

**Fuente: Texto original del fallo aportado por UAIPIT-Portal Internacional de la
Universidad de Alicante en PI y SI- <http://www.uaipit.com>.**

JUDGMENT OF THE COURT (Third Chamber)

1 March 2012

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

In Case C-604/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Court of Appeal (England & Wales) (Civil Division) (United Kingdom), made by decision of 10 December 2010, received at the Court on 21 December 2010, in the proceedings

Football Dataco Ltd,

Football Association Premier League Ltd,

Football League Ltd,

Scottish Premier League Ltd,

Scottish Football League,

PA Sport UK Ltd

v

Yahoo! UK Ltd,

Stan James (Abingdon) Ltd,

Stan James plc,

Enetpulse ApS,

THE COURT (Third Chamber),

composed of K. Lenaerts (Rapporteur), President of the Chamber, J. Malenovský, E. Juhász, G. Arestis and D. Šváby, Judges,

Advocate General: P. Mengozzi,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 27 October 2011,

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after considering the observations submitted on behalf of:

- Football Dataco Ltd, Football Association Premier League Ltd, Football League Ltd, Scottish Premier League Ltd, Scottish Football League and PA Sport UK Ltd, by J. Mellor QC, S. Levine and L. Lane and R. Hoy, Barristers,
- Yahoo! UK Ltd, Stan James (Abingdon) Ltd, Stan James plc and Enetpulse ApS, by D. Alexander and R. Meade QC, P. Roberts and P. Nagpal, Barristers,
- the United Kingdom Government, by L. Seeboruth, acting as Agent, assisted by S. Malynicz, Barrister,
- the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Fiorentino, avvocato dello Stato,
- the Maltese Government, by A. Buhagiar and G. Kimberley, acting as Agents,
- the Portuguese Government, by A.P. Barros and by L. Inez Fernandes and P. Mateus Calado, acting as Agents,
- the Finnish Government, by J. Heliskoski, acting as Agent,
- the European Commission, by J. Samnadda and T. van Rijn, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 December 2011,

gives the following

Judgment

1 This reference for a preliminary ruling relates to the interpretation of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20).

2 The reference has been made in proceedings between Football Dataco Ltd, Football Association Premier League Ltd, Football League Ltd, Scottish Premier League Ltd, Scottish Football League et PA Sport UK Ltd (collectively, ‘Football Dataco and Others’), on the one hand, and Yahoo! UK Ltd, Stan James (Abingdon) Ltd, Stan James plc and Enetpulse ApS (collectively, ‘Yahoo and Others’), on the other, concerning intellectual property rights claimed by Football Dataco and Others over the English and Scottish football league fixture lists.

Legal context

International law

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3 Under a section on copyright and connected rights, Article 10(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights, which constitutes Annex 1C to the Agreement establishing the World Trade Organisation, signed in Marrakech on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1) provides:

‘Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.’

4 Article 5 of the World Intellectual Property Organization (WIPO) Copyright Treaty, adopted in Geneva on 20 December 1996, which relates to ‘Compilations of Data (Databases)’, states:

‘Compilations of data or other material, in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, are protected as such. This protection does not extend to the data or the material itself and is without prejudice to any copyright subsisting in the data or material contained in the compilation.’

European Union law

5 Recitals 1 to 4, 9, 10, 12, 15, 16, 18, 26, 27, 39 and 60 to Directive 96/9 state that:

‘(1) Whereas databases are at present not sufficiently protected in all Member States by existing legislation; whereas such protection, where it exists, has different attributes;

(2) Whereas such differences in the legal protection of databases offered by the legislation of the Member States have direct negative effects on the functioning of the internal market as regards databases and in particular on the freedom of natural and legal persons to provide on-line database goods and services on the basis of harmonized legal arrangements throughout the Community; whereas such differences could well become more pronounced as Member States introduce new legislation in this field, which is now taking on an increasingly international dimension;

(3) Whereas 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;

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(4) Whereas copyright protection for databases exists in varying forms in the Member States according to legislation or case-law, and whereas, if differences in legislation in the scope and conditions of protection remain between the Member States, such unharmonized intellectual property rights can have the effect of preventing the free movement of goods or services within the Community;

...

