[NL] RTL4 and RTL5 May Continue Broadcasting in the Netherlands for the Time Being

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The Chairman of the Administrative Division of the Council of State decided, in response to an appeal by the Holland Media Groep (Holland Media Group - HMG), that the programs of RTL and RTL5 are - for the time beingconsidered to come under the jurisdiction of Luxembourg and therefore may be transmitted in the Netherlands without a Dutch broadcasting licence.

HMG, a commercial broadcasting corporation that broadcasts television programs for RTL4 and RTL5, first lodged an appeal to the Administrative Division against a decree of the District Court of Amsterdam on 7 September 2000, (case 98/3461, Holland Media Groep v. Commissariaat voor de Media, see IRIS 2000-9: 11). The District Court of Amsterdam had to determine whether HMG falls under the jurisdiction of the Netherlands with the consequence that the provisions of the Dutch Mediawet (Media law) would apply and HMG would need a Dutch broadcasting licence to continue broadcasting. The Court did not accept the argument of HMG that it would fall under the jurisdiction of Luxembourg because HMG's headquarters are based in Luxembourg and, therefore, HMG would be entitled to broadcast also in the Netherlands on the basis of a Luxembourg broadcasting licence. Therefore, as a consequence of the decision of the District Court, the transmission of RTL4 and RTL5 is no longer permitted in the Netherlands without a standard Dutch broadcasting licence. As the Commissariaat voor de Media (Dutch Media Authority) stated clearly, the transmission by cable of programs by HMG will be no longer tolerated as of 1 December 2000.

HMG has appealed the decision of the District Court of Amsterdam to the Administrative Division of the Council of State. At the same time, the broadcasting corporation asked the Chairman of the Administrative Division of the Council of State for a provisional arrangement for the duration of the appeal.

The latter ruled that, for the time being, television programs of both RTL4 and RTL5 will be considered foreign so that broadcasting may continue on the basis of the Luxembourg broadcasting licence. This is to prevent a situation arising whereby, if the Dutch Media Authority eventually imposes sanctions on HMG for broadcasting without a licence, HMG would be forced to initiate separate proceedings against such sanctions. Furthermore, the Chairman ordered that the main question, of whether the programs of RTL4 and RTL5 fall under Dutch jurisdiction, should be decided not later than the beginning of March 2001.

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Administrative Law Division of the Council of State, judgement of 21 November 2000, case 200005000/02, Judgement of the Chairman of the Administrative Law Division of the Council of State on a request for a provisional arrangement during the appeal in the case Holland Media Group v. Dutch Media Authority

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