

## Case: EU unreported case

case number | case name | [year] |  
OJ C issue/first page

e.g. Case C–556/07 *Commission v France* [2009] OJ C102/8

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C 102/8	EN	Official Journal of the European Union	1.5.2009
<b>Re:</b> Reference for a preliminary ruling — Sofia City Court — Directive 96/9/EC of the European Parliament and the Council of 11 March 1996 on the legal protection of databases (OJ 1996 L 77, p. 20) — Concepts of extraction and utilization — Legal databases relating to legislation and case-law in a Member State			
<b>Operative part of the judgment</b>			
1. The delimitation of the concepts of 'permanent transfer' and 'temporary transfer' in 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 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 characteristic 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 program 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.			
2. Article 7 of Directive 96/9 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. Otherwise, and in so far as the body of materials constitutes a database 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.			
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 quantitatively, of the contents of the database concerned, within the meaning of Article 7 of Directive 96/9.			
The fact that part of the materials contained in a database are official and accessible to the public does not relieve the national courts 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 quantitatively, of the database inasmuch as they represent, in terms of the obtaining, verification and presentation thereof, a substantial human, technical or financial investment.			
(1) OJ C 51, 23.2.2008.			
<b>Judgment of the Court (Third Chamber) of 5 March 2009</b> <b>— Commission of the European Communities v French Republic</b> <b>(Case C-556/07) (1)</b> <b>(Failure of a Member State to fulfil its obligations — Common Fisheries Policy — Regulation (EC) No 594/97 — Drift net — Definition — 'Honnalle' fishing net — Prohibition for the fishing of certain species — Regulations (EEC) No 2847/93 and (EC) No 2371/2002 — Lack of an effective system of monitoring to ensure respect of that prohibition)</b> <b>(2009/C 102/11)</b> <b>Language of the case: French</b>			
<b>Parties</b> Applicant: Commission of the European Communities (represented by: M. Nolin, M. van Heezik and T. van Rijn, Agents)			