IN THE NAME OF THE QUEEN

rvp\I + II
Case number: 192880
Cause list number: 03-57
Date of judgement: 2 March 2005

COURT OF THE HAGUE
Civil Law Sector & Full Court

Judgement in the case under the case number and cause list number mentioned above of:

1. the foundation **De Nederlandse Dagbladpers**, domiciled in Amsterdam,
2. the private company with limited liability **Koninklijke BDU Uitgeverij B.V**., domiciled in Barneveld,
3. the private company with limited liability **Het Financieele Dagblad B.V**., domiciled in Amsterdam,
4. the private company with limited liability **Friesch Dagblad Holding B.V**., domiciled in Leeuwarden,
5. the private company with limited liability **Nedag Beheer B.V.**, domiciled in Barneveld,
6. the private company with limited liability **Nederlandse Dagblad B.V.**, domiciled in Barneveld,
7. the private company with limited liability **NCD Holding B.V.**, domiciled in Groningen,
8. the private company with limited liability **Friese Pers B.V.**, domiciled in Leeuwarden,
9. the private company with limited liability **Hazewinkel Pers B.V.**, domiciled in Groningen,
10. the limited liability company **PCM Uitgevers N.V.**, domiciled in Amsterdam,
11. the private company with limited liability **PCM Landelijke Dagbladen B.V.**, domiciled in Amsterdam,
12. the private company with limited liability **Algemeen Dagblad B.V.**, domiciled in Rotterdam,
13. the private company with limited liability **NRC Handelsblad B.V.**, domiciled in Rotterdam,
14. the private company with limited liability **Trouw B.V.**, domiciled in Amsterdam,
15. the private company with limited liability **De Volkskrant B.V.**, domiciled in Amsterdam,
16. the private company with limited liability **Het Parool B.V.**, domiciled in Amsterdam,
17. the private company with limited liability **B.V. De Dordtenaar**, domiciled in Dordrecht,
18. the private company with limited liability **Dagblad van Rijn en Gouwe B.V.**, domiciled in Alphen aan den Rijn,
19. the private company with limited liability **Rotterdams Dagblad B.V.**, domiciled in Rotterdam,
20. the private company with limited liability

PCM Interactieve Media B.V., domiciled in Amsterdam,
21. the private company with limited liability
Reformatorisch Dagblad B.V., domiciled in Apeldoorn,
22. the limited liability company **N.V. SDU v/h Staatsdrukkerij/uitgeverij**,
domiciled in The Hague,
23. the limited liability company **N.V. Holdingmaatschappij de Telegraaf**,
domiciled in Amsterdam,
24. the private company with limited liability **De Telegraaf B.V.**,
domiciled in Amsterdam,
25. the private company with limited liability **HDC Uitgeverij Zuid B.V.**, domiciled in Haarlem,
26. the private company with limited liability
Uitgeversmaatschappij Limburgs Dagblad B.V., domiciled in Heerlen,
27. the private company with limited liability
Uitgeversmaatschappij De Limburger B.V., domiciled in Maastricht,
28. the private company with limited liability
Verenigde Noordhollandse Dagbladen B.V., domiciled in Alkmaar,
29. the private company with limited liability **Basismedia B.V.**,
domiciled in Amsterdam,
30. the limited liability company **Wegener N.V.**, domiciled in Apeldoorn,
31. the private company with limited liability **Brabants Dagblad B.V.**,
domiciled in ’s-Hertogenbosch,
32. the private company with limited liability
Dagblad Tubantia/Twentsche Courant B.V., domiciled in Enschede,
33. the private company with limited liability **Eindhovens Dagblad B.V.**, domiciled in Eindhoven,
34. the private company with limited liability
Uitgeversmaatschappij De Gelderlander B.V., domiciled in Nijmegen,
35. the private company with limited liability
Uitgeverij Provinciale Zeeuwse Courant B.V., domiciled in Vlissingen,
36. the private company with limited liability **Sijthoff Pers B.V.**,
domiciled in The Hague,
37. the private company with limited liability
Wegener Uitgeverij Gelderland-Overijssel (WUGO) B.V., domiciled in Apeldoorn,
38. the private company with limited liability
Wegener Uitgeverij Midden Nederland B.V., domiciled in Houten,
39. the private company with limited liability
Uitgeversmaatschappij Zuidwest-Nederland B.V., domiciled in Breda,
the plaintiffs,
attorney: Mr P.J.M. von Schmidt auf Altenstadt, LL.M.,
lawyer: Mr D.J.G. Visser, LL.M., of Amsterdam

versus:

the Kingdom of the Netherlands
(the Ministries of General Affairs, of Home Affairs and Kingdom Relations, of Foreign Affairs, of Defence, of Economic Affairs, of Finance, of Justice, of Agriculture, Nature and Food Quality, of Education, Cultural Affairs and Science, of Social Affairs and Employment, of Transport and Public Works, of Public Health, Welfare and Sports and of Housing, Regional Development and the Environment),

having its seat in The Hague,
the defendant,
attorney: Mr. H.J.M. Boukema, LL.M.
lawyer: (also) Mr B.J. Drijber, LL.M., of The Hague.

