

Institut für Rechtsfragen der Freien und Open Source Software

Enforcing CC-Licenses - Any problems to anticipate?

From the perspective of German and EU law

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## Agenda

- OSS-licenses as an example for enforcement
- Principal proceedings and preliminary injunctions
- Who has the right of action?
- Claim for damages
- Strategy

## Court cases related to CC-Licenses

- Court of Badajoz (Spain, 2005): SGAE
- Rechtbank Amsterdam (2006): Curry ./ Weekend
- District Court of Düsseldorf: mirror of Wikipedia

## Enforcement of OSS-Licenses

- [gpl-violations.org](http://gpl-violations.org) starting in 2004
- District Court of Munich: Welte ./ Sitecom (GPL)
- Court of Appeals for the Federal District (2008):  
Jacobsen ./ Katzer (Artistic License)

## Principal Proceedings and Preliminary Injunctions

- Copyright infringement or breach of contract
- Article 9 Directive 2004/48/EC: „Provisional and precautionary measures“
- Jacobsen ./ Katzer: „condition“ or „covenant“
- Welte ./ Sitecom: „condition“ or „implied restriction“

## Principal Proceedings and Preliminary Injunctions

- Anthony Falzone and Christopher Ridder from CC, and Prof. Lawrence Lessig (Stanford Law School) submitted amicus brief to the court

- CC-Licenses:

*„This License and the rights granted hereunder will terminate automatically upon any breach by You of the terms of this License.“*

Who has the right of action?

- Copyright holder - Art. 4 a) Enforcement Directive
- Other rightholders (exclusive license?) - Art. 4 b)
- Cooperative works: one coauthor may claim to cease and desist for all coauthors
- CC: (-), except own works

## Claim for Damages

- Problem 1: cooperative works
- Is it allowed that one coauthor claims damages for his part?
- Is it allowed that one coauthor claims damages for all other coauthors?

## Claim for Damages

- Problem 2: How to qualify and quantify a damage?
- „Royaltyfree“ as a handicap?
- Dual licensing

## Strategy

- Intentional or unintentional violation?
- Private letter or lawyer's cease and desist letter
- Deadline for a preliminary injunction?

## Court Decisions

- [http://www.jbb.de/judgment\\_dc\\_munich\\_gpl.pdf](http://www.jbb.de/judgment_dc_munich_gpl.pdf)
- [http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=ljn&ljn=AV4204&u\\_ljn=AV4204](http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=ljn&ljn=AV4204&u_ljn=AV4204)
- [http://www.internautas.org/archivos/sentencia\\_metropoli.pdf](http://www.internautas.org/archivos/sentencia_metropoli.pdf)
- <http://www.cafc.uscourts.gov/opinions/08-1001.pdf>

## Further Informationen

- [www.ifross.org](http://www.ifross.org)
- [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0048R\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0048R(01):EN:HTML)
- <http://www.rosenlaw.com/BadFactsMakeGoodLaw.pdf>
- <http://www.law.ed.ac.uk/ahrc/script-ed/issue4/GPL-case.asp>

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