



**ACT 21/2014, DATED NOVEMBER 4, BY WHICH THE INTELLECTUAL
PROPERTY ACT CONSOLIDATED TEXT APPROVED BY ROYAL
LEGISLATIVE DECREE 1/1996, DATED APRIL 12, AND THE CIVIL
PROCEDURE ACT 1/2000, DATED JANUARY 7, ARE AMENDED**

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Traducción

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This translation coincides with the consolidated text extracted from the Official State Gazette which was last updated on November 5, 2014.

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**LEY 21/2014, DE 4 DE NOVIEMBRE, POR LA QUE
SE MODIFICA EL TEXTO REFUNDIDO DE LA LEY DE
PROPIEDAD INTELECTUAL, APROBADO POR REAL
DECRETO LEGISLATIVO 1/1996, DE 12 DE ABRIL,
Y LA LEY 1/2000, DE 7 DE ENERO, DE
ENJUICIAMIENTO CIVIL**

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ACT 21/2014, DATED NOVEMBER 4, BY WHICH THE INTELLECTUAL PROPERTY ACT CONSOLIDATED TEXT APPROVED BY ROYAL LEGISLATIVE DECREE 1/1996, DATED APRIL 12, AND THE CIVIL PROCEDURE ACT 1/2000, DATED JANUARY 7, ARE AMENDED.

TEXT

FELIPE VI

KING OF SPAIN

To all whom this Act shall be seen and understood, be it known that:

be it known that: The Spanish Parliament has approved this Act and I do enact the same as follows:

PREAMBLE

I

Culture and creative industries represent a highly relevant sector in our country, both due to the particular nature of the activities they develop and to their economic weight, for activities related with intellectual property generate nearly 4 percent of the Spanish gross domestic product.

The development of new digital information technologies and decentralised computer networks has had an extraordinary impact on intellectual property rights, which has required an equivalent effort from the international community and the European Union in the provision of efficient instruments that allow to better protect these legitimate rights, without prejudice to the development of the Internet, largely on the basis of the freedom of its users to contribute contents.

The current consolidated text of the Intellectual Property Act, approved by Royal Legislative Decree 1/1996, dated April 12, has been an essential instrument towards the protection of these proprietary rights, but its ability to successfully adjust to the social, economic and technological changes of the last few years is dubious. On this basis, the Government believes addressing legislative changes with regard to intellectual property is a priority of this parliamentary term.

Solving some of these problems cannot be put off until a new comprehensive Intellectual Property Act is approved and they require the short-term adoption of decisions aimed at strengthening the protection of intellectual property rights. Specifically, measures set out in this Act are divided into three blocks: thoroughly

reviewing the private copying system, designing efficient supervisory mechanisms for intellectual property rights' management entities, and reinforcing response instruments against rights' infringement that allows for the promotion of a legal offering in the digital environment.

II

The European Union, through the adoption of two directives, continues the harmonisation process of Member States' domestic substantive laws within intellectual property, an area of great importance for the internal market's development.

Firstly, Directive 2011/77/EU of the European Parliament and of the Council, dated September 27 2011, by which Directive 2006/116/EC related to the period of protection of the proprietary right and certain related rights is amended, extends certain periods concerning the exploitation of phonograms and adopts several additional measures to grant that performers really benefit from this extension, thus recognising the importance that society places with their creative contribution within this sector.

On the other hand, Directive 2012/28/EU of the European Parliament and of the Council, dated October 25 2012, related to certain authorised use of orphan works, chiefly aims at establishing a regulatory framework ensuring legal protection in the use of these works by cultural institutions and public broadcasting agencies in the European Union. These institutions, in complying with their objectives and for the benefit of public interest, make an essential contribution to the European cultural heritage preservation. Information society makes it easier, by way of digitalisation and public availability of collections and archives, for citizens to access the works comprised in them, without prejudice to the intellectual property rights of their holders.

Occasionally, it has been impossible to identify the right holders of these works protected by intellectual property rights, or, if they have, it has been impossible to locate them after diligent search, giving rise to their being classed as orphan works. The inability to locate the intellectual property rights' holders of a work must not prevent it from being accessed and enjoyed by the citizens, and it is therefore necessary to allow cultural institutions to digitalise and make them available, provided that, where these actions are carried out through agreements with private institutions or income is received in relation to them, these are limited to cover the costs resulting from said use. This must be understood without prejudice to the lawful owner's right to put an end to the orphan work condition and to receive fair compensation, considering not only the potential damage caused, but also public interest and the promotion of access to culture substantiating the use of the work, as well as its non-profit nature.

Henceforth, it is appropriate to address, through this reform of the Intellectual Property Act consolidated text, the transposition of the above mentioned Directives 2011/77/EU and 2012/28/EU contents into the Spanish legal system.

III

Article 5.2.b) of Directive 2001/29/EC of the European Parliament and of the Council, dated May 22 2001, concerning the harmonisation of certain considerations of proprietary rights and related rights in the information society, allows Member States of

the European Union to establish, as a limitation to the reproduction right -by which only the holder of the proprietary rights or related rights can authorise or prohibit reproduction of the work-, the instance of copies in any format whatsoever made by a private individual for their consumer use. Nevertheless, the Directive forces any Member States implementing said limitation to establish a way for reproduction rights' holders to receive fair compensation in exchange.

Like many other Member States of the European Union, Spain had already implemented a limitation to private copying, specifically through Article 25 of the Intellectual Property Act 22/1987, dated November 11.

The tenth additional provision of the Royal Executive Order 20/2011, dated December 30, about urgent measures on budgetary, tax and financial matters for correcting public deficit, does not override said limitation to intellectual property rights.

The aim of the above-mentioned Royal Executive Order was to change the funding mechanism for said compensation, which no longer depends on the proceeds made by intellectual property rights' management entities from agents of the reproduction equipment, devices and formats market and comes to be directly funded through the State Budget.

Compensation funding through State Budget must be carried out fully respecting the principle of equitable balance between the amount of the former and the loss incurred by private copying done within the scope of limitations of protected works. Said connection is foreseen by the law, which establishes the copies that shall not be considered reproductions for consumer use or sets out certain scenarios where there is minimum damage or loss. Furthermore, said connection will become apparent when criteria to be considered in the process of quantification and liquidation of the fair compensation are legally developed, in order to allocate an amount as stipulated below annually.

Regarding the origin of this State Budget funding, it should be remembered that, according to the General Budgetary Act 47/2003, dated November 26, the law is a source of obligations for the Public Tax Office, payable where resulting from budget implementation and that, pursuant to Article 31.2 of the Spanish Constitution, public spending will make a fair distribution of state resources.

Given that since January 1 2012, compensation for private copying has been paid through the State Budget, it is necessary to immediately make some legal adjustments.

Under these circumstances, new formulation of section 2 of Article 31 of the Intellectual Property Act consolidated text is done, resulting in its restriction as a consequence of exclusion, on the one hand, of reproductions for professional or corporate use, pursuant to the recent case law by the Court of Justice of the European Union, and, on the other hand, of reproductions from physical formats not owned by the user, including those not acquired by commercial sale, and by public transmission, except for individual work reproductions accessed through a lawful public transmission act, by means of image or sound broadcasting, or both. Since they are no longer within the private copying scope of limitations, these reproductions –unless authorised– become illegal and cannot be subject to fair compensation. Additionally, the new section 3 of Article 31 details the



situations excluded from the private copying limitations, so that not only will electronic databases and computer software be excluded, but all works that have been made available to the public on agreed contractual terms, in such a way that members of the public may access them from any place or at any time of their choosing.

On the other hand, Article 25 of the Intellectual Property Act consolidated text is amended for the purposes of acknowledging that fair compensation referred to in Article 31.2 shall be paid annually through the General Budgetary Act, said provision being subject to the legal requirements concerning the process of determining the amount and payment method of this compensation. Notwithstanding the above reference, it is appropriate to legally foresee certain guidelines, for the purposes of determining the amount of said compensation, regarding the specification of reproductions deemed as private copies, of situations giving rise to a minimum loss or of the differentiation of the loss depending on whether or not the reproduction rights' holder takes efficient technological measures. All of the above are in line with the most recent community case law. It is also provided that payment shall be made through intellectual property rights' management entities, with a view to making the subsequent compensation distribution possible and more efficient, in light of one of the prime examples of mandatory collective rights' management.

Lastly, it is deemed necessary to amend the exception concerning the quotation, review and exemplification for educational or scientific research purposes, mainly with reference to printed works. This way, the system applicable to reviews made by content aggregation electronic services is updated for the digital environment, albeit specifying that the making available to the public of any images, photographic works or simple photographs released in periodical publications or regular updating websites by third parties must always be subject to authorisation. Conversely, the current regulation on quotation and exemplification for educational purposes remains unchanged in essence, with the current scope regarding small fragments of works, except in the case of works in the form of text books, university manuals and similar publications, as well as regarding isolated visual arts or figurative photography works. An amendment in connection with the scope of application of the above exception is simply made, so that, from now on, it shall not be limited to the classrooms. Rather, it shall be considered generally to cover all kinds of teaching, such as distance and online learning.

However, for works or publications –printed or printable– the exception in lieu of authorisation or actions referred to contents whose rights the user centre is the holder of is extended to the scope of universities and research centres, always in accordance with the contents of Articles 5.3.a) and 4 of the above-mentioned Directive 2001/29/EC of the European Parliament and of the Council, dated May 22 2001, although the use benefiting from the exception still accrues the corresponding and necessary compensation.

Certainly, the current Article 32.2, as currently worded, has so far been long away short of the maximum scope that the above-mentioned directive allows for this exception or limitation. These aspects can be inferred both from its articles and its recitals. For that reason, the report by the Council of State prior to the approval of Act 23/2006, dated

July 7, reminded the Spanish legislator that the scope given to that limitation or exception in Spain was maybe not sufficient to cover all common necessities in the educational setting, falling seriously short of what Directive 2001/29/EC provides for.

IV

Intellectual property rights' management entities are a key element in the inner workings of proprietary rights' protection, which have generally proven efficient in the fulfilment of their purposes. Said purposes are none other than the collective management of exploitation rights or other rights of a proprietary nature, on behalf and in the interest of multiple intellectual property rights holders, as well as the protection of the general interests regarding intellectual property protection as a whole. In fact, as pointed out above, the limitations to private copying comes to be compensated by an amount through the State Budget, but this continues to become effective through the aforesaid management entities.

However, accumulated experience has made it possible to identify issues in the operation of the model and has unveiled aspects which show broad opportunities for improvement, especially regarding the system's efficiency and openness. In this context, the motion following urgent interpretation, approved by the Spanish Congress on July 19 2011, of the measures to adopt in order to guarantee compliance monitoring of the legality in management entities for rights recognised under the Intellectual Property Act, urges the adoption of monitoring measures allowing to ensure the management of all proprietary rights and those of other intellectual property rights holders.

