[NL] Cable companies broadcast programmes without copyright holder authorisation

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On 27 August 2014, the Amsterdam District Court handed down its judgment in a case brought by LIRA (a collective rights management organisation for authors) against three cable companies for violation of copyright. LIRA had claimed that the cable companies UPC, Zeelandnet, and Ziggo showed content to their subscribers, which infringed the copyright of authors represented by LIRA. In October 2012, the cable companies stopped paying LIRA for the offering of the content to their subscribers.

In the district court, the cable companies argued that the authors lacked the authority to transfer their copyrights to LIRA and that, therefore, LIRA lacked the authority to represent the authors before the court. The cable companies based their argument on Article 45d of the Dutch Copyright Act (DCA), which provides for the presumption of transfer of copyrights from authors of audiovisual works to film producers. The cable companies thus reasoned that the authors lacked the power to dispose of their copyrights because they were transferred a priori to the film producers.

The court ruled that Article 45d DCA did not prevent the transfer of copyrights by the authors to LIRA. The presumption of transfer of copyrights from the author to the film producer occurs when the film producer deems the audio-visual work ready for showing. Therefore, the transfer of copyrights of the authors' current and future audio-visual works to LIRA was legally valid and, on that basis, LIRA can claim the missed payments on behalf of the authors.

Second, the cable companies were of the opinion that the transfer of copyrights of future works did not meet the requirement following from Article 3:84 (2) of the Dutch Civil Code (DCC). According to Article 3:84 (2), DCC copyright has to be sufficiently defined to be eligible for transfer.

The judge ruled that the contract for the transfer of copyrights from the authors to LIRA sufficiently defined the material scope of the copyrights. Therefore the requirement of Article 3:84 (2) DCC was met, thus making the copyrights eligible for transfer.

Furthermore the cable companies disputed that the contracts, used to transfer the copyrights of the authors to LIRA, included the right of first publication of the

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content. The judge, after reviewing the contract, concluded that it did include the transfer of the right of first publication of the content.

Lastly, the judge ruled in favour of LIRA and stated that the cable companies infringed the copyrights vested in LIRA by offering the content to their subscribers without obtaining the required consent of the right holders. The cable companies were ordered to cease and desist distributing the disputed content and are facing a penalty for non-compliance.

Rechtbank Amsterdam, 27 augustus 2014, ECLI:NL:RBAMS:2014:5397

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBAMS:2014:5397

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