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AFTER BARCELONA MADRID ¡QUE VIVA ESPAÑA!

*Posted on 4 Ottobre 2010 by **Enrico Bonadio***

In a previous post I reported the decision from the Court of Barcelona in SGAE (Sociedad General de Autores y Editores) v Jesus Guerra (Case N. 261/09, Barcelona Commercial Court N. 7, Sentencia N. 67/10, March 2010). This court held that offering an index of links and/or linking to copyright material is not the same as distributing, reproducing or communicating to the public copyrighted works, as said index merely facilitates the search for files (so that no copyright infringement occurs). The judge added that P2P networks are mere conduits for the transmission of data between Internet users and may contribute to cultural diffusion worldwide.

On 20 September 2010 the Court of Madrid ruled on another interesting case, ie a case involving video sharing (Telecinco v YouTube: click here for the ruling). Here the court dismissed copyright violation claims made by Spanish TV Telecinco vis-a'-vis the famous video-sharing platform YouTube. The claimant Telecinco had argued that the posting of audiovisual copyrighted content violated its exclusive rights. Rejecting said claims, the court held that YouTube is just a content-hosting platform and should not be considered liable for copyright infringement with regards to

contents uploaded by its users.

More importantly the Court of Madrid – after stressing the lawfulness of YouTube's activity – underlined "el valor de la información, que se ha convertido en la mercancía mas valiosa de un mundo digitalizado. El reto de los emprendedores en la nueva economía non consiste tanto en proteger los derechos adquiridos como en crear valor en la difusión de esos contenidos porque la marcha de los tiempos evidencia la esterilidad de toda frontera artificial." (emphasis added).

File-sharing, video-sharing and cultural diffusion: Spanish case law seems to be in the forefront!