Accordingly, it is appropriate to anticipate measures to correct the main shortcomings, and the possible thorough review of the bulk of the system shall be postponed to a future law. In this sense, there are three types of measures to highlight. Firstly, the set of obligations for the management entities towards government agencies and regarding their associates is compiled in detail and systematically, with special focus on those relating to annual accountability. Secondly and in consequence of the above, an infringement and sanction's table making it possible to claim administrative liabilities for management entities' failure to comply with legal obligation has been established, as a key condition to ensuring compliance. Thirdly, executive responsibility areas of the Central State Administration and the Autonomous Communities are clearly demarcated, respecting the Constitutional Court's doctrine, initially compiled in the court's judgement STC 196/1997, dated November 13, which delivers its opinion on the adaptation of several provisions of the Intellectual Property Act 22/1987, dated November 2011, to the constitutional framework of competence distribution, but also underlying the court's judgement STC 31/2010, dated June 28.

In that sense, in order to reinforce management entities' new obligations, it is deemed appropriate to amend the article regulating the First Section of the Commission on Intellectual Property aiming to broaden its competences, including tariff determination functions, and to reinforce monitoring functions to ensure that general tariffs established by them are equitable and non-discriminatory.



V

The following set of measures aims to improve efficacy of the legal mechanisms protecting intellectual property rights from infringements that may occur in the digital environment, which will undoubtedly result in an enhanced visibility of the legal contents offering in said sphere and the promotion of new business models on the Internet.

As pointed out before, the general and intensive introduction of new technologies has magnified the intellectual property rights' infringement risks, forcing culture and creative industries to an in-depth transformation and requiring a constant effort to adjust the current legal framework to the new needs from legislators.

Firstly, it becomes necessary to adjust the civil proceedings so that it can remain the regular channel for the solution of disputes over conflicting interests, introducing improvements to the wording of certain preliminary information measures needed to protect intellectual property rights in the online digital environment.

Secondly, clear criteria in the Intellectual Property Act consolidated text are subsequently established regarding potential scenarios for third-party liability where an infringement of intellectual property rights occurs. These kinds of scenarios are especially commonplace in the digital environment, where infringing behaviours by certain individuals, which are often enabled and magnified by the intervention of third parties whose behaviour can occasionally exceed that of a simple intermediation or technical collaboration, becoming illegal business models based on the development of infringing third-party activities, the former being misled to such behaviours, with whom they cooperate or regarding whose behaviour they have control powers. For that reason, basic legal elements for the prosecution of the legality of such conducts are further established. In this respect, it is foreseen that whomever wilfully promotes the infringing behaviour; whomever cooperates with it, knowing the infringing behaviour or having reasonable indications to know it; and, whomever that, having a direct economic interest in the proceedings of the infringing behaviour, has control powers over the infringing party's behaviour, shall all be liable. The aforesaid does not affect the specific limitations to liability established in Articles 14 to 17 of Act 34/2002, dated July 11, on information society and electronic commerce services, inasmuch as legal requirements set forth for its application in said act are complied with.

Once an efficient jurisdictional mechanism for intellectual property rights' infringement prosecution has been guaranteed, the next measure is to undertake a review of the procedural safeguards of intellectual property rights regulated in Article 158.4 of the Intellectual Property Act consolidated text, making it possible to consolidate the Commission on Intellectual Property's capabilities and resources in prosecuting big intellectual property rights' infringers. To that end, the Second Section of the Commission on Intellectual Property is provided with more efficient response mechanisms against infringements incurred by information society's service providers that do not voluntarily comply with the withdrawal requirements directed by the former, including the option to demand cooperation from electronic payments and publicity intermediaries and foreseeing the option of a technical blockage, after adequately substantiating it according to its proportionality and considering the potential efficiency

of other measures available. Additionally, it is foreseen that, in case of recurring non-compliance with the withdrawal requirements, service providers infringing intellectual property rights shall be administratively sanctioned.

On the other hand, service providers infringing intellectual property rights are expressly included in the scope of application of this provision, in the way referred to in the previous paragraph, making the description or location of works and services that are circumstantially offered without prior authorisation easier, and developing to that effect an active –rather than neutral– initiative, not limited to activities of pure technical intermediation, for said activities constitute exploitation in accordance with the general concept of exclusive exploitation rights established in intellectual property regulations. The aforementioned, however, does not affect service providers carrying out activities of pure technical intermediation, such as neutral contents search engine activities, amongst others, or providers whose activities do not seek to actively –rather than neutrally– enable the location of protected contents unlawfully offered under certain circumstances or that are simply linked to said third-party contents from time to time.

Furthermore, technical improvements focused on making it possible for the aforesaid procedural safeguards to benefit from the new public sector rationalisation legislation and other measures of administrative reform are taken.

Related measures included in the current act have been notified to the European Commission according to the provisions of Royal Decree 1337/1999, dated July 31, by which information transmission with regard to technical rules and regulations and any regulations regarding information society services is regulated, transposing Directive 98/34/EC of the European Parliament and of the Council, by which a procedure of information with regard to technical rules and regulations and any regulations regarding information society services is established, as amended by Directive 98/48/EC.

Effective implementation of these new provisions requires the specific modification of the Civil Procedure Act 1/2000, dated January 7, and the Intellectual Property Act consolidated text.

The current act is approved under the provisions of Articles 149.1.6., 8.^a and 9.^a of the Spanish Constitution, by which the State received competence over procedural, civil and intellectual property legislation, respectively.

An online public information process has been carried out and the Autonomous Communities have been heard during the preliminary draft law procedure. Additionally, reports have been requested from the Ministry of the Economy and Competition, the Ministry of Finance and Civil Service, the Ministry of Industry, Energy and Tourism, and the Ministry of Justice. Mandatory reports from the General Council of the Judiciary, the Fiscal Council, the Spanish Data Protection Agency, the National Competition Commission, and the Council of Consumers and Users, as well as the mandatory judgement of the Council of State, have also been requested.

Article one. Amendment of the Intellectual Property Act consolidated text.

The Intellectual Property Act consolidated text approved by Royal Legislative Decree 1/1996, dated April 12, is amended on the terms set out below.

One. Paragraph 4 of Article 19 is amended and shall be phrased in the following way:

«4. Borrowing is understood as making the original work and copies thereof available to use for a limited period of time with no direct or indirect economic or business profit, provided said borrowing is carried out through publicly accessible institutions.

There is no direct or indirect economic or business profit where borrowing by a publicly accessible institution gives rise to payment of an amount not in excess of the amount needed to cover for operating costs. Said amount shall not include -in whole or in part- the right to remuneration amount to be paid to the intellectual property rights' holders, pursuant to the provisions in Article 37.2.

Transactions mentioned in the second paragraph of section 3, as well as those made between publicly accessible institutions, are excluded from the borrowing concept.»

Two. Article 25 is amended, which is worded as follows:

«Article 25. Fair compensation for private copying.

1. Reproduction of works distributed in the form of books or publications legally assimilated for these purposes, as well as phonograms, videograms and other sound, visual or audiovisual formats, using non-typographical devices or instruments and exclusively for consumer, non-professional and non-corporate use, with no direct or indirect business purposes, shall generate a single fair compensation for each of the three reproduction modes referred to, in accordance with sections 2 and 3 of Article 31.

Said compensation paid through the State Budget shall aim to compensate any intellectual property rights that may have not been received due to legal limitations of private copying.

2. Authors of the works mentioned in the above section which are publicly exploited in any of the forms referred to in said section shall benefit from this compensation, jointly, and, in such cases and reproduction modes as it may be appropriate, with the editors, phonogram and videogram producers and performers whose performances have been fixed in phonograms and videograms. This shall be an inalienable right to authors and performers.

3. The procedure to determine the amount of this compensation, which shall be calculated on the basis of the damage caused to the beneficiaries listed in section 2 due to the introduction of private copying limitations under the terms provided in sections 2 and 3 of Article 31, and shall have a yearly allocation in the General Budgetary Act, as well as the procedure to pay for compensation, which shall be done through management entities, will both comply with legal requirements.

4. For the purposes of determining the fair compensation amount, the following shall not be regarded as consumer use reproductions:

a) any reproductions done through digital reproduction equipment, devices and formats acquired by legal persons, which have not been made available -in law or in fact- to private users and that are expressly reserved for uses other than private copying;

b) any reproductions by persons holding mandatory authorisations to carry out the corresponding reproduction of protected work and services in exercising their activities, under the terms of said authorisation.

5. Those situations where minimum damage has been caused to the reproduction rights' holder -to be legally determined- shall not give rise to an obligation to compensate. At any rate, the individual or temporary reproduction by a natural person for its consumer use of a work accessed by lawful image and sound broadcasting or both, enabling its being watched or listened to at a more convenient time in the future and causing minimum damage, shall nor give rise to an obligation to compensate.

6. In order to determine the amount of fair compensation, it may be taken into account, under the terms legally set out, the application or lack thereof of efficient technological measures limiting or preventing private copying, or limiting the number of copies, by the reproduction rights' holders.»

Three. A second paragraph is introduced to section 1 of Article 28, which reads as follows:

«In the case of music compositions with words, the author of the words and the author of the music composition shall bear lifelong exploitation rights, and seventy years from the death or declaration of death of the last surviving party, provided that their contributions have been specifically created for the corresponding music composition with words.»

Four. Section 2 of Article 31 is modified and a new section 3 is added, which comes to read as follows:

«2. Subject to the fair compensation stipulated in Article 25, reproduction, in any format, without third-party assistance, of previously distributed works shall not require the author's authorisation where the following circumstances -which constitute the legal limitation to private copying- occur simultaneously:

a) Being carried out by a natural person exclusively for their consumer -non-professional and non-corporate- use and with no direct or indirect business purposes.

b) For the reproduction to be carried out from works legally accessed at a lawful source. For these purposes, the distributed work shall be deemed legally accessed at a lawful source only in the following cases:

1. When the reproduction is carried out -directly or indirectly- from a format containing a reproduction of the work that has been authorised by the right holder, marketed and purchased in property through commercial purchase.



2. When a single reproduction of works accessed by a lawful public transmission action, through image or sound broadcasting or both, is carried out, and where said reproduction has not been obtained through unauthorised posting at an institution or public space.

c) That the copy obtained is not used for collective or profitable purposes, neither for priced distribution.

3. The following are excluded for the provisions in the section above:

a) Reproductions of works that have been made available to the public in accordance with Article 20.2.i), so that any persons can access them at the place and time of their choosing, the reproduction of the work being authorised, pursuant to the stipulations in the contract, and, where appropriate, against payment of a price.

b) Electronic databases.

c) Computer software, in accordance with letter a) of Article 99.»

