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Preface

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1 Introduction

One of the main tasks of EuroTermBank project is to choose appropriate terminology resources available in the new EU member states represented in the Project Consortium, namely Estonia, Hungary, Latvia, Lithuania, and Poland, and to either integrate them into a central database or make them available via a central on-line user interface.

In a first step the existing resources in the five countries have been identified and described in detail in order to allow an evaluation and selection of appropriate data. The selection comprises data in electronic form and data available only in paper form, which will be digitised for the integration into EuroTermBank. The procedures of describing, evaluating, and selecting data are described in Deliverable 2.1.

As terminology resources under certain circumstances are subject to copyright, the Consortium needs the authorisation by the copyright holders of the selected resources to use and modify them for the purpose of EuroTermBank. Therefore, after identifying the copyright holders, their willingness to co-operate with the EuroTermBank Project and, in case of a favourable decision on their part, their conditions for the co-operation have to be investigated. If these conditions are acceptable, the Consortium, namely the project partners in Estonia, Hungary, Latvia, Lithuania, and Poland, shall conclude agreements with the copyright holders. These agreements differ depending on the conditions of use agreed upon by the contracting parties.

This report sets up the legal and procedural framework for the data exchange and integration. It defines the procedures to establish the ownership of as well as exploitation rights for the data and to conclude the agreements with the copyright holders. It describes the rights and duties of the parties involved – the Consortium as operator of EuroTermBank, the data providers, and the users.

After an introduction to copyright questions in respect of terminology and electronic data exchange, the specific preconditions of EuroTermBank project are described and the different “stakeholders” are presented. A flow-chart illustrates the procedure of establishing the legal relationships for EuroTermBank.

The third chapter provides a presentation of the relevant legislation. The most important regulations at European level are described, followed by an outline of the legal situation in every new EU member state involved in EuroTermBank.

Eventually, the documents required for establishing the relationships between Consortium/EuroTermBank, copyright holders, and users are described.

The Annex offers a model for every document type described in the previous chapter. The documents have been reviewed by lawyers and terminology experts of every country involved and were drafted according to their comments.

2 Basis of the procedural and legal framework for data exchange and exploitation

2.1 Overview on copyright questions with regard to terminology

The Berne Convention for the Protection of Literary and Artistic Works, adopted at Berne in 1886 and revised since then several times, constitutes the basis for copyright law in all countries which notified it. In the course of implementation into national legislations, however, the stipulations of the Berne Convention undergo subtle differences. Nevertheless it provides minimum standards of protection, such as

- the right to translate, the right to make adaptations and arrangements of the work,
- the right to perform in public dramatic, dramatico-musical and musical works,
- the right to recite in public literary works,
- the right to communicate to the public the performance of such works,
- the right to broadcast (with the possibility of a contracting State to provide for a mere right to equitable remuneration instead of a right of authorisation),
- the right to make reproductions in any manner or form (with the possibility of a contracting State to permit, in certain special cases, reproduction without authorisation provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, and with the possibility of a contracting State to provide, in the case of sound recordings of musical works, for a right to equitable remuneration),
- the right to use the work as a basis for an audiovisual work, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work. The application of copyright presupposes an individual intellectual creation of the author.

In Europe, copyright exists from the creation of a work and does not require formal registration or notice (cf. IPR Enforcement Directive, Preamble recital 19). Article 15 of the Berne Convention establishes the presumption whereby the author of a literary or artistic work is regarded as such if his name appears on the work. Whereas the moral rights of an author are not transferable, the exploitation rights of the work may be granted to a third party by the author.

In nearly all countries copyright is subject to limitations and exemptions for the public benefit allowing the reuse of data without special permission or payment of royalty fees, for example for private purposes, for the purposes of illustration for teaching or scientific research – as long as the source is indicated – or for the purposes of public security or an administrative or judicial procedure. Whereas in most European legal systems these limitations and exemptions are enumerated explicitly, the Anglo-American law contains the more general “fair use”, or “fair dealing” doctrine (cf. Wright 1996, http://en.wikipedia.org/wiki/Fair_use 27.10.2005).

Modern information and communication technologies – allowing hitherto unimaginable ways and means of replication and conversion – have put copyright provisions under stress. Furthermore, under a mobile content (mContent) perspective, today, copyright is increasingly impacted. mContent – including terminology – has to be considered from the outset as:

- multilingual
- multimodal
- multimedia

and should be prepared in such a way that it meets multi-channel and universal accessibility requirements, comprising also the requirements of people with special needs. This is the be-

ginning of a new proliferation of derivative works, which may need further modifications or extensions of the Berne Convention.

When it comes to terminology, experts hold quite different views on the question in which way, if at all, terminology as such and terminology collections are subject to copyright or other intellectual property rights. The opinion that the creation of new technical terminology and the formulation of definitions and concept descriptions should be considered as a creative mental achievement worth protection by copyright is rather uncontested by subject-field and terminology experts in general. However, it is contested by legal experts based on the fact that terminological data represent the state-of-the-art, which does not qualify them as original work (cf. RaDT 2000). The question whether the compilation of terminology is also subject to copyright must be decided apparently depending on the character of the compilation (cf. Budin 1993).

The *Guide to Terminology Agreements* by Infoterm states, that “while concepts, as ‘units of knowledge’, should be regarded as the intellectual property of all mankind, their representations as terms and definitions, or other kinds of concept description, as graphic symbols, or as other kinds of non-linguistic representation must be considered to be the intellectual property of the originator, i.e. a single expert, group of experts, or institution/organisation, if this information has been conceived or prepared by the respective originator in the form of a terminological entry, a specific sub-section of an entry, or a collection of terminological data” (Guide 1996, cf. Annex 4) – whereas other experts deny that a single term or terminological entry is already subject of copyright in any case (cf. Stellbrink 1993, p. 4). It seems to be obvious, that the character of every entry determines the question whether it can be considered as a creative work and subject to copyright (cf. Goebel 1993, p. 41).

However, while the “legal position with regard to the definition of the ‘smallest unit’ that may be asserted on the bases of the protection of intellectual property, is not yet settled” (GTW-Report 1996, p. 28), a terminology database is covered by copyright in Europe as a *sui generis* right granted by the EU Database Directive (cf. chapter 3.1.1.1), because the compilation and presentation of the data has to be considered as an autonomous creative work independently from its content and, indeed, often in addition to its copyrighted components. Protected by this right is a database as a whole or a “substantial part” (Database Directive, Art. 7(1)) of it.

A complex terminology database in general consists of linguistic and non-linguistic knowledge representations, and may contain names and logos being part of a term or concept description. The first type comprehends primarily:

- terms proper, incl. abbreviations, nomenclature names, etc.;
- terminological phraseology;
- thesaurus descriptors and class names of a subject classification scheme;
- definitions and other kinds of textual concept description;
- statements representing a (micro-)proposition, and contexts or co-texts.

Non-linguistic knowledge representation can appear in form of

- formulae, e.g. in mathematics and chemistry;
- alphanumeric codes, or equivalents, such as barcodes;
- graphical symbols, complex graphs, figures, and images.

In new multimedia encyclopaedia moving animations or pictures, sound, video clips and other kind of representation can be found, which sooner or later will also find their way into terminology databases.

Terminology databases can consist of different database files – terminology files, bibliographic data files, and indexing and retrieval language files. Terminology files contain the entries whose data centre around the term and concept description as the most important elements to represent the concept in question. Bibliographic data files consist of entries containing references, such as author, title, year of publication, abstract, etc. and other sources of terminological information. In the terminology entries themselves source-related information will occur in coded form, rather than as a full bibliographic entry. However, each code points to a full bibliographic record mostly stored in a separate bibliographic file. Indexing and retrieval language files comprehend records containing class names or thesaurus descriptors, subject headings, etc. for indexing – the terminological records as well as bibliographic records – and retrieval purposes.

In order to analyse the copyright situation with regard to terminology databases the national legislation of the respective country is authoritative. The regulation in all EU member states is similar, because it is based on the relevant EU Directives implemented into the national legislation of each of them. This does not pose any difficulty as long as a copyrighted work is solely used, first of all in printed form, in a given country. The problems arise, if a copyrighted work is accessible via the Internet – i.e. globally.

The identification of the copyright holder may pose several problems: Different types of data, such as textual information and pictures, can be subject to different copyrights which can be owned by different people, i.e. authors/originators being natural persons. The copyright for the content of a terminology database can be owned by one or several persons, when the data collection is the result of a collective work. Big terminology databases may comprise several collections subject to the copyright of different groups of people, and the database as such can constitute an additional copyright for those who created the database.

Although the moral copyright of the author of terminological records in a terminology database remains with him in any case, he can authorise another natural or legal person to use the data, in particular to reproduce, modify, translate, and distribute it according to the exploitation rights. The *sui generis* right based on the Database Directive can belong to the person(s) or legal person(s) that have established the database.

After selecting appropriate terminology resources and identifying their copyright holders, the Consortium has to sign agreements with them in order to obtain the right to use the data for the purposes of EuroTermBank. These agreements shall entitle the Consortium to modify the data according to formal and technical requirements, and to digitise data available only as hard copy.

The conditions or restrictions of use defined by the copyright owners and holders have to be taken into account. They can refer to the price, in the case of data available only for a fee, and payment procedures, or to any restrictions of the use and distribution of the data. Eventually the measures appropriate to prevent misuse and to guarantee due acknowledgment of the authors have to be investigated. These preconditions determine the design of the agreements to be concluded with the copyright holders.

2.2 Parameters of EuroTermBank

EuroTermBank project deals with different kinds of terminological data, different copyright holders, and different user groups. This entails a wide range of rights, duties, and interests to be considered while establishing the relationships between the different parties.

2.2.1 Terminology resources

In case of EuroTermBank the resources in question are characterised by a high degree of heterogeneity. They are multi-, bi- and monolingual and cover different languages. The data structure differs – some of the resources are concept-oriented, whereas most of them are based on a lexicographic approach and term-orientated. The amount and kind of data categories is different – some of them contain definitions, contexts, notes, subject field indications, and further data categories dedicated to define and explain the concept and the use of the term. Grammatical, morphological and/or phonetic information on the terms is added in some cases. They are available in electronic and/or paper form, with various electronic formats.

The terminology resources are described in detail in Deliverable 2.1, as well as selection criteria and procedures.

The rights on terminology databases are subject to different national legislations based on the relevant EU Directives (cf. chapter 3.1.1).

2.2.2 Groups of copyright holders

For the approach to copyright holders and the design of contracts to be signed, the possible interests of the copyright holders should be taken into account. There are two main groups of copyright holders pursuing, in general, various targets.

First of all, there is the group of authors of terminology collections. They might be single persons or groups of authors, institutions like professional organisations or standardisation boards, or, at least, companies creating their own terminology. If they are legal persons, the actual authors/originators as a rule have ceded to them – by blanket agreement or any other kind of implicit or explicit agreement – the exploitation rights. In fact, an author can strive for very different benefits:

- He could be interested in the first place in remuneration or some other economic effect.
- He may as well wish to disseminate his work widely in order to make it available and useful to a group of users as large as possible.
- He could, in his capacity as an expert of his subject field, have an ethical interest in fostering the standardisation of terminology in this field, in contributing to avoid duplication of work in order to achieve a harmonised mono- and multilingual technical communication and, finally, to enhance scientific, technical and economical co-operation.

Hopefully, identified authors will appreciate the scientific dialogue and desire to co-operate with EuroTermBank, and, thus, be involved in an important project using state-of-the-art technology and methodology.

The second large group of copyright holders (holding the exploitation rights) consists of the publishers. They are vendors of terminology, so their natural interest would be to sell the data

to the user via EuroTermBank. There are cases, where the authors are also the publishers of their terminology collection.

A subset of the two first groups of copyright holders are the standards developing organisations (SDOs), which due to their importance for the creation of reliable terminology and to their special function are described here as a single group. As a rule terminologies in SDOs are created by groups of experts in the form of technical committees, their sub-committees or working groups. By the very nature of the SDOs, their terminologies must be considered as authoritative data.

However, whether implicitly or stated explicitly, the terminological data are strictly speaking only valid within the scope of the respective committee or of the standard developed by them. Nevertheless these data are of crucial importance to the process of development of subject standards, especially for their quality. Because of traditional working methods, standardised terminologies are more often than not recorded in conventional form or in an electronic format not appropriate for data processing. Given their authoritative nature SDOs consider standardised terminologies as one of their special assets, although in many cases they lack the means and skills to market them. One of the reasons for this may be that the general business model for standardisation does not fit as a business model for standardised terminologies. Here EuroTermBank could step in and provide a valuable platform for the distribution of standardised terminologies on a commercial or non-commercial basis. As long as a general agreement with ISO Central Secretariat and ISO members is not yet concluded, bilateral preliminary agreements between EuroTermBank Partners and their respective national standards bodies are recommended.

In any case, the interest of EuroTermBank is clearly to get as much as possible valuable terminology for as little a price as possible. The following benefits serve as arguments to arouse the interest of a copyright holder to co-operate with EuroTermBank.

- He can take part in the project as a member of Cooperation Council; so he will be involved in the discussions and decision-making processes.
- He gets advice for his terminology work and access to latest high-quality know-how in terms of terminology creation and processing.
- His data will be reviewed and, if necessary, modified for the exchange according to international standards.
- His involvement in a project co-funded by the EU Commission gives evidence of the quality of his data having passed the selection procedure and being elected as appropriate material for EuroTermBank.
- The protection of his data against misuse is guaranteed by
 - prescription of quotation rules and other user conditions
 - technical precautions.
- The source of his data will be duly acknowledged whenever an entry is looked up by a user.

