[ES] Partial Reform of the Spanish Intellectual Property Act

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On 4 November 2014, the Spanish Parliament adopted a new law amending the Intellectual Property Act (Ley 21/2014, por la que se modifica el texto refundido de la Ley de Propiedad Intelectual (Act No. 21/2014)). The intellectual property legal framework, now partially amended, had been compiled in the Royal Decree 1/1996 (see IRIS 1996-6/17) and modified by the Act 1/2000 (see IRIS 2010-1/Extra). The provisions contained in the new 2014 Act will come into force on 1 January 2015.

The amendments of this law are focused on the protection and strengthening of intellectual property rights, due to the social, economic and technological changes that have occurred in recent years. The Act also transposes into the Spanish legal framework Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011, amending Directive 2006/116/EC on the term of protection of copyright and certain related rights (see IRIS 2011-9/6) and Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (see IRIS 2012-10/1).

The reform of the Spanish Intellectual Property Act introduces several new provisions, such as an obligation for news aggregators to pay a “fair compensation” to publishers for the reproduction of “non-significant fragments of content, published in periodical publications or in websites that are regularly updated and have an informative purpose, create public opinion or have an entertainment goal”. The 2014 Act also applies to copyright breaches on the Internet and introduces a new provision in relation to linking to webpages. The fines related to copyright breaches will range from EUR 150,000 to EUR 600,000. In addition, the Spanish Commission on Intellectual Property will be entitled to compel advertisers or online payment services to stop working with infringing webpages.

Furthermore, the 2014 Act reduces the scope of the concept of “private copying”, by excluding from it, for example, the activity of streaming. It is relevant to note that the government had already substantially modified the private copying regime through Royal Decree 1657/2012, which provides that the relevant compensation shall be financed and paid onwards to the collective management societies out of the State budget, instead of by the manufacturers of the devices

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used to record and reproduce content (CD, DVD, pen drives, MP3 players etc.). Notably, the Spanish Supreme Court has recently considered this specific issue of the payment of the private copying compensation out of the State budget, as it implies that all Spanish citizens have to pay for the compensation independently of whether they have reproduced or not works for their private use. On 18 September 2014, the Spanish Supreme Court made a request to the Court of Justice of the European Union for a preliminary ruling on the consistency of this measure with the 2001 Copyright Directive. The Supreme Court has also asked whether the total amount of the compensation, "still being calculated based on the real injury caused, should be set within the budgetary limits set for each year".

Other new provisions relate to the extension of the term of protection of the rights of artists and performers and of the producers of phonograms by an additional 20 years (from 50 to 70 years) and the establishment of a legislative framework to ensure the legal certainty in the use of orphan works by cultural institutions. On the other hand, the 2014 Act limits to 10 years the maximum period during which a work can be reproduced in the scientific and academic fields.

Ley 21/2014, de 4 de noviembre, por la que se modifica el texto refundido de la Ley de Propiedad Intelectual, aprobado por el Real decreto Legislativo 1/1996, de 12 de abril, y la Ley 1/2000, de 7 de enero, de Enjuiciamiento Civil

http://www.boe.es/boe/dias/2014/11/05/pdfs/BOE-A-2014-11404.pdf

Act 21/2014, 4 November 2014, approving the revised text of the Copyright Act, adopted by Royal Decree 1/1996, 12 April 1996, and Act 1/2000, 7 January 2000, on Civil Procedure

Auto del Tribunal Supremo, Sala de lo Contencioso-Administrativo, sección cuarta, recurso num.: 34/2013, 10 de septiembre de 2014

http://www.poderjudicial.es/stfls/SALA%20DE%20PRENSA/NOTAS%20DE%20PRENSA/Auto%20TS%20%20Cont%2010-09-2014.pdf

Request of the Spanish Supreme Court to the Court of Justice of the European Union for a preliminary ruling, 10 September 2014

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