Five. The title of Article 32, as well as its section 2, are modified and new sections 3, 4 and 5 are added, coming to read as follows:

«Article 32. Quotations, reviews and exemplifications for educational or scientific research purposes.

2. Insignificant fragments of contents released in periodical publications or regular updating websites for information, public opinion creation or entertainment purposes made available to the public by content aggregation electronic services shall not require authorisation, without prejudice to the editor's right or, where appropriate, of any other right holders, to receive fair compensation. This shall be an inalienable right and shall become effective through the intellectual property rights' management entities. In any case, the making available to the public of any images, photographic works or simple photographs released in periodical publications or regular updating websites by third parties shall be subject to authorisation.

Without prejudice to the dispositions in the above paragraph, the making available to the public by service providers supplying search tools for isolated words included in the contents referred to in the above paragraph shall not be subject to authorisation or fair compensation, provided said public availability occurs without the service provider's business purposes and is carried out within the strict limitations of the essential elements to offer search results in response to searches previously formulated by a user to the engine and as long as the making available to the public includes a link to the contents source page.

3. Formal education teaching staff in centres within the Spanish educational system, as well as personnel in universities and public research bodies in their scientific research purposes, shall not need the author or the editor's authorisation to carry out reproduction, distribution and public transmission actions concerning small fragments of works and isolated visual arts or figurative photography works, where, in the absence of business purposes, the following conditions are simultaneously met:

a) That said actions are either for the purposes of exemplifying in their educational activities, both in on-site and in distance learning, or for scientific research purposes, to the extent the non-business purpose may so justify, alone.

b) In the case of previously distributed works.

c) That the works are not in the form of text books, university manuals and similar publications, except for the following cases:

1. Reproduction actions for public transmissions, including the public transmission action in itself, that do not entail public availability neither allow access to the work or fragment thereof to the target audience. In such cases, a location from which students may legally access the protected work must be expressly included.

2. Actions of distribution of copies exclusively amongst the research staff working on each specific research project and to the extent that it may be necessary for that project.

For these purposes, text books, university manuals and similar publications shall be understood as any printed or printable publication that is published for the purposes of being used as resource or material by either teaching staff or students in formal education, in order to facilitate the teaching or learning process.

d) For the name of the author and the source to be included, unless where this is impossible.

For these purposes, a small fragment of a work shall be understood as an extract or segment of little relevance in proportion to the work as a whole, in terms of quantity.

Authors and editors shall not have a right to any compensations for the development of the above actions.

4. Partial reproduction, distribution or public transmission of printed or printable works or publications shall not require the author or editor's authorisation if the following conditions are simultaneously met:

a) That said actions are carried for exemplification purposes in education and scientific research alone.

b) That the actions are limited to one chapter of the book, one article of a journal or an equivalent extension for a similar publication, or an extension close to 10 percent of the total work, regardless, for these purposes, of whether the copy is completed in one or more actions of reproduction.

c) That actions take place at universities or public research centres, by their personnel and with their own means and tools.

d) That at least one the following conditions occurs:

1. That the distribution of partial copies is exclusively carried out amongst students and teaching or research staff of the same centre where the reproduction may have taken place.

2. That only students and teaching or research staff of the centre where the partial reproduction of the work may take place have access to it through such public transmission actions as authorised under this section, the contents being made available through closed intranets accessible only to those beneficiaries or within the framework of a distance learning programme offered by said teaching centre.

In the absence of a specific agreement on the matter between the intellectual property rights' holder and the university centre or research body, and unless said centre or body may hold the corresponding intellectual property rights over the partially reproduced, distributed or publicly transmitted works, in accordance with section b), the authors and editors of said works shall have an inalienable right to receive a fair compensation from the user centres, which shall become effective through the management entities.

5. Musical scores, single-use works or compilations and ensembles of fragments of works or isolated visual arts or figurative photography works shall not be understood as comprised in sections 3 and 4.»

Six. A new Article 37 bis that reads as follows will be introduced:

«Article 37 bis. Orphan works.

1. Any work whose right holders are not known or, if they are, cannot be located despite a previous diligent search of them having taken place, is deemed an orphan work.

2. Where there are several right holders over the same work and not all of them have been identified or, despite having been identified, they have not been located after a diligent search has been completed, the work may be used under the current law, without prejudice to the rights of the holders that may have been identified and located and, where appropriate, the need for the corresponding authorisation.

3. Any use of an orphan work shall require a mention to the names of any identified authors and intellectual property rights' holders, subject to the provisions in Article 14.2.

4. Publicly accessible educational centres, museums, libraries and newspaper and periodicals libraries, as well as public broadcasting bodies, depositories, music libraries, and film archives shall reproduce, for the purposes of digitalisation, making available to the public, indexing, cataloguing, preservation or restoration, and of making available to the public as per Article 20.2.i), the following orphan works, provided such actions are non-profit and aim at achieving objectives related to its public interest mission, specifically preserving and restoring works in its collection and facilitating access to it for cultural and educational purposes:

a) Feature films or audiovisual works, phonograms and other publications in the form of books, newspapers, journals or other printed materials comprised in collections in educational centres, museums, libraries and newspaper and periodicals libraries, as well as public broadcasting bodies, depositories, music libraries, and film archives.

b) Including feature films or audiovisual works and phonograms produced by public broadcasting bodies before December 31 2002 comprised in their depositories.

The provisions in this Article will also apply to protected works and services integrated or incorporated in the works mentioned in this section or being an essential part of them.

5. Orphan works shall be used as long as they have been previously published or, failing that, they have been previously broadcast in a European Union Member State. Said use may be carried out after diligent search of the orphan work's intellectual property rights' holders in said Member State. In the case of film features or audiovisual works whose producer has its registered office or habitual residence in a European Union Member State, the search of the right holders must be done in said State.

Furthermore, any entities mentioned in the above section that may have made unpublished or non-broadcast orphan works available to the public with the right holders' consent, may use them as long as it is reasonable to presume that their right holders would not oppose to the uses stipulated in this Article. In this case, the search mentioned in the above paragraph must be carried out within Spain.

Diligent search will be carried out in good faith through the enquiry of any information sources as may be legally determined, at least, without prejudice to the obligation on consulting additional sources available in other countries where there may be evidence of relevant information about the right holders.

6. The entities mentioned in section 4 will record the right holders' search process and submit the following information mentioned in the following section to the competent body:

- a) Results from the diligent searches carried out leading to the conclusion that a work or phonogram is to be regarded as an orphan work.
- b) The use that entities make of orphan works, in accordance with this Act.
- c) Any change, pursuant to the following section, in the condition of orphan work of the works and phonograms used.
- d) Relevant contact information of the entity at issue.

7. At any time, the intellectual property rights' holders of a work may request the competent body to legally determine the end of its condition of orphan work concerning its rights and receive fair compensation for the use carried out in accordance with the provisions in this Article.»

Seven. A new Article 110 bis that reads as follows will be introduced:

«Article 110 bis. Provisions in relation to the transfer of rights to the phonogram producer.

1. If, once fifty years have elapsed from the legal publication of the phonogram or, in case the latter never took place, fifty years from its legal transmission to the public, a sufficient number of copies to reasonably meet the public's needs in accordance with the nature and purposes of the phonogram is not commercially

available or made available to the public as per Article 20.2.i), the performer may terminate the contract by which their rights over the recording of their performance are transferred to the phonogram producer.

The right to terminate the transfer contract may be exercised if, within one year from the positive notice by the performer of their intent to terminate the transfer contract under the above paragraph, the producer fails to carry out both exploitation actions mentioned in said paragraph. The possibility of termination may not be subject to waiver by the performer.

Where a phonogram contains the recording of performances by several performers, these may only terminate the transfer contract in accordance with Article 111. If the transfer contract is terminated in accordance with the specifications in this section, the phonogram producer's rights over it shall expire.

2. Where a transfer contract grants the performer the right to a single compensation, they shall have a right to receive an additional yearly compensation for each full year after fifty years from the legal publication of the phonogram or, in case the latter never took place, fifty years from its legal transmission to the public, have elapsed. The right to obtain this additional yearly compensation, whose obligor shall be the phonogram producer or, where appropriate, their exclusive grantee, may not be subject to waiver by the performer and shall become effective through the performers' intellectual property rights' management entities.

The total amount of the funds that the obligor must allocate to pay for the additional yearly compensation mentioned in the above paragraph shall be equivalent to 20 percent of net profits made in the year before the compensation for reproduction, distribution and making available to the public as per Article 20.2.i) of the phonograms at issue is made, after fifty years from the legal publication of the phonogram or, in case the latter never took place, fifty years from its legal transmission to the public, have elapsed.

Any amounts received by the obligor as fair compensation for private copying and renting of the phonogram shall be excluded from the estimation of profits mentioned in the above paragraph.

Obligors of additional yearly compensations mentioned in this section shall be under an obligation to provide the corresponding management entity, upon request and once a year, all the information that may be necessary in order to secure payment for such compensation.

3. Where a performer has the right to regular payments, no payments in advance or contractual deductions shall be made from the amounts paid to the performer, once fifty years from the legal publication of the phonogram or, in case the latter never took place, fifty years from its legal transmission to the public, have elapsed.»

Eight. Second paragraph of Article 112 is amended and worded as follows:

«Nevertheless, should a recording of the performance be published or legally transmitted to the public by any means other than the phonogram within said period of time, the above mentioned rights shall expire upon completion of fifty years starting January 1 of the year after the first publication or the first public transmission, should the latter occur first. Should the publication or public

transmission of the recording of the performance be made in the form of a phonogram, the above mentioned rights shall expire upon completion of fifty years starting January 1 of the year after the first publication or the first public transmission, should the latter occur first.»

Nine. First paragraph of Article 119 is amended and worded as follows:

«The phonogram producers' rights shall expire fifty years after the recording has been made. However, should the phonogram be legally published during said period of time, the rights shall expire seventy years after the date of its first legal publication. Should the phonogram not be legally published but legally transferred to the public during said period of time, the rights shall expire seventy years after the date of its first legal transfer to the public.»

Ten. Article 138 is amended, which is worded as follows:

«Article 138. Urgent precautionary measures and actions.

Without prejudice to other corresponding actions, the holder of rights recognised under this act shall call on the termination of illegal activities by an infringing party and demand material and moral damages caused, under the terms provided in articles 139 and 140. They shall also call on the publication or broadcasting, in full or in part, of the judicial or arbitral decision in the media at the expense of the infringing party.

Any persons knowingly prompting the infringing behaviour; cooperating with it, knowing the infringing behaviour or having reasonable indications to know it; and, any persons that, having a direct economic interest in the proceedings of the infringing behaviour, have control powers over the infringing party's behaviour, shall all be regarded as liable for the infringement. The aforesaid does not affect the specific limitations to liability established in Articles 14 to 17 of Act 34/2002, dated July 11, on information society and electronic commerce services, inasmuch as legal requirements set forth for its application in said act are complied with.

