

# MONOPOLY ON SCIENCE DATA?

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Implication: money needed, club of super rich Consequences

In all the hoopla surrounding the World Trade Organisation (WTO) ministerial meeting in Singapore and its unbidden agenda of labour standards and investment guarantees, what is going unnoticed is a treacherous little treaty on protecting databases. Discussions on what is called the Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions have started on 2 December in Geneva and will continue till the 20th. Formulated under the aegis of the World Intellectual Property Organisation, (WIPO), the much sidelined organisation after GATT/ WTO snatched away its mantle of Intellectual Property Rights (IPRs), this ambitious and little understood treaty deals with the protection of databases that could be compiled on any subject under the sun. Such databases could be about health care statistics or scientific results pertaining to biology, chemistry or physics. They could be about songs and films.

The treaty would protect “any database that represents a SUBSTANTIAL INVESTMENT (author’s emphasis) in the collection, assembly, verification organisation or presentation of the contents of the database.”. The treaty defines the term database to include “collections of literary, musical or audiovisual works, or collections of other materials such as texts, sounds, images, numbers, facts, or data representing ANY OTHER MATTER OR SUBSTANCE author’s emphasis). This protection will be afforded to databases in electronic or non-electronic forms so that books, catalogues and lists would also come under the purview of this form of protection. This means that even databases that are generally made available to the public, commercially or otherwise, can be brought under this form of protection.

The WIPO treaty is designed to severely restrict the access of the public to information and data that has been generated in the public domain and that is therefore information belonging to the public. Once these data are compiled in the form of a database, they are to become the property of the people or person who registers himself as the owner of such a bank.

The impetus to control access to information has come from the large publishing houses in America. James Love, director of the US based Consumer Project on Technology in a publication has traced how an adverse US Supreme Court judgement on copyrighting data led to the publishing industry ganging up to create instruments that would enable them to monopolise data in any form. The Supreme Court decision in *Feist Publications, Inc. v. Rural telephone Services* was to reject the claim of the Feist Company to copyright data compiled from a telephone directory. The American Court ruled that facts cannot be copyrighted and that such obvious items as listing names, addresses and telephone numbers in alphabetical order are not sufficiently creative to qualify for copyright protection. The decision, Love says, rejected the “sweat of the brow” theory of copy right, meaning that the compilation was not created by the labour of the company but was simply lifted from somewhere else. Under copyright law, compilations of data or documents, even when the material is from the public domain, can be protected only if certain originality can be shown in the selection and arrangement of the data.

Publishing houses thwarted by the US Supreme Court ruling went on to create a forum that would serve their interests. In their search for stronger protection for data, they are lobbying to create the now immensely fashionable form of *sui generis* protection for databases. The effort is to bypass the constraints imposed by the Copyright law and link to the Berne Convention only in certain selective and advantageous ways so that the Convention cannot interfere in the *sui generis* protection that is being pushed through the new treaty. The advantage of this newly discovered form of *sui generis* protection for Intellectual Property Rights is that one can create *de novo* conditions for the protection of whatever one is seeking a monopoly on. The *sui generis* form has been created so that globally accepted forms of IPRs like patents, trademarks and copyrights can be overtaken by stringent ad hoc forms of monopolies dreamed up by this or that lobby. In the case of seeds, the *sui generis* protection has been dreamed up by the American Biotechnology industry, in the case of databases, it is the American Publishing industry.