Court of Justice EU, 19 December 2013, Innoweb v Wegener

DATABASE RIGHT

Re-utilisation of whole or substantial part of database by dedicated meta engine

- **that an operator who makes available on the Internet a dedicated meta search engine such as that at issue in the main proceedings re-utilises the whole or a substantial part of the contents of a database protected under Article 7, where that dedicated meta engine:**

– provides the end user with a search form which essentially offers the same range of functionality as the search form on the database site;
– 'translates' queries from end users into the search engine for the database site 'in real time', so that all the information on that database is searched through; and
– presents the results to the end user using the format of its website, grouping duplications together into a single block item but in an order that reflects criteria comparable to those used by the search engine of the database site concerned for presenting results.

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Court of Justice EU, 19 December 2013
(T. von Danwitz (Rapporteur), President of the Chamber, E. Juhász, A. Rosas, D. Šváby and C. Vajda, Judges, Advocate General: P. Cruz Villalón)
In Case C-202/12,
REQUEST for a preliminary ruling under Article 267 TFEU from the Gerechtshof te 's-Gravenhage (Netherlands), made by decision of 27 March 2012, received at the Court on 30 April 2012, in the proceedings
Innoweb BV
v
Wegener ICT Media BV,
Wegener Mediaventions BV,
THE COURT (Fifth Chamber),
composed of T. von Danwitz (Rapporteur), President of the Chamber, E. Juhász, A. Rosas, D. Šváby and C. Vajda, Judges, Advocate General: P. Cruz Villalón,
Registrar: A. Calot Escobar,
having regard to the written procedure,
after considering the observations submitted on behalf of:
– Innoweb BV, by M.H. Elferink and M.A.S.M. van Leent, advocaten,
– Wegener ICT Media BV and Wegener Mediaventions BV, by J. van Manen,
advocaat,
– the European Commission, by J. Samnada and F. Wilman, acting as Agents,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following
Judgment
1 This request for a preliminary ruling concerns the interpretation of Article 7 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 request has been made in proceedings between, on the one hand, Innoweb BV and, on the other, Wegener ICT Media BV and Wegener Mediaventions BV (collectively, 'Wegener') concerning Innoweb's operation, through its website, of a 'dedicated meta search engine' that enables searches to be carried out on third party websites and, in particular, on Wegener's website, where a collection of car sales advertisements ('car ads') is displayed.
Legal context
European Union ('EU') law
3 Recitals 39, 42 and 48 in the preamble to Directive 96/9 are worded as follows:
'(39) […] 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 collect[ing] the contents by protecting the whole or substantial parts of a database against certain acts by a user or competitor; […]
(42) […] the special right to prevent unauthorised extraction and/or re-utilisation relates to acts by the user which go beyond his legitimate rights and thereby harm the investment; ... the right to prohibit extraction and/or re-utilisation of all or a substantial part of the contents relates not only to the manufacture of a parasitical competing product but also to any user who, through his acts, causes significant detriment, evaluated qualitatively or quantitatively, to the investment; […]
(48) […] the objective of this Directive ... is to afford an appropriate and uniform level of protection of databases as a means to secure the remuneration of the maker of the database […]'
4 As stated in Article 1(1) thereof, Directive 96/9 concerns the legal protection of databases in any form. A database is defined, in Article 1(2), as *'a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means'*.
5 In Chapter III of that directive, entitled *'Sui generis right'*, Article 7 provides, concerning the 'object of protection':
'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 reutilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.
2. For the purposes of this Chapter:
(a) "extraction" shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;
(b) "re-utilisation" shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by online or other forms of transmission. The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community; Public lending is not an act of extraction or re-utilisation. …
5. The repeated and systematic extraction and/or re-utilisation of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.'

Netherlands law

6 Directive 96/9 was transposed into Netherlands law through the adoption of the Databankenwet (Law on databases) of 8 July 1999 (Stb. 1999, No 303). 7 Article 2(1) the Databankenwet provides:
'The database maker shall have the exclusive right to approve the following acts:
(a) the extraction or re-utilisation of the whole or of a substantial part, evaluated qualitatively or quantitatively, of the contents of the database;
(b) the repeated and systematic extraction or re-utilisation of qualitatively or quantitatively insubstantial parts of the contents of a database, if that conflicts with the normal exploitation of that database or unreasonably harms the legitimate interests of the database maker.'

