[ES] Supreme Court Rules on the Use by a TV Broadcaster of Sampling of Another Broadcaster's Programmes

IRIS 2013-4:1/11

Laura Marcos and Enric Enrich
Enrich Advocats, Barcelona

On 14 January 2013, the Supreme Court confirmed the decisions of the Court of First Instance of Barcelona and the Barcelona Court of Appeal ruling that the broadcaster La Sexta had repeatedly infringed the intellectual property rights of its competitor Telecinco by sampling images of Telecinco's programmes. Therefore, La Sexta was ordered to immediately stop using content and images produced or broadcast by Telecinco.

The conflict between the Spanish TV broadcasters, "La Sexta" and "Telecinco" arose in 2008 when Telecinco filed a lawsuit against La Sexta arguing that La Sexta was constantly using images and content produced and/or broadcast by Telecinco without its authorisation, consequently infringing the intellectual property rights of Telecinco. La Sexta included clips, excerpts and samplings from other programmes in a "remix" programme that highlighted the humorous nature of the clips or included an excerpt from programmes covering celebrities' activities.

La Sexta alleged that the use of images and content from Telecinco in its own programmes should be protected by the rights of freedom of expression and information, and also by the limitation of copyright consisting in the right to citation or quotation of fragments of the works of others (Article 32 Spanish Copyright Act), and was in accordance with the usual practice of the sector.

However, both the Court of First Instance of Barcelona and the Barcelona Court of Appeal rejected such allegations. Finally, the Supreme Court confirmed both decisions on the basis of the following:

- La Sexta used too much content from Telecinco to consider it as information, (approximately 21% of one particular programme consisted of content and images from Telecinco);

- This use cannot be derived from the right to quote fragments of the works of others, as the purposes of such use was not for an educational, cultural or investigative purpose as set out in Article 32. This Article states that "It shall be legal to include in one's own work fragments of the works of others, whether of written, sound or audiovisual character, and also to include isolated works of

© European Audiovisual Observatory (Council of Europe) 2026

three-dimensional, photographic, sculpted or comparable art character, provided that the works concerned have already been published and that they are included by way of quotation, or for analysis, comment or critical assessment. Such use may only be made for teaching or research purposes and to the extent justified by the purpose of the inclusion, and the source and the name of the author of the work shall be stated".

La Sexta states that the Supreme Court's decision does not affect its broadcast scheduling as the decision of the Barcelona Court of Appeal in 2010 was accepted and La Sexta has complied with it. Nevertheless, the amount and payment of damages remain live issues. Telecinco may initiate immediate proceedings on these issues.

Sentencia del Tribunal Supremo STS 426/2013 de 14 de enero de 2013 "Telecino contra la Sexta"

http://www.lasclavesdelderecho.com/pdfs/sentencia-tribunal-supremo-14-enero-2013-426-actualidad-jurisprudencial-propiedad-industrial-intelectual-1361959723.pdf

Decision STS 426/2013 of 14 January "Telecino v. la Sexta"

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026