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 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


- 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://zoeken.rechtspraak.nl/resultpage.aspx?
snelzoeken=true&searchtype=ljn&ljn=AV4204&u_ljn=AV4204

- http://www.internautas.org/archivos/
  sentencia_metropoli.pdf

Further Informationen

- www.ifross.org


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