[ES] Transposition of Copyright Directives

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On 2 November 2021, the Council of Ministers adopted a Royal Decree-Law transposing into Spanish law Directive (EU) 2019/789 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSM Directive).

The Royal Decree-Law recognises a new related right for press publishers and authors. This is a right in its own right, held by publishers of press publications and news agencies with regard to online uses of their press publications, vis-à-vis information society service providers. It regulates the reproduction of a fragment of a publication (a snippet) by content/news aggregators for subsequent availability on their own pages or platforms, but it is silent on how this right is to be managed, thus giving each publisher and rights holder the option and freedom to manage it either individually, through direct negotiation with digital content aggregators, or through a collective management organisation on a voluntary, not compulsory, basis. The negotiation of authorisations to content aggregators for the use of these materials shall be carried out in accordance with the principles of contractual good faith, due diligence, transparency and respect for the rules of free competition, excluding the abuse of a dominant position in the negotiation.

Online content-sharing service providers will need authorisation from the rightsholder. In this regard, the Royal Decree-Law determines that if these providers do not obtain this authorisation, they will be subject to the specific liability regime introduced by Article 17 of the DSM Directive.

In addition, the Royal Decree-Law establishes a series of mandatory rules intended to ensure that authors and performers obtain adequate and proportionate remuneration for the transfer of their rights. It incorporates, within the margins of the DSM Directive, the following new limits or exceptions:

a) An exception is envisaged for the benefit of research organisations and institutions responsible for cultural heritage, so that they can carry out, for scientific research purposes, text and data mining of works or other benefits to which they have lawful access. In cases where the organisation that intends to carry out text and data mining is not a research organisation or institution

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responsible for cultural heritage or the purpose of the mining activity is unrelated to scientific research, it is foreseen that the rightsholder of the work concerned may establish a reservation of rights. In this case, a licence is required. Neither of the above two limits entail any remuneration in favour of the rightsholders.

b) It allows the digital use of works and other subject-matter for the purpose of illustration for educational purposes, in educational establishments recognised by a Member State, irrespective of the level of education, in so far as the uses are justified by the non-commercial purpose of the educational activity.

c) It enables cultural heritage institutions to reproduce for conservation purposes works permanently in their collections.

d) Other measures: non-commercial use of works by cultural heritage institutions. It is foreseen that collecting societies may grant non-exclusive copyright licences, for non-commercial purposes, for reproduction, distribution, public communication, when they are permanently in the collection of a cultural heritage institution.

Real Decreto-ley 24/2021, de 2 de noviembre, de transposición de directivas de la Unión Europea en las materias de bonos garantizados, distribución transfronteriza de organismos de inversión colectiva, datos abiertos y reutilización de la información del sector público, ejercicio de derechos de autor y derechos afines aplicables a determinadas transmisiones en línea y a las retransmisiones de programas de radio y televisión, exenciones temporales a determinadas importaciones y suministros, de personas consumidoras y para la promoción de vehículos de transporte por carretera limpios y energéticamente eficientes

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Royal Decree-Law 24/2021 of 2 November 2021 on the transposition of European Union directives on covered bonds, cross-border distribution of collective investment undertakings, open data and re-use of public sector information, the exercise of copyright and related rights applicable to certain online transmissions and to broadcasts of radio and television programmes, temporary exemptions for certain imports and supplies, for consumers and for the promotion of clean and energy-efficient road transport vehicles

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