[NL] No Copyright in Recorded Conversations with Extortion Victim

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Brenda van der Wal
Institute for Information Law (IViR), University of Amsterdam

The District Court of Amsterdam recently ruled that official reports, based on transcriptions of recorded conversations between a victim of extortion (Dutch real estate tycoon, Willem Endstra) and an intelligence agent, are not protected by copyright.

In the period of May 2003 to January 2004, Endstra had fifteen conversations with agents of the *Criminele Inlichtingen Eenheid* (Criminal Intelligence Unit- CIE). In these conversations, which were being recorded as they took place, the businessman indicated that he was being extorted by Willem Holleeder. Endstra was murdered in May 2004.

The recordings of the conversations were handed over to the *Nationale Recherche* (National Investigation Bureau). It made an official report of the recordings in January 2006. A few days later, Willem Holleeder and his associates were arrested for the extortion of Willem Endstra and other real estate entrepreneurs. Endstra's assassination, the recordings and the arrest of Holleeder constituted important news topics and two reporters were able to obtain a copy of this official report of the recordings. They subsequently published it in several articles in *Het Parool* , a Dutch daily newspaper, as well as in a best-selling book entitled " *De Endstra-tapes* " (the Endstra tapes). The official report eventually also made its way onto the Internet and was available on the website of *Quote* magazine.

Endstra's heirs took legal action seeking to prohibit publication of the book. They argued that the conversations are interviews, and are therefore protected by copyright. In addition, they contended that publishing the book amounts to an illegal breach of their privacy which poses a significant threat to their lives.

The district court of Amsterdam declared that for a conversation to be protected by copyright, creative choices in the manner such a conversation is led must be made. The only purpose of the conversations with Endstra, however, was to provide information in order to enable the police to take action against Holleeder's criminal activities. The interviews can therefore not qualify for copyright protection.

The judge finds it implausible that the heirs of the victim should be endangered as a result of the publication of the book. Their names are not mentioned in the

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book. Moreover, Holleeder and his associates already know the content of the official reports of the recordings due to the criminal proceedings, which are based on the Endstra tapes. The report had also already been published in other media prior to the book.

In this case, the judge decided that the public interest should prevail over the interests of Endstra's heirs. The recordings are an important public topic and they provide useful insight into the way the CIE handled the Endstra case. The possibility that commercial gain could be derived from the publication is irrelevant. The victim's heirs have announced that they will lodge an appeal against the judgment.

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http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=ljn&ljn=BC2153

Endstra tapes Court decision of 11 may 2006

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