[ES] Parliament Finally Approves Controversial Copyright Provision

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On 15 February 2011, the Spanish Parliament finally adopted the Sustainable Economy Act. The new act includes a series of controversial measures against the illegal downloading of protected works (the so-called *Ley Sinde*), which the Parliament had initially removed from the bill prepared by the Government and which were later reintroduced with slight modifications (see IRIS 2011-2/23). These measures amend three further acts, namely the Act on Information Society Services, the Intellectual Property Act and the Act on Administrative Jurisdiction.

The *Ley Sinde* aims at blocking or closing down in a short space of time websites from which copyrighted content may be downloaded. Upon application to the Second Section of the Commission on Intellectual Property of the Ministry of Culture, two courses of action become available for a claimant: the submission of a request to the courts that the Internet service provider, i.e. in most cases a hosting company, submit identifying data of the site owner (always subject to judicial authorization), and/or requesting the service provider to remove the infringing content.

The *Sala de lo Contencioso-Administrativo de la Audiencia Nacional* (Chamber of Administrative Jurisdiction of the National Court) may authorise the submission of data of the alleged offender according to a quick 24 hour procedure. If authorised, the next step would be to take action against the offender, again before the courts. If the data submission is not authorised, the claimant probably would have no other choice but to re-submit his/her complaint, alleging new evidence of the offense.

If the hosting company has been asked to remove the problematic content, it must decide whether or not to do so within 48 hours. If the service provider chooses to withdraw the content voluntarily, the procedure will come to an end. If it does not and presents arguments and evidence to defend itself, the procedure will be put on hold for two days while the parties submit evidence and allegations. The Second Section of the Intellectual Property Commission will then issue a resolution within three days. According to experts, in total, such a proceeding should last no longer than 15 days.

The enforcement of the above-mentioned resolution can only be pursued after authorisation by the Central Court of Administrative Jurisdiction, returning the

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proceedings again, as the initial critics of the Bill demanded, to the judicial bodies.

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http://www.boe.es/boe/dias/2011/03/05/pdfs/BOE-A-2011-4117.pdf

Sustainable Economy Act, Act 2/2011 of 4 March 2011, Official Journal no. 55 of 5 March 2011

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