Protection of a database: our company has developed a digital database on cultural heritage; how can it be protected?

Case:

We are a Bulgarian company working in the field of information technologies covering specific areas of the cultural sector. We have developed a digital database, consisting of data linked to Bulgarian ethnography artefacts and intangible cultural heritage. We would like to know how our database can be protected.

Answer:

At the European level, a database as a commercial asset is protected by law in two ways:

- Protection of databases under the law of copyright - original and creative databases enjoy copyright protection as literary works;

- Protection of databases under a specific database right provided for by EU law (directive 96/9/EC) and the related specific national legislation on database protection; this new form of “sui generis” protection applies to databases which are not “original” in the sense of an author’s own intellectual creation (“non-original” databases), but which involved a substantial investment in their making.

These types of protection will be applicable only if the "collection" of data brought together meets the requirements laid out in the EU definition of a "database" (a "collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means"). Both copyright and sui generis database protection can apply to electronic and non-electronic (paper) databases.

Protection of databases under the law of copyright

Copyright protection applies to databases (collections of data) that are creative/original in the selection and/or arrangement of the contents and constitute their authors’ own intellectual creation. Copyright protection over a database entails a level of creativity/originality in the arrangement of contents. This means that contents which have simply been "put together" in a methodical way will most probably not be considered as an original work, nor be eligible for copyright protection. Please note that this protection would apply to the originality and creativity of expression of the arrangement only and would in no way extend to the contents of the database. Such contents (depending on their nature) might be subject to individual copyright protection (e.g. an article) or might not be protectable as such by intellectual property (e.g. raw data or values).

If applicable, copyright protection prevents any unauthorised reproduction, distribution, communication, display or performance to the public of the database.
Copyright protection would arise automatically (i.e. the database creator, or any other person designated as the right holder by national law) and expires 70 years after the author’s death.

Such protection has an international character – databases are protected by copyright in almost all countries in the world. The conditions of protection may however vary from jurisdiction to jurisdiction.

If the database qualifies for copyright protection, it is good practice to consider the possibility of copyright registration, which exists in certain countries. Registration does not create any further rights but might be a good way to prove the existence of copyright in the case of later misappropriation of the database.

**Protection of databases under the specific database right - EU (directive 96/9/EC) and the related specific national legislation on database protection**

The sui generis, specific protection of databases is automatically granted to the maker of any database the creation of which has incurred substantial qualitative and/or quantitative investment in obtaining, verifying and presenting its contents, without any further conditions for eligibility. A substantial investment is to be understood as a financial and/or professional investment, which may consist in the deployment of financial resources and the expending of time, effort and energy made in obtaining and collecting the contents.

The collection of data should be contained in a fixed base, which may include technical means – electronic, electromagnetic or electro-optical processes or other means – index, table of contents, plan or method of classification, to allow the retrieval of any independent material contained therein.

Please note that this protection will only cover the arrangement of data and in no way the contents themselves. Rights protecting databases only apply to the construction and scheme of the database and never to the information contained therein.

As a result, the database creator will be granted legal protection from unauthorised extraction and/or re-utilisation of all or of a substantial part of the contents of the database.

Sui generis protection runs for 15 years, starting from the date of completion of the database, or if the database is published during this time, the 15-year term will start from the publication date. If the database undergoes substantial changes (in the event that a substantial amount of new material is added and arranged into it), a new 15-year protection period would usually arise.

To conclude, copyright protection entails a level of creativity/originality in the arrangement of contents which can sometimes be difficult to achieve. By comparison, a sui generis database right will usually apply less restrictively as it will apply to non-original databases, although it will still require a substantial qualitative or quantitative investment from the maker of the database. In this regard, please also remember that compared to the sui generis protection, copyright protection of databases is more extensive in its scope and therefore prevents any unauthorised reproduction, distribution and/or communication of a database. Database protection will however be useful as it will restrict the extraction and/or re-utilisation of all or of a substantial part of its contents.