



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


**WIPO ACE: Ninth Session
Geneva, March 2014**

Mr. Raúl Rodríguez Porras
SENIOR LEGAL ADVISOR AND SECRETARY OF THE
FIRST SECTION OF THE INTELLECTUAL PROPERTY
COMMISSION

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**





GOBIERNO DE ESPAÑA
MINISTERIO DE EDUCACIÓN, CULTURA Y DEPORTE

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

CIVIL/COMMERCIAL MATTERS

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

Civil/Commercial

Copyright


EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES

FUTURE APPROACH

INTERNATIONAL LEVEL

UNCITRAL Model Law on International Commercial Arbitration (1985)




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



GOBIERNO DE ESPAÑA
MINISTERIO DE EDUCACIÓN, CULTURA Y DEPORTE

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

COPYRIGHT

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

Civil/Commercial

Copyright

EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES

FUTURE APPROACH

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

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

Civil/Commercial

Copyright

EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES

FUTURE APPROACH

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

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

}

WIDE SCOPE OF ARBITRATION

Type of procedure = **VOLUNTARY**



EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

Civil/Commercial

Copyright

EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES

FUTURE APPROACH

b. THE INTELLECTUAL PROPERTY MEDIATION AND ARBITRATION COMMISSION

1996 - 2011

(Renamed in 2006 as **INTELLECTUAL PROPERTY COMMISSION. IPC**)

COMPETENCE:

WIDE SCOPE OF ARBITRATION

+

NARROW SCOPE OF MEDIATION

Same arbitration competences as the IP Arbitration Commission

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

Type of procedure = **VOLUNTARY** for

arbitration

mediation



EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

→ Civil/Commercial

→ Copyright

c. FIRST SECTION OF THE INTELLECTUAL PROPERTY COMMISSION

2011 - today

COMPETENCE:

- WIDE SCOPE OF ARBITRATION**

No changes regarding the IPC competence (except the introduction of criteria for setting an amount replacing the general tariffs)

Criteria


 - 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.

EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES

FUTURE APPROACH



PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES IN SPAIN

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

→ Civil/Commercial

→ Copyright

1. Intellectual Property Commission

- General info**

 - Cases submitted
 - Mediation → **8 cases**
 - Arbitration → **1 case**
 - Initiated proceedings → **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.

EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES

FUTURE APPROACH



PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES IN SPAIN

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

→ Civil/ Commercial

→ Copyright

EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN


PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES

FUTURE APPROACH

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.



PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES IN SPAIN

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

→ Civil / Commercial

→ Copyright

EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN


PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES

FUTURE APPROACH

2. First Section of Intellectual Property Commission (II)

Principles of acting

- **Mediation proceeding**
 - Confidentiality
 - Voluntariness
 - Impartiality
 - Legality
 - Neutrality
 - Equality
 - Audience/Self determination
- **Arbitration proceeding** (including arbitration to set an amount replacing general tariffs)
 - Confidentiality
 - Voluntariness
 - Impartiality
 - Legality
 - Equality
 - Contradiction
 - Audience



PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES IN SPAIN

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

Civil / Commercial

Copyright

EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES

FUTURE APPROACH

2. First Section of Intellectual Property Commission (III)

- General info

 - Cases submitted
 - Mediation → 5 cases
 - Arbitration → 2 cases
 - Initiated proceedings
 - Mediation → 1 case
 - Arbitration → 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

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

Civil/Commercial

Copyright

EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES


FUTURE APPROACH

MISSION

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



Draft IP Law 14 February 2014



FUTURE APPROACH

PROMOTION AND REGULATION OF EXTRA-JUDICIAL DISPUTE – RESOLUTION MECHANISM

→ Civil /Commercial

→ Copyright

EXTRA-JUDICIAL COPYRIGHT RESOLUTION BODIES IN SPAIN

PRACTICE OF COPYRIGHT AND RELATED RIGHTS RESOLUTION BODIES

FUTURE APPROACH

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!!!