

79

Guangdong Dasheng Culture and Communication Co., Ltd. v. Hong Ruding et al.

Citation: The Supreme People's Court's Civil Judgment No. Mintizi 51/2008

Date of judgment: November 14, 2008

Procedural history

Hong Ruding and Han Wei sued the Guangdong Dasheng Culture and Communication Co., Ltd. (Dasheng) in the Jiujiang City Intermediate People's Court for infringement of their copyright by reproducing and distributing the audio-video products without their authorization. The first-instance court found that Dasheng infringed the rightholders' right to license and right to be remunerated, and held it liable for the damages. Dasheng appealed to the Jiangxi Province Higher People's Court, and the judgment was upheld in the second-instance judgment. Dasheng requested the Supreme People's Court for retrial of the case.

Issue

1. Whether acts of producing audio or sound recording products out of legitimately recorded music works, publishing, reproducing and marketing the products were infringement of the copyright in the music work?
2. The time and rates of the statutory royalties to be paid
3. After a music work copyright proprietor authorized the China Music Copyright Association (the Music Association) to administer the property right in his copyright, whether he is limited as a qualified litigating party?

Facts

Hong Ruding and Han Wei, proprietors of the copyright in the music work entitled *Beating the Hand Drum and Singing*, (the music work in suit) authorized the Music Association to administer the right of performance, right of broadcasting, right of production and right of publication. The Music Association licensed Dasheng to produce and distribute 200,000 CDs of said music work. Dasheng reproduced and distributed 900,000 CDs of the produced sound-recording product of said music work. Before the acts in suit arose, the music work in suit was produced as sound-recording products many times and widely distributed.

The first-instance court found Dasheng had reproduced and distributed 900,000 sound-recording products, and the products so produced in excess of the license by the Music Association had infringed the rightholders' right of license and right of being remunerated, so it held Dasheng liable for damages.

Dasheng argued in its retrial request that, having authorized the Music Association to take care of their property right in their work, Hong Ruding and Han Wei, as members of the Music Association, did not have the right any more to exercise said property right and bring the infringement action. Dasheng should pay the remuneration for the additional 700,000 CDs under the Provisional Provisions on Rates of Remuneration for Statutory License of Sound Recording Products, and the statutory damages should not apply.

Hong Ruding and Han Wei defended that they had the right to file the infringement action to hold Dasheng liable for the infringement; reproduction and distribution of sound-recording products were not covered under the statutory license as provided for in the Copyright Law, and the reproducer or distributor must be licensed by the copyright proprietor to this end.

Rule of law

Article 39, paragraph three, of the Copyright Law *A producer of sound recordings who exploits, for making a sound recording, a musical work of which a lawful sound recording has been made, may do so without permission from the copyright owner, but shall, in accordance with regulations, pay remuneration to the copyright owner; or such work may not be exploited where the copyright*

owner declares that exploitation is not permitted.

Rule 20 of the Regulations on Collective Administration of Copyright *An owner, once having concluded a contract for collective administration of his copyright with an organization for collective administration of copyright, shall not, during the term agreed upon in the contract, exercise, or authorize another person to exercise, the rights stipulated in the contract to be exercised by that organization.*

Reasoning

1. Article 39, paragraph three, of the Copyright Law provided for the statutory license system limiting the right of music work copyright proprietor. While the Article only provided that producer of sound recordings who exploits, for making a sound recording, a musical work of which a lawful sound recording had been made, might do so without permission from the copyright owner, according to the legislative aim of the Article, the provision on the statutory license of Article 39, paragraph three, of the Copyright Law should also apply to reproduction and distribution of sound-recording products of music works of the class. Therefore, once the sound-recording products of a music work produced with license by the copyright proprietor were disclosed, any other party's production of other sound-recording products of said music work, and reproduction and distribution thereof did not require the license from the music work copyright proprietor, but should pay remuneration to him. Given the fact that the music work in suit had been made into sound-recording products many times and widely distributed before the release of the special album thereof and the copyright proprietor did not make any statement against the use, Dasheng's use of the music work in suit and reproduction and distribution of the sound-recording products in suit complied with Article 39, paragraph three, of the Copyright Law, and did not constitute an infringement.

2. Since the law did not provide that remuneration should be paid before use of a work, the user of the work did not violate the law provision to "use the work first and remunerate later". The royalties for the 700,000 additional products of the music work in suit that Dasheng did not pay might be calculated under the Provisional Provisions on the Standard of Statutory Sound Recording Royalties.

3. Under Rule 20 of the Regulations on Collective Administration of Copyright, after a music work copyright proprietor authorizes the Music Association to manage the property right in his copyright, whether he is limited as a qualified litigating party depended on whether it had been expressly agreed in the contract he concluded with the Music Association on the exercise of the right of litigation. In the absence of such agreement in the contract between Hong Ruding and Han Wei and the Music Association, their right of litigation should not be limited.

Holding

1. Production of sound-recording products of a music work that another party had legitimately made in a sound recording product, and reproduction and distribution of the same constituted statutory license, and did not constitute an infringement.

2. The statutory license royalties might be paid with reference to the Provisional Provisions on the Standard of Statutory Sound Recording Royalties.

3. In the absence of express agreement, the qualification of the proprietor of the copyright in a music work as a litigating party should not be restricted after he authorized the Music Association to take care of the property right in his copyright.