(9) Whereas databases are a vital tool in the development of an information market within the Community; whereas this tool will also be of use in many other fields;

(10) Whereas the exponential growth, in the Community and worldwide, in the amount of information generated and processed annually in all sectors of commerce and industry calls for investment in all the Member States in advanced information processing systems;

...

(12) Whereas 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;

...

(15) Whereas the criteria used to determine whether a database should be protected by copyright should be defined to the fact that the selection or the arrangement of the contents of the database is the author's own intellectual creation; whereas such protection should cover the structure of the database;

(16) Whereas no criterion other than originality in the sense of the author's intellectual creation should be applied to determine the eligibility of the database for copyright protection, and in particular no aesthetic or qualitative criteria should be applied;

...

(18) Whereas this Directive is without prejudice to the freedom of authors to decide whether, or in what manner, they will allow their works to be included in a database, in particular whether or not the authorization given is exclusive; ...

...

(26) Whereas works protected by copyright and subject matter protected by related rights, which are incorporated into a database, remain nevertheless protected by the

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respective exclusive rights and may not be incorporated into, or extracted from, the database without the permission of the rightholder or his successors in title;

(27) Whereas copyright in such works and related rights in subject matter thus incorporated into a database are in no way affected by the existence of a separate right in the selection or arrangement of these works and subject matter in a database;

...

(39) Whereas, in addition to aiming to protect the copyright in the original selection or arrangement of the contents of a database, this Directive seeks to safeguard the position of makers of databases against misappropriation of the results of the financial and professional investment made in obtaining and [collecting] the contents by protecting the whole or substantial parts of a database against certain acts by a user or competitor;

...

(60) Whereas some Member States currently protect under copyright arrangements databases which do not meet the criteria for eligibility for copyright protection laid down in this Directive; whereas, even if the databases concerned are eligible for protection under the right laid down in this Directive to prevent unauthorized extraction and/or re-utilization of their contents, the term of protection under that right is considerably shorter than that which they enjoy under the national arrangements currently in force; whereas harmonization of the criteria for determining whether a database is to be protected by copyright may not have the effect of reducing the term of protection currently enjoyed by the rightholders concerned; whereas a derogation should be laid down to that effect; whereas the effects of such derogation must be confined to the territories of the Member States concerned’.

6 Article 1(2) of Directive 96/9 states that:

‘For the purposes of this Directive, “database” shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means.’

7 Under chapter II, entitled ‘Copyright’, Article 3 of Directive 96/9, which defines the ‘[o]bject of protection’, states that:

‘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.

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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.'

8 Under chapter III, entitled 'Sui generis right', Article 7 of Directive 96/9, relating to the '[o]bject of protection', states in paragraphs 1 and 4:

'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-utilization 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. ...'

9 Under chapter IV, entitled 'Common provisions', Article 14 of Directive 96/9 states:

'1. Protection pursuant to this Directive as regards copyright shall also be available in respect of databases created prior to the date referred to [in] Article 16(1) which on that date fulfil the requirements laid down in this Directive as regards copyright protection of databases.

2. Notwithstanding paragraph 1, where 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.

...'

10 The date of the publication of Directive 96/9 in the *Official Journal of the European Communities* is 27 March 1996.

11 That directive was implemented in the United Kingdom by the adoption of the Copyright and Rights in Databases Regulations 1997 (SI 1997, No 3032), which came into force on 1 January 1998. The wording of the provisions of those Regulations which are relevant in the present case is identical to that of the relevant provisions of the directive.

The facts which gave rise to the dispute in the main proceedings and the questions referred for a preliminary ruling

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Creation of the fixture lists of the English and Scottish football leagues

12 According to the order for reference, the creation of the annual fixture lists of the football leagues in England and Scotland follows, on the whole, comparable rules and procedure.

