[BE] Who owns the electronic rights?

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Kamiel Koelman
Institute for Information Law (IViR), University of Amsterdam

Electronic rights are the rights needed to exploit a copyrighted work in a digital environment. In the Copyright Acts of several EU Member States, the author of a work is protected against a too broad transfer of rights. The consequence of this is that there can be uncertainty about who owns the electronic rights if earlier copyrights are granted. Are the rights on future forms of exploitation, like the electronic exploitation, included in the grant of rights? A Belgium court decided in such a matter.

In Belgium newspaper publishers started an on-line service called `Central Station' in which they offered articles to the public which had been published in their papers. The journalists felt the publishers owed them a renumeration for this (re-)use of their works.

Under the old Belgium Copyright Act (replaced in 1994) a work-for-hire doctrine did not exist. Though employers could obtain rights implicitly. The employment contracts with the journalists involved were made before 1994, so on these the old Copyright Act was applicable. Belgium case law learns an implicit transfer of rights has to be interpreted strictly and in favor of the author of a work. The employer therefore only obtains those rights which he needs for the normal activities of his enterprise (activité normal de l'entreprise). Consequently the judges had to determine whether the on-line distribution of articles is a normal activity of a newspaper publisher. They decided it is not. Because (i) the articles had to be adapted to be used on-line, (ii) they were being offered to a larger, more international and different public and (iii) because of the way users of the service could access the articles, namely by stating a well defined subject, while in a newspaper the articles are a placed according to broadly stated social phenomena (like sports or economics). Moreover: The on-line service was not meant to replace the old-fashioned newspaper, but aimed at a new target group. So the journalists were judged to be the owners of the rights for on-line exploitation of their articles and `Central Station' was shut down.

Tribunal de Première Instance de Bruxelles, 16 octobre 1996, Numéro 96/6601/A.

Court of first instance of Brussels, 16 October 1996, Number 96/6601/A.

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