[NL] Liability of Internet Service Providers

IRIS 1999-7:1/3

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On 9 June 1999 the District Court in The Hague ruled that Internet Service Providers are liable when Internet users infringe copyright and the providers do not take adequate measures to remove or block the infringing material after they have been notified of this unlawful behaviour. The proceedings were preceded by summary proceedings which were reported on in IRIS 1995-9: 4 and IRIS 1996-4: 3.

The main plaintiff in this case, the Church of Scientology, claimed that the defendants (23 in total, all but one are Internet Service Providers) had infringed the Church's copyright by making the so called Fishman affidavit, containing copyrighted Scientology information, available on the Internet. One of the questions that had to be answered by the Court is to what extent the service providers themselves infringe copyright when users of their services place infringing material on the Internet. The Court ruled as follows: Service providers pass on information to and from their users and store it. They do not select the information, nor do they edit, revise or update it. They merely provide technical facilities enabling others to make information available to the public. Thus, they do not make information publicly available but only provide the opportunity to do so.

The activities of the service providers do not constitute a reproduction which is relevant from a copyright perspective. The reproductions are dictated by technology and are a consequence not so much of an act of the provider as of an act of a homepage holder or a user who requests the information. In this respect, it is not important whether the information is accessible via an Internet address or via a hyperlink. Nonetheless, a certain degree of care to prevent further infringement can be expected from the service provider. He can be held liable in case he has been notified that a user of his services infringes copyright on his homepage or otherwise acts unlawfully, provided that the correctness of this notification cannot reasonably be doubted and the service provider fails to remove the information as soon as possible, or does not render the information inaccessible. It may be expected from the service provider to remove the infringing material and to inform the rights holder, at his request, of the name and address of the user in question. Moreover, a service provider also acts unlawfully when there is a link in his computer system which, when activated, reproduces a copyrighted work on the computer screen of the user, without the permission of the plaintiff. This applies where the service provider has been notified and the

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correctness of this notification cannot be reasonably doubted and the service provider does not remove the link from the computer system as soon as possible.

Rechtbank Den Haag, 9 June 1999.

District Court in The Hague, 9 June 1999.

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