Preface

This book examines and compares the several types of protection available for the protection of investment in database creation. The protection of investment in making databases is not harmonized internationally. In some countries, database contents are insufficiently protected and, in others, there is too much protection. While database producers deserve protection to recoup their investment, excessive protection can create easily abused monopolies and restrict the public domain. The book is concerned with finding adequate legal protection for investment in collecting, verifying or presenting database contents. The laws of the European Union and the United States, which differ in their protection of databases, are compared. Four types of laws which can protect database contents are chosen: intellectual property, unfair competition, contract and technological protection measures (‘TPMs’) along with TPMs’ anti-circumvention provisions. The book examines whether in isolation and in combination these laws over-protect, under-protect or adequately protect databases’ contents. To do so, it uses a criterion based on the economics of information goods, the human rights to intellectual property and to information and the public interest.

In Europe, a specific intellectual property right was enacted to protect database contents (the "sui generis" right). In isolation, most aspects of the "sui generis" right over-protect databases. The possibility in certain Member States to prevent the copying of databases by the tort of parasitism in addition or instead of the "sui generis" right is over-protective as well. This also proves that harmonization is not fully achieved. Additional contractual protection of databases by way of circumventing the limits of the "sui generis" right also over-protects certain databases. The same goes for most TPMs and anti-circumvention provisions. Therefore in Europe, databases are over-protected in many respects. In the United States, no specific intellectual property right to protect database contents exists. While misappropriation’s shield is far too weak, contracts, TPMs and anti-circumvention provisions are either over- or under-protective.

Remedies to over- and under-protection are proposed along with an adequate model for the protection of investment in database creation based on an intellectual property approach and which can be adopted internationally. The model is then applied to old case law to show the different outcomes arrived at under the new form of protection.
This book is based on my doctoral thesis. Throughout the years, I have been helped enormously by a long list of institutions and persons and I hope that those I may have forgotten in this preface will forgive me. My thanks go to the ‘Fondation Camille Hela’ of the University of Liège, the directors of the Max Planck Institute for Intellectual Property, Competition and Tax Law in Munich, Professors Michael Blakeney, Bill Cornish, Paul Demaret, Damien Geradin, Peter Maggs, Fiona Macmillan, Paul Torremans, Alain Strowel and Adrian Sterling, the many doctoral students of the Max Planck Institute I met while spending time there, as well as the library staff of the Queen Mary Intellectual Property Research Institute, Max Planck Institute and University of Nottingham. Last, but not least, I am grateful to my parents and to Meyrick for their unfailing moral support and patience. I am also forever indebted to Barbara, who unfortunately did not live to see my achievement. This book is dedicated to her.

I have attempted to state the law as it stands at the beginning of May 2007.

Nottingham, May 2007

E.D.