

## **Unofficial translation**

### **DATABASES ACT (1999)**

#### **Article 1**

1. For the purposes of this Act and provisions laid down pursuant to this act:
  - a. database: a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means and for which the acquisition, control or presentation of the contents, evaluated qualitatively or quantitatively, bears witness to a substantial investment;
  - b. producer of a database: the person who bears the risk of the investment for creating the database;
  - c. extraction: the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;
  - d. re-utilization: any form of making available to the public of all or a part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission;
  - e. technical provisions: technology, equipment or components which, in the context of their normal operation, are used to prevent or restrict transactions in relation to databases which are not permitted by the producer of the database or his right-holders; technical provisions will be deemed to be 'efficient' if extraction and re-utilization of a database is managed by the producer of the database or his right-holders by means of an access control or through the application of a method of protection such as encryption, encoding or some other transformation of the database or some copy protection that affords the desired protection;
  - f. information pertaining to the management of rights: all information supplied by the producer of a database or his right-holders that is linked to a version of the database or which becomes known when a database is re-utilized, and that is used to identify the database, or information concerning the conditions for use of the database, together with the numbers or codes containing that information.
2. The making available by institutions accessible to the public for a limited period and without direct or indirect economic or commercial advantage shall not be regarded as extraction or re-utilisation.
3. The relevant provisions of the Copyright Act 1912 shall not apply to computer programs used for the production or operation of databases accessible by electronic means.

#### **Article 2**

1. The producer of a database shall have the exclusive right to authorize the following acts:
  - a. the extraction or re-utilization of all or a substantial part of the content of the database, evaluated qualitatively or quantitatively,
  - b. the repeated and systematic extraction or re-utilization of insubstantial parts of the content of a database, evaluated qualitatively or quantitatively, where this does not conflict with the normal exploitation

of that database or unreasonably prejudice legitimate interests of the producer of the database.

- 2 This shall be without prejudice to the copyright or other rights to the database or works, data or other materials included in the database.
3. Where a copy of a database has been brought into circulation by transfer of ownership for the first time by or with the consent of the producer or his right-holders in one of the Member States of the European Union or in a state that is party to the Agreement on the European Economic Area of 2 May 1992, the bringing into circulation of that copy in those States shall otherwise not infringe the right referred to in paragraph 1.
4. The right referred to in paragraph 1 shall be transferred upon hereditary succession and is eligible for full or partial transfer. The conveyance required for full or partial transfer shall be executed in a deed intended for this purpose.

### **Article 3**

1. The producer of a database which is made available to the public in whatever manner may not prevent the lawful user of the database from extracting or re-utilizing insubstantial parts of its contents, evaluated qualitatively or quantitatively. Where the lawful user is authorized to extract or re-utilize only part of the database, paragraph 1 shall apply only to that part.
2. By agreement no exception may be made to paragraph 1 to the detriment of the lawful user.

### **Article 4**

The legal user of a database, which is made available to the public in whatever manner, may not perform acts, which conflict with the normal exploitation of the database or unreasonably prejudice the producer.

### **Article 5**

The lawful user of a database which is made available to the public in whatever manner may not without the authorization of the producer of the database extract or re-utilize a substantial part of the contents of the database:

- a. in the case of extraction for private purposes of the contents of a non-electronic database;
- b. in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
- c. in the case of extraction or re-utilization for the purposes of public security or an administrative or judicial procedure.

### **Article 5a**

1. Whoever circumvents the purposive technical provisions and knows or should reasonably know that he is doing so shall be acting unlawfully.
2. Whoever provides services or manufactures, imports, distributes, sells, hires out, advertises or possesses equipment, products or components for commercial purposes, that:
  - a) are offered, advertised or put on the market for the purpose of circumventing the protected operation of the purposive technical provisions; or

- b) have only a limited commercial purpose or use apart from the circumvention of the protected operation of the purposive technical provisions; or
  - c) are primarily developed, manufactured or adapted with the aim of circumventing or facilitating the protected operation of the purposive technical provisions;
- will be acting unlawfully.
3. Regulations may be established by Government Order obliging the producer of the database to provide the user of the database, as described in article 5, with the means available to exploit these restrictions, provided that the user has lawful access to the database protected by the technical provisions. The provisions in the foregoing sentence will not apply to databases made available to users under contractual conditions at a place and time chosen individually by them. Article 17d of the Copyright Act will apply, *mutatis mutandis*.

#### **Article 5b**

Whoever intentionally removes or alters electronic information relating to the management of rights without being entitled to do so, or who disseminates, causes the dissemination of, broadcasts or otherwise publishes databases from which such information has been removed in an unauthorized manner, and who knows or reasonably ought to know that in so doing he is committing a breach of the Databases Act or enabling, facilitating or concealing such a breach, will be acting unlawfully.

#### **Article 5c**

1. Breach of the provisions in Article 5a, paragraph 1 and 2, or Article 5b will provide an entitlement to claim ownership of equipment, products and components as defined in Article 5a or databases as defined in Article 5b, or else to demand their destruction or disablement. The same entitlement shall exist in relation to moveable property not being property subject to registration and that has been applied directly towards the manufacture of the equipment, products and components as defined in the first sentence hereof.
2. The provisions of the Dutch Code of Civil Procedure relating to attachment and seizure for forfeiture of moveable property, not being property subject to registration, shall apply. Whoever has imposed an attachment under this Article will take preference over any other concurrent attachment.
3. The Court may determine that forfeiture will not take place except against a payment by the applicant to be established by the Court.
4. Unless otherwise agreed, the licensee shall have the right to exercise the entitlements arising under paragraph 1 to the extent that these extend to protecting the rights that he has been allowed to exercise.

#### **Article 6**

1. The right, referred to in Article 2, paragraph 1, shall run from the date of completion of the making of the database. It shall expire fifteen years from 1 January of the year following the date of completion.
2. If a database is made available to the public before the date of completion of the making of the database, the right provided for in Article 2, paragraph 1, shall expire fifteen years from 1 January of the year following the date when the database was first made available to the public.
3. Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, in particular resulting from successive additions,

deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for a new right referred to in Article 2, paragraph 1.

#### **Article 7**

The right referred to in Article 2, paragraph 1, shall apply to:

- a. the producer of the database or his right-holders who are nationals of or who have their habitual residence in the territory of a Member State of the European Union or a state which is a party to the Agreement on the European Economic Area of 2 May 1992;
- b. the producer of the database or his right-holders that are a company or firm formed in accordance with the legislation of a Member State of the European Union or a state which is a party to the Agreement on the European Economic Area of 2 May 1992 and having their registered office, central administration or place of business within the territory of one of these states; if such a company or firm has only its registered office in the territory of one of these states, its operations must be genuinely linked on an ongoing basis with the economy of this state;
- c. the producer of the database or his right-holders that can derive a right from an agreement that the Council of the European Union has signed with countries other than those referred to under a. or b.

#### **Article 8**

1. The public authority shall not have the right referred to in Article 2, paragraph 1, with respect to databases of which it is the producer and for which the contents are formed by laws, orders and resolutions promulgated by it, legal decisions and administrative decisions.
2. The right, referred to in Article 2, paragraph 1 shall not apply to databases for which the public authority is the producer, unless the right is expressly reserved either in general by law, order or resolution or in a particular case as evidenced by a notification in the database itself or when the database is made available to the public.

#### **Article 9**

This act shall be cited as: the Databases Act.