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

8 Through its website www.autotrack.nl *('the AutoTrack website'*), Wegener provides access to an online collection of car ads, together with a list, updated daily, of 190 000 to 200 000 second-hand cars. Approximately 40 000 of those advertisements are to be found only on the AutoTrack website. The other advertisements can also be found on other advertising sites. With the help of the AutoTrack website search engine, the user can carry out a targeted search for a vehicle on the basis of various criteria.

9 Via its website, www.gaspedaal.nl, Innoweb provides a meta search engine dedicated to car sales ('GasPedaal'). A 'meta search engine' uses search engines from other websites, transferring queries from its users to those other search engines – a feature which differentiates meta search engines from general search engines such as Google. A meta search engine described as 'dedicated' is designed to enable searches to be made in one or more specific subject areas. GasPedaal is such a dedicated meta search engine, designed to search for car ads: through a single query on GasPedaal, the user can simultaneously carry out searches of several collections of car ads listed on third party sites, including the AutoTrack website. 10 By means of the GasPedaal dedicated meta search engine, it is possible to search through the AutoTrack collection on the basis of different criteria, including not only the make, the model, the mileage, the year of manufacture and the price, but also other vehicle characteristics, such as the colour, the shape of the chassis, the type of carburant used, the number of doors and the transmission and, second, 'in real time', that is to say at the time when a GasPedaal user enters his query. GasPedaal carries out that query in 'translated' form; in other words, it translates the query into the format required for AutoTrack's search engine.

11 The results thrown up by the AutoTrack website – that is to say, cars meeting the criteria chosen by the end user – which are also to be found on the results pages of other sites are merged into one item with links to all the sources where that car was found. A webpage is then created with the list of the results thus obtained and merged, which shows essential information relating to each car, including the year of manufacture, the price, the mileage and a thumbnail picture. That webpage is stored on the GasPedaal server for approximately 30 minutes and sent to the user or shown to him on the GasPedaal website, using the format of that site.

12 The total number of advertisements on websites searched through GasPedaal is approximately 300 000.

13 Every day, GasPedaal carries out approximately 100 000 searches on the AutoTrack website in response to queries. Thus, approximately 80% of the various combinations of makes or models listed in the AutoTrack collection are the object of a search daily. In response to each query, however, GasPedaal displays only a very small part of the contents of that collection. In every case, the contents of those data are determined by the user on the basis of criteria which he keys into GasPedaal.

14 On the view that Innoweb compromises its sui generis right in relation to its database, Wegener brought an action claiming that Innoweb should be ordered to desist from infringing Wegener's database rights and, at first instance, succeeded in all essential respects.

15 Innoweb brought an appeal against that decision before the Gerechtshof te 's-Gravenhage (Regional Court of Appeal, The Hague; or 'the referring court').

16 The order for reference is predicated on the assumption that Wegener's collection of advertisements constitutes a database which meets the necessary conditions for protection under Article 7 of Directive 96/9. 17 According to the referring court, moreover, the case before it does not concern a situation in which the whole or a substantial part of Wegener's database is extracted. Nor does the repeated extraction of insubstantial parts of the contents of that

database have a cumulative effect; and, accordingly, it does not constitute an infringement of Article 7(5) of Directive 96/9.

18 In those circumstances, the Gerechtshof te 's-Gravenhage decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 7(1) of Directive [96/9] to be interpreted as meaning that the whole or a qualitatively or quantitatively substantial part of the contents of a database offered on a website (on line) is re-utilised (made available) by a third party if that third party makes it possible for the public to search the whole contents of the database or a substantial part thereof in real time with the aid of a dedicated meta search engine provided by that third party, by means of a query entered by a user in "translated" form into the search engine of the website on which the database is offered?

(2) If not, is the situation different if, after receiving the results of the query, the third party sends to or displays for each user a very small part of the contents of the database in the format of his own website?

