[NL] Court of Appeal allows broadcast of video footage acquired in spite of film ban

IRIS 2015-7:1/24

Sarah Johanna Eskens
Institute for Information Law (IViR), University of Amsterdam

In its judgment of 28 April 2015, the Dutch Court of Appeal of Amsterdam rejected a claim to prevent the broadcast of video footage that was acquired in spite of a film ban. The appellants (a producer and the broadcasting organisation KRO-NCRV) wanted to test whether someone dressed in a uniform-like outfit would be able to act like an employee of a given company. They filmed such an experiment in the retail store of the respondent with a hidden camera and a hand-held camera. In a judgment on preliminary relief proceedings, the court of first instance prevented the appellants from broadcasting the footage. The appellants filed an appeal.

The appellants' right to freedom of expression clashed with the respondent's right to protect the privacy of its employees and visitors to its store. The Court stated that, first and foremost, the respondent was entitled to determine the company rules its visitors had to comply with. It was undisputed that the respondent had made its film ban known. The video footage was shot without the consent of the respondent and therefore possibly constituted an infringement of its property or user rights. However, the Court found that that did not mean an injunction to broadcast the footage was automatically justified, since such a rule would amount to preventive censorship. Furthermore, the Court concluded from the European Court of Human Rights (ECtHR) judgment in Mosley v. the United Kingdom (see IRIS 2011-7/1) that the ECtHR deemed it important that, bearing in mind the weight attached to the right to freedom of expression, the assessment of any possible wrongfulness of a publication or broadcast would take place after the item had been shown to the public.

In contrast to the court of first instance, the Court of Appeal determined that the facts of the case did not justify derogation from what was set out above. The Court considered that the appellants had stated they did not intend to show the respondent in a bad light. They only wished to make an entertainment programme in which they could test new television formats and create interaction with the public. The Court also attached importance to the fact that the appellants had promised not to show the hidden camera footage. In addition, the Court considered that, for the time being, there was no indication of reputational damage for the respondent or its visitors. Finally, the Court found it unlikely that if the respondent would bring an action on the merits after the footage had been

© European Audiovisual Observatory (Council of Europe) 2026

shown to the public and the broadcast would be considered unlawful, the adverse effects for the respondent could not be recovered.

The Court concluded that imposing a prohibition prior to the broadcast of the footage was not justified.

Hof Amsterdam 28 april 2015, 200.157.976/01 (CCCP en KRO-NCRV/Media Markt)

http://www.mediareport.nl/wp-content/uploads/2015/05/Arrest-d.d.-28-04-2015.pdf

Court of Appeal of Amsterdam, 28 April 2015, 200.157.976/01 (CCCP and KRO-NCRV/Media Markt)

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026