

UNESCO
WORLD ANTI PIRACY OBSERVATORY

SPAIN

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I. Legislation

1. Laws

The general copyright laws /regulations in Spain:

Copyright is protected in Spain through international Agreements, the [Royal Legislative Decree 1/1996 of April 12, on Intellectual Property \(in Spanish\)](#) (RDIP), as well as other legislation related to enforcement of copyright or affecting copyright protection.

2. Other laws/regulations:

- Civil Procedure Act 1/2000 7th
- Civil Code 1889
- Criminal Code, 23rd of November 10/1995
- 23/2002, 11th July Information Society Measures and Electronic Commerce

3. Development and perspectives

The Government of Spain has prepared the Sustainable Economy Draft Bill, which proposes legal authorization for the setting up of an administrative body and the development of a procedure ensuring the safeguarding of all the rights at stake.

4. Brief summary of the Spanish copyright legislation

- *Exclusive rights of the authors and of the owners of neighboring rights*

The exclusive rights recognized for authors and neighboring rights owners are the ones provided in the International treaties and the European legislation concerning these issues, these exclusive rights include: Distribution, reproduction, communication and adaptation (articles 17 to 21 of the Royal Legislative Decree on Intellectual Property). Apart from these Spain protects plainly the moral rights.

- *Allowed use of a work without the permission of the owner of the copyright*

The Copyright Law provides a list of limitations and exceptions for specific rights such as reproduction or communication and only for certain cases. This list is regulated in the 2001/29 harmonization of certain aspects concerning intellectual property in the Society Information and transposed to the national legislation through articles 31 to 39 of the Royal Legislative Decree on Intellectual Property.

- *Protection of the foreign works*

Foreign works are protected in Spain, either unilaterally, by virtue of residence or first publication in Spain, or pursuant to Spain's international treaties. Furthermore, Spanish Law codifies the EU rules regarding the term of copyright in foreign works. That aside, several countries have signed bilateral agreements with Spain based on reciprocity including mutual assurances of national treatment. Finally, since Spain is member of the Bern convention and the Universal Copyright Convention, works originated from countries members of these Conventions will be protected in Spain during at least the minimum terms provided in these Conventions (Articles 163 to 167 of the Royal Legislative Decree on Intellectual Property).

- *Period of copyright protection*

The period of copyright protection under Spanish Law is 70 years after the death for the authors and 50 years from the fixation for owners of neighboring rights (Articles 26 and 112 of the Royal Legislative Decree on Intellectual Property).

- *Registration*

As the Berne Convention requires, there is no mandatory registration under the Spanish copyright Act, this means there is no formal requirements in the protection of copyright works (Article 1 of the Royal Legislative Decree on Intellectual Property).

5. International treaties/ conventions

Spain is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention on the Protection of Literary and Artistic Works](#), in force since December 5, 1887.
- [Universal Copyright Convention](#), accession since October 27, 1954 to UCC of 1952 and on April 10, 1974 to UCC of 1971.
- [Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations](#), in force since November 14, 1991.
- [WTO TRIPS Agreement on Trade Related Aspects of Intellectual Property Rights](#), since January 1, 1995.
- [WIPO Copyright Treaty](#) (WCT)
- [WIPO Performances and Phonograms Treaty](#) (WPPT)
- [Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms](#), in force since August 24, 1974.

II. Measures and remedies

1. Copyright infringement

There is no specific definition for copyright infringement; nevertheless it can be defined as the violation of any of the rights protected by the Intellectual Property Legislation in Spain. Indeed there are different repairing measures dealing with civil or criminal infringements.

Apart from the Civil and Criminal Procedure Laws, the Royal Legislative Decree on Intellectual Property (RDIP) provides series of articles that deal with this matter; these are articles 138 to 143.

The owner of the rights recognized in the RDIP may apply for an injunction restraining the unlawful activity of an infringer and claiming indemnification for material and moral damages.

Internet Piracy

The EU Directive on electronic Commerce addresses the liability of service providers in the information society mainly those operating on the internet. Articles 13-17 of the Spanish Act 34 of July 11, 2002 exempt such service providers from liability under specific conditions. The exclusions apply for instance to civil cases. See also Criminal Code.