(3) Is it relevant to the answers to Questions 1 and 2 that the third party undertakes those activities continuously and, with the aid of its search engine, responds daily to a total of 100 000 queries received from users in "translated" form and makes available the results thereof to various users in a manner such as that described above?

(4) Is Article 7(5) of Directive [96/9] to be interpreted as meaning that the repeated and systematic re-utilisation of insubstantial parts of the contents of the database which conflicts with normal exploitation or unreasonably harms the legitimate interests of the database maker is not permissible, or is it sufficient for there to be repeated or systematic re-utilisation?

(5) If repeated and systematic re-utilisation is a requirement,

(a) what does "systematic" mean?

(b) is re-utilisation systematic when an automated system is used?

(c) is it relevant that a dedicated meta search engine is used in the manner described above?

(6) Is Article 7(5) of Directive [96/9] to be interpreted as meaning that the prohibition laid down thereunder does not apply if a third party repeatedly makes available to individual users of a meta search engine belonging to that third party only insubstantial parts of the contents of the database in response to each query?

(7) If so, does that also apply if the cumulative effect of the repeated re-utilisation of those insubstantial parts is that a substantial part of the contents of the database is made available to the individual users together?

(8) Is Article 7(5) of Directive [96/9] to be interpreted as meaning that, if conduct which has not been approved and which is such that, as a result of the cumulative effect of reutilisation, the whole or a substantial part of the contents of a protected database is made available to the public, the requirements of that provision are satisfied, or must it also be claimed and proved that those acts conflict with the normal exploitation of the database or unreasonably harm the legitimate interests of the database maker?

(9) Is it assumed that the investment of the database maker is seriously harmed in the event of the aforementioned conduct?'

Consideration of the questions referred

19 In the first place, it should be noted that the questions are essentially intended to ascertain whether the operator of a dedicated meta search engine such as that at issue in the main proceedings engages in an activity covered by Article 7(1) or Article 7(5) of Directive 96/9, with the consequence that the maker of a database which meets the criteria laid down in Article 7(1) may prevent that database from being included, for no consideration, in the service of the dedicated meta search engine.

20 Article 7(1) of Directive 96/9 – the interpretation of which is sought by Questions 1, 2 and 3 – makes it possible for the database maker to prevent the re-utilisation of the whole or of a substantial part of the contents of that database.

21 On the other hand, under Article 7(5) of that directive – the interpretation of which is sought by Questions 4 to 9 – it is not permissible to re-utilise insubstantial parts of the contents of a protected database where that re-utilisation is repeated and systematic, implying acts which conflict with a normal exploitation of that database or which unreasonably harm the legitimate interests of the database maker.

22 However, the protection conferred by those provisions is reserved, under Article 7(1) of Directive 96/9, for databases which meet a specific criterion, that is to say, in respect of which the maker shows that there has been qualitatively and/or quantitatively a substantial investment in the obtaining, verification or presentation of the database contents. As mentioned in paragraph 16 above, the questions are predicated on the assumption that the collection of car ads at issue in the main proceedings satisfies that condition.

Questions 1, 2 and 3

23 By Questions 1, 2 and 3, which it is appropriate to examine together, the referring court asks, in essence, whether Article 7(1) of Directive 96/9 must be interpreted as meaning that the operator of a dedicated meta search engine such as that at issue in the main proceedings re-utilises the whole or a substantial part of the contents of a database covered by its service.

24 In order to answer that question, it is important, in the first place, to recall the essential features of a dedicated meta search engine and its operation, which are described in the documents placed before the Court and which clearly distinguish, moreover, a dedicated meta search engine from a general search engine based on an algorithm, such as Google or Yahoo.

