[NL] Preliminary Questions on Equitable Remuneration

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In 1986, the Nederlandse Omroep Stichting (the Netherlands Broadcasting Foundation - NOS) and the Nederlandse Vereniging van Producenten en Importeurs van Beeld en Geluidsdragers (the Dutch member of IFPI - the International Federation for the Phonographic Industry) reached an agreement obliging the NOS to pay annual remuneration for the use of the rights of performers and producers of phonograms.

On 1 July 1993, the Wet op de Naburige Rechten (the Dutch neighbouring rights act - WNR) came into force. Article 15 WNR appoints Stichting ter Exploitatie van Naburige Rechten (Foundation for the Exploitation of Neighbouring Rights - SENA) as the representative of the rightsholders. SENA is concerned with the collection and distribution of the equitable remuneration mentioned in Article 7 of the WNR. NOS and SENA disagree upon how to define equitable remuneration. The Court of Appeal in The Hague, in an appeal against a decision of The Hague District Court, stated that the WNR does not provide guidance for the determination of equitable remuneration. Due to the fact that the Dutch legislator saw no need to change Article 7 WNR in light of Directive 92/100/EEC, the Court of Appeal concluded that the Directive was not intended to harmonise national laws with regard to determining equitable remuneration. Consequently, the defining equitable remuneration remained the prerogative of the Member States. However, SENA must take into consideration the criteria by which other Member States define equitable remuneration.

On further appeal, the Supreme Court has now adjourned the case and, in accordance with Article 234 EC-Treaty, submitted preliminary questions to the European Court of Justice. Inter alia, the Supreme Court wants to know whether the equitable remuneration mentioned in Article 8 paragraph 2 of the Directive is a "notion communautaire" and if so, according to which criteria it should be determined. And if not, are the Member States completely free to determine the amount of the equitable remuneration?

Hoge Raad (Dutch Supreme Court), 9 June 2000, SENA Stichting ter Exploitatie van Naburige Rechten (Foundation for the Exploitation of Neighbouring Rights) vs. NOS Nederlandse Omroep Stichting (Netherlands Broadcasting Foundation).

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