Case C-762/19

Request for a preliminary ruling

Date lodged:

17 October 2019

Referring court:

Rīgas apgabaltiesas Civillietu tiesu kolēģija (Regional Court, Riga (Civil Law Division)) (Latvia)

Date of the decision to refer:

14 October 2019

Applicant at first instance and respondent:

SIA 'CV-Online Latvia'

Defendant at first instance and appellant:

SIA 'Melons'

[...]

ECLI:LV:RAT:2019:1014.C30638718.8.L

ORDER

concerning the staying of proceedings and a request to the Court of Justice of the European Union for a preliminary ruling

The Rīgas apgabaltiesas Civillietu tiesas kolēģija (Regional Court, Riga (Civil Law Division)) [...] [composition of the Chamber and parties' representatives]

in open court on 14 October 2019 heard the civil proceedings concerning the application brought by SIA 'CV-Online Latvia' against SIA 'Melons', in which the applicant sought a prohibition on the inclusion of links on the website managed by the defendant whereby users can click on the links in order to access the applicant's database.

Background to the proceedings

Facts

EN

1.   The applicant and respondent, SIA 'CV-Online Latvia' ('the applicant'), owns and manages the website www.cv.lv, which enables people to search for jobs offered and sought. In the main proceedings, it is not disputed that the applicant's website, together with the jobs offered and sought on it, should be classed as a database.

The defendant and appellant, SIA 'Melons' ('the defendant'), owns and manages the website www.kurdarbs.lv, which is a search engine.

The website managed by the defendant finds websites that publish information accessible to the public on job advertisements and uses a hyperlink to redirect users searching for job advertisements to the website on which the information it has found was originally published. End users click on the hyperlinks to access the applicant's website, www.cv.lv, and its contents, from the aforesaid website.

At the appeal stage, the applicant's representative accepted the position of the defendant's representative, who maintained that the defendant does not perform an online transmission to the applicant's website but instead uses another form of transmission.

According to the main proceedings, the applicant published meta tags (Schema.org microdata) on its website, www.cv.lv, which appear in the results obtained by search engines.

In line with the Schema.org microdata standards, the meta tags on the applicant's website provide the following information: hyperlink, job, employer, geographical location of the job and date. That information, which is contained in the meta tags, is shown in the results offered by the search engine on the defendant's website.

2.   The applicant filed an application to protect its *sui generis* rights, in order to prevent extraction and re-utilisation of the contents of its database. According to the applicant, through the activities described above, the defendant is extracting a substantial part of the database and transmitting it to its website. Also, through the hyperlinks, the defendant is ensuring re-utilisation of the database.

3.   The court of first instance ruled that there was an infringement of a *sui generis* right and concluded that the fact that a hyperlink is included in the search results once the end user completes the search fields and that, by clicking on that hyperlink, the user is 'taken' to the applicant's website constitutes re-utilisation of the database.

4.   The defendant lodged an appeal against the judgment handed down by the court of first instance, arguing that the website it manages does not provide online transmissions, that is to say, it does not operate 'in real time'. The inclusion of a hyperlink on a website does not entail a system of direct control, does not operate 'in real time' and does not provide online transmission or any other form of transmission.

According to the defendant, a distinction must be drawn between a website and a database, because the applicant has placed all the information that it wishes to make available to search engines outside its database, that is, on its website, www.cv.lv, with the result that search engines do not access the applicant's database.

The defendant notes that the Schema.org microdata standards have been drawn up and maintained by the top four world leading internet search engines ― Google, Bing, Yahoo! and Yandex ― but that they are followed by virtually all the search engines in the world, including its own search engine, which is available at www.kurdarbs.lv. In accordance with those standards, the applicant has published on its website, www.cv.lv, the information (meta tags) that it wants search engines (such as google.com, bing.com, yahoo.com and, among others, kurdarbs.lv) to supply in the search results. The meta tags are located on the website www.cv.lv, which is outside the database.

In the view of the defendant, the conclusions drawn from the judgments of the Court of Justice of the European Union in *The British Horseracing Board Ltd and Others* ('Case C-203/02') and in *Innoweb* ('Case C-202/12') are not relevant to the present case, in so far as the facts of the main proceedings are different, and this is grounds for adopting a different interpretation of the terms 'extraction' and 're-utilisation'.

Points of Law

Legal framework

5. Article 7 of the Directive of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, which addresses the object of protection and forms part of Chapter III, entitled '*Sui generis* right', stipulates that Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.

This provision defines the terms 'extraction' and 're-utilisation' as follows:

(a)   'extraction' shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

(b)   're-utilisation' shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by online or other forms of transmission. The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community.

6. Directive 96/9 was transposed into Latvian law on 1 May 2004 by amending the Autortiesību likums (Law on copyright).

    Article 57(1) and (2) of the Law on copyright provides that the maker of a database, in respect of which there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents (Article 5(2)) shall mean the natural or legal person who has taken the initiative of creating the database and assumed the risk of the investment.

    The maker of a database shall have the right to prevent the following activities in respect of the whole or of a substantial part, evaluated qualitatively and/or qualitatively, of the contents of that database:

    (1) extraction: the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

    (2) re-utilisation: any form of making available to the public all or a substantial part of the contents of a database, including by the distribution of copies, by renting, by online or other forms of transmission.

