

Group Briefing
September 2019

The High Stakes of Betting on Data

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International Financial Law Review (IFLR) Europe Awards

Ireland Law Firm of the Year 2017
Chambers Europe Awards

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

The High Court of England and Wales has recently examined the enforcement options for protecting the right to collect and process live betting data for horseracing.

In *The Racing Partnership Limited and others v Done Brothers (Cash Betting) Limited and others*, Judge Zacaroli recognised the significant value of the live betting data, and applied the principles of breach of confidence to protect the right to exploit this data commercially. The judgment will directly impact the sports and gaming industries, and potentially have wider implications for companies that rely on the commercialisation of valuable data.

BACKGROUND

The first claimant, The Racing Partnership Limited (“TRP”) collects live betting and horseracing data at racecourses across the UK and uses this data to create and sell consolidated betting shows (i.e. the pre-race price for each horse) to off-course bookmakers. The defendant, Sports Information Services Limited (“SIS”) previously collected the same data at racecourses but its contract expired in January 2017. SIS continued to sell betting shows to a number of off-course bookmakers following the expiration of its contract by collecting the live betting data through the Tote – the on-site pool-betting company.

TRP pursued a number of claims against SIS including a claim for infringements of copyright and database rights, breach of confidence and unlawful means conspiracy.

COPYRIGHT CLAIM

TRP argued that copyright subsisted in the betting shows because a level of skill and judgment went into selecting what live betting data would be fed into TRP’s algorithm to generate the betting shows. The Court rejected this argument on the basis that the process of arriving at each betting show price was “pure routine work” by the algorithm. The Court went on to hold that even if copyright did subsist in this type of data, there had not been any infringement as SIS had merely consulted the prices in formulating its own prices.

TRP also claimed a database right in the database that held the betting shows, which SIS conceded. However, it denied infringing this right for the same reason: it had only consulted the prices to minimise the difference between its betting shows and TRP’s betting shows. The Court held that this was not sufficient “extraction and utilisation” of

the database, even if about half the prices were identical.

BREACH OF CONFIDENCE BY THE TOTE

The only successful claim made by TRP was for breach of confidence by SIS. The reasoning was based on *Douglas v Hello! Ltd (No. 3)* – the case of the unauthorised publication of photographs from the wedding of Michael Douglas and Catherine Zeta-Jones, who had exclusively licensed the right to photograph the wedding to OK! magazine for a high sum. The photographs, therefore, had significant commercial value, and because no other photographers were permitted to attend the wedding, confidentiality attached to them. Hello! magazine knew this, and published the photographs anyway to the detriment of OK! magazine, which amounted to a breach of confidence.

In the TRP case, Judge Zacaroli found that SIS knew that the racecourses restricted all attendees from collecting race data, and SIS also knew the right to

disseminate this data had “significant commercial value”, having previously paid for this right itself. The Tote should have known that it was not permitted to distribute the live betting data to SIS, also being aware of its value. As there was unauthorised use of the data to the detriment of TRP, SIS was liable to TRP for breach of confidence. There has yet to be a decision as to the remedy TRP is entitled to, but it is likely to be an award of damages based on the value of the contract with the racecourses.

SIGNIFICANCE OF THE JUDGMENT

Although the valuable data at issue was live betting data, the judgment has broader implications for industries that operate on the basis of commercialising raw data. The decision shows that, despite it being pivotal to the digital economy, there is often no clear legal basis for protecting raw data except through contract. While companies can still rely on copyright to protect original algorithms that process this data, once the algorithm has been

applied, the results of the processing are outside of the scope of protection, as with the betting shows in this case. The judgment also confirms that although a database right can be claimed to protect a valuable database, the high standard for utilisation and extraction does not guard against competitors consulting it to verify their own results.

TRP’s success in this case was narrowly grounded in the measures taken by the racecourses to control access to the live betting data, such as imposing strict terms and conditions on race attendees, and putting contracts in place with distributors. While companies that sell live or raw data as a commercial asset may be “in-the-money” in the digital economy, businesses should ensure dissemination of data is controlled through exclusive channels by contract or otherwise, to create the necessary conditions for a breach of confidence claim.

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