OPINION OF ADVOCATE GENERAL MENGOZZI

delivered on 15 December 2011

Case C-604/10

Football Dataco Ltd
Football Association Premier League Ltd
Football League Limited
Scottish Premier League Ltd
Scottish Football League
PA Sport UK Ltd
v
Yahoo! UK Limited
Stan James (Abingdon) Limited
Stan James PLC
Enetpulse APS

(reference for a preliminary ruling from the Court of Appeal (England & Wales) (Civil Division), United Kingdom)

(Directive 96/9/EC – Legal protection of databases – Football league fixture lists – Copyright)

1. In the present case the Court is called upon to expand upon its case-law regarding the possibility of protecting football league fixture lists on the basis of Directive 96/9/EC on the legal protection of databases (also 'the Directive'). (2) In 2004, the Court held that such fixture lists cannot, in principle, be protected on the basis of the 'sui generis' right provided for under the Directive. In order to complete the picture, it is now necessary to determine whether copyright protection applies and, if so, on what conditions.

I – Legal context

2. Under Directive 96/9, a database can be covered by two distinct types of protection. The first is that provided by copyright, defined in the following terms in Article 3:

'1. In accordance with this Directive, databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright. No other criteria shall be applied to determine their eligibility for that protection.

2. The copyright protection of databases provided for by this Directive shall not extend to their contents and shall be without prejudice to any rights subsisting in those contents themselves.'

3. Article 7 of the Directive then provides for another type of protection for databases, based on a 'sui generis' right, where a 'substantial investment' has been needed to build them up:

'1. 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.

…

4. The right provided for in paragraph 1 shall apply irrespective of the eligibility of that database for protection by copyright or by other rights. Moreover, it shall apply irrespective of eligibility of the contents of that database for protection by copyright or by other rights. Protection of databases under the right provided for in paragraph 1 shall be without prejudice to rights existing in respect of their content.'

4. Article 14 of Directive 96/9 deals with the application of that directive over time. In particular, Article 14(2) lays down the rule to be applied where a database was protected by copyright before the Directive entered into force, but does not meet the requirements for such protection on the basis of the Directive itself:

'[w]here a database protected under copyright arrangements in a Member State on the date of publication of this Directive does not fulfil the eligibility criteria for copyright protection laid down in Article 3(1), this Directive shall not result in any curtailing in that Member State of the remaining term of protection afforded under those arrangements.'

II – Facts, the main proceedings and the questions referred for a preliminary ruling

5. Football Dataco Ltd and the other applicant companies ('Football Dataco and Others') organise the English and Scottish football leagues. In that context, they draw up and make public the list of all the fixtures to be played each year in those leagues. The opposing parties, Yahoo! UK Limited and Others ('Yahoo and Others'), use those schedules to provide news and information and/or to organise betting activities.

6. Football Dataco and Others are essentially demanding that Yahoo and Others pay for the rights to use the football fixture lists compiled by Football Dataco and Others. They claim protection for those fixture lists under the Directive, on the basis of both the copyright and the 'sui generis' right.

7. The national courts have ruled out the possibility of protection based on the 'sui generis' right, since the Court of Justice has ruled on the point recently and in very clear terms, in four judgments delivered by the Grand Chamber in November 2004. (3) However, on the view that the issue concerning possible protection under the copyright – which was not raised in the context of the cases resolved in 2004 – remains open, the referring court stayed proceedings and referred the following questions for a preliminary ruling:

'(1) In Article 3(1) of Directive 96/9/EC … what is meant by "databases which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation" and in particular:

(a) should the intellectual effort and skill of creating data be excluded?

(b) does "selection or arrangement" include adding important significance to a pre-existing item of data (as in fixing the date of a football match)?

(c) does "author's own intellectual creation" require more than significant labour and skill from the author, if so what?

2. Does the Directive preclude national rights in the nature of copyright in databases other than those provided for by the Directive?'

III – Question 1

8. By Question 1, the referring court asks the Court to specify, essentially, under what conditions a database may be protected by copyright under Directive 96/9/EC. In order to respond adequately, it is first of all necessary to review the Court's case-law on football fixture lists and then to ascertain the relationship

between the two types of protection possible under the directive, namely, the copyright and the 'sui generis' right.

