1. **Background**

Within the framework of the Seventh Framework Programme (FP7), a project involving a consortium of 14 partner organisations from 8 different countries, including SMEs and research organisations, has been launched with the objective to create management tools for rare diseases.

The project aims, in particular, to implement two different databases:

1. a database which will include guidelines developed by organisations external to the project and relevant to the treatment of rare diseases, and
2. a database which will include data on geographical distribution of different rare diseases.

According to the project, as described in annex 1 to the Grant Agreement signed with the European Commission and in the Consortium Agreement, the partners in this project have agreed to jointly own these two databases, since they all have an interest in the data provided.
2. The protection of databases

Early in the project, the partners started to discuss the protection of the two databases, in terms of their content and the way it was arranged within each database (i.e. the structure of the databases).

In the case of this project, the contents of the databases consist of guidelines, which have been developed by organisations outside the consortium. For this reason, the original expression of those guidelines can be protected by copyright to the benefit of the external organisations that have created them. Therefore, the partner responsible for the development of the databases had to carefully ensure not to infringe potential rights on the contents and to seek prior authorisation to integrate them into the database whenever required.

The protection of the contents of the databases is, however, independent from the one which will apply to the database structure. In fact, the arrangement of the contents into a database, under certain conditions, may benefit from copyright and/or database sui generis protection in the European Union. Such protection, however, does not extend to the database contents.

Hence, the first question the partners considered was whether those two databases can be regarded as "databases" according to European law, i.e.:

1. Are they a collection of data?
2. Are they arranged in a systematic or methodical way?
3. Is the data individually accessible within the data sets?

In this sense, for instance football fixture lists, a telephone directory, a music CD, a catalogue, a compilation of data of cheese producers, either in electronic or non-electronic format can be databases. In the analyses of the partners, each of the two databases fulfils these three requirements and therefore is likely to be considered as a "database" under the meaning of European Union law. Consequently, the two databases may therefore potentially qualify for two distinct types of protection.

On the one hand the databases can be protected by copyright as long as they are original as to the way the contents were selected and arranged, that is, they reflect the author’s creative ability and own "personal touch”. If applicable, copyright protection arises automatically and is generally granted to its author, except if an agreement establishes differently or in the case that national law establishes an exception for works of employees.

On the other hand, partners could potentially rely on the sui generis database right. Such protection 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 the database, without any further conditions for eligibility. As a result, the database maker 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. This protection will be granted for 15 years following the database's completion, and is renewed once updates are performed.

3. Action undertaken

Potentially qualifying for copyright and *sui generis* database rights, the two databases would be automatically protected. Yet it is always good practice to make others aware of these rights through notices. These certainly help preventing infringements by others. Therefore, the partners agreed to make the databases available on the website of the project with a copyright notice (©[name of copyright partners], [year of creation]), as well as the indication that a *sui generis* database right protects them in accordance with European law.

In addition, the partners responsible for the creation of the databases made sure to keep records of the financial, technical and human resources used in obtaining, verifying and presenting the database (e.g. the description of work of the grant agreement, documents relating to the costs with classification of the data, etc), which could be useful in court claims to justify *sui generis* database protection. Moreover, the partners confirmed with their legal advisors that they, and not their employees involved in the project, were entitled to copyright ownership.

4. Lessons learned

- Seek prior authorisation before integrating protected third party contents into databases.
- Databases may potentially qualify for copyright protection and *sui generis* database rights in the European Union
- The protection of the database’s structure does not extend to the database contents, which can be protected by copyright, and *vice versa*.
- Including notices on the copyright protection and potential *sui generis* database right can prevent infringements.
- Verifying employees’ rights is a best practice to guarantee the strength of rights and that investments are protected.
- Keeping evidence of the substantial investment in the database allows you to be prepared for potential court proceedings relating to infringements on rights over databases.
GET IN TOUCH

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The European IPR Helpdesk aims at raising awareness of Intellectual Property (IP) and Intellectual Property Rights (IPR) by providing information, direct advice and training on IP and IPR matters to current and potential participants of EU funded projects. In addition, the European IPR Helpdesk provides IP support to EU SMEs negotiating or concluding transnational partnership agreements, especially through the Enterprise Europe Network. All services provided are free of charge.

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