[ES] Adoption of Royal Decree-Law transposing the Collective Management Directive

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Two years after the transposition deadline (and in order to avoid a penalty already announced by the EU) the Spanish Government recently adopted Royal Decree-Law 2/2018 of 13 April 2018 (official gazette of 14 April 2018), which transposes Directive 2014/26/EU of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. Royal Decree-Law 2/2018 also transposes into Spanish law Directive (EU) 2017/1564 of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

Further changes have also been made through an amendment to the Intellectual Property Act, although these are not required under an EU directive. For example, the deadline set out in Article 20.4 on cable retransmission rights is extended from three to five years, bringing it into line with the general five-year deadline for intellectual property rights laid down in Article 177. Article 25.8 on private copying compensation has also been amended with the introduction of a one-year deadline for requests for reimbursement of private copying compensation in certain specific cases.

With regard to the transposition of Directive 2014/26/EU, it should first be noted that part of this reform had already been introduced through the Act amending the Intellectual Property Act, implemented under Act 21/2014 of 4 November 2004, which increased the transparency obligations and monitoring of collective management entities. A special system for the calculation of fees by collecting societies was also introduced through the 2014 reforms, as laid down in Article 157 of the Act amending the Intellectual Property Act (now Article 164). This provision requires collecting societies to establish general fees in accordance with a method approved by a decree of the Ministry of Education, Culture and Sport following a report by the National Markets and Competition Commission (CNMC) and with the agreement of the Governmental Executive Committee for Economic Affairs. In other words, this fee calculation system only applies to collecting societies, regardless of where they are based and whether or not they have received the approval of the Ministry of Education, Culture and Sport for

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compulsory collective management.

Independent collective management entities, which were introduced when the Directive was incorporated into Spanish law, are excluded from this fee calculation system and therefore benefit from a more favourable system than that of collecting societies. The situation has become more difficult for collecting societies because the ministerial decree approving the fee calculation method - Decree ECD/2574/2015 of 2 December 2015 - was recently annulled by the Supreme Court (third chamber) in its judgment of 22 March 2018.

Furthermore, the Spanish legislature has decided to allow collective management entities based outside the European Union to operate on Spanish territory. These entities are subject to different obligations to those that apply to EU-based collecting societies (Article 151.2). Initially, the Spanish legislator, although not bound by the Directive, should have limited the possibility of intervening in the collective management of intellectual property rights to EU-based entities.

It should also be noted that a particular characteristic of Spanish law is the distortion resulting from the exclusion of private collective management entities from the mediation, arbitration and monitoring functions held by the First Section of the Intellectual Property Commission (Sección primera de la Comisión de Propiedad Intelectual) under Article 194 of the Act amending the Intellectual Property Act.

Lastly, the first additional provision of the Royal Decree 2/2017 on the amendment of the statutes of collecting societies states that, within a year of the entry into force of this royal decree, collecting societies approved by the Ministry of Education, Culture and Sport must agree to the modification of their statutes to reflect the Act amending the Intellectual Property Act resulting from the royal decree. Collecting societies that have collected EUR 100 million or more during the year preceding the entry into force of the royal decree must comply with the obligation stipulated in the previous paragraph within three months of the entry into force of the royal decree.

Real Decreto-ley 2/2018, de 13 de abril, 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, y por el que se incorporan al ordenamiento jurídico español la Directiva 2014/26/UE del Parlamento Europeo y del Consejo, de 26 de febrero de 2014, y la Directiva (UE) 2017/1564 del Parlamento Europeo y del Consejo, de 13 de septiembre de 2017

http://noticias.juridicas.com/base_datos/Fiscal/618899-rdl-2-2018-de-13-abr-modificacion-texto-refundido-ley-de-propiedad-intelectual.html

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Royal Decree-Law 2/2018 of 13 April 2018 (official gazette of 14 April 2018)

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