A – *Relevant case-law of the Court*

9. The Court's case-law relating to the protection of databases – and I refer, in particular, to the November 2004 judgments mentioned above – has clarified two fundamental points, which must be kept in mind when examining the questions referred in the present case.

10. First, a football fixture list, albeit consisting in a simple list of matches, must be regarded as a database for the purposes of the Directive. (4) That point is taken as given by the referring court and by all the parties who submitted observations, and therefore requires no further attention.

11. Secondly, a football fixture list does not meet the requirements for protection by the 'sui generis' right under Article 7 of the Directive. That is because the drawing up of the fixture list – that is to say, the entry of a series of pre-existing components (the data relating to each match) into an ordered list – does not require any substantial investment in the obtaining, verification or presentation of the contents. (5) As I have stated, that aspect is also taken for granted by the referring court (although some parties to the main proceedings sought to have questions relating to the 'sui generis' right referred to the Court as well), which accordingly restricted the scope of its questions to protection on the basis of the copyright.

B – *The relationship between protection under the copyright and the 'sui generis' protection*

12. Another point which must necessarily be clarified before addressing Question 1 concerns the relationship between the two types of protection provided for under the Directive. It could be thought, on a reading of the applicable provisions, that there is a *hierarchical relationship* between protection under the copyright and the 'sui generis' protection. On such an interpretation, which counts some authoritative endorsements, (6) and which was alluded to in certain observations made at the hearing, the 'sui generis' protection is regarded as a second-level protection, which can be held to apply to a database that does not possess the necessary originality to be protected by the copyright. If that were case, the fact that, in its judgments of November 2004, the Court ruled out the possibility of 'sui generis' protection (the 'lesser' protection, as it were) for football leagues would mean that protection under the copyright (the 'greater' protection, as it were) is automatically excluded.

13. However, careful examination of the Directive shows that such an interpretation is not correct, and that the two types of protection must be regarded

as mutually independent in all respects, a fact which all the parties who submitted observations in the present case, including the Commission, seem to have accepted.

14. It must be observed that, in the Directive, the very object of the two types of protection is different. On the one hand, protection under the copyright focuses essentially on the *structure* of the database, that is, the way in which it has actually been put together through the selection of the data to be included or the way in which they are presented. What is more, Article 3(2) states clearly that the copyright provided for in that article 'shall not extend to [the] contents' of databases, which can be protected by copyright autonomously, but are not protected by virtue of being entered in a protected database. Recital 15 to the Directive states that the copyright protection 'cover[s] the structure of the database'. The 'sui generis' protection, on the other hand, is simply a right to prohibit extraction and/or re-utilisation *of the data contained in the database*. That right is conferred, not to protect the originality of the database in itself, but to compensate the effort expended in obtaining, verifying and/or presenting the data contained therein. (7)

15. In other words, therefore, a database can be protected by the copyright alone, or by the 'sui generis' right alone, by both or by neither, depending on the case.

C – *The concept of a 'database' for the purposes of the Directive*

16. The fact that – as we have just seen – the two possible types of protection for a database are mutually independent in all respects does not mean, however, that the concept of a 'database', as developed by the Court in its judgments of November 2004, must differ as between the two types of right. On the contrary, I am convinced that the concept of a database must necessarily be the same in both cases. There would be no sense in a key concept of the Directive, defined in Article 1, having a different meaning – with nothing in the text to suggest that it should – for the purposes of construing two separate provisions, which are in no way compromised if they are interpreted in the light of a common concept of a 'database'. The copyright can protect the structure of the database, while the 'sui generis' right guards its content, but that does not mean that there must be two separate concepts of a 'database'.

17. In that context, the Court has made it clear that the scope of protection provided by the Directive *does not cover the phase in which the data are created, but only the phase in which they are collected, verified and presented*. (8) In other words, in identifying the 'database', care must be taken to plot clearly the dividing line between the time when the data are created, which the Directive does not concern, and the time when they are collected or developed, which, by contrast, is

relevant for the purposes of determining whether or not the database is eligible for protection.

