

# Database Protection, Public Domain Data and Competition Law

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## Basics I

- Harmonisation by the Council Directive 96/9/EC of 11 March 1996 on the legal protection of databases
- Uniform legal framework for all member states
- Definition: „*Collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.*“

# Basics II

Twofold protection of databases:

- “Classical” copyright approach for databases which by reason of selection or arrangement represent an intellectual creation
- Sui generis protection for non-original databases

## Sui Generis Right I

Article 7 (1) of the Directive: *“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-utilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.”*

# Sui Generis Right II

- Elements of Protection
- Substantial investment and term of protection
- Utilisation of substantial parts
- Repeated and systematic utilisation of insubstantial parts, rights and obligations of lawful users

# Public Domain Data

- Legislative documents, court decisions , company registry and land registry
- Conflict of investment and public interest; copyright exemptions for single works in national jurisdictions
- Austrian Supreme Court re EDV-Firmenbuch; French Décret relatif aux Services Publiques de Base de donne Juridiques

# Competition Law I

- Problem: Monopolisation of data which previously has not been protected by copyrights
- Database structure as obstacle for entering the market
- Equitable balance between sui generis protection and unaffected competition

# Competition Law II

- IMS Health and the approach of the European Commission
- Essential facilities doctrine
- Compulsory license on fair and equitable conditions
- Restriction of the scope of protection dependent from competition law aspects