The parties are hereinafter (including in the operative part) referred to as 'the publishers' and 'the State'.

The Court has taken cognisance once again of the papers used in this case, which are kept in the clerk of the court's dossier, including the interlocutory judgement of 16 June 2004 and the records of the case mentioned therein, as well as:

- the notes of the hearing of the parties of 11 October 2004 and the documents mentioned therein.

LEGAL GROUNDS

Further assessment

Concerning the proceedings

1. The Court has upheld and taken over all the grounds and decisions taken in the aforesaid interlocutory judgement, except insofar as the reverse would become explicitly evident from that which follows hereafter.

2. The publishers reduced their claim at the hearing to the extent, insofar as contrary to that which has been indicated in point 2.1 of the interlocutory judgement, that they now demand as follows:

I. that the State be ordered to discontinue, now and in the future, its scanning (including causing others to do so) or any other multiplication and the multiplication and/or publication, whether or not via an internal network, of works protected by copyright, which have been published in the publishers' newspapers, with the exception of reports that do not carry the maker's own, personal character and/or personal stamp, as long as the permission of the publishers has not been obtained, except insofar as (the production of) paper cutting collections is/are concerned, which are distributed only in the form of paper (therefore not via email, intranet or electronically in any other way), such on penalty of immediately claimable damages of € 1,000 per day and per ministry during which any (part of a) ministry continues to fail to comply with this injunction;

II. that the State be ordered to compensate the publishers for the damage they have suffered
a. due to the aforementioned infringement of their copyright and/or
b. due to the late and/or incorrect implementation of the Copyright Directive,
to be further assessed by the Court and to be settled in accordance with the law,

All this insofar as possible enforceable by anticipation and costs by right.

Furthermore, the Financieele Dagblad has announced that it has withdrawn its claim insofar as it concerned the Ministry of Finance, since it has reached agreement about an amicable settlement with this Ministry.

3. Thus, in these proceedings the Court is no longer required to form an opinion, which would entail, to put it briefly, a revision of the (paper) Cutting Collection Judgement of the Dutch Supreme Court (NJ 1996/177).

Digital cutting collections and press reproduction exception

4. By act of 6 July 2004 (Stb. 336), the Copyright Directive was implemented in the Netherlands, which act became operative on 1 September 2004 (Royal Decree of 9 August 2004, Stb. 409).

5. This implementation was late. According to Section 13 of the Copyright Directive, it should have been incorporated in the legislation of the Member States no later than on 22 December 2002. The proceedings at issue were commenced deliberately (cf. the statements made in the reply under 2) by summons of 23 December 2002, the day after the implementation period for the Copyright Directive had expired. According to legal ground 3.5 of the interlocutory judgement, the publishers are entitled to rely vis-à-vis the State on the direct vertical operation of (amongst other things) Section 5, paragraph 5 of the Directive in the period dating from the expiry of the implementation period until the date of commencement of the Implementation Act.

6. As from 1 September 2004, a new version of Section 15 of the Copyright Act (CA), which is also central in these proceedings, has become effective, adapted to, in particular, Section 5, paragraph 3, opening words and subsection c of the Directive. The new Section 15 CA reads as follows:

> 1. *As infringement of the copyright in a work of literature, science or art, will not be regarded the reproduction of news reports, mixed reports or articles about current economic, political, religious or philosophical topics, as well as works of a similar nature, which have been published in a daily paper, newspaper or weekly paper, magazine, radio or television programme, or any other medium that serves the same purpose, if:*
>   *1°. the reproduction takes place by a daily paper, newspaper or weekly paper or magazine, in a radio or television programme, or any other medium serving the same purpose;*
>   *2°. Section 25 is observed;*
>   *3°. the source, including the name of the maker, is stated clearly; and*
>   *4°. the copyright has not been expressly reserved.*
> 2. *With regard to news reports and mixed reports, a reservation such as referred to in the first paragraph under 4° cannot be made.*
> 3. *This Section also applies to the reproduction in a language other than the original one.*
>
> Transitory-law section IV of the aforementioned Implementation Act of 6 July 2004 stipulates that this Act leaves any exploitation acts performed prior to 1 September 2004 intact and that the same applies to any rights acquired before that date.

