# [DE] Cologne District Court Bans Version of Tagesschau App

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On 27 September 2012, the *Landgericht Köln* (Cologne District Court) banned the ARD and one of its members, NDR, from distributing a particular version of the Tagesschau app. A total of 11 newspaper publishers that offer electronically accessible services had complained that the version of the application dated 15 June 2011 broke competition regulations.

The court rejected the plaintiff's initial argument that the Tagesschau app had not been granted the necessary approval. Rather, the application, as a telemedium, had passed the three-step test under Article 11f of the *Rundfunkstaatsvertrag* (Inter-State Agreement on Broadcasting - RStV) and had therefore been approved. A general ban on the application could therefore be ruled out. The provision of telemedia, as well as radio and TV services, was part of public service broadcasters' legal remit.

However, whether and in what form public service broadcasters were allowed to offer telemedia as well as radio and television services was determined in this case by Article 11d(2)(3) RStV. Under this provision, "press-like services not related to a programme" are forbidden. As for whether the disputed application was a "press-like service", the LG Köln said that it depended whether, from the user's point of view, it could function as a substitute for the press (in the form of newspapers or magazines), although for this to be the case it was not necessary for it to replace press publications completely. In the case at hand, the level of detail provided was similar to that of most newspapers and magazines. The fact that many of the articles were merely written versions of content originally broadcast as television or radio reports did not mean that the service was not "press-like". Users would only read the text in the form in which it was provided. The same applied to the inclusion of links and video clips in the text, which users would, at best, classify as additional services. It did not make the text any "less press-like".

The Tagesschau app, in its version of 15 June 2011, could also not be considered to be "related to a programme". The reports did not prompt a desire for further information, nor did they simply touch on the topics dealt with or refer the reader to additional information. Rather, the level of detail meant that the press-like texts were visually dominant, giving users the impression that they were

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complete articles. The court expressly pointed out that its ruling did not contain any general benchmarks as to how much detail should be allowed in such reports. Rather, its decision related only to the aforementioned version of the app that had been the subject of the complaint.

Nevertheless, the ruling may be considered to have more general significance, since in it the court explained its interpretation of the term “press-like”.

### *Urteil des Landgerichts Köln vom 27 September 2012 (Az.: 31 O 360/11)*

http://www.justiz.nrw.de/nrwe/lgs/koeln/lg_koeln/j2012/31_O_360_11_Urteil_20120927.html

*Ruling of the Cologne District Court of 27 September 2012 (case no.: 31 O 360/11)*

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