## NÁZEV DIPLOMOVÉ PRÁCE A JEJÍ RESUMÉ V JAZYCE ANGLICKÉM (*ENGLISH SUMMARY*)

The name of the thesis: ***The Legal Protection of databases***.

*What is the value of information?* This is the crucial question that arises in relation to the legal protection of databases. The rise of new media created a brand new world that we labeled the information society and whose most valuable asset has become totally interconnected with quality and speed. Hand in hand with this rapid transformation came the power of digitalization, which has permitted the dramatic speeding up of the transfer of data and information, while offering an almost indefinite amount of storage space, consequently making unauthorized and unlawful copying of data simple and efficient. As a result the form of a database has been transformed.

Information and communication technologies (ICTs) have constantly influenced industry and commerce at all stages and levels and thus the development of the database industry has become crucial for the information society. In other words, society has literally become dependent on the use of different kinds of databases. We encounter them everywhere—from public listings, libraries, telephone listings to free-time activities such are sports databases. Nevertheless, progress in new technologies also carries the new threat of the full exploitation of a database's assets and therefore the possibility of lost investment.

The unanswerable question that normally follows any discussion about the legal protection of databases is: 'How much protection is too much?' So far, there has not been world consent on this issue. The submitted thesis observes the different historical approaches that have resulted in the *de lege lata* protection of databases, using as an example two biggest subject in the world database market: the European Union and the United States of America.

Europe has introduced a new model of protection so called *sui generis* right (i. e. right "of its own nature"), property right subsisting in a database. The European Parliament and the Council of the European Union adopted Directive 96/9/EC on the legal protection of databases on March 11, 1996. It was provided as a mean to ease a transfer of goods and services across the countries of the then European

Community (EC). It attempted to compromise the concept of common law (the Anglo-American doctrine *sweat of the brow*) which contrasted with the civil law concept of author's rights (*droit d'auteur*).

The *Directive on Legal protection of Databases* claimed to focus on the issue of balanced protection between the makers/investors of databases on one hand and the database users on the other. As the supporters of the intellectual property (IP) protection of unoriginal databases (the *sui generis* protection) believe, the current EU legislation better promotes database creations. Its subject matter is generally considered being quite wide-ranging. However, critics of this new law instrument consider it redundant, or even undesirable. The EU adoption of aforementioned Directive as well as the endeavor of internationally anchoring the database right in the WIPO Treaty was accompanied by critical voices coming especially from academic institutions and libraries. They had all expressed fears and concerns of the threat to the free sharing of information. In other words, they accented the deemed insufficient amount of fair-dealing/fair-use exceptions.

The submitted thesis concerns the legal protection of databases as it is being approached from different angles and jurisdictions. Both copyright and *sui generis* protection of databases are covered. The presented work is divided into 17 chapters, including an annex with relevant parts of legislation. After starting with an introduction (Chapter 1), and a note on methodology (Chapter 2), Chapter 3 deals with aspects of the information society. It is then observed from an historical point of view with an attempt to capture its basic characteristics and different approaches via academic fields (economics, media studies, and law).

Coming from this vantage point, Chapter 4 positions a database within the concept of the information society. It lays down the basic outline of two main and unrelated models of legal protection of databases: the copyright and *sui generis* protection. Possible different classification of databases is also mentioned.

Moving from this broader perspective to more specific issues, Chapter 5 concerns the legal protection of Databases under EU law. It shows the historical background of the adoption of the Database Directive and emphasizes the overall debate surrounding it. The process of its transposition within the then-EC countries is elaborated with a note on its impact on countries belonging to the European Economic Area (EEA).

The scope, objectives and substantive provisions of the *Directive 96/9/EC on the legal protection of databases* are pinpointed in Chapter 6. Special attention is given to the analysis of both copyright and *sui generis* protections of databases. Their separate criterions for a database to qualify for any of these protections are described and summarized. Part on *sui generis* right is later on accompanied by the subchapter on Opinion of Advocate General Stix-Hackl delivered on 8 June 2002 concerning the *British Horseracing Board v William Hill* case (BHB). It is often given as an example to enable deeper understanding of developing the interpretation of Directive Database provisions.

Chapter 7 logically continues in historical tracing not only the process of the adoption of the Database Directive but also its practical impact. It complements the previous chapter with the prevailing interpretation of several Directive provisions ruled by the European Court of Justice (ECJ). Decisions in the four sets of proceedings concerning the *sui generis* right were handed down on November 9, 2004. Beside the hereinbefore mentioned BHB case, the three Fixtures Marketing cases are being presented.

Above that, the eagerly awaited first empirical evaluation of the Database Directive is covered in Chapter 8, conducted by the European Commission (precisely by DG Internal Market and Services) as the Database Directive stipulates in its text and published (with delay) on December 12, 2005. If the proclaimed main aim of the evaluation was to give the evidence whether the *sui generis* right led to increased share of European databases on the world market, the results were rather in vain. In other words, the Commission stated that the economic impacts are unproven.

Getting back the ECJ, Chapter 9 deals with its two most recent decisions of 2008 and 2009. They both offered further interpretation of the *sui generis* right. The ECJ retained the line of its previous ruling of 2004 and confirmed a broad scope of database rights. It then looked back closely for clarification of some of the Database Directive terms, such as *an extraction*, *a substantial investment*, and *a permanent* versus *a temporary transfer*. Moreover, the types of acts constituting infringement of *sui generis* right were elucidated.

Chapter 10 outlines the aims and objectives of the comparative analysis of a database protection in three countries—namely the Czech Republic, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. The analysis of the state of protection in these countries can be consecutively found

in Chapters 11, 12**,** and 13. The first two aforementioned EU members serve as the example of transposition of the Database Directive within the countries of different historical backgrounds and approaches to copyright—the concept of *droit d'auteur* in contrast to *common law* traditions. Moreover, the United States of America ultimately represents a country whose makers of databases are exceptionally good at competing on the world database market, yet the proposed bills on the wider protection of databases have been so far rejected by Congress. The history of proposed bills on the subject matter is attached.

Chapter 14 concerns the international aspects of database protection. It analyses the *de lege lata* protection provided by the international copyright agreements. The attention is also given to the attempts made towards an international treaty that would be specifically aimed at the legal protection of databases.

Chapter 15, 16, and 17 include the summary, hereby résumé and annex with related legislative provisions.

What the future holds for the legal protection of databases, and even more importantly for the *sui generis* right is rather uncertain. From the perspective of the aims and objectives of this particular work, answering such a question would exceed the subject matter. Nevertheless, the author herself finds reasons for the *sui generis* regime protection relevant while being aware of all the possible controversy and critical voices accompanying it. The potential EU policy movement concerning the *sui generis* right should become more lucid via the follow-up evaluation of the Database Directive, which is not expecting to be completed any time soon. Thus, the uncertainty will remain for the foreseeable future.