[NL] Eredivisie N.V. et al. v. Myp2p

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Eredivisie N.V. (hereinafter: ENV) is the legal person in charge of organizing the *Eredivisie* (the highest league) of football in the Netherlands. The football clubs which play in the Eredivisie hold the rights for the broadcasting of their football matches. Defendant Myp2p is a website which provided online live broadcasts of these matches (livestreams). Applicants ENV and the football clubs requested an interlocutory injunction against Myp2p to prevent imminent infringement of their intellectual property rights by, among other things, the livestreaming of the football matches. This ex parte petition is an implementation of Article 9 of Directive 2004/48/EC on the enforcement of intellectual property rights and is a request for a decision to be taken without the defendant being heard. In this case, the petition was admitted by the District Court of The Hague on 22 January 2009.

ENV and the football clubs maintain that the distribution of the broadcasts functions as a closed system. Consequently, only viewers who pay a subscription are allowed to watch the matches. Myp2p operates outside this closed system by providing users with livestreams of the matches using peer-2-peer technology (Sopcast). According to the applicants, this streaming is illegal for, *inter alia* , the following reasons:

Myp2p makes the streams (a cinematographic work in the sense of Article 45d Dutch Copyright Act) available to the public. According to Article 3 of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, authors have the exclusive right to authorise or prohibit any communication to the public of their works. Recital 23 of the Directive makes clear that “communication to the public” should be understood in a broad sense. To clarify this “broad sense”, the applicants made an analogy with the decision of the European Court of Justice (ECJ) in case C-306/05 (SGAE v. Rafael Hoteles) (see IRIS 2007-2: 3/3). The ECJ ruled that “the distribution of a signal by means of television sets by a hotel to customers staying in its rooms, whatever technique is used to transmit the signal, constitutes communication to the public within the meaning of Article 3(1) of [the] [D]irective”. According to the applicants, Myp2p’s role in the present case is comparable to that of the hotel in the ECJ case because Myp2p is retransmitting the broadcasts to a different, non-paying, public and is therefore communicating to the public, which is a right reserved for the football clubs.

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The judge admitted the ex parte request for two reasons. Firstly, My2p is causing confusion among the public regarding the origin of the streams by using the football clubs' trademark logos. Moreover, by making the live broadcasts available without the applicants' permission, Myp2p is infringing the rightsholders' copyright in those images. Therefore, Myp2p's activities with regard to the streaming of the Eredivisie broadcasts should cease immediately, as postponement could cause irretrievable damage to ENV and the football clubs.

Rechtbank 's-Gravenhage, 22 januari 2009, ex parte beschikking in de zaak van Eredivisie N.V. et al. en Myp2p

http://www.boek9.nl/www.delex-backoffice.nl/uploads/file/Boek9%20/Boek%209%20Uitspraken/Auteursrecht/ecv%20-%20myp2p%20def.pdf

District Court of First Instance of The Hague, ex parte provision in the case of Eredivisie N.V. et al. v. Myp2p

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