[NL] Dutch Court Addresses Peer-to-Peer Issue

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On 29 November 2001, the District Court of Amsterdam ordered a shutdown of the activities of Kazaa in the course of interlocutory proceedings. Kazaa is one of the recent peer-to-peer (P2P) programs enabling users to share computer files over the Internet. The Court also ordered Buma/Stemra, the Dutch music-rights organisation, to continue negotiations with Kazaa over a worldwide streaming-licence for the music of Buma/Stemra members.

Kazaa accused Buma/Stemra of breaking off the negotiations at an advanced stage. Buma/Stemra in turn asked the Court to order Kazaa to take appropriate measures to stop worldwide illegal reproduction and publication of their copyrighted music. Buma/Stemra ceased negotiations because of recent international developments. These include the Los Angeles suit filed by the RIAA, the American music-rights organisation, against MusicCity, Grokster and Kazaa, all services that enable users to share files over the Internet.

Buma/Stemra alleged that Kazaa was acting unlawfully by providing the software and services that enable users to download music from each other. Kazaa claimed to be unable to take appropriate measures to stop acts of infringement. Kazaa further denied that by offering the P2P software it infringed copyrights since it only acted as an agent. Thirdly, it stated that its users were not infringing copyright since a) the files are never made available to the public, b) exchange via the network is a form of private communication and c) exchange via the P2P network falls under the exception of article 16b of the Dutch Copyright Act 1912 (as revised), which permits replication for private exercise, study or use.

The Court decided that by enabling its users to download music via the software of Kazaa, it is in violation of Dutch copyright law. By offering the software in combination with the search-engine on its website, Kazaa can be regarded as a user of the music that is downloaded. The fact that the music can be downloaded via the P2P network and not via the website of Kazaa is irrelevant. It therefore ordered Kazaa to take appropriate measures to end this infringement. One of the measures suggested involves shutting down the site of Kazaa, thereby denying Kazaa users access to the search engine.

On the other hand, the Court concluded that the parties had been in a very advanced stage of negotiations. Developments on an international level are such

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that agreement on this subject could be attained within a reasonable amount of time. As no facts have been sufficiently proved by Buma/Stemra which would prohibit further negotiations between Kazaa and Buma/Stemra, the parties should therefore continue to discuss a licensing agreement. Lastly, Kazaa's allegation of abuse of a dominant position did not succeed.

The judgment is under appeal.

Pres. Rechtbank Amsterdam, 29 November 2001, LJN-nummer: AD6395, Zaaknr: KG 01/2264

http://www.rechtspraak.nl/uitspraak/frameset.asp?ui_id=29615

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