

Kluwer Copyright Blog

The “Sinde Act”

Francisco Javier Cabrera Blázquez (European Audiovisual Observatory) · Friday, March 4th, 2011

On 15 February 2011, the Spanish Parliament adopted the *Ley de Economía Sostenible* (Sustainable Economy Act). This act aims at turning Spain’s economic model into a more sustainable one from not only a economic but also social and environmental point of view. Among many other issues, this act includes some very controversial provisions amending three further acts, namely the Act on Information Society Services, the Intellectual Property Act and the Act on Administrative Jurisdiction. These provisions deal in particular with copyright infringement and have been nicknamed as *Ley Sinde* (“Sinde act”) after the Spanish Minister of Culture Ángeles González-Sinde.

The “Sinde act” aims at speeding up the procedure for blocking or closing down websites which provide illegal access to copyrighted content. It creates a Commission on Intellectual Property at the Ministry of Culture in charge a.o. of safeguarding intellectual property rights. To this effect, it introduces a procedure whereby a rightsholder can apply to the Commission on Intellectual Property against an allegedly infringing website. The rightsholder can ask directly that the hosting company remove the allegedly infringing content. He/she can also request before a court of justice that the hosting company disclose the identity of the website owner. In the first case, the hosting company has 48 hours to remove voluntarily the allegedly infringing content or to present allegations and evidence against this removal (e.g. the content is authorised or there is an exception applying to the case). After the parties have presented their allegations and evidence the Commission decides whether or not the content has to be removed from the website. Any removal of infringing content has to be confirmed by the Central Courts of Administrative Jurisdiction (following the procedure regulated in Art. 122 bis para. 2 of the Act on Administrative Jurisdiction). In the second case, if the rightsholder wants to obtain the identity of the owner of the allegedly infringing website, he or she has to make a request before the *Sala de lo Contencioso-Administrativo de la Audiencia Nacional* (Chamber of Administrative Jurisdiction of the National Court), which has to decide on this issue in 24 hours.

The way leading to the adoption of the “Sinde act” was rather tortuous and not without surprises: the initial draft was rejected by the Spanish *Congreso de los Diputados* (the lower house of the Parliament) after a heated debate in Parliament and in the public sphere. The government was accused by opposition parties and citizens’ organisations inter alia of infringing fundamental rights of Internet users and of submitting to the wishes of the US government (according to WikiLeaks the US lobbied for some years before the Spanish government for the introduction of measures against copyright infringement in Spain). However, to the surprise of many detractors of the controversial provisions, the bill was then renegotiated with some of the main opposition parties

and adopted with minor amendments at the *Senado* (the upper house of the Parliament). The Act was then sent back to the *Congreso de los Diputados* for its final adoption.

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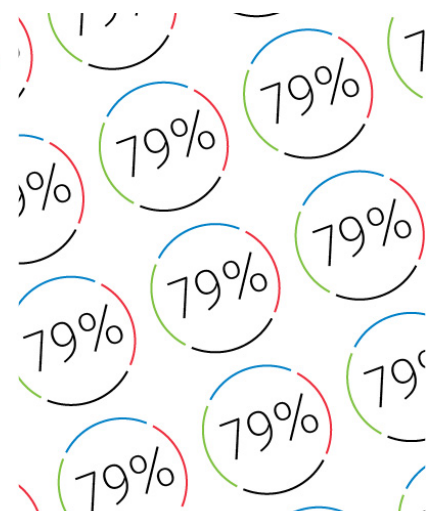
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