2.2.3 User groups

In order to define the relations between the Consortium in its capacity as operator of EuroTermBank and the User, it is necessary to recognise the different user groups possibly accessing the services offered by EuroTermBank. These are mainly translators and interpreters, terminologists, technical writers, standardisation specialists, scientific journalists, experts in individual subject fields, and documentation specialists. They can be representatives of

companies, teaching institutions, standardisation boards, or bodies of public administration. That means that there are private and public users, persons and institutions, commercial and non-commercial users. Users from all over the world will be able to access the data, so no specific national law is applicable in order to define the legal relations between them and EuroTermBank.

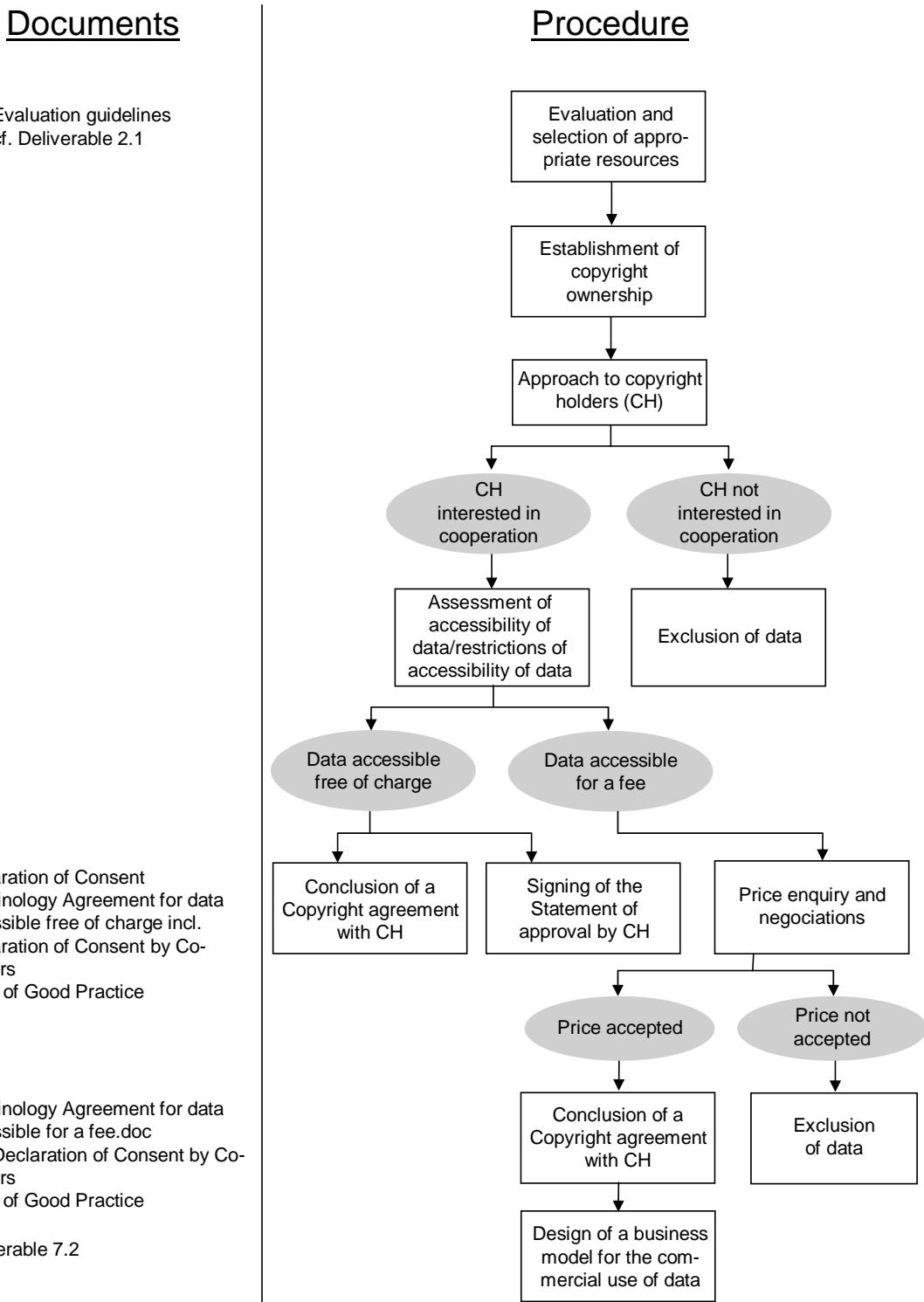
The requirements of the potential user in terms of system design and user interface are described in Deliverable 3.1.

2.2.3.1 User registration form

EuroTermBank can provide for a registration facility, either in form of a mandatory registration for every user before gaining access to the terminological data, or for users only wishing to access data that are subject to charges or other restrictions. In both cases the registration shall be linked to the acceptance of the Code of Good Practice and the Terms of Use (cf. chapter 4) as a requirement for access. The Consortium has to choose the solution which will be the best for the purpose of EuroTermBank, taking into consideration the possibly deterrent effect of a mandatory registration on the one hand, and the potential for copyright circumvention or abuse of data, if access is made too easy on the other hand.

The registration form shall as minimum requirement contain the fields “First name”, “Last name”, “Organisation”, “E-mail address” (repeated), and a reference to the Disclaimer and the Terms of Use with the Code of Good Practice attached to them, including a box to be marked with a cross to confirm that the user has taken note of the content of these documents. After submitting the form a confirmation notice and, in case of a password-based access, the announcement of the reception of an email containing the password shall appear.

2.2.4 Step by step to a Terminology Agreement



3 Legal framework

All documents representing the legal framework of EuroTermBank are drafted on the basis of the relevant acts effective in Estonia, Hungary, Latvia, Lithuania, and Poland, namely the Estonian Copyright Act, the Estonian Information Society Services Act, the Hungarian Copyright Act, the Latvian Copyright Law, the Latvian Personal Data Protection Law, the Lithuanian Law on Copyright and Related Rights, and the Polish Act on copyright and neighbouring rights (cf. chapter 3.1.2). They implement the European legislation on copyright and related rights, regulated in the EU Directives described below.

3.1 Legislation

3.1.1 EU legislation on copyright and related rights

A number of EU Directives is of more or less relevance to the ETB Project:

1. Directive 91/250/EC of 14 May 1991 on the legal protection of computer programs;
2. Directive 92/100/EC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
3. Directive 93/83/EC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission
4. Directive 93/98/EC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights
5. Directive 96/9/EC of 11 March 1996, on the legal protection of databases;
6. Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market
7. Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.
8. Directive 2004/48 EC of 29 April 2004 on the enforcement of intellectual property rights.

For the purpose of EuroTermBank project, mainly four EU Directives provide for the legal framework of intellectual property rights and copyright issues – Directive 96/9/EC of 11 March 1996 on the legal protection of databases, Directive 2001/29/EC of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Directive 2000/31/EC of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, and Directive 2004/48 EC of 29 April 2004 on the enforcement of intellectual property rights. The first three are already implemented into national law by the EU member states, Directive 2004/48/EC has to be transposed by 29 April 2006. Although they grant options to the member states' legislators, they aspire to harmonise the EU-wide legislation on IPR and copyright, taking into account the new technologies offering a wide range of possibilities for creating, storing, reproducing and distributing intellectual works.

Directive 96/9/EC, called the Database Directive, stipulates the harmonisation of copyright provisions in the member states, and provides for a new *sui generis* right entitling the author of a database under certain conditions to prevent extraction and/or re-utilisation of the whole or of a substantial part of the contents of his database.

In this connection it must be repeated that the copyright for the content of a terminology collection can be owned by one or several authors, when the data collection is the result of a collective work. Big terminology databases may comprise several collections subject to the copyright of different groups of authors, and the database as such can constitute an additional copyright for those, who created the database. The moral copyright of the author – being a natural person – of a terminology database remains with him in any case, but he can authorise another natural or legal person to use the data, in particular to reproduce, modify, translate, and distribute it according to exploitation rights.

Directive 2001/29/EC, called the European Union Copyright Directive (EUCD), covers mainly three areas, considered as crucial for information in cyberspace. It grants authors with a new exclusive right to communicate their works to the public, it deals with copyright limits, i.e. exceptions and limitations to the reproduction right for digital works, and it provides legal protection for technical measures dedicated to safeguard rights.

Directive 2000/31/EC, called the E-commerce Directive, intends to “improve the legal security of such commerce in order to increase the confidence of Internet users. It sets up a stable legal framework by making information society services subject to the principles of the internal market (free circulation and freedom of establishment) and by introducing a limited number of harmonised measures” (<http://europa.eu.int/scadplus/leg/en/lvb/l24204.htm>, 03.12.2005).

Directive 2004/48/EC aims at providing an “equivalent level of intellectual property protection throughout the whole European Community” (IPR Helpdesk 2005 p. 1). It establishes specific legal measures and procedures to be taken in case of infringement of IPR.

3.1.1.1 Directive 96/9/EC on the legal protection of databases

Goal of the Directive is the legal protection of databases, whereas database is defined 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” (Database Directive, Art. 1(2)). The definition covers not only electronic, but also paper databases. The Directive subdivides into two main parts: on the one hand it stipulates the harmonisation of copyright provisions in the member states, and on the other hand it provides for a new *sui generis* right.

The protection by copyright extends to “databases which, by reason of the selection or arrangement of their contents, constitute the author’s own intellectual creation” (ibid., Art. 3(1)), the content of the databases itself not being subject to regulation by this act. However, the subject matters being protected under copyright or related rights, which are incorporated into a database, remain protected by the respective rights and may not be incorporated into the database without the permission of the copyright holder.

The author of a database, i. e. the natural person who created it, has the exclusive right to carry out or to authorize the reproduction, the translation, adaptation, arrangement or other alteration as well as the distribution, communication, display or performance to the public (cf. ibid., Art. 5). In case of a collective work created by a group of natural persons, the exclusive rights devolve to them jointly.

The Directive entitles the member states to provide exceptions to copyright in case of reproduction for private purposes, for teaching or scientific research, for the purposes of public

security, administrative or judicial procedure, or in other cases, traditionally authorised under national law, provided that the copyright holder's legitimate interests are not unreasonably prejudiced, according to the Berne Convention for the protection of Literary and Artistic Work (cf. *ibid.*, Art. 6).

Besides the copyright regulation, the Directive provides a *sui generis* right for the author of a database “which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database” (*ibid.*, Art. 7(2)), whereas “‘extraction’ shall mean 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; ‘re-utilisation’ shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission” (*ibid.*).

Furthermore, the Directive prohibits the “repeated and systematic extraction and/or re-utilisation of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database” (*ibid.*, Art. 7(5)). Public lending is not considered as an act of extraction or re-utilisation, though.

Besides the harmonisation of rights and obligations of the lawful users of databases, the Directive grants the member states the right to stipulate exceptions to the *sui generis* right, according to the above mentioned exceptions to copyright regulations.

The *sui generis* right is limited to fifteen years from the first of January of the year following the date of completion of the making of the database. The Directive (Art. 19(2)) establishes the principle that when a database is substantially changed – to be evaluated qualitatively and/or quantitatively – it becomes a new database, entitled to its own term of protection.

The member states are obligated to provide appropriate remedies for infringements of the rights provided for in the Directive.

The Directive has been transposed into national law by all member states.

3.1.1.2 Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

The Directive serves to implement international obligations of the Community accepted by signing the WIPO¹ Copyright Treaty and the WIPO Performances and Phonograms Treaty.

It intends to adapt the existing copyright regulations in order to respond to technological developments, i.e. digital technologies, and economic realities offering new forms of creation, production and exploitation. For a smooth functioning of the European internal market, the various national provisions on copyright and related rights needed to be harmonised. The Directive extends copyright to digital products and aims at safeguarding the rights and interests

¹ WIPO – World Intellectual Property Organisation

of different categories of copyright holders such as authors, performers, phonogram producers, producers of the first fixations of films, or broadcasting organisations.

The Directive stipulates that member states shall provide for authors for the exclusive rights to authorise or prohibit the reproduction of their work in any form, to communicate it to the public and to authorise or prohibit any form of distribution to the public. The distribution right is exhausted when “the first sale or other transfer of ownership in the Community of that object is made by the copyright holder or with his consent” (Copyright Directive 2, Art. 4(2)).

Member states have a significant freedom in the establishment of exceptions and limitations for certain cases, for example educational and scientific purposes, for the benefit of public institutions such as libraries and archives, for purposes of news reporting, for quotations, for use by people with disabilities, for public security uses and for uses in administrative and judicial proceedings. They can also provide for exceptions or limitations to the reproduction right concerning reproduction for private use, accompanied by fair compensation. In most of these exceptional reproduction cases the source, including the author’s name, shall be indicated.

The Directives imposes the obligation to provide adequate legal protection against the circumvention of technological measures carried out in order to safeguard the rights of an author or another copyright holder, i.e. to “prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the copyright holder of any copyright or any right related to copyright as provided for by law or the *sui generis* right provided for in Chapter III of Directive 96/9/EC” (*ibid.*, Art. 6(3)).

The Directive has been incorporated into national law by all member states represented in the EuroTermBank Project.

3.1.1.3 Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market

The goal of the Directive is the “proper functioning of the internal market by ensuring the free movement of information society services between the Member States” (E-Commerce Directive, Art. 1(1)). It harmonises the rules and regulations concerning e-commerce within the internal market in order to provide legal certainty in this area. The principles of freedom to provide services and freedom of establishment shall apply to Information Society services throughout the EU, provided that they comply with the law in the respective member state.

