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Ryanair Ltd v. PR Aviation BV: contracts, rights and users in a “low cost” database law

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The CJEU’s interpretative work on copyright law issues launched in 2015 with the decision of 15 January in the case of Ryanair Ltd v PR Aviation BV (Case C-30/14). The Ryanair ruling is the latest stone added to the complex edifice of legal protection of databases in Europe.

PR Aviation operates a website which allows consumers to search through the flight data of low-cost air companies. It obtains the necessary data to respond to an individual query by automated means, *inter alia*, from a dataset linked to the Ryanair website. Access to Ryanair’s website presupposes that a visitor to the site accepts the application of the air company’s general terms and conditions by ticking a box to that effect. According to these general terms, the information contained on the site can be used only for private and non-commercial purposes and the use of automated systems or software to extract data from the site for commercial purposes (‘screen scraping’) is prohibited, unless the third party has directly entered into a written licence agreement with Ryanair. Ryanair claimed that PR Aviation had infringed copyright law and the database sui generis right and that it had acted contrary to the terms and condition of use of its website, which had been accepted by PR Aviation. After having its claims dismissed by both the Rechtbank Utrecht and the Court of Appeal of Amsterdam, Ryanair appealed against the judgment of the Court of Appeal of Amsterdam before the Netherlands Supreme Court.

The Netherlands Supreme Court decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling: “*Does the operation of [Directive 96/9] also extend to online databases which are not protected by copyright on the basis of Chapter II of [that directive], and also not by a sui generis right on the basis of Chapter III, in the sense that the freedom to use such databases through the (whether or not analogous) application of Article[s] 6(1) and 8 in conjunction with*

Article 15 [of Directive 96/9], may not be limited contractually?".

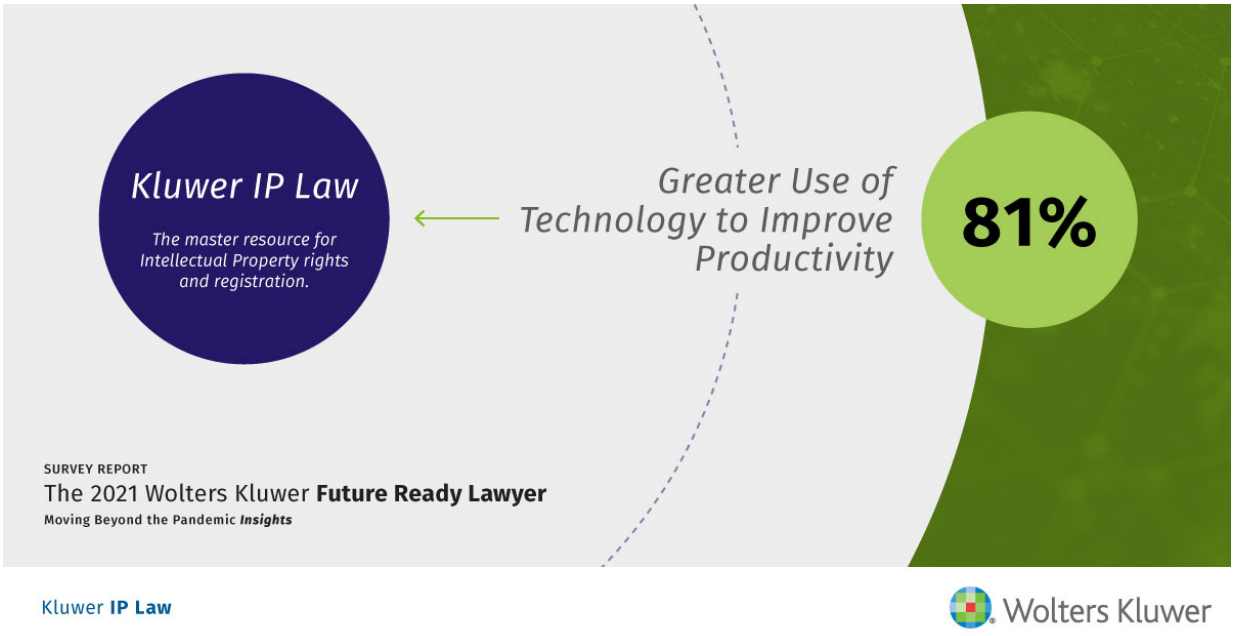
The answer of the CJEU seems obvious. If the national court decides that Ryanair's database is not protected under the terms of the Database Directive, either by copyright or by the sui generis right, the provisions of the Directive are not applicable to it. So, the author of such a database is not precluded from laying down contractual limitations on its use by third parties, without prejudice to the applicable national law. Contractual freedom prevails and there is no place for the *ius cogens* of articles 6 (1) and 8 of the Database Directive. The author or producer of the database is not obliged to safeguard a minimal level of free use of the database contents for the database's users, such as the right for a lawful user to extract and reuse an insubstantial part of the database's contents for any reason, even for commercial purposes.

