[NL] Copyright ruling on Anne Frank's diary

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On 23 December 2015, the District Court of Amsterdam handed down a ruling in a case involving Anne Frank's diary. The case was brought by the Swiss Anne Frank Fonds against the Anne Frank Stichting and the Royal Netherlands Academy of Arts and Sciences (KNAW). It dealt with the alleged expiration of copyright in Anne Frank's diary and reproductions made by Huygens ING, a research institute affiliated with the KNAW. The Anne Frank Fonds holds the copyright to Anne Frank's diaries.

In 2008, all parties assumed that the copyright to Anne Frank's diaries would expire on 1 January 2016, 70 years after Anne Frank's death. After further studying of the copyright terms and the applicable transitory provisions of the amendment of the Dutch Copyright Act in 1995, it appeared that the copyright terms were extended by 20 years. Moreover, parts of the work were only first published in 1986, causing the copyright of those fragments to expire 50 years after 1 January 1987. Eventually, the litigating parties therefore agreed that the works of Anne Frank would still be protected under copyright law after 1 January 2016.

Subject of dispute were the XML files that Huygens ING created from a facsimile of Anne Frank's manuscripts and diaries, including metadata on several features of the texts, such as annotations and variations in handwriting. These files were meant to be used for textual analysis. The facsimiles were made with the permission of the Anne Frank Fonds, but the XML files were not. Principally, the Anne Frank Stichting and KNAW relied on three exceptions in the Dutch Copyright Act, but the Court did find them applicable to the creation of these files.

Nevertheless, the Court went along with the parties' secondary argument, asserting that the fundamental right to freedom of scientific research prevailed over the enforcement of copyrights in the underlying case. Although it acknowledged that such a balance is already made by the legislator, it found that courts must examine this balance if the arguments put forward in a case give rise to such an examination. The Court attached great importance to the principle of proportionality in this assessment.

In this light, it considered that the research involving the XML files served a public interest. This finding was not affected by the fact that the Anne Frank Fonds had

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initiated its own research; the fact that the parties had a disagreement on what approach to take in such research emphasised the need for independent scientific research. The Court found it evident that the reproductions made by Huygens ING were indispensable for its research and were solely made for the purpose of that research. Moreover, it found that the infringing copies had only a minimal impact, since there were only few of them accessible, and to which only a limited amount of individuals involved in the research had access.

The Amsterdam court therefore concluded that freedom of scientific research outweighed the enforcement of copyrights.

Rechtbank Amsterdam, 23 December 2015, ECLI:NL:RBAMS:2015:9312

http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2015:9312

District Court of Amsterdam, 23 December 2015, ECLI:NL:RBAMS:2015:9312

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