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No separate remuneration for renewal of library book loan

Piter de Weerd (Institute for Information Law (IViR)) · Friday, January 4th, 2013



Supreme Court of the Netherlands, 23 November 2012, Foundation for Public Lending vs. Association of Public Libraries.

Lending right. According to the Supreme Court of The Netherlands there is no legal obligation to pay a separate remuneration for a renewal of a library book loan and the extension of the due date. Plaintiff, the Foundation for Public Lending, a collective society, sued the Association of Public Libraries and argued that the refusal to collect such a separate payment was contrary to the three-step test.

The Supreme Court ruled that the payment of remuneration based on art. 15g of the Dutch Copyright Act (DCA) is not to be determined by the number factual loans but by the number of juridical acts or loans as defined in art. 15c DCA. A loan is to be understood as a juridical act whereby the work is handed over to a particular person from the relevant public for use for a limited time. An extension is not to be regarded as a relevant new juridical act or loan, because the period of extension is part of the “limited time”. Therefore, the extension of the due date does not lead to a higher remuneration. However, the fact that a separate remuneration is not required, does not imply that the compensation received does not also regard possible extensions of the loan and that the number of factual loans (including extensions) cannot be taken into account when determining the height of the remuneration.

“3.4.3. [...] The court of appeal correctly stated that the amount of the remuneration payable under article 15 of the Dutch Copyright Act must be determined by the “the number of juridical acts as referred to in article 15c DCA”, that, according to the court, also includes extensions. The court based its judgement that an extension cannot be regarded as a new loan on the fact that a loan as defined by Directive 2006/115/EC on rental right and lending right and the DCA, regards to a juridical act whereby a work is handed over for use to a certain person from the relevant public for a limited period of time. An extension cannot be considered to be a relevant new juridical fact, since the period of extension is included in the “limited time” during which the work is placed at the factual disposal of the user. This conclusion cannot be regarded as an incorrect interpretation of the systematics of the remuneration system of article 15g DCA in conjunction with article 15c DCA. In that regard, it is considered that, in that system, the notion of a juridical act is closely

interwoven with the notion of the act of lending and that, according to the legislative history, “the number of juridical acts as referred to in article 15c DCA” (article 15g DCA) sees to the “number of loans” (Parliamentary Papers, House of Representatives, 1992/1993, 23247, No. 3, p. 22). The use of the notion of a legal act has therefore no independent significance in this respect. “

A full Summary of this case will be added to the Kluwer IP Cases Database (www.KluwerIPCases.com).

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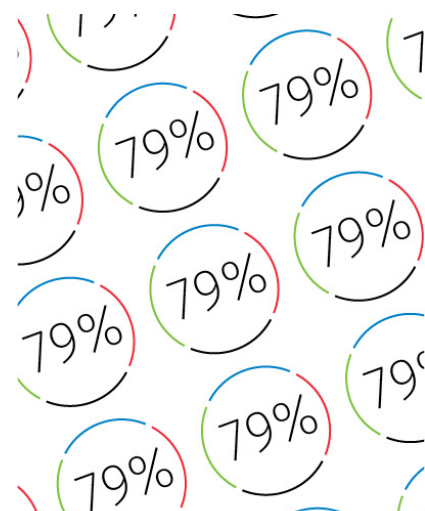
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