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Judgment of the Court of Justice in Case C-304/07

Directmedia Publishing GmbH v Albert-Ludwigs-Universität Freiburg

**THE TRANSFER OF MATERIAL FROM A PROTECTED DATABASE TO ANOTHER
DATABASE MAY BE PREVENTED EVEN IF THERE IS NO TECHNICAL PROCESS
OF COPYING**

The operation of consulting a protected database on-screen and transferring material contained in that database following individual assessment is capable of constituting an ‘extraction’ which the maker of the database may prevent in particular if it leads to the transfer of a substantial part of the contents of the protected database

‘The 1 100 most important poems in German literature between 1730 and 1900’ is a list of verse titles which the University of Freiburg published on the Internet. The list was drawn up as part of the ‘vocabulary of the classics’ project under the supervision of Professor Ulrich Knoop. The University, which bore the project costs amounting to a total of EUR 34 900, has had its rights as maker of a database infringed by the distribution of a CD-ROM entitled ‘1 000 poems everyone should have’ by Directmedia. Of the poems on that CD-ROM, 876 date from the period between 1720 and 1900. 856 of those poems are also mentioned in the list of verse titles drawn up by Prof. Knoop.

Directmedia used that list as a guide in selecting the poems for inclusion on its CD-ROM. It omitted certain poems which appeared on that list, added others and, in respect of each poem, critically examined the selection made by Prof. Knoop. Directmedia took the actual texts of each poem from its own digital resources.

The Bundesgerichtshof, which has already upheld the action brought by Prof. Knoop as compiler of an anthology, is of the opinion that the that the resolution of the dispute, in so far as it concerns Directmedia and the University, depends on the interpretation to be given to the Database Directive¹. That court raises the question whether using the contents of a database in such circumstances constitutes an ‘extraction’ within the meaning of the directive which the maker of the database may prevent.

In its judgment of today, the Court of Justice points out that where the maker of a database makes the contents of that database accessible to third parties, even if he does so on a paid basis,

¹ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20).

he may not prevent those third parties from consulting that database for information purposes. It is only when on-screen display of the contents of that database necessitates the permanent or temporary transfer of all or a substantial part of such contents to another medium that such an act of consultation may be subject to authorisation by the maker.

The Court observes that the concept of ‘extraction’, which the maker of a protected database may prevent, must be understood as referring to any unauthorised act of appropriation of the whole or a part of the contents of a database. That concept is not dependent on the nature and form of the mode of operation used.

In that context it is immaterial, for the purposes of assessing whether there has been an ‘extraction’, that the transfer is based on a technical process of copying the contents of a protected database, such as electronic, electromagnetic or electro-optical processes or any other similar processes. Even a manual recopying of the contents of such a database to another medium corresponds to the concept of extraction in the same way as downloading or photocopying.

The Court goes on to state that the concept of ‘extraction’ also cannot be reduced to acts concerning the transfer of all or a substantial part of the contents of a protected database.

Lastly, the fact that material contained in one database may be transferred to another database only after a critical assessment by the person carrying out the act of transfer does not preclude a finding that there has been a transfer of elements from the first database to the second.

The Court concludes that **the transfer of material from a protected database to another database following an on-screen consultation of the first database and an individual assessment of the material contained in that first database is capable of constituting an ‘extraction’, which the maker of the database may prevent to the extent that – which it is for the referring court to ascertain – that operation amounts to the transfer of a substantial part, evaluated qualitatively or quantitatively, of the contents of the protected database, or to transfers of insubstantial parts which, by their repeated or systematic nature, would have resulted in the reconstruction of a substantial part of those contents.**

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Languages available: BG, ES, DE, EL, EN, FR, IT, NL

The full text of the judgment may be found on the Court’s internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-304/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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