

Advisory Committee on Enforcement

Fifteenth Session

Geneva, August 31 to September 2, 2022

NATIONAL INITIATIVES TO ADDRESS ONLINE IP INFRINGEMENTS

Contributions prepared by the Republic of Korea and Spain

1. At the fourteenth session of the Advisory Committee on Enforcement (ACE), held from September 2 to 4, 2019, the Committee agreed to consider, at its fifteenth session, among other topics, the “exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanisms to resolve IP disputes in a balanced, holistic and effective manner”. Within this framework, this document introduces the contributions of two Member States (the Republic of Korea and Spain) on national initiatives to address online IP infringement.

2. In their contributions, the Republic of Korea and Spain describe how each are responding to the surge in online copyright infringement. The Republic of Korea presents three ways in which it is addressing online piracy, namely by monitoring, detecting and deleting copyright infringing content; by recommending that online service providers implement corrective measures; and by pursuing domestic and international cooperation to effectively investigate and combat online piracy.

3. In its contribution, Spain presents its administrative procedure for combating online copyright infringement through removing or blocking access to copyright-infringing online content. The contribution also describes how the use of a private-sector investigative software facilitates the collection of evidence in alleged cases of online piracy. Finally, the paper looks at the self-regulatory measures that the creative industries and Internet access operators agreed on in Spain with a view to curbing online copyright infringement and promoting access to legal digital content.

4. The contributions are in the following order:

Copyright Enforcement Measures and Recent Achievements in Online Enforcement in the Republic of Korea	3
Administrative Procedure for Combating Piracy in the Digital Environment and Self-regulation in Spain	7

[Contributions follow]

COPYRIGHT ENFORCEMENT MEASURES AND RECENT ACHIEVEMENTS IN ONLINE ENFORCEMENT IN THE REPUBLIC OF KOREA

*Contribution prepared by Mr. Junhyeok Choi, Deputy Director, Cultural Trade and Cooperation Division, Copyright Bureau, Ministry of Culture, Sports and Tourism, Sejong, Republic of Korea**

ABSTRACT

With the rapid development of digital technologies, online copyright infringement has become a significant issue. For the year 2021, the Korea Copyright Protection Agency reported that Korean content was pirated 385,900 times on Korean websites and 2,268,721 times on overseas websites.

The Ministry of Culture, Sports and Tourism (MCST) is working to tackle the problem. Its system for monitoring copyright infringement includes deterrence measures, such as the deletion of illegal content. The MCST also pursues domestic and international cooperation with relevant authorities to improve copyright enforcement.

The MCST has strengthened cooperation with the World Intellectual Property Organization through various copyright infringement prevention programs in the field of new technology. Under its 2030 Vision for Copyright, the MCST is further developing the country's copyright system.

I. INTRODUCTION

1. The number of people participating in the online market is growing. The consumption, transaction and distribution of online content has become a significant part of our daily lives. People can easily download games, songs and movie clips. Online content users are also increasingly becoming content creators. For example, it is easy to upload short video clips to YouTube and other social media sites, available to viewers around the world. As a result of unprecedented technological development, people can enjoy almost any content they want.

2. However, there is also a down side, including a surge in online copyright infringement. With greater ease of access to online content, the likelihood of infringement, deliberate or otherwise, has also increased. The problem poses a global threat.

3. This paper addresses how the Government of the Republic of Korea is responding to the problem of online copyright infringement.

II. THE CURRENT STATUS OF ONLINE COPYRIGHT INFRINGEMENT

4. The sources of online piracy are diverse. According to the Korea Copyright Protection Agency (KCOPA), of the 385,900 cases of Korean content being pirated on websites in the Republic of Korea reported for 2021, 80,825 were committed using web hard drives (referred to

* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO.

as webhards in the Republic of Korea¹), making them the single biggest source of domestic piracy. They were followed by web portals² (66,338 cases) and social network services (38,727 cases).

5. In contrast, 2021 saw 2,268,721 cases of Korean content being pirated on websites hosted abroad. Torrent sites accounted for almost half, with 1,094,030 cases. They were followed by webtoon sites (993,296 cases) and streaming sites (149,778 cases).