18. The Court drew that distinction, between the creation and the banking of the data, in the course of discussing the 'sui generis' protection. In my view, however, these are considerations which concern, more generally, the very concept of a 'database' for the purposes of the Directive. That finding also makes it clear, once and for all, that the Directive protects *the creation of databases* – both in terms of the structure of the database and in terms of the collection of the data – *but does not deal with the protection of the data as such*. Furthermore, the objective of the Directive is to encourage the creation of systems for collecting and consulting information, (9) not the creation of data. When discussing the concept of a 'database', the Court has, moreover, repeatedly stressed the independent informative value of the data entered in a database. (10)

19. Furthermore, as regards copyright, it is perfectly logical not to take the activities involved in the creation of the data into consideration for the purposes of Directive 96/09, since that directive makes it clear that the data *may still be protected as such by copyright*, if the conditions for such protection are met, independently of any copyright in the database itself.

20. I must also observe that, in the present case, the very idea of using copyright to protect football fixture lists seems peculiar, to say the least. As I have already pointed out above, in the case of a database, the copyright essentially protects its 'external' aspect, its structure. It is my understanding that Yahoo and Others use *the data* developed by the companies which organise the leagues, not the form in which in which those companies make the data public. Perfectly reasonably, before the Court's judgments of 2004 ruled out the possibility that the 'sui generis' type of protection could apply, the only type of protection that the organising companies considered was the 'sui generis', which, as has been seen, protects the contents of a database (or, more accurately, the effort required to collect and present the data) rather than its structure. Recourse to the copyright now appears to be a 'fallback' solution prompted by the Court's exclusion of 'sui generis' protection. Moreover, it is not even certain that, were protection under copyright available for football fixture lists, it would impede the current activities of Yahoo and Others, which, as far as can be understood from the case file, appear to be confined to use of the raw data (the dates, times and teams for the various matches), and not the structure of the database.

21. On the basis of all those preliminary remarks, we can now move on to consider Questions 1(a), (b) and (c). As will be seen, because of the approach taken to each of those three queries. The solution to these will allow me to arrive at an answer to the whole of the first question.

D – *Question 1(a)*

22. By the first of the three sub-questions, the referring court asks the Court whether the activity that goes into creating the data which are entered into the database is to be taken into consideration when deciding whether or not the database is eligible for protection under the copyright.

23. The answer to that question flows directly from what I have stated above regarding the fact that, throughout the Directive, the term 'database' necessarily relates to one and the same concept. The effort expended in the *creation* of the data cannot be taken into account for the purposes of assessing eligibility for protection under the copyright, just as, according to the Court's case-law, they cannot be taken into account for the purposes of assessing eligibility for 'sui generis' protection. The creation of the data is an activity which falls outside the scope of the Directive.

24. Furthermore, it should be noted that if the activities involved in the creation of the data cannot, as the Court has affirmed, be taken into consideration for 'sui generis' protection, which is more closely linked to the data and the obtaining of those data, then *a fortiori* those activities will have to be disregarded for protection by copyright, which is more tenuously linked to the collection of the data and is focused more on their representation.

E – *Question 1(b)*

25. By the second sub-question, the referring court asks the Court to clarify whether the 'selection or arrangement' of the contents of the database – appraisal of which makes it possible to determine whether the requirements for protection under the copyright are satisfied – can also consist in adding important significance to a pre-existing item of data.

26. Essentially, what is being asked is whether, for instance, the attribution of additional specific characteristics to an item already entered in a database amounts to 'selection or arrangement' in sufficient measure to ensure protection under Article 3. The referring court mentions by way of example the act of determining the date of a given match between two football teams.

27. To my mind, that sub-question is based on a mistaken premise. Indeed, all the details relating to each match in a given league *must be regarded as having been fixed by the time they are entered in the database*. In the case of football fixture lists, the basic data entered in the database are not – as the Court has already made clear – all the teams and all the possible dates, *but the specific details of every single match to be played* (date, teams, venue, and so on).(11) In other words, all the details for each match are identified and collected at the data creation stage – which, as has been seen, is excluded from protection under the Directive – and the determination of those details cannot be regarded as caused by or following upon the organisation of the data in the database.

28. The referring court, on the other hand, seems to start from the assumption that, in practice, a number of simple lists are entered in the database: all the teams in the league, and all the possible dates and times for the matches. Viewed in that way, the determination of the specific details of each match (the teams involved, the date and time) would take place *after* the basic data were entered in the database. Such a determination would be *output* generated by the database.

