



TERRALEX®

# CROSS-BORDER COPYRIGHT GUIDE 2018



# Spain

Roca Junyent, Anna Viladàs/Marta Rodés/Cristina Albiol



## 1. Legislation and regulation

### 1.1 What are the main sources of copyright law?

The main source of copyright legislation in Spain is the Royal Legislative Decree 1/1996, dated 12 April, enacting the consolidated text of the Intellectual Property Act (IPA). This regularises, clarifies and harmonises the previous legal provisions. Although the IPA replaced and repealed two previous Copyright Acts (1879 and 1987), the previous Acts are still applied today where a work was created at a time when those Acts were in force. Copyright infringements that qualify as a criminal act are established in the Organic Act 10/1995, dated 23 November, enacting the Criminal Code<sup>1</sup>.

As Spain is a member of the European Union, the interpretation and application of Spanish legislation by the judiciary must be read in accordance with European Directives and Regulations which have direct effect. Further, the Spanish courts and other EU national courts often refer questions of law to the European Court of Justice, whose decisions are binding on national courts. As a result, Spanish copyright law is frequently added to and updated from external sources.

## 2. Subsistence of copyright

### 2.1 What type of works can be protected by copyright?

Any original creation – literary, artistic or scientific – expressed by any means can be protected under copyright. They are broad categories, and the IPA lists the following examples:

- books, pamphlets, printed matter, correspondence, writings, speeches and addresses, lectures, forensic
- reports, academic treatises and any other works of the same nature
- musical compositions with or without words
- dramatic and dramatic-musical works, choreographic works and entertainments in dumb show and theatrical works in general
- cinematographic works and any other audiovisual works whatsoever
- sculptures and works of painting, drawing, engraving and lithography, picture stories, cartoons or comics, including drafts or sketches therefore, and other works of three-dimensional art, whether applied or not

1. The Criminal Code has been recently modified in Spain by means of the Organic Act 1/2015, dated 30 March.

- projects, maps, models and drawings or architectural works and works of engineering
- illustrations, maps and sketches relating to topography, geography and science in general
- photographic works and works expressed by a process analogous to photography
- computer programs.

Finally, it should be noted that the title of a work shall be protected as part of the work provided it is original.

## 2.2 What is required for works to qualify for copyright protection?

If a work falls within the one of the categories above, it may be protected by copyright if it is original. A work is original if the author (see 3.1 for how to decide on who is the author) has created the work through his or her own skill, judgement and individual effort and has not copied from other works. It is not requisite that work is of artistic merit. It is also not necessary for the whole of a work to be original. Spain provides copyright protection if the author is:

- a national of Spain
- a national of other Member States of the EU
- a national of a third country who is ordinarily resident in Spain
- a national of other countries, for those of their works published on Spanish territory for the first time or within 30 days of having been published in another country.

Nationals of other countries shall enjoy protection available under the international conventions and treaties to which Spain is a party.

The author's moral rights, whatever his or her nationality, are recognised.

## 2.3 What rights does copyright grant to the rights holder?

The IPA sets out the rights subsisting in copyright works which are the exclusive rights of the rights holder (before any licences are granted).

They include the rights to:

- reproduce the work
- issue copies of, rent or lend the work to the public (distribution)
- perform, show or play the work to the public (communication to the public)

- make an adaptation of the work or do any of the above in relation to the adaptation (transformation)

Rights holders (when authors) also have the moral rights described in 2.4.

## 2.4 Are moral rights protected (for example, rights to be identified as an author of a work or to object to derogatory treatment of a work)?

Yes. In Spain, the following moral rights are provided for by the IPA:

- the right to be identified as the author of a copyright work
- the right to decide whether the work is to be made available to the public, and if so in what form
- the right to determine whether such communication should be effected in his/her name, under a pseudonym or sign or anonymously
- the right to demand respect for the integrity of the work and to object to any distortion, modification or alteration of it or any act in relation to it that may be prejudicial to his/her legitimate interests or reputation
- the right to alter the work subject to respect for the acquired rights of third parties, and the protection requirements of works of cultural interest
- the right to withdraw the work from circulation due to changes in his/her intellectual or ethical convictions, after paying damages to the holders of the exploitation rights
- the right of access to the sole or a rare copy of the work when it is in another person's possession, for the purpose of the exercise of the right of communication or any other applicable right.

Moral rights are applicable to literary, artistic and scientific works.

## 2.5 What is the duration of copyright in protected works?

The duration of protection for copyright works varies according to the type of work and the date of creation.

