

# Kluwer Copyright Blog

## Sinde (anti-downloading ) Law: A Thorny Reality

Pedro Letai (IE University (Segovia, Spain)) · Thursday, June 21st, 2012



A greatest hits album by Spanish pop star Luz Casal is the subject of the first case to be brought before the Intellectual Property Commission, the body created by the so-called *Sinde* anti-downloading law, aimed at combating copyright violations on the internet.

AGEDI, the collecting society that represents Spain's phonographic producers, has filed a complaint against the Swiss owner of the website *uploaded.to* for offering allegedly unauthorized downloads of Casal's 15-track collection *Un ramo de rosas (A bouquet of roses)*. The commission has also issued a notification to the administrator of the Spanish website *bajui.com*, Juan José Coronel, for offering a link to the content.

AGEDI argues that *uploaded.to* is providing an intermediary service that a third party is using to infringe copyright. In short, what the commission has communicated to them is that there is an open case in which they could be involved.

The commission began the process by notifying the company hosting the content, which is located in Switzerland, about the opening of the proceedings. The company then has two days to take down the content in question voluntarily, and five days to respond to the allegations. Although, it's more than likely that they don't even know it's there.

The commission will most likely establish that the content is on the website without authorization. Once it has a ruling forcing the site to take it down, it will turn its attention to *bajui.com*.

As this ruling has been reached, the administrator will not have a chance to respond, but rather will simply have 72 hours to carry out the measure. If it refuses to comply, it could be fined between 150,000 and 600,000 euros.

Up to this point, everyone is in more or less in agreement. The controversy revolves around what happens from that moment on. The commission demands that in the future you take down possible links to the same content. But the reality is that you can't be monitoring all the links that users are publishing on your site. Spanish laws take into account that this is impossible to comply with, and only warn of the obligation to take down the unauthorized link.

In fact, the Supreme Court, as well as the European Court of Justice, has already ruled that a page hosting links is obliged to remove those where the administrator has knowledge that there is a copyright infringement for a third party. And that knowledge is conveyed when an administrative body or the copyright owner themselves let you know.

It's a thorny issue indeed.

Not unlike a bouquet of roses.

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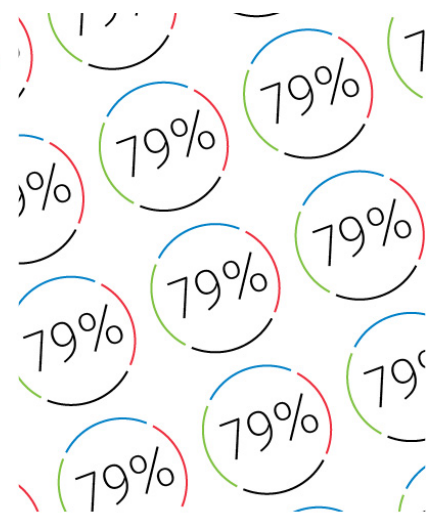
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