[BE] Copyright and Distribution by Cable

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On 26 June 1998 the Presiding Judge of the Court of First Instance in Brussels delivered a judgement in the case between SABAM, a company which manages copyright fees, and the Professional Union of Radio and Television Distribution (RTD), an umbrella organisation for Belgian cable distributors.

The Presiding Judge noted violation of Articles 51 and 52 of the Copyright and Neighbouring Rights Act of 30 June 1994. Article 51 states that originators have the exclusive right to authorise the retransmission by cable of their works. Retransmission by cable is taken to mean the simultaneous, unaltered and integral retransmission by cable or by a system of broadcasting using ultra-short waves for reception by the public of an initial transmission, without or without wires, particularly by satellite, of television and radio broadcasts intended for reception by the public (Article 52).

RTD refused to apply for authorisation to retransmit a number of television programmes containing works included in SABAM's repertoire.

These were firstly programmes whose retransmission by cable distributors was rendered compulsory by the Belgian Community authorities ("must-carry" programmes). RTD felt it was contradictory to have to request authorisation to make a compulsory broadcast using the cable network.

RTD also refused to apply for authorisation to retransmit satellite broadcasts which may be received by anyone by means of a satellite dish. According to RTD a programme which could be received freely by an individual person could also be retransmitted freely by a cable distributor to its subscribers. As regards the "must-carry" programmes, the Court recalled - as its Presiding Judge had already emphasised in his judgement delivered in an urgent matter on 4 July 1997 - that there was no contradiction between on the one hand respect for the administrative obligation to retransmit certain programmes and on the other the private law obligation to first obtain authorisation from the copyright beneficiaries. As for satellite programmes, the Presiding Judge found that the manner in which programmes were received made no difference to the legal obligations of cable distributors as regards originators. The judgement gave the parties until December 1998 to reach an agreement. An appeal has since been lodged against the judgement, and no agreement has been reached.

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Rechtbank van eerste aanleg te Brussel, 98/2828/A, 26 juni 1998.

Judgement by the Presiding Judge of the Court of First Instance in Brussels (98/2828/A), 26 June 1998, SABAM v. RTD and its members.

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