

ALAI Congress 2017 in Copenhagen

Copyright, to be or not to be

Questionnaire-Spain (ALADDA)

Current **Spanish Copyright Act** is the “**Texto Refundido de la Ley de Propiedad Intelectual**” (hereinafter referred to as **TRLPI**). It was enacted by **Royal Legislative Decree 1/1996**, of 12 April, consolidating (and derogating) the text of the **Intellectual Property Act of 1987 (Act 22/1987)** together with the several Acts implementing the EC Directives; A fully updated version of the TRLPI (in Spanish) is available at: <http://www.boe.es/buTRLPIr/pdf/1996/BOE-A-1996-8930-consolidado.pdf>

An English translation of the TRLPI (updated up to 2012) is available at:
<http://www.mjusticia.gob.es/cs/Satellite/1292426984404?blobheader=application%2Fpdf&blobheadertype=Content-Disposition&blobheadervalue1=attachment%3B+filename%3DThe+Intellectual+Property+Act+%28Ley+de+Propiedad+Intelectual%29.PDF>

Note: Spanish laws use the term “intellectual property” to grant protection of copyright and related rights.

1. The traditional justifications for copyright and related rights.*

1.1. In your country, which justifications for copyright have been presented in connection with your national legislation, for example in the preamble of the Statute or in its explanatory remarks or similar official documents?

In Spain, explanations and justifications for copyright have generally been scarce in the Explanatory Remarks and Preambles to copyright laws. It is impossible to find a Spanish legislative document, from any point in time, which directly or expressly explains or argues the very foundation of the protection that those laws confer on authors.

A chronological review of the legislative texts nevertheless reveals that whilst the first laws emphasised copyright as a right to private property, in this case in an intangible asset worthy of protection as such, over time this idea has been relegated, or rather it has been adjusted in pursuit of the necessary balance that must be struck between that right to private property, which has not been excluded and continues to be legally recognised (as a constitutional right since 1978)¹, and other constitutionally protected rights, such as freedom of expression and information, the dissemination of culture and, in relation to the latter, the right

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¹ The right to private property and inheritance rights are recognised, as interpreted by the Spanish Supreme Court in its judgment of 9 December 1985.

to literary, artistic, scientific and technical production, all of which are provided for in Article 20.1 of the Spanish Constitution (SC)².

However, there is an idea that has been nurtured over time, and that is the need to confer protection on authors as a means to promote and preserve artistic creation and culture in general, which in some way provides copyright with finalistic or utilitarian justification.

Back in the first Spanish Intellectual Property Law –**Decree CCLXV of the Courts of Cádiz of 10 June 1813**– it was stated that the law was enacted *“for the purpose of protecting the property rights held by all authors in their written works, in the desire that they should not one day be forgotten, to the detriment of national illustration and literature...”*.

Almost two centuries later, the Preamble to **the Intellectual Property Act 22/1987, of 11 November**, stated that *“the present Law aims to adequately satisfy the demand of our society to grant due recognition and protection of the rights of those who, through creative works, contribute so outstandingly to the formation and development of culture and science for the benefit and enjoyment of all citizens”*.

More recently, **Act 19/2006, of 5 June, extending the forms of protection of intellectual and industrial property rights and establishing procedural rules to facilitate the application of Community Regulations**, despite also applying to industrial property rights, goes one step further by establishing that *“the effectiveness of the judicial protection of those rights must lead to both the promotion of innovation and the competitiveness of companies and to European Cultural development.”* It went on to indicate that *“account should also be taken of its repercussions on diverse fields such as employment, market stability and consumer protection”*.

The copyright laws enacted in the last 10 years, many of which to implement EU Directives, rather than lingering on providing a justification for copyright, have strongly emphasised the need to reconcile this right with the new means of disseminating culture, essentially the Internet.

This is underscored in the Preamble to **Act 23/2006, of 7 July, amending the TRLPI**

“... the evolution of technology and its impact on the level of development of the information society in Spain, taking into account in the latter case the opportunities that the advance of digital technology and communications imply for the dissemination of culture, for the emergence of new economic and social models, for citizens’ greater and better enjoyment, without any of this impairing the protection of creators”.

² The following rights are recognised and protected:

- a) the right to freely express and disseminate thoughts, ideas and opinions through words, in writing or by any other means of communication;
- b) the right to literary, artistic, scientific and technical production and creation;
- c) the right to academic freedom;
- d) the right to freely communicate or receive accurate information by any means of dissemination whatsoever. The law shall regulate the right to invoke personal conscience and professional secrecy in the exercise of these freedoms. The Spanish Supreme Court also ruled along those lines in judgment no. 234/1996, of 29 March 1996.

And Act 21/2014, of 4 November³, also amending the TRLPI

“The development of new digital information technologies and decentralised computer networks has had an extraordinary impact on intellectual property rights, which has required an equivalent effort from the international community and the European Union to provide effective tools to better protect those legitimate rights, without undermining the development of the Internet, largely based on users’ freedom to contribute content.”

Nevertheless, it is perhaps the Preamble to **Royal Decree 1889/2011, of 30 December, regulating the functioning of the Intellectual Property Commission** which most clearly describes this tension of conflicting interests which find support in the Spanish Constitution, as mentioned previously, as well as the utilitarian idea of copyright, necessary for the development and expansion of culture:

“The Spanish Constitution recognises and grants qualified protection to the right to freely express and disseminate thoughts, ideas and opinions by word, image or any other means. Together with freedom of expression, the Constitution enshrines the right to literary, artistic, scientific and technical production and creation. It is the duty of the public powers to guarantee the aforesaid fundamental rights and freedoms and to remove obstacles so that they may be fully exercised. Only by combating the alleged infringements of the intellectual property rights of authors and creators and by preventing the unjust enrichment of those who infringe them can it be ensured that the former will receive consideration for the exploitation of their works and creations, and can cultural diversity, freedom of creation and universal access to culture be guaranteed, considering that, under Article 27.2 of the United Nations’ Universal Declaration of Human Rights, ‘everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author’”.

