Kluwer Copyright Blog

A futile attempt. Spain implements web-blocking regulation

Pedro Letai (IE University (Segovia, Spain)) · Monday, January 9th, 2012

Spain's newly elected Partido Popular has recently implemented the controversial Regulation that develops the Intellectual Property disposition contained in the Law for Economic Sustainability (Ley de Economía Sostenible), informally known as the Sinde law (Ley Sinde), after outgoing Culture Minister Angeles Gonzalez-Sinde. The main aim of the so-called Law is to protect the owners, creators and other rightholders' rights against the profitable sacking of their assets on illegal downloading websites.

Under the Sinde Law, rightholders can identify hosting websites infringing content to a government commission on intellectual property, which will determine if the site is indeed infringing. Within ten days, the government commission can take action against the site or against the ISP providing infrastructure to the site.

The Sinde Law was passed by the parliament in February 2011, but opposition from the public kept the socialist government from enacting the law, despite U.S. pressure to do so.

As mentioned, copyright and intellectual property right owners would be able to report suspected infringing websites to a newly formed governmental commission. That commission would then determine the merit of the complaint; if action should be taken against the company or individuals running the website in question and against the ISP providing service to the website. If the commission decides there is merit, the complaint is passed to a Spanish judge who then rules on whether the infringing website should be shutdown or not. The Spanish government aims to make this an expedited process, with a goal of 10 days per complaint.

The potential success of this regulation is highly doubtful, as Spanish tribunals are ruling, almost unanimously, in the sense that websites offering links to contents protected under copyright could not be seen as infringers, as they do not really reproduce or communicate any content at all. Hence, they only offer a link, so an hypertext, that can lead you to the above mentioned content, but no infringing behavior is apparently taking place.

Under this scenario none of the possible situations seems appropriate. The commission might uphold the opinion of the previous judicial decisions or, being an administrative commission, it could take its own position, eventually contradicting that of the judges, with the load of legal uncertainty that fact could carry.

Spanish legislators are once more missing here the opportunity to operate a great refund over the IP legislation, where figures as the vicarious liability or the contributory infringement seem more necessary than ever to fight against the huge rate of copyright infringements on the digital era.

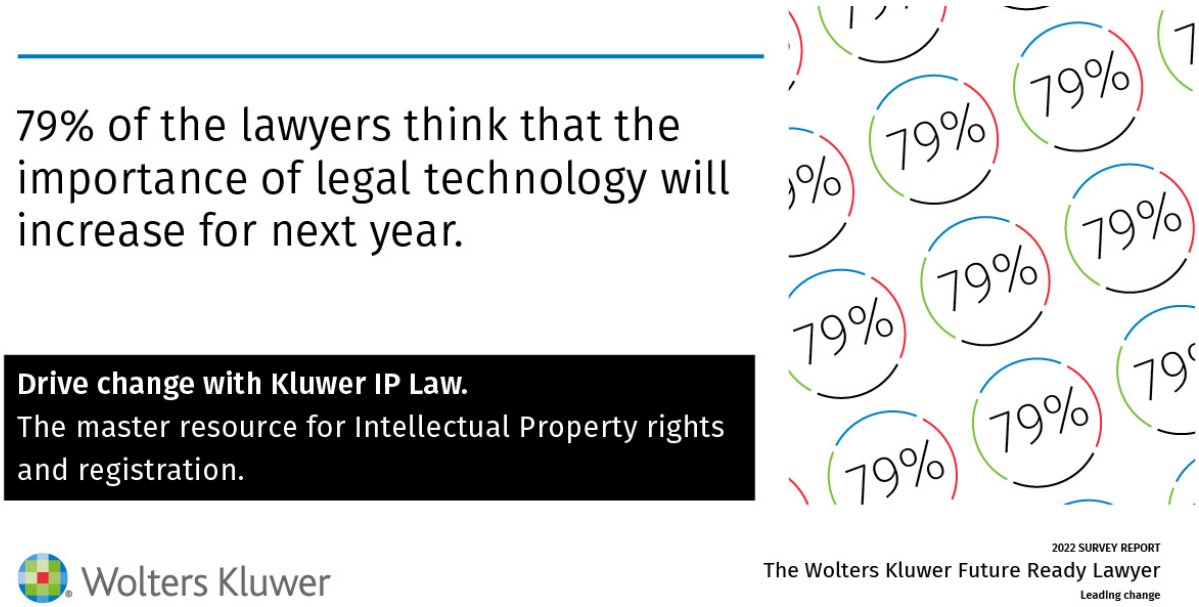
The Sinde Law seems just like an intermediate and inefficient way out to a very serious problem that needs bigger tools and mechanisms to be duly solved.

To make sure you do not miss out on regular updates from the Kluwer Copyright Blog, please subscribe here.

Kluwer IP Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.



This entry was posted on Monday, January 9th, 2012 at 2:46 pm and is filed under Case Law, Landmark Cases, Remedies, Spain
You can follow any responses to this entry through the Comments (RSS) feed. You can skip to the end and leave a response. Pinging is currently not allowed.