[NL] Court of Appeal rejects copyright infringement claim over television series

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On 20 September 2016, The Court of Appeal of Arnhem-Leeuwarden rejected the appeals of the author Robert Moszkowicz for copyright infringement of his autobiography. The Court stated there is no reasonable suspicion, or threat, of an infringement by the television drama “De Maatschap” of Dutch Mountain Film (DMF) and the Dutch broadcaster VPRO.

While the drama series tells the story of the Meyer family, it is inspired by the life of the Moszkowicz family. According to Moszkowicz, the drama series is based on his autobiography, “De Straatvechter”. Moszkowicz started proceedings in the District Court of Noord-Nederland to seize the script, scenario, and synopsis of the drama series. Further, Moszkowicz demanded access to these documents. To assess possible copyright infringement, an expert was assigned by the Court to investigate whether there was a specific bedroom scene in the scenario of the drama series. The District Court dismissed the demand of access after it was established that there was no such scene.

Moszkowicz appealed the decision, stating that the book was a source for the scenario. At least nine elements in his book were argued to have been copied by the drama series. These included the scene discussed at the District Court, the time-span of the story, the central position of the father-son relationship, and other elements and passages. The Court found that at least two of these elements and passages could not have been obtained from any other source. The respondents DMF and VPRO countered the allegations by stating that the elements and passages constitute facts, which are not protected by copyright. Furthermore, the respondents stated that they did not copy protected elements of the work, and argued that they have expressed the events in their own manner.

The Court of Appeal dismissed the claims. First, the Court stated that the book is protected by copyright, and that DMF and VPRO used the book as a source. However, the use as a source does not in itself constitute copyright infringement. In order for a copyright infringement to be found, the similarity should be such that adaptation into a television series would constitute an unauthorised reproduction. According to the Court, five of the elements contain general facts and are not protected. The other four elements are more detailed passages of the book, such as the bedroom scene. The Court concluded that the makers of the

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television drama did not copy the creative details in these passages, and it was only apparent that they adopted the (actual) events on a global level. The Court of Appeal further stated that infringement would be unlikely: the television series is about the entire Moszkowicz family, while the book is only about the life of Robert Moszkowicz.

The Court of Appeal denied the demand for access to the script, scenario and synopsis due to the lack of a reasonable suspicion of infringement. It then confirmed the judgment of the District Court, and made an order against Moszkowicz for full payment of the costs of the proceedings.

Hof Arnhem-Leeuwarden, 20 september 2016, ECLI:NL:GHARL:2016:7612 (Moszkowicz / RAAF-VPRO)

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:GHARL:2016:7612

Court of Appeal Arnhem-Leeuwarden, 20 September 2016, ECLI:NL:GHARL:2016:7612

Rechtbank Noord-Nederland, 27 mei 2016, ECLI:NL:RBNNE:2016:2521

http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:RBNNE:2016:2521

District Court of North-Holland, 27 May 2016, ECLI:NL:RBNNE:2016:2521

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