[NL] Copyright Protection for Game-concepts

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In the Netherlands three conflicts concerning the counterfeit of (board)games were settled in summary Battlefield, of his own travel-version proceedings. In the first case the plaintiff discovered an imitation, called of the well-known boardgame Stratego, available at a much lower price. Plaintiff claimed that the imitation infringed his copyright in the concept of the game and in its external appearance. The President of the District Court of Amsterdam determined that the concept of the game was sufficiently elaborated to attract copyright. Not only did the concept of the game consist of the (not copyright) play of a battlefield including the conquest of the flag and the destruction of the hostile army, but also of some elements which formed a combination that was unique and original and did not result from technical pre-conditions. Not only did Battlefield infringe copyright in the concept of the game Stratego, but besides the President established copyright infringement because the impression of the external appearance of the games was the same.

In the second case between the same parties, the President of the District Court of Amsterdam made a distinction between the idea, the concept, and the external appearance of the game. In this case plaintiff claimed the defendant had infringed copyright with his game Tuimeltoren (`Tumbletower') in the concept and/or the external appearance of the game of skill called Pisa. The President considered that the idea to make a game in which the participants have to place small objects on a wobbly object, does not attract copyright. However, because this idea was sufficiently elaborated in the concept of the game, this concept was copyright protected. Defendant's game infringed plaintiff's copyright because the concept of the games was the same as well as the external appearance of the games was the same.

The third case is less explicit on the protection of game-concepts. In this case (another) plaintiff claimed that (the same) defendant's games Balltrap, Mystery Person, Four Wins, Crazy Tower and Sea Battle infringed copyright in his games Valkuil (`Pitfall'), Wie is het (`Who is it'), Vier op 'n rij (`Four in a row'), Jenga Ultimate en Zeeslag (`Sea Battle'). The President of the District Court of Amsterdam considered that plaintiff's games did not only exist of ideas, but that they were sufficiently elaborated in concrete forms. Because these forms are original they are copyright protected. Infringement was established.

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Although the opinion of the judge might well have been based principally on similarities of the external appearance of the games, it is important to realise that in the first two decisions the judge explicitly establishes that besides the external appearance the concepts of the games attract copyright.

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District Court (Rechtbank) of Amsterdam 17 July 1997

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Pres. District Court (Rechtbank) of Amsterdam 31 July 1997

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Pres. District Court (Rechtbank) of Amsterdam, 23 October 1997

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