1.2. Are there any similar justifications for related rights? Are the arguments the same as for copyright in literary and artistic works or are there different or additional justifications?

Spanish legislation contains no specific justification for the protection of related rights beyond the justification used for the protection of copyright. With respect to such rights, the Preamble to the Spanish Intellectual Property Act, as enacted on 22 December 1987, establishes as follows:

“As regards the legal system of rights deriving from the performance, production or dissemination of the creative works, i.e., other intellectual property rights known as related rights, the Law has essentially followed the criteria set out in the Rome Convention of 1961 and the Geneva Convention of 1971. This regulation, which certainly does not constitute a limitation on copyright, serves the legitimate interests of an important professional and industrial sector closely linked to culture, which in recent years have been particularly affected by fraud deriving from new technologies and which, therefore, were in particular need of express recognition and protection in a rule having force of law.”

³ Act 21/2014, of 4 November, amending the consolidated wording of the Spanish Copyright Act, approved by Royal Legislative Decree 1/1996, of 12 April, and the Spanish Civil Procedure Act (Act 1/2000, of 7 January).

When subsequently introducing other related rights, such as *sui generis* rights in databases, the Spanish legislature has merely implemented the Community regulation without offering any assessment in that regard.

1.3. Is it possible with any certainty to trace the impact of such justifications in the provisions of the law, or is their influence more on a general (philosophical) level?

There is indeed a philosophical component in the justifications for the regulation of copyright and intellectual property. Nevertheless, it is also possible to identify clear examples of their impact in the provisions of national law that are often, in turn, transpositions into national law of international conventions and EU laws applicable in Spain.

The most obvious manifestation of the justification of copyright as **private property** is, on the one hand, its identification as “property” in the very title of the Act (“Copyright Act”) and, on the other, regulation of the subject in Articles 428 and 429 of the Spanish Civil Code, which are included in Book II (On property, ownership and its modifications) which, in turn, derives from the provisions of Article 33 of the aforementioned Civil Code (hereinafter, CC). Under those Articles, the author of a literary, scientific or artistic work is entitled to exploit and dispose of that work at will.

Notwithstanding the above, the Spanish Civil Code (CC) itself provides that this property is specifically regulated by means of a copyright law, and that the Code applies in the alternative. One of the reasons why copyright is subject to different treatment from ordinary property is precisely the limitation affecting it as a result of its **convergence with other fundamental rights and freedoms**, as described in point 1.1 above.

There are many provisions in the TRLPI that clearly reflect the fact that copyright is **special property**, for instance, the establishment of **limitations** on the exercise of copyright and related rights in protected works, precisely linked to the need to facilitate the observance of other fundamental rights.

Of particular note is the right to **freedom of expression and information**, in defence of which a number of limitations on the exercise of copyright have been laid down, such as the limitations regarding quotations and illustration for teaching, regulated in Article 32 TRLPI, the limitation relating to works concerning topical subjects, regulated in Article 33 TRLPI, and essentially, the limitation concerning parody, regulated in Article 39 TRLPI.

Other limitations apply in defence of the **public interest** and, in particular, promotion of the dissemination of, and access to, culture. Those limitations include the private copying limitation, regulated in Articles 25 and 31 TRLPI, and the limitation concerning the reproduction, loan and consultation of works via special terminals in specific establishments, laid down in Article 37 TRLPI and, obviously, the limitation concerning protection of the right of access to culture laid down in Article 40 TRLPI.

The legislature’s concern by the **development of new digital technologies** and, broadly speaking, by the consolidation of the information society, is also present in the regulation of limitations on copyright. A clear example is the regulation of the limitation regarding provisional reproductions, also laid down in Article 31 TRLPI, and of the aforementioned private copying limitation.

Meanwhile, the regulation of the duration of copyright, which is subject to a time limit and moreover linked to the life of the author, is another example of the impact of the justification relating to the fact that it is special property, linked to the author's private sphere (Article 26 *et seq.* TRLPI)⁴.

In the more specific field of the **promotion and preservation of artistic creation** and of culture in general (by means of economic compensation to the author), as opposed to what would be the traditional concept of private property from which –as we have explained previously- copyright moves away to a certain extent, we have all the provisions concerning fair remuneration rights deriving from economic exploitation of the works, which accompany the author and the holders of related rights throughout the whole term of protection of their intellectual property rights. Two clear examples are the remuneration rights held by the authors of a cinematographic work who have assigned their rights in same to the producer (Article 90 TRLPI), and the right of remuneration for the public communication of phonograms held by music performers (Article 108 TRLPI).

The change of direction in copyright legislation, which has led the need to make room for technological evolution and its impact on a greater dissemination of culture on a European level and, within that context, to encourage the promotion of innovation and competitiveness of companies, to be addressed in that legislation as well, essentially stems from the transposition of Community legal instruments.

The impact of that justification can be detected, for instance, in the regulation of the making available right, as a form of public communication right, as laid down in Spanish law in Article 20 TRLPI based on the reform of that Act carried out by means of Act 23/2006 (which, in turn, implements Directive 2001/29/EC⁵). This new variant of the economic right of public communication seeks to incorporate new ways of disseminating copyright-protected content, specifically via the Internet, whose technical uniqueness means that the concept of traditional public communication will not suffice for the purpose of covering acts of communication carried out via that medium.

There are many more examples of the impact of the justification linked to the need to legally adapt intellectual property to new technologies, and also to protect other public interests, such as access to culture and consumer protection. The most recent is the pending proposal for a Regulation concerning the cross-border portability of online content services⁶ aimed at enabling European citizens to use online content services in other EU countries, thus meeting their needs whilst at the same time encouraging innovation for the benefit of consumers, service providers and rightholders themselves.

1.4. Are there similar, or different or supplementary justifications for copyright and related rights expressed in the legal literature?

⁴ This regulation also stems from the Berne Convention in respect of authors and the Rome Convention for the protection of performers, producers of phonograms and broadcasting organizations, of 18 May 1964, with regard to performers.