Category of work
Literary, dramatic, musical or artistic works
Duration
Copyright expires 70 years from the end of the calendar year in which the author dies.

Where a work has a joint author/co-author, copyright expires 70 years from the end of the calendar year in which the last known author dies. Where a work is collective, copyright expires 70 years from the end of the calendar year in which the work is lawfully made available to the public.

Where the author's identity is unknown, copyright expires 70 years from the end of the calendar year in which the work was lawfully made available to the public. Where a work is not lawfully made available to the public, copyright expires 70 years from the end of the calendar year in which it was created.

**Category of work**

Phonogram producers

**Duration**

Copyright expires 50 years from the end of the calendar year in which the recording is made or, if the recording is published lawfully, 70 years from the end of the calendar year in which it was first published. If no lawful publication is made within such period of time but the phonogram is lawfully communicated to the public, 70 years from the first lawful public communication. The aforesaid terms shall be counted from 1 January of the year following that in which the phonogram is recorded, published or publicly communicated.

**Category of work**

Broadcasting organisations

**Duration**

Copyright in a broadcast expires after 50 years, counted from 1 January of the year following that of the first making of a broadcast or transmission.

**Category of work**

Computer programs

**Duration**

Where the author is an individual, 70 years counted from 1 January of the year following that in which the author dies. Where the author is a legal person, 70 years counted from 1 January of the year following that of the lawful communication of the program or that of its creation, if it has not been made available to the public.

**Category of work**

Rights of performers

**Duration**

The exploitation rights conferred on performers shall run for 50 years, counted from 1 January of the year following that of the performance. If, in that period, a recording of the performance is lawfully published, the rights in question shall expire 50 years after the publication of the said recording, counted from 1 January of the year following that in which it occurred. If the recording of the performance is made through a sound recording, the rights shall expire 70 years after the publication of the said recording, counted from 1 January of the year following that in which it occurred.

**Category of work**

Audiovisual recording

**Duration**

50 years after publication, counted from 1 January of the year following that of the making thereof.

If, during the said period the recording is lawfully published, the rights mentioned shall expire 50 years following publication, counted from 1 January of the year following the date on which the said publication took place.

**Category of work**

Ordinary photographs

**Duration**

The rights shall run for 25 years counted from 1 January of the year following the date of the making of the photograph or reproduction.

**Category of work**

Unpublished works in the public domain and unprotected works

**Duration**

The rights shall run for 25 years counted from 1 January of the year following that of the lawful communication of the work.

**Category of work**

Databases

**Duration**

The right provided shall come into being at the same time as the process of making the database is deemed completed, and shall run for 15 years from 1 January of the year following the date on which the process was completed.

## 3. Ownership

### 2.6 For how long do moral rights subsist in copyright works?

The following moral rights are perpetual and may be exercised by an author's executors, heirs or the State after the author's death:

- the right to be identified as the author
- the right to demand respect for the integrity of the work and to object to any distortion, modification or alteration of it or any act in relation to it that may be prejudicial to their legitimate interests or reputation
- the right to decide whether the work is to be made available to the public, and if so in what form, shall pertain to the same persons as described above and shall last for 70 years from the end of the calendar year in which the author dies.

All other moral rights mentioned in 2.4 above shall be extinguished upon the author's death.

### 3.1 Who is the first owner of a copyright work?

As a general rule, the first owner of the copyright is the author. The main exception to the rule is where the work was made by a person in the course of their employment and in connection with the object of their employment; in those circumstances the employer is the first owner unless there is an agreement to the contrary. The author is defined as the person who creates the work. In certain circumstances, the IPA establishes the *ius tantum* presumption of who the author is:

- for sound recordings, the author is the person who made the arrangements necessary for making the sound recording
- for films, there are three main authors: the director; the authors of the scenario or adaptation and of the dialogue; and the composers of any music created specifically for the work
- for broadcasts, the author is the person making the broadcast.

### 3.2 Can copyright in a work be jointly owned? If so, what are the rights of a co-owner?

Copyright in a work can be jointly owned by two or more persons. This can occur where a work is created by more than one person, and the rights in it shall pertain to all of them.

Joint owners have their own individual rights with respect to the work that can be assigned independently of the other or others, and may exploit their contribution separately insofar as the joint exploitation is not thereby prejudiced. However, communication and alteration of the work shall require the consent of all the co-authors, and once the work has been made available to the public none of the co-authors may unreasonably withhold their consent to its exploitation in the manner in which it has been disclosed.

