

[REDACTED] (GROW)

**From:** Miguel Perez Subias <mps@aiui.es>  
**Sent:** 24 September 2014 14:25  
**To:** ENTR /C/3 PREVENTION TECHNICAL BARRIERS  
**Cc:** [REDACTED] (ENTR)  
**Subject:** Complaint against the Spanish State in relation to Draft Law to amend the Consolidated Law on Intellectual Property  
**Attachments:** AUI\_complaint\_form\_es\_signed.pdf

Att [REDACTED],

My name Miguel Perez Subias, President of the Association of Internet Users in Spain.

This email is to inform you that we have today filed a EU complaint against the Spanish State in relation to Draft Law to amend the Consolidated Law on Intellectual Property (now in the process of parliamentary procedure in the Spanish Senate (see attached document with the complaint, the main info is in Spanish and in English, we include links to related documents)

On February 14, 2014, the Council of Ministers approved the Draft Law to amend the Consolidated Law on Intellectual Property that introduces, under Article 32, the so-called "Agregators tax".

This "tax" is effectively a compensation that the *providers of electronic content aggregation services* must pay to the publishers for aggregating *news snippets*. Strictly speaking, this is an actual limitation of the exclusive intellectual property rights, so that aggregators will not have to ask for the editor's prior approval in order to aggregate news snippets but, in exchange, they will have to pay an irrevocable compensation. Said irrevocable compensation shall be managed by the corresponding managing entity.

Article 32.2 has not been notified to the European Commission, despite being subject to the obligation of being notified to the Commission (DG for Enterprise), since it is a "Draft Technical Regulation". Therefore, under the terms provided in Directive 98/34 EC, its approval must be postponed until the Commission has given its effective approval. The fact that Spain notified the Commission of an initial version of the Draft Amendment to the Law does not exempt it from communicating the specific amendment of Article 32.2 of the IPL, which was proposed after the fact.[1]

The failure of the Spanish authorities to fulfill their obligation to notify the above would constitute a breach of Art. 8 of Directive 98/34/EC and Art. 4.3 of the TEU. Furthermore, it may imply that the "Agregators tax" cannot be enforced against companies required to pay the compensation, according to ECJ case law (see ruling from the ECJ on the *CIA* case).

The complaint was presented by one side to demand that the law be notified and then to point out that it is against policy and against the philosophy of the EU Digital single market. In fact the inalienable character of the law would mean a de facto cancellation of the Creative Commons licenses in Spain something that seems at least reckless and has a report against from the National Competition Commission.

We request that the issue be studied and act quickly to demand the law be notified in the terms in which they want to be approved and secondly that urged the Spanish Government to align its legislation in accordance with the European guidelines on matters of information society, competition and intellectual property.

We remain available to clarify whether you need from us and soon we will ask audience, with other affected collectives, to explain you the dimension of the problem raised if this law passed as it is.

Best regards

Miguel Pérez Subias  
+34 609 03 22 87  
President  
Spanish Internet Users Association

## **RELEVANT DOCUMENTS**

### **LEGAL REPORT**

[http://todoscontraelcanon.org/docs/EN\\_LPI\\_Spain\\_Agregator\\_Tax\\_Report.pdf](http://todoscontraelcanon.org/docs/EN_LPI_Spain_Agregator_Tax_Report.pdf)

Assembly of the National Commission on Markets and Competition Amendment article 32 of the Intellectual Property Bill REPORT

[http://todoscontraelcanon.org/docs/CNMC\\_Report.pdf](http://todoscontraelcanon.org/docs/CNMC_Report.pdf)

### **PROPOSAL**

[http://todoscontraelcanon.org/docs/CNMC\\_Proposal.pdf](http://todoscontraelcanon.org/docs/CNMC_Proposal.pdf)

Economic Analysis impact by AFI

[http://todoscontraelcanon.org/docs/AFI\\_Economic\\_Analysis.pdf](http://todoscontraelcanon.org/docs/AFI_Economic_Analysis.pdf)

Draft Law Text to amend the Consolidated Law on Intellectual Property (Actual text, now under Senado discussion)

ANTEPROYECTO DE LEY DE MODIFICACIÓN DEL TEXTO REFUNDIDO DE LA LEY DE PROPIEDAD INTELECTUAL

[http://http/www.senado.es/legis10/publicaciones/pdf/senado/bocg/BOCG\\_D\\_10\\_388\\_2650.PDF](http://http/www.senado.es/legis10/publicaciones/pdf/senado/bocg/BOCG_D_10_388_2650.PDF)