A Database from Space: The Legal Protection of Data Created or Collected in Outer Space under the 1996 European Database Directive

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The discovery of a new solar system requires a substantial investment in a telescope or a journey into space. It results, among other things, in the obtaining of a collection of stars with their given names. Is such a collection a protected database?2

1. Introduction

For the commercial utilisation of the International Space Station (ISS) it is important to establish whether and to what extend activities in outer space can produce results which are protected by some kind of intellectual property.

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2 Question asked by the PvdA (Dutch Labour party) during the discussion of the implementation of the European Database Directive into Dutch Law. The question was answered in the negative by the Dutch Minister of Justice. Second Chamber of Parliament (Lower House), 1998–1999, 26 108, nr. 6, p. 5.
Different kinds of intellectual property protection that do or might apply to activities in outer space are discussed in the contribution of Balsano and Wheeler, elsewhere in this publication.

This contribution focuses on one particular kind of protection that might apply to data created, discovered, collected and/or treated in outer space, for instance on board the International Space Station. As is already mentioned by Balsano and Wheeler, such data are traditionally not protected by copyright, mainly because they do not satisfy the originality criterion: there is no ‘creative’ or ‘subjective’ human intervention which is required for copyright protection.

The legal protection of raw, corrected and treated or analysed data resulting from activities in outer space was the subject of a study, conducted jointly by ESA and the European Commission in 1993. In this study much attention was paid to the European Database Directive which was by that time still a proposal.

2. The European Database Directive


The most important paragraph of the Database Directive is Article 7:

Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.

The definition of this new right contains quite a few vague notions. The requirement for protection is: a qualitatively and/or quantitatively substantial investment. The criterion for infringement is (extraction and/or re-utilization of the

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6 BGB 1997 I p. 1870.
8 SI 1997 No. 3032.