

Executive Committee Paris February 27, 2009

RECENT DEVELOPMENTS IN THE NETHERLANDS

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I. Legislation

In November, the government introduced a bill to extend and strengthen supervision on collecting societies. So far, the supervisory authority (*College van Toezicht*) only has authority to supervise Buma and the four government appointed organisations responsible for collecting and distributing remuneration rights (private copying, reprography, public lending, communication to the public of phonograms published for commercial purposes). The bill extends the supervision to include a total of 17 Dutch collecting societies. The bill introduces the obligation to publish distribution regulations, affiliation agreements and financial reports. Supervision is both corrective as well as preventive in nature. Changes in bylaws, affiliation agreements, distribution regulations, model agreements and tariff increases require prior approval by the supervisory authority. In addition the bill introduces a dispute body that will settle tariff disputes between users and collecting societies that issue licenses on the basis of contractual mandates by individual rightholders. The dispute body will decide on whether tariffs are 'equitable'.

II. Jurisprudence

- **District Court The Hague 28 January 2009 (Norma v. NL Kabel c.s.)**

Dutch collecting society for performers Norma sued Dutch cable distributors for the transmission of television programs containing performances by its affiliated rightholders. Norma's contractual mandate covered transmission as meant in Article 14a Dutch Neighbouring Rights Act, which is the implementation of Article 9 Cable and Satellite Directive. The court deduces from the definition of transmission in the Neighbouring Rights Act that Article 14a does not apply in those cases in which the broadcasting organisation submits its program to the cable distributor directly, without performing a broadcast to the public itself.

The judgement has incited a large debate on whether copyright collecting societies can still rely on Article 9 Cable and Satellite Directive to license cable distribution of television programs, and on whether the submission of a television program to a number of cable, satellite and dvb-t distributors (without a simultaneous broadcast to the public), can constitute a separate act of communication to the public.

- **District Court The Hague 11 February 2009 (Wegener v. Innoverb)**

Innoverb publishes Gaspedaal.nl, a dedicated meta search engine that enables users to search in collections of car sales ads available on other websites, including AutoTrack.nl published by Wegener. AutoTrack.nl offers advertising space for car ads. The research result on Gaspedaal is a list of cars showing a thumbnail image, the name of the source website and a deeplink to the actual ad. The District Court held that AutoTrack is a database in the sense of the Database Act. Searches on Gaspedaal.nl are extractions for which Innoverb is responsible. The publication of the search result is a re-use in the sense of the Database Act