⁵ Directive 2001/29/EC of the European Parliament and of the Council, of 22 May 2001, on the harmonisation of certain aspects of copyright and related rights in the information society.

⁶ COM/2015/0627 final - 2015/0284 (COD)

Spanish legal literature contains the traditional debate as to whether copyright should be deemed to fall under Article 20.1.b) SC, as a fundamental right to literary, scientific and technical production and creation, or whether its constitutional reflection lies in Article 33 SC, in which the right to private property is recognised.

Despite the fact that there are hefty arguments in support of both positions, and that the Spanish Supreme Court has recognised that copyright is protected under Article 20 SC, the most renowned legal literature supports the consideration of copyright as a property right and, as such, indicates that it must be constitutionally reflected in Article 33 SC⁷. Production and creation rights are tied to freedom of expression, which is granted privileged treatment in Spanish law in keeping with the fundamental right that it is. Copyright, despite possessing features that separate it from ordinary property and bring it closer to personality rights, is not a fundamental right. In that sense, **prevailing doctrine in Spain understands that the ultimate constitutional justification for copyright must be located within property rights.**

Nevertheless, and although none of this is mentioned in the Preambles or Explanatory Remarks of Spanish laws, we should not lose sight of the fact that copyright is not just made up of a set of economic rights of exploitation of the protected work (essentially, reproduction, public communication and distribution rights, laid down in Article 17 *et seq.* TRLPI), which can be either exclusively or non-exclusively assigned to third parties, but also of a series of moral rights which are unwaivable and inalienable, in other words, which never accompany the assignment of economic rights, and certainly not the transfer of ownership of the physical medium on which the copyright-protected creation is captured. They are rights which always remain in the possession of the author, since they are linked to his/her individual and personal sphere, and so they are closely related to the category of personality rights, despite not being so in the strict sense. Those moral rights are regulated in Article 14 *et seq.* TRLPI for authors and in Article 113 TRLPI for performers⁸. This is the reason why some legal literature understands that copyright is, and is justified as being, not just private property, but also a fundamental right to literary, artistic, scientific and technical production.

Besides the strictly legal justification, in recent years, due to the growing impact of the economic analysis of the right, there have been an increasing number of contributions by scientific literature and some organisations, such as the Spanish Commission for Markets and Competition, which emphasise the financial justification for copyright in respect of both exclusive rights and their legal limitations. From that perspective, it is understood that copyright should not be regulated in a manner not supported by coherent economic justification.

From an economic standpoint, some legal literature understands that the very recognition of a property right in intellectual creations must ultimately serve the general interest. From the standpoint of exclusive rights, to stimulate creation and innovation, as well as investment by the culture industry. From the perspective of limitations on the exclusive right, to favour access to citizens' information and education and to correct any malfunctions in the competitive structure and functioning of the culture industry that may be

⁷ BERCOVITZ, R. *"Comentarios a la Ley de Propiedad Intelectual"* (Comments on the Copyright Act). Coord. R. BERCOVITZ. Edit. Tecnos, 2007.

⁸This regulation ultimately stems from the Berne Convention for the Protection of Literary and Artistic Works, of 9 September 1886.

caused by the existence of legal monopolies of which intellectual property is comprised. All of the above is basically aimed at boosting cultural, scientific, technical and economic development.

Intellectual property rights generate dynamic market efficiency in the sense that they act as an engine that drives creation (subsequent innovation) and investment in the sector of culture, information and entertainment. They are displayed as pro-competition tools that contribute towards increasing the number of available goods and services, based on cultural property, favouring greater options for consumers and, ultimately, a broader cultural heritage.

An economic-utilitarian understanding of intellectual property is thus accepted, in which the conferral of intellectual property rights on creators, performers and producers of cultural property takes the form of an instrument to promote scientific, cultural and technical innovation for the benefit of society as a whole, with the general interest (not the private interests of rightholders) being the ultimate aim pursued by intellectual property legislation. In order to achieve the highest possible degree of well-being, it is necessary to delve into the balance between exclusive rights and limitations with a view to preventing exclusive rights, as a legal monopoly, from curbing further innovation and access to information.

Thus, when establishing a new regulation on the subject of intellectual property, it is necessary to analyse whether the dynamic efficiency linked to that right could have a positive or negative impact on the functioning of the market and consequently on consumer welfare.

One example of this trend is the Report/Proposal published by the Spanish Commission for Markets and Competition on 16 May 2014: *"Proposal referring to the amendment of Article 32.2 of the Draft Bill to amend the Consolidated Wording of the Spanish Copyright Act"*⁹. That report analyses the potential impact of the regulation of use of press materials by news aggregators such as Google News on the digital information market and on consumer welfare. The Commission points out that in the legislative design of systems of protection, it is necessary to take account not only of the interest of rightholders in securing protection, and thus maximising their income positions, but also of the interest in achieving and maintaining effective market competition, minimising any negative externalities deriving from that protection. It concludes that the creation of a new remuneration right for newspaper publishers would not really be offsetting or balancing out a market failure, since, despite the constant use of their content made by search engines and aggregators, there is actually no loss of income or of incentives, insofar as the publishers benefit from the user traffic that the search engines and aggregators divert to their website, and they are able to prevent indexing and aggregation using the standardized file "robots.txt".

2. Economic aspects of copyright and related rights.*

2.1. Has there in your country been conducted research on the economic size of the copyright-based industries? If yes, please summarize the results.

⁹ PRO/CNMC/0002/14. Vid. on http://cnmcblog.es/wp-content/uploads/2014/05/140516-PRO_CNMC_0002_14-art-322PL.pdf (last visited, 14 October 2014).