Additionally, they may previously request the adoption of precautionary measures of urgent protection regulated under Article 141.

Both the specific termination measures under Article 139.1.h) and precautionary measures stipulated in Article 141.6 may also be requested, where appropriate, against intermediaries whose services are used by third parties for the purposes of infringing the intellectual property rights recognised under this act, despite the actions of said intermediaries not being infringements themselves, without prejudice to the provisions in Act 34/2002, dated July 11, related to information society and electronic commerce services. Said measures must be objective, proportionate and non-discriminatory.»

Eleven. Section 5 of Article 151 is modified and new sections 13 and 14 are added, which come to read as follows:

«5. The rights of the partners and, specifically, the voting system, which may be established considering the weighting criteria reasonably limiting multiple votes and ensuring, at any rate, sufficient and balanced representation of the partners collectively. Said weighting criteria may be solely based on the duration of the



partner status in the management entity, on the amounts received by virtue of said status or on both. In matters related to sanctions to exclude the partners, an equal voting system shall be used.»

«13. Adequate provisions to ensure the free management of users' influence in their repertoire and to prevent the unfair preferential use of protected works and services.»

«14. Procedures to process and resolve any complaints and claims logged by the members concerning specifically purchasing conditions and the loss of the partner status, aspects related to the management contract, as well as royalties collection and distribution.»

Twelve. Section 1 of Article 153 is modified and should read as follows, after removing section 2 of said Article:

«Royalties management shall be appointed to the management entity by the right holders through a contract whose duration shall not exceed three years with one-year renewal periods, and it shall not impose the management of neither all forms of exploitation nor the entire work of future productions as mandatory. This remains without prejudice to the royalties prescribed under this act whose management is to be exclusively carried out through management entities.»

Thirteen. Article 154 is amended, which is worded as follows:

«Article 154. Royalties distribution, payment and limitation.

1. Distribution of royalties collected shall be performed equitably amongst the right holders of the works and services used, in accordance with a system previously defined in the by-laws and excluding arbitrariness. Distribution and payment of royalties shall be diligently carried out.

2. The right holders' participation in the distribution of royalties collected by the management entity shall be in proportion to the use of their works and services. Management entities shall establish the most appropriate methods and means of obtaining detailed information about the degree of use of the works and services by users in their activity, the latter being under the obligation to provide said information in the format agreed with the management entities. In those scenarios where information gathering is performed electronically, the voluntary industry norms and practices developed internationally or within the European Union for the electronic exchange of this type of data must be complied with.

Furthermore, the management entity's General Meeting may adopt certain rules taking into account either the culturally relevant works, performances or transmissions or their nature, novelty or any other objectively reasonable considerations, as well as agreements reached internationally, in the distribution.

3. The action to claim payments for amounts allocated to a holder in the distribution from management entities shall expire within five years from January 1 of the year after the corresponding amounts to the holder are made available to them.

4. The action to claim payments for collected amounts pending allocation from management entities, where, after the distribution process, the protected work or service holder has not been identified, shall expire within five years from January 1 of the year after its collection.

Management entities shall adopt the necessary measures to identify and locate the right holders in the distribution process: These measure will include specifically:

- a) Verification of updated registration data of the members of the entity, as well as standardised protected works and services' records and other easily available records.
- b) Making a list of the works and services whose right holders have not been identified or located, alongside any other relevant information available that may help identify or locate the right holders, under the terms in section 4 of Article 157.1.d)., available to the members of other management entities and to the public.

5. Any collected amounts that have not been claimed by their holder within the period set out in sections 3 and 4 of this Article shall be allocated to the following purposes by management entities:

- a) Carrying out assistance activities in favour of the entity's members and/or training and promotional activities for authors and performers.
- b) Promoting the legal digital offering of protected works and services whose royalties they manage, under the terms provided in Article 155.1.c) 1 and 3.
- c) Increasing the distribution in favour of the rest of the duly identified works managed by the management entity.
- d) Funding a one-stop invoicing and payment portal.

Each management entity's General Meeting shall annually agree on the minimum percentages of the collected and unclaimed amounts that are to be allocated to each of the purposes mentioned above and that, under no circumstance, except in the case of the above letter d), shall be less than 15 percent for each of them.

Should the management entities show negative surplus on their annual statements or fail to accredit being up to date with their tax and social security obligations or both, they shall allocate the amounts pointed out in the first paragraph of this section and up to the necessary amount, to offset negative surplus on their annual statements or accredit the above mentioned obligations, or both.

6. After three years from January 1 of the year once the holder has received the amounts either corresponding to them or of the collection, the management entities may have up to half of the amounts pending limitation, annually and in advance, at their disposal for the same purposes as provided in the above section, without prejudice to the claims over said non-limited amounts of the holders. For these purposes, management entities shall establish a security deposit with 10 percent of the amounts provided.



7. Management entities may not grant credits or loans, directly or indirectly, neither secure, endorse or ensure third-party obligations in any way, except under express and single authorisation by the competent Administration and provided they are directly related to assistance and/or promotional activities benefiting the holders of the royalties they represent.

8. Management entities may only grant advance payments to members of the entity, in account for future distributions of collected royalties, where their granting is based on non-discriminatory rules and does not compromise the final results in the distribution of royalties.

9. Management entities must administrate collected royalties and returns resulting from them by keeping them separate from their own assets and income resulting from their management services and other activities in their accountancy. Under no circumstance may they use collected royalties and returns resulting from them for purposes other than their distribution amongst the right holders, except for the deduction or offset of their management discounts and the amounts allocated to funding activities and services stipulated in Article 155, pursuant to the decisions adopted by the management entity's General Meeting.»

Fourteen. Article 155 is amended, which is worded as follows:

«Article 155. Social duty and legal digital offering development.

1. Management entities shall foster, directly or through other entities:

- a) Promoting assistance activities and services benefiting their members,
- b) Carrying out training and promotional activities for authors and performers, and
- c) The legal digital offering of protected works and services whose royalties they manage, which shall comprise:

1. Training, education and awareness campaigns about the legal offering and use of protected contents, as well as campaigns against the infringement of intellectual property rights.

2. Direct promotion of protected works and services whose royalties they manage through proprietary technology platforms or shared with third parties.

3. Activities to foster the inclusion of disabled authors and artists in their corresponding field of creation or art, or both, as well as promoting the legal offering of their works, creations and services, and their accessibility by disabled people in the digital environment.

2. Management entities must allocate equal percentages of the legally determined compensatory payments stipulated in Article 25 to the activities and services mentioned in letters a) to b) of the above section.

3. Upon request of the competent Administration, management entities must prove the assisting, training, promoting and legal digital offering nature of the activities and services mentioned in this Article.

4. For the purposes of carrying out the activities in section 1, management entities can incorporate non-profit legal entities, under the current legislation, prior communication to the competent Administration. In the event of dissolution of the legal entity thus incorporated, the management entity must inform of such dissolution and its terms to the body its incorporation was informed of in due course.

5. As an exception and on reasonable grounds, management entities may incorporate or become part of profit-making legal entities under express and single authorisation of the competent Administration, for the purposes of carrying out the activities stipulated in letters a) and b) of section 1, as well as others with obvious interest. In the event of dissolution of said legal entities, the management entity must immediately inform of such dissolution and its terms to the body authorising its incorporation or association in due course.»

Fifteen. Article 156 is amended, which is worded as follows:

«Article 156. Accounting and auditing.

1. Intellectual property rights' management entities must produce an annual statement prepared in compliance with the Accounting Plan for non-profit organisations and shall draft it exclusively following the standard models provided in it.

Management entities participating in trading companies and falling under any of the scenarios stipulated in articles 42 and 43 of the Commercial Code for parent companies must produce consolidated annual statements under the terms provided in said Code and in Royal Decree 1159/2010, dated September 17, by which the Rules for the Preparation of Consolidated Annual Statements are approved and the General Accounting Plan approved by Royal Decree 1514/2007, dated November 16, and the General Accounting Plan for Small and Medium-sized Enterprises approved by Royal Decree 1515/2007, dated November 16, are amended.

2. The management entity's historic annual statements, besides completing, expanding and commenting on the information included in the rest of essential documents of the annual statement, must detail information about the activities carried out to comply with its object and purposes, as well as the following information, at least:

a) The total turnover and effectively received collection amounts corresponding to the fiscal year, broken down under each of the royalties and exploitation modes managed.

b) The total distributed amount, broken down under each of the royalties and exploitation modes managed, detailing in every case the following limits:

1. The amounts both allocated and received by the members of the entity and by the management entities, domestic and international.

2. The amounts pending allocation in the distribution.



3. The amounts allocated with holders that are not members of the entity in the cases of mandatory collective management and the amounts effectively received by them.

c) Discounts applied to each of the royalties and exploitation modes managed.

d) A report on the entity's evolution and situation, important events taken place after the financial year-end relevant to it, the foreseeable evolution of the entity and the research and development activities carried out for matters such as royalties management systems.

e) The amounts allocated to complying with the social duty provided in Article 155, broken down into items and detailing the entities carrying out the corresponding activities, approved projects and amounts allocated to each of them.

f) Changes to the by-laws, internal procedures and operating rules and those of the management contract, approved during the fiscal year.

g) Contracts entered into with user associations and contracts of representation made with domestic and international organisations for collective management of protected rights and services.

h) The evolution in the number of members at the entity under each category stipulated in the by-laws.

i) The accumulated collected amounts pending allocation or effective distribution and the prescription dates to claim them.

3. All intellectual property rights' management entities shall be subject to an audit of their annual statements. Said audit will be contracted and performed pursuant to the provisions of the Audit and Accounts Act consolidated text approved by Royal Legislative Decree 1/2011, dated July 1, except for the provisions in its Article 19, and auditors shall have a minimum period of one month to prepare the audit report from the time the annual statements produced are handed to them.

Auditors shall be appointed at a General Meeting of the entity held before the end of the fiscal year to be audited. The appointment of the auditors shall not be less than three years or more than ten, and it shall not be renewed before a minimum period of three years has elapsed from their previous term. The General Meeting shall not rescind auditors before the end of the term for which they may have been appointed, unless there is due cause.

Where the General Meeting has failed to appoint an auditor before the end of the fiscal year to be audited or the person appointed does not accept the appointment or is unable to perform their functions, the entity's higher executive body shall request for the Commercial Registrar of the corresponding registered office to appoint the person or persons that are to carry out the audit, in accordance with the provisions of the Companies House for trading companies. In these cases, such a request to the Commercial Registrar can also be carried out by any partner of the entity.

4. The management entity's higher executive body shall prepare an annual statement within the first three months following each financial year-end.

The annual statement, alongside the auditor's report, shall be made available to the members of the entity at its registered office and those of the regional offices, at least fifteen days prior to the General Meeting where they are to be approved being held.

