[NL] Digital satellite delivery infringes copyright

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The digital direct-to-home (DTH) delivery by satellite of a "bouquet" of digitized television programs constitutes a separate act of communication to the public under Dutch copyright law, for which the operator of the service is liable. That is the essence of the decision by the President of the District Court of Utrecht in the case of Buma vs. Nethold, decided on 21 February 1997. The case is the first one that has been decided under the new regime of the Council Directive of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (Directive 93/83/EC), which was implemented by the Dutch legislature on 20 June 1996.

Since September 1996 Nethold has been offering a multichannel digital DTH-service to Dutch viewers equipped with satellite receivers, decoders and smartcards. The Nethold "bouquet" contains a host of television programmes normally available to European audiences only from different analogue transponders. The simultaneous and unaltered retransmission of these programmes in a single digital package is considered, by the President of the District Court, a secondary act of communication to the public, which is not covered by the existing licensing agreements between right owners and broadcasters.

Nethold has appealed the verdict.

President of the District Court of Utrecht, 21 February 1997, KG No 04.21.90/97.

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