[NL] Online news platform entitled to Copyright Act exception on portraits

IRIS 2019-8:1/32

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On 12 June 2019, the Amsterdam District Court delivered a ruling on copyright and the use of portrait photographs in online news articles. In 2013 the claimant, a photographer, was asked by a third party to photograph an economist/journalist for an interview. Separately, the portrait was used several times on the website of Dutch News, a small online news outlet. The economist had sent his portrait photograph to Dutch News to accompany online news articles. The news platform used the portrait photograph at least 20 times on its website. The photographer who created the photograph, however, considered this use to constitute an infringement of his copyright. He wrote a letter to Dutch News asserting his copyright, pointing out that he had not given permission for the use of the portrait photograph on the website. In response, it was removed from the website.

The photographer requested the District Court of Amsterdam to award him damages in respect of the infringement of his copyright and the alleged infringement of his moral right, as his name was not mentioned in conjunction with the publication of the photographs. Dutch News claimed it was allowed to use the picture, citing Article 19 of the Dutch Copyright Act (*Auteurswet*). This provision contains a special rule regarding copyright in respect of portraits. There is no copyright infringement when a photographic portrait is used in a newspaper or journal with the permission of the person photographed. This rule applies as long as the photographer is credited, provided that their name is mentioned on or with the work. This provision only applies to portraits created as a result of an assignment, by or on behalf of the persons portrayed, or given to the maker on their behalf. Article 19 of the Dutch Copyright Act refers to the use of portrait photographs in newspapers and journals. However, the Court held that this provision applies equally to television news bulletins and websites.

The name of the photographer was not given next to the portrait together with the publication of the portrait. The Court agreed with Dutch News that this was not required as the name of the photographer was not provided with or on the work itself. The photographer furthermore claimed that the photograph was not made by or on behalf of the person portrayed. Here too, the Court sided with Dutch News and found that even though the assignment was given by a third party, the portrayed person had a strong interest in the creation of the photograph, and as such can be understood to have been made on his behalf.

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The Amsterdam District Court held that there had been no copyright infringement, as the use of the picture on the website of Dutch News falls fully within the scope of Article 19 of the Dutch Copyright Act.

Rechtbank Amsterdam, 17 juli 2019, ECLI:NL:RBAMS:2019:4919

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2019:4919

Amsterdam District Court, 17 July 2019, ECLI:NL:RBAMS:2019:4919

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