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The Database Directive: Taking Stock

Much has been written about the EU Database Directive since it was first proposed in 1992, however, some eight years after its adoption and six years after its deadline for implementation, few, if any, of the issues concerning the *sui generis* database right that it established have been resolved. There is hope on the horizon in that preliminary rulings have been sought from the European Court of Justice (ECJ) on the *sui generis* right in four cases and Advocate-General Stix-Hackl recently delivered her opinion in each of these references. This paper examines the issues that have been referred to the ECJ for preliminary rulings (namely, subsistence, the scope of the database right and term of protection), along with others that have yet to be referred (such as the exceptions and protection for non-EU databases), but no doubt will be (or at least should be) sometime in the future. More specifically, this paper will consider: 1) the meaning of 'database' in Article 1(2); 2) the threshold requirement of 'substantial investment' in Article 7(1); 3) the scope of the rights of extraction and re-utilisation rights in Article 7(2) ; 4) what constitutes a substantial part of the contents of the database for the purpose of Article 7(1); 5) what constitutes repeated and systematic extraction or re-utilisation of insubstantial parts of the database contents that conflict with the normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database in Article 7(5); 6) the term of protection laid down by Article 10; 7) the concept of lawful user in Articles 8 and 9; and 8) protection for non-EU databases under Article 11(3).