III. HOW THE GOVERNMENT IS RESPONDING

A. INSTITUTIONS

6. Copyright falls within the purview of the Ministry of Culture, Sports and Tourism (MCST). Its Copyright Bureau has four divisions: the Copyright Policy Division, the Copyright Industry Division, the Copyright Protection Division and the Cultural Trade and Cooperation Division. The functions of the Copyright Bureau are regulated by the Copyright Act³ and its related Enforcement Decree⁴ and Enforcement Rule of the Copyright Act⁵.

7. Under the governance of the MCST, two additional public institutions are dedicated to copyright-related issues: the Korea Copyright Commission (KCC) and the KCOPA.

B. RESPONSE OVERVIEW (MONITORING, DETECTION AND DELETION)

8. As the ministry in charge of copyright law and policy, the MCST is addressing online copyright infringement in various ways. It operates a monitoring system jointly with the KCOPA to detect infringement, recommends that infringers take corrective action and pursues domestic and international cooperation to investigate infringement.

9. The monitoring system to detect digital copyright infringement comprises tools and technologies such as digital forensics. When it detects online piracy activities, they are reported to the MCST and the KCOPA. An appropriate action is then taken in line with the Copyright Act. Under its Article 133-1, the MCST may collect, destroy and delete the illegal content, programs, devices or information that are designed to circumvent technological protection measures. Under Article 133-2, the MCST may order an online service provider to implement corrective measures, which include warning the reproducer or interactive transmitters of illegal reproductions and deleting or suspending the interactive transmission of illegal reproductions. Under Article 133-3, the KCOPA may issue a recommendation to an online service provider to take equivalent corrective measures. If the online service provider fails to comply with the recommendation, the KCOPA may request the MCST, under Article 133-3, to order corrective measures to the corresponding online service provider, as provided in Article 133-2. The failure to execute orders given by the MCST results in an administrative fine⁶.

¹ Elsewhere, these services are commonly called cyberlockers.

² Copyright infringement on a web portal typically takes place when an online user directly uploads illegal materials to a web page or provides other links leading to illegal websites.

³ Copyright Act (Act No. 432 of January 28, 1957, as amended up to Act No. 17588 of December 8, 2020), available at: <https://wipo.int/en/legislation/details/21016>.

⁴ Enforcement Decree of the Copyright Act (Presidential Decree No. 1482 of April 22, 1959, as amended up to Presidential Decree No. 30898 of August 4, 2020), available at: <https://wipo.int/en/legislation/details/21013>.

⁵ Enforcement Rule of the Copyright Act (Ordinance No. 94, July 1, 1987, of the Ministry of Culture and Communication, as amended up to ordinance No. 274 October 8, 2016, of the Ministry of Culture and Tourism), available at: <https://wipo.int/en/legislation/details/16968>.

⁶ Article 142 of the Copyright Act.

C. DOMESTIC INFRINGEMENT

10. The MCST is working with the Korean National Police Agency and the KCC to combat online copyright infringement. As a result, between 2018 and 2020, 41 operators of illegal sites were arrested and 50 sites were shut down.

11. Since 2019, the KCOPA has issued more than 600,000 recommendations annually to domestic online service providers to take corrective action (664,400 in 2021, 694,560 in 2020 and 671,759 in 2019). In 2021, webhards accounted for the bulk of the infringement that led to the KCOPA recommendations (533,737 cases), followed by web portals (128,889 cases) and streaming sites (1,774 cases). The number of infringement through streaming sites has drastically increased, from only four cases in 2019 to 1,774 in 2021. Cases involving web portals and social media sites doubled from 67,206 in 2020 to 128,889 in 2021, while webhard infringement fell by 20 per cent from 626,457 in 2020 to 533,737 in 2021.

D. INFRINGEMENT ABROAD

12. The Government also responds to websites using foreign domains by blocking access to illegal sites, searching the URL information and prohibiting advertisements on those sites. In 2021, the number of measures taken amounted to 16,573, a steep increase from 1,432 in 2019. Approximately 80 per cent of those measures involved blocking the URL information. In 249 cases, advertisements were blocked, and in 261 cases, access was blocked.