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In Spain, several reports about the economic size of the copyright-based industries are published annually regarding the whole spectrum of cultural industries as well as the different sectors (i.e. literature, music, theatrical productions, motion picture and video, software, and computer games). The most relevant reports recently published are the following:

GLOBAL STUDIES	
Annual Report of Cultural Statistic, 2016 (by the General Sub-directorate of Statistics and Studies of the Ministry of Education, Culture and Sport) ¹⁰	<p>This report contains a complete selection of the most relevant data on the cultural industry, gathered from the many available sources. It includes the principal indicators for the 2011-2015 timeframe.</p> <p>The report is divided into three parts: The first part includes the more relevant statistics about employment, companies, public and private funding, intellectual property, foreign trade, tourism, education, and cultural habits.</p> <p>The second part offers more specific data about cultural heritage, museums, cultural archives, libraries, books, dramatic arts, cinema, video, and bullfighting.</p> <p>The last part is devoted to statistics summarizing all the data and includes the results of the so-called Culture Satellite Account (CSA). The CSA is an accounting framework created to better measure the economic importance of culture in the Spanish economy.</p>
Annual report regarding Digital Content Sector in Spain 2016 (by the National Observatory of Telecommunications and Information Society) ¹¹	<p>Overview study about the evolution of digital content industries in 2015 in Spain. This report offers aggregated data and detailed statistics about the most relevant sectors (i.e. video-games, music, cinema and video, audiovisual and publication). It includes an interesting analysis about the future trends in the digital content industry.</p>
Report regarding the state of culture in Spain. Culture as force for change 2016	<p>This report seeks to offer a complete overview of the cultural industry using a different approach than the aforementioned documents.</p> <p>The report contains, within its first part, the sectorial analysis of culture in Spain from an academic view. It is important to note that it includes some novel studies regarding, for instance, the consideration of design as a cultural industry.</p>

¹⁰ Subdirección General de Estadística y Estudios, Secretaría General Técnica. Ministerio de Educación, Cultura y Deporte. *Anuario de Estadísticas Culturales. 2016*. <http://www.mecd.gob.es/servicios-al-ciudadano/mecd/estadisticas/cultura/mc/naec/2016.html>

¹¹ Observatorio Nacional de las telecomunicaciones y de la SI. *Informe anual del Sector de los Contenidos Digitales en España 2016*. <http://www.ontsi.red.es/ontsi/sites/ontsi/files/Informe%20Sector%20de%20los%20Contenidos%20Digitales%202016.pdf>

(by Alternatives Foundation) ¹²	The second part of this report is about the last trends in cultural politics, including studies about cultural business incubators or self-management in cultural industries.
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SECTORAL STUDIES	
PRESS AND LITERATURE	
<p>The book publishing sector in Spain 2013-2015 (by The Observatory of Reading and Books)¹³</p>	<p>This report is grounded on the cataloguing of the ISBN annually attributed. The data collected in this report originated from the following sources:</p> <ul style="list-style-type: none"> - Panorámica de la Edición Española de Libros (<i>Panorama of Spanish Book Publishing</i>) - Comercio Interior del Libro en España (<i>Internal market of Book Publishing in Spain</i>) - Estadística de la Producción Editorial (<i>Statistics for Editorial Production</i>) - Encuesta de Hábitos y Prácticas Culturales (<i>Inquiry of Habits and Cultural Practices</i>) - Anuario de Estadísticas Culturales (<i>Yearbook of Cultural Statistics</i>) - Estadística de Bibliotecas (<i>Library Statistics</i>) - Sistema de Indicadores de Gestión Económica de la Librería en España (<i>System of Economic Management Indicators of the Book Sector in Spain</i>) - Barómetro de la Actividad de la Librería en España (<i>Barometer of Activity in the Book Sector in Spain</i>) - Mapa de Librerías (<i>Map of Bookshops in Spain</i>) - Evolución de los precios de los libros de texto (<i>Evolution of textbook prices</i>) - Estudio de Perfil del sector de la distribución de libros y publicaciones periódicas (<i>Profile Study of the sector of the distribution of books and periodical publications</i>)

¹² Fundación Alternativas. *Informe sobre el Estado de la Cultura en España 2016. La Cultura como motor de cambio*. <http://www.fundacionalternativas.org/las-publicaciones/informes/informe-sobre-el-estado-de-la-cultura-en-espana-2016-la-cultura-como-motor-del-cambio>

¹³ Observatorio de la Lectura y el Libro. Ministerio de Educación, Cultura y Deporte. *El sector del libro en España 2013-2015*. <http://www.mecd.gob.es/dms/mecd/cultura-mecd/areas-cultura/libro/mc/observatoriolect/redirect/destacados/2016/Enero/mundo-libro/InformeSector-Enero2016/El-Sector-del-Libro-en-Espa-a---Enero-2016/El%20Sector%20del%20Libro%20en%20Espa%C3%B1a%20-%20Enero%202016.pdf>

	<ul style="list-style-type: none"> - Comercio Exterior del Libro (Foreign Trade of Books) - Hábitos de Lectura y Compra de Libros en España (<i>Book Reading and Purchasing habits in Spain</i>).
Report on the Spanish publishing sector 2015 (by the Federation of Publishers' Guilds)	This report, made by the Federation of Publishers' Guilds, gathers all data related to Interior and Exterior Market for Spanish Books.
Spanish Book Publishing Panorama 2015 (by The Observatory of Reading and Books) ¹⁴	<p>This report is in its 27th issue and gathers editing and billing data from private and unionized publishing companies in Spain for 2015.</p> <p>The report reflects the present situation of the editing market, as well as the evolution and trends of the main sector indicators. It is based on data gathered via questionnaires filled by the publishers.</p>
MUSIC AND THEATRICAL PRODUCTIONS	
White Book on Music in Spain 2013 (by Promusicae) ¹⁵	This White Book is the second one that Promusicae published regarding the music sector in Spain (The first one was released on 2005). It gathers a complete update of the most relevant details regarding the Spanish music industry. It studies the political, economic, and social background of the music sector and explains the last changes and trends in the music business.
Recording music market in Spain in 2016 (by Promusicae) ¹⁶	Periodical infographic chart of the music sector in Spain. This chart resumes graphically the main data regarding the music sector in 2016.
SGAE ¹⁷ 2016 Yearbook of the performing arts, musical and audiovisual works ¹⁸	This report, now in its sixteenth edition, is one of the reference publications on the cultural sector. It provides information about the following sectors: performing arts (theatre, dance and opera), classical music, modern music, cinema, recorded music, television, video, radio and new technologies.
MOTION PICTURE AND VIDEO	