25 First, it can be seen from the order for reference that a dedicated meta search engine such as that at issue in the main proceedings does not have its own search engine scanning other websites. Instead, in order to answer queries, the meta search engine makes use of the search engines on the websites covered by its

service, as described in paragraph 9 above. The dedicated meta search engine enters its users' queries, in translated form, in those search engines 'in real time', so that all the data on those databases is searched through.
26 Second, it can be seen from the order for reference that a dedicated meta search engine such as that at issue in the main proceedings offers advantages similar to those of the database itself in terms of the formulation of a query and the presentation of the results, whilst making it possible to use a single query to search several databases, as described in paragraphs 9 and 10 above. Like the database, the search form of the dedicated meta search engine in which the end user enters his query is composed of a number of different fields, enabling the user to target his search by specifying a number of criteria which the results must satisfy. Moreover, the results as displayed by the database site or by the dedicated meta search engine are ranked, in a manner of the end user's choosing, so as to reflect certain criteria in increasing or decreasing order.
27 As regards, in the second place, the characterisation, in the light of Article 7(1) of Directive 96/9, of the activity of the operator of a dedicated meta search engine such as that at issue in the main proceedings, it should be borne in mind that Question 1 concerns the offer, made to the public by that operator, to make it possible – by means of a dedicated meta search engine – to search the entire contents of a database or a substantial part thereof 'in real time', by entering an end user's query, in 'translated' form, in the search engine of the database.
28 That description of the relevant activity of that operator takes account of the fact that the search undertaken by the dedicated meta search engine in response to a query – including the presentation of the results to the end user – takes place automatically, in accordance with the way in which the meta search engine has been programmed, without any intervention on the part of the operator at that stage. At that stage, the only person who carries out an activity is the end user who enters his query.
29 By contrast, actions actually carried out by the operator of a dedicated meta search engine such as that at issue in the main proceedings occur prior to activities carried out by end users and before a search is made in response to a given query. Such actions consist in making a dedicated meta search engine available on the Internet for 'translating' queries (keyed into that meta search engine by end users) into the search engines of the databases covered by the service of the meta search engine in question.
30 In the third place, therefore, it is necessary to consider whether that activity falls within the scope of Article 7(1) of Directive 96/9: to do so, it must constitute 're-utilisation' for the purposes of Article 7(2)(b) and must involve all or a substantial part of the contents of the database concerned.
31 As regards the concept of 're-utilisation' for the purposes of Article 7(2)(b) of Directive 96/9, this is defined as '*any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by online or other forms of transmission'*. However, the reference to the 'substantial' nature of the re-utilised part is no part of the definition of the concept of 're-utilisation' as such (**see Case C-203/02 The British Horseracing Board and Others [2004] ECR I-10415, paragraph 50**).
32 Since the concept of re-utilisation is referred to in paragraphs 1 and 5 of Article 7 of Directive 96/9, it must be interpreted in the general context of that provision (see, to that effect, as regards the concept of 'extraction', **Case C-304/07 Directmedia Publishing [2008] ECR I-7565, paragraph 28**).
33 The use, in Article 7(2)(b) of Directive 96/9, of the phrase 'any form of making available to the public' indicates that the Community legislature attributed a broad meaning to 'reutilisation' (see, to that effect, **The British Horseracing Board and Others,** paragraph 51, and Case C-173/11 **Football Dataco and Others [2012] ECR I-0000**, paragraph 20).
34 That broad construction of the concept of 're-utilisation' is lent support by the objective pursued by the Community legislature through the establishment of a sui generis right (see, to that effect, as regards the concept of extraction, **Directmedia Publishing, paragraph 32**).
35 As the Court has already held on the basis of a number of recitals in the preamble to Directive 96/9, including recitals 39, 42 and 48, that objective is to stimulate the establishment of data storage and processing systems which 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, inter alia, **The British Horseracing Board and Others**, paragraphs 30 and 31; **Case C-46/02 Fixtures Marketing [2004] ECR I-10365**, paragraph 33; and **Case C-604/10 Football Dataco and Others [2012] ECR I-0000**, paragraph 34).
36 To that end, the protection offered by the sui generis right under Directive 96/9 is intended to ensure that the person who has taken the initiative and assumed the risk of making a substantial investment in terms of human, technical and/or financial resources in the setting up and operation of a database receives a return on his investment by protecting him against the unauthorised appropriation of the results of that investment (see **The British Horseracing Board and Others**, paragraphs 32 and 46; **Fixtures Marketing**, paragraph 35; and **Directmedia Publishing**, paragraph 33).
37 In the light of that purpose, the concept of 're-utilisation' as used in Article 7 of Directive 96/9 must be construed as referring to any act of making available to the public, without the consent of the database maker, the results of his investment, thus depriving him of revenue which should have enabled him to redeem the cost of the investment (see **The British Horseracing Board and Others**, paragraph 51). '*Re-*