13. The MCST, however, cannot unilaterally address copyright infringement abroad, as it does not have all necessary information and jurisdictional competence outside the Republic of Korea.

14. To respond to copyright infringement overseas, the MCST has been cooperating with the International Criminal Police Organization (INTERPOL). In April 2021, the MCST and INTERPOL signed a memorandum of understanding (MoU), launching a five-year project to tackle digital piracy. MCST agreed to provide KRW 3.6 billion (approximately EUR 2.7 million) in funding from 2021 to 2025. The Korean National Police Agency will also play an important role, as it has a long tradition of working with INTERPOL in combating transnational crime. One aim of the project is to raise public awareness of the risks associated with digital piracy. The MCST and INTERPOL regularly share investigation information and hold meetings on how best to combat online copyright infringement.

E. COOPERATION WITH WIPO

15. The MCST has strengthened its cooperation with the World Intellectual Property Organization (WIPO) to lead the development of a balanced and effective international intellectual property (IP) system that enables innovation and creativity.

16. In 2006, the MCST and WIPO signed a MoU on cooperation in the area of copyright development in the Republic of Korea and throughout the world, especially in developing countries. Since then, the MCST has gradually increased its WIPO funds-in-trust and runs various programs on copyright development and building respect for IP. The joint efforts in these areas have had a positive global impact.

17. In close cooperation with WIPO's Copyright Development Division, the MCST has helped developing countries enact copyright laws and build copyright systems. It has also organized small group webinars to raise awareness of copyright around the world. In April 2021, the two

organizations held a webinar for creative music starts-ups. More than 50 participants from around 20 countries joined to learn about and experience the copyright system in the music industry in the Republic of Korea, home to the global music phenomenon of K-pop.

18. Working with WIPO's Building Respect for IP (BRIP) Division, the MCST has funded the development of a webtoon to raise awareness of copyright. Together, the BRIP Division and MCST held webinars on online copyright infringement in 2021 and 2022. Joint projects also include the establishment of IP Clubs in three member states of the African Regional Intellectual Property Organization (ARIPO) and the publication of IP handbooks for teachers.

19. The MCST has also signed a MoU with the WIPO Arbitration and Mediation Center to collaborate on promoting alternative dispute resolution (ADR) services and encouraging concerned stakeholders to consider using these services.

F. FRONTIER TECHNOLOGY

20. The MCST is also looking at ways of preventing the use of frontier technologies, such as artificial intelligence, non-fungible tokens (NFT), the metaverse and blockchain, to infringe copyright. For example, the MCST plans to publish NFT guidelines for market stakeholders with a view to preventing them from infringing copyright when conducting transactions. It also plans to set up a consultative body, composed of academics and industry experts, to examine legal and institutional copyright aspects in relation to these new technologies.

IV. CONCLUSION: 2030 VISION FOR COPYRIGHT

21. On February 4, 2020, the MCST launched its 2030 Vision for Copyright: *Becoming a copyright superpower, where culture becomes economy*. Under the vision, the MCST will take a more active role in implementing policies to develop the copyright system and raise global awareness of the importance of protecting and enforcing copyright.

[End of contribution]

ADMINISTRATIVE PROCEDURE FOR COMBATING PIRACY IN THE DIGITAL ENVIRONMENT AND SELF-REGULATION IN SPAIN

*Contribution prepared by Ms. Mercedes Hernández Villar, Advisor, Sub-directorate for Intellectual Property, and Secretary, Second Division of the Intellectual Property Commission, Ministry of Culture and Sport, Madrid, Spain**

ABSTRACT

Protecting intellectual property (IP) rights is a priority for Spain. It is for this reason that the Second Division of the Intellectual Property Commission (S2CPI) was created in 2012. In the past 10 or so years, the S2CPI has had illegal content removed from over 550 websites, access to pirate websites in Spain significantly restricted and many of those websites shut down.

