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The Boundaries of Property Rights: Netherlands National Report 2006

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1. Introduction

In this national report I will give an overview of the different assets that may be the object of property rights in Dutch law. The French title for these national reports to be found in the official subject list of the International Academy of Comparative Law is *la notion de biens*: the notion of... Already here terminological problems start. The Dutch word that corresponds to the term *bien* is the word *goed*. It denotes something that can be the object of a proprietary right. It comprises tangible things as well as rights. The nearest equivalent in English would be the term *asset*. Therefore, in the following report I will use the term *asset* to denote a *bien* or *goed*.

Dutch law uses a very narrow concept of property rights. Property rights or proprietary rights are rights which have as their object a *goed* or *asset* in the above sense. This is the reason why in Dutch law intellectual property rights are not regarded as property rights. They have as their object for example a certain text, invention or idea, in short *immaterialia*, immaterial things, not an *asset*, that is to say, not a tangible thing nor a patrimonial right. On the other hand, proprietary rights and intellectual property rights have a common feature in that they work against everyone. For that reason both are called absolute rights. An intellectual property right is a patrimonial right (Art. 3:6 DCC) and is itself seen as an *asset* (Art. 3:1 DCC).

The holder of a copyright or trade mark is not called owner of the copyright or trade mark, but simply *holder* of the copyright of trade mark. In Dutch law ownership always relates to tangible objects, movable or immovable objects. Ownership of rights, such as intellectual property rights, is impossible. However, as intellectual property rights are themselves *assets*, these rights can be burdened with limited proprietary rights, e.g. a right of pledge.

The report will first address the question which objects may be objects of proprietary rights. In the second part intellectual property will be dealt with. It should be noted that the report will be confined to the notion of *asset* in private law. In Dutch law the definition of *asset* in private law has no bearing whatever on for example the

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criminal law notion of theft. Electricity cannot be seen as a thing in private law, but it can be stolen: illegal tapping of electricity constitutes a criminal act of theft.

2. Property Law

2.1. Some more Definitions

Article 1 of the 3rd Book of the Dutch Civil Code (Art. 3:1 DCC) gives a definition of an asset by saying: assets are all things and all patrimonial rights. The following Article, 3:2 DCC, adds that things (*zaken*) are tangible objects that are susceptible of human control. Patrimonial rights are rights which can be transferred or which purport to give its holder material benefit or which have been given in exchange for material benefit that has been given or will be given in future (Art. 3:6 DCC). This is not a neat distinction of comparable notions: a thing is not a right but the object of a right. However, the Dutch Civil Code often uses the expression ‘things’ as shorthand for ‘the right of ownership of the thing’. In its turn, the right of ownership or most other patrimonial rights can be the object of a proprietary right, for example where the right of ownership of land is burdened with a right of hypothec or a long lease.

Tangible objects, things (*zaken*), may be either movable or immovable. Unlike the old Dutch Civil Code from 1838 the new 1992 Civil Code restricts the distinction movable/immovable to things; rights cannot be movable or immovable. Dutch law does not call a right on immovable property an immovable right.

2.2. Movable Property

As said before, things (*zaken*) are tangible objects that are susceptible of human control (Art. 3:2 DCC). Water in a river or the air around us is said not to be susceptible of human control, but once it has been canned for example it is susceptible of human control and it is therefore regarded as a thing. Whether a collection of tangible objects belonging together constitutes one thing or a number of separate things depends on common opinion. Normally a collection of books will be seen as a large number of separate things. A cd-box, on the other hand, is seen as one thing rather than as a number of separate items: box, booklet and several cd’s.

2.3. Electricity, Water and Gas

Although one can feel electricity in different, often disagreeable, ways, electricity is not seen as a material object, a tangible object that is susceptible of human control. Similarly, water and gas which is not canned but supplied through pipes are not seen as things susceptible of human control. The supply through cables or pipes of electricity, water and gas does not underlie the rules of sale, as sales contracts are confined to things, movable or immovable, and rights. The supply through cables and pipes of electricity, water and gas is not regarded as the supply of a thing in the sense of Article 7:1 DCC, the first article in the Title on sales contracts.¹ There is no other special contract type (nominated contract) applying to the supply of electricity, water and gas. In practice this does not cause trouble as for these types of contracts standard contracts have been made.

¹ Hijma 2001, nr. 196.