7. As a reminder, Section 5, paragraph 3, opening words and subsection c, as well as paragraph 5 of the Copyright Directive read as follows:

Paragraph 3(c)
The Member States are entitled to impose limitations or restrictions on the rights referred to in Sections 2 and 3 (sc. exclusive reproduction and distribution rights for the copyright holder, CRT) in respect of:
(...)
c) reproduction in the press, announcement to the public or provision of published articles about current economic, political or religious topics or broadcasts or any other materials of a similar nature, in cases in which this use is not expressly reserved, and insofar as the source, including the author's name, is mentioned, or the use of works or any other material in connection with the coverage of topical events, insofar as this is justifiable from the point of view of public information and, insofar as the source – including the author's name – is mentioned, unless this proves to be impossible.
(...)

Paragraph 5
The limitations and restrictions referred to in paragraphs 1, 2, 3 and 4 shall only be applied in certain specific cases, provided that it does not affect the normal exploitation of works or other materials and the legitimate interests of the rightful claimant are not prejudiced unreasonably.

8. A comparison between the English text of Section 5, paragraph 5, Copyright Directive (as declared by the State and not challenged, English was in this case the most important negotiating language) and the Stockholm and Parisian versions of Section 9 of the Bern Convention shows to what extent the provision of the Copyright Directive has been modelled on the provision of the Bern Convention [in English]:

Par. 5
The exceptions and limitations provided for in paragraphs 1, 2, 3 and 4 shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

9 BC
(1) Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorizing the reproduction of these works, in any manner or form.
(2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.
(...)

9. For the sake of completeness, the Dutch and English texts of paragraph 1 of Section 10b of the Bern Convention is reproduced, insofar as of importance now, which is reflected in both Section 5 of the Copyright Directive and in Section 15 CA [in English]:

10b, paragraph 1, BC
It shall be a matter for legislation in the countries of the Union to permit the reproduction by the press (...) of articles published in newspapers or periodicals

on current economic, political or religious topics (...) in cases in which the reproduction (...) thereof is not expressly reserved. Nevertheless, the source must always be clearly indicated (...)

10. The Court wishes to put first that now, after that which has become evident at the hearing and insofar as this deviates from that which was still assumed in a more or less explicit form in the interlocutory judgement, in its opinion, the following three questions, which have been put forward by the parties in these proceedings, may remain unanswered.

11. This refers in the first place to the matter of whether or not the publishers were entitled to *expressly reserve* their copyright within the meaning of Section 15, paragraph 1.4 CA in the manner stated by them, viz. in the colophon of their publications and/or by making such a reservation vis-à-vis the State by letter of summons of 24 July 2002.

12. Furthermore, it does not need to be assessed in this case whether or not Section 15, paragraph 2 (new) CA is compatible with Section 5, paragraph 3, opening words and subsection c, Copyright Directive, which is not the case according to the publishers, if the phrase "*news reports and mixed reports*" would have been meant to refer to something other than to that which forms the subject-matter of impersonal text protection in the Netherlands.

13. Finally, it does not need to be assessed either whether or not such a reservation could be made to apply to reproduction in digital cutting collections, which rests on the *second part of Section 5, paragraph 3, opening words and subsection c* of the Copyright Directive, viz. the use in connection with the coverage of topical events, insofar as justifiable from the point of view of public information, which the State has put forward, relying in this respect also on Section 16a of the Copyright Act.

14. The reason for leaving these three questions unanswered now is that, in the opinion of the Court, the digital cutting practice of the State cannot stand the so-called *three-step test* of Section 5, paragraph 5, Copyright Directive. The following issues are causal in this respect.