¹⁴ Observatorio de la Lectura y el Libro. Ministerio de Educación, Cultura y Deporte. *Panorámica de la edición española de libros 2015*. <https://sede.educacion.gob.es/publiventa/panoramica-de-la-edicion-espanola-de-libros-2015-analisis-sectorial-del-libro/libros-y-lectura/20784C>

¹⁵ PROMUSICAE. *Libro Blanco de la Música en España 2013*. (English versión: <http://www.promusicae.es/libroblanco/2013/en/>)

¹⁶ PROMUSICAE. *Mercado de la Música Grabada en España 2016*. <http://www.promusicae.es/estaticos/view/4-informes-promusicae>

¹⁷ The Spanish General Society for authors and publishers (Sociedad General de Autores y Editores)

¹⁸ SGAE. *Anuario SGAE de las artes escénicas, musicales y audiovisuales 2016*. <http://www.anuariosgae.com/anuario2016/home.html>

EGEDA ¹⁹ 2016 Ibero-american Audiovisual Panorama ²⁰	Study of the audiovisual markets in Spain and Latin America, with special attention to the cinema sector.
SGAE 2016 Yearbook of the performing arts, musical and audiovisual works ²¹	(See above)
CNMC ²² Telecommunications and Audiovisual. Sector Economic Report 2015 ²³	Economic study of telecommunications and audiovisual sector conducted by the Spanish Competition Authority. This report contains information regarding audiovisual communication services, especially radio and television (including pay television).
SOFTWARE, DATABASES AND COMPUTER GAMES	
AEVI ²⁴ 2015 Yearbook of the Video-game Industry ²⁵	This Yearbook provides a complete overview of the video game sector, including on-line games. It also provides a profile of the users and an economic study of this sector.
DEV ²⁶ 2016. White Book of the Development of the Videogame Industry ²⁷	This White Paper aims at studying the full potential of the videogame sector in Spain, providing data about the current situation and the future trends in this sector.
ART MARKET	
The Spanish Art Market in 2014. Cuadernos de Arte y Mecenazgo, nº3. Fundación Arte y Mecenazgo. Barcelona, 2014 ²⁸	This report is based on data gathered and analyzed by Arts Economics from a number of different sources. Much of the insights presented in the report have been based on a series of interviews conducted with collectors, auctioneers and dealers in Madrid and Barcelona in 2014.

The data and statistics provided by these studies are extremely complete and detailed.

General overview of the cultural industry

¹⁹ Spanish Collective Management Society for Audiovisual Producers.

²⁰EGEDA. *Panorama Audiovisual Iberoamericano 2016*. http://www.egeda.com/documentos/Panorama_Audiovisual_Iberoamericano_2016.pdf

²¹ SGAE. *Anuario SGAE de las artes escénicas, musicales y audiovisuales 2016*. <http://www.anuariosgae.com/anuario2016/home.html>

²² Spanish National Authority for Markets and Competition (Comisión Nacional de los Mercados y la Competencia. CNMC)

²³ https://www.cnmc.es/sites/default/files/1539347_2.pdf

²⁴ Video-games Spanish Association (Asociación Española de Videojuegos. AEVI).

²⁵ AEVI. *Anuario de la industria del videojuego 2015*. <http://www.aevi.org.es/documentacion/el-anuario-del-videojuego/>

²⁶ Spanish Development of Video games. (Desarrollo Español de Videojuegos. DEV).

²⁷ DEV. *Libro Blanco del Desarrollo Español de Videojuegos 2016*. <http://www.dev.org.es/publicaciones/libro-blanco-dev-2016>.

²⁸ McAndrew, C. *The Spanish Art Market in 2014*. Cuadernos de Arte y Mecenazgo, nº3. Fundación Arte y Mecenazgo. Barcelona, 2014. <http://fundacionarteymecenazgo.org/wp-content/uploads/2014/11/The-Spanish-Art-Market-in-2014-Arte-y-Mecenazgo-Clare-McAndrew.pdf>

Regarding the cultural industry in general the following salient facts can be pointed out:

- The number of cultural companies recorded in the Central Business Register (*Directorio Central de Empresas -DIRCE-*) reached 112.037 at the beginning of 2015.
- Most of the companies (78.6%) carry on industrial or service activities such as publishing, library, archives, museums, film production and distribution companies, video, radio and television companies, artistic and entertainment companies. The rest of these companies (21.4%) are linked to the purchasing or renting of cultural goods.
- Only 0.5% of these companies have more than 50 employees, the rest are SMEs among which 63.4% have no employees.
- The employment in the cultural sector increased to 515.000 people in 2015.
- Annual public expenses in Culture by the Public Administrations reached 679 million euros and the Autonomous Administrations expenses in Culture attained 1.047 million.

Books

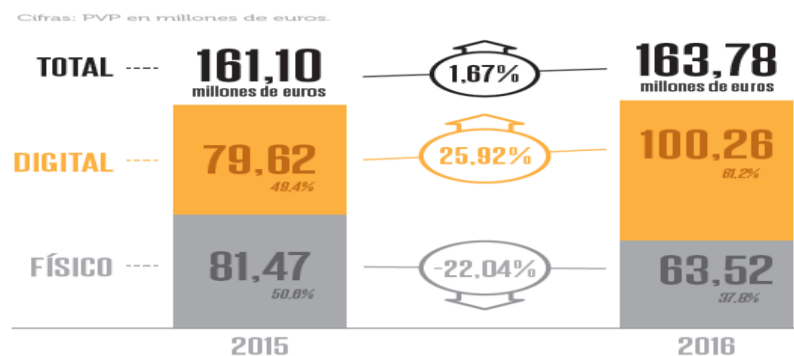
The number of books registered in ISBN in 2015 was 79.397 with 71.9% in paper and 28.1% in other media. The data obtained in 2015 seems to confirm the change in trend noticed in 2014 which announced the beginning of the recovery in the editorial sector in Spain. In 2015, employment increased by 1%. During 2015, 80.181 titles were published (2.1% more than in 2014) and 225.277.000 copies were printed (0.6% less than in 2014). There were 155.436.000 books sold (thus, 1,2% more than in the precedent year). The editorial sector increased its turnover to 2.257 million euros.

