[GB] Infringement of Database - Jurisdiction of English Courts

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Football Dataco, the "official, general licensing website, for the 4 professional football leagues in the United Kingdom" compiles and maintains football match data in a database called "Football Live". It is a "live" database and comprises information from UK football matches, such as goals scored, penalties, yellow and red cards and substitutions.

Sportsradar is a German company, owned by a Swiss holding company. It also operates a live sports data service, "Sports Live Data", with the material held on servers hosted in Germany and Austria. It is both accessible from the UK and made available to third parties, some of whom are in the UK.

Football Dataco raised an action claiming copyright and database right infringement by Sportsradar for unlawfully using material from "Football Live". Sportsradar argued that the English courts did not have jurisdiction to hear the claim: it was not committing any infringing acts in the UK and it was domiciled in Germany and Austria.

The issue regarding extraction from a database turned on the interpretation of Article 7(2)(b) of the Database Directive: "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 on-line or other forms of transmission."

Legally, where did the act of "making available" occur?

As regards online transmission, the judge analogised from the question, where did a satellite broadcast occur - at the place of transmission or the place of receipt? The Directive on Satellite Broadcasting and Cable Re-transmission favours the former (the so-called "emission theory").

Mr Justice Floyd stated that "I have come to the conclusion that the better view is that the act of making available to the public by online transmission is committed and committed only where the transmission takes place. It is true that the placing of data on a server in one state can make the data available to the public of another state but that does not mean that the party who has made the data available has committed the act of making available by transmission in the State of reception. I consider that the better construction of the provisions is that the

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act only occurs in the state of transmission."

The full trial will consider whether Sportsradar is liable for authorising copyright infringement and/or is jointly liable for the infringement.

Football Dataco Ltd, The Scottish Premier League Limited, The Scottish Football League and PA Sport UK Limited v. Sportradar GmbH & and Sportradar AG, 17 November 2010

http://www.bailii.org/ew/cases/EWHC/Ch/2010/2911.htm

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