15. Since Section 5.5 of the Copyright Directive contains the general preconditions for the application of e.g. the press reproduction exception, made possible in Section 5.3, opening words and subsection c of this Directive, which provision of the Directive is meant to correspond with our legal press reproduction exception under Section 15 CA, the aforesaid Section 15 CA must be interpreted *in accordance with the Directive* in the light of Section 5.5 of the Copyright Directive. It ought to be investigated therefore whether the phrase *another medium that serves the same purpose as a daily paper, newspaper or weekly paper or a radio or television programme* under Section 15.1.1 CA is meant to include a digital departmental collection of cuttings. There is only question of this if this legal phrase under Section 15 CA, which corresponds with the Directive's phrasing, i.e. *other material of a similar nature such as a reproduction in the press, announcement to the public or provision of published articles about current economic, political or religious topics or broadcasts,* put into words in Section 5.3, opening words and subsection c, Copyright Directive, may be interpreted to the extent that the digital cutting collection complies with the Directive's preconditions under Section 5.5 Copyright Directive, under which the aforesaid press reproduction

exception can be applied, or, put more briefly, complies with the three-step test of Section 5.5 of the Directive. After all, according to the Directive, the limitation or restriction imposed on the copyright in accordance with the press reproduction exception will only be applicable if these preconditions are met. Even if all the hurdles phrased in 11 up to and including 13 could thus be taken in order for the newly formulated press reproduction exception to apply, so that the State could in principle invoke the press reproduction exception, then it still stands, considered this way, that it must have met the three-step test under Section 5.5 of the Copyright Directive. At least, this is the case within the framework of the dispute at issue, because the publishers have explicitly left the reproduction of impersonal texts out of their claim.

16. The Court is of the opinion, with the publishers, that due to the digital cutting practice of the State the *normal exploitation* of the publishers as the rightful claimants is jeopardised. Within this context, after all, normal exploitation is also understood to mean the digital exploitation for the commercial or professional market, which is still in its early stages, but is gradually growing more important. On being asked at the hearing of the parties, the publishers gave a further explanation of what this exploitation entails to a degree that may be considered sufficient. Apart from the analogue cutting practice, which is no longer challenged by the publishers in this case and which, on the one hand, can guarantee the *free flow of information* within the machinery of government to a sufficient degree in the opinion of the Court, but under which, on the other hand, the legal press reproduction exception is already being stretched to the limit, it is the digital version of the cutting collections, used *in addition to and in combination with this*, that forms, seen from this point of view, an unlawful infringement of the publishers' exclusive rights, due to which – in the words of the Copyright Directive – their legitimate (*sc.* digital exploitation) interests are prejudiced *unreasonably*. Within the context of the hearing, the argument of the State by reply in § 3.5 that the digital cutting collections would *be replacing* the paper cutting collections has proved to be incorrect to the extent that it has become firmly established that they exist alongside each other.

17. But even if the State would be followed in its standpoint that the digital exploitation referred to under 16 does not (yet), or at least not primarily refer to the normal exploitation referred to in Section 5.5 Copyright Directive, because that would be the publication of paper newspaper publications, then the requirement is not met that the interests of the publishers may not be prejudiced in an *unreasonable* way. This can be considered in greater detail as follows.

18. It became evident at the hearing of 11 October 2004 (and the State has explicitly *not* called this into question) that at least the digital Justice Cutting Collection most certainly provided extensive (pdf) search options, which moreover went back to a series of years, so that the digital cutting collection concerned therefore also had an extensive filing purpose. Such despite the positions taken by the State in its pleadings and as initially became apparent from its written summary of arguments at the hearing, viz. that the government's digital cutting collections were not more than one-on-one, albeit coincidentally digital, copies of paper cuttings without extensive search and file functions. According to the mere argument by the mouth of the State's legal adviser at the hearing, *this particular* departmental digital cutting collection (Justice) would have been an exception in respect of these extra options as compared to all the other departmental digital cutting collections, which argument of the State, for that matter, was considered totally implausible by the publishers. As a result of that which occurred

at the hearing, the State then took the line that the *filing and the option to still search after a maximum of one week* of the digital departmental cutting collections were not covered by the press reproduction exception, so that, so far, the State acknowledged the positions of the publishers. This means that in the opinion of the State shorter search (and possibly ditto filing) options would, conversely, be permitted on the basis of the press reproduction exception.

19. The Court does not share this view. After all, what is at stake is that the cutting collections are published in a digital form. From the nature of this medium it ensues that thereby other forms of consultation and/or setting up a digital filing systems are made possible in a simple way – even if, as a matter of speech, only consultation on the day itself alone is made possible via the departmental intranets concerned, or an intermediate step is introduced through the agency of the public information department. It is precisely because of this digitalisation and its inherent search and file potential that the publishers, taking everything into consideration, are impeded *unreasonably* in their digital exploitation possibilities – i.e. to offer the professional market usually custom-made digital forms of exploitation of their works.

