

[NO] Consumer Ombudsman Bans iTunes' Contractual Terms

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Following a complaint by the Norwegian Consumer Council earlier this year, the Norwegian Consumer Ombudsman, in a letter dated 30 May 2006 to iTunes Music Store Norway (the defendant), declared that several of the terms applied by the online music service in its contracts with consumers were found to be in breach of Norwegian law. Thus, iTunes Music Store Norway has been formally instructed to alter the unlawful terms by 21 June 2006 (the deadline was subsequently extended to 1 August 2006).

The Consumer Ombudsman stated that some of the terms applied by the online music service are to be considered unlawful, and that others are likely to be unlawful. Among the terms which are, according to the Ombudsman, undoubtedly unlawful, the following can be found: the contractual locking of purchased music to the iPod player-unit, the requirement that the consumer accept English law as governing law, the disclaiming of all liability for damage that the iTunes software might cause and the provisions enabling iTunes to alter the rights to the music post-purchase. The said terms have all been found to be in breach of section 9a of the Norwegian Marketing Control Act; a provision targeting the use in trade of contractual terms that are unreasonable.

Among the terms which are likely to be unlawful, the Consumer Ombudsman lists negligence to respect the statutory consumer right to cancel a purchase made by distance-selling within a certain time-limit (cooling-off period) and the geographical restrictions facilitating geographical price discrimination. Also, the Ombudsman is not quite certain whether TPMs as such can be considered as unreasonable terms under section 9a of the Marketing Control Act, which by its wording targets unreasonable contractual terms. As far as these undecided matters are concerned, the defendant has been given an opportunity to express its views before a final conclusion is reached by the Ombudsman.

Non-compliance with the instructions of the Consumer Ombudsman can be sanctioned by fines. Decisions of the Consumer Ombudsman are subject to appeal to the (administrative) Market Council, whose decision can in turn be brought before the ordinary courts. Thus, we are probably far from having heard the last word in the case.

The Norwegian Consumer Ombudsman has cooperated with Swedish and Danish consumer authorities in the case, and similar actions are expected in those countries within a short period of time.

Press release of the Consumer Ombudsman, 7 June 2006

<http://www.forbrukerombudet.no/index.gan?id=11032467&subid=0>