The intellectual property rights in a work of joint ownership shall pertain to all the authors in the proportions determined by them and, in the absence of provisions, the rules laid down in the Spanish Civil Code on joint ownership (which determine that portions corresponding to the participants of the community shall be presumed equal) shall apply to such works.

## 4. Infringement

### 3.3 Can you register copyright? If so, what are the benefits of such registration and what other steps, if any, can you take to help you bring an infringement action?

Copyright is an unregistered right in Spain; it arises automatically upon creation of the work. However, the intellectual property rights in works may be subject to entries in the Intellectual Property Register, which may be useful to evidence ownership of copyright and the date of authorship. The registration creates a presumption that the named person is the author, and puts third parties on notice of the rights, but copyright subsists without such registration and the failure to display it does not affect copyright in a work.

### 3.4 What steps should you take to validly transfer, assign or license copyright?

An assignment of copyright must be in writing, signed by or on behalf of the copyright owner. If, after having been formally called upon to do so, the assignee fails to meet this requirement, the author may choose to terminate the contract.

### 3.5 Can moral rights be transferred, assigned or licensed?

No. Moral rights cannot be waived nor assigned.

Owners of copyright can take legal action if any of their exclusive rights (as set out in 2.3 and 2.4 above) have been infringed.

### 4.1 What acts are permitted with respect to copyright works (ie what exceptions apply)?

There are a number of acts that can be carried out in relation to copyright works despite the fact that they

might be protected by copyright. The Information Society Directive (2001/29/EC) contains what has been termed a 'shopping list' of exceptions and limitations, many of which have been implemented into Spanish law through the last modification of the IPA conducted by the Law 21/2014, dated 4 November. These permitted acts are wide in variety but often relate to very specific scenarios. They include (amongst others):

<b>Act</b>
Making of temporary copies
<b>Description</b>
Reproduction that is transitory or accessory which: <ul style="list-style-type: none"><li>• is an integral and essential part of a technological process</li><li>• has the sole purpose of enabling a transmission of the work in a network between third parties by an intermediary or a lawful use (deeming this to be one either licensed by the author or authorised at law), or</li><li>• has no independent economic significance (eg ISPs who use caching).</li></ul>
<b>Act</b>
Personal copies for private use
<b>Description</b>
The making of a copy that is made for the individual's personal and private use (but not for professional or entrepreneurial use, or for purposes that are directly or indirectly commercial.) Nevertheless, making a private copy will trigger a single and equitable compensation payment. This compensation shall be determined for each modality according to the equipment, apparatus and media material suitable for such reproduction, whether it was manufactured in Spanish territory or acquired outside it for commercial distribution or use within that territory.  This payment shall be satisfied by the manufacturers and distributors* of the equipment, apparatus and media materials.

The beneficiaries of this compensation will be the authors of the works. Without prejudice to fair compensation as provided for in Article 25 of the IPA, the reproduction does not require the permission of the author, in any medium, without the assistance of others, of works already disclosed when the following circumstances occur simultaneously, which represent the legal limit for private copies:

- that it is carried out exclusively by a natural person for private use and not for professional or business use, and not for purposes that are directly or indirectly commercial
- that the reproduction is made from works that have been legally accessed from a lawful source. It is deemed to have been lawfully accessed and from a lawful source only in the following cases:
  - when a reproduction is made, directly or indirectly, from a medium containing a reproduction of the work authorised by its owner, commercialised and property acquired by commercial sale
  - when an individual reproduction of works is made that has been accessed through a legitimate act of public communication, by the diffusion of the image, sound or both, such reproduction not having been obtained by unauthorised fixing in an establishment or public space
- that the copy obtained is not subject to shared use or for profit, nor paid distribution.

\*In this sense, the recent Royal Legislative Decree 12/2017, which amends the IPA in line with recent European and national judicial pronouncements which interpreted Directive 2001/29/EC, has left the current regulation on fair compensation for private copying (which, until now, was covered by the Spanish General State Budget) effectively unchanged, although replacing it with the aforementioned model.

#### Act

Quotations and reviews and illustrations with educational or scientific research purposes

#### Description

Periodical compilations made in the form of press summaries or reviews shall be deemed quotations. However, if the compilation of press articles merely consists of a reproduction, and is made for commercial purposes, the author who has not expressly opposed the reproduction of their work shall be entitled to obtain an equitable remuneration. In the event that the author expressly indicates their opposition, such activity shall not be deemed covered by this limitation.

The provision by electronic service providers to the public of contents containing unimportant extracts, reported in journals or regularly updating websites which have an informative purpose, in creating public opinion or entertainment, shall not require authorisation, without prejudice to the right of the publisher or, where appropriate, of other rights holders, to receive fair compensation.

