

[NL] Judgment on responsibilities of YouTube channel

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On 16 March 2022, the Amsterdam Court (Rechtbank Amsterdam) delivered a notable judgment regarding a copyright infringement and an unlawful allegation in an episode published on a popular YouTube channel. The channel is described as a ‘juice channel’, where the creators usually discuss the latest gossip and news concerning famous Dutch people. The Court ruled that uploading the video, which contained an unreleased song as well as the discussion surrounding it regarding allegations of sexual misconduct, without the consent of the claimant, was considered unlawful, and the channel had acted unlawfully in the way the news was presented. The creators of the YouTube channel had to delete the episode and post a rectification.

The channel uploaded an episode regarding an unreleased ‘diss-track’ (a music track in which another artist is targeted, usually in a negative light) by Dutch singer, vlogger, and model Famke Louise. This track was, supposedly, about the (alleged) sexual misconduct by her former manager and fellow musician. The track and the YouTube episode gained attention after the former manager was named in an exposé by YouTube channel ‘BOOS’ on alleged sexual misconduct on the popular television show ‘*The Voice of Holland*’. The defendants claimed that in their episode the person(s) referred (in)directly to the claimant, insinuating that the claimant was the victim of the same sexual misconduct. The claimant has objected to these claims.

The Court first assessed the copyright infringement, first stating that even an unreleased track falls under the copyright protection of Article 12(1) Copyright Act. The defendants claimed that the communication to the public had been done prior to the episode by the claimant, arguing that even disclosure to a small group still constitutes a communication to the public. The Court held that the fact that the claimant posted a fragment of the track on her Instagram ‘story’ does not legitimise the communication to the public by defendants. The Court noted that the story disappears after 24 hours and that the fragment posted did not point to her former manager. The Court held that the copyright of the claimant has been infringed by the defendants.

The defendants also argued that, even if there is a copyright infringement, their right to freedom of expression should prevail over the claimant’s right to privacy. Freedom of expression is protected under Article 10 of the European Convention

on Human Rights (ECHR), while the right to privacy is protection under Article 8 ECHR; and both are not unlimited rights. There needs to be a balancing test between the two in case of conflict.

The existing case law of the European Court of Human Rights holds that expressions that fall under the scope of freedom of expression and that may be viewed as contributing to the public debate, enjoy a broader scope of protection. Freedom of expression also contains journalistic freedoms. It entails the underlying idea that journalists function as public watch dogs and that they offer a contribution to the public debate by reporting on (newsworthy) events. The Court acknowledged the defendants' rights to freedom of expression, but upheld that statements cannot be made without backing the story up. Factors that may be relevant are if the reporting is contributing to a debate of public interest and if there is a situation of wrongdoing. The statement, however, needs to find footing in the facts and the way it is portrayed, as well as the content, form and consequences of the publication needing to be assessed.

The Court ruled that the copyright of the claimant was infringed and by framing the statements as facts and without backing this up with evidence, the creators had no claim to the broad scope of freedom of expression offered to reporters. This case illustrates that under certain circumstances YouTube channels may also enjoy the broad scope of protection offered under Article 10 ECHR, however the same standards apply as to any news outlet reporting on events. The Court concluded that the defendants have to refrain from the repeating the allegation(s), and to post the ordered rectification for 48 hours on social media.

Rechtbank Amsterdam, 16 maart 2022, ECLI:NL:RBAMS:2022:1239

<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBAMS:2022:1239>

Amsterdam District Court, 16 March 2022, ECLI:NL:RBAMS:2022:1239

