[NL] Dutch Court Upholds Creative Commons License

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On 9 March 2006, the District Court of Amsterdam, judging in summary proceedings, rendered a decision involving the validity of a Creative Commons (CC) license, a first in the Netherlands. Local media celebrity, Adam Curry, had published photos of his family on a website (www.flickr.com) under a Creative Commons Attribution-Noncommercial-Sharealike license. The photos also carried the notice `This photo is public'. The Dutch weekly `Weekend', a gossip magazine, had reproduced four photos in a coverage of the celebrity's children without seeking his prior consent.

Curry sued `Weekend' for copyright and privacy infringement. Regarding the copyright claim, `Weekend' argued that it was misled by the notice `this photo is public', and that the link to the CC license was not obvious. Audax, the magazine's publisher, alleged that it was informed of the existence of the CC license only much later by its legal counsel. Thus, `Weekend' had assumed in good faith that authorization from Curry was not necessary. Moreover, the defendants argued, Curry had not incurred any damages by the publication of the photos in the magazine, since these were freely available to the public on “flickr”.

The Court rejected the magazine's defense, and held as follows:

“All four photos that were taken from www.flickr.com were made by Curry and posted by him on that website. In principle, Curry owns the copyright in the four photos, and the photos, having been posted on that website, are subject to the [Creative Commons] License. Therefore Audax should observe the conditions which control the use by third parties of the photos as stated in the License. The Court understands that Audax was misled by the notice `This photo is public' (and therefore failed to take note of the conditions set out in the License). However, a professional party such as Audax can be expected to conduct thorough and precise research before publishing photos in `Weekend' originating from the internet. If it had carried out such an investigation, Audax would have clicked on the symbol accompanying the notice `some rights reserved' and found the (short version of) the License. In case of doubt as to the applicability and the contents of the License, it should have requested authorization for publication from the copyright holder of the photos (Curry). Audax has failed to perform such a thorough investigation, and has assumed too easily that publication of the photos was allowed. Audax has not observed the conditions stated in the License [...].

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The claim [...] will therefore be accepted; defendants will be enjoined from publishing all photos that [Curry] has posted on www.flickr.com, unless this occurs in accordance with the conditions of the License."

The Dutch Court's decision is especially noteworthy because it confirms that the conditions of a Creative Commons license automatically apply to the content licensed under it, and bind users of such content even without their express agreement to, or knowledge of, the conditions set out in the license.

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http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=AV4204

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