The contractual method of delimitating the use of information has its own inherent limits. The principle of privity of the contract precludes the imposition of the contractual obligations on third parties. So, where the information extracted from a contractually protected database is further disseminated on the Internet, by a third party who has taken this information from the original extractor's website, the database author/producer cannot bring a claim for breach of contract against the third party. The conclusion of a contract of use between the author/producer of the database and the database's user is not disputed in the Ryanair case. Every user of the air company's website had to tick a box confirming compliance with the general terms of use of the site. So, ticking the box was the demonstration of an express acceptance of the contract's terms. But, even if there was no requirement to tick a box, the contract could still have been concluded on the grounds that the use of a website implies the acceptance of the general terms of its use, provided that the terms of use have been properly notified to the user when accessing the website. Certainly, the contract is the last and weakest legal resort for database producers when the database sui generis right does not apply. And this will often be the case when the production of the database appears to be a sub-product of another activity of a database producer whose main investments relate to another economic activity, and do not directly concern the creation of the database, such as in the present case.

Nonetheless, since the sui generis right does not apply, the rights of the lawful user do not apply either. But, which rights we are talking about? Does copyright law recognise, aside from copyright exceptions, certain "user rights"? A few years ago even posing such a question was deemed heretic. In principle the answer is negative, since the author-centred continental European tradition of copyright law precludes the recognition of copyright exceptions as user rights. Nonetheless, the emergence of the concept of lawful user and the declaration of certain copyright exceptions as mandatory in the Software and Database Directives introduced a new perception of the delimitation of the copyright monopoly. Indeed, the introduction of mandatory copyright exceptions that cannot be overridden by contractual terms, marks the advent of a more robust and active approach to copyright exceptions and brings closer the "legal prerogatives" safeguarded by the exceptions to the legal nature of "rights".

The recognition of the existence of such rights is the major contribution of this ruling. According to recital 39 of the ruling (emphasis added), " *..it is clear from the purpose and structure of Directive 96/9 that Articles 6(1), 8 and 15 thereof,* ***which establish***

mandatory rights for lawful users of databases*, are not applicable to a database which is not protected either by copyright or by the* sui generis *right under that directive, so that it does not prevent the adoption of contractual clauses concerning the conditions of use of such a database*". The Court is more explicit in recital 40 which states "*That analysis is supported by the general scheme of Directive 96/9. As Ryanair and the European Commission have stated,* ***that directive sets out to achieve a balance between the rights of the person who created a database and the rights of lawful users of such a database****, that is third parties authorised by that person to use the database….*". Certainly, the recognition of such rights remains marginal, since it concerns only specific cases (computer programs and databases) and not copyright exceptions in general, which shall be interpreted restrictively according to the established case law of the CJEU. But, it shall not be ignored. It has a particular symbolism that marks a new perspective on the position of users in copyright law that has to be further explored.



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