a quite different situation from typical commercial databases where the facts are easier and cheaper to obtain and their compilation represents a much larger fraction of the total investment involved.

The creative contribution in assembling a scientific database is a minute proportion of the creativity required to initially obtain the facts and data – again, the balance is very different for many databases of commercial information, and for copyright as a whole.

It would of course be possible for those wanting unimpeded access to scientific data to construct their own databases, for which free access could be given to all. This seems to be an unnecessary duplication of effort, when acceptable databases have already been assembled.

Since, as has been emphasised, scientific data are different from those used in the purely commercial sector, the problems could be dealt with most effectively by extending the exceptions which are already enshrined in Article 9 of Chapter III of the Directive. The exceptions as presently formulated are, in my view, unsatisfactory because:

- they are not mandatory;
- they are confined to lawful users (i.e. those who already have permission from the maker of the database to extract or re-utilise data): a restriction that severely undermines their usefulness;
- they allow only extraction and not re-utilisation of data;
- the wording for “the purposes of illustration for teaching or scientific research” is ambiguous. If illustration is meant also to apply to scientific research it is not at all clear what this allows; and
- restriction to “for a non commercial purpose” is also ambiguous since much scientific research may have commercial implications which are difficult to define in its early stages.

I believe that the exceptions allowed in Article 9 should be strengthened. Suitable wording might be to add, after 9(c):

“Member States should stipulate that extraction and/or re-utilisation for the purposes of scientific research or illustration for teaching is allowed without the authorisation of its maker for any database which is made available to the public in whatever manner.”

Such a change would be in the interests of the UK and Europe’s information society.

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