[ES] File-Sharing Administrators Jailed For Linking To Copyright Works

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On 27 September 2011, the Provincial Court of Vizcaya sentenced the website managers of the web pages Fenixp2p and MP3-es to imprisonment and payment of a fine for the infringement of intellectual property rights. It is the first case that has convicted administrators of websites that actively link to content protected under copyright law in Spain.

In common with many similar sites, FenixP2P.com and MP3-es.com carried no content of their own, but instead linked to other locations where content was hosted. Breaking a long run of operators being acquitted for similar activities, the Spanish court decided that the act of linking constituted a for-profit communication to the public. A negative ruling against their operators had seemed unlikely, as Spanish courts have continually acquitted defendants running similar sites. It therefore comes as quite a surprise to hear that the Provincial Court of Vizcaya has sentenced the operators of both sites not only to fines, but a year in jail.

After the original acquittal, an appeal in the case was brought by the Spanish Association of Distributors and Publishers of Entertainment Software, ADESE (Asociación Española de Distribuidores y Editores de Software de Entretenimiento - Spanish Association of Distributors and Publishers of Entertainment Software), and Promusicae, the recording industry outfit.

While the court agreed that neither site actually hosted any infringing content, it noted that the defendants organised and made available links that enabled the free download of copyright works, from which they intended to profit via advertising.

Crucially, the Court of Vizcaya viewed linking very differently to other courts handling similar cases in the past, as it described the act as constituting communication to the public and not an exchange between individuals.

Sentencia A.P. Bilbao 530/2011, de 27 de septiembre

http://portaljuridico.lexnova.es/jurisprudencia/JURIDICO/104777/sentencia-ap-bilbao-530-2011-de-27-de-septiembre-delito-contra-la-propiedad-intelectual-descarg

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