

Legal Alert

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Dutch Supreme Court: US performing artists are entitled to private copying levy ("thuiskopievergoeding")

16 November 2009

Last Friday, the Dutch Supreme Court rendered a ground-breaking decision in the *De Stichting Thuiskopie/Norma-Irda* case.¹



In this case, the question was whether US performing artists are entitled to the "private copying levy" of Article 16c Copyright Act.² To answer this question the Supreme Court needed to provide its interpretation of Article 32 Dutch Neighbouring Rights Act ("DNRA")³, Article 4 of the Rome Convention⁴ and Article 7(2) of the Geneva Convention.⁵

Contrary to the decisions of the District Court and the Court of Appeal, the Supreme Court ruled that it follows from the wording of Article 32 DNRA that performing artists from countries which are not a member of the Rome Convention, like the United

States, do have neighbouring rights in the Netherlands, meaning that they are entitled to a private copying levy. The Supreme Court, however, made clear that these neighbouring rights relate to "audio" and do not include "video".

This decision has far-reaching consequences, including that US artists can claim neighbouring rights protection in their audio recordings in the Netherlands, even though no such protection exists in the US. Also, these artists will have a claim on the relevant neighbouring rights collecting societies. The Netherlands will be the only EU country granting such protection and compensation (without reciprocity).

The winning party De Stichting Thuiskopie, was represented in this matter by Tobias Cohen Jehoram of De Brauw.

Obviously, we are more than pleased to discuss the practical consequence this decision may have.

¹ [Dutch Supreme Court 13 November 2009](#)

² [Copyright Act](#)

³ [Dutch Neighbouring Rights Act](#)

⁴ [Rome Convention](#)

⁵ [Geneva convention](#)

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