13 It involves having regard to several rules, which are called ‘the golden rules’, the most important of which are:

- no club shall have three consecutive home or away matches;
- in any five consecutive matches no club shall have four home matches or four away matches;
- as far as possible, each club should have played an equal number of home and away matches at all times during the season, and
- all clubs should have as near as possible an equal number of home and away matches for mid-week matches.

14 The procedure for drawing up a fixture list such as those in question in the main proceedings consists of several stages. The first stage, which begins during the previous season, is the preparation by employees of the leagues concerned of the Premier League fixture schedule and an outline fixture list for other leagues. That stage consists of establishing a list of possible dates for the fixtures on the basis of a series of basic parameters (the dates of the start and the end of the season, the number of fixtures which must be played, the dates reserved to other national, European or international competitions).

15 The second stage is the sending out, to the clubs concerned, of questionnaires prior to the fixing of the schedule and the analysis of the responses to these questionnaires, in particular ‘specific date’ requests (a request by a club to play its fixture against another club at home or away on a particular date), ‘non-specific date’ requests (a request by a club to play a certain match on a certain day of the week at a certain time, for example, Saturday after 1.30 pm), and ‘pairing’ requests (a request that two or more clubs not play at home on the same day). Around 200 requests are made per season.

16 The third stage, which, in the case of the English football leagues, is undertaken by Mr Thompson of Atos Origin IT Services UK Ltd, comprises two tasks, ‘sequencing’ and ‘pairing’.

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17 Sequencing aims to achieve the perfect home-away sequence for every club, having regard to the golden rules, a series of organisational constraints and, as far as possible, the requests made by the clubs. Mr Thompson then produces a pairing grid on the basis of the requests made by the teams. He gradually inserts the names of the teams into that grid and attempts to resolve a maximum amount of problem cases until a satisfactory draft fixture list is completed. For that purpose, he uses a computer program, to which he transfers information from the sequencing sheet and the pairing grid to produce a readable version of the fixture list.

18 The final stage involves Mr Thompson working with employees of the professional leagues concerned to review the content of the fixture lists. That review is carried out manually with the assistance of computer software to find solutions to outstanding problems. Two meetings then take place, one with a fixtures working party and the other with police representatives, in order to finalise the fixture list. In the 2008/2009 season, 56 changes were made during that final stage.

19 According to the findings of fact made by the judge at first instance reproduced in the order for reference, the process of preparing the football fixture lists in question in the main proceedings is not purely mechanistic or deterministic; on the contrary, it requires very significant labour and skill in order to satisfy the multitude of competing requirements while respecting the applicable rules as far as possible. The work needed is not mere application of rigid criteria, and is unlike, for instance, the compilation of a telephone directory, in that it requires judgment and skill at each stage, in particular where the computer program finds no solution for a given set of constraints. With regard to the partial computerisation of the process, Mr Thompson states that it does not eliminate the need for judgment and discretion.

The facts in the main proceedings and the questions referred for a preliminary ruling

20 Football Dataco and Others claim that they own, in respect of the English and Scottish football league fixture lists, a ‘sui generis’ right pursuant to Article 7 of Directive 96/9, a copyright pursuant to Article 3 of that directive, and a copyright under United Kingdom intellectual property legislation.

21 Yahoo and Others do not accept that such rights exist in law, arguing that they are entitled to use the lists in the conduct of their business without having to pay financial compensation.

22 The judge at first instance held that those lists are eligible for protection by copyright under Article 3 of Directive 96/9, on the ground that their preparation requires a substantial quantum of creative work. However, he refused to recognise either of the two other rights claimed.

23 The referring court confirmed the judgment at first instance as regards the ineligibility of the lists in question in the main proceedings for protection by the ‘sui

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generis' right under Article 7 of Directive 96/9. By contrast, the referring court raises the question of whether the lists are eligible for protection by copyright under Article 3 of that directive. The referring court also has doubts regarding the possibility of the lists being protected by the copyright pursuant to United Kingdom legislation prior to that directive under conditions which are different to those which are set out in Article 3 of Directive 96/9.

