

(GROW)

From: [REDACTED]
Sent: 24 September 2014 12:57
To: ENTR /C/3 PREVENTION TECHNICAL BARRIERS
Subject: Fwd: Spain's failure to properly notify a draft law affecting ISS
Attachments: Article 32-2 Literal Translation- Ancillary Copyright in Spain.pdf

Dear Sir or Madam,

I would like to forward you the email below which I put to [REDACTED] attention yesterday. It concerns a Spanish draft law amending the country's intellectual property laws which has not been properly notified.

As the proposed Art. 32.2 (see link and attachment) would have a severe impact on information society services and their ability to provide their services cross-border, we believe that a proper analysis of the proposed law against EU law is required.

I stand ready to provide you with more information and I would like to ask you what the Commission intends to do in this specific case.

I thank you for your answer in advance.

Best
[REDACTED]

----- Forwarded message -----

From: [REDACTED]
Date: Tue, Sep 23, 2014 at 5:57 PM
Subject: Spain's failure to properly notify a draft law affecting ISS
To: [REDACTED]@ec.europa.eu, [REDACTED]@ec.europa.eu

Dear [REDACTED], dear [REDACTED],

I would like to draw your attention to a draft law that is currently being discussed in Spain. The proposed law would amend the country's Intellectual Property Law. Among the many amendments, there is a provision which would introduce an ancillary right in favor of publishers for the online aggregation of copyright protected content (Article 32.2). According to the proposed law, this right would function under an unwaivable, equitable compensation scheme managed by a collecting society. You can find the draft text of the proposed Article 32.2 under this link (on page 9):

[http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=pu10&DOCS=1-1&DOCORDER=LIFO&QUERY=\(BOCG D 10 388 2650.CODI.\)#\(P%C3%A1gina2\)](http://www.congreso.es/portal/page/portal/Congreso/PopUpCGI?CMD=VERLST&BASE=pu10&DOCS=1-1&DOCORDER=LIFO&QUERY=(BOCG D 10 388 2650.CODI.)#(P%C3%A1gina2))

For your convenience, I have attached a non-official translation to this email.

We understand that Article 32.2 was inserted by the Spanish government at a very late stage and only *after* Spain notified the draft law to the Commission under Directive 98/34/EC, as amended by Directive 98/48/EC (Notification No 2013/244/E). Accordingly, the Commission did not have the opportunity to scrutinize the entire law in light of its impact on the EU single market.

As the law introduces significant new obligations on information society services by specifically legislating for the activities of “electronic content aggregation service providers”, Spain is obliged to adhere to the notification procedure set out under Directive 98/34/EC, as amended by Directive 98/48/EC. We think that the proposed provision raises serious concerns as to the compatibility with the single market for information society services. The mentioned provision would restrict the cross-border provision of certain information society services in Spain as the mere accessibility of these services in Spain could trigger a compensation claim in Spain. Large-scale geo-blocking of services for Spain could be the result creating a new barrier to the free movement of services.

Apart from that we also have substantial concerns as to the laws compatibility with EU copyright law as well as Spain’s and the EU’s international law obligations. We would be happy to provide you and your colleagues with more information on these issues.

I would like to kindly ask you to remind the Spanish authorities about their obligation to notify the draft law in order to give the European Commission the opportunity to scrutinize the proposed law against EU law, including its impact on one of the Treaty’s fundamental freedoms.

I thank you for your attention and remain at your disposal for any questions you might have.

Best,

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[Redacted signature block]

[Redacted line]

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[Redacted signature block]

[Redacted line]