“The crux of the judgment comes at paragraph 60 where the court clearly states that skill and labour in the selection or arrangement of the data, even if significant, is not sufficient as such to trigger copyright protection. The case did not challenge the specificity of the arrangement but whether the underlying choice was original. (This is a point of contention in the Infopaq case.)”

The Court of Justice of the European Union (CJEU) ruled in Case C-604/10 that Football Dataco (FDC) could not claim copyright protection for its football fixtures lists. FDC claimed that the lists were protected by copyright as databases because they contain a substantial amount of skill and labour and does not simply follow rigid rules. However, the CJEU ruled that the protection afforded by copyright law is not appropriate for databases because the person who makes (a certain Mr Thompson) them expands a lot of skill and labour and not simply follows rigid rules.

Nonetheless, it is slightly unclear whether the Court of Appeal cannot find that the judgement on this point is not an appealable point of law. The High Court and Court of Appeal of England and Wales accepted that they were databases but rejected sui generis right in them as per the CJEU’s Football Dataco decision. But the Court of Appeal could have been a different composition or had different judges. Therefore, the Court cannot make the final decision.

The Court then refers to its Infopaq judgment to find that a database is a compilation of pre-existing materials, each of which is already protected by copyright or other intellectual property rights. The selection or arrangement of the data contained in the database is not original. Unless these procedures are supplemented by elements reflecting originality in selecting or arranging the data contained in the lists, the national court will then be forced to find that the database is not original and thus not protected by copyright law.

As the Court of Appeal of England and Wales accepted that the claimant (Football Dataco) argued that the lists were protected by copyright as databases, the High Court and Court of Appeal of England and Wales accepted that they were databases but rejected sui generis right in them as per the CJEU’s Football Dataco decision. But the Court of Appeal could have been a different composition or had different judges.

The crux of the judgment comes at paragraph 60 where the court clearly states that skill and labour in the selection or arrangement of the data, even if significant, is not sufficient as such to trigger copyright protection. The case did not challenge the specificity of the arrangement but whether the underlying choice was original. (This is a point of contention in the Infopaq case.)

The Court of Justice then seems to retract from this leeway given to the creator of the database by the recent Infopaq case. Indeed, as article 3(1) of the Database Directive says no other criterion than that of originality is to be applied to determine whether the database is eligible for copyright protection. Therefore, the court, are not original. Unless these procedures are supplemented by elements reflecting originality in selecting or arranging the data contained in the lists, the national court will then be forced to find that the database is not original and thus not protected by copyright law.

The Court then refers to its Infopaq judgment to find that a database is a compilation of pre-existing materials, each of which is already protected by copyright or other intellectual property rights. The selection or arrangement of the data contained in the database is not original. Unless these procedures are supplemented by elements reflecting originality in selecting or arranging the data contained in the lists, the national court will then be forced to find that the database is not original and thus not protected by copyright law.

Therefore, adding significance to the data as such is not relevant anyway, because it is something done to the data after its creation and thus irrelevant as per the Court of Justice’s reasoning. Indeed, as article 3(1) of the Database Directive says no other criterion than that of originality is to be applied to determine whether the database is eligible for copyright protection.

As to the first question, the Court rightly holds that the Database Directive’s concepts of “selection” and “arrangement” refer to the “selection or arrangement of the data through which the author of the database gives the database its structure.” Selection and arrangement do not extend to the creation of the lists contained in the database. Furthermore, the selection and arrangement of data in creating a database are not intended in order to assess the eligibility of the database that contains them for copyright protection. The Court notes that the separate protection for the function of the database and the data de facto, is not relevant in this case, in view of the significant choices the data does with the creation of the database. Therefore, adding significance to the data as such is not relevant anyway, because it is something done to the data after its creation and thus irrelevant as per the Court of Justice’s reasoning. Indeed, as article 3(1) of the Database Directive says no other criterion than that of originality is to be applied to determine whether the database is eligible for copyright protection.

The Court of Justice ruled that the author’s own intellectual creation can be found in a database in the context of the second question. The Court of Justice then seems to retract from this leeway given to the creator of the database by the recent Infopaq case. Indeed, as article 3(1) of the Database Directive says no other criterion than that of originality is to be applied to determine whether the database is eligible for copyright protection. Therefore, the court, are not original. Unless these procedures are supplemented by elements reflecting originality in selecting or arranging the data contained in the lists, the national court will then be forced to find that the database is not original and thus not protected by copyright law.

Therefore, adding significance to the data as such is not relevant anyway, because it is something done to the data after its creation and thus irrelevant as per the Court of Justice’s reasoning. Indeed, as article 3(1) of the Database Directive says no other criterion than that of originality is to be applied to determine whether the database is eligible for copyright protection.

The crux of the judgment comes at paragraph 60 where the court clearly states that skill and labour in the selection or arrangement of the data, even if significant, is not sufficient as such to trigger copyright protection. The case did not challenge the specificity of the arrangement but whether the underlying choice was original. (This is a point of contention in the Infopaq case.)

The Court then refers to its Infopaq judgment to find that a database is a compilation of pre-existing materials, each of which is already protected by copyright or other intellectual property rights. The selection or arrangement of the data contained in the database is not original. Unless these procedures are supplemented by elements reflecting originality in selecting or arranging the data contained in the lists, the national court will then be forced to find that the database is not original and thus not protected by copyright law.

As the Court of Justice of the European Union (CJEU) ruled in Case C-604/10 that Football Dataco (FDC) could not claim copyright protection for its football fixtures lists, FDC claimed that the lists were protected by copyright as databases because the person who makes (a certain Mr Thompson) them expands a lot of skill and labour and does not simply follow rigid rules. However, the CJEU ruled that the protection afforded by copyright law is not appropriate for databases because the person who makes (a certain Mr Thompson) them expands a lot of skill and labour and does not simply follow rigid rules. However, the CJEU ruled that the protection afforded by copyright law is not appropriate for databases because the person who makes (a certain Mr Thompson) them expands a lot of skill and labour and does not simply follow rigid rules.

Nonetheless, it is slightly unclear whether the Court of Appeal cannot find that the judgement on this point is not an appealable point of law. The High Court and Court of Appeal of England and Wales accepted that they were databases but rejected sui generis right in them as per the CJEU’s Football Dataco decision. But the Court of Appeal could have been a different composition or had different judges. Therefore, the Court cannot make the final decision.

Summary & comment by Estelle Derclaye

The University of Nottingham

Estelle Derclaye

Kluwer Copyright Blog

Football Dataco: skill and labour is dead!

Kluwer Copyright Blog

March 1, 2012

Estelle Derclaye, The University of Nottingham

Please refer to this post as: Kluwer Copyright Blog, March 1, 2012, http://copyrightblog.kluweriplaw.com/2012/03/01/football-dataco-skill-and-labour-is-dead/