The contribution sets out the administrative procedure for combating piracy by the S2CPI. The aim of the procedure is to ensure enforcement through the voluntary withdrawal of online content that infringes IP rights. The document also details the procedure's achievements in the fight against online piracy.

Furthermore, the document provides information on how the collaboration between the culture sector and Internet access providers is formally self-regulated – a key factor in both ensuring access to legal digital offerings of cultural content and combating piracy.

Because of the efforts of creators and the cultural industries, the emergence of legal offerings in Spain, and the work of the S2CPI, less than 5 per cent of the websites most visited by Spaniards are pirate pages. The S2CPI will continue working to protect the rights of creators in the digital environment and to ensure the availability of legal cultural content for all citizens.

I. INTRODUCTION

1. Protecting intellectual property (IP)¹ rights is a priority for Spain. It is for this reason that the S2CPI was created in 2012. In the past 10 or so years, the S2CPI has had illegal content removed from over 550 websites, access to pirate websites in Spain significantly restricted and many of those websites shut down.

II. SECOND DIVISION OF THE INTELLECTUAL PROPERTY COMMISSION OF SPAIN

2. The Second Division of the Intellectual Property Commission (S2CPI, also referred to as the "Anti-Piracy Division") is regulated by Article 195 of the Consolidated Text of the Law on

* The views expressed in this document are those of the authors and not necessarily those of the Secretariat or of the Member States of WIPO.

¹ In Spain, the term "intellectual property" refers to copyright and related rights, whereas in other countries it typically refers to both copyright and industrial property rights.

Intellectual Property (TRLPI)². Its function is to prevent the online infringement of IP rights by providers of information society services³.

3. The Ministry of Culture and Sport designated the Head of the Directorate-General for Cultural Industries, Intellectual Property and Cooperation as the Chair of the S2CPI. The S2CPI is a collective body composed of eight advisors from different areas of the Ministry of Culture and Sport who work in the area of IP.

III. ADMINISTRATIVE PROCEDURE FOR COMBATING PIRACY

4. The administrative procedure for combating online infringement of IP rights by providers of information society services⁴ is regulated by the TRLPI and Royal Decree No. 1889/2011⁵ of December 30, 2011. The procedure has been adapted following amendments to the TRLPI.

5. The aim of the administrative procedure is to re-establish legality through the voluntary withdrawal of online content that infringes IP rights.

6. Holders of IP rights who believe that their rights have been infringed may report the information society service provider facilitating access to the infringing content to the S2CPI.

7. The formal launch of the procedure is conditional on the completion of preliminary proceedings to verify the existence of the reported infringement and to identify the information society service provider and any relevant intermediary service providers in each case. Intermediary service providers are those that carry out intermediary activities such as transmission, copying, hosting and localization of network data⁶. This includes hosting companies and providers of electronic advertising and payment services. In general, a duty of cooperation is imposed on such providers to prevent the further dissemination of certain unlawful services or content.

8. Following the latest amendments to the TRLPI⁷, websites whose owners are not identified in accordance with the Act on Information Society Services⁸ can be blocked directly once judicial authorization has been obtained.

9. Where it is not possible to verify the infringement, a decision to close the preliminary proceedings is issued due to the disappearance of the subject matter of the proceedings.

² Consolidated Text of the Law on Intellectual Property Regulating, Clarifying and Harmonizing the Legal Provisions in Force (approved by Royal Legislative Decree No. 1/1996 of April 12, 1996, and modified by Royal Decree-Law No. 6/2022 of March 29, 2022), available at: <https://wipo.int/en/text/584952>.

³ For further information on the legal assumptions according to which providers of information society services are considered liable for infringing IP rights, see Articles 195.2 and 196.2 of the TRLPI.

⁴ Information society services are defined as “any service normally provided for remuneration, remotely, by electronic means and at the individual request of the recipient. The concept also encompasses services that are not paid for by their recipients, insofar as they constitute an economic activity for the service provider” (Annex to Act No. 34/2002 of July 11, 2002, on Information Society Services and Electronic Commerce (as amended by Act No. 6/2020 of November 11, 2020), available on WIPO Lex at: <https://wipo.int/en/legislation/details/20419>).

