[ES] Offering advanced P2P technology is not connected to IPR infringement

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On 8 April 2014, the Madrid Court of Appeals found a Spanish software developer not guilty of an Intellectual Property Rights (IPR) infringement. According to the Regional Court of Appeals, developing a P2P software is legal and does not infringe IPRs; in particular, the Court decision states that P2P protocols are a tool to connect devices and therefore allows users to share content stored on his or her own computer. Indeed, P2P software allows direct and decentralised communication among users, and software developers do not interfere in the communication process as file sharing takes place among user devices.

Therefore, according to the Spanish Regional Court, developing P2P software does not imply ‘per se’ an IPR infringement, as this type of software is designed to connect devices and allow file sharing. P2P software development does not connect users to the network, nor does it transmit or store data; hence P2P developers cannot be considered as intermediaries and are not legally answerable for IPRs infringement.

According to Spanish law, IPR infringement only occurs when sharing files protected by copyright laws; this activity is unquestionably illegal in Spain. Thus, users will be liable for sharing files protected by copyright laws, but liability will not extend to P2P software developers - P2P software only enables device interconnection, it does not reproduce files or make them available for illegal consumption.

Unlike other national jurisdictions, such as the US, the Spanish Court of Appeal decision does not consider either ‘contributory liability’ or ‘vicarious liability’ to IPRs infringement in P2P software developing. According to the court, ‘contributory liability’ cannot be applied in this case due to the fact that the software developer did not promote IPR infringement; on the contrary, the outlawed web pages (www.bluster.com, www.piolet.com and www.manolito.com) displayed clear advice on the need to protect IPRs. Likewise, ‘vicarious liability’ cannot be applied in this case as the software developers do not receive any type of economic benefit in case of illegal file sharing and, most importantly, they do not intend to benefit either financially or commercially from it.

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Sentencia num. 103/2014, Audiencia Provencial Civil de Madrid, 8 Abril 2014

http://www.scribd.com/doc/217237433/Sentencia-favorable-a-Pablo-Soto

Decision 103/2014, Madrid Court of Appeal, 8 April 2014

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