29. In my opinion, that is an incorrect reading of the facts. It is not the generic lists of teams and the possible dates and times that are entered in the database. Rather, what is entered in the database is all the individual matches to be played, *each with its details already finalised*: time, date, and teams. The transition from the generic lists (for instance, teams A, B, C, D and so on, and dates x, y z, and so on) to the definition of the individual matches (for instance, team A against team B on date x) *takes place at the data creation stage*, which precedes the entry of those data in the database.

30. In consequence, the fairly detailed observations submitted by the parties to the case before the referring court in order to demonstrate that the process of determining the details of each individual match is not simply automatic, but in fact requires considerable judgment and skill, are irrelevant. That process is wholly preliminary to, and separate from, that of the creation of the database.

31. The interpretation just suggested is confirmed by the case-law of the Court referred to above and, in particular, by those passages in which it is stressed that the individual components of a database must have autonomous informative value. (12) To my mind, generic lists of teams, dates and times cannot be regarded as genuinely 'informative'. Only the set of details identifying each individual match can have such value.

32. That said, I believe that, if framed in abstract terms and posed outside the context of the present case, the sub-question should be answered in the affirmative. In other words, the adding of important significance to pre-existing items of data – by entering those data in a database – can constitute an 'arrangement of contents' which can properly be taken into consideration for the purposes of protection under the copyright. In my view, there is no doubt that, in the spirit of the Directive, the fact that the entry of data in a database adds further value or significance to those data can be relevant, in the context of an overall assessment, for the purposes of determining whether the database itself is to be accorded copyright protection. What is more, that is the very purpose of the provision, which seeks to protect what a database 'adds', in whatever way, to the basic data entered in it. The elements which characterise the matches of a football league, however, are *all* basic data, and are not output generated by the entry of the basic data in a database.

F – *Question 1(c)*

33. By the third sub-question, the referring court asks the Court about the concept of the 'intellectual creation' of the author of the database. This is, of course, a reference to the condition laid down in Article 3 of the Directive to the effect that, to be protected by the copyright, the database must, by reason of the selection or arrangement of its contents, be the author's own intellectual creation. In particular, the referring court asks whether or not the application of 'significant labour and skill' is sufficient for there to be an intellectual creation.

34. In all likelihood, this third sub-question – like the second – is based on the assumption, which I believe to be mistaken, that the effort expended by the organising companies to determine the teams, the date and the times of the various league matches – which undoubtedly requires a certain amount of labour and organising experience – are linked to the setting up of the database. In reality, as I have pointed out above, that effort is expended at the previous stage, at which the data are created, which cannot be taken into consideration for the purposes of assessing whether the database is eligible for protection.

35. In any case, even leaving aside that matter and considering the national court's question in the abstract, I believe that the answer admits of no alternative: copyright protection is conditional upon the database being characterised by a 'creative' aspect, and it is not sufficient that the creation of the database required labour and skill.

36. It is common knowledge that, within the European Union, various standards apply as regards the level of originality generally required for copyright protection to be granted. (13) In particular, in some European Union countries which have common law traditions, the decisive criterion is traditionally the application of 'labour, skills or effort'. For that reason, in the United Kingdom for example, databases were generally protected by copyright before the entry into force of the Directive. A database was protected by copyright if its creator had had to expend a certain effort, or employ a certain skill, in order to create it. On the other hand, in countries of the continental tradition, for a work to be protected by copyright it must generally possess a creative element, or in some way express its creator's personality, even though any assessment as to the quality or the 'artistic' nature of the work is always excluded.

37. Now, on this point there is no doubt that, as regards copyright protection, the Directive espouses a concept of originality which requires more than the mere 'mechanical' effort needed to collect the data and enter them in the database. To be protected by the copyright, a database must – as Article 3 of the Directive explicitly states – be the 'intellectual creation' of the person who has set it up. That expression leaves no room for doubt, and echoes a formula which is typical of the continental copyright tradition.

38. Clearly, it is not possible to define, once and for all and in general terms, what constitutes an 'intellectual creation'. That depends on an assessment which, as I have said, is not necessary in the present case. In any event, if ever that assessment is required, it is for the national courts to undertake it on the basis of the circumstances of each individual case.

