[ES] Supreme Court Rules on P2P

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A recent decision of the *Tribunal Supremo, sala de lo penal* (Spanish Supreme Court - TS), through its criminal division, on a child pornography issue (Judgement STS 19327/2008, dated 9 May of this year), created considerable debate as regards the implications for P2P use and the potential conflict with both privacy protection and telecoms secrecy and inviolability.

Essentially, the TS concluded that upon connection to a P2P network, in this case Emule, an implicit consent is provided by the user, known and accepted by said user, which overrides the secrecy of communications, meaning that data provided by the user becomes publicly accessible and privacy cannot be invoked.

In this case, the Guardia Civil, one of the security forces that operates throughout Spain, traced P2P users online in order to identify potential child pornography P2P networks. This investigation, conducted without previous judicial authorisation, necessitated a follow-up procedure, in which the ISPs were required to identify the traced IP numbers and corresponding user IDs. As a result of this investigation, a Spanish citizen was accused and prosecuted.

The *Audiencia Provincial de Tarragona* (Tarragona Provincial Appeal Court), in the first instance, came to a verdict of not guilty, due to the violation of article 18.3 of the Spanish Constitution on telecoms inviolability, and the prosecutor then took the case to the TS.

The TS resolution considered that the legal framework affected corresponds rather to Art. 18.1 of the Spanish Constitution, Law 15/1999 on personal data (LOPD) and the relevant Regulation 1720/2007, as well as telecom laws and regulations and even, incidentally, the recent law 25/2007 on the conservation of data regarding electronic communications for security forces.

In conclusion, the TS considers data flowing on the Internet through P2P applications as public data for Internet users and thus, out of the scope of privacy and telecom inviolability protection. This implies that police forces may investigate and access such data without previous judicial approval. As a final comment, this resolution forms an important precedent and it would seem that the TS may consider acceptable in specific cases, such as those involving child abuse networks, that telecoms secrecy and even data privacy may be overridden by a higher interest. Undoubtedly, Internet user associations shall have something

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to say about this decision.

Tribunal Supremo. Sala de lo Penal, sección 1, Sentencia 1932/2008, de fecha 9 de mayo de 2008, Apelación Procedimiento Abreviado

http://www.poderjudicial.es/eversuite/GetRecords?Template=cgpj/cgpj/pjexaminarjurisprudencia.html&TableName=PJJURISPRUDENCIA&dkey=1037

Supreme Court, criminal court, section 1, resolution 1932/2008, of 9 May 2008, Appeals Brief procedure

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