2. Remedies to protect copyright holders.

Civil remedies

Article 138 of the Royal Legislative Decree on Intellectual Property states clearly that, the owner of the rights may obtain special preliminary relief, a variety of restraining orders, and damages for economic and moral harm. Pre-suit relief may include freezing gains or assets, preliminary injunction, confiscating copies and instruments, cessation of services, and preliminary discovery.

Cessation of infringement activities may include (article 139 of Royal Legislative Decree on Intellectual Property):

The restraining of the unlawful activity which include:

- suspending the infringing exploitation;
- prohibiting the infringer from resuming it;
- withdrawing from the market and destroying unlawful copies;
- disabling, and where necessary destroying, any molds, plates, printing blocks, negatives and other material intended solely for the reproduction of the unlawful copies, and of the instruments whose sole purpose is to facilitate the unauthorized removal or neutralization of any technical device used to protect a computer program;
- removing, or placing seals on, apparatus used for unauthorized communication to the public.

The Civil Procedure Act rules certain provisions concerning an ordinary procedure (article 249). It also provides for a series of articles that deal with preliminary relief such as seizure of illicit gains, of the sums claimed, of infringement copies or products or materials (articles 727 (8) and (9)).

Criminal measures

Criminal infringement in Spain assumes bad faith or knowledge that rights may be violated, and in specified cases gainful intention (articles 270, 271, 272, 287, 288 of the Criminal Code). The related provisions of the Criminal Code include measures such as fines or confinements in addition to penalties of prison depending on the seriousness of the harm.

3. Provisional measures

Article 141 of the Royal Legislative Decree on Intellectual Property regulates some provisional measures:

“In the event of infringement or where there are good and reasonable grounds to fear that infringement is imminent, the judicial authority may, at the request of the owners of the rights recognized under this Law, decree such precautionary measures as may be necessary, according to the circumstances, for the immediate protection of the rights concerned, and especially:

- (1) the accounting and deposit of revenue earned through the unlawful activity or, where appropriate, the posting or deposit of amounts payable by way of remuneration;
- (2) suspension of the work of reproduction, distribution and communication to the public, as appropriate;
- (3) seizure of copies produced or used and of material used solely for the reproduction or communication to the public.
- (4) seizure of the equipment, apparatus and the ones used for the suppression or alteration of information for rights electronic management referred to in article 162”.

As mentioned before, article 727 of the Civil Procedure Act comes into force equally for provisional measures.

For criminal cases, measures ruled by article 141 of the Royal Legislative Decree on Intellectual Property may also be applied (article 143 of the Royal Legislative Decree on Intellectual Property).

4. Penalties for copyright infringement

Civil Remedies

Apart from cessation, preliminary and urgent measures, publication or dissemination of the judgment at expense of the defendant mentioned before, the Law provides a monetary relief in article 140 of the Royal Legislative Decree on Intellectual Property which requires the claimant to choose between:

- Damages/profits: Compensation for the negative economic consequences of the infringement, such as the loss of benefits suffered and the benefits that the infringer has obtained or;
- Reasonable royalties: such remuneration as would have been obtained from the defendant for authorizing the infringing use.

Article 140 also authorizes damages for moral harms even if there is no economic harm that the court may evaluate according to the circumstances and the seriousness of the harm.

Criminal Penalties

- Article 270 of the Criminal Code raises penalties for criminal infringement of copyright to a cumulative fine or confinement of 12 to 24 months in addition to a penalty of 6 to 24 months of imprisonment.
- Article 271 includes aggravated cases
- Article 270 penalizes making or importing instruments specifically intended to unauthorized removal or circumvention of any TPM used to protect works protected by copyright.
- Article 286 establishes a penalty of imprisonment from 6 to 24 months plus a fine or confinement of 6 to 24 months for whomever, without the consent of the service provider and with gainful intent, provides unauthorized access to a broadcast service, interactive distance services or gives conditional access to such by means of different actions established on this article. This article also penalizes whoever intends alters or duplicates the identification number of communication equipment or commercializes equipment subject to fraudulent manipulation.

