

Sui Generis: A Unique Form of Intellectual Property Governing Compilations of Data

Bruce Goldstein

Bruce Goldstein, JD, is a patent attorney serving as senior policy advisor in the Division of Policy in the National Institutes of Health Office of Technology Transfer in Rockville, Maryland.

Introduction

The well-used Latin phrase *sui generis* translates into English as *of its own kind* or *unique*. In the arena of intellectual property (IP) law, the phrase refers to a form of IP that does not derive from other, traditional forms of IP, such as patents and copyrights. Beginning in the mid-1990s, the European Union (EU) began trying to create such a sui generis system to govern compilations of data. Ten years later, the EU has returned to re-examine this new system, perhaps to change or repeal it, perhaps not. The two questions for this chapter are, what does the sui generis system do and how does it affect technology transfer (both in the United States and elsewhere)?

This chapter will review the history of the law leading up to the creation of the sui generis system. It will also examine the sui generis system in detail. Then the chapter will recount the EU's experiences with, commentary on, and international reaction to the system. Finally, the chapter ends with some suggestion of issues to consider in negotiating agreements with the sui generis system in mind.

Historical Perspective

U.S. Constitution: Patent and Copyright Clause

The United States Constitution enumerates the powers of the three branches of the federal government. Under Article I, Section 8, Clause 8, Congress has the following authority regarding patents and copyrights: "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Clearly, under this clause, Congress can create a system of copyrights designed to give the author of, say, a book of new, fictional stories the right for a limited time to market that new book exclusively. The question is, what about a book of facts?

Twentieth Century Case Law: Sweat of the Brow Doctrine

As a matter of metaphysics, if a person happened to be the first to record a given fact on paper, calling that person the *author* of the writing seems strange at best, and granting the person exclusivity to any paper reproduction of the fact would create a barrier to “the progress of science and useful arts.” This dynamic is reflected in the most fundamental axiom of copyright law, that “no author may copyright his ideas or the facts he narrates.”

At the same time, the history of copyright clearly allows that, when one collects a series of separate works (whether copyrighted on their own or not) and compiles them into a new work, that new compilation may be entitled to its own copyright. Thus, a collection of folk stories, sheet music, and reproductions of artwork all may involve sufficiently creative industry that the new work represents something more than the sum of its parts. As a result, the copyright laws in the United States (U.S.) have always expressly acknowledged that compilations may be protected by copyright.²

Between these two unassailable premises lies an apparent tension: When does a stack of individual facts become a unitary work protected by copyright? Most courts in the United States construed the Constitution’s Patent and Copyright Clause and the copyright laws to require that a person claiming to be an author of a work demonstrate that the work has some element of creativity or originality beyond the mere facts on a page. For example, the selection of which data to include, or how to arrange it in the work, could involve sufficient creativity to warrant protection. Merely being the first to write it down, however, would not, because the fact itself inherently belonged to the public.³

Some courts, however, asserted that copyright is a social trade-off—without the promise of exclusivity, people will tend not to invest as much in creating compilations and, because society is better off having such works in existence, copyright is a reward for that investment, even where the work fails to involve the kind of creativity that would normally warrant copyright protection. This reasoning became known as the *sweat of the brow* or *industrious collection* doctrine.

Paradigm Shift: *Feist v. Rural Telephone*

The Facts of Feist

During the 1980s, Kansas had eleven local telephone utilities, each with a monopoly in its region. State regulations required that each maintain a local white pages directory of residential phone numbers, organized by last name, which must be collected and distributed free of charge, but companies could charge advertisers for placing ads in the commercial yellow pages directory. These two directories were typically joined in a single book.

Feist Publications Inc. wanted to publish a directory of all residences in Kansas, which would also be distributed for free, but which would compete for advertisers. Feist received permission to copy the data from ten of the eleven utilities, but when Rural Telephone Service refused, Feist copied data without its consent. Because Rural had inserted four fictitious names in the directory, Rural was able to prove easily that Feist had copied. The Kansas courts followed the sweat of the brow doctrine, holding that Feist infringed Rural's copyright in the white pages, a decision affirmed by the Tenth Circuit Court of Appeals.

