

El Cheapo comes out on top

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Two aspects specific to the Internet age have been the cause of a number of disputes in the Netherlands. First, inherent in the use of the Internet is the use of links. Second, databases are not only used by their owners, but also by third parties to provide information to the public. One recent case is worth mentioning, as it involves both these issues.

The Dutch newspaper De Telegraaf owns a website called El Cheapo (www.elcheapo.nl). The site searches for the best bargains on products like cars, travel, music and housing. For example, by clicking on the 'housing' link, El Cheapo searches the databases of third parties, including the Dutch Real Estate Agents' Association (NVM). The search results are copied to the server of El Cheapo and appear on the user's screen.

In September 2000 the District Court of The Hague held that the creation and use of links (including deep links) forms the basis of the Internet and does not constitute copyright infringement. The court did decide, however, that El Cheapo had reused the NVM database without NVM's permission and had therefore infringed NVM's database rights.

De Telegraaf appealed, claiming that no substantial efforts were made by NVM to create the database because it was the fusion of the individual databases of NVM agents. De Telegraaf also maintained that El Cheapo had not used a substantial part of the database.

The Court of Appeals of The Hague has decided that no protection is accorded to a database when it can be regarded as a 'spin-off' product from the main activity of the database owner. According to the court, De Telegraaf had therefore not infringed the database rights of NVM.

NVM has since filed an appeal with the Dutch Supreme Court.

Although copyright and database rights on the Internet can sometimes be invoked, it is not always clear when. It seems important therefore that the Supreme Court and future case law crystallize terms such as 'substantial part' and 'spin-off'. This particular case will no doubt be subject to further interpretation and refinement in the future.

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