

Advocate General issues opinion in Football Dataco v Sportradar

In an important development earlier today, the Advocate General of the European Court of Justice has said that where a website operator displays material on its website that infringes the sui generis database right of a third party, that operator infringes the third party's rights both in the country in which the server hosting the website is based and in the countries in which the users accessing that information are based.

The case of Football Dataco Ltd and others v Sportradar GmbH concerns the copying of English and Scottish football fixture lists and statistical data about football matches in progress (goals, goal scorers, yellow and red cards etc) called the "Football Live" database. The data is collected on behalf of Football Dataco and others who also organise the football leagues and competitions in England and Scotland. Football Dataco manages the creation and exploitation of the data and intellectual property rights relating to those competitions and claims to have, under English law, the sui generis right in the Football Live database. Sportradar provides live results and other statistics relating to fixtures in the English league to the public via the internet under a service called "Sport Live Data". Certain UK betting companies allegedly have contracts with Sportradar to access Sport Live Data from Sportradar's betradar.com website. Football Dataco and others brought an action against Sportradar in the High Court in England for the infringement of its database rights, alleging that Sportradar had provided the Sport Live Data service by extracting information from Football Live.

Sportradar challenged the proceedings brought before the English High Court on the grounds that it did not have jurisdiction to hear the case given that it was based in Germany. The High Court ruled that it did have jurisdiction but only so far as the case concerned the liability of Sportradar and its customers based in England but not Sportradar alone. Both parties appealed to the English Court of Appeal which asked the European Court of Justice to answer the following question:

"Where a party uploads data from a database protected by sui generis right onto that party's web server located in Member State A and in response to requests from a user in another Member State B the web server sends such data to the user's computer so that the data is stored in the memory of that computer and displayed on its screen

- (a) is the act of sending the data an act of "extraction" (i.e. taking / copying from the copied database) or "re-utilisation" (i.e. making the copied material available to the public) by that party?
- (b) does any act of extraction and/or re-utilisation by that party occur
 - (i) in A only?
 - (ii) in B only; or
 - (iii) in both A and B?"

In his opinion, the Attorney General concluded that:

- (a) the chain of actions which starts with Sportradar and culminates in the Football Live data being made available to individuals through the betting companies which have entered into contracts with Sportradar constitutes "re-utilisation" (i.e. making the material available to the public since "extraction" must take place at an earlier stage); and
- (b) re-utilisation takes place in both A and B on the basis that the processes required to transmit data over the internet results in the material being made available both in the country in which it is sent as well as those countries in which it is received.

The Advocate General is responsible for presenting an impartial and public opinion on each case brought before the European Court of Justice before a ruling is made. His opinions are not determinative but tend to be followed. Further updates will be released on this case in due course.

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