

Football Fixtures: CJEU Advocate General refutes intellectual Property Rights Claim

In his opinion delivered today, Advocate General Paolo Mengozzi, refuted the claims of Football DataCo and the English and Scottish football leagues that intellectual property rights under the Database Directive subsist in the annually-created fixture lists.

Fixture lists, for each season of the leagues, set the dates and venues for every match to be played. Football DataCo et al, asserted that there is in the fixture lists a sui generis right and a copyright under the Database Directive and a copyright under UK law. It consequently initiated legal action against certain media and sports betting companies in the UK, including Yahoo! and Stan James, who had refused to pay fees for those alleged rights.

The matter was then referred for a preliminary ruling to the Court of Justice of the European Union (CJEU) (case C-604/10) from the Court of Appeal (England & Wales)

The CJEU had previously ruled (Fixtures Marketing C-46/02, C-338/02 and C-444/02; *British Horseracing Board v. William Hill* C-203/02) that football fixture lists and 'runners and riders' horseracing lists do not give rise to a sui generis database right (which is easier to obtain than a copyright).

Advocate General Mengozzi's opinion on this latest case reaffirms that fixture lists do not give rise to a copyright. In doing so he found that:

- the intellectual effort and skill of creating data (i.e. the contents of the database, not the database itself) cannot be taken into consideration to assess whether copyright protection should be granted;
- "all the details for each match are identified and collected at the data creation stage – which (...) is excluded from protection under the Directive"; and
- the intellectual output in the creation of the database requires from the author not just significant labour and skill but creativity in the selection or arrangement of the contents of the database; "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".

He went as far as to say that: *'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'*

The Advocate General also confirms that the Database Directive aims at completely harmonising copyright protection for databases across the EU and therefore precludes national rights other than those provided for by the Directive.

Although Advocate Generals' opinions are not binding for the CJEU, they are usually upheld in the final rulings of the court. In this instance, that will be made in 2012.

Clive Hawkswood, Chief Executive of the RGA, said: *"We welcome the findings of the Advocate General in this case and, in due course, we would expect both the CJEU and the British courts to adopt the same approach. Sporting bodies have attempted several times to use IP right arguments and the Database*

Directive to extract significant funds from media and betting organisations. We hope that this opinion and the final CJEU ruling in this case discourages them from doing so again. Substantial revenues already flow from the betting industry to professional sports, for instance through sponsorship and joint ventures, and those kinds of truly commercial relationships provide the best way ahead for the two sectors to co-operate together for their mutual benefit.'