

Case Law Summary: *Robert Kneschke vs. LAION e.V.*

by **Julienne Te, LL.M.**

Court: *Landgericht (Regional Court) of Hamburg*
Date: *29 September 2024*
Case number: *310 O 227/23*
Parties: Robert Kneschke vs. LAION e.V.

A. Facts

On April 27, 2023, the claimant, photographer Robert Kneschke, filed a copyright infringement suit before the Regional Court of Hamburg against the defendant, LAION. The legal dispute arose from the defendant's incorporation of one of the claimant's photographs in the training dataset for the AI model "LAION-5B". The defendant is a German non-profit organisation that makes open-source artificial intelligence (AI) models and datasets. In the suit, the claimant sought an injunction against the use of that photo, and damages for copyright infringement.¹

The defendant creates datasets that can be used to train generative AI and makes these datasets available to the public free of charge.² The dataset for LAION-5B contains descriptions of and hyperlinks to images publicly available on the Internet, including the claimant's photograph.³

The claimant argued that the inclusion of his copyrighted photograph in LAION's training datasets constituted unauthorized reproduction of copyrighted content.⁴ To create the dataset, LAION had to record, download, and analyse the copyrighted image. The claimant alleged this conduct infringed his rights under Section 16 of the German Copyright Act.⁵

The claimant also argued that such reproduction was impermissible due to the presence of a valid reservation of use, made to prevent text and data mining ("TDM") by automated bots.⁶ This reservation was declared on the website www.bigstockphoto.com, a licensee of the claimant's photograph.⁷

Furthermore, the claimant argued that the defendant pursues research for commercial purposes and could therefore not avail of the TDM exception under the German Copyright Act.⁸ Section

¹ Regional Court of Hamburg, 29 September 2024, 310 O 227/23, par. 31.

² Ibid, par. 5.

³ Ibid.

⁴ Ibid, pars. 10 and 12.

⁵ Ibid, par. 7.

⁶ Ibid, par. 5: "RESTRICTIONS YOU MAY NOT: (...) 18. Use automated programs, applets, bots or the like to access the ... com website or any content thereon for any purpose, including, by way of example only, downloading Content, indexing, scraping or caching any content on the website."

⁷ Ibid, pars. 8 and 16; Section 44b of the German Copyright Act allows the copyright owner to reserve their rights, provided that they do so in a machine-readable format.

⁸ Ibid, pars. 17 and 21.

60(d) of the German Copyright Act permits reproductions of copyrighted content through TDM for the purposes of scientific research by research organizations.⁹

The defendant admitted that the download of the photos constituted reproduction of copyrighted content,¹⁰ but argued that the TDM exception to copyright infringement for scientific research did apply.¹¹ It also submitted that the alleged reservation against TDM for commercial use was not valid because it was not made by the claimant but by the operator of the website.¹² The defendant further argued that the reservation was not made in a valid machine-readable format, i.e., capable of being automatically processed by software.¹³

In its decision, the Hamburg-based Court dismissed the claimant's suit and denied his request for an injunction.¹⁴

B. Court's reasoning

The Court found that the defendant was not guilty of copyright infringement in using the claimant's photo in its dataset.

Use of claimant's photograph was an unauthorized reproduction

Section 44(a) of the German Copyright Act allows for temporary reproductions under certain conditions. The reproductions must be fleeting or incidental, and an "integral and essential part of a technological process." The purpose thereof must solely be to enable a) network transmissions between third parties via an intermediary or b) lawful use of a work or other protected content.¹⁵

To constitute a temporary reproduction, the image must be stored only for as long as necessary for the proper functioning of the technical process in question. Additionally, this process must be automated in such a way that it deletes the reproduction automatically after the function is completed.¹⁶

In this case, the Court held that the temporary copying exception does not apply. The Court reasoned that the act of downloading the claimant's photograph was a conscious and actively

⁹ Ibid, par. 110.

¹⁰ Ibid, par. 35.

¹¹ Ibid, pars. 42 to 45.

¹² Ibid, par. 38.

¹³ Ibid, par. 40.

¹⁴ Ibid, pars. 1 and 130.

¹⁵ Ibid, pars. 58 to 59.

¹⁶ Ibid, par. 62.

controlled process.¹⁷ Additionally, the defendant did not specify the duration of storage for the copyrighted image, and the deletion was not carried out "independently of the user."¹⁸

Use of a copyrighted image in AI training dataset falls under TDM exception for scientific research.

The court decided that **the creation of the dataset was part of scientific research**, falling under the scope of the TDM exception of the German Copyright Act.¹⁹

The court deemed the defendant's creation of a dataset necessary to enable future research in training artificial neural networks.²⁰ According to the decision, "scientific research" should not be understood so narrowly as to only cover work steps directly related to gaining knowledge.²¹ Rather, it should also cover initial or preparatory steps for knowledge acquisition.²² Accordingly, the court ruled that creating a dataset which can be used to train AI systems is scientific research under Section 60(d).

The Court highlighted the fact that the defendant makes its datasets available to researchers and the general public for free. In its decision, the court ruled that this is sufficient to fulfil the non-commercial purpose requirement under the TDM exception for scientific research.²³

The claimant also failed to produce evidence that could substantiate its claim that LAION was granting preferential access to its datasets to private commercial companies.²⁴ In addition, the Court considered the claimant's assertion that the dataset in question is used by commercial companies to train their AI systems to be irrelevant. The court reasoned that research by commercial enterprises is still research.²⁵

The Court also noted the EU and German legislators' intention to make the creation of datasets intended for training artificial neural networks subject to the TDM Exception for research purposes under Article 4 of the Digital Single Market Directive²⁶.

C. Other important issues

Machine-readable reservation for commercial use TDM

¹⁷ Ibid, par. 66.

¹⁸ Ibid, par. 63.

¹⁹ Ibid, pars. 109 to 112.

²⁰ Ibid, par. 114.

²¹ Ibid, par. 113.

²² Ibid.

²³ Ibid, pars. 117 to 119.

²⁴ Ibid, pars. 122 to 125.

²⁵ Ibid, par. 114.

²⁶ Ibid, pars. 83 and 84.

The Court also ruled on the validity of the disputed reservation of use following Section 44(b), par. 3 of the German Copyright Act. This exception permits TDM of lawfully accessible copyrighted works for commercial purposes. However, copyright owners can “opt-out” of TDM by making a machine-readable reservation of their rights.

In this regard, the Court found that the claimant’s reservation was made by an authorized person.²⁷ Furthermore, it ruled that the reservation was sufficiently machine-readable, even if made in natural language instead of block text.²⁸ The Court also found that the claimant’s copyrighted photograph was lawfully accessible on the Internet.²⁹ Nevertheless, since the scientific research TDM exception applied, the Court ruled that no copyright infringement was committed by the defendant.

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²⁷ Ibid, pars. 94 to 96.

²⁸ Ibid, pars. 37, and 100 to 102.

²⁹ Ibid, par. 91.