[NL] Collecting Society VEVAM Cannot Claim Compensation from Cable Companies

IRIS 2013-10:1/34

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On 4 September 2013, the District Court of Amsterdam found that the collecting society VEVAM has no legal basis to claim compensation from cable companies for film directors concerning cable retransmission.

VEVAM is a collecting society representing film directors. It acquires the director's rights and collectively exploits them. VEVAM sued cable companies Ziggo and UPC for compensation for cable retransmissions. RODAP, the collecting society for film producers, public and commercial broadcasting organisations and distributors (e.g. cable companies), joined the proceedings in support of Ziggo and UPC.

Up until 1 October 2012, so called Kabelovereenkomsten (Cable Contracts) had been in place between the Dutch cable companies and several collecting societies, including VEVAM. According to these Cable Contracts the cable companies were obliged to pay the collecting societies a monthly compensation per subscriber for the benefit of the different copyright holders. Negotiations concerning a new contract had been underway since December 2010, but eventually broke down. This was due to the fact that the cable companies no longer acknowledged VEVAM's claim to these rights. As such, the cable companies have not been paying any compensation to VEVAM since 1 October 2012. VEVAM consequently initiated summary proceedings against the two cable companies. VEVAM sought a court order for Ziggo and UPC to pay compensation retroactively from 1 October and to resume negotiations concerning the new Cable Contracts. .

VEVAM claimed that its position as a collecting society has a basis in the law, namely Article 26a of the Copyright Act (CA), as well as a contractual basis. Article 26a provides for compensation for simultaneous, unaltered and unabridged broadcasting and for mandatory collective management of these rights. The contractual basis concerns the fact that all film directors that join VEVAM transfer the rights to their works to VEVAM. In their contract with producers, directors also use a clause that excludes the rights exploited by VEVAM from transfer to the producers in accordance with article 45d CA.

The Court rejected VEVAM's argument that they have a legal mandate to collect the compensation for the cable retransmissions. It accepted the cable companies'

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claim that the broadcasters do not communicate the programmes to the public when they deliver them to the cable companies, due to the technological process that is currently used. As a result, the subsequent broadcasting of these programmes by the cable companies does not constitute a simultaneous, unaltered and unabridged broadcast. Consequently Article 26a does not apply, which means that VEVAM does not have a legal mandate to seek compensation for the cable retransmissions.

VEVAM's contractual claim was also rejected by the Court. It agreed with RODAP's claim that the rights that had been excluded from transfer to the producers, in accordance with 45d CA, only concern the rights that VEVAM exploits according to article 26a CA.

Lastly, the Court found that the film directors have a right to an equitable remuneration from the producers according to Articles 12 and 45d CA. Ziggo and UPC, however, do not have any obligations towards VEVAM. The Court thus rejected VEVAM's claim that, when negotiating, Ziggo and UPC had to take into account VEVAM's legitimate expectations and past payments to VEVAM.

Rechtbank Amsterdam, 4 september 2013, ECLI:NL:RBAMS:2013:5554, VEVAM tegen Ziggo/UPC & RODAP

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2013:5554

District Court Amsterdam, 4 September 2013, ECLI:NL:RBAMS:2013:5554, VEVAM v Ziggo/UPC & RODAP

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