This right cannot be waived and will be paid by the management agencies of intellectual property rights. In any event, making available to the public by third parties of any image, photo or photographic work reported in journals or websites that are regularly updated is subject to authorisation.

However, the provision to the public by electronic service providers who provide search tools of isolated words included in the contents referred to in the previous paragraph shall not be subject to authorisation nor fair compensation, provided that such provision to the public takes place without a commercial purpose and that it is strictly limited to what is necessary in order to offer search results in response to prior queries entered in a search engine by a user, provided that the provision to the public includes a link to the source page content.

Teachers in regulated education taught in centres integrated into the Spanish educational system and personnel of universities and public research bodies engaging in scientific research shall not need authorisation from the author or publisher to carry out acts of reproduction, distribution and public communication of small extracts of works and isolated works of visual art or photographic figurative character when not doing so for commercial purposes, and provided all of the following conditions are met simultaneously:

- that such acts are made solely to illustrate its educational activities, both in classroom teaching and in distance learning, or for scientific research, and justified by the non-commercial purpose that the works have already been published
- That the works do not have the status of textbook, university manual or assimilated publication, except in the case of:
  - acts of reproduction for public communication, including the act of public communication itself, which do not involve the making available or allowing access to the work or extract. In such cases, a location shall be included from which students have a legal access to the protected work
  - acts of distribution of copies exclusively among staff collaborating in research of each specific research project
- that the author's name and the source are included, except in cases where this proves impossible.

The acts of reproduction, distribution and public communication of works or publications, shall also not require the author's authorisation when all of the following conditions are satisfied simultaneously:

- that such acts are performed solely for the purposes of illustration for teaching and scientific research
- that the acts are limited to a book's chapter, a magazine's article, or extension or equivalent to 10% of the work
- that the acts are carried out in universities or public research centres by their own staff and their own means and instruments
- That at least one of the following conditions is satisfied:
  - that the distribution of partial copies is exclusively between students and teachers or staff who are researchers in the same centre where the reproduction is made

- that only the students and the teachers or staff who are researchers of the centre where the partial reproduction is made can access the works through the acts of public communication authorised, carrying this out through internal and closed networks that can be accessed only by the aforementioned parties who have been allowed such access or as part of a distance education programme offered by said educational institution.

#### Act

Parody

#### Description

The parody of a work made available to the public shall not be deemed a transformation that requires the author's consent, provided that it involves no risk of confusion with that work and does no harm to the original work or the author thereof.

#### Act

Security, official procedures and disabilities

#### Description

When a work is reproduced, distributed or made available to public for public security purposes, for the correct carrying out of administrative, judicial or parliamentary proceedings or for use by people with disabilities.

#### Act

Articles on topical subjects

#### Description

Studies and articles on topical subjects disseminated by the media may be reproduced, distributed and communicated to the public in any other media of the same type, subject to mention of the source and of the author if the study was published under a by-line and provided that no reserved copyright notice appeared on the original.

All the foregoing shall be without prejudice to the author's right to collect the agreed remuneration or, in the absence of agreement, such remuneration as is deemed equitable.

#### Act

Databases



<b>Description</b>
<p>The lawful user of a database protected under Article 12 of IPA may, without licence from the author of the database, engage in whatever acts may be necessary for access to be had to the contents of the database and for its normal use by the user him/herself, even where they are subject to an exclusive right of the author. Insofar as the lawful user is licensed to use only a part of the database, this provision shall be applicable only to that part. Any agreement contrary to the terms of this provision shall be <i>ipso iure</i> null and void.</p> <p>Without prejudice to the provisions of Article 31 IPA, licence from the author of a database that is protected under Article 12 of the same Act and has been made available to the public is not necessary:</p> <ul style="list-style-type: none"> <li>• if, in the case of a non-electronic database, a copy is made for private purposes</li> <li>• if the use made is for the purposes of illustration in teaching or scientific research, provided that it is made to the extent justified by the non-commercial purpose pursued, and that in all cases the source is mentioned</li> <li>• if the use is for purposes of public security or for the purposes of an administrative or judicial procedure.</li> </ul>
<b>Act</b>
Works in the reporting of current events and of works located on public thoroughfares
<b>Description</b>
Any work liable to be seen or heard in the reporting of current events may be reproduced, distributed and made available to the public, but only to the extent justified by the information purpose. Works permanently located in parks, streets, squares or other public thoroughfares may be freely reproduced, distributed and communicated by painting, drawing, photography and audiovisual processes.
<b>Act</b>
Official acts and religious ceremonies
<b>Description</b>
The performance of musical works in the course of official state events or those of the public administrations, or religious ceremonies does not require the licence of the holders of the rights, provided that the public may attend them free of charge and that the performers who take part in them do not collect specific remuneration for their performances.

