

Recent developments in copyright law in the Netherlands

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Private copying:

On January 1, 2013 the new *governmental decree on private copying levies* came into effect. The decree was adopted after the Court of Appeal in The Hague held that the State was liable for not applying private copying levies to MP3 players and hard disk recorders. The new levies now apply to these and most other devices, except for USB sticks, memory cards and game consoles. Fees vary from €0,03 for CDs and DVDs to €5,00 for tablets over 8 Gb, PCs and laptops.

The decree is as yet effective until December 31, 2013. The government intended to permanently abolish private copying levies after that date in exchange for implementing a statutory provision that would render downloading from illegal source illegitimate. Parliament however adopted a motion against this as a result of which the levy system will continue to apply beyond January 1, 2014.

In *ACI/Thuiskopie*, the Supreme Court of the Netherlands, in its judgment of September 21, 2012, referred to the European Court of Justice for a preliminary ruling on a question on the interpretation of article 5, paragraph 2 of the Copyright Directive (2001/29/EG): does private copying from illegal sources fall under the private copying exception?

The district court of The Hague in its judgment of February 20, 2013 in *Thuiskopie v. Imation* ruled that the levies collected by collecting society were partly unjustified to the extent that they also covered blank media purchased for professional use. The court denounced the levy system whereby levies are paid for all copies sold and the estimated scope of professional vs. consumer uses is taken into account in determining the fee levels.

Communication to the public:

District Court of Amsterdam, September 12, 2012 (Sanoma v. GeenStijl)

The court ruled that in the case in question, publishing hyperlinks to copyright infringing material hosted elsewhere on the internet was an act of copyright infringement. Because the files were not indexed by search engines, they were impossible to find without the publication of the hyperlinks. The hyperlinks therefore constituted a publication to a new public.

District Court of The Hague, December 19, 2012 (Buma v. Nederland.fm)

Nederland.fm provides access to streams of over 50 radio stations. Consumers click on the radio station logo, which then hyperlinks to the radio stream on the radio station server. The court held that this constitutes a communication to the public by Nederland FM of the music works embodied in the radio streams separately from the communication to the public to visitors of the radio station's website. The court considered that Nederland.fm presents the radio streams in the context of its own website. This intervention is a communication to a new public.

Public lending rights:

Supreme Court of the Netherlands, November 23, 2012 (Stichting Leenrecht v. Bibliotheken)

Extending a library loan period is not a new, separate act of lending requiring a separate remuneration. The fact that the copy is available to all library members after the initial loan period and extension is not possible if the book has been reserved by another member, was not held relevant.

Legislative bills:

Supervision on collective management organizations

On March 5, 2013, parliament passed a bill that strengthens the supervision on collective management organizations. The amendment introduces more strict governance rules both for statutory and voluntary collective management. The Supervisory Board will supervise both statutory and voluntary CMO's and has to approve tariff increases. The amendment will take effect on July 1, 2013.

Proposal to Remove Non-Original Writings from Copyright Protection

The Ministry of Security and Justice has invited interested parties to comment on a draft bill that would amend the Dutch Copyright Act so as to protect writings only based on the creator's intellectual creation. The bill would abolish the current protection of non-original writings. The proposal is made in response to the ECJ's decision in *Football Dataco*.