Supreme Court's Opinion

The United States Supreme Court, however, reversed unanimously. Looking at the Constitution and prior Supreme Court cases dating to the late 1800s, the Court held that *originality* is, and always has been, the constitutional touchstone of copyright. The Court noted that one who writes down facts is not an *author* and the work is not *original* because the act of recording a fact is not one of creating; at best, the writer has discovered a fact, but the fact itself is not created by its recordation.

This observation is consistent with the concept that granting copyright to certain compilations is constitutionally acceptable. After all, creating a compilation can involve a non-functional, creative selection of which facts to include, an artful arrangement of data, or an imaginative coordination of otherwise unrelated data. It is *these* elements of the compilation that are protected by copyright, not the underlying data.⁵

The Court expressly repudiated the line of cases relying on the sweat of the brow doctrine.

It may seem unfair that much of the fruit of the compiler's labor may be used by others without compensation. As Justice Brennan has correctly observed, however, this is not "some unforeseen byproduct of a statutory scheme." *Harper & Row, Publishers, Inc. v. Nation Enterprises*, 471 U.S. 539, 589 (1985) (dissenting opinion). It is, rather, "the essence of copyright," *ibid.*, and a constitutional requirement. The primary objective of copyright is not to reward the labor of authors, but "to promote the Progress of Science and useful Arts."⁶

The Court went further, observing that copyright protection does not necessarily apply to every selection, coordination, or arrangement of data. To be sure, the degree of originality is not large, and most compilations will pass muster; moreover, novelty is not required.⁷ Nonetheless, some compilations are so mechanical, utilitarian, and trivial that the spark of independent creativity is wholly lacking.

The Court noted that even *Feist* conceded *Rural* had a valid copyright in the book as a whole, as it contained both advertisements in the yellow pages and original, introductory text at the forward of the book. Nevertheless, the Court held that *Feist* did not infringe by copying the data in the white pages. *Rural* mechanically included all residents, functionally sorted by last name, and exercised no independent creativity in coordinating the phone number with each name. Merely associating that data with a separate yellow pages section did not render this mindless listing original.

Post-Feist Cases

After the *Feist* decision, several cases helped clarify exactly where the line of minimal creativity lies. In one case, involving a compilation of public laws, a court held that, while the laws themselves are in the public domain, the layout and pagination may be protected.⁸ Similarly, another court held that the formatting, organization, layout, and artwork in the yellow pages section of the phone book can be copyrighted.⁹ Where recording content requires the application of professional judgment (rather than merely reporting statistics), a court ruled that copyright is available.¹⁰ Finally, despite the

acknowledged principle that a recipe's mere listing of ingredients is not protected, the exact words used in a cookbook to articulate the process can be copyrighted.¹¹

Tangentially, the issue of news has continued to arise in the context of copyright, even after the decision in *Feist*. The National Basketball Association (NBA) has long tried to extract value out of the reporting of scores in basketball games. With the rise in the 1990s of inexpensive cellular telephones, Motorola began a service of sending updates of games directly to customers' phones. The Second Circuit noted that the score of a game is a fact, and so cannot be copyrighted by the NBA. At the same time, the court observed that a major value of that fact is in its entertainment function, which Motorola was diminishing without compensation. Accordingly, the court held that, under *Feist*, the NBA cannot sue for copyright infringement, but might have a claim for unfair competition.¹²

Impact of Feist on Other Common-Law Countries

Since *Feist*, the courts of Canada and Australia have had opportunities to examine the same issues, in light of their own versions of copyright laws (which follow principles and procedures very similar to those of the United States). These cases are also instructive.

In Canada, the Supreme Court faced a dispute between a library service, which offered photocopying services for research purposes, and publishers of scientific works and of compilations of data. The Court declined to hew to the reasoning in *Feist* and require creativity, but also declined to hold that anything beyond slavish duplication, such as sweat of the brow labor, is enough to warrant a copyright. Instead, the Court required that the writer have used some intellectual effort, skill, and judgment beyond a mere trivial, mechanical exercise.¹³

Australia has elected to follow the lead of the United Kingdom's (UK) long-held industrious collection approach.¹⁴ In *Desktop Marketing v. Telstra*, Telstra owned copyrights in a CD-ROM edition of the enhanced white pages and yellow pages for Australia, which included more data per person than merely the associated phone number and address. Because the Australian copyright laws were written on the basis of UK laws, the court found UK precedent much more persuasive than *Feist*, and so declined to follow *Feist*.

