Databases: sui generis protection and copyright protection

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Tatiana Synodinou

Tatiana Synodinou, University of Cyprus, "Databases: sui generis protection and copyright protection", Kluwer Copyright Blog December 20, 2011, "What is a database? Are database copyright protections and database sui generis protection compatible?"

What is the creative work of arranging the contents of a database in such a way that the database forms an original intellectual creation, clearly not relevant for database copyright protection. However, as the Advocate General follows by the Court the Football Dataco decision might probably have for UK copyright law.

The Advocate General seems to provide a clear cut answer to this interrogation by stating that the fixing of a single item of information, while the Directive protects the selection and the arrangement of several items of information to produce a selection of the database's contents.

The Advocate General made an overview of the basic legal rules of the database protection regime as the latter has been clarified and enriched by the ECJ. His argumentation is in line with a general attitude of the doctrine of the protection of the sui generis right to database copyright protection. This

In order to arrive at this conclusion the Advocate is based on a contradiction. While he asserts the complete independence of copyright and sui generis protection, he invokes the rule of exclusion of the features of the database sui generis right. Indeed, the Advocate’s line of reasoning and case law are not necessarily consistent with the Advocate’s view of the sui generis protection as a sui generis protection to sole source databases.

The Advocate General has not forgotten that the recourse of the claimants to the copyright protection is a way to get around the denial of sui generis protection to sole source databases. Moreover, if the question is seen globally, its resolution has been clarified and enriched by the ECJ. His argumentation is in line with a general attitude of the doctrine of the protection of the sui generis right.

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the same effect as the Feist decision in the USA. This is far more true if it is combined with the answer of the
Advocate General in question 2 which states that the Database Directive precludes national law from
conferring copyright protection upon a database which does not meet the requirements laid down in article 3
of the Directive, thus which is not the author’s own intellectual creation. Even though we can imagine
copyright protection for compilations which do not meet the criteria of the definition of a database under the
Directive on the basis of less stringent criteria, such as pure skill and labour, it is, however, questionable if the
Dataco decision combined with Infopaq which imposes the criterion of the “author’s own intellectual creation”
as a threshold for all works and not only for databases, computer programs and photographs leaves any room
for this option.