

# Reform of the Spanish Copyright Act: Liberalisation and Oversight of Collecting Societies

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14 April 2018 saw the entry into force of Spanish Royal Decree-Law 2/2018, of 13 April, amending the wording of the Spanish Copyright Act.



This reform transposes two Directives into Spanish law, namely: Directive 2017/1564 of the European Parliament and of the Council on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled; and Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (Collective Rights Management Directive).

The reform also affects specific issues concerning other areas, such as the time limit for obtaining reimbursement of fair compensation for private copying, and injunctions against the circumvention of technological measures. We will nevertheless focus our analysis on the issues arising out of the implementation of the EU Collective Rights Management Directive, which has caused the greatest impact given that it affects over 30 articles of the Copyright Act.

It is common knowledge that this reform largely stems from the scandals involving a certain Spanish copyright collecting society in recent years. For some time, the growing loss of prestige of Spanish collective copyright management had called for the adoption of legislative measures to “clean up” the system.

In keeping with the Directive, two parallel measures have been adopted, namely, the liberalisation of collective management and the supervision of collecting societies.

The **liberalisation measures** are geared towards creating greater leeway for individual management within collective management. Specifically, efforts have been made to ensure that entrusting a collecting society with the management of copyright will not entail a total and absolute loss of control over the management of those rights; the rightholder will always be able to directly manage certain types of works, rights and categories of rights.

The provisions of the Directive are aimed at limiting the extent of the rights assignment to the collecting society –or at least at enabling the rightholder to do so– in order to render collective management compatible with individual management. Thus:

(i) Under **Art. 157**, each of the rights and forms of exploitation entrusted to the collecting society must be explicitly documented, as well as the territories in which the rights are to be managed. Furthermore, the contract cannot make it mandatory for all forms of use, or the whole work or future production, to be managed.

(ii) Under **Art. 169**, the rightholder is entitled to grant licences for non-commercial use, regardless of whether that party has entrusted a collecting society with the management of his/her rights.

(iii) **Art. 158** puts the maximum duration of the management contract at 3

years, and not only does that Article enable the rightholder to revoke his/her mandate to the collecting society, but it also permits that party to withdraw part of his/her rights, categories of rights or types of works within a notice period not exceeding 6 months.

(iv) **Art. 153** allows for the creation of independent management entities (IMEs) as an alternative to collecting societies in all aspects comprised within the scope of voluntary collective management. Such entities must be organised on a for-profit basis, and their governing bodies cannot be in any way related to the holders of the managed rights. Unlike collecting societies, they do not need to be authorised by the Ministry of Culture. The Ministry will, however, have the authority to oversee them and to impose penalties.

Another product of the liberalisation of collective management is the fact that foreign collecting societies will be able to provide their services in Spain (Art. 151) and that Spanish collecting societies will be able to grant multi-territorial licences for the online use of musical works both inside and outside Spain.

The new Act also establishes **greater control over governance of the collecting societies**, by means of the following measures:

- The creation of an internal control body (Art. 162), independent from the collecting society's governing bodies, to facilitate control and reporting by the governing and representative bodies of the collecting society.
- The collecting societies' obligation to prepare an annual transparency report setting out detailed economic and financial management information (Art. 175.5).
- The allocation of specific supervisory, inspection and monitoring functions to the Ministry of Culture with respect to the collecting societies' activity (Art. 155).

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