[BE] Case Brought by Writer-Performers and Performing Artists Against Cable Distributors Thrown Out

IRIS 1998-8:1/6

Peter Marx
Marx, Van Ranst, Vermeersch & Partners

On June 1998 the Court of Appeal in Brussels delivered a decision in the dispute between Uradex, a company managing the neighbouring rights of writer-performers and performing artists (the artists) and the Professional Radio and Tele-distribution Union (RTD), an umbrella organisation for Belgian cable distributors.

The main point in the Uradex claim was that the members of the RTD were prejudicing the artists' neighbouring rights by broadcasting their services on cable without authorisation.

Uradex therefore applied to the Court for an order to put a stop to such unauthorised broadcasting by the cable distributors, on pain of penalty. Invoking Article 51 of the Copyright and Neighbouring Rights Act of 30 June 1994 (the Act), Uradex claimed that cable broadcasting of artists' performances was only lawful if authorised by the latter. On the basis of Article 53, Section 1 of the Act, Uradex also maintained that the right to authorise or prohibit broadcasting by cable may only be exercised by a collective management company. The Court upheld the main claim made by Uradex, but found that the collective management companies only had an exclusive right if the artists whose rights they managed were still themselves holders of that right. Artists may dispose of their right to authorise or prohibit the broadcasting of their performances, and not necessarily to a collective management company.

The Court found that Uradex had not demonstrated that the artists who had entrusted management of their rights to Uradex had retained the exercise of their exclusive rights of audiovisual use in their contractual relations with their producers. As this was not proven, the presumption of transfer of exclusive rights in respect of audiovisual use by the artist to the producer, as instituted by Article 36 of the Act, was upheld in favour of the producers.

It should be noted that in the explanatory part of its judgment the Court rejected the cable distributors' argument that the "direct injection" of televised programmes on the network by means of cable could not be assimilated to broadcasting by cable as referred to in Article 51 of the Act. The Court held that the broadcasting of a programme injected directly was no different from that of a

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programme which had already been broadcast previously. Such broadcasting was also a new communication in the meaning of Article 11bis, part 1(ii), of the Bern Convention, i.e., a public communication by a body, namely the cable distributor, other that the original body, namely the broadcaster.

The Court also rejected another argument put forward by the cable distributors, that action should be taken against the broadcasters rather than against them, since they had concluded "all rights included" agreements with the latter which guaranteed that payment for neighbouring rights had indeed been made. The Court held that these agreements were not binding on the companies for the collective management of the rights.

Arret de la Cour d'Appel de Bruxelles (8è chambre), 25 juin 1998 (1997/AR/3778), Uradex S.C.R.L. contre L'Union Professionnelle de la Radio et de la Télédistribution et La Société Intercommunale pour la Diffusion de la Télévision.

Decision of the Brussels Court of Appeal (8th Chamber) on 25 June 1998 (1997/Ar/3778); Uradex S.C.R.L. v. Union Profesionnelle de la Radio et Télédistribution and the Société Intercommunale pour la Diffusion de la Télévision.

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