Instead, the court articulated the rule that sufficient work and expense could support copyright, provided that the author independently collected the data (i.e., did not copy it from any other source).

EU Directive on Sui Generis

1996 Directive

On March 11, 1996, the Parliament of the European Union passed a directive entitled, “Directive 96/9/EC of the European Parliament and of the Council on the legal protection of databases.”¹⁵ The directive required that member states pass implementing legislation by January 1, 1998. For convenience, a complete copy of the text of the 1996 directive is available as a separate PDF.

The directive sought to harmonize several competing theories and practices regarding compilations of data that do not clearly qualify for copyright protection. As noted above, the UK has long followed a sweat of the brow doctrine. France pioneered a droit d’auteur (author’s right) doctrine, which protected only original databases that required an element of “intellectual creation.” Also, some of the Scandinavian countries followed a catalogue rule, which gave a limited protection to factual compilations created through original labor.¹⁶

Scope of Application

The directive establishes that databases may be protected by either or both of two forms of intellectual property: traditional copyright (which needs no further elaboration here) and sui generis protection. Under the terms of the directive, the sui generis rights would apply to “[a]ny collection of independent works, data, or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.” The directive imposes no qualification or limitation regarding originality, creativity, functionality, or the like.

Infringement

Under the directive, the owner of sui generis rights in a database may exclude others from extracting and reutilizing a substantial part of the database. *Reutilization* includes

any reproduction (even temporary or archival), adaptation (including to a new medium), alteration, or distribution to the public. *Substantial* can be measured either quantitatively or qualitatively, depending on context.

Duration

Once created, the sui generis rights last up to fifteen years.¹⁷ That term can be continued indefinitely, however, as long as the owner continues to update the database with “substantial new investments” of data.

Reciprocity

The EU included in the directive a carrot to induce other nations to follow suit. For a database made outside the EU, sui generis rights may be exercised in the EU only if the database was made in a country that offers “comparable protection to databases produced by nationals of [the EU].”

Optional Exemptions

Each EU member state may, at its option, exempt copying for teaching or scientific research, but only “to the extent justified by the non-commercial purpose to be achieved.” Also, each EU member state may continue to exempt other things “traditionally authorized” by that state.

Implementation

Officially, all EU members were required to have passed implementing national legislation by January 1, 1998, but only three actually met the deadline. All but Ireland and Luxembourg had finished by the close of 2000 and, as of January 2007, all but two EC members (Romania and Bulgaria) have implemented it. Norway, Iceland, and Lichtenstein also had implemented sui generis rights, even though they were not members of the EU.¹⁸ Although other nations have considered adopting legislation implementing sui generis protections comparable to the 1996 directive, apparently no other nation has clearly done so.

Follow Up: 2001 Directive (2001/29/EC)

In 2001, the EU passed a directive to harmonize “copyright and related rights in the framework of the internal market, with particular emphasis on the information society.”¹⁹ On its face, the 2001 directive did not amend any prior directive relating to copyright or sui generis rights; rather, it purports to focus on issues on the periphery, such as the proper scope of affirmative rights of owners, a long list of specific (but optional) exemptions that member states may implement, and the legal significance of technological measures used to control access to protected works.

EU Experience and International Reaction

Major EU Cases

In November 2004, the European Court of Justice (ECJ) issued four opinions limiting sui generis rights. All four shared a common theme: What is the nature and minimum level of resources that one must invest in the creation of the database to confer sui generis rights?

*British Horseracing Board v. William Hill Organisation Ltd (UK)*²⁰

The British Horseracing Board (BHB) has a crown-granted monopoly on reporting results of horse races. As of 1998, BHB maintained a large database on, among other things, the lists of horses running in all races, their respective handicaps, and their respective owners, trainers, jockeys, pedigrees, and racing histories. The data for the next day’s races are available by subscription (online or by satellite feed) and, afterward, the data are published weekly, in an official journal. William Hill Organisation Ltd. (Hill), a subscriber to both the live feed and the journal, launched an online betting service, which included both the list of which horses will be running and what odds Hill’s service was offering.

