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Press Release

CREATIVE COMMONS LICENSES UPHELD IN DUTCH COURT

San Francisco, USA, & Amsterdam, The Netherlands, March 15, 2006

The first known court decision involving a Creative Commons license was handed down on March 9, 2006 by the District Court of Amsterdam. The case confirmed that the conditions of a Creative Commons license automatically apply to the content licensed under it.

The proceedings arose when former MTV VJ and podcasting guru Adam Curry (<http://curry.podshow.com/?p=49>) published photos of his family on the well-known online photo-sharing site Flickr (<http://www.flickr.com>) under a Creative Commons Attribution-Noncommercial-Sharealike license (<http://creativecommons.org/licenses/by-nc-sa/2.5/>). The Dutch tabloid *Weekend* reproduced four of the photos in a story about Curry's children.

Curry sued *Weekend* for copyright and privacy infringement. As to the copyright claim, *Weekend* argued that it was misled by the notice 'this photo is public' (which is a standard feature of all Flickr images that are viewable by the public), and that the link to the CC license was not obvious. *Weekend* had assumed that no authorization from Curry was needed. Audax, the publisher of *Weekend*, argued that it was informed of the existence of the CC license only much later by its legal counsel.

The Court rejected *Weekend'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, by posting them on that website, are subject to the [Creative Commons] License. Therefore Audax should observe the conditions that 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 did not take note of the conditions of the License). However, it may be expected from a professional party like Audax that it conduct a thorough and precise examination before publishing in *Weekend* photos originating from the Internet. Had it conducted such an investigation, Audax would have clicked on the symbol accompanying the notice 'some rights reserved' and encountered 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 detailed



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Press Release

investigation, and has assumed too easily that publication of the photos was allowed. Audax has not observed the conditions stated in the License [...]. The claim [...] will therefore be allowed; defendants will be enjoined from publishing all photos that [Curry] has published on www.flickr.com, unless this occurs in accordance with the conditions of the License.”

The full text of the decision (in Dutch) is available at http://zoeken.rechtspraak.nl/zoeken/dtluitspraak.asp?searchtype=ljn&ljn=AV4204&u_ljn=AV4204

“We are very happy with this decision as it demonstrates that the millions of creators who use creative commons licenses are effectively protected against abuses of their willingness to contribute to the commons,” said Paul Keller, Public Project Lead for Creative Commons in the Netherlands.

“This decision confirms that the Creative Commons licensing system is an effective way for content creators to manage their copyrights online,” said Lawrence Lessig, Creative Commons CEO & Chairman, “The decision should also serve as a timely reminder to those seeking to use content online, to respect the terms that apply to that content.”

About Creative Commons Netherlands

Creative Commons Netherlands is collaboration between Creative Commons Corporation, Waag Society, Netherland KnowledgeLand Foundation and the Institute for Information Law of the University of Amsterdam. Creative Commons is supported by the Dutch Ministry for Education, Culture and Sciences. For general information (in Dutch) visit <http://nl.creativecommons.org>

About Creative Commons

Creative Commons is a not-for-profit organization, founded in 2001, that promotes the creative re-use of intellectual and artistic works—whether owned or in the public domain. Creative Commons licences provide a flexible range of protections and freedoms for authors, artists, and educators that build upon the “all rights reserved” concept of traditional copyright to offer a voluntary “some rights reserved” approach. It is sustained by the generous support of various foundations including the John D. and Catherine T. MacArthur Foundation, the Omidyar Network Fund, the Hewlett Foundation, and the



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Press Release

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