

[NO] Decision on Linking to File Sharing Services

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The issue was whether a consumer portal on the Internet, ABC Startside, contributed to infringement of copyright by publishing links to file-sharing services like KaZaA. The plaintiff was Phonofile, a company organising the licensing of musical works for the Internet.

ABC Startside is a typical portal, the first page including a categorisation of different services. By selecting the category "MP3", the user was directed to a new page, which included the choice "file sharing". If this was selected, a page was displayed with links to several file-sharing services, including KaZaA.

The court states that file-sharing services may have both lawful and unlawful objectives. The court also based its decision on evidence that proved that users who had been referred to KaZaA from the home page of Startside used the file-sharing service for unlawfully making protected musical works available to the public. In this way, the court found that there had been established a certain actual causation between the links and the infringements. However, to be legally relevant, the causation also had to be qualified according to Norwegian legal doctrine. The court did not find that such a qualified causation had been proven. After having accessed the home page of the file-sharing service using the link from Startside, the user would have to make further individual choices before being able to employ the service for offering music files to the public: download the appropriate software, upload files to his or her own disk, etc. In the sequence of events leading to the infringement, the court found that the links of Startside were "elements of little importance".

The court also considered whether the law of unfair competition would be relevant. The court found that Startside and Phonofile were not competitors in the same market, which would require a rather strong degree for an "unfair" action to be relevant. The court did not find that the links represented such action.

Startside was acquitted. The decision has not been appealed, and is therefore final.

Oslo Tingrett, Sak nr.: 02-5914-A88

<http://www.domstol.no/archive/Osloetingrett/Nye%20avgjorelser/startsiden.doc>

Decision by Oslo First Instance Court of 27 October 2003

