[NL] Collecting Society Prohibited from Issuing Pan-European Licences Covering the Repertoire of the British PRS

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On 19 August 2008, the Dutch district court of Haarlem issued a preliminary injunction in a case which the British Performing Rights Society (PRS) commenced against the Dutch copyright collecting society BUMA. PRS had complained that BUMA illegitimately granted licences covering the PRS repertoire outside the Netherlands. BUMA had previously signed a pan-European licence agreement with the US-based online electronic music retailer beatport.com. This licence covered all of the world's music repertoire for which BUMA, because of the reciprocal representation agreements (RRAs) with collecting societies in other countries, could issue authorisations.

PRS maintained that BUMA had no right to issue pan-European licences covering the repertoire of works administered by PRS, since the RRA it had concluded with BUMA was restricted to the territory of the Netherlands.

The court followed the argument of PRS and prohibited BUMA from offering, granting or putting into effect any music licences for online (satellite, cable or internet) usage of the PRS repertoire to the extent that those licences reach beyond the territory of the Netherlands. It held that BUMA simply does not have the power to do so because it has never been granted the rights for usage of the PRS repertoire outside the territory of the Netherlands. A reasonable interpretation of the RRA between PRS and BUMA does not imply an inapplicability of the RRA's territorial restriction to online music usage.

Although BUMA, in its defence, tried to rely on the European Commission's recent CISAC decision (see IRIS 2008-8: 5) as a possible ground for nullification of the territorial restriction in the RRA, this attempt was unsuccessful. The court did not accept the argument that, because of this decision, any territorial restriction in the RRA would be null and void ipso jure, due to the anticompetitive nature of the restriction. According to the court, the CISAC decision did not affect the individual RRAs of CISAC members, but merely held the coordinated approach between CISAC members leading to a system of identical RRAs to be contrary to Article 81 EC Treaty. Moreover, even if the territorial restriction in the RRA would have to be considered null and void, the court found that BUMA still has no right to license the PRS repertoire beyond the territory of the Netherlands, since PRS has never transferred this right to BUMA.

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Rechtbank Haarlem, 19 augustus 2008, vonnis in kort geding in de zaak van Performing Right Society (PRS) en BUMA, LJN: BE 8765

http://www.rechtspraak.nl/ljn.asp?ljn=BE8765

District Court of Haarlem, 19 August 2008, Judgment in summary proceedings, in the case between Performing Right Society (PRS) and BUMA, LJN: BE 8765

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