24 In those circumstances, the Court of Appeal (England and Wales) (Civil Division) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. In Article 3(1) of Directive 96/9 ... 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), and
- (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 [Directive 96/9]?"

The first question submitted for a preliminary ruling

25 By its first question, the referring court is essentially seeking an interpretation of Article 3(1) of Directive 96/9. In particular, it is asking:

- firstly, whether the intellectual effort and skill of creating data should be excluded in connection with the application of that provision;
- secondly, whether the 'selection or arrangement' of the contents, within the meaning of that provision, includes adding important significance to a pre-existing item of data, and
- thirdly, whether the notion of 'author's own intellectual creation' within the meaning of that provision requires more than significant labour and skill from the author and, if so, what that additional requirement is.

26 First of all, it is to be noted that, on the one hand, the Court has already held that a football league fixture list constitutes a 'database' within the meaning of Article 1(2) of Directive 96/9. The Court essentially held that the combination of the date, the time and

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the identity of the two teams playing in both home and away matches has autonomous informative value which renders them ‘independent materials’ within the meaning of Article 1(2) of Directive 96/9, and that the arrangement, in the form of a fixture list, of the dates, times and names of teams in the various fixtures of a football league meets the conditions set out in Article 1(2) of Directive 96/9 as to the systematic or methodical arrangement and individual accessibility of the data contained in the database (see Case C-444/02 *Fixtures Marketing* [2004] ECR I-10549, paragraphs 33 to 36).

27 On the other hand, it is apparent from both a comparison of the terms of Article 3(1) and Article 7(1) of Directive 96/9 and from other provisions or recitals of Directive 96/9, in particular Article 7(4) and recital 39 to that directive, that the copyright and the ‘sui generis’ right amount to two independent rights whose object and conditions of application are different.

28 Consequently, the fact that a ‘database’ within the meaning of Article 1(2) of Directive 96/9 does not satisfy the conditions of eligibility for protection by the ‘sui generis’ right under Article 7 of Directive 96/9, as the Court held in relation to football fixture lists (Case C-46/02 *Fixtures Marketing* [2004] ECR I-10365, paragraphs 43 to 47; Case C-338/02 *Fixtures Marketing* [2004] ECR I-10497, paragraphs 32 to 36; and Case C-444/02 *Fixtures Marketing*, cited above, paragraphs 48 to 52), does not automatically mean that that same database is also not eligible for copyright protection under Article 3 of that directive.

29 Under Article 3(1) of Directive 96/9, ‘databases’ within the meaning of Article 1(2) of that directive are protected by copyright if, by reason of the selection or arrangement of their contents, they constitute the author’s own intellectual creation.

30 Firstly, it is apparent from reading Article 3(2) in conjunction with recital 15 of Directive 96/9 that the copyright protection provided for by that directive concerns the ‘structure’ of the database, and not its ‘contents’ nor, therefore, the elements constituting its contents.

31 Similarly, as is apparent from Article 10(2) of the Agreement on Trade-Related Aspects of Intellectual Property Rights and from Article 5 of the WIPO Copyright Treaty, compilations of data which by reason of the selection or arrangement of their contents constitute intellectual creations are protected as such by copyright. On the other hand, that protection does not extend to the data itself and is without prejudice to any copyright subsisting for that data.

32 In that context, the concepts of ‘selection’ and of ‘arrangement’ within the meaning of Article 3(1) of Directive 96/9 refer respectively to the selection and the arrangement of data, through which the author of the database gives the database its structure. By contrast, those concepts do not extend to the creation of the data contained in that database.

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33 Consequently, as Yahoo and Others, the Italian, Portuguese and Finnish governments as well as the European Commission have argued, the materials mentioned in section (a) of the referring court's first question that concern the intellectual effort and skill of creating data are not relevant in order to assess the eligibility of the database that contains them for the copyright protection provided for by Directive 96/9.

