

## Supreme Court rejects ‘spin-off’ argument in database case

Louis Jonker

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An ongoing dispute between the Dutch Association of Real Estate Agents (NVM) and the Dutch newspaper *De Telegraaf* has come to a preliminary end with a ruling by the Netherlands Supreme Court.

The subject of the dispute was El Cheapo, a website owned by *De Telegraaf* that searches for the best bargains on various products. NVM's website was deep linked and the data was framed in the El Cheapo screen and copied onto the El Cheapo server.

In September 2000 The Hague District Court held that El Cheapo had infringed NVM's database rights.

*De Telegraaf* appealed, claiming that NVM had not made a substantial investment in creating the online database; it was just a spin-off from NVM's main activities. *De Telegraaf* was successful, with The Hague Court of Appeal deciding that El Cheapo had not infringed NVM's database rights\*.

However, the Netherlands Supreme Court has now rejected the spin-off argument, stating that the collection of data in order to provide an online presentation of data on houses for sale required a substantial investment. The online data collection was, therefore, considered to constitute a separate database worthy of protection. The court also noted that if a database is to be used for multiple purposes, a separate substantial investment for each purpose is not required.

\* see Dinant T.L. Oosterbaan, 'El Cheapo comes out on top', in: *World eBusiness Law Report*, 17 July 2001

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Oosterbaan & Van Eeghen

Koningslaan 35, 1075 AB Amsterdam, The Netherlands

tel: +31.20.671.6756 / fax: +31.20.671.8669 / e-mail: [info@itlawyers.nl](mailto:info@itlawyers.nl) /url: [www.itlawyers.nl](http://www.itlawyers.nl)