BHB sued Hill in the UK courts under the UK’s implementation of the 1996 Directive, and in 2001, won at the trial level. The UK Court of Appeals, however, stayed the judgment and referred eleven questions of interpretation to the European Court of Justice. The ECJ concluded that the sui generis right stemmed from investing in the creation of the database, mainly the act of seeking, discovering, and collecting disparate data from inde-

pendently existing sources—in contrast to the mechanical collection or creation of data that might happen to be deposited in a database incidentally or for convenience. BHB existed to collect its data for purposes of public reporting and BHB itself created the data on horses' handicaps; the simple act of putting the data into a database did not constitute an additional investment sufficient to confer sui generis rights in that compilation.

Fixtures Marketing v. Oy Veikkaus Ab (Finland),²¹ *Fixtures Marketing v. Svenska Spel Ab (Sweden)*,²² and *Fixtures Marketing v. OPAP (Greece)*²³

Fixtures Marketing Ltd works under an exclusive contract with the English and Scottish Football Leagues to compile all the details for all the games played in England and Scotland. Under these contracts, Fixtures owns all the IP associated with that data. OPAP, Oy Veikkaus Ab, and Svenska Spel Ab all operate national betting services. Toward that end, all three betting services reproduced data taken directly from Fixtures' database. Fixtures offered each betting service a license, but each refused.

Fixtures originally sued Veikkaus in 1996 under copyright infringement and won at trial, but the judgment was overturned by the Helsinki Court of Appeal, a decision affirmed by the Finland Supreme Court. After Finland adopted the 1996 Directive, Fixtures tried again in 1999. This time, Fixtures lost at trial, but the Helsinki Court of Appeal referred the case to the ECJ. Fixtures sued Svenska Spel in 1999, lost at trial and in the intermediate appellate court, but Sweden's highest court stayed the case and referred the question to the ECJ. Finally, Fixtures sued OPAP after Greece implemented sui generis in 2000. The trial court stayed the case and referred the matter to the ECJ.

In all three cases, the questions included whether the sports data was protected by sui generis rights at all, and if so, whether use by the three betting agencies constituted infringement. As with the *BHB* case, the ECJ reasoned that sui generis rights stemmed from investing in the creation of the database, mainly the act of seeking, discovering, and collecting disparate data from independently existing sources—in contrast to the mechanical collection or creation of data that might happen to be deposited in a database incidentally or for convenience. In each case, the compilation in question was created each year wholly independent from whether that data would ever be put into a database.

Merely putting data into a database does not represent a sufficiently significant investment to warrant sui generis protection.

*Directmedia Publishing GmbH v. Albert-Ludwigs-Universität Freiburg (Germany).*²⁴

In the *Directmedia* case, a German university professor laboriously selected 1,100 of 20,000 poems that he considered the most important written in German literature from 1730 to 1900. A database, which he built over the course of about two-and-a-half years and at a cost to the university of about €35,000, tabulated many aspects of the works, including information on the author, title, opening line, and year of publication.

Soon thereafter, Directmedia put out its own list of the 1,000 most important poems of German literature on CD-ROM. In this list of a thousand poems, 876 were written between 1730 and 1900, and 856 of these appeared in the professor's database. Directmedia conceded that it had looked at the data in the university's database in compiling its own, but maintained that it had used critical independent judgment on each work in deciding which poem to include, and drew the actual poem texts from its own digital resources.

The professor and the university brought an action against Directmedia for cessation and damages. The Regional German Court found infringement, but on appeal, the Bundesgerichtshof (Federal Court of Justice) referred the case to the European Court of Justice (ECJ) for guidance. The key question was whether "extraction" reached as far as using the primary work as a substantive guide in making a new version.

The ECJ began by noting that the Directive was written to be very broad, such that copying data into a different medium or transforming the structure of the work, do not rescue an act of copying content from being an infringement. Given this context, the ECJ was unimpressed with the argument that "copying" included only mindless duplication of content. If Directmedia transferred substantial data from the university's database to its own, an interim critical examination of the substance of the data did not excuse the transfer of that data.

