

THE ADMINISTRATIVE AND JUDICIAL PROCEDURE CONCERNING INTERNET INFRINGEMENTS: MUCH MORE THAN A SIMPLE NOTICE AND TAKEDOWN PROCEDURE

*Jorge Cancio, Senior Legal Advisor and Legal Coordinator of
the Second Section of the Intellectual Property Commission,
Deputy Directorate General for Intellectual Property - Spain*



Overview

- (I) Description of the procedure
- (II) Added value of the procedure
- (III) Milestones so far and obstacles identified
- (IV) Next steps and latest developments



Description of the procedure

(1) Main elements

- Law 2/2011 of March 4, 2011 on Sustainable Economy, Royal Decree 1889/2011 of December 30, 2011
- Object. Any infringement of copyright and related rights committed through an information society service
- Purpose of the Procedure. To re-establish a situation of legality = the simple termination of the infringing behavior
- Active subject. Any owner of copyright and related rights that have been deemed to have been infringed, or his/her representatives
- Passive subject. The provider of the information society service through which the infringement is committed
- Competent body. The Procedure is carried out by the Second Section of the CPI



Description of the procedure

(2) Procedure

- Complaint by interested party
- Preliminary investigations (identifications and verification of infringement)
- Formal opening of procedure – request to take down
- If removal: procedure is closed
- If infringement persists: procedure continues with draft final resolution, final arguments and final decision
- If final decision is not abided by: execution of suspension through intermediary services, prior judicial authorisation



Added value of the procedure

No “silver bullet” exists, but...

- Identification of infringers and other third parties
- Intervention of a public authority and due process
- Detailed, reasoned and justified ruling
- Obligation to abstain from making the same content available in the future (“stay down”)
- Interruption or suspension measures by intermediary services if lack of compliance
- Effective knowledge for third-party intermediary services v-à-v infringing behavior of their clients



Milestones so far and obstacles identified

(1) Milestones

- More than 84% of more than 400 complaints duly processed and finalised
- More than 150 websites involved
- All websites involved have taken down identified infringing content
- Distinction between passive, neutral and technical intermediary services and services responsible for the content
- Linking sites with deep-links or P2P links which systematically, actively and knowingly localize illegally-offered content, deemed to infringe



Milestones so far and obstacles identified

(2) Obstacles


- Lack of accuracy of registration data for generic Internet domain names (such as “.com”)
- Massive use of privacy protection services concerning generic Internet domains
- Cooperation measures limited to technical Internet intermediary services (no online payment or advertising)
- Procedure being focused overly on individual works
- Lack of adequate prior requirements for sufficient self-protection efforts



Next steps and latest developments

- Better identification of the owners of generic domain names exercising an economic activity (ICANN)
- Reforms concerning the regulatory framework currently in force:
 - clarification that sophisticated linked web sites are involved in an economic exploitation of works
 - Empowerment of the CPI to broaden the range of works or subject matters to be protected in each case file
 - Inclusion of advertising and electronic payment services
 - Administrative sanctions for repeat infringers
 - Self-regulation for intermediaries
 - Civil procedure to allow identification of large-scale infringers
 - New Criminal Code to ensure criminal prosecution of egregious infringing linking sites





Thank you for your attention!

Jorge Cancio, Senior Legal Advisor and Legal Coordinator of the Second Section of the Intellectual Property Commission, Deputy Directorate General for Intellectual Property - Spain



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