34 That analysis is confirmed by the purpose of that directive. As is apparent from recitals 9, 10 and 12 of that directive, its purpose is to stimulate the creation of data storage and processing systems in order to contribute to the development of an information market against a background of exponential growth in the amount of information generated and processed annually in all sectors of activity (see Case C-46/02 *Fixtures Marketing*, cited above, paragraph 33; Case C-203/02 *The British Horseracing Board and Others* [2004] ECR I-10415, paragraph 30; Case C-338/02 *Fixtures Marketing*, cited above, paragraph 23; and Case C-444/02 *Fixtures Marketing*, cited above, paragraph 39) and not to protect the creation of materials capable of being collected in a database.

35 In the case in the main proceedings, it must be observed that the resources, in particular intellectual resources, described by the referring court and referred to in paragraphs 14 to 18 of this judgment, are deployed for the purpose of determining, in the course of arranging the leagues concerned, the date, the time and the identity of teams corresponding to each fixture of those leagues, in accordance with a set of rules, parameters and organisational constraints as well as the specific requests of the clubs concerned (see Case C-46/02 *Fixtures Marketing*, cited above, paragraph 41; Case C-338/02 *Fixtures Marketing*, cited above, paragraph 31; and Case C-444/02 *Fixtures Marketing*, cited above, paragraph 47).

36 As Yahoo and Others and the Portuguese government have pointed out, those resources relate to the creation of the same data which is contained in the database in question, as already noted in paragraph 26 of the present judgment (see Case C-46/02 *Fixtures Marketing*, cited above, paragraph 42; Case C-338/02 *Fixtures Marketing*, cited above, paragraph 31; and Case C-444/02 *Fixtures Marketing*, cited above, paragraph 47). As a consequence, and having regard to what is stated in paragraph 32 of the present judgment, they are, in any case, of no relevance in order to assess the eligibility of the football fixture lists in question in the main proceedings for the copyright protection provided for by Directive 96/9.

37 Secondly, as is apparent from recital 16 of Directive 96/9, the notion of the author's own intellectual creation refers to the criterion of originality (see, to that effect, Case C-5/08 *Infopaq International* [2009] ECR I-6569, paragraphs 35, 37 and 38; Case C-393/09 *Bezpečnostní softwarová asociace* [2010] ECR I-0000 paragraph 45; Joined Cases C-403/08 and C-429/08 *Football Association Premier League and Others* [2011] ECR I-0000, paragraph 97; and Case C-145/10 *Painer* [2011] ECR I-0000, paragraph 87).

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38 As regards the setting up of a database, that criterion of originality is satisfied when, through the selection or arrangement of the data which it contains, its author expresses his creative ability in an original manner by making free and creative choices (see, by analogy, *Infopaq International*, paragraph 45; *Bezpečnostní softwarová asociace*, paragraph 50; and *Painer*, paragraph 89) and thus stamps his ‘personal touch’ (*Painer*, paragraph 92).

39 By contrast, that criterion is not satisfied when the setting up of the database is dictated by technical considerations, rules or constraints which leave no room for creative freedom (see, by analogy, *Bezpečnostní softwarová asociace*, paragraphs 48 and 49, and *Football Association Premier League and Others*, paragraph 98).

40 As is apparent from both Article 3(1) and recital 16 of Directive 96/9, no other criteria than that of originality is to be applied to determine the eligibility of a database for the copyright protection provided for by that directive.

41 Therefore, on the one hand, provided that the selection or arrangement of the data – namely, in a case such as the one in the main proceedings, data corresponding to the date, the time and the identity of teams relating to the different fixtures of the league concerned (see paragraph 26 of the present judgment) – is an original expression of the creativity of the author of the database, it is irrelevant for the purpose of assessing the eligibility of the database for the copyright protection provided for by Directive 96/9 whether or not that selection or arrangement includes ‘adding important significance’ to that data, as mentioned in section (b) of the referring court’s first question.

42 On the other hand, the fact that the setting up of the database required, irrespective of the creation of the data which it contains, significant labour and skill of its author, as mentioned in section (c) of that same question, cannot as such justify the protection of it by copyright under Directive 96/9, if that labour and that skill do not express any originality in the selection or arrangement of that data.