“The Directive covers all Information Society services, both business to business and business to consumer, and services provided free to the recipient (for example funded by advertising or sponsorship revenue). Examples of online sectors and activities covered include shopping, newspapers, databases, financial services, professional services (such as lawyers, doctors, accountants, estate agents), entertainment services, direct marketing and advertising and internet intermediary services” (Press release of the European Commission on <http://europa.eu.int>, 12.10.2005).

The Directive establishes harmonised rules on mandatory information an online service must provide to users, such as name, address, or contact details, on commercial communications and electronic contracts. It restricts the liability of intermediary service providers concerning the information transmitted, temporary storage of information, and information monitoring.

The member states and the Commission shall encourage the establishment of codes of conduct at Community level in order to facilitate the proper implementation of the Directive's provisions.

3.1.1.4 Directive 2004/48 EC on the enforcement of intellectual property rights

Based on consultations, and despite the TRIPs² Agreement, the EC found out that there are still major disparities as regards the means of enforcing intellectual property rights. In some Member States, there are no measures, procedures and remedies such as the right of information and the recall, at the infringer's expense, of the infringing goods placed on the market.

Given the fact that

- “the disparities between the systems of the Member States as regards the means of enforcing intellectual property rights are prejudicial to the proper functioning of the Internal Market and make it impossible to ensure that intellectual property rights enjoy an equivalent level of protection throughout the Community...”
- the current disparities also lead to a weakening of the substantive law on intellectual property and to a fragmentation of the internal market in this field...
- infringements of intellectual property rights appear to be increasingly linked to organised crime” (IPR Enforcement Directive, Preamble recital 8 et seq.).

effective enforcement of the substantive law on intellectual property should be ensured by specific action at Community level. The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the internal market.

Thus the general obligations of this Directive (Art. 3) state:

- “1. Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
2. Those measures, procedures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.”

The Directive stipulates that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 29 April 2006.

3.1.2 National legislation on copyright and IPR

3.1.2.1 Overview of the legal protection of databases in Estonia

By Anu Uritam, Attorney at law, Straus & Partners Law Firm, Tallinn, Estonia

All issues related to the legal protection of databases in Estonia are covered by the Copyright Act. Estonian Copyright Act was adopted on November 1992 and became effective since December 12, 1992. Our Copyright Act is based on the principles of the Berne Convention for

² Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (WTO)

the Protection of Literary and Artistic Works and on the principles of other international conventions administered by World Intellectual Property Organization (WIPO).

The conditions of the following EU Directives are included into the Estonian Copyright Act:

1. Directive 91/250/EC from May 14, 1991 on the legal protection of computer programs;
2. Directive 92/100/EC from November 19, 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
3. Directive 93/83/EC from September 27, 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission
4. Directive 93/98/EC from October 29, 1993 harmonizing the term of protection of copyright and certain related rights
5. Directive 96/9/EC from March 11, 1996, on the legal protection of databases;
6. Directive 2001/29/EC from May 22, 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

Thus, it is possible to state that our Copyright Act is harmonized with the requirements of the directives listed above.

The regulations of the European Directive 2000/31/EC from June 8, 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, are included into our legal system with the Estonian Information Society Services Act that became effective on May 1, 2004.

Pursuant to the Estonian Copyright Act, all databases may either be protected by copyright or by the so-called *sui generis* right.

The Article 4 of the Estonian Copyright Act states that collections of works and information, including databases, are protected as any other copyright works. This means that databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright.

Database means a collection of independent works, data or other economics arranged in a systematic or methodical way and individually accessible by electronic or other means. The definition of database does not cover computer programs used in the making or operation thereof.

Creators of such databases have the same rights as any other authors whose works are protected by copyright. This means that the creators of such databases have both moral rights and economic rights.

The moral rights of the author are the following:

1. the right to appear in public as the creator of the work and claim recognition of the fact of creation of the work by way of relating the authorship of the work to the author's person and name upon any use of the work (right of authorship);
2. the right to decide in which manner the author's name shall be designated upon use of the work – as the real name of the author, identifying mark of the author, a fictitious name (pseudonym) or without a name (anonymously) (right of author's name);

3. the right to make or permit other persons to make any changes to the work, its title (name) or designation of the author's name and the right to contest any changes made without the author's consent (right of integrity of the work);
4. the right to permit the addition of other authors' works to the author's work (illustrations, forewords, epilogues, comments, explanations, additional parts, etc.) (right of additions to the work);
5. the right to contest any misrepresentations of and other inaccuracies in the work, its title or the designation of the author's name and any assessments of the work which are prejudicial to the author's honour and reputation (right of protection of author's honour and reputation);
6. the right to decide when the work is ready to be performed in public (right of disclosure of the work);
7. the right to supplement and improve the author's work which is made public (right of supplementation of the work);
8. the right to request that the use of the work be terminated (right to withdraw the work);
9. the right to request that the author's name be removed from the work which is being used.

Additionally to the moral rights, the author has the exclusive right to use the work in any manner, to authorize or prohibit the use of the work in a similar manner by other persons and to receive income from such use of the work. These rights are the economic rights of the author.

The economic rights are the following:

1. the right for reproduction of the work. "Reproduction" means the making one or several temporary or permanent copies of the work or a part thereof directly or indirectly in any form or by any means;
2. the right for distribution of the work. "Distribution" means the transfer of the right of ownership in a work or copies thereof or any other form of distribution to the public, including the rental and lending;
3. the right for translation of the work;
4. the right for making adaptations, modifications (arrangements) and other alterations of the work;
5. the right for making collections of the work;
6. the right for public performance of the work as a live performance or a technically mediated performance;
7. the right for exhibitions of the work. "Exhibition of a work" means presentation of the work or a copy thereof either directly or by means of film, slides, television or any other technical device or process;
8. the right for communication of the work by radio, television or satellite, and retransmission thereof by cable network, or direction of the work at the public by other technical devices;
9. the right for making the work available to the public in such a way that persons may access the work from a place and at a time individually chosen by them.

The Copyright Act provides also for possibilities when it is allowed to use databases protected under copyright without the permission of the author and without any payments. Article 25¹ of the Copyright Act states that the lawful user of a database or of a copy thereof is entitled, without the authorisation of the author and without payment of additional remuneration, to perform any acts which are necessary for the purposes of access to the contents of the database and normal use of its contents. If the lawful user is authorised to use only part of the da-

tabase, this provision shall only apply to the corresponding part of the database or of a copy thereof. Any contractual provisions which prejudice the exercise of the right are void.

As it was stated earlier, databases that can not be regarded as original creative works of its author, are protected by a so-called *sui generis* right. Databases that are protected by such legal institution, are collections of work, data or other economics arranged in a systematic or methodical way and individually accessible by electronic or other means.

The *sui generis* right provides protection for the maker of a database. Under the Estonian Copyright Act, the maker of a database is a person who has made a substantial investment, evaluated qualitatively or quantitatively, in the collecting, obtaining, verification, arranging or presentation of data which constitutes the contents of the database.

The maker of a database has the exclusive right to authorize or prohibit the use of the database in the manner prescribed in the Copyright Act and to obtain remuneration agreed between the parties for such use.

The following actions are permitted only with the authorisation of the maker of a database:

1. extractions from the database or from a substantial part thereof. "Extraction" means 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;
2. re-utilisation of the database or a substantial part thereof. "Re-utilisation" means any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission.

These exclusive rights shall belong to the maker of a database irrespective of the eligibility of that database or the contents thereof.

The maker of a database may transfer (assign) his rights or grant an authorisation (license) for the exercise of such right.

The lawful user of the database that is made available to the public in whatever manner has the right to make extractions and to re-utilize insubstantial parts of its contents, for any purposes whatsoever.

The lawful user of a database which is made available to the public in whatever manner is not entitled to violate copyright or related rights in the works or other economics contained in the database.

Any lawful user of a database which is made available to the public should not perform acts that may be in conflict with normal use of the database or unreasonably prejudice the legitimate interests of the maker of the database.

The chapter of the Copyright Act that regulates the *sui generis* rights, provides also for some legal limitations for the rights of makers of databases.

The lawful user of a database which is lawfully made available to the public is entitled to, without the authorisation of its maker and without payment of remuneration, make extracts from the database or re-utilize a substantial part of the database if:

1. extractions are made for private purposes of the contents of a non-electronic database;

2. extractions are made 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;
3. extractions are made or re-utilisations are made for the purposes of public security or an administrative or judicial procedure to the extent justified by the purposes of public security or an administrative or judicial procedure.

The term of protection of the rights of the maker of a database shall expire in fifteen years from the first of January of the year following the date when the database was completed.

3.1.2.2 Copyright of Terminology Resources in Hungary

By Balázs Kis and György Tardy, MorphoLogic, Budapest, Hungary

3.1.2.2.1 Current Legal Situation

Terminology and dictionary materials in Hungary are subject to the Hungarian Copyright Act (further referred to as the HCA). However, the copyright applies to the compilations, and does not refer to the perusal of parts of the materials. There are currently no known legal cases about dictionary or terminology copyrights.

To our knowledge, MorphoLogic is the only organisation in Hungary that regularly licenses dictionary and terminology materials from various authors and publishers for electronic publication or other types of exploitation. Thus MorphoLogic's contracts, though they may be far from perfect, can serve as a model of the Hungarian legal situation.

Generally, MorphoLogic has three types of agreements with copyright owners. Each of the licenses is described below.

(1) General dictionary publishing license

1. The editor/author reserves copyright for the compilation.
2. Partial perusal/exploitation is not regulated. The agreement does not explicitly allow for partial use of the material.
3. The agreements had been drawn up for an indefinite term, overriding the default term set forth in the Hungarian Copyright Act, which is a definite term of 8 years.
4. The agreements do not explicitly allow other uses than publishing the dictionaries in their entirety, preserving the entry structure, and formatting if possible.
5. The authors/editors/copyright owners are entitled to royalties, set forth as a percentage of net sales by the licensee. No advances are to be paid.
6. All agreements prohibit the licensee from transferring the license rights to third parties.
Note: if the EuroTermBank Consortium is to be considered as the publisher of the databases within the project's scope, this point alone requires drawing up new contracts with the copyright owners. However, if the EuroTermBank service is considered as the pub-

lishing media, and the publisher remains the same as set forth in the agreement, a new contract might not be required.

7. The agreements do not regulate the use of these materials for research/experimental, i.e. non-commercial, purposes. Because the authors assume total copyright control according to the HCA and the copyright itself cannot be transferred to organisations under any conditions, this is also prohibited if not explicitly allowed or regulated. In case of some materials, verbal agreements exist; in cases of others, the contracts must be amended to cover for this situation.

(2) A special license for using the EU terminology compiled by the Hungarian Ministry of Justice

1. This agreement was drawn up by the Hungarian Ministry of Justice.
2. This license does allow for internal/experimental use of the material by the licensee (Compare (1)-7).
3. The term of the agreement is 5 years from 2003, so it will expire in 2008, overruling the default 8 years as set forth in the HCA. Amendment or new contract will be necessary.
4. Like the general dictionary license, this agreement does not allow for transferring the license rights to third parties (Compare (1)-6).
5. It is explicitly ruled that the original entry structure must be preserved. However, because there was no strictly defined entry structure in the case of this material, all printed and electronic publications used a somewhat altered structure that was in fact accepted by the copyright owners.

(3) Verbal agreements

1. Verbal agreements exist between MorphoLogic and organisations or natural persons within the inner circle of acquaintance.
2. These agreements usually allow for the free use of the material in parts or for internal/research purposes.
3. All commercial uses are permitted, but royalty agreements are required when a particular commercial use is to be started.

No agreements concern the use of the materials within an integrated service. However, MorphoLogic's dictionary framework uses multiple dictionaries within the same context – it is thus an integrated service, though on a smaller scale than EuroTermBank is intended to be – this practice has been accepted by the copyright owners.

3.1.2.3 Latvia – Legal opinion on copyright aspects

By Janis Bordans, Attorney at Law, Bordans & Belajevs Law Offices, Riga, Latvia

The opinion has been based on observation of legal practice in Latvia and regulations that are binding in the Republic of Latvia, including the following acts:

1. Copyright Law of the Republic of Latvia, April 27, 2000
2. Personal Data Protection Law, October 24, 2002.
3. Directive 2004/48 EC, from April 29, 2004, on the enforcement of intellectual property rights
4. Directive 2001/29/EC from May 22, 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.
5. Directive 96/9/EC from March 11, 1996, on the legal protection of databases;
6. Directive 93/98/EC from October 29, 1993 harmonizing the term of protection of copyright and certain related rights;
7. Directive 93/83/EC from September 27, 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission;
8. Directive 92/100/EC from November 19, 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property;
9. Directive 91/250/EC from May 14, 1991 on the legal protection of computer programs.

3.1.2.3.1 General

The legislation of Latvia in regard to intellectual property rights is in line with EU and other international IPR requirements in respect of the protection of author's rights and databases.

Modern copyright legislation has been implemented in Latvia since 1993, when working with WIPO and foreign copyright experts, the Law on Copyrights and Related Rights was adopted and subsequently a new Copyright Law to modernise the regulation were passed in 2000 with several amendments in 2003 and 2004. Latvia is a member of the Berne Convention since 1995, it has also accessed the WTO and the TRIPs Agreement by passing minor amendments to the Copyright Act.

Substantial parts of terminology resources apply to the terms of copyright regulations according to the legislation of Latvia, including in respect of ownership of terminology resources, database, responsibilities, rights and duties of users, rights and duties of third parties and transfer of rights of use.

3.1.2.3.2 Protection of Author's Rights

According to the Copyright Law, an author can only be a natural person. Copyrighted work in the sense of the law should be result of an author's creative activities in the literary, scientific or artistic domain, irrespective of the mode or form of its expression and its value. No registration of the work is necessary.