<b>Act</b>
Protection of the right of access to culture
<b>Description</b>
If, on the author's actual or declared death, their successors in title exercise their right of communication of the work in a manner contrary to the provisions of Article 44 of the Spanish Constitution, a court may order appropriate measures at the instigation of the State, the Autonomous Communities, local corporations, public institutions of cultural character or any other person having a legitimate interest.
<b>Act</b>
Orphan works
<b>Description</b>
<p>Shall be considered to be a work whose rights holders are not identified or cannot be found despite having made a prior diligent search of the same work.</p> <p>Schools, museums, libraries and newspaper archives available to the public, as well as public broadcasters, files, record and film libraries can reproduce, for the purposes of digitisation, offer to the public, indexing, cataloguing, preservation or restoration, and make available to the public, the following orphan works, provided such acts are carried out on a non-profit basis and in order to achieve their mission related to public interest objectives; in particular, the conservation and restoration of works contained in their collections and facilitating access thereto for cultural and educational purposes:</p> <ul style="list-style-type: none"> <li>• cinematographic or audiovisual works, phonograms and works published in books, newspapers, magazines or other material contained in the collections of schools, museums, libraries and newspaper archives available to the public, as well as files, record and film libraries</li> <li>• cinematographic or audiovisual and sound recordings produced by public broadcasters up to and including 31 December 2002 and works contained in their archives.</li> </ul>

#### 4.2 Is it permissible to provide a hyperlink to, or frame, a work protected by copyright? If so, in what circumstances?

The CJEU decision in *Nils Svensson v Retriever Sverige* (C-466/12) determined whether linking to or framing links to copyright material without consent is a 'communication to the public' and therefore infringes the rights holder's 'communication to the public' exclusive right. The CJEU

## 5. Remedies

emphasised that to be a communication to the public, a link would have to be a communication to a 'new' public, ie a public not in the contemplation of the rights holder when the rights holder published the work. As a result, when a person uploads material to the internet, the public communicated to is the internet at large. Therefore, linking to a work freely available on the internet does not communicate that work to a 'new' public.

However, where a work is not freely available on the internet, such as where the work sits behind a paywall, the copyright owner cannot be said to have communicated with the internet as a whole, and so linking to that work in a way that circumvents the paywall would, it appears from recent case law, constitute a communication to the public and infringe the rights of the rights holder. The doctrine established by the CJEU has been applied by several court decisions in Spain.

### 4.3 Is a licensee of copyright able to bring an infringement action?

Under the IPA, an infringement of copyright is actionable by the copyright owner. When copyright is transferred, the authority to bring an infringement action depends on the type of transfer involved.

An exclusive assignment authorises the exclusive assignee to exercise a right which would otherwise be exercisable exclusively by the copyright owner. One such right, which shall be independent of that of the assigning rights holder, is the right to institute proceedings for infringements that affect the rights that have been assigned to them. The IPA does not establish whether a non-exclusive assignee may also bring an infringement action, so it will depend on the circumstances of the case.

### 5.1 What remedies are available against a copyright infringer?

The IPA provides the following remedies for rights holders:

- interim injunctions (including seizure and deposit of revenue, or posting or deposit of amounts payable by way of remuneration, suspension of the work of reproduction, distribution and communication to the public, seizure of copies produced or used and of material used mainly for the reproduction or communication to the public, destruction of the equipment, apparatus and material supports, or suspension of the services provided by intermediaries to third parties who use them to infringe intellectual property rights)
- suspending the infringing exploitation or the activity committing the infringement
- prohibiting the infringer from resuming the exploitation or the activity committing the infringement
- withdrawing from the market and destroying unlawful copies
- withdrawing from commercial circuits, disabling and, where necessary, destroying any moulds, plates, negatives and other material or instruments intended mainly for the reproduction, creation or manufacture of unlawful copies
- removing, or placing seals on, apparatus used for unlicensed communication to the public of works or services
- confiscating, disabling and, if necessary, destruction of the instruments whose sole purpose is to facilitate the unlicensed removal or neutralisation of any technical device used to protect a computer program
- removing or sealing the instruments used to facilitate the non-authorized suppression or neutralisation of any technical device whatsoever used to protect works or services
- suspending the services provided by intermediaries to third parties who use them to infringe intellectual property rights
- to elect between either an enquiry as to damages or an account of profits arising from the infringement.

