



A football fixture list cannot be protected by copyright when its compilation is dictated by rules or constraints which leave no room for creative freedom

The fact that the compilation of the list required significant labour and skill on the part of its creator does not justify, in itself, it being protected by copyright

The Database Directive¹ grants copyright protection to databases if the selection or arrangement of their contents constitute the author's own intellectual creation. The databases can also be eligible for protection by a so-called '*sui generis*' right when the obtention, verification or presentation of their contents required a substantial investment.

In the main proceedings, the UK company Football Dataco, which is responsible for protecting the rights acquired in the English and Scottish football league fixtures, and the organisers of those leagues accuse Yahoo! UK, Stan James (a bookmaker) and Enetpulse (a sports information provider) of having infringed their intellectual property rights in the football fixture lists by having used those fixture lists without paying financial compensation.

The fixture lists are prepared in accordance with several 'golden rules'. The process of preparing is in part automated but requires, however, very significant labour and skill in order to satisfy the multitude of requirements of the parties concerned whilst respecting the rules.

The national court has already rejected a '*sui generis*' protection of those fixture lists in accordance with the case-law of the Court of Justice². By contrast, it raises the question of the possibility of those lists being eligible for copyright protection. In that context, it asks the Court of Justice to clarify the conditions which must be satisfied in order to be eligible for that protection.

The Court states, first, that **the copyright protection provided for by the Database Directive concerns the 'structure' of the database, and not its 'contents'. That protection does not extend to the data itself.** In that context, the concepts of 'selection' and of 'arrangement' within the meaning of the directive refer respectively to the selection and the arrangement of data, through which the author gives the database its structure. By contrast, those concepts do not extend to the creation of the data contained in that database. Consequently, the intellectual effort and skill of creating data are not relevant in order to assess the eligibility of the database that contains them for the copyright protection provided for by the directive.

In the present case, the effort and skill of creating the lists relate to the creation of the same data contained in the base. As a consequence, that effort and skill are, in any event, of no relevance in order to assess the eligibility of the football fixture lists concerned for the copyright protection provided for by the directive.

The Court then observes that **the notion of 'intellectual creation', which is a necessary condition in order to be eligible for copyright protection, refers to the sole criterion of originality.** As regards the setting up of a database, that criterion of originality is satisfied when, through the selection or arrangement of the data which it contains, its author expresses his

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)

² Cases [C-46/02](#), [C-338/02](#) and [C-444/02](#) *Fixtures Marketing*, see also Press Release No [89/04](#)

creative ability in an original manner by making free and creative choices. By contrast, that criterion is not satisfied when the setting up of the database is dictated by technical considerations, rules or constraints which leave no room for creative freedom.

The 'addition of important significance' to the data by their selection or arrangement in the database does not affect the determination of the originality required for that database to be protected by copyright.

Similarly, **the fact that the setting up of the database required**, irrespective of the creation of the data which it contains, **significant labour and skill on the part of its author does not justify, as such, the protection of it by copyright if that labour and that skill do not express any originality** in the selection or arrangement of that data.

It is for the national court to assess, in the light of the considerations set out by the Court, whether the football fixture lists concerned are databases which satisfy the conditions of eligibility for copyright protection. However, the Court adds that unless the procedures for creating the lists concerned as described by the national court are supplemented by elements reflecting originality in the selection or arrangement of the data contained in those lists, they do not suffice for those lists to be protected by the copyright laid down in the directive.

Finally, the Court states that, given that the directive harmonises the protection given by copyright to databases, national legislation which grants copyright protection under conditions which are different to those set out in the directive is incompatible with European Union law.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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