	2015	% 2015/2014
Private and unionized publishing companies	775	0,9
Employees	12.532	1,0
Published titles	80.181	2,1
Copies produced (thousands)	225.277	-0,6
Average printing (copies/titles)	2.810	-2,7
«Live» titles for sale	586.811	5,9
Internal Market Turnover (PVP) (million Euros)	2.257,07	2,8
Internal Market Net turnover (million Euros)	1.573,44	3,7
Copies sold (thousands)	155.436	1,2
Average price	14,52	1,6

Source: Federation of Publishers' Guilds. *Report on the Spanish publishing sector 2015* (translation from the original source)

Music

The studies conducted last year confirm the growing importance of digital music content. In 2016, for the first time, digital market turnover surpassed physical market turnover. One of the key points of this change is the success of streaming (around 62 million coming from subscriptions and 25 from streaming indirectly funded by advertisement). An interesting information is the increase of the purchasing of vinyl records (up 19.6% from 2015).

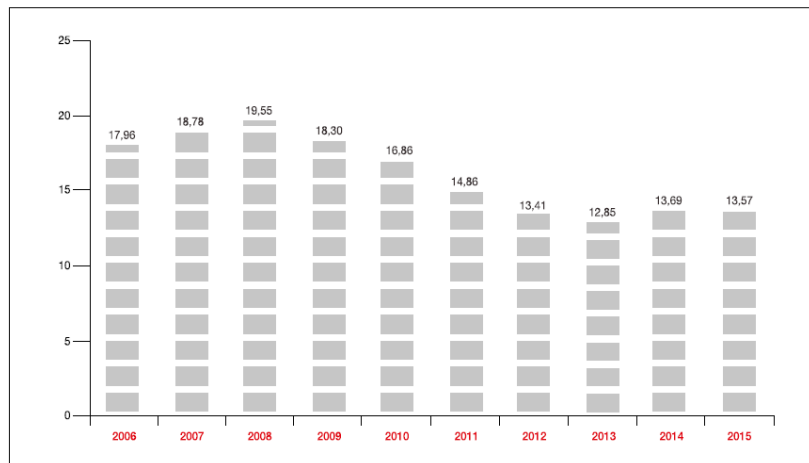


Source: Promusica. *Recorded music market in Spain in 2016*. Infographic chart.

Performing arts (theatre, dance, opera, and zarzuela)

During 2015, 221.125.117 euros were collected, i.e. 9.6 million euros more than the previous year. Nevertheless, as pointed out by the SGAE report, this sector is expanding but it continues to be affected by the economic crisis. Moreover, the increase in aggregated turnover should be mitigated by the cultural VAT rise in 2012.

GRÁFICO 1 | Espectadores de artes escénicas (millones). 2006-2015

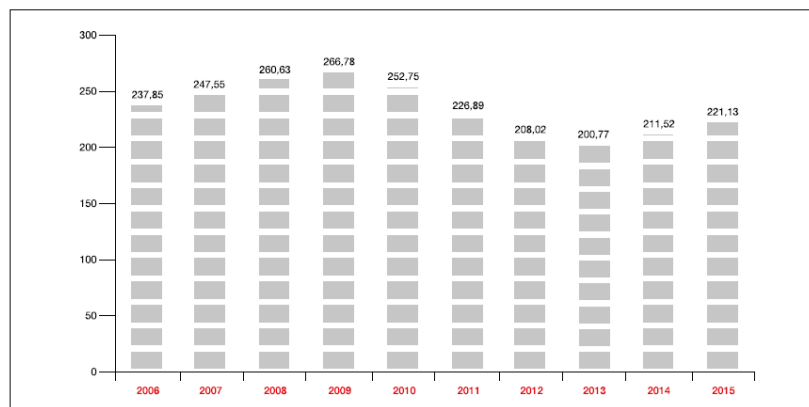


Unidad: Millones de espectadores.
Fuente: SGAE.

Number of viewers of performing arts from 2006 to 2015.

Source: SGAE 2016 Yearbook of the performing arts, musical and audiovisual works

GRÁFICO 2 | Recaudación total de artes escénicas (millones de euros). 2006-2015



Unidad: Millones de euros.
Fuente: SGAE.

Total revenue of performing arts from 2006 to 2015.

Source: SGAE 2016 Yearbook of the performing arts, musical and audiovisual works

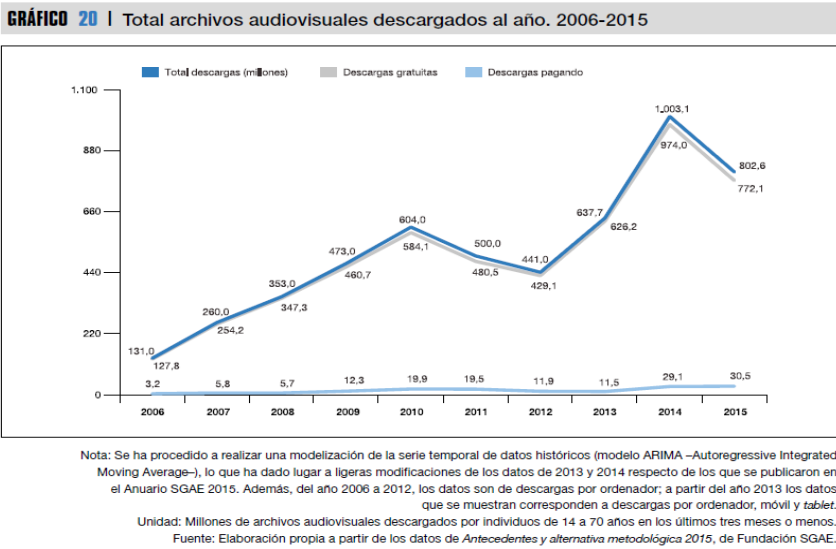
Cinema

During 2015, movie theatres made 570.739.592 euros, (a 9,6% more than in the previous year, thus around 50 million more). Despite a decline in the number of screens and sessions, the number of tickets sold increased by 7.8%.