39. The Court has made some statements on this matter and, in particular, has stressed that the copyright protection of databases under Article 3 of the Directive – like the copyright protection of computer programs under Article 1(3) of Directive 91/250 (14) or of photographs under Article 6 of Directive 2006/116 (15) – requires that the works be 'original, in the sense that they are their author's own intellectual creation'. (16)

40. In that regard, the Court has also stated that a work is an intellectual creation if it reflects the personality of its author, which is the case if the author was able to make free and creative choices in the production of the work. (17) The Court has further specified that, in general, the necessary originality will be absent if the features of a work are predetermined by its technical function. (18)

41. What the legislature sought to achieve through the Directive, essentially, is a sort of compromise/reconciliation between the approaches in the various Member States of the European Union at the time when the Directive was adopted. For copyright protection, the more 'rigorous' paradigm of the countries of the continental tradition was chosen, whereas, for 'sui generis' protection, a criterion was used which, in practice, is closer to that of the common law tradition. (19)

42. As can be seen, these are rather general tendencies, which need not be explored any further here, since, as I stated above, in the case of a football fixture list, the database accommodates complete and autonomous items of information *which do not acquire any additional significance by being entered in the database itself*.

43. Naturally, the fact that copyright protection of databases is subject to a fairly stringent originality requirement does not mean that the 'mechanical' efforts involved in the collection of the data are irrelevant for the purposes of the Directive. On the contrary, the essential purpose of Article 7 of the Directive, relating to 'sui generis' protection, is precisely to provide legal protection for those activities. The fact that the Court has excluded its application to football fixture lists does not detract from its importance in more general terms.

44. The fact also remains that, in principle, even a football fixture list can in some circumstances be protected by copyright if, in actually putting it together, the creator introduces sufficiently original features. For example, a football fixture list characterised by a particular manner of representing the matches, through the

use of colours or other graphic elements, could certainly qualify for copyright protection under the Directive. However, that protection would extend only to the *means* of the representation, and not the data represented. In the case before the referring court, it does not appear that the football fixture list produced by the organising companies is characterised by any original means whatsoever of presenting the data; it is for the national court to make that assessment, however, also taking into account the guidance from the Court, referred to above.

G – *Conclusion on Question 1*

45. Consideration of the three sub-questions has made it possible to clarify certain essential aspects of the protection of databases by copyright under the Directive. In particular, it has been established that the effort expended in the creation of the data cannot be taken into consideration for the purposes of assessing the eligibility for protection of the database as such (Question 1(a)). Secondly, we have seen that, although the addition of new elements to the pre-existing data as a result of their being entered in a database can be relevant for the purposes of assessing whether the database is eligible for protection, in the case of a series of football matches entered in a database, there is no 'enhancement' of the pre-existing items of data (Question 1(b)). Lastly, it has been found that the mere application of effort or skill does not suffice to make a database an intellectual creation protected by the copyright (Question 1(c)). On the basis of those observations, it is now possible to formulate an answer to Question 1.

46. I therefore propose that, in answer to Question 1, the Court should state that a database can be protected by copyright under Article 3 of Directive 96/9/EC only if it is an original intellectual creation of its author. The activities involved in the creation of the data cannot be taken into account for the purposes of that assessment. In the case of a football fixture list, the determination of all the elements relating to each individual match is a data creation activity.

IV – Question 2

47. By Question 2, the referring court asks the Court if protection provided for under the Directive on the basis of the copyright is the only type of copyright protection possible for a database or if, on the contrary, national law may confer the same protection on databases which do not meet the necessary conditions under the Directive.

48. The referring court states clearly in the order for reference that it has only minor doubts regarding the answer to the question and, in fact, Question 2 can be rapidly resolved. It is clear that the Directive has completely harmonised the protection of databases by copyright, so that further rights cannot be conferred at national level.

49. That this was the legislature's intention is demonstrated unambiguously by the recitals to the Directive alone. For example, recital 3 states as follows:

'… existing differences distorting the functioning of the internal market need to be removed and new ones prevented from arising, while differences not adversely affecting the functioning of the internal market or the development of an information market within the Community need not be removed or prevented from arising'.

50. Recital 12 to the Directive follows the same line of thought:

'… such an investment in modern information storage and processing systems will not take place within the Community unless a stable and uniform legal protection regime is introduced for the protection of the rights of makers of databases'.

