PRACTICE AND FUNCTIONING OF EXTRA JUDICIAL COPYRIGHT AND RELATED RIGHTS DISPUTE RESOLUTION SYSTEMS IN SPAIN

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AGENDA

1. PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISMS
2. EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN
3. PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES
4. FUTURE APPROACH
PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

CIVIL/COMMERCIAL MATTERS

INTERNATIONAL LEVEL

NATIONAL LEVEL
- Law 60/2003 of December 23, 2003 on mediation in civil and commercial matters

EU LEVEL
Directive 2008/52/EC, of 21 May, 2008, on certain aspects of mediation and commercial matters

NATIONAL LEVEL
Law 5/2012 of July 6, 2012 on mediation in civil and commercial matters

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

COPYRIGHT

EU LEVEL
- Directive 91/83/EC on the coordination of certain rules concerning copyright and related rights applicable to satellite broadcasting and cable retransmission (Article 11)
- Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (Recital 46)
- EU Commission Communication 2004 on the management of copyright and related rights in the internal market.
- Proposal for a Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (Articles 34 and 35)
* First reading (European Parliament. 4 February 2014)
EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

**a. THE INTELLECTUAL PROPERTY ARBITRATION COMMISSION**

**1987 - 1996**

**COMPETENCE**

Responsible for resolving any disputes which may arise between copyright and related rights management bodies and user associations or broadcasting organizations with regard to:

- The grant of non exclusive authorization
- Resigning of general contracts.
- Setting of general tariffs

**WIDE SCOPE OF ARBITRATION**

Most relevant aspect: **POWER TO SET AN AMOUNT REPLACING THE GENERAL TARIFFS.** The determined amount is deposited with the competent legal body.

Type of procedure = **VOLUNTARY**

**b. THE INTELLECTUAL PROPERTY MEDIATION AND ARBITRATION COMMISSION**

(Renamed in 2006 as INTELLECTUAL PROPERTY COMMISSION. IPC)

**1996 - 2011**

**COMPETENCE:**

Same arbitration competences as the IP Arbitration Commission

**WIDE SCOPE OF ARBITRATION**

Limited to the mediation concerning disputes arising due to the failure to sign a contract authorizing cable retransmission

**NARROW SCOPE OF MEDIATION**

Type of procedure = **VOLUNTARY** for arbitration or mediation
EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

C. FIRST SECTION OF THE INTELLECTUAL PROPERTY COMMISSION

COMPETENCE:

- WIDE SCOPE OF ARBITRATION
  No changes regarding the IPC competence (except the introduction of criteria for setting an amount replacing the general tariffs)
  - Effective use of the repertoire by the user
  - Relevance of the repertoire
  - Use within the context of the user’s overall activity

- WIDE SCOPE OF MEDIATION
  a. The failure of signing a contract matters related to collective management rights.
  b. Dispute arising due to failure to sign a contract authorizing cable retransmission.

PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES IN SPAIN

1. Intellectual Property Commission

- General info
  - Mediation ➔ 8 cases
  - Arbitration ➔ 1 case
  - Cases submitted ➔ 4 cases
  - Agreements reached within the Commission ➔ 1 case

*Despite of not reaching an agreement during the proceedings, IPC’s labor boosted the signing of agreements latterly

- Main clients
  - CMOs (Collective Management Organizations)
  - Associations of users
    - Education
    - Tourism
    - Audiovisual
    - Leisure

- Main objects
  Mostly remuneration rights, but also exclusive rights licenses.
2. First Section of Intellectual Property Commission (I)

**Innovations since 2012**

- Name changed to First Section of IPC
- Establishment of 3 specific types of proceedings:
  1. Mediation
  2. General arbitration
  3. Arbitration to set an amount replacing general tariffs
- Setting of time periods.
- Transformation to a payment based on public rates proceeding.
- Widening the "clients’ access to the First Section of IPC proceedings.
- Setting of specific acting principles for each proceeding.

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2. First Section of Intellectual Property Commission (II)

**Principles of acting**

- **Mediation proceeding**
  - Confidentiality
  - Impartiality
  - Neutrality
  - Voluntariness
  - Legality
  - Equality
  - Audience/Self determination

- **Arbitration proceeding** (including arbitration to set an amount replacing general tariffs)
  - Confidentiality
  - Impartiality
  - Equality
  - Audience
  - Voluntariness
  - Legality
  - Contradiction
PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES IN SPAIN

2. First Section of Intellectual Property Commission (III)

- **General info**
  - Cases submitted
    - Mediation \( \rightarrow \) 5 cases
    - Arbitration \( \rightarrow \) 2 cases
  - Initiated proceedings
    - Mediation \( \rightarrow \) 1 case
    - Arbitration \( \rightarrow \) 2 admissions pending

- **Main clients**
  - CMOs (Collective Management Organizations)
  - Associations of users
  - **SIGNIFICANT INDIVIDUAL USERS**

- **Main objects**
  Mostly remuneration rights ("private copy"), but also exclusive rights licenses.

FUTURE APPROACH

**MISSION**
Reduce the level of disputes arisen over copyright and related rights.

Draft IP Law 14 February 2014
DEFINED PROPOSALS ABOUT EXTRA JUDICIAL DISPUTE RESOLUTION MECHANISM

(Draft IP Law 14 February 2014)

A model that empowers the First Section of IPC with new tasks. The following features will be foreseen:

1. Ex-ante supervisory measures:
   - Established criteria to set general tariffs.
   - Methodology adopted by a Public Administration Body to set general tariffs.

   Compulsory to CMOs

2. Dispute-resolution measures
   - Negotiating tariffs (Free will of the parties)
   - No agreement
   - Intervention of the First Section of IPC (dispute resolution)

   Compulsory or voluntary based proceeding?

3. Strengthening a ex-post supervision, mainly over market related aspects
   Shared competence between the First Section of IPC and the supervisory body.

THANK YOU FOR YOUR ATTENTION!!!