Without prejudice to the rights of authors as to the original work, the derivative works shall also be protected. Such protected derivative works include

1. translations and adaptations, revised works, annotations, theses, summaries, reviews and similar works; and
2. collections of works (encyclopaedias, anthologies, atlases and similar collections of works), as well as databases and other compiled works which, in terms of selection of materials or arrangement, are the result of creative activity.

Derived works shall be protected irrespective of whether the works from which they are derived or which are included within them can have copyright protection applied to them.

Non-protected works. Regulatory enactments and administrative rulings, other documents issued by the State and Local Governments and adjudications of courts (laws, court judgments, decisions and other official documents), as well as official translations of such texts and official consolidated versions are not protected by copyright.

Co-authors. If a work has two or more authors and the individual contribution of each author to the creation of the work cannot be segregated as a separate work, copyright to the work shall belong to all the co-authors jointly. Notwithstanding the above, each author shall have copyright to his or her individual contribution as a separate work, if the individual contribution of each author is a separate work. Protection against copyright infringement may be realised by any of the co-authors, independently from the other co-authors.

A compilation of the composite work shall also be protected according to copyright protection, if the selection or arrangement of material is the result of creative activity.

The following author's economic rights of the work are mentioned:

- to communicate the work to the public;
- to publish the work;
- to publicly perform the work;
- to distribute the work;
- to broadcast the work;
- to retransmit the work;
- to make the work available to the public by wire or by other means, so that it is accessible in an individually selected location and at an individually selected time;
- reproduce the work directly or indirectly, temporarily or permanently;
- to translate the work; and
- to arrange, to adapt for stage or screen, or to otherwise transform the work.

3.1.2.3.3 Aspects of Protection of Databases (*sui generis*)

A Database, according to provisions of the law, should be a collection of independent works, data or other materials, which are arranged in a systematic or methodical way and are individually accessible by electronic or other means.

Databases are protected, if the creation, obtaining, verification or presentation of that database has required a substantial qualitative or quantitative investment – either financial resources or consumption of time and energy.

Both natural and legal persons which have undertaken initiative and the investment risk regarding the making of a database shall be recognised as the maker of this database.

The maker of a database has the right to prevent regarding the entire contents of the database or such parts of which may be qualitatively or quantitatively regarded as substantial:

- extraction, which means permanent or short-term (temporary) transfer of all or a substantial part of the contents of a database to another location by any means or in any form; and
- re-use, which means any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by rental, by providing on-line or other forms of transmission.

3.1.2.3.4 Other conditions

Work performed by an employee.

It should be noticed that, if an author has created a work performing his duties in an employment relationship, the moral and economic rights to the work shall belong to the author (natural person). The economic rights of the author may be transferred, in accordance with a contract, to the employer.

Exceptions.

There are several exceptions of author's and database maker's exclusive economical rights. Those are rights to use the work without consent of the author and without remuneration pursuant to the procedures specified by the Law for information purposes, educational and research purposes, for needs of libraries and archives, for the purposes of judicial proceedings.

3.1.2.4 Review on Legal Regulation of Databases and Copyright in Collective Works and Joint Authorship in the Republic of Lithuania

By Jūratė Zabielaite, Attorney-at-law, Zabiela, Zabielaite and partners Law Firm, Vilnius, Lithuania

This review was prepared according to the Law on Copyright and Related Rights of the Republic of Lithuania³ (hereinafter referred to as "the Law") and the Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the Legal Protection of Databases⁴ (hereinafter referred to as "the Directive").

This review is of general nature and shall not be interpreted expansively as explaining facts or legal acts which are not directly considered in it. This review shall be used only by The Institute of the Lithuanian Language or its authorized representative.

The Law on Copyright and Related Rights of the Republic of Lithuania regulates the rights of makers of databases (*sui generis* rights), the exercise and enforcement of these rights. The Law is harmonized with the respective EU legislation, inter alia with the Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the Legal Protection of Databases, as well as with the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society.

³ Official gazette (Valstybės žinios), 2003, No. 28-1125 (2003-03-21)

⁴ Official Journal L'1996 No.77-20

The Law on Copyright and Related Rights of the Republic of Lithuania stipulates the definition of database. The database in the Law is referred to as a collection of independent works, data or any other material arranged in a systematic or methodical way and individually accessible by electronic or other means, except for computer programmes used in the making or operation of such databases.

The Law on Copyright and Related Rights of the Republic of Lithuania guarantees certain rights for the makers of databases (*sui generis* rights). According to the provisions of the Law the subject of *sui generis* rights is the maker of database who has made a substantial qualitative and/or quantitative (intellectual, financial, organisational) investment in obtaining, arrangement, verification or presentation of the contents of that database, as well as a natural or legal person who is the successor of *sui generis* rights of a maker of database.

Article 32 of the Law regulates the use of databases. A lawful user of a database or its copy thereof is entitled, without the authorisation of the author or other owner of copyright, to perform a variety of acts (reproduce a work in any form or by any means, translate a work, as well as other acts referred to in the Article 15 of the Law) provided that such acts are necessary for the purposes of access to, and a proper use of the contents of a database. In case a lawful user of a database is authorised to use only a certain part of the database, he is entitled to perform these acts only with that certain part. Any agreements that preclude the performance of such acts shall be null and void.

A database which has been published or otherwise communicated to the public may, without the authorisation of the author or other owner of copyright, be used as an example for the needs of educational development or scientific research, provided that the source of the database is indicated and that the exploitation thereof is justified for non-commercial purposes, as well as if it is used for the purpose of public safety and state security or for the purposes of public administration or judicial proceedings.

Article 61 of the Law stipulates that the maker of a database who shows that he has made a substantial qualitative and/or quantitative (intellectual, financial, organisational) investment in obtaining, arrangement, verification or presentation of the contents of that database shall have the exclusive right to prohibit to perform the following acts:

1. 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;
2. any form of making available to the public of all or a substantial part of the contents of a database by the distribution of copies of databases by renting, by communicating all or a substantial part of the contents of a database via computer networks (internet) or by other forms of transmission.

These rights of makers of databases shall be protected for 15 years from the date of completion of the making of the database. Should the database be made available to the public in whatever manner within this period, the rights of the maker of the database shall be protected for 15 years after the date it was made available to the public (the term of protection of a database shall be calculated from the first day of January of the year following the date of completion or the date when the database was first made available to the public). It should be noted as well that any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any changes resulting from the accumulation of successive additions, deletions or alterations, which may be considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database for its new term of protection.

It must be noted that the rights of makers of databases may be transferred to other persons under the agreement, hereditary succession or in accordance with other procedure prescribed by law.

The Law also stipulates that the rights of makers of databases shall be protected without prejudice to copyright in the making of a database and to copyright or related rights in the works or subject matter contained in the database. Thus the Law protects the copyright in the subject matter of the database and respective copyright of authors-database compilers, as well as guarantees certain rights of makers of databases. According to the provisions of the Law the subject matter of copyright shall also be databases – expressed in a machine-readable form, or in any other form, collections of works or collections of data, which, by reason of the selection or arrangement of their contents are the result of intellectual creation of an author. Copyright in collections shall apply without prejudice to the copyright in the work or works on the basis of which a collection has been made, and shall not extend to the data or material, which is not attributed to the subject matter of copyright employed in the database.

The attention must be drawn to the fact that the right of distribution of copies of a database shall be exhausted in respect of the copies of a database, which have been sold by the maker of the database, or under his authorisation, and which are lawfully in circulation.

The Law entrenches also certain limitations of rights of makers of databases and guarantees certain rights for lawful users of databases. These rights and limitations are stipulated in articles 62 and 63 of the Law. The maker of a database which is lawfully made available to the public in whatever manner may not prevent lawful users of the database from extracting and re-utilising insubstantial (evaluated qualitatively and/or quantitatively) parts of its contents for any purposes whatsoever. Where a lawful user is authorised to use only certain parts of the database he shall not be prevented from performing these acts with the respective parts of the database. A lawful user of a database which is lawfully made available to the public in whatever manner may not perform acts which conflict with normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database and he shall not infringe the copyright and related rights in the works and objects of related rights which comprise the contents of the database. Any agreements contrary to these provisions of the Law shall be null and void.

A lawful user of a database which is made available to the public in whatever manner may, without the authorisation of its maker, extract or re-utilise a substantial part of its contents:

1. in the case of extraction for private purposes of the contents of a non-electronic database;
2. in the case of extraction for the purposes of illustration for teaching or scientific research in various fields, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved;
3. in the case of extraction and re-utilisation for the purposes of public and state security, public administration or judicial procedure.

Repeated and systematic extractions and reutilisation of small parts of the contents of a database shall be prohibited where such acts conflict with a normal exploitation of that database or unreasonably prejudice the legitimate interests of the maker thereof.

Authors, who consider that their rights in the contents of the database have been violated, as well as the makers of databases and the authors-database compilers, may defend their violated rights according to the provisions of the Law. In any case the persons defending their rights

shall not infringe the rights of others. For instance, should the maker of a database use any data which comprise the subject matter of copyright, he shall enter into respective contracts with authors and his rights would be defended as long as the copyright is not infringed. The provisions of the Law entrench a variety of remedies.

3.1.2.4.1 On copyright in collective works

The Law makes a distinction between joint authorship and copyright in collective works.

When a work is created by two or more natural persons in joint creative endeavour, they shall be considered as co-authors, irrespective of whether such a work constitutes a single unitary whole, or consists of parts, each of which can have an autonomous meaning. A part of a joint work shall be considered as having an autonomous meaning if it may be used independently of the other parts of that work. Mutual relations of the co-authors and their remuneration shall be determined by an agreement between them. Should there be no such agreement on the author's remuneration, copyright in the joint work shall be exercised jointly by the co-authors, and the remuneration shall be divided among them in proportion to the creative contribution of each co-author. None of the co-authors shall have the right to prohibit, without a valid reason, the use of the joint work. Each of the co-authors shall have the right to use his part of work which has an autonomous meaning on his own discretion provided that the agreement among the authors does not stipulate otherwise. A person who has rendered material, technical or organisational assistance in the process of the creation of a work shall not be considered to be its co-author. Thus there might exist a situation where certain data that comprise the contents of a database have been created jointly by several authors.

When a collective work – encyclopaedias, encyclopaedic dictionaries, periodical scientific works' collections, newspapers, journals and other collective works – is created, an author's economic rights in such works shall vest in the natural or legal person on the initiative and under the direction of whom the work has been created. The authors of the works incorporated in collective works shall retain exclusive rights to exploit their works independently of the use of the collective work, unless otherwise provided for by an agreement.

Article 4 of the Directive stipulates that the author of a database shall be the natural person or a group of natural persons who created the database or, where the legislation of the Member States so permits, the legal person designated as the right holder by that legislation. Where collective works are recognised by the legislation of a Member State, the economic rights shall be owned by the person holding the copyright. In case of a database created by a group of natural persons jointly, the exclusive rights shall be owned jointly. Should several persons make investments into the creation of the database, they shall become the co-owners of the database. They shall jointly exercise the rights stipulated by the Law.

3.1.2.5 Comments on the Polish Copyright Law 2005 in the Context of Terminology Collections

By Dr Danuta Kierzkowska, Information Processing Centre, Warsaw, Poland

3.1.2.5.1 Comments to general provisions

1. The below comments are valid for the Act of 4 February 1994 on copyright and neighbouring rights, consolidated text published in an official gazette 'Dziennik Ustaw' 2000, No. 80, item 904 with subsequent amendments.
2. Any original work (Article 1) and its translation as a derivative work (Article 2) are copyrighted and their authors must be indicated. This requirement, including co-author's moral rights (see Article 16 below), may be met in a declaration of a terminology collection co-author's stating his consent to make his work available to the public.
3. The provisions of this Act applies to works whose author or co-author is a Polish citizen; or which have been published for the first time within the territory of the Republic of Poland or simultaneously within such territory and abroad; or which have been published for the first time in Polish; or whose protection is provided for by international agreements (Article 5). Thus, it means that the Polish copyright law has been already harmonized with the EU law.
4. The published work means a work which, with the permission of its author, has been reproduced and its copies being made available to the public; disseminated work shall mean a work which, with the permission of its author, has been made available to the public (Article 6). This definition of the published work is also compatible with EU law.
5. The owner of the copyright is the author whose name has been indicated as the author on copies of the work or whose authorship has been announced to the public in any other manner in connection with the dissemination of the work. In order to exercise his copyright the author is represented by the producer or the publisher (Article 8). It means that in case of infringement of the co-author's rights, the terminology collection holder is responsible to defend the co-author's interests which must be taken into account in the terminology agreement.
6. The moral rights protect the link between the author and his work so that the author's name is indicated, the author's work is inviolable and properly used, the author gives his consent to make his work available to the public for the first time and is allowed to control the manner of using the work (Article 16).

3.1.2.5.2 Specific provisions which may concern co-authors of terminology collections

7. Collections, anthologies, selections, and data bases shall be covered by copyright even though they contain unprotected materials, if their selection, arrangement or composition are creative without detriment to the rights of the used works (Article 3). This provision means for a holder of a terminology data base that he must meet all the requirements provided by the copyright law. For this purpose it is enough to have a co-author's Declaration of Consent as above.