20. In other words: the State does not comply with the cumulative guarantee under section 5.5 of the Copyright Directive, illustrated under 8, which stems from Section 9 of the Bern Convention, viz. that the digital cutting collections are not permitted to clash with the publishers' normal exploitation, whilst the publishers' interests may not be frustrated *unreasonably*.

21. That, on the one hand, the State's pursuance (*à l'improviste* at the hearing) of more detailed clauses specifying the accessibility of the digital cutting collections does not seem to accommodate any storage or offering of a more permanent nature than would appear on the surface, whilst, on the other hand, the paper cutting collections that are now no longer contested do in fact have such a more permanent nature, is not sufficiently important in the opinion of the Court, precisely because of the aforesaid inherent differences in character between paper and digital cutting collections.

22. The use of news reports in new exploitation forms, such as supplied digitally, custom-made, is an emerging, economically increasingly more relevant domain, in which a real exploitation interest of the publishers is involved, which interest is prejudiced by the departmental digital cutting collections in a manner deemed unreasonable. This is not only due to the licence income that is directly lost in this way, but also because of the reflex effect, which it has on the decentralised parts of the government or semi state-controlled sectors, such as the library sector. This is furthermore the case, for instance, because the practice that thus exists within the entire central government has the effect of a negative example for that part of the private sector, which is, in itself, interested in the aforementioned new market for custom-made digital information provision, which the publishers are able (and also actually (attempt)) to serve. If the central government would be allowed, without a licence, not incidentally but systematically, every day, to scan all the publishers' publications for important information in order to make this accessible digitally, it is, in itself, conceivable that this practice would not incite the private sector to not copy this practice, but, by contrast, to take the digital information products, custom-made, from the publishers. At the hearing, the publishers have also furnished sufficient prima facie evidence (by means of statements of managers of various publishers in charge of the digital product range for the commercial market,

submitted as exhibits 3, 4 and 5, and denied on inadequate grounds) that this phenomenon actually exists. It has thereby become certain that the aforesaid exploitation interests of the publishers are prejudiced in an unreasonable way by the practice of producing digital cutting collections without permission.

23. For the approach taken at present, the Court has found support in the parliamentary history of the Implementation Act of the Copyright Directive. This shows explicitly that it was the intention of the government to leave it to the courts to judge in concrete cases whether or not reliance on the amended press reproduction exception under Section 15 CA would be able to pass the three-step test of Section 5.5 of the Copyright Directive, especially in the event of new *digital* exploitation forms. This becomes evident from the following passage of the explanatory memorandum to the bill involved 28 482, p. 39:

> *Article 5.3.c of the Directive does not only provide the Member States with the freedom to leave a certain reproduction freedom intact, but also offers scope for formulating the provision of the 1912 Copyright Act in a manner that is neutral from a technological point of view. Moreover, the Member States have the freedom to give their own interpretation to the phrase "press", which is, after all, not a phrase that is defined accurately. (...) Although the terminology used at present can also be interpreted extensively, such as the application to subscription TV, hospital broadcasts and phenomena such as Viditel and Teletext, or "the magazine on the Internet", there is no reason to assume why the freedom to reproduce as guaranteed by this Section would not also apply to other news media that serve the same purposes, such as telephonic news provision and web pages on the Internet. That is why the provision about the scope of this Section has been extended in the first paragraph to include "another medium that serves the same purpose". This means therefore that, in the same way as is the case at present, in the event of storage or offering of a more permanent nature, in which an element of durable or timeless exploitation plays a dominant part, such as with filing functions, this provision is devoid of applicability. The more detailed interpretation of the scope provided by this directive is left to the courts. The application in the digital environment does not necessarily lead to exactly the same result as in the paper world. One could make a distinction there between, on the one hand, the area that is also covered by this provision, such as even the paper cutting collection, of which the Supreme Court in its judgement of 10 November 1995 NJ 1996, 177 (Stichting Reprorecht/NBLC), decided with its reliance on the history of the act* [that this, CRT] *is covered by this provision, and, on the other hand, the situation in which the use of news reports acquires an economically independent meaning and which also affects the exploitation interests of rightful claimants, for instance, because rightful claimants meet this need by means of their services. New technologies lead to the creation of a new market for custom-made information provision from information databases and electronic news services. In practice, more and more agreements are effected between information suppliers and buyers about such services. To this extent, the Court could attach special value to the "three-step test" of Section 5.5 of the Directive.* (underlining by the Court).

