[FR] Telephone Directory Protected by Sui Generis Right Granted to Producers of Databases

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In a recent high-profile decision, the Commercial Court in Paris applied the Database Protection Act of 1 July 1998 in favour of France Télécom, the national company which until 1 January 1998 held a monopoly in the market for telecom services in France.

The case concerned the offer to the public by the company MA Éditions of a reverse directory on the Minitel server «3617 Annu» and on the Internet. The service had been made possible by the company downloading data from France Télécom's electronic directory, which can be accessed using the code «3611». The judges of the Commercial Court held that this practise of extracting data was «rigorously prohibited by the intellectual property code».

However, in ordering the company MA Éditions to pay to France Télécom FRF 100 million in damages, the Commercial Court based its judgment on the legal protection of databases. Reasoning with the utmost simplicity, the judges held that the France Télécom directory constituted a structured database requiring considerable investment. The unauthorised extractions made by the defendant company were therefore prohibited and the data protected, not on an individual basis but as a whole, by the sui generis right granted to producers of databases. In this case the judges were sanctioning the behaviour of the company MA Éditions, which they described as «piracy».

The defendants argued that France Télécom's abuse of its dominant position, contrary to the proper exercise of fair competition, constituted a restriction on access to the «essential facility» its list of subscribers provided. In rejecting this argument, the judge referred to the defendants' own turpitude in a dispute in which it had itself acted with total disregard of all the basic rules of commerce.

Tribunal de commerce de Paris, 18 juin 1999, France Télécom c/ SARL MA Éditions et SA Fermic devenue Iliad.

Commercial Court of Paris, 18 June 1999; France Télécom v. Sàrl MA Éditions and SA Fermic, subsequently Iliad.

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