# [NL] Scribes are not Allowed under the Dutch Media Act

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On 14 January 2013 the Rechtbank Amsterdam (Amsterdam District Court) ruled that electronically-added advertisements displayed with games results, so-called “scribes”, (i.e., promotional expressions) are not allowed under the Mediawet 2008 (Dutch Media Act - Mw). On 10 September 2009 the Commissariaat voor de Media (Dutch Media Authority) imposed a EUR 60,000 fine on the Nederlandse Omroep Stichting (Dutch Public Broadcaster NOS) for not complying with the sponsorship rules applicable to public service broadcasters (violating Article 2.89 (1)(b) Mw) by using the above-mentioned scribes. NOS filed an objection against the imposed fine, which was rejected by the Dutch Media Authority. NOS appealed the decision of the Dutch Media Authority before the Amsterdam District Court.

NOS argued that the advertisements for the Sponsor Bingo Lottery (hereafter the “Lottery”) that were electronically added fall within the exemption applicable to charity institutions provided by Article 1.1(2) Mw. The Court, however, does not accept this argument. It states that the viewer is encouraged to buy the Lottery's products, because buying a lottery ticket is the only way in which the viewer could support the Lottery's charities.

Subsequently, NOS argued that the scribes were allowed under Article 2.89(2) Mw, because the scribes were not predominant in the broadcast and were therefore exempted. The Court rejects this argument on the following grounds. The Explanatory Memorandum of the Dutch Media Act mentions that the non-commercial nature of public broadcasting services is a fundamental principle. It was not the intention of the legislator to bring scribes under the exception provided by Article 2.89(2) Mw. Article 2.89 Mw does not cover advertisements that are electronically added to the broadcast. Therefore, scribes do not benefit from this exception.

Thirdly, NOS stated that scribes were allowed because they comply with the criteria of Article 9(1)(c) Mediabesluit 2008 (Dutch Media Ordinance, see IRIS 2009-3/29), which allows advertisements in certain circumstances. The Dutch Media Ordinance provides specific rules on certain aspects of the Dutch Media Act. According to the aforementioned Article, reference to a product or service is allowed, if the reference is not exaggerated or excessive. The Court, however, states that exaggeration and excessiveness is a given fact with regard to scribes. Finally NOS argued that the imposed fine infringed Article 10 of the European

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Convention on Human Rights (ECHR), because the law did not adequately prescribe the imposed fine. The Court states that the general prohibition is sufficiently grounded in Article 2.89 Mw and that Article 10 ECHR was not infringed.

If the imposed fine were to be upheld, NOS argued that the amount of EUR 60,000 would not be proportionate to the culpability involved, that there were mitigating circumstances and that the amount of the fine was therefore in conflict with the Beleidslijn Sanctiemaatregelen 2007 (consolidated version of the policy rules on sanctions of 2007, see IRIS 2007-6/24). The Court does not agree with NOS and states that the Dutch Media Authority was justified in categorising the offence as 'serious' due to its systematically showing and putting emphasis on the name Sponsor Bingo Lottery during the broadcast. Moreover, it was NOS's duty to examine whether scribes were prohibited under the Dutch Media Act. However, the Court finds that the fine should be reduced due to the fact that scribes are a completely new phenomenon that the Dutch Media Authority has never sanctioned before. The Court also takes into account the fact that NOS has taken adequate measures to prevent future offences. Therefore, the imposed fine has been reduced to EUR 30,000.

### *Rechtbank Amsterdam 14 januari 2013, NOS-Eredivisie v. CvdM, LJN BY8744*

http://www.cvdm.nl/dsresource?objectid=13659&type=org

*Judgment of the District Court of Amsterdam, NOS-Eredivisie v. CvdM, LJN BY8744*

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