[NL] Dutch Court of Appeal Re-addresses Peer-to-Peer Issue

IRIS 2002-5:1/15

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In its judgment of 29 November 2001, the District Court of Amsterdam ordered a shut-down of the activities of Kazaa and decided as well that Buma/Stemra (the Dutch music-rights organisation) should continue negotiations with Kazaa over a worldwide streaming-licence for the music of the Buma/Stemra members (see IRIS 2002-1: 13). Following this judgment, both parties involved, Kazaa and Buma/Stemra, decided to take their case to a higher court.

The President of the District Court had ruled that Kazaa had violated the Dutch Copyright Act by enabling its users to download music with the aid of Kazaa software. By offering its peer-to-peer software together with a search-engine, Kazaa was considered to be a user of the music that had been downloaded.

This point of view was not shared by the Court of Appeal of Amsterdam, which stated in its judgment of 28 March 2002 that insofar as there were any relevant acts of copyright infringement in this case, those acts were performed by the users of the software themselves and not by Kazaa, as such. The mere provision of means for publication or multiplication of copyright-protected works is not in itself an act of publication or multiplication.

Furthermore, it is not only copyright-protected works that are shared with the help of the Kazaa software, but also works that are in the public domain and works for which the author's permission has been given to use them. The provision by Kazaa of relevant software cannot therefore be considered unlawful.

Kazaa also appealed on the grounds that it is unable to take appropriate measures to prevent its users from sharing copyright-protected works. It has shut down its website, as ordered by the District Court, but stated that it cannot stop the acts of infringement. The Court of Appeal accepted the correctness of this statement and ruled that the counterclaim by Buma/Stemra could not therefore be allowed.

Kazaa, to conclude, withdrew the request for an order to continue the negotiations, which it had originally been granted by the District Court of Amsterdam.

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Gerechtshof Amsterdam, 28 maart 2002, LJN-nummer: AE 0805, Zaaknr: 1370/01 SKG

http://www.rechtspraak.nl/uitspraak/frameset.asp?ui_id=32573

Decision of the Court of Appeal of Amsterdam of 28 March 2002, LJN-nummer: AE 0805, Zaaknr: 1370/01 SKG

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