8. The co-authors shall enjoy copyright jointly and each of the co-authors may exercise his copyright with respect to his autonomous part of the work without detriment to the other co-authors. The consent of all co-authors shall be required in order to exercise copyright with respect to the whole work. Economic rights of co-authors shall be governed by the respective provisions of the Civil Code on the co-ownership of fractional parts (Article 9). The Declaration of Consent of a co-author of a terminology collection (data base) must take into account that his input to the collection seldom consists an autonomous part thereof and that he cannot claim any rights of a single author in such case, including economic rights.
9. The employer acquires the author's economic rights to his employee's work created within the scope of his duties resulting from the employment relationship within the limits resulting from the purpose of the employment contract and the unanimous intention of the parties (Article 12). By virtue of this provision no Declaration of Consent is required in Poland, unless the employer is not sure that the work has been created within the scope of the (co)author's duties.
10. Fragments of disseminated works or minor works in full are allowed to be quoted in works constituting an independent whole within the scope justified by explanation, critical analysis, teaching or the rights governing a given kind of creative activity (Article 29). It is also allowed to use the works, within the limits of permissible use, on the condition that the author and the source have been named. The authors shall not have the right to remuneration unless this Act provides otherwise (Article 34). According to this provision, definitions of concepts, even if they have their identified authors, may be quoted without any special permit or declaration.

3.1.2.5.3 Polish Copyright Act

ACT of 4 February 1994 ON COPYRIGHT AND NEIGHBOURING RIGHTS

(Consolidated text: Dziennik Ustaw 2000, No. 80, item 904 with subsequent amendments)
(Excerpts)

Chapter 1. The Subject Matter of Copyright

Article 1. 1. The subject matter of copyright shall be any and all manifestation of creative activity of individual nature, established in any form, irrespective of its value, designation or manner of expression (work).

2. In particular, the subject matter of copyright shall be:

1) works expressed in words, mathematical symbols, graphic signs (literary, journalistic, scientific and cartographic works and computer programs); (...)

3. The work shall be copyrighted since it has been established, even though its form is incomplete.

4. The author shall enjoy copyright protection irrespective of complying with any formalities.

Article 2. 1. The work derived from another author's work (derivative work), in particular its translation, alteration or adaptation, shall be copyrighted without detriment to the original work.

2. The disposal and use of the derivative work shall depend on permission of the author of the original work (derivative copyright) unless the author's economic rights to the original work

have expired. The author's permission shall also be required for preparing a derivative work in the case of data bases possessing the features of a work.

3. The author of the original work may withdraw his permission if within five years from granting such permission the derivative work has not been disseminated. The remuneration paid to the author shall not be refundable.

4. The work which has been created under the inspiration of another author's work shall not be deemed the derivative work.

5. Copies of the derivative work shall indicate the author and the title of the original work.

Article 3. Collections, anthologies, selections, and data bases shall be covered by copyright even though they contain unprotected materials, if their selection, arrangement or composition are creative without detriment to the rights of the used works. (...)

Chapter 2. Owner of the Copyright

Article 8. 1. The owner of the copyright shall be the author unless this Act states otherwise.

2. It shall be presumed that the author is the person whose name has been indicated as the author on copies of the work or whose authorship has been announced to the public in any other manner in connection with the dissemination of the work.

3. In order to exercise his copyright the author, as long as he does not disclose his authorship, shall be represented by the producer or the publisher and in the absence thereof by the competent organisation for collective administration of copyright.

Article 9. 1. The co-authors shall enjoy copyright jointly. It shall be presumed that the amounts of shares are equal. Each of the co-authors may claim the amounts of shares to be determined by the court on the basis of his contribution of creative work.

2. Each of the co-authors may exercise his copyright with respect to his autonomous part of the work without detriment to the other co-authors.

3. The consent of all co-authors shall be required in order to exercise copyright with respect to the whole work. In the event of absence of such consent, each of the co-authors may request a court decision which shall take into account the interests of all the co-authors in its decision.

4. Each of the co-authors may lay claims for infringement of copyright with respect to the whole work. All co-authors shall have the right to compensation received in proportion to their shares. (...)

Article 12. 1. If this Act or a contract of employment does not state otherwise, the employer, whose employee has created a work within the scope of his duties resulting from the employment relationship, shall, upon acceptance of the work, acquire the author's economic rights within the limits resulting from the purpose of the employment contract and the unanimous intention of the parties. (...)

3. Unless the contract of employment states otherwise, upon the acceptance of the work, the employer shall acquire the ownership of the object in which the work has been fixed. (...)

Chapter 3. The Content of Copyright

Division 1. Author's Moral Rights

Article 16. Unless this Act states otherwise, the moral rights shall protect the link between the author and his work which is unlimited in time and independent of any waiver or transfer, and, in particular, the right:

- 1) to be an author of the work;
- 2) to sign the work with the author's name or pseudonym, or to make it available to the public anonymously;
- 3) to have the contents and form of the author's work inviolable and properly used;
- 4) to decide about making the work available to the public for the first time;
- 5) to control the manner of using the work. (...)

Division 3. Permissible Use of Protected Works

Article 29. 1. It shall be permitted to quote, in works constituting an independent whole, fragments of disseminated works or minor works in full, within the scope justified by explanation, critical analysis, teaching or the rights governing a given kind of creative activity. (...)

Article 34. It shall be permitted to use the works, within the limits of permissible use, on the condition that the author and the source have been named. The authors shall not have the right to remuneration unless this Act provides otherwise.

4 Documents for EuroTermBank

On account of the heterogeneity of the data to be integrated into EuroTermBank, the Consortium provides different legal documents dedicated to define the relations between Consortium, represented by a Project partner, copyright holder, and user. In the first case, the applicable copyright provisions to be respected play the most important role.

The task was to draft documents covering on the one hand all necessary questions of copyright agreements on terminology and, on the other hand, meeting the requirement of being understandable and concise. The *Guide to Terminology Agreements* (Annex 4) by Infoterm served as a fundamental orientation; raising the main questions to be decided and conditions to be defined in a copyright agreement.

The document templates were drafted on the basis of the EU Directives described above. In order to ensure the conformity of the texts with the respective national provisions of the new EU countries represented in the Consortium, namely the Estonian Copyright Act, the Estonian Information Society Services Act, the Hungarian Copyright Act, the Latvian Copyright Law, the Latvian Personal Data Protection Law, the Lithuanian Law on Copyright and Related Rights, the Polish Act on copyright and neighbouring rights, (cf. chapter 3.1.2), experts of the concerned countries were invited to comment on the drafted texts. Their comments and propositions were integrated into the documents.

Finally, the documents were sent to the IPR Helpdesk, an EU-co-funded internet portal offering free of charge support for questions related to the protection of intellectual property rights. Although detailed legal comments on the drafts could not be given, it was affirmed that all major aspects were covered properly.

The following documents represent the legal framework defining the relations between the Consortium and copyright holders:

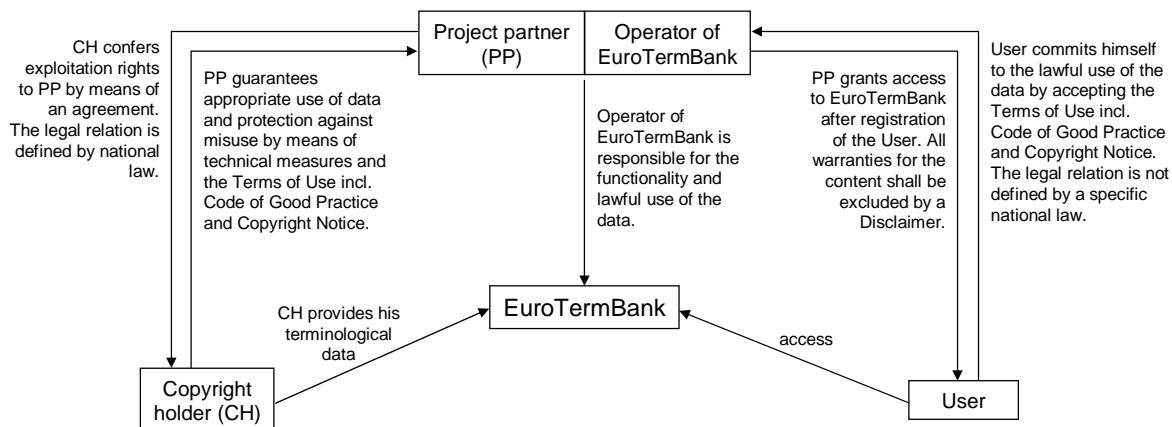
- Declaration of Consent
- Model Agreement for data available free of charge incl. Declaration of Consent by Co-authors
- Model Agreement for data available for a fee incl. Declaration of Consent by Co-authors
- Disclaimer
- Copyright Notice
- Terms of Use.

Furthermore, the Consortium adapted the Code of Good Practice drafted under the aegis of Infoterm to the requirements of EuroTermBank. The Code of Good Practice, the Disclaimer and the Copyright Notice serve to specify the relations between the Consortium in its capacity of operator of EuroTermBank on the one hand, and copyright holder and user on the other hand.

For the time being, the documents are available in English. The Project partners are free to localise them into their national languages, if required.

The Declaration of Consent, Model Agreement for data available free of charge incl. Declaration of Consent by Co-authors, Model Agreement for data available for a fee incl. Declaration of Consent by Co-authors, Code of Good Practice, and Guide to Terminology Agreements are available in the Annex.

Legal relations between the parties



4.1 Guide to Terminology Agreements

The Guide to Terminology Agreements (cf. Annex 4) has been the result of years of discussion of managers of large-scale terminology databases and legal experts in UN, WIPO, WHO, etc. It was first prepared by the International Information Centre for Terminology (Infoterm) and published jointly by the European Language Resources Association (ELRA) and the International Network for Terminology (TermNet) in 1996. It “represents the culmination of a long period of work by many experts, and provides an overview of current good practice in terminology...” (Preface). For the purpose of EuroTermBank it has been modified, taking into account new European developments in this field.

4.2 Code of Good Practice

The Code of Good Practice for Copyright in Terminology (cf. Annex 5) has been developed in the 1990s by Infoterm in cooperation with the legal departments of international organisations. It aims at defining rules of conduct while exchanging, obtaining, and using terminological data.

As terminology work is very labour-intensive and time-consuming, a co-operation between institutions and organisations active in the production of terminological data seems advisable. On the other hand, for the same reasons, high-quality terminology is valuable and should be respected as such. For this purpose the Code of Good Practice defines general ethical provisions regarding the respect of copyright, reference procedures, protection of data integrity, and quoting rules. As long as these issues are not or cannot be put into clear legal provisions or covered by bilateral agreements, the parties should accept the Code as minimum set of rules, which however are only morally, not legally binding.

The Code will be available for the users on the EuroTermBank website in English, the Project partners being free to localise it into their national languages. It will also be hyperlinked to the Terms of Use, which the user has to read and sign off obligatorily in the process of registration, and/or to sign off every time before gaining access to the data.

4.3 Declaration of Consent

The Declaration of Consent (cf. Annex 1) is the easiest way to conclude an agreement with a copyright holder on the exchange, modification, and reuse of his data for the purpose of EuroTermBank. It is applicable in case of copyright holders willing to provide their data without charge and without too many restrictions for the use and re-use of the data. The parties agree upon the minimal solution affirming the mere use of the data for the purpose of EuroTermBank and excluding commercial re-use. The Code of Good Practice (cf. Annex 5) will be annexed to this declaration.

4.4 Model Agreement for data available free of charge

The Model Agreement for data available free of charge (cf. Annex 2) is a template for a contract to be concluded with a copyright holder on the transfer and the conditions of use and modification of his data in the framework of EuroTermBank. The Agreement describes what kind of data shall be transferred and used by EuroTermBank. It determines for what purpose and in which way the data will be used and defines the contract period.

According to the Database Directive stipulating that “works protected by copyright and subject matter protected by related rights, which are incorporated into a database, remain nevertheless protected by the respective exclusive rights and may not be incorporated into, or extracted from, the database without the permission of the copyright holder or his successors intitle” (Preamble recital 26), the Agreement contains a provision confirming the contracting partner’s lawful ownership of the data. This applies as well to the Model Agreement for data available for a fee.

The Agreement contains a Declaration of Consent by co-authors in order to respect the rights of every copyright holder in case of collective works.

Although EuroTermBank will not sell the data with a view to making profit, it is necessary to stipulate in both the Agreement for data available free of charge and the Agreement for data available for a fee that the Consortium or its successor as operator of EuroTermBank is entitled to charge a fee appropriate to cover the costs of maintenance.

4.5 Model Agreement for data available for a fee

Besides the details already mentioned in chapter 4.4, the Agreement to be concluded with copyright holders who prefer to sell their data for a fee or any other form of compensation (cf. Annex 3) contains a range of other provisions. It defines the amount of the charges and payment arrangements.

In order to draft a document universally applicable, the specific details varying from one contract to the other according to the characteristics of the data material and the requirements of the copyright holder are suggested to be specified in an Appendix to the Agreement.

4.6 User Conditions

The user conditions consist of

- Terms of Use
- Copyright Notice
- Disclaimer
- Code of Good Practice

which are available on the EuroTermBank website mutually hyperlinked and which the user has to sign off obligatorily in the process of registration, and/or to sign off every time before gaining access to the data after initial registration.

Furthermore, at the end of every retrieved record the user should see a button saying “USER CONDITIONS”, which – if he clicks – will show the “Terms of Use”, to which the Disclaimer, the Copyright Notice and the Code of Good Practice are hyperlinked. This is to remind the user of his obligations and of his responsibility while using the data. At this level of access, it should not be obligatory to sign off the user conditions again.

4.6.1 Terms of Use

When clicking the button USER CONDITIONS, it should read:

“TERMS OF USE:

1. The owner of this website is a data service provider (host) for terminological data.
2. The user declares to respect copyright in general and the “Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases” in particular.
3. Download and use of whole databases or substantial parts thereof is prohibited.
4. In particular any commercial re-use of the host’s terminological data is prohibited.

