

Court of Appeal finds for NSE, but proceedings drag on

Amsterdam, 8 March 2016 – The Court of Appeal surprised friend and foe alike by delivering a second interlocutory decision rather than a final judgment today. The Court is in doubt, as is News-Service Europe (NSE), as to whether Stichting BREIN has an interest in continuing the proceedings, since News-Service Europe ceased its activities after the judgment in first instance. The Court of Appeal has therefore ordered a personal appearance hearing of the parties, at which continuation of the proceedings will be discussed.

Despite the fact that the Court of Appeal has in the meantime rejected all of BREIN's claims, it is of the opinion that there is scope for the possibility of imposing less far-reaching measures. Since the interlocutory decision of 19 August 2014, this is the only topic still in dispute.

In today's interlocutory decision, the Court of Appeal ruled that, since the previous interlocutory decision, BREIN has not managed to put forward concrete facts that could lead to the conclusion that News-Service Europe, after all, acted unlawfully. Indeed, the Court decided the remaining complaints in favour of News-Service Europe with the definitive conclusion that News-Service Europe had not acted unlawfully.

Wierd Bonthuis, former CFO, had this to say: "I am pleased that the Court of Appeal has finalised its conclusion that News-Service Europe did not act unlawfully. However, it is painful that we must now conclude that this means it has been established that in 2011 BREIN wrongfully forced News-Service Europe to cease its activities."

If BREIN manages to convince the Court of Appeal during the personal appearance hearing that it really does have an interest in continuing the proceedings, a subsequent appearance will be ordered for which the parties must each designate an expert in order to investigate what measures might still be imposed on News-Service Europe. According to the Court, the fact that News-Service Europe is no longer active does not form an obstacle to imposing additional measures. In particular, the Court wants the experts to investigate the technical feasibility of a keyword filter and of blocking certain newsgroups.

Patrick Schreurs, former CEO of News-Service Europe: "I am pleased with the fact that the Court of Appeal has decided all main grounds for appeal in our favour and that all of BREIN's claims have been rejected. But it is disappointing that there just seems to be no end to these long drawn-out proceedings."

About usenet providers

The role of a usenet provider is similar to that of an internet provider or an email provider. A usenet provider enables usenet users to post articles in public newsgroups and ensures that these articles are distributed to the entire usenet. Such neutral intermediaries offer access to a technological platform without any involvement in what is posted by users.

Background

Stichting BREIN initiated proceedings against usenet provider News-Service Europe in 2009. BREIN was of the opinion that usenet providers independently reproduce and disclose copyright-protected works to the public, and BREIN claimed cessation of these activities by News-Service Europe. The court of first instance found in favour of BREIN and prohibited News-Service Europe from recording and making available copyright-protected works, subject to a penalty of € 50,000 a day. This order boiled down to a far-reaching, preventive, general and 100% water-tight obligation to install a filter. Because it was impossible for News-Service Europe to comply with this impracticable order, it was compelled to cease its activities as from 6.00pm on 4 November 2011. An appeal had been lodged in the meantime.

About News-Service Europe B.V.

News-Service Europe (News-Service.com) was founded in 1998 and was a successful usenet provider established in the Netherlands with an international group of customers. At the end of 2011, News-Service Europe was forced to discontinue its services. News-Service Europe gave access to usenet only to businesses, such as resellers and internet providers.