2.4. *Computer Software*

A disc containing computer software is a tangible object and is therefore treated as a thing. However, it is controversial whether or not the software itself can also be seen as a thing in itself. If you buy software that is transmitted over the internet and not stored on a cd-rom, is this the sale of a movable thing? The question, by the way, does not affect the intellectual property right, the copyright, that the producer of the software program has.²

2.5. *Immovable Property*

A piece of land can be the object of a property right. According to Article 5:20 DCC the right of ownership of land comprises the topsoil, the layers of earth beneath, groundwater that comes to the surface naturally or through an installation, the water above the soil unless it has an open connection to water covering another's land, buildings permanently attached to the soil unless they are part of another's immovable thing, and finally, plants and trees connected to the soil. Oddly, a clear definition of a piece of land cannot be found in the Dutch Civil Code. Suppose the owner of a plot of land wants to sell and transfer part of his land. Suppose, that the entire plot of land is one cadastral parcel. Is he able to transfer part of a parcel or should he wait until the part to be transferred has been turned into a new cadastral parcel with its own individual parcel number? The question comes down to the definition of immovable property: can part of a cadastral parcel be regarded as an immovable thing?

In Dutch law the answer is affirmative. A transfer of part of a parcel is possible and this part forms a separate thing even though it has not yet received its own parcel number and registration in the cadastre. The splitting of the parcel and allocation of new parcel number to the newly formed parcels is a mere administrative measure.

2.6. *Humans, Human Remains, Body Parts and Embryo's and Animals*

In Dutch law human beings cannot be seen as objects of proprietary rights; they cannot be regarded as assets in the legal sense of the word. It is generally accepted that for moral reasons embryos cannot be regarded as assets.³ Body parts which are separated from the human body, e.g. blood or tissue, are seen as assets.⁴ The question whether or not human remains can be assets is more difficult to answer. It is highly controversial whether a dead body is an asset or not. A mummy, on the other hand, is more easily seen as an asset.⁵ The fact that a mummy is an archaeological find seems to overshadow the fact that these are dead persons. Objects made from human remains can be seen as assets more easily than the human remains themselves, e.g. a beaker made from a skull, or ashes of a cremated corps which have been used to make a diamond.

Animals, on the other hand, are assets if they are susceptible of human control. If so, animals are regarded as movable things. No special rules of private law apply to them. Still, there is a bulk of special legislation on animal welfare such as the Health and Welfare Act for Animals of 1992.⁶ Moreover, the Criminal Code contains an article on damaging a thing belonging or partly belonging to another person (Art. 350

² Van der Steur 2003, p. 176-181.

³ Van der Steur 2003, p. 217-220.

⁴ Van der Steur 2003, p. 220-231.

⁵ Van der Steur 2003, p. 213-217.

⁶ Gezondheids- en Welzijnswet voor Dieren, *Staatsblad* 1992, 585. According to Article 36 in conjunction with Article 121 of this act maltreatment of animals is a criminal act.

Criminal Code). In paragraph 2 of this article the rule on damaging things is applied to animals by analogy. However, the article does not treat animals as things.

2.7. *Goodwill, Clientele*

Although goodwill and clientele can be the object of a sales contract and can be transferred to a company as consideration for the allotment of shares and can be put on the company's balance sheet as separate assets for accounting reasons, they are not seen as assets in a legal sense, i.e. as objects of proprietary rights.⁷

2.8. *Universitas Rerum et Iuris*

The concept of *universitas rerum* is unknown to Dutch property law. Although it is possible to sell a collection of books or an entire library, the collection of books is not seen as one thing but as a number of separate things. In order to transfer ownership of the books every item has to be transferred separately. So, the fact that the books belong together and form a *universitas* has no consequences on the definition of what constitutes an 'asset': the *universitas rerum* is not regarded as one single asset. According to common opinion a large heap of unions, on the other hand, is seen as one single asset. However, the heap is not an *universitas rerum*. On the contrary, the concept of *universitas rerum* presupposes that there is a number of separate items.

On the other hand, the concept of *universitas iuris* (a collection of all sorts of assets) does have some importance in Dutch law. Not that such a *universitas* is seen as a single asset, but the fact that a number of assets belong together and share a certain fate may have some legal consequences. The most common examples are matrimonial property belonging to both spouses, the deceased's estate and the patrimony belonging to a partnership without legal personality.

