

[DE] Cologne District Court equates non-commercial use with private use under Creative Commons licences

IRIS 2014-5:1/12

*Tobias Raab
Stopp Pick & Kallenborn, Saarbrücken*

In a ruling of 5 March 2014, the *Landgericht Köln* (Cologne District Court - LG) dealt for the first time with the meaning of the condition “no commercial use” attached to Creative Commons (CC) licences (case no.: 28 O 232/13).

The plaintiff, a photographer whose pictures were made available for public use under a “Creative Commons Licence Attribution-NonCommercial 2.0”, had launched court proceedings against Deutschlandradio after the broadcaster had made one of his photographs available to the public on its website “dradiowissen.de” in order to illustrate a programme. The LG Köln did not think the fact that Deutschlandradio was a public service broadcaster was relevant. In its opinion, since a commercial radio station should not be using these licences in any case, it should be assumed that the rightsholder had also wanted to stop public service broadcasters from using his work. Deutschlandradio should therefore be treated as a private radio broadcaster.

In addition, the court held that, given the lack of a binding definition, “non-commercial use” in the sense of a CC licence should only be interpreted as purely private use. Since the Deutschlandradio website was not purely private, it must be a commercial service and therefore could not use works covered by a Creative Commons Licence BY-NC 2.0.

However, this decision by the LG Köln contradicts the wording of the CC Licence conditions which, contrary to the court’s assumption, define the concept of commercial use in paragraph 4(b). They prohibit uses that are “intended for or directed toward commercial advantage or monetary compensation”. Equating non-commercial with purely private use, as the LG Köln has done, does not correspond with the CC Licence conditions.

Since Deutschlandradio has already announced its intention to appeal against the decision, it seems likely that the OLG Köln (Cologne Appeal Court), which would hear such an appeal, will clarify the matter further.

Urteil des LG Köln vom 5. März 2014 (Az. 28 O 232/13)

<http://www.lhr-law.de/wp-content/uploads/2014/03/geschw%C3%A4rztes-Urteil-LG-K%C3%B6ln-2.pdf>