5. Requirements for foreign persons

As a Member State of the EU, Spain accords full national treatment with regard to intellectual property to nationals of the European community and the European Economic Area (E E A). It also protects claimants pursuant to any treaty which becomes effective in Spain to the extent permitted by the Spanish law. Otherwise the protection of foreign works is ruled by articles 163 to 167 of the Royal Legislative Decree on Intellectual Property.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

Enforcement bodies responsible for enforcing copyright and neighboring rights are the Police (including Border Police), Custom authorities, Market surveillance authorities, etc.

b) Enforcement bodies entitled to act *ex-officio* in copyright infringement cases

In almost every case, crimes against intellectual property shall be prosecuted *ex-officio* (i.e. there is no need of a private claim by the injured party).

c) Courts deal with copyright cases / See III. 1.

Civil claims in intellectual property issues or unfair competition are dealt with within the "Commercial Courts", and then to specified sections of the Audiencia Provincial, this is intermediate courts taking appeals on law.

Criminal claims are dealt with within the Criminal Courts.

2. Specific measures under the law for enforcing copyright at the border

European Regulations impose procedures for controlling infringing imports entering the EU. These matters are dealt with in Spain by the Customs General Direction within the Department of Special Taxes of the Tax Agency. In practice there is a prior specific agreement of protection with the authorities or there is no such agreement. In the first case, the agreement may be followed from a request addressed to the customs authorities to block private merchandise. The Law provides for a specific procedure in these cases.

If there is no specific agreement but the customs authorities found some possible illicit material, they will suspend the release of the products and will notify the right holder. The Law rules out some norms dealing with this case.

IV. Public awareness

1. Awareness campaigns and actions

The *Plan for Action Against Activities which Infringe Intellectual Property Rights 2008* has been launched ruling several measures to raise awareness on the effects of *piracy*, at a general level through TV, radio, on-line media and others, and at a specific level in schools, universities and other public institutions.

Besides the Plan for Action Against Activities which Infringe Intellectual Property Rights, some informal negotiations are taking place in order to launch a Communication Plan focusing on press and principal media.

2. Promotion of legal exploitation

Information not available

3. Associations and organizations with awareness-raising purpose

Information not available

4. Best practices

Information not available

V. Capacity building

1. Training

2. Establishment of specialized units and intersectoral groups

A Royal Decree of creation was set up in 2005 (Royal Decree 1228/2005 October 13TH) which creates and regulates the Intersectoral Commission for Action Against Activities which Infringe Intellectual Property Rights. This organ implements, manages and evaluates the application of the Plan for Action Against Activities which Infringe Intellectual Property Rights.

The principal measures concerning this Plan are:

- Cooperation and collaboration
- Preventive Actions
- Awareness measures
- Normative actions
- Training groups involved

The Spanish Government (Consejo de Ministros) approved, at its meeting of 9th October 2009, an agreement which led to the creation of *the Interministerial Labour Commission for advice in the fight against the infringement of Intellectual Property rights through **Internet pages***.

The new Interministerial Commission, which is made up of representatives of eight ministries, will formulate proposals to the Cabinet with a view to achieving a significant reduction in the negative effect of Internet web sites that facilitate the infringement of Intellectual Property rights on a large scale. The work of the Commission has been included by the Government in the Sustainable Economy Draft Bill, which proposes the grounds for the articulation of a fast and effective administrative channel to re-establish legality.

The Commission will also study the creation of a legal online offer system and will propose a series of educational and strengthening measures so as to allow the gradual overcoming of the existing deficit of social awareness regarding Internet piracy.

3. Best practices

Information not available

VI. Other

1. Technological Protection Measures (TPM)

Article 160.3 of the Royal Legislative Decree on Intellectual Property defines TPM as: “any technique, device or component that, by its normal functioning is meant to prevent or restrict certain acts relating protected works or media productions from taking place without authorization of the owners”. This article provides for a series of provisions concerning TPM and its limitations.

2. Licensing Schemes

Information not available

3. Optical Disks

Information not available

4. Hotlines

Information not available

5. Relevant contacts

Culture Ministry, www.mcu.es

Contact person in the Copyright Unit:

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	Police (incl. Border Police)	Custom authorities	Market surveillance authorities	Anti-fraud authority	Tax authorities	Specialized court for IP issues	Customer safety authorities
Copyright/ related rights	Police and Civil Guard	Tax Administration National Agency	Competition Authority	Police and Treasury	Police and Treasury	For civil proceeding: Regional High Courts and Mercantile Court. For criminal proceeding: Criminal Court	Consumer Affairs National Council