utilisation' accordingly refers to any unauthorised act of distribution to the public of the contents of a protected database or a substantial part of such contents (see **The British Horseracing Board and Others**, paragraph 67; **Case C-545/07 Apis-Hristovich [2009] ECR I-1627**, paragraph 49; and **Football Dataco and Others**, paragraph 20). The nature and form of the process used are of no relevance in this respect (**Football Dataco and Others**, paragraph 20).

38 The second part of the definition given in Article 7(2)(b) of Directive 96/9 – '*by the distribution of copies, by renting, by on-line or other forms of transmission*' – and, in particular, the alternative 'or other forms' also make it possible to construe that definition broadly, by reference to the objective of Article 7, considered in paragraphs 35 and 36 above.

39 As regards the activity of the operator of a dedicated meta search engine such as that at issue in the main proceedings and, in particular, the facet of that activity that is of relevance to the present case – that is to say, making available on the Internet a dedicated meta search engine for translating queries (keyed into that meta search engine by end users) into the search engines of the databases covered by the service of the meta search engine in question – it should be noted that that activity is not limited to indicating to the user databases providing information on a particular subject.

40 The purpose of that activity is to provide any end user with a means of searching all the data in a protected database and, accordingly, to provide access to the entire contents of that database by a means other than that intended by the maker of that database, whilst using the database's search engine and offering the same advantages as the database itself in terms of searches, as can be seen from paragraphs 25 and 26 above. The end user no longer has any need, when researching data, to go to the website of the database concerned, or to its homepage, or its search form, in order to consult that database, since he can consult the contents of that website 'in real time' through the website of the dedicated meta search engine.

41 That activity on the part of the operator of a dedicated meta search engine such as that at issue in the main proceedings creates a risk that the database maker will lose income, in particular the income from advertising on his website, thereby depriving that maker of revenue which should have enabled him to redeem the cost of the investment in setting up and operating the database.

42 As the end user no longer has any need to proceed via the database site's homepage and search form, it is possible that the maker of that database will generate less income from the advertising displayed on that homepage or on the search form, especially to the extent that it might seem more profitable for operators wishing to place advertisements online to do so on the website of the dedicated meta search engine, rather than on one of the database sites covered by that meta engine.

43 As regards, furthermore, database sites displaying advertising, sellers – aware that, with the dedicated meta search engine, searches will be made simultaneously in several databases and duplications displayed – may start placing their advertisements on only one database site at a time, so that the database sites would become less extensive and therefore less attractive.

44 The risk that the making available on the Internet of a dedicated meta search engine such as that at issue in the main proceedings deprives the database maker of revenue cannot be ruled out by force of the argument that, in order to have access to all the information relating to a result found in a database – that is to say, in the case before the referring court, access to all the information on a car featured in an ad – it is still necessary, as a rule, to follow the hyperlink to the original page on which the result was displayed.

45 First, the information displayed by the dedicated meta search engine enables the end user, to some extent, to sort the results found and to decide that he does not need further information on a particular result. Second, it is possible that the end user will access more detailed information on a result without following the link to the database concerned, if that result is thrown up by a number of databases covered by the dedicated meta search engine, since that search engine reveals duplication by grouping all doubles together.

46 Of course, the protection under Article 7 of Directive 96/9 does not cover consultation of a database (see **The British Horseracing Board and Others**, paragraph 54, and **Directmedia Publishing**, paragraph 51). In consequence, if the database maker makes the contents of that database accessible to third parties, even if he does so for a consideration, his sui generis right does not enable him to prevent such third parties from consulting that database for information purposes (see **The British Horseracing Board and Others**, paragraph 55, and **Directmedia Publishing**, paragraph 53).

