[NL] Downloading… soon to Be Illegal in the Netherlands?

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On 11 April 2011 Fred Teeven, the Dutch State Secretary for Public Safety and Justice, published a mission statement titled "Speerpuntenbrief auteursrecht 20©20" in which he proposes to modernise the Dutch Copyright Law. In his mission statement Teeven addresses a number of issues, which will be discussed below. The main emphasis of the mission statement is to enhance the public's trust in the copyright system and strengthen the position of authors of copyright protected works.

First and foremost Teeven plans to alter the download system in the Netherlands. At present it is legal to download copyrighted works, such as books, films and music, from an illegal source, as long as the downloader does not also upload the works. The statutory basis for this can found in the private copy exception. The mission statement, by contrast, would provide copyright holders with the ability to protect their rights based on civil law. Unlike France and the United Kingdom, no three strikes provision is proposed. However, copyright will be enforced against intermediaries, such as website owners and hosting providers, but not on individuals who occasionally upload and download copyright-protected files.

Secondly, rightsholders will have the possibility to request that Internet Access Providers block foreign websites and services that provide illegal content. However, some critics argue that this plan is unnecessary, since Art. 26d Dutch Copyright Act already establishes such a regime. Another aspect to consider in this context is the role of search engines. According to Teeven, search engines should prioritise search results that show websites with legal content. It is unclear whether search engines would have to start filtering their search results to prevent the appearance of illegal content.

A further step towards modernising the Dutch Copyright Law is the plan to abolish the private copying levy inter alia on blank CDs and DVDs. In order to compensate for the consequent loss of income copyright owners may have to increase the price of their products. Another suggestion is that copyright owners protect their works by using technical measures that prevent copying. Various interest groups have expressed great concerns and criticism in this context. It is argued that the proposal on abolishing the private copying levy is contrary to European Copyright Directive, as well as the recent Case C-467/08 Padawan v SGAE, in which the EU

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Court of Justice ruled that the aim of fair compensation is to “adequately” compensate authors for unauthorised uses made of their works (see IRIS 2010-10/7).

A final point of interest in the mission statement is adherence with European proposals. The State Secretary supports European proposals to abandon territorial limitations on copyright licenses and craft a system addressing the orphan works situation in order to stimulate plans to digitise works that are of importance for the preservation of the European cultural heritage (see IRIS 2011-3/5). Furthermore, Teeven calls for the introduction of a European fair use exception to enhance creative uses or the so-called remixing of existing works.

Staatssecretaris Teeven biedt de Tweede Kamer, mede namens de Minister van Economische Zaken, Landbouw en Innovatie en de Staatssecretaris van Onderwijs, Cultuur en Wetenschap de speerpuntenbrief Auteursrecht 20©20 aan

http://www.rijksoverheid.nl/documenten-en-publicaties/brieven/2011/04/11/speerpuntenbrief-auteursrecht-20-20.html

Mission Statement by State Secretary for Public Safety and Justice Fred Teeven

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