[DK] Judgment on Internet Distribution of Music

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A Danish pop band “Dodo & the Dodos” won a case concerning a conflict over the right for its record label to distribute music over the Internet without a clear agreement on such distribution. Dodo brought a case against the record label Sony BMG before the Court of First instance because the label had informed music bands of its intention to offer digital downloads to online music stores without a special agreement on the matter with the artists. Before the Court, Dodo alleged that the existing contract did not admit distribution over the Internet; an agreement with every single band specifically addressing this right was required. The Court examined whether the existing contract could be interpreted in such a way that the rights for the label to proceed to Internet distribution were considered to be included in the existing agreement. The Court decided the case in favour of Dodo. Sony BMG appealed the case before the *Østre Landsret* (Eastern High Court) where it lost once again. The judgment is fundamental in the sense that, in accordance with Danish law, it lays down the requirement of a clear agreement concerning the rights of Internet distribution. When there exists no clause on the matter in the contract, no right is granted. It means that the bands may negotiate special royalties for granting these rights. The Eastern High Court decision was delivered on 15 February 2007.

The Danish Act on Copyright art. 53 (1) allows the copyright holder to assign his rights (and imposes certain limitations). Art. 53 (3) states that where a right to exploit the work in a specific manner or through specific means has been assigned, the assignment does not give the assignee the right to exploit the work in any other manner or through any other means. So, a contractual clause on the assignment of a right to exploit a work must be interpreted restrictively.

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