

[NO] Norwegian Music Piracy Case: napster.no Fined

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On 22 January 2003, Sør-Gubbrandsdal tingrett (the Court of Sør-Gudbrandsdal) rendered its decision in the case between the copyright-holder organisations and the owner of the web-site, napster.no. Napster.no was a web-site offering links directly to music that was illegally up-loaded on the Internet. The Court had to address whether this linking was illegal as regards the Norwegian Copyright Act.

The Court's point of departure was the exclusive right that the copyright-holder has according to Section 2 of the Norwegian Copyright Act (NCA) to make the copyrighted work available to the public and to make copies. The Court came to the conclusion that any uploading on the Internet, even to web-addresses only using an IPCenter for number and not a domain name, is to be considered an act of making a copy available and is thus not covered by Section 12 of the NCA that gives individuals the right to make private copies.

The Court then addressed whether a direct link to the illegal music on the Internet could be considered a performance of the music and thus a breach of the copyright-holder's exclusive right according to Section 2 of the NCA. After a lengthy discussion, where the Court also referred to other Nordic judgments and Nordic unity in this field of law, the Court came to the conclusion that the performance requirement included any method whereby the public was made aware of the work.

The Court concluded that the owner of napster.no had acted in violation of Section 2 of the NCA and had violated the copyright-holder's exclusive right to make the copyrighted work available to the public.

The most interesting part of the judgment by far, is the question of whether the owner of napster.no also was an accomplice to the illegal copying of music. The Court had to address whether the users of the web-site had acted in violation of the right to make copies for private use according to Section 12 of the NCA. The Court found that the downloading of music has the same effect as when other physical copies are made within the private sphere and therefore, the users had only acted within their rights under Section 12. The owner of napster.no could not be held liable for this use.

Finally, the Court addressed the question of damages. It considered that of all hits on the web-site, only 20% led to downloading, but that it could not be presumed that everyone who downloaded would be willing to buy a CD, had they not downloaded the music. As a result, the Court did not apply such percentages and awarded the copyright-holders NOK 75,000 in compensation for losses relating to the sale of records. The copyright-holders were also awarded an additional NOK 25,000 for other losses.

The judgment may yet be appealed.

Sør-Gudbrandsdal tingrett, 22-01-2003

<http://www.lovdata.no/nyhet/dok/napster.html>

Decision of the Sør-Gudbrandsdal City Court - First Instance of 22 January 2003

Lov om opphavsrett til åndsverk m.v. (åndsverkloven)

<http://www.lovdata.no/all/nl-19610512-002.html>

Norwegian Copyright Act 1961 (as amended)

http://www.unesco.org/culture/copy/copyright/norway/fr_sommaire.html

