Why the *sui generis* right must be protected
and the “DATABASE DIRECTIVE” should stay

Brussels, 12 March 2006

### Summary

- On a modest estimate, the business and professional media industry in the EU is worth well in excess of €100bn*.
- Based on known data the industry has more than doubled in size over the last eight years.
- This industry is entirely dependent on building, maintaining, marketing from and selling data of every conceivable kind: it is one of the cornerstones of the information economy in which Europe is an international leader.
- Major EU companies in the sector include Reed Elsevier, Wolters Kluwer, Reuters, CMP, The Economist, Financial Times/Pearson etc.
- **Estimates from these businesses show that as much as 30 per cent of their costs involve the compiling and maintenance of databases:** an investment which could be around €30bn annually in the EU.
- One of the reasons for the growing success of database driven businesses in the EU is the existence of the *sui generis* right, which underpins the huge investment in these companies.
- The fact that the European Commission has even considered removing this right has sent shock waves through the industry and is forcing companies to revisit their investment proposals for the future.
- The cost to Governments of removing this right now enacted in law in most EU states, added to the loss of investment in database driven businesses within the EU would represent overall a gigantic cost with no recognisable gain.
- Before taking any further steps to question the continuance of the *sui generis* right the EC should, with the industry, conduct the fullest possible regulatory impact assessment, which has not been possible in the very short time available to the industry to conduct such an investigation in such a huge and amorphous sector.

---

*Professional Media: Connecting Business 2005 – A portrait of a £17bn sector (Published by the UK Business Information Forum and compiled by the UK Periodical Publishers Association (PPA):*
Who we are

The European Federation of Magazine Publishers (FAEP) welcomes the opportunity to make comments on the first evaluation report of the Directive 96/9/EC on the legal protection of databases.

The magazine publishing and business and professional media sector in Europe is one of Europe’s great success stories, comprising large media companies to (often very small) SME publishers, the sector is one of the largest investors in the information economy. As well as producing written and visual content that encompasses every aspect of human life - from well-known general-interest consumer titles to popular niche consumer titles to general B2B titles to very specific professional and specialised titles – the sector also drives most of the business and consumer exhibitions, thousands of interactive products as well as conferences and a plethora of events. Some 360 million EU citizens read 20 billion magazines on a regular and consistent basis each year.

In the EU today, there are more than 50,000 magazines titles produced by over 15,000 publishing companies, with combined annual revenues of 40 billion Euro and directly employing 200,000 EU citizens, with a multiple of that figure involved in the related advertising, distribution, printing, design and paper manufacturing industries.

Databases, are at the heart of almost every aspect of this diverse business and its competitiveness and profitability. Whether a title is heavily subscribed to (i.e. delivered to the reader) or sold as single-copy (i.e. bought in shops etc.), a publisher requires an effective database in order to understand and cater for his readers.

Further, database use facilitates publishers in both their marketing strategies and their use of advertising space.

A recent study\(^1\) from the UK (probably the second or third largest business publishing sector on the EU) shows that this business and professional media sector is worth 25 billion Euro to the UK economy, a sector which is entirely database driven activity and is completely typical of business to business activity throughout the EU and the developed world.

Major EU companies in the sector include Reed Elsevier, Wolters Kluwer, Reuters, CMP, The Economist, Pearson and many more.

---

\(^1\) GfK NOP study on “Professional Media: connecting business”, commissioned by the Business Information Forum
FAEP Input to the Evaluation Report

A study by FAEP shows that up to 30 percent of costs in this vital sector is invested in building and marketing databases of various kinds. Based on the figures derived from the UK this investment has doubled the value of the business and professional media sector since 1998 when the first survey was conducted with the assistance of the UK Department of Trade and Industry. Unfortunately other countries have yet to conduct such investigations and FAEP can therefore only estimate on the basis of the known figures. It is clearly not possible to quantify how much of this impressive growth relates specifically to the existence of ‘sui generis’ protection and it would be grossly misleading to try to do so.

