[ES] New Spanish Regulation on private copying

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In 2006, Spain implemented in its Copyright Law the limitation for private copying as per Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. By virtue of this limitation, a natural person can make a copy of a work already divulged whenever it is for his or her exclusive private use and without direct or indirect commercial purposes. On the other hand, that directive requires a means of ensuring that rightsholders of the reproduced work receive fair compensation. The manufacturers of copying devices opposed the initial Spanish regulation, and in 2011 and 2014 (see IRIS 2014-4/13 and IRIS 2015-1/14), the government decided that the financing of the equitable compensation for private copying should be borne as an item of the annual General State Budgets. The collecting societies suffered a significant reduction in their income and contested that regulation. The recent European and national judicial decisions interpreting Directive 2001/29/EC left that regulation of fair compensation for private copying without effect (see IRIS 2017-1/11), but the limit to the right of reproduction by private copying remained in force.

In general terms, with the new regulation, the former model of equitable compensation financed from the state budget has been replaced by a model based on the payment of an amount by manufacturers and distributors of equipment, apparatus and reproduction media. It is a system that responds in a balanced way to the needs of consumers and the different sectors involved, including the copyright holders, and which provides for equitable compensation that complies with both European and national law.

The system compensates the investments made by rightsholders of all categories of works (visual arts, books, sound recordings, audiovisual, etc.) in order to exploit the works affected by the validity of the private copy limitation; the debtors obliged to pay equitable compensation are the manufacturers of equipment, apparatuses and supporting material of reproduction based in Spain, as long as they are acting as commercial distributors, and the acquirers of the same outside the Spanish territory for commercial distribution or use within this country.

The current regulation brings the former system back into force, that is to say, setting the compensation as a percentage on the price of the equipment. After consultation with the Council of Consumers and Users and reporting to the

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Delegate Commission of the Government for Economic Affairs, the government will have to publish an Order specifying which apparatus will be subject to the payment of equitable compensation, as well as the amount thereof.

This compensation shall be determined for each modality, according to the equipment, apparatus and media material suitable for such reproduction, whether manufactured on Spanish territory or acquired outside of it for commercial distribution or use within that territory.

The determination of the amount of equitable compensation shall be calculated on the basis of the damage caused to the creditors.

Within three months of the entry into force of the new regulation, the collecting societies will have to incorporate a company that will manage the debtors' payment, and the repayment to the respective collecting societies, which in turn, will compensate their members.

Real Decreto-ley 12/2017, de 3 de julio, por el que se modifica el texto refundido de la Ley de Propiedad Intelectual, aprobado por el Real Decreto Legislativo 1/1996, de 12 de abril, en cuanto al sistema de compensación equitativa por copia privada

http://www.boe.es/buscar/doc.php?id=BOE-A-2017-7718

Royal Decree Law 12/2017, of 3 July, amending Royal Legislative Decree 1/1996, of 12 April

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