[NL] Dutch Internet Providers May Refuse Spam

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On 12 March 2004, the Dutch Supreme Court ruled that the Dutch Internet provider XS4ALL is allowed to refuse spam on its network.

AbFab, a Dutch marketing company, sent large amounts of unsolicited commercial e-mail to subscribers of XS4ALL. XS4ALL applied for an injunction to prevent this, which was granted by the President of the Court of Amsterdam in March 2002 (see IRIS 2002-4: 11). Shortly after that, the Court of Appeal set aside the judgment of the Court of Amsterdam.

In the final appeal, the Supreme Court stated that XS4ALL has exclusive rights to its computer capacity, transmission capacity and customer base. Anyone who, without being authorised, makes use of property to which another party has an exclusive right, is acting unlawfully unless this can be justified. AbFab invoked the right to freedom of speech as a ground for justification. The defence failed because, according to the Supreme Court, “[t]his fundamental right cannot serve in principle to justify a use of property that infringes the exclusive rights of another party”. XS4ALL, and therefore every Dutch Internet provider, has no obligation to carry and is permitted to refuse spam on its network. The Dutch Supreme Court reversed the Court of Appeal's judgment and upheld the judgment in the preliminary relief proceedings.

This ruling offers Internet providers the possibility to refuse spam in advance and also allows the forbidding of unsolicited commercial e-mail when addressed to business clients. This goes further than the new spam legislation planned for the Netherlands, which will only forbid the spamming of private e-mail addresses.

Decision of the Supreme Court of 12 March 2004, LJN no. AN8483, Case no. C02/264HR

http://www.xs4all.nl/uk/news/overview/abfab120304fv.html

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