The creditors of a partnership have an exclusive right to seize the partnership's assets in execution, a right which excludes the creditors of the partners in private (Art. 7:806 and 7:827 DCC). Within the partners' patrimony the partnership patrimony thus forms a separate patrimony to the benefit of the partnership's creditors. On the other hand, when private assets of the partners are seized the business creditors have no priority over the private creditors. Similarly, when there are two or more heirs, the creditors of a deceased's estate have an exclusive right to seize assets from the deceased's estate in execution, excluding the heirs' private creditors. Within the patrimony of the heirs the deceased's estate forms a separate patrimony (Art. 4:184 DCC). Another example from the law of succession: in article 4:183 DCC Dutch law recognizes the *hereditatis petitio*, a right to recover a deceased's estate in its entirety.⁸

Still, Dutch law does not recognise the *universitas iuris* as one single asset. In practice it has important consequences on the transfer of an enterprise, whether or not the enterprise has legal personality or not. In order to transfer an enterprise all assets which make up the enterprise should be transferred separately in accordance with the transfer rules which apply to those items. On the other hand, Article 3:222 DCC gives special rules on a right of usufruct on a collection of things and rights, such as a deceased's estate or an enterprise, but we cannot infer from the article that the deceased's estate or the enterprise is seen as an *universitas*. Every asset of the collection should be burdened with a usufruct separately. In order to do so, formalities

⁷ Mijnsen & De Haan 2001, nr. 4; Van der Steur 2003, p. 190 et seq. See also the Dutch Supreme Court's decision in HR 31 May 2002, *NJ* 2003, 342.

⁸ The practical advantage of the *hereditatis petitio* over the possessory action or the revindication is a less strict burden of proof and different limitation periods. See Van Mourik 2002, § XIII 9.

have to be fulfilled which differ according to the nature of the asset. A usufruct on immovable property, for example, needs a notarial deed and registration in the land register.

2.9. *Res extra Commercium*

The Roman concept of *res extra commercium* can no longer be found in the Dutch Civil Code as a legal concept. The Roman concept consisted of three different classes of things. Firstly, the *res communes*, things belonging to everyone, such as the air we breathe, secondly, the *res divini iuris* or *res sanctae*, religious objects, and thirdly, the *res publicae*, things belonging to the government. Dutch law does not recognize open air as a thing. For that reason Dutch law no longer uses the concept of *res extra commercium* in reference to open air. The second category of *res sanctae* is also superfluous, as religious objects are owned by for example churches, museums, governments or private persons. The third category, the *res publicae*, still exists but in principle does not underlie special rules of property law. The standard concept of private ownership applies to things owned by a local government or the national government, although public property may underlie special rules of written or unwritten public law.

An example of a special rule on *res publicae* is Article 436 Code of Civil Procedure which provides that *res publicae* cannot be seized in execution. The article applies to all kinds of assets, immovables, movables, claims and other assets. Book 5 of the DCC contains special rules on immovable *res publicae* belonging to the state and rules on immovable property with a public function, such as roads, even if privately owned. Article 5:24 DCC provides that immovables which have no other owner belong to the State. Moreover, the seabed of the territorial sea and the Waddensea (in the north of The Netherlands) are owned by the State (Article 5:25 DCC). The beaches until the foot of the dunes are presumed to be owned by the State (Art. 5:26 DCC). The riverbed of public waterways are also presumed to belong to the State (Art. 5:27 DCC). Public immovable property (excluding the beaches) which are maintained by a public body are presumed to be owned by that public body. Many church towers from before 1798 became the property of the local city councils in 1798⁹ because the church towers at the time fulfilled public functions such as a look-out and prison and often the bells were used as a warning signal in the case of fire in the city, or enemy armies approaching the city.¹⁰

Most public roads are owned by local governments or the State. However, a privately owned road may be a public road if it has a public function. Under Article 5:28 DCC all public immovable property other than beaches is presumed to belong to the public authority maintaining the property in question. This provision is especially important for public roads.

2.10. *Obligations*

In Dutch law obligations are owed, not owned. The creditor is said to have a claim against his debtor. He holds the claim but he is not the owner of the claim. The concept of ownership does not apply to a claim or obligation. Ownership is confined to tangible things (Art. 3:2 DCC). The same applies to rights other than personal

⁹ Staatsregeling voor het Bataafsche Volk of 1 May 1798. The relevant provision is Article VI Additioneele artikelen tot de Acte van Staatsregeling voor het Bataafsche Volk.

