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Press Release

SPANISH COURT RECOGNIZES FOR THE FIRST TIME THAT THERE IS MUSIC THAT IS NOT REPRESENTED BY COLLECTING SOCIETIES

Spanish bar owner does not have to pay license fees to Spain's primary collecting society for CC-licensed music

Barcelona, Spain & San Francisco, USA – March 23, 2006

Last month, the Lower Court number six of Badajoz, a city in Extremadura, Spain, ruled that a bar owner did not have to pay license fees to the main Spanish collecting society – Sociedad General de Autores y Editores (“SGAE”) for his use of Creative Commons-licensed music.

In the Fall of 2005, the main SGAE sued Ricardo Andrés Utrera Fernández, the owner of Metropol, a disco bar located in Badajoz alleging that he had failed to pay SGAE's license fee of 4.816,74 € for the period from November 2002 to August 2005 for public performance of music managed by the collecting society.

On February 17th, 2006, the court rejected the collecting society's claims because the owner of the bar proved that the music he was using was not managed by the society. The music performed in the bar was licensed under CC licenses that allows that public display since the authors have already granted those rights. Specifically, the judge said:

“The author possesses some moral and economic rights on his creation. And the owner of these rights, he can manage them as he considers appropriate, being able to yield the free use, or hand it over partially. "Creative Commons" licenses are different classes of authorizations that the holder of his work gives for a more or less free or no cost use of it. They exist as ... different classes of licenses of this type ... they allow third parties to be able to use music freely and without cost with greater or minor extension; and in some of these licenses, specific uses require the payment of royalties. The defendant proves that he makes use of music that is handled by their authors through these Creative Commons licenses. “

The full text of the decision (in Spanish) is available here (http://www.internautas.org/archivos/sentencia_metropoli.pdf)



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This case sets a new precedent because previously, every time that the SGAE claimed a license fee from a bar, a restaurant or a shop for public performance of music, the courts have ruled in their favor on the basis that the collecting society represents practically all the authors. This case shows that there is more music that can be enjoyed and played publicly than that which is managed by the collecting societies.

Unfortunately, the current membership requirements of collecting societies such as SGAE, which requires musicians to assign rights to the society, means that their members are currently unable to release their works to the public under a Creative Commons license. Consequently, all artists who choose to CC-license their creativity currently cannot be members of SGAE.

“This decision demonstrates that authors can choose how to manage their rights for their own benefit and anyone can benefit from that choice, too. I expect that collecting societies will understand that something has to change to face this new reality,” said Ignasi Labastida, Project Lead for Creative Commons in Spain.

“This case shows that both bar owners and Spanish courts recognize that there are new and diverse forms of music emerging,” Creative Commons Chairman & CEO Lawrence Lessig said, “I do hope, however, that we can work with SGAE and other collecting societies so that musicians have the freedom to choose when they want their music CC-licensed and when they want to be represented by a collecting society.”

About Creative Commons Spain

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