Summary of the session on databases and protection of information

July 12th 9.30 a.m. – Session F

Atelier n°6 – workshop nr. 6

Chair: Dr. Estelle Derclaye, University of Nottingham

The session started with a summary of the protection of databases at international level and more specifically at EU level by Dr Derclaye.

Thereafter, **Victor Ascensio** presented the protection of databases under Mexican law. He specifically distinguished between the creative and non creative databases. He also argued for a difference to be made between publicly funded and privately funded databases. The most interesting points were the term of protection which lasts as whopping 100 years p.m.a. since the modification of the copyright act in 1996 and the special system for unoriginal databases which are protected for 5 years (art. 108). This triggered questions on proof of authorship and ownership of such databases.

He was followed by his **Cynthia Solis** who spoke about the relationship between database protection and privacy, also in Mexican law. She drew the difference between the terms data, information, knowledge and understanding. In effect, because data does not yet make sense, databases should be better named infobases, once data has become information through human processing. The issue she discussed more specifically was that of devices which record your bodily functions and produce graphs which could be classed as databases. Such medical records can be protected by copyright law whether they are original or not (if not original, through art. 108). If the patient has given consent to the hospital to use this information, then the copyright owner can exploit the copyright-protected database.

Rossana Ducato then discussed the protection of biobanks. She noted the difference between the biobank consisting of samples (e.g. DNA, blood etc) and any database coming out of it, such as a database analysing this data. Such databases can both be protected by the sui generis right. She criticised the Italian law which does not include an exception for research and teaching. This often creates a monopoly on the raw data in the biobank as it is difficult to replicate this data (one would have to ask each individual to again give a sample). She concluded that the *sui generis* right protection for biobanks can negatively affect the development of science. We should have open models for biobanks especially for those funded by the taxpayer (e.g. biobanks constituted by public hospitals).

Last but not least, **Gemma Minero Alejandre** presented the recent *Football Dataco* case decided by the ECJ in March 2012. She gave a detailed critical analysis of this complex case. The main points of discussion were the Court's decision that data creation does not count for copyright nor for the sui generis right and that another type of copyright than that of the Directive (the directive requires the author's own intellectual creation) cannot subsist in databases. Therefore, the UK can no longer protect databases which simply reflect skill or labour, i.e. if there is no creativity.

There was a lively and stimulating discussion throughout the whole session, with a number of interesting ideas and exchanges for instance on the Mexican system of protection of databases on the interface between database protection in Europe and misappropriation/slavish imitation/parasitism.