Video

The total amount collected in 2015 in video sector was 67.15 million euros, (thus, 1.85 million more than the previous year, i.e. +2.8%). Of this amount, only 3.2% correspond to renting fees (in a sharp decline

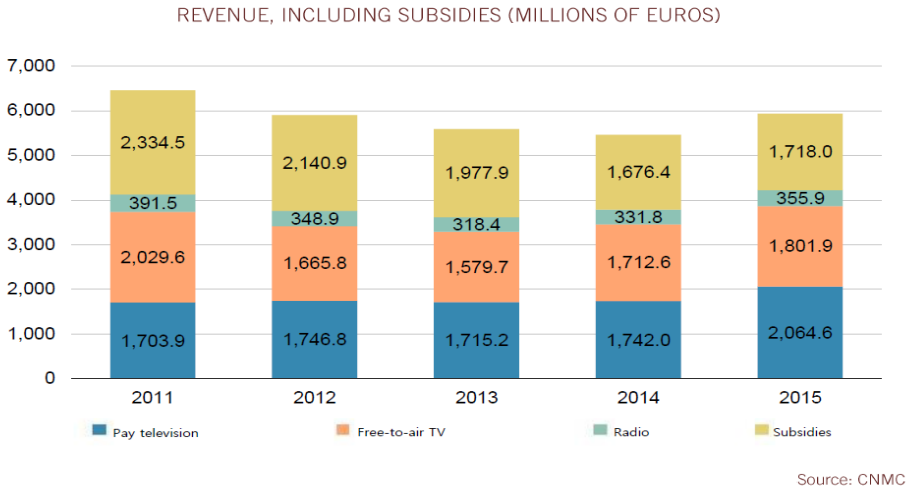
of 18.2%). The amount raised by video sales accounts for the remaining 96.8%. In 2015, the number of audiovisual file downloads dropped by 20.7%, nevertheless paid downloads raised by 4.8%.



Number of files downloaded per year (2006-2015)
Source: SGAE 2016 Yearbook of the performing arts, musical and audiovisual work 2016

Audiovisual

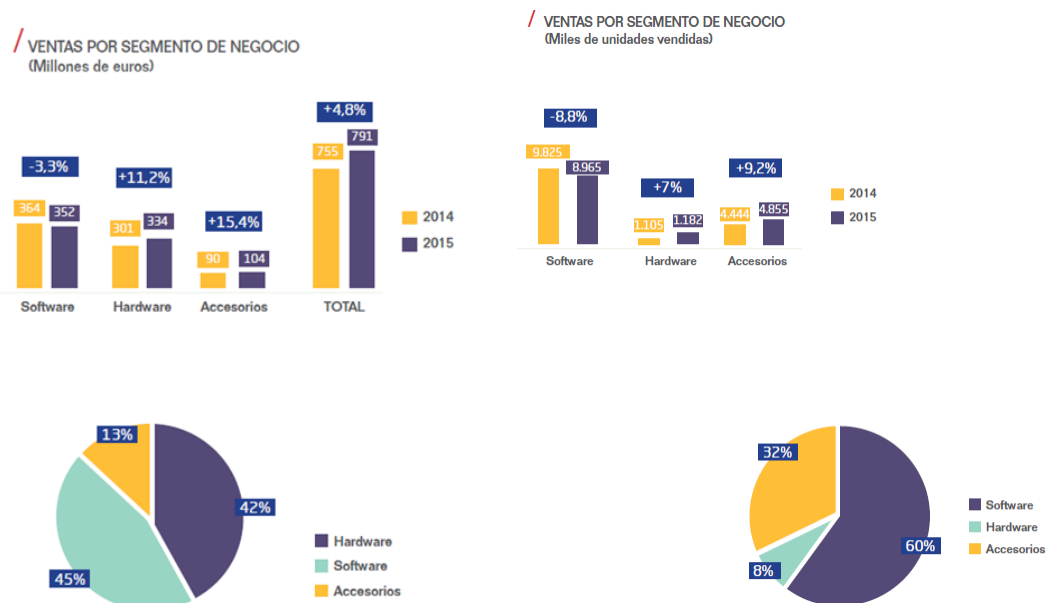
Revenue (excluding subsidies) obtained by radio and television operators was 4.222.4 million (thus, 11.5% more than the previous year). As pointed out in the CNMC Annual Report, the main causes of this growth were the recovery in advertisement revenue and the increase in pay television revenue.



Source: CNMC Telecommunications and Audiovisual. Sector Economic Report 2015

Video game

During 2015, the consumption of videogames in Spain rose to 1.083 million euros, among which 755 million euros from physical market and 241 from on-line market (thus 8.7% more than the previous year). Data regarding goods segments shows that software made a turnover of 352 million euros, while hardware generated a volume of business of 334 million euros and accessories and peripherals of 104 million euros. Experts affirm that videogames are therefore confirmed as the most important audio-visual and interactive industry in Spain.



Source: AEVI 2015 Yearbook of the Video-game Industry

2.2. Has the research been conducted in accordance with a generally accepted and described methodology in order to make it comparable to similar research abroad?

There is no single set of methodologies applied in every report, as these will vary according to the report's objective and the sector(s) being studied. Nevertheless, most of them, notably global reports, respect the UNESCO Framework for Cultural Statistics. Furthermore, most of the studies contain a detailed description of the methodology used. The importance of statistics and data provided by CMOs as fundamental sources of most of the reports should be highlighted.

