

Case C-545/07

Apis-Hristovich EOOD

v

Lakorda AD

(Reference for a preliminary ruling
from the Sofiyski gradski sad)

(Directive 96/9/EC — Legal protection of databases — Sui generis right — Obtaining, verification or presentation of the contents of a database — Extraction — Substantial part of the contents of a database — Database containing official legal data)

Judgment of the Court (Fourth Chamber), 5 March 2009 I - 1631

Summary of the Judgment

1. *Approximation of laws — Legal protection of databases — Directive 96/9 (European Parliament and Council Directive 96/9, Art. 7)*
2. *Approximation of laws — Legal protection of databases — Directive 96/9 (European Parliament and Council Directive 96/9, Art. 7)*
3. *Approximation of laws — Legal protection of databases — Directive 96/9 (European Parliament and Council Directive 96/9, Arts 1(2) and 7)*

1. As is clear from the very terms of Article 7(2)(a) of Directive 96/9 on the legal protection of databases, the Community legislature intended to include in the concept of 'extraction' within the meaning of Article 7 not merely acts of 'permanent transfer' but also those of 'temporary transfer'. The delimitation of the concepts of 'permanent transfer' and 'temporary transfer' in Article 7 is based on the criterion of the length of time during which materials extracted from a protected database are stored in a medium other than that database. The time at which there is an extraction, within the meaning of Article 7, from a protected database, accessible electronically, is when the materials which are the subject of the act of transfer are stored in a medium other than that database. The concept of extraction is independent of the objective pursued by the perpetrator of the act at issue, of any modifications he may make to the contents of the materials thus transferred, and of any differences in the structural organisation of the databases concerned.

The fact that the physical and technical characteristics present in the contents of a protected database made by a particular person also appear in the contents of a database made by another person may be interpreted as evidence of extraction within the meaning of Article 7 of Directive 96/9, unless that coincidence can be explained by factors other than a transfer between the two databases concerned. The fact that materials obtained by the maker of a database from sources not accessible to the public also appear in a database made by another person is not sufficient, in itself,

to prove the existence of such extraction but can constitute circumstantial evidence thereof.

The nature of the computer programme used to manage two electronic databases is not a factor in assessing the existence of extraction within the meaning of Article 7 of Directive 96/9.

(see paras 42, 55, operative part 1)

2. Article 7 of Directive 96/9 on the legal protection of databases must be interpreted as meaning that, where there is a body of materials composed of separate modules, the volume of the materials allegedly extracted and/or re-utilised from one of those modules must, in order to assess whether there has been extraction and/or re-utilisation of a substantial part, evaluated quantitatively, of the contents of a database within the meaning of that article, be compared with the total contents of that module, if the latter constitutes, in itself, a database which fulfils the conditions for protection by the sui generis right set out in Article 7(1) of that directive. Otherwise, and in so far as the body of materials constitutes a data-

base protected by that right, the comparison must be made between the volume of the materials allegedly extracted and/or re-utilised from the various modules of that database and its total contents.

inasmuch as they represent, in terms of the obtaining, verification and presentation thereof, a substantial human, technical or financial investment.

(see para. 74, operative part 2)

The fact that the materials allegedly extracted and/or re-utilised from a database protected by the sui generis right were obtained by the maker of that database from sources not accessible to the public may, according to the amount of human, technical and/or financial resources deployed by the maker to collect the materials at issue from those sources, affect the classification of those materials as a substantial part, evaluated qualitatively, of the contents of the database concerned, within the meaning of Article 7 of Directive 96/9.

3. It is apparent both from the general nature of the terms used in Article 1(2) of Directive 96/9 on the legal protection of databases to define the concept of a database within the meaning of the Directive and from the objective of the protection afforded by the sui generis right instituted by Article 7 of the Directive that the Community legislature intended to give that concept a wide scope, unencumbered by considerations relating, in particular, to the substantive content of the body of materials in question.

The fact that part of the materials contained in a database are official and accessible to the public does not relieve the national court of an obligation, in assessing whether there has been extraction and/or re-utilisation of a substantial part of the contents of that database, to verify whether the materials allegedly extracted and/or re-utilised from that database constitute a substantial part, evaluated quantitatively, of its contents or, as the case may be, whether they constitute a substantial part, evaluated qualitatively, of the database

Moreover, as is apparent from Article 7(4) of Directive 96/9, the sui generis right applies independently of whether the database and/or its contents are protected, *inter alia*, by copyright.

It follows that the fact that the materials contained in a legal information system are, by reason of their official nature, not

eligible for copyright protection does not, as such, justify a collection consisting of those materials being refused classification as a 'database' within the meaning of Article 1(2) of Directive 96/9 or that such a collection should be excluded from the

scope of the protection accorded by the sui generis right.

(see paras 69-71)