[NL] BREIN's Successful Bid to Halt the Distribution of Circumvention Devices

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On 21 July 2005, the District Court in Rotterdam rendered its judgment on a lawsuit initiated by Bescherming Rechten Entertainment Industrie Nederland (Protection of Dutch Entertainment Industry Rights - BREIN). This is the first time BREIN has initiated proceedings on the grounds of Article 29a of the Dutch Copyright Act and Article 19 of the Dutch Performers and Phonograms Act. Both articles implement the provisions of the European Copyright Directive that forbid the circumvention of technological protection measures and the commercial distribution of circumvention devices.

The BREIN foundation acts for several copyright owners and neighbouring rights owners when unauthorised copying and/or distribution of copyright protected works (for example music, movies, games or interactive software) occurs. Examples of unauthorised copying and distribution are a bootleg CD and the illegal uploading of music. When copyright owners decide to use a technological protection measure to protect their work, and this technological protection measure has been circumvented, or devices are commercially distributed that enable circumvention of the technological protection measure, BREIN takes action to halt the alleged infringement.

The case BREIN initiated on 21 July 2005, concerned the commercial distribution of circumvention devices. Teledirekt is a company that commercially distributed the DVD X copy Gold, DVD X copy Platinum and DVD Xpress programmes. These make it possible to circumvent the Contents Scrambling System (CSS) on a DVD. In its brochure, Teledirekt advertised that this programme “is the most effective programme for making a copy of a DVD”, and that “the programme has been declared unlawful by a court of law in the United States” and “the programme is able to handle all kinds of protection on DVDs”. Moreover, Teledirekt's direct mail boasted that its software “copies even protected DVD movies and circumvents all protection measures”. Teledirekt argued that it should be possible to make a back up copy for consumers of DVDs and that this is precisely what their programme DVD X Copy allows for. The judge ruled that the programme can be considered as a circumvention device and that distribution of these devices is prohibited under Article 29a of the Dutch Copyright Act and Article 19 of the Dutch Performers and Phonograms Act.

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