The annual statement must be approved by the General Meeting within six months from each financial year-end.

5. Within the following month after the annual statement being approved, the annual statement approval agreements by the General Meeting, alongside a copy of each of the statements and the auditors' report, shall be produced for filing at the Companies House corresponding to the registered office.»

Sixteen. Section 1 of Article 157 is amended, which is worded as follows:

«1. Management entities must:

a) Negotiate and contract, subject to remuneration, in fair and non-discriminatory conditions, upon request and except for reasons that are justified, granting of non-exclusive authorisations of royalties under management, acting in good faith and with transparency.

b) Establish general, simple and clear tariffs determining the compensation demanded for the use of their repertory, including any reductions for non-profit culture entities. Tariffs' amounts shall be established under reasonable terms, considering the economic value of the use of rights over the protected work or service in the user's activity, and seeking a fair balance between both parties, to which end the following criteria, at least, shall be taken into account:

1. The degree of effective use of the repertory in the user's collective activity.

2. The intensity and relevance of use of the repertory in the user's collective activity.

3. The extent of the management entity's repertory. For these purposes, the repertory shall be understood as works and services whose royalties are managed by a collective management entity.

4. The economic income obtained by the user through commercial exploitation of the repertory.

5. The economic value of the services provided the management entity to make the tariff application effective.

6. Tariffs established by the management entity with other users for the same mode of use.

7. Tariffs established by management entities recognised in other European Union Member States for the same mode of use, provided there are like-for-like comparison basis.

The methodology for determining general tariffs shall be approved by order of the Ministry of Education, Culture and Sport, following a report by the National Commission on Financial Markets and Competition and agreement of the Government's Economic Affairs Committee.

c) Negotiate and enter general contracts with user associations benefiting from its repertory, provided the former so request and are representative of the corresponding sector.

d) Disclose on their website in an easily accessible way:

1. Current general tariffs for each of the modes of use of its repertory, including discounts and circumstances of application, which must be published within ten days from its setting or latest amendment, alongside the principles, criteria and methodology used for their calculation.

2. The repertory managed by the entity, which must include protected works and services managed under current contracts of representation signed with foreign collective management organisations, as well as the names of said organisations and their corresponding regional management area.

3. General contracts signed with user associations and contract models regularly used for each mode of use of its repertory.

4. Distribution systems, rules and procedures, the amount or percentage of discounts to be applied to each royalty and exploitation mode under management, and protected works and services managed whose holders are neither identified nor located, whether partially or wholly.

e) Take part in the creation, management, funding and maintenance of a one-stop invoicing and payment portal, accessible on the Internet, within the periods and terms set out in the current regulation and where users of the management entity's repertory may know the updated individual and total cost to be paid to the ensemble of said entities, as a result of the application of general tariffs to its activity, and making the corresponding payment.

f) Inform the users of the repertory they represent over business conditions granted to other users carrying out similar economic activities.

g) Inform its members, prior written request, about the following limits:

1. Persons being part of the top management and representation bodies, as well as commissions and work groups where they take part.

2. Remunerations and other receivables attributed to the persons mentioned in the above paragraph under their status as members of the representation and top management bodies and part of the commissions and work groups. This information can be provided globally by remuneration item, individually gathering the ones corresponding to the top management personnel from the rest of the members of the above mentioned bodies and commissions that do not carry such status.

3. The terms of contracts entered by the entity with users of its repertory, their associations and other management entities, where a direct and legitimate interest can be proven.

h) Perform the accountability of liquidations and payment made to the members by the entity for the use of their works and services. Said liquidations must include the following information, at least: royalties and mode they refer to, accrual period, origin or source of collection and any deductions applied.

i) Comply with obligations provided in section 1, letter g) and letter h) of this section concerning the right holders who are not members of the management entity managing the same category of rights corresponding to the right holder, with reference to mandatory collective rights' management.

j) Diligently advising the competent Administration of the documents containing the full information on directors and representatives' appointments and dismissal, standard management contracts and amendments thereof, general tariffs and amendments thereof, alongside the principles, criteria and methodology used to calculate them, general contracts entered into with user associations and those agreed upon with domestic and international collective management organisations, as well as the documents mentioned in Article 156.

k) Prepare an annual budget for the collection and distribution of royalties under management and the entity's revenues and expenditure, to be approved prior to the start of the fiscal year it refers to. The resulting proposal shall be made available to the members of the entity at its registered office and those of the regional offices, at least fifteen days prior to the session of the competent body for its approval being held.»

Seventeen. A new Article 157 bis that reads as follows will be added:

«Article 157 bis. Supervisory powers.

1. The competent Administrations shall ensure compliance with the obligations concerning the intellectual property rights' management entities.

To that end, the competent Administration shall perform inspection and monitoring activities as they deem necessary, seeking, where appropriate, other public or private entities' collaboration.

2. Intellectual property rights' management shall be under an obligation to collaborate with the competent Administrations and diligently tend to their information and documentation requirements.»

Eighteen. Article 158 is amended, which is worded as follows:

«Article 158. Commission on Intellectual Property: structure and functions.

1. The Commission on Intellectual Property is created in association with the Ministry of Education, Culture and Sport as a nationwide collective body for the exercise of mediation, arbitration, tariff setting and control functions in the situations described in this title, as well as intellectual property rights' safeguarding



functions attributed by this act. Furthermore, it shall exercise guidance functions on any matters under its competence that it may be consulted on by the Ministry of Education, Culture and Sport.

2. The Commission shall act through two Sections:

- a) The First Section shall exercise mediation, arbitration, tariff setting and control functions, under the terms stipulated in this Title.
- b) The Second Section shall ensure the safeguard of intellectual property rights against their infringement by decision-makers of information society services under the terms set forth in Article 8 and concordant articles of Act 34/2002, dated July 11, related to information society and electronic commerce services, within the scope of competences of the Ministry of Education, Culture and Sport.

3. The First Section shall be comprised by four permanent chairs, which may delegate their functions to their deputies, all of them chosen amongst experts of recognised standing in intellectual property and protection of competition matters. The Ministry of Education, Culture and Sport shall appoint one of them as president of the Section, who shall exercise the quality vote. The Government shall appoint the Section's chairs by Royal Decree, on the motion of the Ministers of the Ministry of Education, Culture and Sport, the Ministry of the Economy and Competition, and the Ministry of Industry, Energy and Tourism, for a five-year term which can be renewed only once.

The First Section's structure, operation and activities shall be governed by the provisions in this act and the regulatory standards that implement it and, additionally, the provisions in Act 30/1992, dated November 26, of Public Administrations' Regulations and Common Administrative Procedures, in Act 60/2003, dated December 23, of Arbitration, in Act 5/2012, dated July 6, of mediation in civil and commercial matters. The Government may legally amend the arrangement of the First Section.

4. The Second Section, under the presidency of the Secretary of State for Culture or the person to whom the latter may delegate, shall be comprised by two chairs of the Ministry of Education, Culture and Sport, one chair of the Ministry of Justice, one chair of the Ministry of the Economy and Competition, and one chair of the Ministry of the Presidency, appointed by said departments amongst the Public Administrations' personnel, belonging to groups or categories requiring and advanced degree and gathering specific proven knowledge in intellectual property matters. Without prejudice to compliance with the above requirement, in the appointment made by each department, legal training in the fields of procedural law, contentious-administrative jurisdiction, and electronic communications will additionally be taken into account. The above mentioned departments shall simultaneously appoint, according to the requirements noted in the above section, a deputy for each of the chairs, for the purposes legally stipulated in case of vacancy, absence or illness, and, in general, where there is good cause.

The Second Section's operation and the procedure for the exercise of functions attributed to it shall be legally established.»

Nineteen. A new Article 158 bis that reads as follows will be added:

«Article 158 bis. Mediation, arbitration, fee-setting and control functions.

1. The First Section of the Commission on Intellectual Property shall exercise its mediation function under the following terms:

a) Collaborating in negotiations, prior voluntary submission of the parties due to lack of agreement, regarding any matters directly related to the collective management of intellectual property rights and for the authorisation of the cable distribution of a broadcasting between the intellectual property rights' holders and the cable distribution companies.

b) Producing proposals to the parties, where appropriate.

Where none of the parties expresses their opposition within three months, it shall be understood that all parties accept the proposal referred to in the above paragraph. In this scenario, the Commission's judgement shall have the effects provided in the Arbitration Act 60/2003, dated December 23, and it shall be liable to review by the the civil judicial order. The proposal and any opposition to it shall be advised to the parties, under the provisions of Articles 58 and 59 of the Public Administrations' Regulations and Common Administrative Procedures Act 30/1992, dated November 26.

2. The First Section of Commission on Intellectual Property shall exercise its arbitration function:

a) Remedying any conflicts over matters directly related to the collective management of intellectual property rights, prior voluntary submission of the parties.

b) Setting, upon the request of the affected management entity, user association, broadcasting entity or affected user of especial significance, and prior agreement of the other party, the amounts to replace general tariffs, for the purposes mentioned in section 2 of Article 157, taking into consideration the minimum criteria for their fixing, provided in Article 157.1.b), at least.

The stipulations in this section shall be understood without prejudice to actions that may be carried out before the competent jurisdiction. Nevertheless, the proposition of a dispute subject to arbitral decision before the Section shall prevent the Judges and the Court to hear about it, until it a decision has been issued and provided the interested party so calls upon by way of exception.

3. The First Section of the Commission on Intellectual Property shall exercise its function to set the tariffs for the exploitation of rights under mandatory collective management, and for the rights under voluntary collective management that coincide with a right to compensation over the same work or service, regarding the same holder category.

The Section shall establish the amount of compensation demanded for the use of works and other services in the management entity's repertory, the method of payment and other necessary conditions to make the rights mentioned in the above paragraph effective, upon request of the affected management entity, user

association, broadcasting entity or affected user of especial significance, at the Section's discretion, in the absence of an agreement between them, within six months from the formal start of negotiations. In the exercise of this function, the First Section may request a preliminary report from any public bodies that may exercise their functions regarding the economic markets and sectors affected by the tariffs to be determined, as well as from the corresponding user associations or representatives.

When determining these tariffs, the First Section shall observe the criteria set out in letter b) of Article 157.1, at least. Additionally, such decisions shall be published in the Official State Journal, shall apply from the day after its publication, with a general scope to all holders and obligors, concerning the same mode of exploitation of works and services within the same user sector, and shall be revoked before the contentious-administrative jurisdiction.

Furthermore, the First Section may issue decisions updating or developing the methodology for setting general tariffs referred to in Article 157.1.b), prior to a report by the National Commission on Financial Markets and Competition.

4. The First Section of Commission on Intellectual Property shall exercise its control function ensuring that the general tariffs established by the management entities in compliance with their obligation are fair and non-discriminatory, to which end it shall assess –among other aspects– the application of the minimum criteria provided in Article 157.1.b) for their setting. In case of noticing a breach in these obligations, the National Commission on Financial Markets and Competition shall be informed of such a circumstance, to all appropriate effects.

