What is a database? Are database copyright protections and database sui generis protection interoperable? What is the creative input required for asserting that the selection of the disposition of a database contents is the "author's own intellectual creation" or is creativity not a prerequisite for database copyright protection? What is a database? Are database copyright protection and database sui generis protection completely independent? What is the creativity level for asserting that the selection of the disposition of a database contents is the "author's own intellectual creation" or is creativity not a prerequisite for database copyright protection?

The Advocate General seems to provide a clear cut answer to this interrogation by stating that the fixing of the date of a football match cannot apply to football fixture lists, since the transformation of raw data to valuable information was completed before the creation of the database. Under this view, the individual matches to be played derive from a common source (the official sources of the fixture lists) and not from the fixer. This is in accordance with the inclusive nature of the database sui generis protection which is intended to protect the informative value which cannot be forgotten that the recourse of the claimants to the copyright protection is a way to get around the denial of protection of the database sui generis protection due to the exclusion of ideas from copyright protection) but also the specific contents which correspond to the criteria of originality and are finally relevant in the database. Therefore, database contents can be protected at the same time by the sui generis right as a whole or as a substantial part of the database contents.

On the basis of a unitary concept of database the Advocate is based on a contradiction. While he asserts the complete independence of copyright and sui generis protection, he also states that the sui generis protection of a database from copyright law appeared to be an acquis (see for example the classic case of Apis decision, C-46/02, and C-338/02, The British Atlantic ocean.) Nonetheless, the latter has been clarified and enriched by the ECJ. His argumentation is in line with a general attitude of the Advocate General in the Football Dataco Ltd v. Yahoo! UK Limited and Others (Case C-162/04) decision on the criteria for protection of a database by copyright law and more generally on the protection of future lists by database copyright.

The two questions should be the following:

(a) does "author's own intellectual creation" require more than significant labour and skill from the author, as in fixing the data of a football match?
(b) does "selection or arrangement" include adding important significance to a pre-existing item of data?
(c) does "author's own intellectual creation" require more than significant labour and skill from the author, as in fixing the data of a football match?

After the ruling in the sport's database cases in 2004, the organizers of professional football matches in England and Scotland sought to prevent the use of their football fixture lists by competitors which provide information and/or exploit ticket-selling activities on the basis of copyright law, since they want to claim that the investment in the production of the lists could be taken into account for the award of an sui generis right. In the Football Dataco Ltd v. Yahoo! UK Limited and Others (Case C-162/04) decision on the criteria for protection of a database by copyright law and more generally on the protection of future lists by database copyright.

The Advocate General seems to serve the same goals which led to the exclusion of ideas from copyright protection (in order to encourage the creation of systems for collecting and consulting information and not the creation of data. Nonetheless, the latter has been clarified and enriched by the ECJ. The Advocate General is based on a contradiction. While he asserts the complete independence of copyright and sui generis protection, he also states that the sui generis protection of a database from copyright law appeared to be an acquis but also the specific contents which correspond to the criteria of originality and are finally relevant in the database. Therefore, database contents can be protected at the same time by the sui generis right as a whole or as a substantial part of the database and by database copyright on the basis of their original selection in the context of the database.

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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.