[NL] Cable Exploitation Companies and Copyright

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On 7 April 2005 the Amsterdam preliminary Court rendered a decision settling a dispute between a consortium of cable operators and the Bureau voor Muziekauteursrecht (Mediation Society for Collection of Music Copyright - BUMA). The Court ordered the parties to negotiate the contested payable amount of authors' rights within a frame of time not exceeding 1 October 2005.

In 1985 the cable operators contractually agreed upon the amount of authors' rights payable for the transmission of works represented and protected by BUMA. Television broadcasting organizations in particular (public as well as commercial broadcasters) were party to this so called “Model Agreement”. This agreement held that public broadcasting organizations would not charge cable operators for author's rights to which they were entitled. The cable operators however, gave notice to terminate this agreement from 1 March 2005 but continued to transmit these programmes (also partly because they were obligated to do so by virtue of the “must carry” programmes of art. 82i Dutch Media Act). This resulted in a situation whereby cable operators transmitted programmes without any contractual basis to do so and without the explicit permission of the party otherwise entitled to payment of author's rights. Hence, by making the programmes available to the public the cable operators breached the intellectual property rights concerned.

Therefore a provisional arrangement was made regarding the payment for author's rights due from the cable operators and the Model Agreement was extended until 1 October 2005. This date matches the period of six months expressed by the parties as being needed to reach a definitive agreement.

Regarding the Public broadcasters' position the judge remarked that no reason would justify cable operators withholding payment for the author's rights concerned because they were only able to transmit programmes free of charge as a contingency of the very agreement they chose to terminate.

Regarding the commercial broadcasting organizations, the cable companies agreed on “clean” delivery of programmes entailing that the author's rights had already been paid for.

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Decision of the Amsterdam preliminary Court of 7 April 2005

Brief van de Staatssecretaris van Onderwijs, Cultuur en Wetenschap aan de Voorzitter van de Tweede Kamer der Staten-Generaal , Den Haag, 03.05.2005, Kamerstukken II 2004/05, 29 800 VIII, nr. 203

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