5. The procedure for the exercise of the functions developed by the First Section, in accordance with the provisions in the above sections, shall be legally determined.»

Twenty. A new Article 158 ter that reads as follows will be added:

«Article 158 ter. Rights' safeguard function in the digital environment.

1. The Second Section of the Commission on Intellectual Property shall exercise safeguard functions over intellectual property rights against their infringement by the decision-makers in information society services by means of a procedure whose aim shall be to restore legality.

2. The restoration of legality procedure shall be directed against:

A) Information society service providers infringing intellectual property rights, the Second Section basing the decision to agree to the start of the procedure or not on its degree of audience in Spain, the number of protected works and services circumstantially unauthorised that can be accessed through the service, and its business model.

B) Information society service providers infringing intellectual property rights in the way referred to in the previous paragraph, making the description or location of works and services that are circumstantially offered without prior authorisation easier, and developing to that effect an active -rather than neutral- initiative, not limited to activities of pure technical intermediation.

Specifically, any persons offering lists of orderly and classified links to the above mentioned works and services shall be included, regardless of whether those links may be initially provided by the service recipients.

3. The procedure shall be started *ex officio*, prior claim by the holder of the property rights that are deemed infringed or the person entrusted to them, who must produce, alongside the claim, reasonable evidence of an unsuccessful previous withdrawal requirement attempt directed to the alleged infringing information society, requesting the specific contents offered without authorisation be withdrawn. Directing said requirement to the e-mail address the service provider makes available to the public for communication purposes shall suffice. This prerequisite can be considered where appropriate, for the purposes of generating effective knowledge under the terms provided in Articles 16 and 17 of Act 34/2002, dated July 11, provided it precisely identifies the work or service, the corresponding right holder, and at least one location where the work or services are offered in the information society's offering. In case the service provider does not make a valid e-mail address for communication purposes available, the requirement attempt provided in this paragraph shall not apply. The requirement attempt shall be deemed unsuccessful if the service provider concerned does not issue a reply or, where it does, it fails to withdraw or disable access to the corresponding contents within three days from sending said requirement.

Management entities shall be entitled to urge upon this procedure under the terms provided in Article 150.

This procedure, to be carried out legally, will be based on the principles of urgency and proportionality, and rights of defence provided in Article 135 of the Public Administrations' Regulations and Common Administrative Procedures Act 30/1992, dated November 26, shall apply to it.

In the absence of a resolution within the legally established period, the procedure shall expire.

Decisions given by the Second Section in this procedure shall put an end to the administrative channel.

4. The Second Section shall adopt measures for the disruption of the service provided by the information society infringing intellectual property rights or for the withdrawal of the contents infringing said rights, provided the service supplier has caused or is liable to having caused proprietary damages. Such measures may include technical measures and specific duties to exercise due diligence that the infringing service provided must meet, whose aim is to ensure the end of the infringement and to prevent its continuation.

The Second Section may extend withdrawal and disruption measures to other sufficiently identified protected works and services whose royalties are represented by persons concerned in the procedure, corresponding to the same right holder or being part of the same type of works or services, as long as facts or circumstances revealing that said works or services are also illegally offered concur.



Before proceeding to adopting the above measures, the information society service provider must be addressed so that, within a period no longer than 48 hours, they may proceed to voluntarily withdraw the contents stated as infringing or, where appropriate, make allegations and propose evidence as they may deem appropriate, about use authorisation or the applicability of a limitation to the intellectual property right. After said period, where appropriate, evidence shall be taken within two days and it will be communicated to the interested parties for conclusions in a maximum period of five days. The Section shall give a decision within a maximum period of three days.

Voluntary service disruption or withdrawal of unauthorised works and services shall be deemed as an implicit acknowledgement of the intellectual property rights' infringement it refers to and shall put an end to the procedure.

5. In the absence of a voluntary withdrawal and for the purposes of ensuring the effectiveness of the decision issued, the Second Section might request the necessary cooperation from intermediation services providers, electronic payments and publicity providers, asking them to suspend the corresponding service provided to the infringing provider.

When adopting collaboration measures, the Second Section shall assess the potential effectiveness of those directed at blocking funding for the information society service provider declared as infringing.

Blocking the information society service provider's Internet access services by their suppliers must be adequately justified taking into account its proportionality, and the potential effectiveness of other measures available.

In case the service is provided using a domain name under the country code corresponding to Spain (.es) or other first-level domain whose registration is established in Spain, the Second Section shall inform the registration authority of the facts for the purposes of cancelling the domain name, which shall not be assigned again for a minimum period of six months.

The lack of cooperation by intermediation service providers, electronic payments and publicity services shall be deemed as an infringement of the provisions in Article 11 of Act 34/2002, dated July 11, of information society and electronic commerce services.

In any case, the implementation of the collaboration measure directed to the intermediation service providers, in light of the infringement of the withdrawal or disruption requirement, issued in accordance with the above section, by the information society service provider responsible for the infringement, shall require prior authorization by a judicial authority, in accordance with the regulated procedure in the second section of Article 122bis of Act 29/1998, dated July 13, regulating the contentious-administrative jurisdiction.

6. The non-compliance with the requirements of withdrawal of contents declared as infringing resulting from final resolutions adopted in accordance with the provisions in the above section 4, by the same information society service provider as the ones described in the above section 2, shall become, from the time the infringement takes place for a second time -included-, a very serious administrative

infringement carrying a sanction ranging from EUR 150,001 to 600,000. Continuation, for two or more times, of illegal activities by the same information society service provider shall also be construed as reiterated infringement for the purposes of this section. The fact that the same decision-maker against whom the procedure was started exploits works or services belonging to the same holder again, despite them not being exactly the same as the ones used the first time, prior voluntary withdrawal of the contents, shall be construed as the continuation of the illegal activity. Any providers that, even through the use of natural persons or intermediaries, carry on with the infringing activity, shall engage in these infringements.

When the severity and social repercussion of the infringing behaviour so justifies, the participation in the infringement may entail one of the following consequences:

- a) The publication of the sanction resolution, at the expense of the sanctioned party, in the “Official State Journal”, in two nationwide newspapers or in the home page of the provider’s website, once the resolution is final, on the basis of the social repercussion of the infringement incurred and the severity of the wrongful act.
- b) The end of the activities declared as infringing by the service provider during a maximum period of one year. In order to ensure the effectiveness of this measure, the competent body might request the necessary cooperation from intermediation services providers, electronic payments and publicity providers, making them suspend the corresponding service provided to the infringing provider. When adopting collaboration measures, the potential effectiveness of those directed at blocking funding for the information society service provider declared as infringing shall be assessed. Blocking the information society service provider’s Internet access services by their suppliers must be specifically justified taking into account its proportionality and estimated effectiveness, and the potential effectiveness of other measures available. The lack of cooperation shall be deemed as an infringement of the provisions in Article 11 of Act 34/2002, dated July 11, of information society and electronic commerce services. In any case, the implementation of the collaboration measure directed to the corresponding intermediation service providers, shall require prior authorization by a judicial authority, in accordance with the regulated procedure in the second section of Article 122bis of Act 29/1998, dated July 13, regulating the contentious-administrative jurisdiction.

Where infringements have been incurred by service providers established in non-European Union and non-European Economic Area Member States but whose services specifically target the Spanish territory, the body having imposed a sanction may command intermediation service providers to take the necessary steps to prevent access to the services provided by the former from the Spanish territory for a maximum period of one year.

The exercise of the sanctioning powers shall be governed by the procedure set out in Title IX of the Public Administrations' Regulations and Common Administrative Procedures Act 30/1992, dated November 26, and by its implementing regulations.

Sanction imposition shall fall under the authority of the Secretary of State for Culture, the competent body for the purposes of the provisions in Articles 35 and 36 and concordant articles of Act 34/2002, dated July 11.

The advisor of the sanction procedure may include any actions that were part of related procedures processed by the Second Section into the file, when exercising intellectual property rights' safeguard measures established in the above section.

7. The provisions in this Article are to be construed without prejudice to civil, commercial and administrative actions that may proceed, where appropriate.

8. Voluntary conduct codes may be developed with reference to collaboration measures for intermediation services, electronic payments and publicity services stipulated in this article.

9. Data processing concerning details and information derived from the actions by the Second Section carried out within the scope of its functions shall be done in accordance with the provisions in the Personal Data Protection Organic Act 15/1999, dated December 13, and, specifically, with its Article 7.5, should they refer to the commission of criminal or administrative offences.»

Twenty-one. Article 159 is amended, which is worded as follows:

«Article 159. Public Administration competences.

1. At any rate, the following functions shall fall under the responsibility of the Ministry of Education, Culture and Sport:

a) Verifying compliance with legal requirements at the start of the activity and legal disqualification for operations of intellectual property rights' management entities, in accordance with the provisions in this act.

b) Approving by-law amendments produced by these entities, once they have been approved by the corresponding General Meeting and without prejudice to the provisions in other applicable rules. Said approval shall be deemed as given unless otherwise notified by written decision within three months from its being logged.

2. Inspection, supervisory and control functions over intellectual property rights' management entities, including exercising sanctioning powers, shall fall under the Autonomous Community in whose territory it mainly carries out its ordinary business.

An intellectual property rights' management entity shall be construed to mainly carry out its business in a given Autonomous Community where its registered office and the tax residence of at least 50 percent of its partners are based within the territory of said Autonomous Community, and the main collection area of compensation for royalties entrusted to its management is limited to said territory.

The the main collection area shall be that where over 60 percent of the compensation comes from. Compliance with this condition can be reviewed every two years.

On the motion of the Ministry of Education, Culture and Sport, the Government shall legally establish the necessary information mechanisms and obligations to ensure the coordinated and efficient implementation of these functions.

3. Inspection, supervisory and control functions over intellectual property rights' management entities, including exercising sanctioning powers, shall fall under the Ministry of Education, Culture and Sport where exercising these functions does not fall under the responsibility of an Autonomous Community, in accordance with the provisions in the above section.»

Twenty-two. Letter c) of section 1 of Article 161 is amended and reads as follows:

«c) The limit concerning the quotation and exemplification for educational and scientific research purposes under the terms provided in Article 32.2, 3 and 4.»

Twenty-three. A new Title VI in Volume III that reads as follows will be introduced:

«TITLE VI

Penalties applicable to management entities

Article 162 bis. Administrative liability, competent sanctioning bodies and sanction procedure.

1. Management entities will incur administrative liability over infringements committed in the exercise of their functions, in accordance with the provisions in this act.

2. Exercising sanctioning powers falls under the responsibilities of the competent Administration, in accordance with Article 159. Legal disqualification for operation falls under the Ministry of Education, Culture and Sport, at any rate.

