[NL] Norma & Irda v. Vecai et al.

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The trade organisation Vecai (now renamed NLkabel) represents five cable operators. Vecai et al. were called upon to defend themselves against legal claims by the collecting societies Norma and Irda. Norma and Irda represent performing artists in the sense of the *Wet op de naburige Rechten* (Related Rights Act - WNR): Norma and Irda are allowed to represent their performers in their right to authorise the unaltered and unabridged re-broadcasting by a cable broadcasting installation of a performance or phonogram or a reproduction thereof. Their claim is that the cable operators are re-broadcasting without the performing artists' permission, infringing the performers' related rights. On 28 January 2009, the District Court of The Hague decided that the case involves broadcasting rather than re-broadcasting and thus there is no infringement of related rights.

Nowadays, broadcasting organisations transmit their (inaccessible to the public and sometimes encrypted) signals using satellite or cable directly to cable operators, such as the defendants. The question was whether or not this distribution system of signals constitutes a form of re-broadcasting in the sense of Article 14a WNR.

Norma and Irda's claims are based on Article 14a WNR. This Article states, among other things, that it is the performer who has the right to authorise the unaltered and unabridged re-broadcasting by a cable broadcasting installation. This right may also be exercised by legal persons such as Norma and Irda. The plaintiffs claim that the broadcasting by the cable operators is a form of "re-broadcasting". They argue that no authorisation for re-broadcasting has been given, making the act unlawful. In turn, Vecai et al. disputed the claim that this is a case of re-broadcasting. They base their arguments on the European Court of Justice cases C-306/05 (SGAE v. Rafael Hoteles, see IRIS 2007-2: 3) and C-192/04 (Lagardère Active Broadcast v. SPRE & GVL), according to which, "re-broadcasting" means that a) a public radio or television signal is picked up and re-transmitted, while b) contrary to the rightsholder's intention, the signal ends with a different public.

The District Court of The Hague held that the distribution of signals between broadcasting organisations and cable operators is not a form of re-broadcasting in the sense of Article 14a WNR. As a result, the signal transmitted by the cable operators should be defined as "broadcasting" instead of, as the plaintiffs claimed, "re-broadcasting".

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The plaintiffs' claim with regard to Article 9 of the Cable and Satellite Directive (Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission) cannot stand. This Article states that Member States shall ensure that the right to grant or refuse authorisation to a cable operator for a cable retransmission may be exercised only through a collecting society such as Norma and Irda. The plaintiffs claim that an interpretation of the term "re-broadcasting" in national law in conformity with the term "retransmission" in the Directive would result in making Article 14a WNR applicable to broadcasting as well. According to the court, such an extension of the term "re-broadcasting" would be *contra legem* .

Rechtbank 's-Gravenhage, 28 januari 2009, vonnis van Norma & Irda tegen Vecai et al.

http://www.boek9.nl/www.delex-backoffice.nl/uploads/file/Boek9%20/Boek%209%20Uitspraken/Auteursrecht/Norma%20-%20Vecai%2028%20januari%202008%20_4_.pdf

District Court of First Instance The Hague, 28 January 2009, decision of Norma & Irda v. Vecai et al.

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