[ES] Draft royal decree regulating the granting of extended collective licences for mass exploitation of works protected by intellectual property rights for the development of general-purpose AI models

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On 19 November 2024, the Spanish government presented a draft royal decree aimed at regulating the granting of extended collective licences for the mass exploitation of works and performances protected by intellectual property rights in the development of general-purpose artificial intelligence models.

This instrument is designed to balance technological developments with the protection of rightsholders in order to promote the development of artificial intelligence as a strategic sector.

The royal decree transposes EU Directive 2019/790, which allows member states to introduce mechanisms such as extended collective licences, legal mandates and presumptions of representation in order to facilitate the large-scale use of content protected by intellectual property rights. It is particularly relevant in circumstances where obtaining individual licences from each holder of intellectual property rights is a difficult and costly process.

The main aspects of the regulations proposed by the Spanish government, which are essential to achieve correct implementation and effective protection of intellectual property rights, are as follows:

- Extended collective licences will allow collecting societies to grant non-exclusive licences for protected works and performances, even for rightsholders who have not granted a mandate, provided they do not exercise their opt-out right (Article 1). These licences will apply exclusively in situations where obtaining individual licences is considered excessively difficult or costly on account of the large number of rightsholders involved.

- Rightsholders retain the possibility to exclude their works from extended collective licences at any time via a simple, accessible opt-out procedure that enables them to control the use of their works (Article 5).

- The certificate of representativeness is a requirement that ensures that only collecting societies with sufficient representation can grant extended collective licences. In order to obtain it, entities will have to demonstrate criteria such as the

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extent of their repertoire and the number of rightsholders represented (Article 3).

- The licences will have a maximum term of three years and will not apply to rights already subject to mandatory collecting mechanisms, thus ensuring that they do not interfere with previously regulated systems (Article 2.5).

- Collecting societies are obliged to inform rightsholders and ensure equal treatment between members and non-members in the distribution of economic benefits (Articles 4 and 6).

- Users who subscribe to these licences must exclude works whose owners have exercised their opt-out right. They must also ensure transparency in the use of their content (Article 7).

The draft decree addresses the need to use large volumes of data to train generative artificial intelligence models and other advanced systems. At the same time, it seeks to provide an effective response to the concerns of rightsholders who wish to ensure fair participation in the economic benefits derived from these technologies.

Proyecto de Real Decreto por el que se regula la concesión de licencias colectivas ampliadas para la explotación masiva de obras y prestaciones protegidas por derechos de propiedad intelectual para el desarrollo de modelos de inteligencia artificial de uso general

https://www.cultura.gob.es/en/dam/jcr:95c986c7-893f-46c6-81d4-3ba822a6696e/proyecto-rd-licencias-colectivas.pdf

Draft royal decree aimed at regulating the granting of extended collective licences for the mass exploitation of works and performances protected by intellectual property rights in the development of general-purpose artificial intelligence models

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