    Reasons why there are doubts over the interpretation of the EU legislation

7. In the judgment of the Court of Justice of the European Union in case C-202/12, it was held that [']Article 7(1) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases must be interpreted as meaning that an operator who makes available on the internet a dedicated meta search engine such as that at issue in the main proceedings re-utilises the whole or a substantial part of the contents of a database protected under Article 7, where that dedicated meta engine:

    – provides the end user with a search form which essentially offers the same range of functionality as the search form on the database site;

    – "translates" queries from end users into the search engine for the database site "in real time", so that all the information on that database is searched through; and

    – presents the results to the end user using the format of its website, grouping duplications together into a single block item but in an order that reflects criteria comparable to those used by the search engine of the database site concerned for presenting results.[']

8. Paragraph 25 of the judgment states that [']it can be seen from the order for reference that a dedicated meta search engine such as that at issue in the main proceedings does not have its own search engine scanning other websites. Instead, in order to answer queries, the meta search engine makes use of the search engines on the websites covered by its service, as described in paragraph 9 above. The

dedicated meta search engine enters its users' queries, in translated form, in those search engines "in real time", so that all the data on those databases is searched through.'

In the main proceedings, the defendant argues that the website it manages, www.kurdarbs.lv, does not translate database search queries 'in real time' and that it has its own meta search engine.

9. Paragraphs 39 and 40 of the judgment state that [']as regards the activity of the operator of a dedicated meta search engine such as that at issue in the main proceedings and, in particular, the facet of that activity that is of relevance to the present case — that is to say, making available on the internet a dedicated meta search engine for translating queries (keyed into that meta search engine by end users) into the search engines of the databases covered by the service of the meta search engine in question — it should be noted that that activity is not limited to indicating to the user databases providing information on a particular subject['].

    [']The purpose of that activity is to provide any end user with a means of searching all the data in a protected database and, accordingly, to provide access to the entire contents of that database by a means other than that intended by the maker of that database, whilst using the database's search engine and offering the same advantages as the database itself in terms of searches, as can be seen from paragraphs 25 and 26 above. The end user no longer has any need, when researching data, to go to the website of the database concerned, or to its homepage, or its search form, in order to consult that database, since he can consult the contents of that website "in real time" through the website of the dedicated meta search engine.[']

    In paragraph 1 of this order, the referring court notes that the website managed by the defendant finds websites that publish information accessible to the public on job advertisements and uses a hyperlink to redirect users searching for job advertisements to the website on which the information it has found was originally published. End users click on the hyperlinks to access the applicant's website, www.cv.lv, and its contents, from the aforesaid website.

    Given that the facts of the main proceedings are different, the referring court has doubts over whether the conclusions reached by the Court of Justice of the European Union in case C-202/12 on the extraction or re-utilisation of the contents of a database by other forms of transmission are relevant as regards hyperlinks, which is an issue that is closely related to the difficulties of interpretation concerning the re-utilisation of a database by other forms of transmission.

10. In paragraph 4 of this order, the referring court sets out the observations of the defendant, who argues that a distinction must be drawn between a website and a database, because the applicant has placed all the information that it wishes to make available to search engines outside its database, that is, on its website,

www.cv.lv, in the form of meta data, with the result that search engines do not access the applicant's database.

11. According to the directive, 'extraction' means the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form. Consequently, as regards the concept of the 'extraction' of the contents of a database, the difficulty of interpretation lies in distinguishing between meta tags, being the information created by the applicant in order to enable internet search engines to extract that information, and the contents of the database. The question, therefore, is whether the information contained in the meta tags that is shown in the defendant's search engine constitutes an extraction of all or a substantial part of the contents of a database to another medium in any form, within the meaning of the directive under consideration.

12. In the view of the referring court, the *acte clair* doctrine is not applicable, because the facts of the main proceedings are different from those addressed in the judgment of the Court of Justice of the European Union in case C-202/12. The differences are explained in paragraphs 7 to 12 of this order.

13. In the light of the considerations set out above, the referring court has doubts over the interpretation of Article 7, in Chapter III (*Sui generis* right) of the Directive of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases. Therefore, in the opinion of the referring court, questions need to be referred to the Court of Justice of the European Union for a preliminary ruling.

[...] [reference to national rules of procedure]

Operative part

Based on Article 267 of the Treaty on the Functioning of the European Union, [...] [reference to national rules of procedure] the Regional Court, Riga (Civil Law Division)

orders

That the following questions be referred to the Court of Justice of the European Union for a preliminary ruling:

1. Should the defendant's activities, which consist in using a hyperlink to redirect end users to the applicant's website, where they can consult a database of job advertisements, be interpreted as falling within the definition of 're-utilisation' in Article 7(2)(b) of the Directive of 11 March 1996 on the legal protection of databases, more specifically, as the re-utilisation of the database by another form of transmission?

2.   Should the information containing the meta tags that is shown in the defendant's search engine be interpreted as falling within the definition of 'extraction' in Article 7(2)(a) of the Directive of 11 March 1996 on the legal protection of databases, more specifically, as the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form?

That proceedings be stayed until the Court of Justice of the European Union issues a final judgment.

[...] [reference to national rules of procedure]

[...][Signatures]