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Legal Regulation & Education: Doing the Right Thing?

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Collection versus Database – evolution or confusion in European Intellectual Property Law

Since the Berne Convention for the Protection of Literary and Artistic Works, of September 9, 1886, it was recognized protection dignity to Collections as works of art. According with the Berne Convention for the Protection of Literary and Artistic Works, of September 9, 1886, «Collections of literary or artistic works such as encyclopaedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections» (article 2.º n.º 5).

In modern days, the growing social, cultural and economic importance of Databases, brought by de development of ICT, also demands a response from Law in order to unsure is protection. So, one century after the Berne Convention, the Directive 96/9/EC of the European Parliament and Council, of 11 March 1996, on the legal protection of databases, defines Database as «a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means» (article 1.º n.º 2).

The option from European Union Law was to develop a new regime for the protection of Databases, as a new form of intellectual creation, instead of an evolution on the traditional concept of collection to an object that could include this new reality. In addition to defining this new concept of Database, this directive enshrines the coexistence of two intellectual property rights on the Databases: the Copyright and the Sui Generis Right.

While the Copyright on Databases closely resembles the set up for computer programs, with some special features compared to the general scheme of copyright arising from the Berne Convention, the Sui Generis Right presents itself as a true foreign body to the traditional dichotomy between Copyright and Industrial Property (patents and trademarks in Anglo-Saxon tradition) though in much European Countries it has been implemented as a neighboring right of copyright.

This option of the EU resulted in the actual coexistence of several intellectual creations, protected by different intellectual property rights, compose by a certain form of selection and organization of data or information.

First of all, we will argue in our presentation that these legal evolution, from the concept of Collections to Databases, is directly related to economics and technical evolution in how we address the elements that make up the flow of information.

In a legal perspective, the questions that we will address are the possible confusion of legal objects, between Collections and Databases, and the conflicts that the different legal regimes applicable to them may raise.

In fact, the similarity between the cited definitions of Collections and of Databases may raise the possibility of the same intellectual creation meeting the elements of the definition of both objects, and even the protection requirements of the various intellectual property rights recognized over those legal objects. In that case, the main question is if their legal regimes are compatible, and if not, which one should prevail.