Desirability of alternative dispute resolution in the field of copy rights and neighbouring rights

Conclusions

The five interviewees (members of the legal profession, the judiciary, the public broadcasting network and two collective societies) have indicated with regard to question a) that they have been involved either personally or with their organisation in actual or past judicial dispute resolution within the field of copy rights and neighbouring rights. This dispute resolution has taken place through summary proceedings or proceedings on the merits and has resulted in a settlement many times. All parties recognise the existence of methods of extra judicial dispute resolution, but these methods have hardly been tried.
With regard to question b) alle interviewees have dealt with music conflicts. Besides those conflicts, issues in the field of expressive art, literature, photography, design, packaging of products and logo's, architecture, software, programme data and formats/concept games. One very fruitful experience with extra judicial mediation proceedings should be mentioned, concerning a dispute about intellectual property rights on software. This case had been resolved within four weeks and could be dealt with in such short period of time, because all parties were focussed on settlement, wanted to reach a quick result within a short time and were looking for a secure and private environment due to the politically sensitive subject they had to manage.

From question c) emerges that not all interviewees are acquainted with the costs of judicial proceedings. As far as something can be said about this, those costs vary from f 10.000 to f 20.000 in summary proceedings and from f 500.000 to f 1.000.000 in proceedings on the merits. The duration of summary proceedings is being estimated between 3 weeks and 2 months and in proceedings on the merits between 1 year and indefinitely. On the one hand side the following (possible) relevant factors are mentioned, which are deemed to influence the result of proceedings: the future cooperation of the parties, the commitment of the parties, the eagerness of the lawyers stimulating the parties to reach a solution, the pressure of time, the political nature of the subject which is sensitive for publication, the costs of judicial proceedings and the developments of similar cases abroad. On the other hand side the conclusion is that there are no relevant factors which have an impact on the result of proceedings.

The general answer to question d) is that judicial proceedings either end with a settlement or with a court decision. The jurisprudence in cases of copy right and neighbouring rights establishes precedent. It can withhold or on the contrary stimulate a party to bring the case before the court. The moment extra judicial dispute resolution proceedings such as mediation have beared fruit, a tendency exists to judge these proceedings again on its (beneficial) merits.

All interviewees are, with regard to question e), of the opinion that the swiftness in summary proceedings is good. The speed in proceedings on the merits of district courts and the courts of appeal leave much to be desired. The individual who had experienced extra judicial proceedings, expressed himself in a positive way about mediation but negatively about arbitration. Generally the interviewees trust the expertise of the court (or alternative dispute settlers). Some think that the professional ability is of high quality in the big cities whereas of low level in the small towns. Others are of the opinion that circulation of judges jeopardizes the expertise, while it is also said that circulation could yield advantages such as cross-pollination. Another comment is that specialisation of certain chambers of a judicial court could contribute in creating professional ability, although obviously disadvantages can be attached to it too. The meticulousness of the courts (or alternative dispute settlers) is being labelled as good by the interviewees. Some individual believes that the court shows an insecure attitude in a matter by giving a higher court the opportunity to furtherly interprete its judgment. Another remark is that the swiftness, which is to be observed in summary proceedings, can cause a weak legal reasoning. This defect can be compensated by the fact that the solution is reasonable.

With regard to question f) the two sides of the arbitration and binding advice medal are put forward. It is said that arbitration proceedings and binding advice score better than proceedings on the merits as far as swiftness and expertise are concerned. The costs of the first mentioned proceedings are also lower. Subsequently is said that in an arbitrary award a decision is given about all issues, whereas a judicial court decision often is divided in different, partial judgments. The other side of the medal is that arbitration proceedings are not the appropriate proceedings for issues of considerable interest, because the parties can not keep the issue in their own hands and there are no appeal possibilities available.

From question g) results that there is a difference of opinion about the need of another form of dispute resolution than the judicial proceedings. The interviewees particularly introduce arbitration proceedings as another form. Those proceedings are supposed to be particularly appropriate for issues of domain names, because of its transparence, its meticulousness, its swiftness and its cost savings in comparison with judicial proceedings. Arbitrators generally dispose of a fargoing expertise. The question is whether the parties, who usually have no legal knowledge of this specific field of law, could litigate themselves (without legal assistence). To avoid abuse, the abusing party should be condemned to pay the full litigation costs (of both parties). It is carefully indicated that mediation proceedings are only interesting, when it is not obvious that one of the parties has behaved incorrectly towards the other party or when there seem to be no more opportunities for the parties to negotiate. An alternative form of dispute resolution could be effective as far as it has been legally adopted and as far as it can be controlled.

Question h) shows that some of the interviewees want to give alternative dispute resolution a chance and that others do not pin much faith on it at all. The ones who believe it could work think that this kind of resolution only works for copy right issues or neighbouring rights in which both parties have a credible and reasonible point of view or in which parties will need to cooperate in the future. The ones who have no faith in another kind of dispute resolution put forward that this method has an inhibiting effect in the sense that parties will sooner take the step to settle through this new method than take the step to litigate in court.

The interviewees have difficulty in taking a stand regarding question i) concerning the foundation of an organisation which concentrates on copy right dispute settlement. They adopt an aloof attitude towards the success of such an organisation. It is not self evident that the recourse of such an organisation does not shift the problem, that the problem reduces or that it gets solved. As soon as an organisation gets competence to determine tariffs and licence compensations, the flood will be enormous and little freedom and eagerness will exist to reach a good usage system by negotiations of the parties themselves. The creation of the Copyright Tribunal gives food for thoughts. Some interviewees indicate that an organisation in charge of dispute resolution, should not concentrate on determining tariffs and creating conditions on certain areas of copy rights and neighbouring rights.

The response to question j) about the development of guidelines in the field op dispute resolution with regard to copy right and neighbouring right cases, shows that all interviewees 5are openminded. The existence of such guidelines is considered as a hold. Formulating those guidelines is quite a task as it is hard to determine general and relevant criteria which can be applied in every particular case.

From the foregoing the prudent conclusion could be drawn that the legal profession, the judiciary and the public broadcasting network have had such little taste of alternative dispute resolution methods that it is too early at this stage to pronounce upon the desirability of such alternative methods in the field of copy rights and neighbouring rights. This provisional conclusion seems to be justified even more, now that the two collective societies have declared not at all to be supporters of alternative dispute resolution. As it is not possible yet to clearly pronounce upon the desirability of alternative dispute resolution in the field of copy rights and neighbouring rights, there is no need (nor possibility) at this moment to examine the subsequent question of the existence of a basis for such type of resolution method.

Wenselijkheid van en draagvlak voor alternatieve geschillenbeslechting op het terrein van auteursrecht en naburige rechten; een terreinverkenning
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