### 5.2 Are there any specific remedies for online copyright infringement?

Where it appears that a website is displaying infringing material, or providing the description or localisation of works that are apparently being offered without authorisation (should such activity not be limited to a

mere technical intermediation), rights holders can seek an injunction from the Second Section of the Intellectual Property Commission (attached to the Education, Culture and Sports Ministry) ordering the internet service provider (ISP) to remove such infringing contents in the event it causes or may cause a patrimonial damage. The ISP should be put on notice of the person using their services to infringe copyright before the order is sought. Should the ISP voluntarily remove the infringing contents once it has been requested to do so by the Second Section, the IPA determines that such removal shall be considered an implicit acknowledgement of the infringement.

Failure to voluntarily remove the infringing contents for the purpose of guaranteeing that the enacted resolution is effective shall prompt the Second Section to ask the intermediation services, electronic payment services and advertisement providers to suspend the corresponding service provided to the infringing ISP. Should the service be provided under a domain name using the extension “.es” corresponding to Spain, or under another first level domain name whose register is established in Spain, the registry authority shall be notified to cancel the domain name, which shall not be assigned again for registration within, at least, six months.

### 5.3 Under what circumstances is copyright infringement a criminal act and what sanctions may apply?

There are a number of criminal acts under the Criminal Code in relation to copyright. The main offences are related to selling or making available for sale copies of a copyright work but there are also offences for communicating the infringing copy to the public. The sanction for committing a criminal offence in relation to copyright is likely to be either a fine and/or a prison sentence.

If an offence is committed by a company, the legal person itself can also be liable for the criminal act. Additionally, if it is proven that an individual officer of the company consented to committing the offence, that officer can also be liable for the criminal act. Each offence requires a level of intention, knowledge or belief on behalf of the potential culprit, and each carries various penalties:

<b>Criminal act</b>
Reproducing, plagiarising, distributing or publicly disclosing all or part of a literary, artistic or scientific work.
<b>Relevant intention, knowledge or belief</b>
For profit and to the detriment of a third party and with the knowledge, or having reason to believe, that the copy is infringing a person’s copyright.

<b>Penalty</b>
Six months to four years in prison and a fine. In cases of occasional distribution: Six months to four years in prison or a fine, or 31 to 60 days of community work (in view of the circumstances of the offender and the small amount of financial profit).  When the author is a legal person (according to Article 31 <i>bis</i> of the Spanish Criminal Code): a fine.
<b>Criminal act</b>
Transforming, interpreting, performing all or part of a literary, artistic or scientific work in any kind of medium, or broadcast by any medium, without authorisation by the holders of the relevant intellectual property rights or their assignees.
<b>Relevant intention, knowledge or belief</b>
For profit and to the detriment of a third party and with the knowledge, or having reason to believe, that the copy is infringing a person’s copyright.
<b>Penalty</b>
Six months to four years in prison and a fine.  In cases of occasional distribution: Six months to four years in prison or a fine, or 31 to 60 days of community work (in view of the circumstances of the offender and the small amount of financial profit).  When the author is a legal person (according to Article 31 <i>bis</i> of the Spanish Criminal Code): a fine.
<b>Criminal act</b>
Providing access or the location on the internet to copyright work or services without authorisation by the holders of the relevant intellectual property rights or their assignees.
<b>Relevant intention, knowledge or belief</b>
For profit and to the detriment of a third party and with the knowledge, or having reason to believe, that the copy is infringing a person’s copyright.
<b>Penalty</b>
Six months to four years in prison and a fine.  When the author is a legal person (according to Article 31 <i>bis</i> of the Spanish Criminal Code): a fine.

<b>Criminal act</b>
Intentionally exporting or storing copies of the works, productions or performances previously mentioned, including digital copies of them, with the intention of reproducing, distributing or publicly disclosing them.
<b>Relevant intention, knowledge, or belief</b>
The knowledge, or having a reason to believe, that communicating the work is infringing copyright.
<b>Penalty</b>
Six months to four years in prison and a fine. When the author is a legal person (according to Article 31 <i>bis</i> of the Spanish Criminal Code): a fine.
<b>Criminal act</b>
Intentionally importing the works, productions or performances previously mentioned, without authorisation and with the intention of reproducing, distributing or publicly disclosing them, regardless of whether these have a lawful or unlawful origin in their country of origin. (Unless they come from a member of the European Union and have been acquired directly from the copyright holder).
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that the copy is infringing a person's copyright.
<b>Penalty</b>
Six months to four years of prison and a fine.
When the author is a legal person (according to Article 31 <i>bis</i> of the Spanish Criminal Code): a fine.
<b>Criminal act</b>
Facilitating the above mentioned criminal acts by suppressing or neutralising any technical measures that have been placed to prevent them, without authorisation.
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that the copy is infringing a person's copyright.
<b>Penalty</b>
Six months to four years in prison and a fine. When the author is a legal person (according to Article 31 <i>bis</i> of the Spanish Criminal Code): a fine.

