

[REDACTED] (GROW)

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**Subject:**

FW: Our position regarding snippets copyright in Spain and EU law

**From:** [REDACTED]  
**Sent:** Tuesday, October 07, 2014 11:31 AM  
**To:** [REDACTED] (ENTR)  
**Cc:** [REDACTED]  
**Subject:** Our position regarding snippets copyright in Spain and EU law

- Dear [REDACTED],

We, the "Coalición Prointernet" ("ProInternet Coalition"), represent a large number of companies and interests: over a thousand media publishers, hundreds of internet companies and entrepreneurs.

We are writing to point out the issues raised by a proposal for copyright levy on content snippets on the internet which is being proposed in Spain. The Coalición Prointernet believes this proposal is harmful to consumers, European businesses, creators and the internet as a whole. We also believe it fundamentally disregards EU rules and the EU single market.

First and foremost, the Spanish law has not been notified in accordance with Directive 98/34/EC. As such, it infringes EU law and also will be unenforceable. We urge you to raise this formally with the Spanish authorities. We would also point out MEP's Beatriz Becerra recent Parliamentary question to the European Commission on this matter<sup>[1]</sup>.

Further, while we fully support IP but believe the internet to be a place for new business models as a key transformer of all economic activities. The current proposal might put this opportunity to an end for Spain and the EU. In doing so, it raises serious questions regarding its compatibility with the Digital Single Market and with existing EU rules. These include in particular the free movement of services, the e-commerce Directive, the current European acquis on IPRs, the right to link, and the fundamental rights to free expression and property.

We would be grateful for the opportunity to follow up on those points in more detail should you being interested, and look forward to your views on ensuring compliance with European rules on those issues.

Best Regards

[1] P-006993-14

## Annex – the Spanish regulation and its implications

The Government of Spain has proposed legislation modified its IP law and the legislative process is ongoing.[1] **Article (32.2) proposes to levy payments on short quotations and linking on the Internet.** This payment is an "inalienable right to compensation for news publisher", which applies even to publishers who want their content to be shared online, for example under Creative Commons or other Free Licenses.

The relevant provision of the Draft Regulation reads as follows:

*Article 32. Quotations, reviews and illustration for teaching or scientific research purposes.*

*2. The making available to the public by electronic service providers of non-significant fragments of aggregated content, reported in periodical publications or on periodically updated websites, which have as their purpose informing, creating a public opinion or entertaining, shall not require authorization, without prejudice to the right of the publisher or, where appropriate, of other right holders to receive fair compensation. This right cannot be waived and will be made effective through collecting societies. In any case, the making available to the public by third parties of any image, photographic work or ordinary photograph reported in periodical publications or periodically updated websites will be subject to authorization*

*Notwithstanding the provisions of the preceding paragraph, the making available to the public by service providers that provide search engines to search for isolated words included in the contents mentioned in the preceding paragraph shall not be subject to authorization and fair compensation provided that such making available to the public occurs not for their own commercial purposes and is strictly limited to what is necessary to provide search results in response to queries previously made by a user to the search engine and where the making available to the public includes a link to the original website.*

This **provision has not been notified in accordance with Directive 98/34/EC**. The Bill itself was notified in May 2013<sup>[2]</sup>, before the introduction of the new right.

However, the draft bill constitutes a “Draft Technical Regulation” in the sense of Directive 98/34/EC. It seeks to establish rules affecting the provision of information society services. It is accordingly subject to the obligations of notification to the European Commission.

The fact that Spain notified an earlier version of the Draft Regulation under the Directive does not exempt it from the obligation of notifying the amendment to Article 32(2) that was proposed subsequently. This is because the notification also applies to changes to the draft that have the effect of significantly altering its scope, adding specifications or requirements, or making the latter more restrictive (Article 8(1) of Directive 98/34/EC).

Failing to notify the measure on the part of Spanish authorities would constitute a breach of Article 8 of Directive 98/34/EC, which provides for a clear and unconditional duty of notification.

It also makes the law unenforceable against private parties before national courts, in accordance with the case law of the CJEU.

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<sup>[1]</sup> “Modificación de la Ley de Propiedad Intelectual” or “Bill amending the Recast Text of the Act on Intellectual Property”, approved by Royal Legislative Decree 1/1996, of 12 April, and Law 1/2000, of 7 January, on Civil Procedure

<sup>[2]</sup> [notification number 2013/244/E](#)