



NETHERLANDS
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Country Report

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1. Topic:	Legislation
When:	6 March 2002
Where:	IC Directive on community design, council regulation EC6/202, 12 December 2001
The Facts:	<p>The regulation on Community designs became effective as of March 6, 2002. It introduces two new forms of design protection, which are valid for all Community countries.</p> <p>Pursuant to this regulation, all product designs newly introduced in the European Union are automatically protected as Community designs without the need for registration. This Community design protection is valid for a period of three years after a design is introduced to the public. In addition to this protection for unregistered designs, registered Community design protection was also introduced. If a design is registered, it is protected for a maximum period of 25 years. The registration, which comes into effect as from January 2003, is possible up to one year after introduction of the new design.</p> <p>Unregistered designs will only be protected against deliberate imitation. Any use of a registered Community design without permission of the owner will be regarded as an violation of the law even if the use was in good faith.</p>

2. Topic:	The demolition of a building vs. its architect's copyright
When:	2 July 2002
Where:	Court of Appeal of Arnhem

<p>The Facts:</p>	<p>The community of Zwolle wanted to demolish a building in the city centre dating from 1967 in connection with the development of the area. The building’s architect raised objection to the demolition and demanded an injunction against it based on the Copyright Law, in particular in respect of his moral rights.</p> <p>In a prior case, the Court of Appeal of Amsterdam had ruled that an architect can successfully invoke his moral rights if, for example, emendations are made to his design, e.g., by means of partial demolition. Subsequently, the Court of Appeal of Den Bosch ruled that if a decision has been taken to demolish a building, its architect does not have the right to invoke his moral rights.</p> <p>In the present instance, the Court of Appeals of Zwolle ruled that even if a building is to be completely demolished, its architect can, in certain circumstances, successfully invoke his moral rights. This is particularly possible if such a demolition will result in damage to his reputation. The Court in turn ruled that damage to the architect’s reputation is possible if the decision to demolish is taken needlessly or without the required care. The architect’s reputation can suffer damage if his creation is treated “merely as something to be thrown away.” It also considered relevant in this connection the building’s importance in the architect’s oeuvre as well as the possibilities for the structure’s alternative use, the modification of employment provision and the costs involved.</p>
<p>Comments:</p>	<p>In advertisement law, as well, a designer’s moral rights are increasingly often being invoked, e.g., in connection with the modification or modernisation of a logo, or the replacement of a corporate identity by a totally different design. This makes it clear that such objections can no longer be disregarded <i>ipso jure</i>, but, rather, that a decision to reject such an objection can only be made after careful and thorough consideration of the question. This problem can especially be expected to occur in connection with multinationals with well-known logos.</p>

<p>3. Topic:</p>	<p>Advertising for registered medicines</p>
<p>When:</p>	<p>15 May 2002</p>
<p>Where:</p>	<p>District Court of Arnhem, criminal proceedings</p>
<p>The Facts:</p>	<p>Novartis Farma produces and sells a number of products for fungus infections of the nails. Public advertisement of registered medicines is prohibited in the Netherlands. Novartis had a TV commercial produced, and had it broadcast on public television networks. In it, it referred to the danger of contagion in connection with the condition, and advised the viewer, in the event that he/she has the condition, to consult a GP, as the problem is relatively easy to remedy, this all being in conjunction with the mentioning of the brand name Novartis.</p>

	Novartis claimed that this cannot be considered an advertisement as referred to in the Medicines Act of 1961, but, rather, that it is information in the public interest, and it used audience research to support this assertion. The criminal court judge concurred with Novartis and acquitted it of the charge of violating the Medicines Act of 1961.
Comments:	<p>‘Informing the public’ is the new trend in the drugs industry in those countries where public advertising for registered medicines is prohibited. The criminal court judge ruled in this case that advertisement was not involved, as reference was made exclusively to the phenomenon fungous infection of the nails and the associated danger of contagion, coupled with advice to consult one’s GP.</p> <p>Prior to these proceedings, the Advertising Standards Committee had ruled that advertisement was involved, however, not advertisement for medicines but, rather, ‘actual’ advertising, i.e., the propagation of the <i>idea</i> of consulting one’s GP. In the final analysis, the result is the same: despite the prohibition of advertisement for prescription drugs, in such an instance, the prohibition can be limited in connection with informing the public.</p>

4. Topic:	Invocation of copyright vs. abuse of power.
Who:	Netherlands Competition Authority (NMA)
When:	3 October 2001
Where:	Case 1 NMA (see p. 171)
The Facts:	<p>The NOS and HMG are broadcasting organisations. The <i>De Telegraaf</i> is one of the Netherlands’ largest daily newspapers. <i>De Telegraaf</i> wanted to publish the broadcast schedules of these organisations. Both the NOS and HMG refused to provide this information and forbade its publication, invoking copyright. The NMA ruled that it does not, in a general sense, follow from the Magill judgement that in instances where intellectual property rights are involved, the other legal precedents concerning abuse of power through refusal of supply are not relevant. In support of this position, the NMA cites, among other things, the judgment, Oscar Bronner GmbH/Mediaprint of 26 November 1998, and concludes that the question whether the NOS and HMG had abused their position of power depends on the answers to three questions:</p> <ol style="list-style-type: none"> 1. Is the service which was refused a prerequisite for being active in the relevant market?; 2. Does the refusal disturb competition in that market?;

	<p>3. Is there an objective ground for the refusal?</p> <p>As a first step, the NMA looked into what constituted, in this instance, “the specific object” of industrial property law. It concluded that the present instance involved document protection. It ruled, in turn, that, as a rule, industrial property rights are provided for a limited period only. However, the NMA found that programme information constitutes a special category. Each time that the weekly programme information appears, new document protection comes into being, such that unlicensed access to the market is rendered impossible. According to the NMA, in such a case a permanent exclusive right is involved, a circumstance which must be taken account of in view of the provisions of Article 24 of the Competitive Trading Act. Further, it observed that the production of such programme information does not require a substantial financial or creative investment on the part of the networks. It observed, as well, that the Media Act provides for licensing of parties other than broadcast organisations, and that, all things considered, under such circumstances invoking document protection does not give objective justification for the refusal to supply such information.</p>
<p>Comments:</p>	<p>Radio and television programme information can now be published in other publications other than just those of the broadcast organisations themselves.</p>