<b>Criminal act</b>
Manufacturing, importing, putting into circulation or possessing with commercial aim any means specifically intended to facilitate unauthorised suppression or neutralisation of any technical device that has been used to protect computer programs or any other work, interpretation or performance subject to copyright.
<b>Relevant intention, knowledge or belief</b>
The knowledge, or having reason to believe, that the copy is infringing a person's copyright.
<b>Penalty</b>
Six months to three years in prison.
When the author is a legal person (according to Article 31 <i>bis</i> of the Spanish Criminal Code): a fine.
<b>Criminal act</b>
Aggravating circumstances regarding all the above mentioned criminal acts:
<ul style="list-style-type: none"> <li>• special economic importance of the profit</li> <li>• particular seriousness of the events, attending to the value of the objects produced unlawfully, the number of works, or the importance of the damage caused</li> <li>• that the offender belongs to an organisation or assembly whose purpose is to perpetrate activities that infringe intellectual property rights</li> <li>• using persons under 18 years of age to commit those offences.</li> </ul>
<b>Relevant intention, knowledge, or belief</b>
The knowledge, or having a reason to believe, that the article is to be used to make infringing copies for sale.
<b>Penalty</b>
Two to six years in prison and a fine and special barring from practice of the profession related with the offence committed from two to five years.
When the author is a legal person (according to Article 31 <i>bis</i> of the Spanish Criminal Code): a fine.

#### 5.4 Is there a time limit for bringing a copyright infringement claim?

For civil actions, the time limit is five years to bring a compensation for damages claim for breach of copyright. Time begins to run from the date when the actions could lawfully have been exercised.

There is no explicit time limit for bringing any other copyright infringement claim under the IPA. However, legal doctrine considers that the same limit of five years should apply, accepting the analogy with the provisions of the Law 11/1986, dated 20 March, on Patents and of the Law 17/2001, dated 7 December, on Trade marks.

### 5.5 Can legal (or any other) costs be recovered in an action for copyright infringement? If so, what percentage of costs will typically be recovered by the successful party?

In Spain, by virtue of the Law 1/2000, dated 7 January, on Civil Procedure, the general rule is that the unsuccessful party pays the costs of the successful party, unless the court considers and reasons that the case may pose serious *de facto* or *de iure* doubts. If the upholding or dismissal of the pleas is partial, each party shall pay the costs involved in their proceedings and the common costs shall be shared equally, unless there are reasons to impose the costs on one of these as they litigated recklessly.

When the costs are imposed on the litigant who has lost the case, only they shall be obliged to pay the full amount of the part which corresponds to the attorneys and other professionals who are not subject to rates or dues, which shall not exceed one third of the cost of the proceedings, for each of the litigants in this situation.

## 6. Enforcement

### 6.1 What courts can you bring a copyright infringement action in, and what monetary thresholds, if any, apply?

According to the Organic Act 6/1985, dated 1 July, on the Judiciary, the Commercial Courts shall resolve disputes concerning intellectual property rights. The Central Administrative Courts shall authorise the material execution of the resolutions adopted by Section Two of the Intellectual Property Commission in order to interrupt the provision of information society services, or in order to get the infringing contents withdrawn. No monetary thresholds apply.

### 6.2 Are there any other ways in which you can enforce copyright?

#### Criminal proceedings

Criminal proceedings, although rare, can be brought on the grounds described in 5.3 above, and pursued through the criminal courts.

### 6.3 What agency bodies are responsible for promoting and/or enforcing copyright?

#### What do they do?

The Intellectual Property Commission of Spain is the official government body responsible for intellectual property rights in Spain. It is an executive Commission of the Education, Culture and Sports Ministry.

The IPC is responsible for:

- mediation
- arbitration
- tariff determination
- control
- safeguarding of the intellectual property rights assigned by the IPA
- advice on any matters within its competence when consulted by the Education, Culture and Sports Ministry.

### 6.4 What are the main collective rights management agencies that operate in your jurisdiction and who do they represent?

To use copyright material without infringing the rights of another, you usually need to gain permission of the rights holder.

