[BE] Copyright and Distribution by Cable (continued)

IRIS 1999-6:1/6

Peter Marx
Marx, Van Ranst, Vermeersch & Partners

The Brussels Court of Appeal heard an appeal against a decision reported in an earlier issue (IRIS 1999-1: 7). The original dispute was between SABAM, a company which manages copyright fees, and the Professional Union for Radio and Television Distribution (RTD), an umbrella organisation for Belgian cable distributors. In the original case, the presiding judge of the Court of First Instance in Brussels sitting in urgent matters had decided that the content of a letter sent by RTD to SABAM as part of negotiations on cable re-transmission rights constituted a violation of the exclusive right of authors to authorise the re-transmission by cable of their works.

In its letter the RTD had informed the SABAM that it felt it was contradictory to have to obtain authorisation for the re-transmission by cable of programmes whose re-transmission was rendered compulsory by the Belgian Communities authorities («must carry» programmes). The RTD also questioned the need for authorisation to re-transmit satellite broadcasts, as these could be received freely by anyone, using a satellite dish. The presiding judge delivered his decision on 26 June 1998, applying Article 87, paragraph 1, of the Copyright and Neighbouring Rights Act of 30 June 1994, which enables the presiding judge to note an infringement and order it to cease.

In its decision of 9 March 1999, however, the Court of Appeal rejected the issue of violation of copyright as raised by SABAM in the initial proceedings and allowed the appeal lodged by RTD and its members. The court of appeal has decided that RTD has not violated the copyright protection of authors represented by SABAM merely by expressing its position during negotiations.

Moreover, quite apart from the interpretation and import of the correspondence between SABAM and RTD, the Court held that it was not necessary to order the re-transmission by cable to cease.

The court noted that, in an order by the presiding judge of the Court of First Instance in Brussels sitting in urgent matters on 15 November 1996, it had been decided that cable distributors should pay provisional compensation in exchange for authorisation to re-transmit by cable pending the outcome of the negotiations between the parties, of the mediation procedure, or of a decision on the merits.

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In the circumstances, the court allowed the appeal lodged by the RTD and cancelled the decision of 26 June 1998 by the presiding judge of the Court of First Instance in Brussels.

Het Hof van Beroep te Brussel, achtste Kamer, 1998/AR/2516-1998/AR/2632-1998/AR/2784, 9 March 1999; SABAM v. RTD.

Brussels Court of Appeal, 1998/AR/2516-1998/AR/2632-1998/AR/2784, 9 March 1999; SABAM v. RTD and its members.

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