When copying, downloading or printing out this entry, please remember the rules concerning COPYRIGHT and the CODE OF GOOD PRACTICE, to which you subscribed. You are responsible for making appropriate use of the data contained in this entry. DISCLAIMER: EuroTermBank cannot be made responsible for the accuracy of the terminological data”.

4.6.2 Disclaimer

As EuroTermBank will make use of the data created and compiled by various persons and institutions and will not as well as cannot check every single entry even though the data will be selected according to quality criteria, and as the further use of the data once downloaded cannot be effectively controlled, EuroTermBank will

- formulate a Disclaimer available on the EuroTermBank website to be signed off by the user upon registration (together with the Terms of Use, Copyright Notice and Code of Good Practice);
- hyperlink the Disclaimer to the Terms of Use, Copyright Notice and Code of Good Practice, which the user has to read and sign off in the process of registration.

Proposal for the Disclaimer:

1st Solution

“CAUTION: Use EuroTermBank at your own risk. Please be aware that any information you may find in EuroTermBank may be inaccurate or misleading.

This risk disclaimer has been linked to the page you have been reading because some of the information on that page may create an unreasonable risk for readers who choose to apply or use the information in their own activities or to promote the information for use by third parties.

None of the authors, contributors, sponsors, administrators, or anyone else connected with EuroTermBank, in any way whatsoever, can be held responsible for your use of the information contained in or linked from these web pages.

Do not rely upon any information found in EuroTermBank without independent verification.

Please be aware that

- EuroTermBank does not give medical, legal, or financial advice,
- EuroTermBank may contain content you may find objectionable.

Neither the individual contributors, system operators, developers, or sponsors of EuroTermBank nor anyone else connected to EuroTermBank can take any responsibility for the results or consequences of any attempt to use or adopt any of the information presented on this web site.

EuroTermBank makes no warranties or representations of any kind that the services provided by this web site will be uninterrupted, error-free or that the web site or the server that hosts the web site are free from viruses or other forms of harmful computer code.

Thank you for taking the time to read this page, and please enjoy your use of EuroTermBank.”

2nd Solution

“EuroTermBank makes no warranties or representations of any kind concerning the accuracy or suitability of the information contained on this web site for any purpose. All such information is provided “as is” and with specific disclaimer of any warranties of merchantability, fitness for purpose, title and/or non-infringement.

EuroTermBank makes no warranties or representations of any kind that the services provided by this web site will be uninterrupted, error-free or that the web site or the server that hosts the web site are free from viruses or other forms of harmful computer code.

In no event shall the host of EuroTermBank be liable for any direct, indirect or consequential damages resulting from the use of this web site.”

4.6.3 Copyright Notice

Although a copyright notice can hardly guarantee the protection of the data, it is considered as useful for the purpose of communicating the statement that someone actually owns the copyright and of reminding the user of respecting it.

EuroTermBank will

- formulate a Copyright Notice available on the EuroTermBank website to be signed off by the user upon registration (together with the Terms of Use, Disclaimer and Code of Good Practice);
- hyperlink the Copyright Notice to the Terms of Use, Disclaimer and Code of Good Practice, which the user has to read and sign off in the process of registration.

Every terminological entry contains a reference to the respective author and/or copyright holder, which can be viewed in coded form on request.

Proposal for the Copyright Notice:

"The contents of EuroTermBank are subject to copyright. In most legal systems there are exemptions from copyright. They are largely based on the Berne Convention and subsequent modifications and extension, and, for the member states of the European Union, the Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, and the Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases. These acts are implemented differently in individual countries due to their legal traditions.

The United States and the Philippines are the countries with a 'fair use' doctrine. However, comparable copyright limitations/exemptions can be found in many nations' copyright statutes, though these differ in scope, either in form of a related doctrine known as 'fair dealing', which is defined in a constrained manner through an enumerated list of causes for exemption that allows little room for judicial interpretation, or in form of codified, similarly specific and narrowly drawn exceptions.

Nevertheless, information found in entries of EuroTermBank may be in violation of the laws of the country or jurisdiction from where you are viewing this information. The data are stored on servers in different countries, and are maintained in reference to the protections afforded under local and European law. Laws in your country or jurisdiction may not protect or allow the same kinds of speech or distribution. EuroTermBank does not encourage the violation of any laws and cannot be responsible for any violations of such laws, should you link to this domain or use, reproduce, or republish the information contained herein.

According to copyright exemptions, such as reproduction in copies or by any other means, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright, provided that the source is indicated. In determining whether the use made of a work in any particular case is a fair use, the factors to be considered shall include

- the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
- the nature of the copyrighted work;

- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

IMPORTANT: If you want to use content from EuroTermBank, first read the [Terms of Use](#).”

5 References

Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971, and amended on September 28, 1979 (Berne Convention)

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Directive 93/83/EC of the European Parliament and of the Council of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (Broadcasting Directive)

Directive 93/98/EC of the European Parliament and of the Council of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (Copyright Directive 1)

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Annex

Annex 1 Declaration of Consent

concerning the use of
(a part / a selection / a subset of)
my/our terminology collection on "..."

I/we herewith declare my/our consent to the use of (a part / a selection / a subset of) my/our Terminology collection on [subject field] in the form of [a database/file/list/ dictionary etc. consisting of xy records] by the EuroTermBank Consortium, represented by [project partner] for the purpose of carrying out the ETB project* for the benefit of improving specialized communication in Europe.

I/we recognize that my/our author's moral rights in the collection in the form handed over remain with me/us. I/we hereby guarantee that I/we am/are the author/s of this collection, and I/we guarantee that third persons will have no pretensions, claims or any other objections to the use of this collection in EuroTermBank.

I/we note that the source of my/our terminology collection will be duly acknowledged by the ETB Consortium whenever an entry from my/our terminology collection is looked up by a user.

I/we consider the provision of my/our terminology collection as a contribution to the Euro-TermBank project expecting that the ETB Consortium will make best use of it.

Signed in XXX on YYY

* *EuroTermBank – Collection of Pan-European Terminology Resources through Cooperation of Terminology Institutions.* The general purpose consists of compiling terminological data in a centralised online terminology bank for the languages of the new EU member countries interlinked to other terminology banks and resources.

Annex 2 Agreement for data available free of charge

AGREEMENT

Between: [full official name of the Terminology data copyright holder]

.....

[full official address]

.....

.....

.....

(hereinafter referred to as the “Information provider”),
represented for the purposes of the signature of this Agreement by

[forename, name and function]

.....

acting under.....

and: [full official name of the EuroTermBank Consortium partner]

.....

[full official address]

.....

.....

.....

(hereinafter referred to as the “Information receiver”)
represented for the purposes of the signature of this Agreement by

[forename, name and function]

.....

acting under.....

(hereinafter both together might be referred to as the “Parties” and each separately as the
“Party”)

whereby it is agreed as follows:

1. The purpose of this Agreement is to authorise the Information receiver to use, distribute and publish without limitation throughout the world, for the full legal term of copyright, terminology data supplied by the Information provider via web interface developed in the project *EuroTermBank – Collection of Pan-European Terminology Resources through Cooperation of Terminology Institutions* (hereinafter referred to as the “Terminology data”).

2. Within the meaning of this Agreement, the Terminology data shall be such contents of the Information provider's terminology database or databases or analogous electronic file or files ("terminology database") as the Parties deem fit – at the time of supplying the data to the Information receiver – for publication in the framework of EuroTermBank.
3. The Information provider shall supply the Terminology data to the Information receiver in electronic form or any other form agreed upon by the Parties by [date]. The provisions of this Agreement shall, in addition, apply *mutatis mutandis* to subsequent updates to the Information provider's terminology database.
4. With a view to achieving the purpose set out in Article 1 and except as otherwise stipulated elsewhere in this Agreement, the Information provider hereby grants the Information receiver a non-exclusive right to use, distribute and publish the Terminology data, in whole or in part, in the framework of EuroTermBank

In detail the following economic rights are concerned:

- to communicate the Terminology data to the public;
- to publish the Terminology data;
- to distribute the Terminology data;
- to make the Terminology data available to the public by wire or by other means, so that it is accessible in an individually selected location and at an individually selected time;
- to reproduce the Terminology data directly or indirectly, temporarily or permanently; and
- to translate the Terminology data.

5. The Information receiver shall be entitled to make or have made such changes in the Terminology data as may be strictly necessary for consistency with the publication in the framework of EuroTermBank. It shall, however, ensure that the source of the data is clearly acknowledged and that no material changes are made to the data without the prior consent of the Information provider. The addition of comments and/or other language versions shall not be deemed to constitute "material" changes.
6. The contracting Parties agree on the Terms of Use of the Terminology data via online access as attached to this agreement in Appendix 3 (always in its latest version as agreed upon by the Parties) as well as on a Disclaimer concerning the liability for the terminology data as attached to this Agreement in Appendix 2 (always in its latest version as agreed upon by the Parties). The Information receiver takes the necessary technical and other measures to the effect that users comply with the Terms of Use by means of:
 - technical tools against the download of substantial amounts of data at a time,
 - a Copyright Notice (Appendix 4),
 - a Code of Good Practice (Appendix 5).

7. The Information provider warrants to the Information receiver that the Terminology data does not constitute a violation or infringement of any existing copyright or license or any other right of any other person or party whatsoever and is liable for any infringement incurred in this connection.

If the consent of co-authors shall be required in order to exercise copyright with respect to the whole work, the Declaration of Consent by a Co-Author of a Terminology Collection (Appendix 1) signed by the co-author/s forms an inherent part of this Agreement.

8. The Information provider formally renounces entitlement to any form of remuneration as compensation for the rights granted to the Information receiver under this Agreement. The Information receiver has the right to charge a cost-recovery for using the technical services of EuroTermBank.
9. Articles 1 and 4 of this Agreement shall not prevent the Information provider from itself using, publishing or distributing the data or granting similar non-exclusive rights to other users, distributors or publishers.
10. The contracting Parties agree on respecting the following EU Directives:
 - Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases
 - Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society
 - Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)
 - Directive 2004/48 EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rightsas well as on respecting the respective national legislation, such as: [...].
11. This Agreement shall enter in effect on the day of signing remain in effect until the last day of the following year. Thereafter, it shall automatically renew in increments of one (1) year on the last day of the following year, except voluntary termination expressed by one Party. Either Party may terminate the Agreement at any time by giving [...] days' written notice. In case of a severe infringement of the Agreement either Party may immediately terminate the Agreement.
12. The use of the Terminology data starts on [...] and ends with the termination of the Agreement. With the termination of the Agreement the Information receiver is obliged to remove the data supplied by the Information provider from his database available via web interface within [...] days after the termination of the Agreement.
13. The Parties agree to treat all information about each other as confidential.

14. The rights and obligations of the Parties in so far as they are not expressly covered by this Agreement shall be established according to the law of [state of the registered office of the Information receiver]. Any dispute in connection with this Agreement shall be determined by the courts of [state of the registered office of the Information receiver].
15. Any communication relating to the Agreement shall be made in writing and sent by registered mail to the following addresses:

Information receiver:

[full address]

Information provider:

[full address]

Any change in the above addresses shall also be communicated in writing.

For the Information provider
[name, forename, function]

For the Information receiver
[name, forename, function]

Signature _____

Signature _____

Done at [place], [date]

Done at [place], [date]

APPENDIX 1 to the Model Agreement for data available free of charge

**DECLARATION OF CONSENT FOR FREE USE
BY A CO-AUTHOR OF TERMINOLOGY COLLECTION**

I, [...], a terminologist/translator [...] and co-author of a terminology collection known to me under the name [...] do hereby give my consent to the owner of the said collection to use, distribute, publish and make available to the general public free of charge without any limitation throughout the world, all and any elements of the collection that constitute my own intellectual input thereto without any financial claims on my part, provided that my moral rights are respected and my name is mentioned among other co-authors of the collection.

I understand that my consent authorises the owner of the above mentioned collection to benefit from my intellectual input, protected as such by the international copyright law and my country's national copyright law, said input being in the form of a terminological neologism such as a word or a combination of words never known before in a given language or never used before for a given concept or any other kind of my input given to the said collection, including an input of which I am not aware.

Signature _____

Done at [place], [date]

APPENDIX 2 to the Model Agreement for data available free of charge

Disclaimer

(cf. chapter 4.6.2 of the Deliverable)

APPENDIX 3 to the Model Agreement for data available free of charge

Terms of Use

(cf. chapter 4.6.1 of the Deliverable)

APPENDIX 4 to the Model Agreement for data available free of charge

Copyright Notice

(cf. chapter 4.6.3 of the Deliverable)

APPENDIX 5 to the Model Agreement for data available free of charge

Code of Good Practice

(cf. Annex 5 to the Deliverable)

Annex 3 Agreement for data available for a fee

AGREEMENT

Between: [full official name of the Terminology data copyright holder]

.....

[full official address]

.....
.....
.....
.....

(hereinafter referred to as the “Information provider”),
represented for the purposes of the signature of this Agreement by

[forename, name and function]

.....
acting under.....

and: [full official name of the EuroTermBank Consortium partner]

.....

[full official address]

.....
.....
.....
.....

(hereinafter referred to as the “Information receiver”)
represented for the purposes of the signature of this Agreement by

[forename, name and function]

.....
acting under.....

(hereinafter both together might be referred to as the “Parties” and each separately as the
“Party”)

whereby it is agreed as follows:

1. The purpose of this Agreement is to authorise the Information receiver to use, distribute and publish without limitation throughout the world, for the full legal term of copyright, terminology data supplied by the Information provider via web interface developed in the project *EuroTermBank – Collection of Pan-European Terminology Resources through Cooperation of Terminology Institutions* (hereinafter referred to as the “Terminology data”).