¹⁰ More detailed: Ploeger 1997, ch. 9.

rights. In Dutch legal terminology we do not say that someone owns a right of pledge. We refer to the pledgee as the holder of the right of pledge. In short you hold a certain right but you do not own it.

3. Intellectual Property Law

3.1. Introduction

A large part of intellectual property law is based on international treaties and a number of EC regulations and directives. A general and worldwide treaty giving rules on most aspects of intellectual property rights is the WTO agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS-agreement) from 1994. In the following overview I will concentrate on the Dutch national statutes.

3.2. Copyright

The Netherlands is a contracting state to the WIPO Berne Convention for the Protection of Literary and Artistic Works of 1886 and to the WIPO Copyright Treaty (Geneva 1996).¹¹

In Dutch national law copyright is protected under the Copyright Act 1912 (*Auteurswet* 1912). The Act has been amended on many occasions, e.g. as a result of EC directives. Article 1 of the Act reads as follows:

‘Copyright is the exclusive right of the maker of a work of literature, science or art, or his successor in title, to publish and to multiply the work, subject to the restrictions set by this Act’.

The Copyright Act protects not only copyrights which came into being in the Netherlands but also foreign copyrights which have to be protected under the various copyright treaties ratified by the Netherlands.¹²

The photographer who makes a portrait or other picture of someone has copyright over the picture, but in addition the person portrayed may have what is sometimes called a publicity right or portrait right which enables him to prevent the photographer from publishing the photo. In effect this right is not recognized as an exclusive right; rather the portrayed person has a legal position which is protected by tort law. The definition of portrait covers among other things photos, drawings, paintings, sculptures and impressions on a coin. The portrait is a representation of (part of) someone’s body (not necessarily his face), from which the person portrayed can be recognized by the public for which the portrait is published.

If the picture has been made with the portrayed person’s permission, the portrait may not be published without the permission of both the author and the person portrayed. The author has a copyright and the portrayed person has a portrait right (Art. 19 and 20 Copyright Act 1912). Where the portrait has been made without the portrayed person’s permission, the author is allowed to publish the portrait unless the portrayed person or, after the latter’s death, his direct relatives have a reasonable

¹¹ This treaty shall be ratified by the European Union on behalf of all member states. Furthermore, the treaty has been adopted into the EC directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society and this EC directive has been implemented into Dutch law by Statute of 6 July 2004, *Staatsblad* 336.

¹² Berne Convention for the protection of literary and artistic works (1886), Universal Copyright Convention (1952), and the Trade Related Aspects of Intellectual Property Rights (1994). The dates given are the dates of the treaties, not the dates of ratification by the Netherlands.

interest to oppose publication (Art. 21 Copyright Act 1912). Originally this reasonable interest had a non-financial nature: the protection of the portrayed person's privacy. Nowadays it also covers financial interests. If the portrayed person is so popular as to enable a commercial exploitation of his portrait and the portrait is indeed used for commercial purposes, the portrayed person is entitled to resist publication if he does not receive a reasonable financial compensation.¹³

3.3. *Trade Mark*

The primary source on trade mark law in the Netherlands is the Benelux Trademark Act, based on the Benelux Trademark Treaty, a treaty uniforming trade mark law in Belgium, the Netherlands and Luxemburg. The Benelux Trademark Act has been amended to adopt the EC regulation on the harmonization of trade mark law.¹⁴ A new Benelux Trademark Treaty was signed on 25 February 2005, expected to be in effect before the end of 2006. Apart from the Benelux Trademark Act several international treaties apply in the Netherlands: the Paris Convention for the Protection of Industrial Property (1883), the Madrid Agreement concerning the International Registration of Marks (1891), the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957), the Agreement on Trade-related Aspects of Intellectual Property Rights (1994), and the Trademark Law Treaty (1994). In addition, the EU Council Regulation nr. 40/94 on the Community Trade Mark (1993) applies.