43 In the present case, it is for the referring court to assess, in the light of the factors set out above, whether the football fixture lists in question in the main proceedings are databases which satisfy the conditions of eligibility for the copyright protection set out in Article 3(1) of Directive 96/9.

44 In that respect, the procedures for creating those lists, as described by the referring court, if they are not supplemented by elements reflecting originality in the selection or arrangement of the data contained in those lists, do not suffice for the database in question to be protected by the copyright provided for in Article 3(1) of Directive 96/9.

45 In light of the considerations above, the answer to the first question is that Article 3(1) of Directive 96/9 must be interpreted as meaning that a ‘database’ within the meaning of Article 1(2) of that directive is protected by the copyright laid down by

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that directive provided that the selection or arrangement of the data which it contains amounts to an original expression of the creative freedom of its author, which is a matter for the national court to determine.

46 As a consequence:

- the intellectual effort and skill of creating that data are not relevant in order to assess the eligibility of that database for protection by that right;
- it is irrelevant, for that purpose, whether or not the selection or arrangement of that data includes the addition of important significance to that data, and
- the significant labour and skill required for setting up that database cannot as such justify such a protection if they do not express any originality in the selection or arrangement of the data which that database contains.

The second question submitted for a preliminary ruling

47 By its second question, the referring court is essentially asking whether Directive 96/9 must be interpreted as precluding national legislation which grants databases, as defined in Article 1(2) of that directive, copyright protection under conditions which are different to those set out in Article 3(1) of the directive.

48 In that respect, it must be pointed out that Directive 96/9 aims, according to recitals 1 to 4 of the directive, to remove the differences which existed between national legislation on the legal protection of databases, particularly as regards the scope and conditions of copyright protection, and which adversely affected the functioning of the internal market, the free movement of goods or services within the European Union and the development of an information market within the European Union.

49 In that context, as is apparent from recital 60 of Directive 96/9, Article 3 of that directive carries out a ‘harmonization of the criteria for determining whether a database is to be protected by copyright’.

50 It is true that, as regards databases which were protected on 27 March 1996 by national copyright arrangements under different eligibility criteria than those set out in Article 3(1) of Directive 96/9, Article 14(2) of the directive preserves the duration of the protection granted by such arrangements in the Member State concerned. However, subject only to that transitional provision, Article 3(1) of the directive precludes national legislation which grants databases as defined in Article 1(2) of that directive copyright protection under conditions which are different to that of originality laid down in Article 3(1) of the directive.

51 As for recitals 18, 26 and 27 of Directive 96/9, highlighted by Football Dataco and Others, those recitals note the freedom which authors of works have to decide

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whether to include their works in a database and the absence of effect which the incorporation of a protected piece of work in a protected database has on the rights protecting the work thus incorporated. However, they do not support an interpretation contrary to that set out in the previous paragraph of this judgment.

52 In light of the above considerations, the answer to the second question is that Directive 96/9 must be interpreted as meaning that, subject to the transitional provision contained in Article 14(2) of that directive, it precludes national legislation which grants databases, as defined in Article 1(2) of the directive, copyright protection under conditions which are different to those set out in Article 3(1) of the directive.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. Article 3(1) of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases must be interpreted as meaning that a ‘database’ within the meaning of Article 1(2) of that directive is protected by the copyright laid down by that directive provided that the selection or arrangement of the data which it contains amounts to an original expression of the creative freedom of its author, which is a matter for the national court to determine.

As a consequence:

- the intellectual effort and skill of creating that data are not relevant in order to assess the eligibility of that database for protection by that right;
- it is irrelevant, for that purpose, whether or not the selection or arrangement of that data includes the addition of important significance to that data, and
- the significant labour and skill required for setting up that database cannot as such justify such a protection if they do not express any originality in the selection or arrangement of the data which that database contains.

2. Directive 96/9 must be interpreted as meaning that, subject to the transitional provision contained in Article 14(2) of that directive, it precludes national legislation which grants databases, as defined in Article 1(2) of the directive, copyright protection under conditions which are different to those set out in Article 3(1) of the directive.

[Signatures]

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* Language of the case: English.