The general purpose consists of compiling terminological data in a centralised online terminology bank for the languages of the new EU member countries interlinked to other terminology banks and resources. The terminology will be available for the public, the Information receiver reserving the right to charge a fee for using the technical services of EuroTermBank as well as to provide paying users exclusively with parts of the data according to the agreements signed with the Terminology provider and other copyright holders.

2. Within the meaning of this Agreement, the Terminology data shall be such contents of the Information provider's terminology database or databases or analogous electronic file or files ("terminology database") as the Parties deem fit – at the time of supplying the data to the Information receiver – for publication in the framework of EuroTermBank.
3. The Information provider shall supply the Terminology data to the Information receiver in electronic form or any other form agreed upon in Appendix 1 by the deadline agreed upon in Appendix 1. The provisions of this Agreement shall, in addition, apply *mutatis mutandis* to subsequent updates to the Information provider's terminology database as agreed upon in Appendix 1.
4. With a view to achieving the purpose set out in Article 1 and except as otherwise stipulated elsewhere in this Agreement, the Information provider hereby grants the Information receiver a non-exclusive right to use, distribute and publish the Terminology data, in whole or in part, in the framework of EuroTermBank on the terms as defined in Appendix 1.

In detail the following economic rights are concerned:

- to communicate the Terminology data to the public;
- to publish the Terminology data;
- to distribute the Terminology data;
- to make the Terminology data available to the public by wire or by other means, so that it is accessible in an individually selected location and at an individually selected time;
- to reproduce the Terminology data directly or indirectly, temporarily or permanently; and
- to translate the Terminology data.

5. The Information receiver is not entitled to issue sublicenses for the Terminology data to third persons.
6. The Information receiver shall be entitled to make or have made such changes in the Terminology data as may be strictly necessary for consistency with the publication in the framework of EuroTermBank. It shall, however, ensure that the source of the data is clearly acknowledged and that no material changes are made to the data without the prior consent of the Information provider. The addition of comments and/or other language versions shall not be deemed to constitute "material" changes.

7. The contracting Parties agree on the Terms of Use for the Terminology data via online access as attached to this Agreement in Appendix 4 (always in its latest version as agreed upon by the Parties) as well as on a Disclaimer concerning the liability for the terminology data as attached to this Agreement in Appendix 3 (always in its latest version as agreed upon by the Parties). The Information receiver takes the necessary technical and other measures to the effect that users comply with the Terms of Use by means of:
 - technical tools against the download of substantial amounts of Terminology data at a time,
 - a Copyright Notice (Appendix 5),
 - a Code of Good Practice for the user (Appendix 6).
8. Should the access to the data be reserved to paying users, the Information receiver takes the necessary technical and other measures to prevent improper access and use.

9. The Information provider warrants to the Information receiver that the Terminology data does not constitute a violation or infringement of any existing copyright or license or any other right of any other person or party whatsoever and is liable for any infringement incurred in this connection.

If the consent of co-authors shall be required in order to exercise copyright with respect to the whole Terminology data, the Declaration of Consent by a Co-Author of a Terminology Collection (Appendix 2) signed by the co-author/s forms an inherent part of this Agreement.

10. The Information provider obtains for the provision of the data a remuneration in form of payment and/or services rendered by the Information receiver as agreed in Appendix 1.
11. Articles 1 and 4 of this Agreement shall not prevent the Information provider from itself using, publishing or distributing the data or granting similar non-exclusive rights to other users, distributors or publishers.
12. The Parties agree on respecting the following EU Directives:
 - Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases
 - Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society
 - Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)
 - Directive 2004/48 EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rightsas well as on respecting the respective national legislation, such as: [...].

13. This Agreement shall enter in effect on the day of signing remain in effect until the last day of the following year. Thereafter, it shall automatically renew in increments of one (1) year on the last day of the following year, except voluntary termination expressed by one Party. Either Party may terminate the Agreement at any time by giving [...] days' written notice. In case of a severe infringement of the Agreement either Party may immediately terminate the Agreement.
14. The use of the Terminology data starts on [...] and ends with the termination of the Agreement. With the termination of the Agreement the Information receiver is obliged to remove the data supplied by the Information provider from his database available via web interface within [...] days after the termination of the Agreement.
15. The Parties agree to treat all information about each other as confidential.
16. The present agreement forms the whole and exclusive basis for the contractual relationship between the Parties. The Information receiver's general terms and conditions are not part of the subject matter of the Agreement. No additional oral agreements subsist.
17. The Information receiver undertakes to observe all relevant national, European and international regulations when using the data. Where the Information receiver culpably infringes against relevant national, European and international regulations, and where damage arises to the Information provider as a result of the Information receiver's infringement, the Information receiver shall make good the damage to the extent that such damage does not merely represent an indirect or consequential loss. Where a third Party acquires a claim or claims against the Information provider as the result of the Information receiver's infringement, then he shall indemnify the Information provider against all claims brought by the third Party.
18. Alterations and additions to the Agreement and notice of its termination must be in writing.
19. The rights and obligations of the Parties in so far as they are not expressly covered by this Agreement shall be established according to the law of [state of the registered office of the Information receiver].

The contracting Parties undertake that, in the case of all differences of opinion or dispute in connection with this Agreement which they cannot resolve themselves, they shall call on mutually agreed upon arbitration services to settle these differences in whole or in part, provisionally or finally. The Parties proceed on the assumption that the arbitration procedure is fair and balanced, that the arbitrators are unbiased, that the arbitration procedure does not represent a legal finding of fact and that the Parties' right of recourse to the public courts is not affected. Information about arbitration procedures can be obtained from: Infoterm, Mariahilfer Strasse 123/3, 1060 Vienna (Austria). The

arbitration procedure suspends the periods of limitation and preclusion for all claims arising from the matter under dispute for the period laid down in the arbitration rules.

In case that the arbitration does not result in a settlement, the dispute shall be determined by the courts of [state of the registered office of the Information receiver].

20. Should individual provisions of this Agreement be or become null and void or inoperable, this shall not affect the validity of the rest of this Agreement in any way. The Parties undertake to fill any lacunae that may arise in such a case with a provision which reflects as closely as possible the original economic intent and purpose of the provision in question, and of the Agreement as a whole.
21. Any communication relating to the Agreement shall be made in writing and sent by registered mail to the following addresses:

Information receiver:

[full address]

Information provider:

[full address]

Any change in the above addresses shall also be communicated in writing.

For the Information provider
[name, forename, function]

Signature _____

Done at [place], [date]

For the Information receiver
[name, forename, function]

Signature _____

Done at [place], [date]

APPENDIX 1 to the Model Agreement for data available for a fee

1. Type and amount of data

The Information provider shall supply terminological data consisting of

- [number] terms
 - [number] entries
 - database containing [number] terms/ [number] entries comprising
 - linguistic (terms, definitions, contexts, grammatical info, ...)
 - non-linguistic (graphics, images, films, audio, ...)
 - associate (bibliographic references, ...)
- to the Information receiver.

2. Exchange format

The data are provided in

- paper form, namely (book, printout, ...)
- electronic form as [format] file(s)

and delivered to the Information receiver through mail/e-mail/download/...

3. Term of delivery

The data shall be delivered by the Information provider within [Number] days after signature of the Agreement.

4. Update conditions

The contracting Parties agree

- on a regular update every [Number] months
- on an update modus depending on update practice at the Information provider's
- that the Information provider is /not/ obliged to supply updates to the terminological data he provided.

5. Terms of payment

- Between Information receiver and Information provider:

- o flat fee/ time-based fee/ usage-based fee
 - o price
 - o monthly/ yearly/ ...

- Between user and Information receiver

- o flat fee/ time-based fee/ usage-based fee
 - o price

- Further conditions:

- o ...

All payment transactions are processed in Euro.

Bank details of the Information provider:

.....

6. Services rendered by the Information receiver in exchange for the terminological data

In exchange for the provision of the terminological data the Information receiver offers the following services to Information provider:

- the digitalisation of the resources
 - o [terms, conditions]

- ...

7. Necessary modifications of the data to be made by the Information receiver

- modification of data format
- modification of entry structure
- consolidation with other terminological data
- translation
- digitisation
- ...

8. Bibliographic reference

Bibliographic reference to the different parts of the terminological data shall be given in the following form, unless otherwise indicated in the resources themselves:

.....

9. Other conditions

...

APPENDIX 2 to the Model Agreement for data available for a fee

**DECLARATION OF CONSENT FOR PAID USE
BY A CO-AUTHOR OF TERMINOLOGY COLLECTION**

I, [...], a terminologist/translator [...] and co-author of a terminology collection known to me under the name [...] do hereby give my consent to the owner of the said collection to use, distribute, publish and make available to the general public without any limitation throughout the world, all and any elements of the collection that constitute my own intellectual input thereto, provided that my moral rights are respected and my name is mentioned among other co-authors of the collection and that due remuneration is provided for me proportionally to the profit earned by the owner of the collection.

I understand that my consent authorises the owner of the above mentioned collection to benefit from my intellectual input, protected as such by the international copyright law and my country's national copyright law, said input being in the form of a terminological neologism such as a word or a combination of words never known before in a given language or never used before for a given concept or any other kind of my input given to the said collection, including an input of which I am not aware.

Signature _____

Done at [place], [date]

APPENDIX 3 to the Model Agreement for data available for a fee

Disclaimer

(cf. chapter 4.6.2 of the Deliverable)

APPENDIX 4 to the Model Agreement for data available for a fee

Terms of Use

(cf. chapter 4.6.1 of the Deliverable)

APPENDIX 5 to the Model Agreement for data available for a fee

Copyright Notice

(cf. chapter 4.6.3 of the Deliverable)

APPENDIX 6 to the Model Agreement for data available for a fee

Code of Good Practice

(cf. Annex 5 to the Deliverable)

Annex 4 Guide to Terminology Agreements for EuroTermBank

Agreement on the use and re-use of terminological data

*Agreement on the Preparation/Revision/Processing/Conversion/Exchange/
Production/Marketing/Compilation of Terminological Data*

1 Parties to the Contract

between: {A} *[full name of provider of terminological data]*

as **copyright owner/licensor** of a terminology collection/terminology database of x00 entries in the languages

(the “information provider”)

represented by

and: {B} the EUROTMBANK Consortium

represented by,

(the “information receiver/host/distributor”)

as **non-exclusive/exclusive distributor** (or licensee with all rights of re-use)

for the purpose of using, distributing, publishing, co-publishing or otherwise re-using of the above-mentioned terminological data (and associated information) in the form considered best suitable and agreed upon.

2 Preamble

2.1 General purpose of the contract and contractual relationship between A and B

This agreement serves the general purpose of furthering the preparation of high-quality terminology by promoting co-operation between different parties and avoiding duplication of effort, and of making these terminological data and collections of data available to users in the best possible form. It defines the contractual relationship between {A} and {B} for the purpose of (*add description of the precise purpose here*) on the basis of existing supranational law (s. APPENDIX 1).

2.2 “Code of Good Practice” and arbitration in case of conflict

Any interpretation of or additions to the following provisions which may become necessary in order to resolve cases of doubt shall be made on the basis of the Infoterm “Code of Good Practice”, which is an integral part of this agreement. National and international legislation shall only be invoked to solve such conflicts in the second instance. In addition, an arbitration procedure chaired by the International Information Centre for Terminology (Infoterm) may be invoked.

3 Subject matter of the contract

3.1 Detailed description of the activity or activities forming the subject matter of the contract:

- Preparation (compilation, revision, etc.) of a terminology file or terminology database
- Access to (retrieval from, etc.) a terminology database (for the purpose of)
- Release of terminological data for further (commercial/non-commercial) use, e.g.
 - online retrieval
 - publication
 - transmission to third parties
 - information services

and any other re-use of the data (for the purpose of).

3.2 Detailed scope of the activity or activities forming the subject of the contract⁵

may comprise:

- Purpose (in general terms)
- Subject fields/subfields
- Quality and quantity of the data
- Data alone or data plus software
- Language(s) in which the data are available
- Restrictions (regarding data structure, etc.)

4 Copyright and other similar rights

4.1 Disclaimer

Information provider gives no warranty and assumes no liability for the correctness and/or completeness of the data forming the subject matter of the contract.

4.2 Exploitation Rights

may comprise:

- Rights granted under the contract
- Contractual rights to take precedence over legal provisions
- Types of data (data categories, data elements, data fields)
- Types of use
- Frequency of use (by ... people at ... locations)
- (Type of) Reproduction
- Permissible modifications (e.g. omissions, additions, merging of specific data with/without obligation to notify other party)
- Transmission to third parties
- Data storage media
- Non-disclosure agreement
- Sub-licensing to re-users
- Other uses
- (Type of) Dissemination
- Special provisions as stipulated in an annex to the contract
(including concrete specification of tasks)

4.3 Declaration of ownership and other rights of disposition⁶

The information provider declares that s/he is the owner of the copyright or other rights to the data offered and that s/he is empowered to conclude an agreement of this kind (power of attorney/representation)

⁵ If necessary, the technical and organisational details pertaining to the subject matter of the contract can be recorded in an annex to the agreement. This avoids complicating the contract text unduly and allows flexible definition of the subject matter (e.g. in the case of ongoing changes to the terminology database).

⁶ In all cases, it should be clearly stated whether the information host/distributor is being granted an exclusive or a non-exclusive right, whether this right is for a limited or unlimited period, and whether it applies globally or only to a particular territory. Where the copyrighted work is the result of the co-operation of a number of project partners with equal rights, the allocation and distribution of these rights should be explicitly noted in the contract; where this is not the case, joint copyright in the terminology/data collection exists.

