# [NL] Dutch Supreme Court rules on cable transmission

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On 28 March 2014, the Dutch Supreme Court handed down its judgment in the case of NORMA and others v. NLKabel and others. NORMA, a collective management organisation for neighbouring rights of performers, claimed that the cable operators, represented by NLKabel, needed permission from the performers to transmit the television programmes over cable to their subscribers. Pursuant to the Dutch Neighbouring Rights Act, the retransmission rights of performers in their performances are enforced by a collective management organisation. In the present case, NORMA acted on behalf of the performers.

In its judgment, the lower court considered that two situations should be distinguished, i.e. the situation before the digital "switch-off"; and the situation after the 'switch-off'. This refers to the change in deliverance of TV signals from the broadcasters to the cable operators. Before the switch-off on 11 December 2011, broadcasters transmitted their TV signals over radio waves, which were receivable by both television viewers and cable operators. The cable operators then further transmitted these signals to their subscribed viewers. This was deemed to be a 'retransmission'. After the switch-off, the transmission of the TV signals over radio waves was discontinued. According to the lower court, the cable operators only received their TV signals directly from the broadcasters through a media gateway.

The Supreme Court had to decide whether the transmission of television programmes by the cable operators after the switch-off was to be considered a 'cable retransmission' within the meaning of the Dutch Neighbouring Rights Act and the SatCab Directive (93/83/EEC).

The Supreme Court decided that the technique used after the 'switch-off' could not be considered a 'retransmission' within the meaning of the SatCab Directive. The Court explained that the transmission by the cable operators has to be preceded by a primary 'communication to the public', a concept that is, according to the court, harmonised in the EU for both copyrights and neighbouring rights. It therefore interpreted the concept as developed by EU case law. As only the cable operators received the signals from the broadcasters, the cable operators could not be regarded as 'an indeterminate number of potential television viewers'. Therefore, they were not considered to be a 'public' and the transmission of the signals to the cable operators could thus not be regarded as a communication to the public. It was therefore held that there was no 'retransmission' by the cable

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operators.

***Hoge Raad, 28 maart 2014, ECLI:NL:HR:2014:735 (NORMA c.s./NL Kabel c.s.)***

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2014:735

*Dutch Supreme Court, 28 March 2014, ECLI:NL:HR:2014:735 (NORMA and others v. NLKabel and others)*

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