3. The exercise of the sanctioning powers shall be governed by the procedure set out in Title IX of the Public Administrations' Regulations and Common Administrative Procedures Act 30/1992, dated November 26, and by its implementing regulations.

Article 162 ter. Types of infringement.

1. Infringements committed by intellectual property rights' collective management entities shall be classed as very serious, serious and minor.

2. The following actions are very serious infringements:

a) Clear and notable inefficiency in the administration of royalties entrusted to the the management entity, which circumstance must be assessed by considering the ensemble of the users and the holders of said rights rather than in an isolated, individual way.

b) Serious and reiterated breach of the object and purposes stipulated in the management entity's by-laws, where activities other than the protection or management of entrusted intellectual property rights are carried out directly or indirectly, without prejudice to the social duties and the development of



the legal digital offering to be complied with and activities linked to the entity's cultural field and non-profit activities mentioned in said Article, provided these are stipulated in the by-laws.

c) Serious and reiterated breach of the obligation to administrate intellectual property rights entrusted to the management entity set out in Article 152.

d) Clear indication of any facts that mean a very serious infringement of the obligations under Title IV.

3. The following actions are serious infringements:

a) Infringement of conditions regarding the management contract set out in Article 153.

b) Application of distribution systems, rules and procedures of amounts collected arbitrarily and inequitably.

c) Infringements of obligations set out in Articles 154 to 156, 157.1, except for letters b) and k), and 157.4.

d) Resistance, excuse or refusal to inspection activities by the competent Administrations, in accordance with the provisions of this act, by intellectual property rights' collective management entities.

e) Significant disregard for the legally established procedure with reference to claims raised by the partners, in accordance with the provisions of Article 151.14.

4. The following actions are minor infringements:

a) The lack of attention to requirements from Public Administrations issued under the provisions of Article 157bis. A lack of attention to requirements is understood to take place where the management entity fails to reply within a month from being advised, except for where there is good cause. Public Administrations may reduce the one month period for duly justified reasons.

b) Infringement of obligations set out in Article 157.1.k).

c) Any other breaches affecting purely formal or documentary obligations, except for where they must be construed as a serious or very serious infringement, in accordance with the provisions in the above sections.

Article 162 quarter. Sanctions.

1. The infringing entity shall be imposed one of the following sanctions for committing very serious infringements:

a) Disqualification to operate as an intellectual property rights' management entity.

b) Fine ranging from 1 to 2 percent of the total collection obtained by the management entity in the year prior to the date of the fine being imposed. In the absence of collection in the year prior to the fine being imposed, a fine not exceeding EUR 800.000 and no less than EUR 400,001 shall be imposed.

2. Sanction resolutions for very serious infringements must be published in the “Official State Journal”, and, where appropriate, the official journal of the corresponding Autonomous Community, once they are final in administrative channel and prior dissociation with any personal data contained in it.

3. Infringing parties committing serious infringements shall be imposed a fine not exceeding 1 percent of their total collection corresponding to the year prior to the fine being imposed. In the absence of collection in the year prior to the fine being imposed, a fine not exceeding EUR 400.000 and no less than EUR 200,001 shall be imposed.

4. Sanction resolutions for serious infringements may be published in the “Official State Journal”, and, where appropriate, the official journal of the corresponding Autonomous Community, once they are final in administrative channel and prior dissociation with any personal data contained in it.

5. Infringing parties committing minor infringements shall be imposed a fine not exceeding EUR 200,000 or 0.5 percent of their total collection corresponding to the year prior to the fine being imposed.

6. Criteria established in Article 131 of Act 30/1992, dated December 26, shall be observed for sanction ranking.

7. Where the Ministry of Education, Culture and Sport has imposed financial penalties, collection bodies and procedures shall be as established in the General Regulations for Tax Collection, approved by Royal Decree 939/2005, dated July 29, and other applicable rules. In any other cases, they shall be as the Public Administration imposing the fine may establish according to the relevant legislation.

8. Once the sanction procedure for committing a very serious infringement, and where justified urgent reasons in the objective difficulty or impediment to restore legal compliance concur, the competent authority may reasonably agree, prior approval of the judge corresponding to the entity’s registered office, on the removal of the entity’s representation bodies and their temporary intervention by way of appointing an interim manager who shall take over legal and statutory functions of the entity’s representation bodies, under the following terms:

a) Interventions shall be carried out for a six-month term, renewable for one such term.

b) Costs resulting from temporary interventions shall be at the expense of the mediated entity.

c) Interventions shall aim to standardise the entity’s institutional operation, clarifying its management and adopting and implementing as many measures as may be necessary for the compliance with legal obligations in this respect.

The Government shall legally develop the temporary intervention procedure of the intellectual property rights’ management entities.»

Twenty-four. The fifth additional provision is amended and worded as follows:

«Fifth additional provision. Intellectual property rights' safeguard procedure notices.

1. The Ministry of Education, Culture and Sport, within the scope of its competences, shall ensure the safeguard of intellectual property rights against their infringement by decision-makers of information society services under the terms set forth in Article 8 and concordant articles of Act 34/2002, dated July 11, related to information society and electronic commerce services.

2. In intellectual property rights' safeguard procedures against their infringement by decision-makers of information society services providers, whose competence has been attributed to the Ministry of Education, Culture and Sport, where the situations stipulated in Article 59.5 of Act 30/1992, dated November 26, may concur, or the interested party's known residence or address for notification purposes is outside of the European Union territory, notification shall be exclusively carried out by way of a notice published in the "Official State Journal", under the terms provided in said article.

3. Nevertheless, in the cases provided in section 6 of Article 59 of Act 30/1992, dated November 26, notice of the action may be replaced by its publication in the "Official State Journal", specifically, where the recipients are information society intermediation service providers under an obligation to cooperate for the efficient compliance with any resolutions adopted.

4. In the cases considered in the two sections above, publication in the "Official State Journal" shall be accompanied by a message advising of such a circumstance sent to the e-mail address that the information society service provider provides for communication purposes, according with letter a) in section 1 of Article 10 Act 34/2002, dated July 11, of information society and electronic commerce services or the applicable foreign rule, provided that said e-mail address is provided electronically and permanently, easily, directly and free of charge. Should said e-mail address not be provided under the terms described above, the provisions in this paragraph shall not apply.

After ten calendar days from the date of publication in the "Official State Journal", the notice shall be construed as made, said formality shall be construed as complied with, and the procedure may proceed.

5. Where an information society service provider to which Act 34/2002 applies, in accordance with the provisions in its articles 2 to 4, and must be deemed an interested party in a procedure carried out under Article 158ter, is not identified in the terms provided in Article 10 of Act 34/2002, dated July 11, and, once reasonable identification activities available to the Second Section have been performed, these may not have resulted in sufficient identification, the procedure may commence understanding the information society service provided by the unidentified provider to be the interested party, until the provider is identified and appears in the procedure. Such circumstance shall be recorded in the file, and the stipulations to publish in the "Official State Journal" stated in this provision, and,

where appropriate, the cooperation and sanction measures provided in Article 158ter in the absence of the voluntary withdrawal of the above mentioned service by the information society, shall apply.»

Twenty-five. An new sixth additional provision is introduced and will read as follows:

«Sixth additional provision. Works regarded as orphan works in accordance with the legislation of another European Union Member State.

Works regarded as orphan works in accordance with the legislation of another European Union Member State enforced in transposing the provisions in Directive 2012/28/EU of the European Parliament and of the Council, dated October 25 2012, on certain authorised uses of orphan works, shall additionally be recognised under the same terms in Spain for the purposes of the provisions in Article 37bis.»

Twenty-six. An new twenty-first transitional provision is introduced and will read as follows:

«Twenty-first transitional provision. Temporary application of provisions concerning music compositions with words, orphan works and transfer of performer's rights to the phonogram producer.

1. The second paragraph in Article 28.1 shall only apply to music compositions with words where at least either the music composition or the words are protected in Spain or at least in one European Union Member State on November 1 2013 and music compositions with words created after said date.

Protection provided in the above paragraph shall be construed without prejudice to actions concluded and rights acquired before November 1 2013.

2. Article 37bis shall be applied to all works and phonograms protected under the legislation of the European Union Member States concerning proprietary rights dated October 29 2014 or at a later date, without prejudice to actions held and rights acquired before said date.

3. Articles 110bis, 112 and 119 shall apply to the recording of performances and phonograms where the performer and the phonogram producer are protected, dated November 2013, according to the legislation applicable prior to that date, as well as to recording of performances and phonograms of a later date.

4. Unless otherwise agreed upon, transfer contracts held before November 1 2013 shall continue to be effective after the date when, by virtue of Article 112 applicable at the the time, the performer ceases to be protected.»

Article two. Amendment of the Civil Procedure Act 1/2000, dated January 7.

Civil Procedure Act 1/2000, dated January 7, is amended as follows:

One. Subsection 7 is amended and new subsections 10 and 11 are introduced to section 1 of Article 256, which reads as follows:

«7. Upon request, put forward by any persons intending to exercise an action regarding the infringement of an industrial or intellectual property right committed through actions that cannot be deemed as carried out by simple end-users in good faith and without seeking economic or business



profits, of data gathering duties about the potential infringing party, the source and network distributions of works, goods or services infringing an intellectual or industrial property right and, specifically, the following:

a) Names and addresses of producers, manufacturers, distributors, suppliers and providers of goods and services, as well as those who may have been in possession of the goods for commercial purposes.

b) Names and addresses of wholesalers and retailers to which the goods and services may have been distributed.

c) Amounts produced, manufactured, delivered, received or ordered, and amounts met as prices by the goods or services at issue, the models and technical characteristics of the goods.»

«10. Upon request, by any persons intending to exercise an action regarding the infringement of an industrial or intellectual property, for the identification of the information society service provider regarding whom there is reasonable evidence of their making available or transmitting, directly or indirectly, contents, works or services subject to said right without compliance with the requirements established by the industrial and intellectual property legislation, taking into account the presence of a noticeable degree of audience in Spain for said provider or a volume, also noticeable, of unauthorised protected works and services made available or transmitted to the public.

The request shall refer to the gathering of the necessary information for the identification and may be addressed to the information society service providers, electronic payments and publicity service providers that may have or may have had a service provision relation with the information society service provider under identification in the twelve months prior. The above mentioned service providers shall produce the information requested, as long as it can be gathered from the data available to or stored by them as a result of the service provision relation they may have or may have had with the service provider under identification, except for data that may exclusively be subject to processing by an Internet service provider, in accordance with the provisions of Act 25/2007, dated October 18, of data retention regarding electronic communications and public data communication networks.»