⁵ Royal Decree No. 1889/2011 of December 30, 2011, on the Operation of the Intellectual Property Commission (as amended by Royal Decree No. 1023/2015 of November 13, 2015), available at: <https://wipo.int/en/legislation/details/16717>.

⁶ Intermediary services are defined as “information society services that facilitate the provision or use of other information society services or access to information. Intermediary services include the provision of Internet access, the transmission of data over telecommunications networks, the production of temporary copies of Internet pages requested by users, the hosting on one’s own servers of data, applications or services provided by others and the provision of search, access and data collection tools or links to other Internet sites” (Annex to Act No. 34/2002).

⁷ TRLPI Article 195.5.

⁸ Act No. 34/2002 Articles 8(1)(e) and 8(2).

10. Conversely, where the infringement verifiably exists, an initiatory administrative decision (Initiation Agreement) is issued, containing the following:
 - the identification of the information society service provider(s), where this is possible;
 - a reference to the content that is deemed to have been infringed by the service in question and the location from which it is provided; and
 - a request to the information society service provider to remove the infringing content within 48 hours or to invoke whatever defense it deems appropriate, such as the existence of an authorization, an applicable statutory limitation or any other circumstance.
11. If the content is withdrawn, the S2CPI terminates the proceedings.
12. If the content has not been removed without a valid reason, two possible scenarios are to be considered:
 - If the infringing service provider is not properly identified, the Initiation Agreement automatically becomes a Proposal for a Decision and is forwarded to the courts for authorization of the measures to be requested from the intermediary services to prevent the identified infringement.
 - If, on the other hand, the infringing service provider is properly identified, the S2CPI drafts a Proposal for a Decision setting out collaborative measures to be taken by the intermediary services. The Proposal for a Decision is notified and communicated again, respectively, to the interested parties and the collaborators.
13. The S2CPI issues a Final Decision on the matter, ordering, where applicable, the withdrawal of content declared to be infringing and establishing the appropriate collaborative measures.
14. In accordance with the applicable Royal Decree, the infringing service provider has 24 hours from the notification of the Final Decision to remove the content. Once this period has elapsed, the S2CPI ascertains whether the removal has been effected.
15. If the content is not removed voluntarily, judicial authorization must be requested for the adoption of the collaborative measures envisaged by the S2CPI in its Decision, which may include suspending the hosting service of the infringing website, having the website blocked by Internet access operators based in Spain, having URLs containing the infringing content de-indexed by search engine services and suspending the advertising service of the infringing website.
16. If the judge authorizes the measures, the authorization is duly notified to the parties and communicated to the intermediary services, which must comply with the suspension order within 72 hours.
17. The maximum duration of suspension is one year.

IV. ACHIEVEMENTS OF THE S2CPI

18. Given the challenges posed by the anonymity of website owners on the Internet, the reliable identification of those owners by an administrative body is a major step towards holding them accountable for their wrongdoing. To address this challenge and those detailed below,

the S2CPI uses a piece of investigative software provided by the Anti-Piracy Division of the Spanish National Professional Football League (La Liga).

19. On October 19, 2022, the Ministry of Culture and Sport signed an agreement with La Liga for the use of a La Liga computer application, known as *Lumière*, to strengthen the investigation of IP rights infringement and the enforcement of those rights against the offending information society service providers, specifically by:

- Evidencing infringement of IP rights belonging to owners of works identified in related complaints filed with the S2CPI. In particular, the software facilitates the investigation by identifying the works, how those works are used by the information society service and precisely where they are located (URL). It also confirms whether the infringement was committed by downloading, viewing or other means.
- Identifying the owners of the information society services responsible for the infringement and the providers of intermediary services to the websites in question, including advertising and electronic payment services.

20. *Lumière* enables a more efficient management of enforcement proceedings, as it reduces the amount of time, resources and public services.