In the memorandum following the report, this has been specified as follows on page 26:

> *Ground 44 of the Directive indicates that allowance must be made for the fact that restrictions in a digital environment may have a more drastic economic effect. The explanatory memorandum to the proposed Section 15, Copyright Act*

1912, indicates, in line with ground 44, that the application of the restriction in a digital environment does not necessarily lead to exactly the same result as in the analogue world. In a digital environment, the use of news reports, mixed reports and articles may in fact acquire an independent, economic meaning, by means of search and file functions and the option of custom-made services. The use can then prejudice the normal exploitation of the protected material and the legitimate interests of the rightful claimants. This will particularly be the case when the rightful claimants meet the needs that exist for this by means of services. (underlining by the Court)

24. Based on the grounds taken above, the claimed infringement injunction is admissible, which is also valid for the damage to be assessed by the Court formulated in 2 under II (a.), since it has now after all become possible, on the basis of the established copyright infringement by the State, that the publishers are suffering damage, for which the State can be held liable. In view of the intention explicitly indicated by the publishers to start these proceedings only after the expiry of the implementation period of the Copyright Directive as well as that which has been put forward in the proceedings thus commenced by the publishers about the aspect of damage, the damage to be compensated in time will also need to be restricted to that period, so that the damage claim is admissible as from 22 December 2002. For the proceedings in which the damage is to be assessed, the point of departure should be included, partly in view of the Francovich doctrine of the European Court of Justice, that the consequence of the transitory-law Section IV of the Implementation Act (cf. above under 6 *in fine*) cannot be that it would not be possible to claim damage for the period during which the Copyright Directive ought to have been implemented, but was not yet. In the opinion of the Court, the transitory-law provision of the Conversion Act means that any exploitation acts performed and rights acquired prior to the date on which the Implementation Act took effect remain intact, not that only damage suffered after 1 September 2004 can be subject to compensation.

25. The Court has not got down to assessing the question of whether or not the State was already infringing copyright under the old Section 15 CA prior to the expiry of the period for implementation of the Copyright Directive. After all, the publishers have failed to furnish prima facie evidence that they, in view of the stage at which their own digital exploitation was at that time, already (possibly) suffered damage during that phase, which is in fact necessary for reference to the assessment of damage. For the injunction requested to be allowed, the aforesaid question does not need to be answered either.

Implementation damage and costs

26. In compliance with ground 3.8 taken in the interlocutory judgement, the damages claimed due to the late and/or erroneous implementation of the Copyright Directive (as reproduced above in 2 under II (b.)) must be dismissed on the grounds mentioned in the interlocutory judgement. The (possible) damage suffered by the publishers arises exclusively from infringement by the State of the copyright to which the publishers are entitled, as contained in the foregoing. This damage does not increase or change due to the late and/or erroneous implementation of the Directive, because of the aforementioned vertical direct operation of, in particular, Section 5.5 of the Copyright

Directive, or the interpretation in compliance with the Directive of the Copyright Act of 1912 amended because of its being adapted to this Directive.

27. As the party against whom the matter is decided, the State will be ordered to pay the costs of the proceedings.

DECISIONS:

The Court:

- orders the State to discontinue, now and in the future, the scanning (including causing others to do so) or any other multiplication and the multiplication and/or publication, whether or not via an internal network, of works protected by copyright, which have been published in the publishers' newspapers, with the exception of reports that do not carry the maker's own, personal character and/or personal stamp, as long as no permission from the publishers has been obtained, except insofar as (the production of) paper cutting collections is/are concerned, which are distributed only in the form of paper (therefore not via email, intranet or electronically in any other way), such on penalty of immediately claimable damages of EUR 1,000 per day and per ministry during which any (part of a) ministry continues to fail to comply with this injunction;

- orders the State to compensate the publishers for the damage they have suffered due to the aforementioned infringement of their copyright in the period from 22 December 2002, to be further assessed by the Court and to be settled in accordance with the law,

- orders the State to pay the costs involved in these proceedings, estimated up until the date of this judgement on the part of the publishers at EUR 258.18 in advances and EUR 1,356 in attorney's fees;

- declares this judgement to be enforceable (insofar as possible) by anticipation;

- dismisses anything claimed in excess or otherwise.

This judgement was passed by Mr P.A. Koppen, LL.M., Mr M.J. van der Ven, LL.M., and Mr G.R.B. van Peursem, and pronounced at the public session of 2 March 2005 in the presence of the clerk of the court.

[signed]
[stamp: Court of The Hague, For a first authenticated copy, 02 March 2005, The Clerk of the Court]