In referring the case back for further factual findings, the ECJ cautioned that sui generis rights do not protect against mere consultation and may not be used to facilitate “abuses of a dominant position,” restrictive practices, or unfair competition. While a database owner may condition access on agreeing to certain terms, including restrictions on direct transfers of content, once the database has been released, the recipient may examine the work for informational purposes.

2005: EU Report

As the decennial anniversary of the 1996 Directive approached, the European Commission issued its first review of the impact of the 1996 Directive.²⁵ The report, based on surveys and public information on product development, focused on whether the rate of growth of the database industry in Europe increased, whether more databases were produced in Europe than would have been in the absence of sui generis rights, and whether the benefits accrued in areas targeted to encourage innovation.

Despite assertions by the publishing sector that sui generis rights were crucial, and despite survey responses suggesting that the 1996 Directive offered new legal certainty, the report concluded that the evidence did not support the position that the anticipated economic benefits of sui generis were realized. Ultimately, the report recommended neither repealing the 1996 Directive nor changing its scope (up or down), but leaving it as is. The report encouraged members of the public to submit comments, both on the report and on sui generis rights in general. As of the writing of this chapter, the EU has not taken any subsequent action regarding the 1996 Directive.

International Reaction to the 1996 Directive

WIPO Proposal of 1997

Following the EU’s passage of the 1996 Directive, the World Intellectual Property Organization (WIPO), an intergovernmental organization under the auspices of the United Nations, began discussing the creation of a worldwide treaty. The Committee on Copyrights drafted a proposed treaty in 1997, but WIPO never reached consensus on what the treaty ultimately should say. Moreover, the Trade-Related Aspects of Intellectual

Property (commonly known as TRIPS) Agreement came into force in 1995, and WIPO had just concluded another copyright treaty, both of which included terms concerning compilations of data.²⁶ Between these, the need for yet another treaty was unclear.

WIPO issued a report in July 2002 on subsequent developments. The report concluded that more work was needed to clarify open issues, that there would not likely be any major movement internationally soon, and that WIPO should continue to follow any and all further developments.

Academic and Publishing Communities

Most of the articles and reports published in response to the report,²⁷ as well as those written beforehand, have been critical of sui generis rights,²⁸ and some even criticized the report as being too limited in scope.²⁹ Only a handful supported the sui generis model.³⁰

Other Nations' Responses

It is difficult to be certain which countries have considered implementing European-style sui generis rights for databases but declined to do so and which have never considered it seriously. Either way, after the 1996 Directive, most countries failed to implement a similar system nationally. Based on a survey conducted by the International Association for the Protection of Intellectual Property, countries known not to have sui generis provisions as of 2007 include Argentina, Australia (which follows the UK sweat of the brow doctrine of copyrights), Brazil, Canada, China, Egypt, Japan, Paraguay, Singapore, South Africa, Switzerland, and the United States.³¹ India reported it does not have a sui generis system for databases, rather, India follows the logic of *Feist*.³²

The United States Congress has examined the question almost every year from 1996 through 2004. Congress' latest effort involved two competing bills: H.R. 3872, "The Consumer Access to Information Act of 2004," and H.R. 3261, "The Database and Collections of Information Misappropriation Act of 2004." Both bills died in committee, never reaching the floor of the House of Representatives for debate, and no subsequent bill has been proposed.

Issues to Consider in Negotiations

Access to Collaborative or Funded Works

Private Funding

In most cases, in the United States and other non-EU countries, worrying about sui generis rights to data generated under a collaborative project is not worthwhile. Such rights are only likely to have a substantial impact where the bulk of the raw labor is to be done in Europe. In such situations, those who negotiate with European counterparts should carefully consider how important access to that data may be over time. Indeed, merely preserving the right to publish may not be enough if the non-EU party wants to ensure continued free access to that data.

