[NL] Producer is not a Performing Artist under Neighbouring Rights Act

IRIS 2000-7:1/31

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Peters and Co are producers and members of the Genootschap van Onafhankelijke Geluidsproducenten (a Dutch independent association of soundproducersGONG). Peters and Co has requested de Stichting ter Exploitatie van Naburige Rechten (Foundation for the Exploitation of Neighbouring Rights - SENA) to distribute the SENA-revenues also to them and to other producers, but SENA refuses. Peters and Gong want producers to be considered as performing artists according to Article 1 sub a of the Wet op de Naburige Rechten (the Dutch neighbouring rights act - WNR) or producers of phonograms in the sense of Article 1 sub d WNR.

The question arose: does the notion of performing artist exclusively stand for the person who performs a literary or an artistic work?

The Amsterdam District Court found that although a producer delivers an artistic and creative performance, this performance is always connected to a recording. Therefore, a producer does not perform, but produces or influences the recording of the performance and, hence, the producer differs from the performing artist of article 1 sub a WNR.

However, a producer is not a phonogram producer as mentioned in article 1 sub d of the WNR. The Amsterdam District Court stated that the primary task of a producer of phonograms is the assumption of financial responsibility for producing the first recording of the performance on a disk or soundcarrier. The fact that either the producer of phonograms himself produces or that he lets another producer produce the recording - at the phonogram's producer's commercial risk - makes no difference. Only when the producer and the record company, from a financial point of view, are more or less equally responsible for the first recording is the producer, together with the record company, to be considered as phonogram producer. The Amsterdam Court thus denies to soundproducers the status of neighbouring rightsholders.

Rechtbank Amsterdam, Peters and Co vs. SENA, decision of 14 June 2000.

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