# [NL] Court of Appeal Ruling in Scientology Case

**IRIS 2003-9:1/29**

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On 4 September 2003, the Den Haag Court of Appeal ruled that Dutch journalist Karin Spaink did not act unlawfully by publishing on her web-site parts of works owned by the Church of Scientology. The present decision reverses the judgment of the Den Haag District Court of 9 June 1999 (see IRIS 1999-7: 3), which is widely regarded as a landmark decision on Internet Service Provider (ISP) liability for copyright infringement. The District Court ruling set the standard that ISPs should remove hosted material if they receive a notification that hosted material is infringing and they cannot doubt the reasonableness of the notification. The Court of Appeal ruling does not address the question of ISP liability in full.

The copyrighted works, "Operating Thetan I to VII", describe part of the organisation and principles of Scientology. Spaink posted parts of these works on her web-site as an illustration to her story about Scientology. Scientology requested the Court to order, inter alia, that the ISPs hosting Spaink's web-site remove the allegedly infringing works.

The Court of Appeal dismissed the ISPs' assertion of the right to quote, noting that the works had not been lawfully made available to the public previously. A right to quote is only granted if this is the case.

However, the Court of Appeal then noted that under these circumstances enforcement of the copyright violates Article 10 of the European Convention on Human Rights (ECHR), which protects the right to freedom of speech. The Court noted that Scientology does not fear undermining democratic values and that the quoted parts of the works substantiate Spaink's article about Scientology. Therefore, the public interest in freedom of information about Scientology is more important than the interest of Scientology in enforcing their copyright, and Spaink does not infringe on the copyright of Scientology.

The Court, referring to the Agreed Statement on Article 8 of the WIPO Copyright Treaty, in obiter dicta notes that the ISPs, by providing physical facilities for enabling or making a communication, do not themselves make available to the public or reproduce.

The Court reversed the decision of the District Court and dismissed the claims of Scientology.

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***Gerechtshof 's-Gravenhage, Uitspraak: 4 september 2003, LJN-nummer: AI5638 Zaaknr: 99/1040***

http://www.rechtspraak.nl/uitspraak/show_detail.asp?ui_id=51205&webpage=/uitspraak/show_searchadv.asp

*Judgment of the Den Haag Court of Appeal of 4 September 2003, LJN-no. AI5638*

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