[ES] Amendments to the Criminal Code to Fight against Piracy

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On 1 October 2004 Act 15/2003 of 25 November 2003 amending the Criminal Code entered into force. It introduces reinforced measures (with increased fines and terms of imprisonment) to fight against piracy offences, which also concern unauthorised file-sharing activities. Since in Spain the sharing of music files is very popular (it is estimated that 43% of the illegal copying through P2P systems in Europe is done from Spain), different sectors of the Internet community have voiced their opposition to the amendments.

The main purpose of the new Criminal Code is to fight against:

- Big organisations with an extended piracy network;

- Those who market devices used to break the protection of works;

- Those who upload music, films or computer programmes to the Internet and make them available through a file-sharing programme to multiple users;

- Those selling illegal products through Internet, e-mail or special servers, as well as web-sites offering the illegal downloading of protected works. From now on, the following activities shall be considered offences:

- To manufacture, import or introduce onto the market any instrument or device specifically designed to facilitate the unauthorised suppression of a technical mechanism used to protect computer programmes or a work protected by copyright;

- To reproduce, communicate or copy an artistic, literary or scientific work through any media without the authorisation of the copyright owners . In this case there must be a profit motive and harm caused to a third party.

For both offences, there are specific aggravating circumstances in the event that the offence has a particular impact due to its economic significance or harm caused. Furthermore, the offences are now a crime against the State, so these offences can be persecuted ex officio without a formal complaint by the rightsholder.

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This amendment seems to exclude Internet users who download a copy of a work for private use. However, in this case the line that separates what is, or is not, considered "profit motive" or "economic significance" is very thin.

Ley Orgánica 15/2003, de 25 de noviembre, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal

http://noticias.juridicas.com/base_datos/Penal/lo15-2003.html

Act 15/2003 of 25 November 2003 amending the Criminal Code 10/1995 of 23 November 1995

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