Government Funding

If government funds are involved (for instance grants from the U.S. federal or state governments), then the recipient of those funds may be required to adhere to additional rules about publishing and about sharing raw data.³³ If so, then an arrangement in which access by the public to the data is limited may be inconsistent with the spirit, if not the letter, of the government's policy. Careful attention must be paid to ensure that the collaboration agreement does not put the funding-recipient in jeopardy of violating the funding agreement.

Protection Strategies

Reliance on Traditional Intellectual Property

In some cases, a party seeking to reserve sui generis rights can be placated if much of the commercial value could just as easily be realized through traditional forms of intellectual property protection. For example, a party trying to protect a database such as the one cited in the *BHB* and *Fixtures* cases might have better chances if the owner of the database had relied on copyright to the content that they had independently created or trademark-related rights in certifying the authenticity and quality of the data. Databases governing genetic information may be useful for a time as a research tool but, probably, the commercially useful intellectual property rights in such a tool are neither large in scope nor infinite in duration. Moreover, the true blockbuster products likely to come out of

such work will be those designed *in light of* the data in the database. These products can be adequately protected by patents.

Trade secret protection is also a possibility. Not every collaboration requires that each shred of data generated be made public (whether free or for sale). Where this is the case, a party legitimately might preserve the right to keep a portion of the data it generates under the collaboration as a trade secret, particularly where that data are related to another product (such as data on manufacturing processes for a drug). If faced with such a situation, the most important thing for both parties to do is strive to identify clearly what their respective commercial plans are—sell the data (via *sui generis* licenses), publish the data outright, or keep (some of) the data confidential.

Contract-Based Solutions

As is true for most negotiation problems, successful resolution is limited mainly by creativity and willingness to compromise. Once the negotiators have clearly staked out what their interests are, common ground usually can be found.

Consider the following possible options:

- Each party provides complete copies of the data to each other at regular intervals;
- Each party has a nonexclusive, royalty-free, worldwide, irrevocable license (perhaps for internal use, perhaps for any use) to access, extract, reorganize, and otherwise use all data generated under the project;
- Commercial exploitation of *sui generis* rights (when consistent with the purposes of the collaboration) will be limited in scope to certain fields of use or applications;
- Access to a database governed by *sui generis* rights will be granted to all requesters via a nonexclusive license styled on the open-source licenses commonly used to share software.

Notes

1. *Harper & Row Publishers Inc. v. Nation Enterprises*, 471 U.S. 539, 556 (1985).
2. *Feist Publications Inc. v. Rural Telephone Service Co.*, 499 U.S. 340, 345 (1991).

3. See, e.g., *International News Service v. Associated Press*, 248 U.S. 215 (1918). Recognizing that § 5(b) of the 1909 Copyright Act specifically mentioned “periodicals, including newspapers,” the Court acknowledged that news articles were copyrightable, but rejected the notion that the copyright in an article extended to the facts in it: “The news element—the information respecting current events contained in the literary production—is not the creation of the writer, but is a report of matters that ordinarily are *publici juris*; it is the history of the day.” *Id.*, at 234.
4. *Jeweler's Circular Publishing Co. v. Keystone Publishing Co.*, 281 F. 83, 88 (2nd Cir. 1922), *Cert. denied*, 259 U.S. 581 (1922).
5. *Feist*, 499 U.S. at 348–49.
6. *Id.*, at 349.
7. *Id.*, at 358–59.
8. *West Publishing Co. v. Mead Data Central*, 799 F.2d 1219 (8th Cir., 1986), *Cert. denied*, 479 U.S.(1987).
9. *Bellsouth Adv. & Publ. Corp. v. Donnelly Info. Publ. Inc.*, 933 F.2d 952 (11th Cir., 1991).
10. *CCC Info. Svces., Inc. v. MacLean Hunter Market Reports Inc.* (2nd Cir, 1994).
11. *Publications International v Meredith Corp.*, 88 F.3d 473 (7th Cir., 1996).
12. *Nat'l Basketball Ass'n v. Motorola, Inc.*, 105 F.3d 841 (2nd Cir., 1997).
13. *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 S.C.R. 339, 2004 SCC 13.
14. *Desktop Marketing Systems Pty Ltd. v. Telstra Corp. Ltd.*, [2002] FCAFC 112. The UK's approach dates back to at least the case of *Walter v. Lane*, [1900] AC 539 (House of Lords), but was repeatedly reaffirmed after the passage of the 1911 Copyright Act, which is the foundation of the current copyright law in the UK.
15. Official Journal L 077, 27/03/1996 pp. 0020–0028.
16. *DG International Market and Services Working Paper: First Evaluation of Directive 96/9/EC*, Commission of the European Communities, Brussels (12 Dec 2005; hereafter “Working Paper”) (document available at http://europa.eu.int/comm/internal_market/copyright/prot-databases/prot-database_en.htm).
17. To be precise, the sui generis rights persist until the first day of the January preced-