«11. Upon request, put forward by any intellectual property right holder intending to exercise an action regarding the infringement of it, for an information society service provider to produce the necessary data to identify one user of their services with whom they may have or may have had service provision relation in the twelve months prior, regarding whom there is reasonable evidence of their making available or transmitting, directly or indirectly, contents, works or services subject to said right without compliance with the requirements established by the intellectual property legislation, through actions that may not be deemed as carried out by simple end-users in good faith and without seeking economic or business profits, taking into account a noticeable volume of unauthorised protected works and services made available or transmitted to the public.»

Two. Section 4 of Article 259 comes to read as follows:

«4. Information gathered through diligences under numbers 7, 8, 10 and 11 in section 1 of Article 256 shall be exclusively used for the judicial protection of industrial or intellectual property rights of the measure petitioner, under a prohibition to disclose or transmit to third parties. Upon request of any interested parties, the court may attribute a reserved nature to the actions, in order to ensure data and confidential data and information.»

First additional provision. *Transaction costs reduction measures.*

1. The Government shall promote measures for the reduction of transaction fees between intellectual property rights' holders and users of said rights, specifically taking into account the possibilities offered by technological developments, including, amongst others, measures directed at a more efficient structuring of the dialogue between right holders, their representatives, and users.

2. Legally incorporated intellectual property rights' collective management entities shall create a one-stop portal through which all invoicing and payment operations regarding the amounts payable by users will be centralised, in accordance with the obligation set out in Article 157.1.e) of the Intellectual Property Act consolidated text. Management entities shall have a five-month period from the entry into force of the act to agree to the terms for setting up, funding and maintaining this one-stop portal. In the absence of an agreement between the management entities and within a non-renewable period of three months from the end of the above mentioned period, the First Section of the Commission on Intellectual Property may issue a decision establishing said terms, with powers to resolve as many disputes as may arise and establish as many instructions as may be necessary for the correct operation of said one-stop portal, without prejudice to the corresponding sanctions proceeding based on the non-compliance with the above mentioned legal obligation.

The portal will be managed by a private legal entity without any management entities holding the power to control the decision-making process.

The portal shall provide its services under objective, transparent and non-discriminatory terms, adjusting to the following rules:

- a) Service provision to any legally established management entity must be ensured.
- b) Current general tariffs for each user group regarding each legally established management entity must be included.
- c) Payment of general tariffs payable by the users to the legally established management entities must be made possible.

The Ministry of Education, Culture and Sport, and the National Commission on Markets and Competition, in their corresponding areas of competence, shall ensure compliance with the provisions in this section, including supervision of the by-laws of the legal entity managing the one-stop portal prior to commencement of its operation.

The Government may legally implement the provisions in this section.

3. Management entities, in compliance with the obligation provided in letter d) of Article 154.5 of the Intellectual Property Act consolidated text, shall allocate the corresponding amounts resulting from said obligation to funding the one-stop invoicing and payment portal stipulated in the above section.

Second additional provision. *Special tariffs.*

Intellectual property rights' management entities must apply appropriate tariffs to users entrusted with managing public radio and television services, non-profit making services and those having legally imposed culture promotion obligations.

Third additional provision. *Tariff-setting fee.*

1. Regulatory sources: The fee for setting a tariff for the exploitation of royalties under mandatory collective management and royalties under voluntary collective management that, regarding the same holder category, concur with a compensation right over the same work or service, shall be governed by this act and other sources of law established by Public Fees and Prices Act 8/1989, dated April 13.

2. Taxable event: Tariff-setting requested by affected management entities, by nationwide representative user associations, by a broadcasting entity, and by a user of especial significance shall be a taxable event of this fee.

3. Taxpayers: Natural persons or legal entities taking part in tariff-setting shall be taxpayers of this fee.

Taxpayers of this fee shall be under an obligation to make self-assessment tax return operations and deposit the corresponding amount at the Public Treasury.

4. Accrual: The fee shall be accrued at the moment of setting the tariff regarding the request submitted.

5. Taxable amount and charge:

1. The taxable amount of the fee shall be made of the estimated amounts resulting from the application of tariffs set by the First Section of the Commission on Intellectual Property.

2. The charge to be deposited for this fee shall result from applying the proportional rate or rates legally fixed to the estimated amounts resulting from the application of the tariffs set by the First Section of the Commission on Intellectual Property, which shall be no less than EUR 16,659.47 and shall not exceed 0.2 percent of the taxable amount, in the cases where the charge to be deposited exceeds said minimum amount.

First transitional provision. *Applicability of the Accounting Plan for non-profit organisations.*

Management entities shall apply the Accounting Plan for non-profit organisations from January 1 of the calendar year after the entry into force of this act, in accordance with the following rules:

1. The opening balance for the fiscal year when the Accounting Plan for non-profit organisations is applied for the first time shall be prepared in accordance with the following rules:

- a) Proprietary elements shall be reclassified pursuant to the provisions in these rules.
- b) Said proprietary elements shall be assessed by their carrying value; and
- c) Its decline value on that date shall be checked.

Notwithstanding the foregoing, the entity may choose to assess all the proprietary elements included in letter a) for the amount corresponding to the retrospective application of these rules.

The counterpart of adjustments to be made to comply with the first application of these rules shall be an unavailable reserve.

2. The annual statement corresponding to the first fiscal year when the Accounting Plan for non-profit organisations is applied, may be produced:

- a) Including comparative information without adjusting to the new criteria, in which case, the annual statement shall be classed as initial for the purposes derived from the application of the uniformity principle and the comparison requirement.
- b) Including comparative information adjusting to the new criteria. In this case, the first of first application shall be the starting date of the fiscal year prior to the start of the Accounting Plan for non-profit organisations.

3. In the historic annual statements corresponding to the first fiscal year when the Accounting Plan for non-profit organisations is applied, a section entitled “Aspects resulting from transitioning to new accounting rules” shall be created to include an explanation of the main differences between the accounting criteria applied in the previous and the present fiscal years, as well as the quantification of the impact produced by the variation in accounting criteria on the entity’s equity.

Second transitional provision. New tariff approval.

1. Management entities must approve new general tariffs adjusting to the criteria established in this act within a six-month period from the entry into force if the order by the Ministry of Education, Culture and Sport by which the methodology to determine said tariffs provided in Article 157.1.b) of the Intellectual Property Act consolidated text is approved.

2. Collective management entity’s tariffs agreed with the users shall continue to have full effect during the validity of the agreements, for a maximum period of three years from the entry into force of this act, where they refer to exclusive rights, and the management entity may prove having agreements with nationwide representative associations of the corresponding sectors or with the main broadcasting bodies, as well as in singular use cases.

3. Except for the cases mentioned in the previous sections, intellectual rights’ collective management entities must negotiate the new tariffs adjusting to criteria established in Article 157.1 b) of the Intellectual Property Act consolidated text with nationwide

representative associations of the corresponding sectors and with broadcasting bodies, within a maximum period of one year from the entry into force of the act. In the absence of agreement between the parties, they will be subject to the provisions in Article 158bis.3 of the Intellectual Property Act consolidated text.

For the cases considered in the above paragraph, and, except for where there are effective agreements on tariffs applicable to collective management rights, whose terms and conditions may have been negotiated and fixed with nationwide representative associations of the corresponding sectors or with the main broadcasting bodies in the three years prior to the entry into force of this act, and until new general tariffs are approved and disclosed to the public, users must pay 70 per 100 of the general tariffs approved by each management entity on account, with reference to the compensation required by the management entities for the exploitation of compensation rights and for the purposes of regarding authorisation over concurring exclusive rights as granted. Where an action of exploitation of a protected work or service is subject to a compensation right, and an exclusive right over the same work or service in the same holder category the compensation right falls under concurs, the tariff for both rights shall be subject to the system set out in this section.

Single repealing provision. *Legislation repeal.*

Any provisions of an equal or lower rank opposing the stipulations in this act are hereby repealed.

First final provision. *Amendment of the 10/2007 Act, dated June 22, related to reading, books and libraries.*

Section 2 of Article 8 of the of the Act 10/2007, dated June 22, related to reading, books and libraries is amended and shall now read:

«Effective from January 1 2015 and with indefinite duration, Section 2 of Article 8 of the of the Act 10/2007, dated June 22, related to reading, books and libraries is amended and shall now read:

In the implementation of international recommendations and guidelines approved by the International ISBN Agency, the Spanish ISBN Agency develops an ISBN system in our country. The Spanish Agency shall provide the Ministry of Education, Culture and Sport with the updated ISBN records in order to secure the continuity of the database of books published in Spain, and that of printing houses, managed by said department.»

Second final provision. *Legislative authority.*

The first Article and the additional and temporary provisions are approved pursuant to Article 149.1.9. of the Spanish Constitution, by which the State received competence over intellectual property legislation.

The second Article is approved under the provisions of Articles 149.1.6.^a and 8.^a of the Spanish Constitution, by which the State received competence over procedural and civil legislation.

Third final provision. *Incorporation of European Union Law.*

By way of this law, Directive 2011/77/EU of the European Parliament and of the Council, dated September 27 2011 by which Directive 2006/116/EC regarding the protection term for proprietary rights and certain associated rights (Articles 110 bis, 112, and 119 and transitional provision twenty-one of the Intellectual Property Act consolidated text), and Directive 2012/28/EU of the European Parliament and of the Council, dated October 25 2012, about certain authorised uses of orphan works (Article 37bis, sixth additional provision, and transitional provision twenty-one of the Intellectual Property Act consolidated text) are amended, is incorporated into the Spanish law.

Forth final provision. *Comprehensive reform of the Intellectual Property Act.*

The Government, within one year from the entry into force of this act, shall perform all necessary preparatory works in collaboration with all concerned sectors and agents, to put together a comprehensive reform of the Intellectual Property Act that fully adjusts to the needs and opportunities of the knowledge-based society. In the interest of this reform, amongst other aspects, the system applicable to collective rights' management, the system for fair compensation for private copying, and the competence and nature of the regulator shall be assessed.

Fifth final provision. *Entry into force.*

This Act will come into force on January 1 2015, with the following exceptions:

- a) The stipulations in sections 3 and 4 of Article 32 of the Intellectual Property Act consolidated text will come into force one year from the publication of this act in the "Official State Journal".
- b) The stipulations in Article 158ter and concordant articles of the Intellectual Property Act consolidated text will come into force two months from the publication of this act in the "Official State Journal".
- c) The stipulations in Article 154, sections 7 and 8, 162ter and 162quarter of the Intellectual Property Act consolidated text will come into force six months from the publication of this act in the "Official State Journal".
- d) Sections 3, 4, 5, and 6 of Article 154 of the Intellectual Property Act consolidated text shall apply to the amounts collected by the management entities from January 1 of the calendar year after the publication of this act in the "Official State Journal", regardless of its accrual date.

Therefore,

I order all the Spaniards, private citizens and authorities to abide and enforce this Act.

Madrid, November 4, 2014.

FELIPE R.

The President or the Spanish Government,

MARIANO RAJOY BREY