However, as a result of the practical difficulties and administrative burden for copyright owners in granting licences individually to all those seeking them, copyright

holders participate in collection schemes by signing up as members of the collecting societies. Once members, they either transfer rights to the collecting society, which then administers the rights for them, or appoint the society as their agent.

The key collecting societies in each sector are as follows:

<b>Agency</b>
Sociedad General de Autores y Editores (SGAE)
<b>Who it represents</b>
Authors and editors
<b>Agency</b>
Centro Español de Derechos Reprográficos (CEDRO)
<b>Who it represents</b>
Writers, translators, journalists and publishing houses
<b>Agency</b>
Asociación de Gestión de Derechos Intelectuales (AGEDI)
<b>Who it represents</b>
Phonogram producers
<b>Agency</b>
Artistas Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE)
<b>Who it represents</b>
Performers
<b>Agency</b>
Visual Entidad de Gestión de Artistas Plásticos (VEGAP)
<b>Who it represents</b>
Visual artists
<b>Agency</b>
Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA)
<b>Who it represents</b>
Producers of audiovisual recordings
<b>Agency</b>
Artistas Intérpretes, Sociedad de Gestión (AISGE)
<b>Who it represents</b>
Stage managers, dubbers, actors and dancers

<b>Agency</b>
Asociación de Derechos de Autor de Medios Audiovisuales (DAMA)
<b>Who it represents</b>
Directors and scriptwriters of audiovisual and cinematographic works

## 6.5 Are copyright levies payable? By whom, and in what circumstances?

This does not apply in our jurisdiction.

## 7. Copyright reform

### 7.1 What do you consider to be the top two recent copyright developments?

#### Report on the draft Bill to transpose the Directive on the collective management of copyright and multi-territorial licensing of rights

On 22 September 2017, the Council of Ministers agreed to urgently introduce a procedure to draft and approve a preliminary Bill to modify the IPA in order to incorporate the Directive 2014/26/EU of the European Parliament and of the Council, on the collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

Specifically, the draft Bill will:

- improve the control mechanisms of the collecting societies, by introducing measures such as creating an internal body to control each collecting society (formed both by members of the collecting society and by external people) that shall supervise its own governing bodies concerning the allocation of revenues and conduct disciplinary proceedings, among other things. Similarly, collecting societies shall be obliged to publish an annual transparency report and the audit of their annual accounts.  
The draft Bill will also apply to those collecting societies established outside the Spanish territory that are willing to provide their services in Spain, as well to any entity that collectively manages intellectual property rights in Spain.
- regulate the granting of multi-territory licences of rights in musical works for online use in the internal market. These licences will make it easier for online music service providers to obtain the necessary permission, through a single cross-border authorisation, to use the rights to musical works or repertoires in either the territories of several Member States or in the entire European Union.

There have been no further developments in drafting and approving the said preliminary Bill.

#### Royal Legislative Decree 12/2017, dated 3 July, which amends the consolidated text of the Intellectual Property Act, enacted by the Royal Legislative Decree 1/1996, dated 12 April, concerning the system of fair compensation for private copying.

In addition, the Royal Legislative Decree 12/2017, which amends the IPA in line with recent European and national judicial pronouncements which interpreted Directive 2001/29/EC., has introduced another development this year, since this new legislation changes the regulation of personal copies for private use.

Before the Royal Legislative Decree 12/2017 entered into force, the private copy compensation for the copyright payments that were not received (due to private copying) was paid using the General State Budget, according to the IPA provisions. Now, this payment must be satisfied by the manufacturers and distributors of the equipment, apparatus and media materials.

### 7.2 What do you consider will be the top two copyright developments in the next year?

#### Comprehensive reform of the IPA

On 4 November 2014, the latest reform of the IPA was approved, the provisions thereof already being in force. Despite the Government announcing that the preliminary groundwork needed to conduct a comprehensive reform of the IPA would start the following year (ie 2015), it has not yet been approved.

It is likely that this comprehensive reform will take place over the coming year.

#### Developments on the EU initiatives adopted last year

As a key part of its Digital Single Market strategy (initially released on 6 May 2015), on 14 September 2016 the European Commission set out proposals on the modernisation of copyright, to increase cultural diversity in Europe and the online content available, at the same time as introducing clearer rules for all online stakeholders.

On 10 May 2017, the European Commission published the mid-term review of its Digital Single Market Strategy. It took stock of the progress made, made calls to legislators to swiftly act on all proposals already presented, and outlined further actions on online platforms, data economy and cybersecurity.

We believe these initiatives will lead to future developments regarding copyright.

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