

Case C-203/02

The British Horseracing Board Ltd and Others

v

William Hill Organization Ltd

(Reference for a preliminary ruling from the Court of Appeal
(England and Wales) (Civil Division))

(Directive 96/9/EC — Legal protection of databases — *Sui generis* right —
Obtaining, verification or presentation of the contents of a database — (In)
substantial part of the contents of a database — Extraction and re-utilisation —
Normal exploitation — Unreasonable prejudice to the legitimate interests of the
maker — Horseracing database — Lists of races — Betting)

Opinion of Advocate General Stix-Hackl delivered on 8 June 2004 I - 10419

Judgment of the Court (Grand Chamber), 9 November 2004 I - 10461

Summary of the Judgment

1. *Approximation of laws — Legal protection of databases — Directive 96/9 — Definition of investment in the obtaining, verification or presentation of the contents of a database*

— *Resources used to draw up and verify lists of horses entered in horse races — Not included*

(European Parliament and Council Directive 96/9, Art. 7(1))

2. *Approximation of laws — Legal protection of databases — Directive 96/9 — Definitions of extraction and re-utilisation of the contents of a database — Right of the maker of the database to prohibit such acts — Database made accessible to the public — No effect on that right*

(European Parliament and Council Directive 96/9, Art. 7)

3. *Approximation of laws — Legal protection of databases — Directive 96/9 — Definition of substantial part of the contents of a database — Quantitative and qualitative assessment*

(European Parliament and Council Directive 96/9, Art. 7)

4. *Approximation of laws — Legal protection of databases — Directive 96/9 — Prohibition on extraction and re-utilisation of insubstantial parts of the contents of a database — Scope*

(European Parliament and Council Directive 96/9, Art. 7(5))

1. The expression 'investment in ... the obtaining ... of the contents' of a database in Article 7(1) of Directive 96/9 on the legal protection of databases must be understood to refer to the resources used to seek out existing independent materials and collect them in the database. It does not cover the resources used for the creation of materials which make up the contents of a database.

ensuring the reliability of the information contained in that database, to monitor the accuracy of the materials collected when the database was created and during its operation. The resources used for verification during the stage of creation of materials which are subsequently collected in a database do not fall within that definition.

The expression 'investment in ... the ... verification ... of the contents' of a database in Article 7(1) of Directive 96/9 must be understood to refer to the resources used, with a view to

In the context of drawing up lists of horse races, the resources used to draw up a list of horses entered in a race constitute investment not in the obtaining of the contents of the database but in the creation of the data making up the lists relating to those races. The

resources used for the checks prior to the entering of a horse on a list for a race relate to the stage of creating the data making up that list and thus do not constitute an investment in the verification of the contents of a database.

the whole or a substantial part of those contents.

(see para. 67, operative part 2)

(see paras 30-31, 34, 38, 40-42,
operative part 1)

2. The terms 'extraction' and 're-utilisation' as defined in Article 7 of Directive 96/9 on the legal protection of databases must be interpreted as referring to any unauthorised act of appropriation and distribution to the public of the whole or a part of the contents of a database. Those terms do not imply direct access to the database concerned.

3. The expression 'substantial part, evaluated ... quantitatively, of the contents of [a] database' in Article 7 of Directive 96/9 on the legal protection of databases refers to the volume of data extracted from the database and/or re-utilised and must be assessed in relation to the total volume of the contents of the database. The expression 'substantial part, evaluated qualitatively ... of the contents of [a] database' refers to the scale of the investment in the obtaining, verification or presentation of the contents of the subject of the act of extraction and/or re-utilisation, regardless of whether that subject represents a quantitatively substantial part of the general contents of the protected database.

Any part which does not fulfil the definition of a substantial part, evaluated both quantitatively and qualitatively, falls within the definition of an insubstantial part of the contents of a database.

The fact that the contents of a database were made accessible to the public by its maker or with his consent does not affect the right of the maker to prevent acts of extraction and/or re-utilisation of

(see paras 70-71, 73, operative part 3)

4. Article 7(5) of Directive 96/9 on the legal protection of databases, which prohibits, in certain cases, the repeated and systematic extraction and/or re-utilisation of insubstantial parts of the contents of the database, refers in particular to unauthorised acts of extraction and/or re-utilisation the cumulative effect of which is to reconstitute and/or make available to the public, without the

authorisation of the maker of the database, the whole or a substantial part of the contents of that database and thereby seriously prejudice the investment by the maker.

(see para. 95, operative part 4)