21. Informing third-party intermediary services (hosting, advertising and electronic payment services, etc.) of the commission of infringements by their clients (information society service providers) implies for those services a duty of diligence to permanently disable access to the infringing content if it is not voluntarily withdrawn. Since 2012, an increasing number of such intermediaries have voluntarily discontinued their services to sites providing access to pirated content. This is clearly supported by the agreement between intermediaries and content creators and cultural industries, which is discussed in the next section.

22. Since its creation, the S2CPI has optimized its processing times and currently takes 45 days to remove content or close an offending website. It continues to improve its performance, with around 90 per cent of cases completed and more than 550 websites affected.

23. Moreover, the S2CPI has published a list of more than 150 domain names that have been the subject of final decisions, which may help, for example, to reduce the financing of those domains through advertising.

24. The Minister of Culture and Sport has already imposed two administrative sanctions, classified as very serious within the meaning of Article 195.6 of the TRLPI, against website owners for repeat offences. The sanctions consisted of fines of EUR 400,000 and 375,000, in addition to the cessation of the website's activity for one year and the publication of the decision in the Official State Gazette.

V. SELF-REGULATION: THE PROTOCOL FOR ENFORCING INTELLECTUAL PROPERTY RIGHTS ONLINE

25. Since March 2020, the Directorate-General for Cultural Industries, Intellectual Property and Cooperation has convened several round-table sessions for Internet access operators in Spain and representatives of IP rights holders, creators and content industries to discuss medium- and long-term self-regulation⁹ in order to promote legal digital offerings and reduce online IP infringements.

⁹ The development of self-regulation is based on Article 195.8 of the TRLPI.

26. On April 8, 2021, after months of negotiation, the *Protocol for Strengthening the Protection of Intellectual Property Rights*¹⁰ was signed. This constituted a milestone in the area, since:

- Spain is one of the first countries to develop a voluntary code of conduct for the formal self-regulation of collaboration between the culture sector and Internet access operators – a key factor in ensuring access to legal digital offerings of cultural content and combating piracy.
- The protocol applies to those websites whose infringement of IP rights has been declared judicially or by means of a judicially supported administrative decision with the adoption of measures to suspend Internet access. It also applies to other domains, sub-domains and IP addresses whose exclusive or main purpose is to facilitate access to said websites, including websites that serve to circumvent or avoid the blocking measures and provide access to users on Spanish territory.

27. The Protocol establishes a Technical Committee in which the two signatory parties are represented. The Ministry of Culture and Sport may approve a course of action in accordance with the documentation on file following consultation with either party; it therefore welcomed the signing of the Protocol. On a weekly basis, the Committee consults with the Ministry of Culture and Sport on up to 40 websites that demonstrably meet the conditions to be blocked. Subject to the favorable response of the Ministry, the intermediary services for Internet access are ordered to block such websites. Since April 2021, more than 200 Internet domains – including 700 related sub-domains – have been blocked.

VI. CHALLENGES AND THE FUTURE OF COMBATING PIRACY

28. The S2CPI will continue working to protect the rights of creators in the digital environment and to ensure the availability of legal cultural content to all citizens. To this end, it is committed not only to improving material and human resources, but also to making the necessary legislative changes to ensure that the IP legal framework is adapted to new forms of piracy.

29. In addition, the *Recovery, Transformation and Resilience Plan*¹¹, drawn up as a consequence of the COVID-19 pandemic, envisages the creation of a Spanish Copyright and Related Rights Office attached to the Ministry of Culture and Sport, which represents an important boost to IP protection in Spain.

30. To conclude, the Ministry of Culture and Sport is aware that, thanks to the efforts of creators and cultural industries, the emergence of legal offerings in Spain and the work of the S2CPI, pirate websites account for a much smaller proportion – currently five per cent – of the websites most visited by Spaniards.

31. Therefore, the Ministry of Culture and Sport is determined to continue along its current trajectory and increase efforts to bring to a halt the activities of infringing information society service providers.

[End of document]

¹⁰ Document not publicly available.

¹¹ Recovery, Transformation and Resilience Plan of Spain, available (in Spanish) at: https://www.lamoncloa.gob.es/temas/fondos-recuperacion/Documents/160621-Plan_Recuperacion_Transformacion_Resiliencia.pdf.