- ing the fifteenth anniversary of the creation of the database.
18. *Working Paper*, supra n. 16, at 11. See also, The Database Right File, Institute for Information Law, 2007 (document maintained online, at <http://www.ivir.nl/files/database>). This document also summarizes local court cases interpreting the national implementation acts.
 19. Official Journal L 167, 22/06/2001 pp. 0010–0019.
 20. Grand Chamber Case C-203/02 (9 Nov 2002).
 21. Grand Chamber Case C-46/02 (9 Nov 2002).
 22. Grand Chamber Case C-338/02 (9 Nov 2002).
 23. Grand Chamber Case C-444/02 (9 Nov 2002).
 24. Grand Chamber Case C-304/07 (9 Oct 2008).
 25. *Working Paper*, supra n. 16.
 26. The WIPO Copyright Treaty implemented terms consistent with the standard for originality articulated in the *Feist* case (supra, n. 2).
 27. A complete, online list of comments to the European Commission’s Internal Market and Services Directorate General, with links to content, is available at http://circa.europa.eu/Public/irc/market/market_consultations/library?l=/copyright_neighbouring/database_consultation&vm=detailed&sb=Title).
 28. See, e.g., Hugenholtz, P.B., “The ‘Spin-Off’ Doctrine in the Netherlands and Elsewhere in Europe,” Paper presented at Fordham U. Sch. Of Law, 11th Ann. Conference on Int’l IP Law & Policy (14-25 April 2003) (document available at <http://www.ivir.nl/publications/ugenholtz/spinoffordham.html>); “Free and Open Exchange of Environmental Data,” 83 *Bulletin Amer. Met. Soc.* 452–56 (2002) (statement by the AMS Council); Maurer, S., “Across Two Worlds: Database Protection in the United States and Europe,” *Intellectual Property and Innovation in the Knowledge-Based Economy* (Industry Ministry, Canada, 2005); Langford, J., “Sui Generis Protection of Genetic Resources and Associated Traditional Knowledge,” International Expert Workshop on Access to Genetic Resources and Benefit Sharing (Cuernavaca, Mexico, 2004) (document available at <http://www.can-mexworkshop.com/documents/papers/III.3.1.pdf>).

29. Cardinale, P.J., “Sui Generis Database Protection: Second Thoughts in the European Union and What it Means for the United States,” 6 *Chi.-Kent J. Intell. Prop.* 157 (2007).
30. See, e.g., Mathur, A., “Working Paper No. 141, Missing Markets in World Trade: The Case for ‘Sui Generis’ Protection of Traditional Knowledge,” India Council for Research on International Economic Relations (Aug 2004) (document available at <http://ideas.repec.org/p/ind/icrier/141.html>); “Response from the European Publishers Council to the First Evaluation of Directive 96/9/EC on the Legal Protection of Databases” (10 March 2006) (document available at http://www.epceurope.org/issues/EPC_response_legal_protection_databases.shtml).
31. Report summary is available online at http://www.aippi.org/reports/q182/q182_summary_e.pdf.
32. Gupta, A., “Protection of Databases in India and Sui Generis Protection,” 10 *J. Intell. Property Law & Practice* 1093 (2007).
33. See, e.g., “NIH Principles and Guidelines for Sharing of Biomedical Research Resources,” 64 Fed. Reg. 246 (23 Dec 1999); “NIH Policy on Sharing Research Data,” Grants Notice #NOT-OD-03-032 (26 Feb. 2003) (document available at <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-03-032.html>).