The Benelux Trademark Act distinguishes general trademarks from individual trademarks. An example of a general trademark is the well-known Woolmark. Until 1987 trademarks were confined to physical products; the Act did not recognize trademarks for services. The latter trademarks could be asserted only with an action in tort. From 1987, however, the provisions on trademarks for physical products apply to services as well. Under Article 10 of the Act the trademark lasts for 10 years, but it can be renewed. Each renewal is for 10 years and the number of renewals available is indefinite so that the trademark may remain valid eternally.

3.4. *Patent*

Patent law in the Netherlands is governed by national law, European law and international treaties. A national patent, valid in the Netherlands,¹⁵ can be obtained under the National Patent Act 1995 (*Rijksoctrooiwet* 1995).¹⁶ Interest in purely national patents is in decline in the Netherlands. In many more cases an application is filed with the European Patent Office which is able to confer a patent under the European Patent Convention (Munich 1973). Such a European patent will be valid in those member states to the convention mentioned in the applicant's request. In fact it is a bundle of national patent rights each of which underlies the various national rules on patent law. It is therefore not a uniform patent. It should be noted that the European patent is not restricted to the member states of the European Union: many European states outside the European Union are contracting state to the European Patent Convention. A third way to apply for a patent right is an application under the Patent Cooperation Treaty (Washington 1970). This path will not lead to a uniform patent right but again to a single national or a bundle of different national patents. The

¹³ HR 19 January 1979, *NJ* 1979, 383 (*'t Schaep met de vijf Pooten*).

¹⁴ 21 December 1988, 89/104/EEC, *OJ L* 40, 1.

¹⁵ To some part the Act also applies in the Netherlands Antilles.

¹⁶ *Octrooi* being the Dutch word for patent.

Dutch substantive rules on which inventions may be protected by a patent are in line with European and international requirements and will therefore not be discussed here.

3.5. *Trade Secrets*

Trade secrets cannot be regarded as property in the strict sense of the word. Trade secrets may be protected by adopting non-competition clauses in employment contracts. In order to be valid the non-competition clause should be made in writing and the employee should be at least 18 years old (Art. 7:653(1) DCC). If in relation to the employer's interests the employee's interests are unfairly disregarded, the judge may avoid the non-competition clause or part of it (Art. 7:653(2) DCC). The judge may also grant a fair compensation to the employee (Art. 7:653(4) DCC). There is a new draft bill on non-competition clauses to the effect that the employer is always under a duty to pay the employee a fair compensation for the time during which the non-competition clause is valid. The bill also demands that every non-competition clause should expressly state its geographical application and its time limit. The bill (nr. 28167) which is now discussed in the First Chamber of Parliament is fiercely criticised and may never be enacted. The protection of trade secrets is also important in licensing agreements.

List of Questions

- I A is the owner of land C. A has been using the water of red river since 30 years to irrigate the land C. B is authorized by Public Authority to dig the bed of the red river up to the land C in order to search for gas (or for any other reasons). In order to realize the digging B closes access to the red river depriving A of the water. Which remedy does A have against B?
- ad I The fact that B received a permit to dig the river bed and acts within the limits of this permit does not mean that by doing so B cannot commit an unlawful act (tort) against A.¹⁷ If B by denying access to the water commits an unlawful act against A, A can sue B for damages or ask the judge for an injunction which demands to refrain from his unlawful acts.
- II A receives a regular gas supply from the company named B. A stores the gas in a tank before using it. Suppose that A does not pay for the gas supply, will B then be able to claim back the gas which is left in the tank?
- ad II Even though A has not paid for the gas and the non-payment amounts to non-performance of the contract, B does not own the gas in the tank. B merely has contractual rights based on non-performance. He has a claim for the unpaid sum of money, he has the right to withhold any further delivery of gas until the gas bill has been paid, or he has the right to terminate the contract. In order to get payment B will be able to seize A's property in execution. As the full gas tank is part of A's assets, the gas may be seized in execution, but so may A's car or house.
- III A is the owner of a picture-gallery. A authorizes the weekly magazine B to take pictures of the paintings with the promise that B will pay a certain amount

¹⁷ HR 10 March 1972, *NJ* 1972, 278 (*Vermeulen v Lekkerkerker*).

of money. Afterwards A sells the picture-gallery to C. The contract of sale has been drafted very broadly and refers to all the rights which A has over the goods involved. Who is entitled to receive the money due by B?