5 Contract details (including rights of the information provider with regard to the subject matter of the contract)

Subject matter as specified in 3.1 – 3.2 (for the purpose of/ for re-use in)

5.1 Type of data

Types of data may comprise:

- Linguistic data
- Non-linguistic data
- Associated information (e.g. source,)

5.2 Type of use

may comprise:

(1) Purpose

- Main purpose:
- Other purposes, if applicable
 - education and training
 - (human, computer-assisted, machine) translation:
 - scientific/technical writing
 - technical documentation
 - scientific journalism
 - dissemination via radio and/or television broadcasts/data storage media/telecommunications, etc.
- re-use (in whatever form considered most suitable)
 - merging with other (types of) data to create:..... (e.g. new tools, or new services etc.)

(2) (Mode of) distribution

- Sale
- Dissemination

(3) Other types of use

to be specified – e.g.:

- (Type of) Transfer (e.g. in full, in part, ...)
- Special provisions for specific types of data
 - registered names
 - other names
 - other copyright holders (duty to inform)
 - non-linguistic information (e.g. graphics, illustrations, etc.)
- Full bibliographic references
- Different copyright rules for different data, etc.
- Exclusion of improper use

(4) Conditions (for each type of data, purpose,)⁷

- Data storage medium
- Interchange procedures
- Interim procedures.

(5) Insofar as transmission to third parties is permissible:

- For a consideration
- Free of charge
- In exchange for other data

⁷ Complex technical details can be listed in a separate technical annex (complete with notes to users, if appropriate)

6 Contract details (including rights of the User with regard to the subject matter of the contract)

Subject matter as specified in 3.1 - 3.2 (for the purpose of/ for re-use in)

- Exceptions
- Exclusion of improper use
- Accountability/product liability (of Supplier)
- Utilisation only for own use/for specified purpose
- No transmission to third parties
- Technical precautions against improper use

7 Derived data products and data integrity

may comprise provisions on:

- Intended products and services (e.g. online database, CD ROM, diskette, multimedia ...)
- Data integrity (critical for multimedia)
- Exceptions to data integrity for typing errors and obvious mistakes

8 Payment (Money flow between users, supplier/distributor, re-user, originator)

Conditions for third parties:

- Flat fee
- Time-based fee
- Usage-based fee

Other conditions between the Parties:

- Free of charge in exchange-based relationships
- License fee payable to participatory interests
- Royalties payable to third parties

Payment modes and conditions:

- Specific payment models
- Terms of payment
- Consequences of default
- Invoicing currency/exchange rate

9 Prevention of improper use, protection of rights

- Technical and organisational measures to prevent improper use
- No transmission to third parties above and beyond contractual provisions
- Infringements may lead e.g. to disbarment from use, liability to claims for damages, termination of the agreement, contractual penalty

10 Exceptions/fair use

In compliance with fair use stipulations limited quotations (as permitted by copyright law) are permissible for research and educational purposes, as well as for scientific-technical presentations and publications.

11 Warranties and liability

Warranties and liability clauses may comprise:

- Rights under warranties (depending on product)
- Originators are liable for contents
- Liability limited to criminal intent and negligence
- Indemnity against third-party claims
- Subject to legal admissibility of limitation of liability
- No liability for processing errors on the part of the purchaser

- No liability for failure to meet intended purpose of the purchaser

12 Contractual period, notice of termination

may comprise provisions concerning:

- Beginning of contract (and duration)
- Renewal/prolongation
- Regular termination subject to agreed period of notice
- Immediate termination (without notice) and grounds for this (severe infringements of contract)
- Duty to return/purge data at the end of the contract (notification of purge)

13 Data protection, confidentiality

The parties to the contract agree to treat all information about each other as confidential. If necessary, further stipulations covering the confidential use of corporate data, etc. may be added.

14 Scope of the contract

The present agreement forms the whole and exclusive basis for the contractual relationship between the parties. The User's general terms and conditions are not part of the subject matter of the contract. No additional oral agreements subsist.

15 Application of national/international law

- (1) The licensee undertakes to observe all relevant national, European and international regulations when using the data/services.
- (2) Where the licensee culpably infringes against Paragraph (1), and where damage arises to the Supplier as a result of the User's infringement, the User shall make good the damage to the extent that such damage does not merely represent an indirect or consequential loss.
- (3) Where a third party acquires a claim or claims against the Supplier as the result of the licensee's infringement against Paragraph (1), the licensee shall indemnify the Supplier against all claims brought by the third party.

16 Written form

Alterations and additions to the contract and notice of its termination must be in writing. If desired, notice to terminate the agreement by means of registered letter.

17 Choice of law, court of jurisdiction, arbitration

- (1) The contracting parties undertake that, in the case of all differences of opinion in connection with this contract which they cannot resolve themselves, they shall call on Infoterm's arbitration services to settle these differences in whole or in part, provisionally or finally.
- (2) The parties proceed on the assumption that the arbitration procedure is fair and balanced, that the arbitrators are unbiased, that the arbitration procedure does not represent a legal finding of fact and that the parties' right of recourse to the public courts is not affected. Information about arbitration procedures can be obtained from: Infoterm, Aichholzgasse 6/12, 1120 Vienna (Austria).
- (3) The arbitration procedure suspends the periods of limitation and preclusion for all claims arising from the matter under dispute for the period laid down in the arbitration rules.

In addition:

- Statement of the law to be used in cases of dispute and to supplement the provisions of the contract
- Insofar as permissible: stipulation of a court of jurisdiction
 - in the case of international organisations, the International Court of Justice
 - in the case of European institutions, the European Court
- Alternatively: implementation of an arbitration procedure (in which an appropriate body acts as the arbitrator)
- Other provisions

18 Concluding clause

Should individual provisions of this contract be or become null and void or inoperable, this shall not affect the validity of the rest of this contract in any way. The contracting parties undertake to fill any lacunae that may arise in such a case with a provision which reflects as closely as possible the original economic intent and purpose of the provision in question, and of the contract as a whole.

APPENDIX 1 to the Guide to Terminology Agreements

Legal provisions to be respected

The contracting parties agree on respecting the following directives:

- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases
- Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society
- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights

APPENDIX 2 to the Guide to Terminology Agreements

Code of Good Practice for Copyright in Terminology

(cf. Annex 5 to the Deliverable)

Glossary

Associated information:

Information pertaining to terminological data, e.g. creator/reviser, experts (e.g. standards bodies), (bibliographic and other source) references, date of preparation/revision.

Copyright holder:

Strictly speaking (i.e. in contrast to common usage), the holder of a copyright according to Anglo-American law.

Database:

A collection of data organised according to a conceptual structure describing the characteristics of these data and the relationships among their corresponding entities, supporting one or more application areas.

Data usage:

The use of terminological data (and additional information) for the User's own (or internal) and/or external commercial or non-commercial purposes, in the form of (selective or comprehensive):

- publication
- downloading
- retrieval
- printing out
- conversion
- electronic dissemination (e.g. via mailbox)
- dissemination

Originator:

The creator of an original intellectual work, e.g.

- Where the author is an expert interested in the free dissemination of his or her work, s/he is generally interested in being cited, although this is not always the case.
- Where a number of people are involved in production of a work, these can be joint originators, either as a group, or as an institution.
- Organisations which are the originators of data are generally interested in complete control of copyright for both commercial and non-commercial reasons.

Quality of data:

The volume of data as expressed via the types of data, data elements and data relationships selected.

Quantity of data:

The volume of data as expressed via the number of entries, from the entire database right down to small subsets of the data (including the use of specific software or parts of software programs)

Subject field; domain:

A section of human knowledge, the order lines of which are defined from a purpose-related point of view.

Supplier:

Supplier of terminological data and additional information to the User or re-user/distributor; the Supplier may be the author/originator or the copyright owner.

Terminology database:

A database containing terminological data.

Annex 5 Code of Good Practice for Copyright in Terminology

General observations

The importance of terminologies

Terminological data (terminologies) are important in a number of basic scientific and technical areas, such as

- Domain (specialised) communication;
- Technical writing, translation, localisation, internationalisation, and related applications;
- Subject field-specific education and training;
- Recording, indexing and retrieval of specialist information, etc.

The preparation of reliable terminologies – a task worth promoting

As a rule, high-quality, reliable terminological data are prepared by teams of experts (e.g. working groups or (sub-)committees attached to learned societies, scientific and technical associations, research institutions, or terminology standardisation bodies). Such preparation of terminological data in the areas of science and technology aims at unifying terminological usage in order to achieve clarity and consistency. In the social sciences and humanities, on the other hand, terminology work is more likely to aim at making conceptual differences transparent.

Cooperation in terminology work

Terminology work – and especially terminology standardisation – is very labour-intensive and time-consuming. Cooperation between institutions and organisations active in the preparation of terminological data should, therefore, be encouraged as much as possible. Exchanging terminological data helps prevent duplication of effort and create consistent terminologies across national, linguistic and subject field boundaries.

Cooperation in terminology preparation, and the exchange of terminological data in particular, may entail:

- Taking over a greater or smaller number of terminological entries or subsets of data from one or more existing terminological entries;
- Exchanging terminological data for use as raw material for systematic terminology work;
- Merging terminological data from different sources to prepare new entries, records, etc.

These activities should take place within the context of the requirements of copyright laws and other laws concerning intellectual property. They should aim both to avoid unduly impeding the exchange of ideas and to give due acknowledgement of the intellectual property of the originator of the data.

Applicability of intellectual property rights to terminology

While concepts, as “units of knowledge”, should be regarded as the intellectual property of all mankind, their representations as terms and definitions (or other kinds of concept description), or as graphic symbols (or other kinds of non-linguistic representation) must be considered to be the intellectual property of the originator (i.e. a single expert, group of experts, or institution/organisation), if this information has been conceived or prepared by the respective originator in the form of a terminological entry, a specific sub-section of an entry, or a collection of terminological data.

Call for the open accessibility of terminologies

All institutions/organisations which prepare terminologies or which own terminological data should regard these as an important contribution to the intellectual property of mankind and should make them available to outside users on terms and conditions which reflect the nature of the terminologies in each case.

Code of good practice

Where no bilateral agreements have been concluded to the contrary, the following general provisions shall apply as a code of good practice when importing, entering, or exchanging terminological data:

1 *Originators' intellectual property*

- 1.1 Reference to the origin of terminological data shall be explicitly made whenever (all or subsets of) the data are reproduced (output) or passed on to third parties. This applies equally to individual items and to subsets of data from terminological entries or records.
- 1.2 Where the origin of large volumes of data is to be documented, a single reference to the source may be all that is required when the data are reproduced or transferred. In this case, however, the provider must ensure that the recipient of the data agrees to give due acknowledgement to the originator of the data in all cases.
- 1.3 Where terminological data have been obtained from an originator who also markets the data himself or herself, the originator's consent shall be obtained where the data exchanged or taken over are made available to a third party in the form of complete entries or as parts of entries.
- 1.4 Data under copyright must not be passed on without the agreement of the originator. This does not refer to individual entries or a limited set of individual entries which are to be used for research or teaching purposes under the conditions of exemptions from copyright stipulations as they exist in the Berne Convention and its implementations at national level.
- 1.5 Financial agreements on licenses and royalties must be observed.
- 1.6 Institutions and organisations, in which large numbers of users have access to terminological data from an external source (i.e. the author{s} themselves or the economic rights holder{s}, such as a publishing house), are responsible for taking all necessary measures against uncontrolled downloading/copying which violates any rights claimed by the originator{s} or rights holders.

2 *Data integrity*

- 2.1 Measures to protect data integrity must be strictly observed and must not be deliberately violated (e. g. by introducing minor changes or by taking data out of context). However, the correction of typographic errors and other obvious mistakes is permissible where justified.
- 2.2 In the case of highly sensitive terminological data (e. g. where safety issues are involved) the strict observance of data integrity with respect both to individual items of information and to data structures shall be obligatory.
- 2.3 Data marked as secret or confidential must not be passed on without the prior (preferably written) consent of their respective owner.

3 *Standardised terminology*

- 3.1 The exchange of terminological data among standards bodies and between standards bodies and relevant specialist institutions and organisations, in order to increase the volume and to improve the quality of standardised terminology, should be encouraged. Given the highly authoritative character of standardised or unified terminologies on the

one hand and the highly labour-intensive efforts to create them, cooperation among standards bodies and between them and authoritatively unifying terminologies should be developed as much as possible.

- 3.2 In the case of terminological records, where no other agreement to the contrary has been made the originating standards body shall be indicated in every individual item or set of terminological information taken over. In this connection national standards bodies should follow the rules, established by international and European organizations of standardization, which regulate observance of copyright when international standards are adopted as regional or national standards.
- 3.3 Standards bodies should promote active cooperation in terminological data by assigning authoritative foreign language equivalents (and - if possible - definitions as well) to the entries received from sister organisations. Such cooperation needs written bilateral agreements, if federated agreements are not available, stipulating the conditions for the exchange and re-use of the data in accordance with existing legal frameworks.
- 3.4 Standards bodies and other institutions/organisations considered as authorities in their subject field, are encouraged to collaborate in the harmonisation of existing terminologies.
- 3.5 Cooperation concerning standardized terminologies shall conform to the *Code of Good Practice for the preparation, Adoption and Application of Standards*, which has to be observed according to the annex of WTO Agreement on Technical Barriers to Trade.

4 Limited quotations of terminological data for scientific, research, teaching and training purposes

As a rule, copyright provisions do not apply

- in cases involving limited extracts of individual terminological data within the limits of defined exemptions from copyright
and
- to the use of individual items of terminological data or entries in scientific publications (limited quotations, fair use etc.) and for teaching and training purposes, provided that no data integrity rules are violated and that correct citation is ensured wherever possible and applicable.