47 However, it is important to note that the activity of the operator of a dedicated meta search engine such as that at issue in the main proceedings does not constitute consultation of the database concerned. That operator is not at all interested in the information stored in that database, but he provides the end user with a form of access to that database and to that information which is different from the access route intended by the database maker, whilst providing the same advantages in terms of searches. By contrast, it is the end user keying in a query in the dedicated meta search engine who consults the database by means of that meta search engine.

48 Moreover, the relevant aspect of the activity of the operator of a dedicated meta search engine such as that at issue in the main proceedings – that is to say, making that search engine available on the Internet – comes close to the manufacture of a parasitical competing product as referred to in recital 42 of the preamble to Directive 96/9, albeit without copying the information stored in the database concerned. In view of the search options offered, such a dedicated meta search engine resembles a database, but without having any data itself.

49 It is sufficient for the end user to go to the website of the dedicated meta search engine in order to gain simultaneous access to the contents of all the databases covered by the service of that meta engine, as a search carried out by that meta engine throws up the same list of results as would have been obtained if separate searches had been carried out in each of those databases which, however, are presented using the format of the dedicated meta engine's website. The end user no longer has to go to the website of the database, unless he finds amongst the results displayed an advertisement about which he wishes to know the details. However, in that case, he is directly routed to the advertisement itself and, because duplicate results are grouped together, it is even entirely possible that he will consult that advertisement on another database site.

50 It follows from the foregoing considerations that the act on the part of the operator of making available on the Internet a dedicated meta search engine such as that at issue in the main proceedings, into which it is intended that end users will key in queries for '*translation*' into the search engine of a protected database, constitutes '*making available*' the contents of that database for the purposes of Article 7(2)(b) of Directive 96/9.

51 That *'making available'* is for '*the public*', since anyone at all can use a dedicated meta search engine and the number of persons thus targeted is indeterminate, the question of how many persons actually use the dedicated meta engine being a separate issue.

52 Consequently, the operator of a dedicated meta search engine such as that at issue in the main proceedings re-utilises part of the contents of a database for the purposes of Article 7 (2)(b) of Directive 96/9.

53 That re-utilisation involves a substantial part of the contents of the database concerned, if not the entire contents, since a dedicated meta search engine such as that at issue in the main proceedings makes it possible to search the entire contents of that database, like a query entered directly in that database's search engine. Accordingly, the number of results actually found and displayed for every query keyed into the dedicated search engine is irrelevant. As the European Commission observed, the fact that, on the basis of the search criteria specified by the end user, only part of the database is actually consulted and displayed in no way detracts from the fact that the entire database is made available to that end user, as was pointed out in paragraphs 39 and 40 above.

54 In the light of all the foregoing considerations, the answer to Questions 1, 2 and 3 is that Article 7(1) of Directive 96/9 must be interpreted as meaning that an operator who makes available on the Internet a dedicated meta search engine such as that at issue in the main proceedings re-utilises the whole or a substantial part of the contents of a database protected under Article 7, where that dedicated meta engine:

– provides the end user with a search form which essentially offers the same range of functionality as the search form on the database site;

– 'translates' queries from end users into the search engine for the database site 'in real time', so that all the information on that database is searched through; and – presents the results to the end user using the format of its website, grouping duplications together into a single block item but in an order that reflects criteria comparable to those used by the search engine of the database site concerned for presenting results.

Questions 4 to 9

55 In the light of the answer to Questions 1, 2 and 3, it is not necessary to reply to Questions 4 to 9.

Costs

56 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 (Fifth Chamber) hereby rules:

Article 7(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 an operator who makes available on the Internet a dedicated meta search engine such as that at issue in the main proceedings re-utilises the whole or a substantial part of the contents of a database protected under Article 7, where that dedicated meta engine:

– provides the end user with a search form which essentially offers the same range of functionality as the search form on the database site;

– 'translates' queries from end users into the search engine for the database site 'in real time', so that all the information on that database is searched through; and

– presents the results to the end user using the format of its website, grouping duplications together into a single block item but in an order that reflects criteria comparable to those used by the search engine of the database site concerned for presenting results.