- ad III The contract of sale merely creates obligations for the seller to transfer the assets sold under the contract. The contract itself does not pass ownership of the objects sold. The same applies to the contractual right of A against B to receive the sum of money. Under the contract of sale this contractual right should be assigned to C. If all requirements for a valid assignment have been fulfilled the right to receive the sum of money belongs to C. After notice of the assignment has been given to B the latter should pay to C, the assignee. The assignee is then entitled to receive the money.
- IV A downloads from an illegal internet site a music recording. He is discovered by accident. Can the editor B who has the copyright on the recording, sue A in order to obtain payment of the copyright?
- ad IV Downloading from the internet for private use is allowed. If A uses the downloads for other purposes than private use, the holder of the copyright can sue A for payment of copyright. However, many musicians, composers, text authors and sheet music publishers have joined the Dutch BUMA¹⁸ organisation to which the copyright holders have transferred their copyright. BUMA exercises these rights collectively on behalf of all copyright holders who share in the payments to BUMA.
- V A is the director of the factory of Company X. Over the past years he has developed a sophisticated logistic system which permits the factory to obtain all necessary components just in time for assembly. Company X has not patented the logistic system created by A. Despite this omission X considers the logistic secrets one of her most valuable trade secrets and has taken all possible steps to protect it. A resigns from his job at company X and after the non-competition clause has elapsed he starts a new job with Company Y which is a direct competitor of X. X is worried that A will introduce the logistic system in the company Y. Are there any remedies which X can use to prevent A from making use of the logistic system?
- ad V After the non-competition clause has elapsed, company X in principle has no remedy against its former employee or against company Y. In rare cases X might have a tort action against A and/or Y. As long as the non-competition clause is valid, a tort action can be brought against Y only if Y wilfully profited from A's breach of contract.
- VI A is a non-profit organisation giving help to families whose members have a predisposition to a certain genetic disease. During their activity they have stored a lot of medical data regarding a large group of families. Can the non-profit organisation deliver the data to X company in order to develop a medicine which might be able to cure the disease? Is there any difference whether the transfer is made for free or for valuable consideration?

¹⁸ Buro voor Muziekauteursrecht. Membership of this organisation is not compulsory.

- ad VI Such a delivery is contrary to the Protection of Personal Data Act (*Wet Bescherming Persoonsgegevens*) from 2000. Article 16 of the Act forbids among other things the collection and delivery of medical data unless the Act provides otherwise. Article 21(1)(a) enables collection of medical data by doctors, hospitals and certain institutions for medical or social welfare provided that the data are necessary for the exercise of their medical or social duties. The second paragraph of article 21 adds that medical data may be collected or passed on only to persons who are under a duty of secrecy, and that all other persons who get the data are under a duty of secrecy. Article 21(4) focuses on genetic data and provides that collection of such data is allowed only in relation to the person whose data are collected unless there is strong medical interest in favour of such collection or the collection of data is necessary for medical research or statistics. Article 23(1)(a) provides that collection or passing on of medical and genetic data is allowed if the person whose data are concerned gives his explicit permission.
- VII The magazine X published pictures of A (a well known football player) to celebrate the winning of Champions league by his team. After a while magazine X sells posters with the above-mentioned pictures. Does A have any legal remedy to protect his right of publicity? Is there any possibility for A to claim damages? Is there any possibility to obtain the restitution of the money gained by X magazine deriving from the selling of the posters?
- ad VII The case involves a portrait made without permission. Copyright of the photo belongs to magazine X. In principle the holder of the copyright may use this photo for whatever purpose unless the use constitutes an unlawful act. The fact that the football player is well known makes commercial exploitation of his portrait possible. In that case publication is not allowed unless a fair compensation is offered. Without such compensation publication constitutes an unlawful act (a tort). As a consequence the football player may demand an injunction to prevent the magazine from publishing his portrait. If the photos have already been published he may demand damages to be paid by the publishing company. The amount to be paid is at least the sum which the football player should have received if he had given his permission (the fair compensation).¹⁹ The damages do not normally cover the commercial gains earned by the publishing company.²⁰

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¹⁹ See for example Amsterdam District Court 16 October 2002, *IER* 2003, 18.

²⁰ According to the Amsterdam District Court's decision in 2 February 2005, *IER* 2005, 44 politicians do not have right of publicity which can be exploited commercially. For that reason a politician cannot demand restitution of commercial gains. He can, however, demand immaterial damages.

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