The question the Commission should surely ask itself is to what extent this vibrant industry would reduce investment, contract or decamp to more favourable environments were the sui generis protection to be withdrawn.

The above-mentioned UK study demonstrates the importance of databases for the business and professional media sector in the UK – a picture FAEP believes is replicated in all economies where there is a strong business publishing sector. These include Finland, Sweden, Denmark, The Netherlands, Belgium, Germany, France, Spain and Italy. The study is at Appendix I.

Questionnaires

FAEP has carried out a survey among its members which has received strong support for the continuance of the ‘sui generis’ right. On this evidence:

1. 80% of publishers make data available as a database.
2. 50% published more databases in 2005 than in 2000.
3. 80% have seen the average amount of the data content in databases increase since 2000.

According to many of our member associations, the Commission should not only look at the Gale Directory of Databases (GDD) to assess whether the sui generis protection has led to growth of database production, but should also consider the fact that some publishers do not invest so much in creating new databases, rather they invest in optimizing their existing databases as much as possible, which sui generis easily facilitates. These investments can go up to millions of euros for individual publishing companies.

Many publishers have declined to give exact economic data for commercial reasons, hence the need for a full impact assessment with the necessary guarantees of confidentiality.
FAEP Position

FAEP strongly contests the suggestion that the creation of the *sui generis* right has had adverse effects on competition. Completely to the contrary, FAEP members believe that the introduction of this right has provided a catalyst to publishers (in particular SMEs and the business and professional publishers) to invest more in the production and use of databases.

It is interesting to note, as the evaluation report points out, that the *sui generis* right is unique to the EU, “without precedent in any international convention. No other jurisdiction makes a distinction between “original” and “non-original” databases. FAEP was closely involved with the Commission in the early 1990’s when the Directive was being drafted. We wholeheartedly supported and actively promoted the introduction of the *sui generis* principle.

In this context, it is interesting to note that US publishers, in particular the Mc-Graw Hill Companies, are currently opening up a debate in Washington D.C. for the legislature to also introduce the ‘*sui generis*’ right in the USA.

All market players have tighter marketing budgets than before because of the growth of other media channels. Publishers therefore have become considerably more selective in how they do their marketing: using databases is one of the main elements in their decision-making in this regard.

Further, the existence of the *sui generis* right easily enables new entrants to the market. Creating new companies and exploiting new markets is easier than ever, largely due to technological developments. To quote from the above-mentioned study from the UK:

“Starting up companies and gaining entry to markets is easier than ever. To begin with, technological and cost barriers are far less than they used to be, thanks to the development and universal use of computers. Online developments have particularly affected those providing directories and databases: others add that the internet has grown the whole marketplace for them. For magazine publishers, the spread of online publishing has resulted, amongst other things, in downward pressure on page advertising yields, while desk top publishing has also been a key factor for those in the business-to-business newsletter industry where new players see online newsletter publishing as a cost-effective way of advertising and marketing."

As regards the four policy options proposed in the evaluation report, FAEP must reject option 1 (repeal the whole Directive) and option 2 (withdraw the ‘*sui generis*’ right).

While we would need to consider further the implications of Option 3 (amend the ‘*sui generis*’ provisions), for the time being, at this early stage in the Commission’s work on this matter, **we support Option 4: Maintaining the status quo.**
Conclusion

FAEP, as the organisation representing magazines and business and professional media at the EU level, believes that there is no justification for removing the *sui generis* right as enshrined in the Database Directive.

We believe there is ample evidence to show that the right has played an extremely important role in the development of the information society in the EU and made the EU a desirable place in which to develop these important businesses.

FAEP strongly urges the EC to conduct a full and thorough review, similar to that conducted in the UK with the help of the UK Department of Trade and Industry, in order to understand fully the importance of these industries within the EU economy and the potential damage that would be done by the removal of the right and/or the directive.