51. In my view, however, the matter is conclusively settled by Article 14 of the Directive. That provision establishes special transitional arrangements for databases formerly protected by copyright under national rules which do not meet the requirements for copyright protection under the Directive. Those databases are to retain copyright protection for the remainder of the term of protection afforded under the national arrangements preceding the Directive. It is obvious that the rule would make no sense if, after the entry into force of the Directive, national law could continue, without any limitation in time, to protect a database which does not meet the requirements under the Directive. If that were the case, 'national' copyright would continue to apply autonomously, and there would be no need for a transitional rule for databases which are not sufficiently original to qualify for protection under the Directive.

52. In answer to Question 2, it must therefore be stated that the 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 itself.

V – Conclusion

53. On the basis of the foregoing considerations, I propose that the Court give the following answer to the questions referred by the Court of Appeal for a preliminary ruling:

(1) A database can be protected by copyright, for the purposes of Article 3 of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases only if it is an original intellectual creation of its author. For the purpose of that assessment, the activities involved in the creation of the data cannot be taken into account.

In the case of a football fixture list, the determination of all the elements relating to each single match is a data creation activity.

(2) Directive 96/9 precludes national law from conferring copyright protection upon a database which does not meet the requirements laid down in Article 3 of the Directive itself.

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1 – Original language: Italian.

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2 – Directive of the European Parliament and of the Council of 11 March 1996 (OJ 1996 L 77, p. 20).

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3 – Case C-46/02 *Fixtures Marketing* [2004] ECR I-10365; Case C-203/02 *The British Horseracing Board and Others* [2004] ECR I-10415; Case C-338/02 *Fixtures Marketing* [2004] ECR I-10497; and Case C-444/02 *Fixtures Marketing* [2004] ECR I-10549.

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4 – Case C-444/02 *Fixtures Marketing*, cited in footnote 3, paragraphs 23 to 36.

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5 – Case C-46/02, *Fixtures Marketing*, cited in footnote 3, paragraphs 44 to 47.

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6 – To that effect, see, in particular, the Working Paper of the Directorate General for the Internal Market of 12 December 2005, *First evaluationof Directive 96/9/EC on the legal protection of databases*, available on the Commission's website.

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7 – Case C-46/02 *Fixtures Marketing*, cited in footnote 3, paragraph 39. It may be remarked, incidentally, that the Italian version of Article 7 of the Directive seems to require that the significant investment be expended in the obtaining, verification *and* presentation of the data. The other language versions, on the other hand, use the conjunction *or* and the interpretation provided by the Court is consistent with those versions: the significant investment can justify protection even if it concerns only the obtaining, or only the verifying or only the presentation of the data.

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8 – Case C-444/02 *Fixtures Marketing*, cited in footnote 3, paragraphs 39 and 40, and Case C-338/02 *Fixtures Marketing*, cited in footnote 3, paragraph 25.

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9 – Case C-444/02 *Fixtures Marketing*, cited in footnote 3, paragraph 28.

10 – Ibidem, paragraphs 29 and 33 to 35.

11 – Case C-46/02 *Fixtures Marketing*, cited in footnote 3, paragraphs 41 to 42; Case C-338/02 *Fixtures Marketing*, cited in footnote 3, paragraph 31; and Case C-444/02 *Fixtures Marketing*, cited in footnote 3, paragraph 47.

12 – See footnote 10.

13 – In its initial proposal for a directive, dated 13 May 1992 [COM(92) 24 final], the Commission had already identified divergence in national rules regarding originality as one of the factors militating in favour of harmonising the legal protection of databases (see paragraph 2.2.5).

14 – Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ 1991 L 122, p. 42).

15 – Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version) (OJ 2006 L 372, p. 12).

16 – Case C-5/08 *Infopaq International* [2009] ECR I-6569, paragraph 35. Moreover, it must be observed that the three directives just referred to use terminology which in some languages is identical and in others (for instance, Italian) clearly indicates, despite some slight differences, that the legislature intended to refer to the same concept.

17 – Case C-145/10 *Painer* [2011] ECR I-0000, paragraphs 88 to 89.

18 – Case C-393/09 *Bezpečnostní softwarová asociace* [2010] ECR I-0000, paragraph 49.

19 – On that point, see also the Commission *Working Paper* cited in footnote 6 (paragraph 1.1).