2.3. Has there been any empirical research in your country showing who benefits economically from copyright and related rights protection? If yes, please summarize the results and the methodology used.

The most relevant report on this matter is the *Annual Report of Cultural Statistic 2016*. This report gathers all available data regarding amounts raised by CMOs and allocated amongst right-holders.

The data was provided by the General Sub-Directorate of Intellectual Property (Ministry of Education, Culture and Sport), which obtained them directly from the Spanish CMOs.

The total amount collected by all the Spanish CMOs in 2015 was 356.5 million euros, which supposes an increase of +2.2% from a year earlier: 73.5% corresponds to the authors' rights, 14.7% to the artists and performers' rights and 11.8% to the producers' rights.

The number of members of all CMOs went up to 184.000 (among which 4.1% were companies).

As shown in the tables below, CMOs collected 356.539.000 euros in author rights, 52.437.000 euros in artist and performer rights and 41.912.000 euros in producer rights and they distributed 225.852.000 euros in author rights, 53.611.000 euros in artist and performer rights and 32.007.000 euros in producer rights.

5.1. Cantidades recaudadas por las entidades de gestión de derechos de propiedad intelectual ⁽¹⁾

ENTIDADES DE GESTIÓN	VALORES ABSOLUTOS (Miles de euros)					DISTRIBUCIÓN PORCENTUAL				
	2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
TOTAL	490.585	389.346	362.274	348.743	356.539	100	100	100	100	100
De derechos de autor	342.298	274.962	264.179	264.610	262.190	69,8	70,6	72,9	75,9	73,5
SGAE	311.381	258.602	248.418	248.424	246.887	63,5	66,4	68,6	71,2	69,2
CEDRO	22.030	7.585	7.794	8.032	7.077	4,5	1,9	2,2	2,3	2,0
VEGAP	6.546	5.355	4.548	4.615	4.919	1,3	1,4	1,3	1,3	1,4
DAMA	2.341	3.420	3.419	3.539	3.307	0,5	0,9	0,9	1,0	0,9
De derechos de artistas, intérpretes o ejecutantes	101.056	71.478	60.841	48.679	52.437	20,6	18,4	16,8	14,0	14,7
AISGE	49.085	35.533	30.096	20.497	23.533	10,0	9,1	8,3	5,9	6,6
AIE	51.971	35.945	30.745	28.182	28.904	10,6	9,2	8,5	8,1	8,1
De derechos de productores	47.231	42.906	37.254	35.454	41.912	9,6	11,0	10,3	10,2	11,8
EGEDA	18.970	19.434	13.222	15.264	19.528	3,9	5,0	3,6	4,4	5,5
AGEDI	28.261	23.472	24.032	20.190	22.384	5,8	6,0	6,6	5,8	6,3

Fuente: MECD. Subdirección General de Propiedad Intelectual

5.2. Cantidades repartidas por las entidades de gestión de derechos de propiedad intelectual ⁽¹⁾

ENTIDADES DE GESTIÓN	VALORES ABSOLUTOS (Miles de euros)					DISTRIBUCIÓN PORCENTUAL				
	2011	2012	2013	2014	2015	2011	2012	2013	2014	2015
TOTAL	451.932	450.960	351.133	320.301	311.470	100	100	100	100	100
De derechos de autor	340.463	351.539	250.870	241.178	225.852	75,3	78,0	71,4	75,3	72,5
SGAE	322.186	332.751	241.380	231.309	212.950	71,3	73,8	68,7	72,2	68,4
CEDRO	13.023	12.256	4.623	4.148	7.241	2,9	2,7	1,3	1,3	2,3
VEGAP	4.022	4.744	2.864	3.012	3.135	0,9	1,1	0,8	0,9	1,0
DAMA	1.232	1.788	2.003	2.709	2.526	0,3	0,4	0,6	0,8	0,8
De derechos de artistas, intérpretes o ejecutantes	78.517	63.156	69.621	49.040	53.611	17,4	14,0	19,8	15,3	17,2
AISGE	36.200	23.999	31.742	18.052	23.899	8,0	5,3	9,0	5,6	7,7
AIE	42.317	39.157	37.879	30.988	29.712	9,4	8,7	10,8	9,7	9,5
De derechos de productores	32.952	36.265	30.642	30.083	32.007	7,3	8,0	8,7	9,4	10,3
EGEDA	11.657	15.036	11.209	10.273	13.499	2,6	3,3	3,2	3,2	4,3
AGEDI	21.295	21.229	19.433	19.810	18.508	4,7	4,7	5,5	6,2	5,9

Fuente: MECD. Subdirección General de Propiedad Intelectual

(1) Véanse notas a este cuadro en el apartado Notas metodológicas

Source: General Sub-directorate of Statistics and Studies of the Ministry of Education, Culture and Sport
Annual Report of Cultural Statistic, 2016

The amounts originated by each kind of right in 2015 are summarized in the following tables:

Collected rights	Reproduction and distribution rights	Public communication	Droit de suite	Private copying levy
Authors	44.959	203.388	908	12.935
Artists and performers	0	50.840	-	1.597
Producers	3.499	36.956	-	1.457

Distributed rights	Reproduction and distribution rights	Public communication	Droit de suite	Private copying levy
Authors	36.450	181.372	692	7.337
Artists and performers	0	51.012	-	2.600
Producers	4.248	27.132	-	627

The complete tables are reproduced below:

5.3. Cantidades recaudadas por las entidades de gestión de derechos de propiedad intelectual según tipo de derecho por tipo de entidad ^(f)

	TOTAL		Reproducción / Distribución		Comunicación Pública		Participación		Copia Privada	
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
VALORES ABSOLUTOS (Miles de euros)	348.743	356.539	51.337	48.458	287.783	291.184	814	908	8.808	15.989
De derechos de autor	264.610	262.190	48.058	44.959	208.649	203.388	814	908	7.089	12.935
SGAE	248.424	246.887	41.549	37.399	203.543	198.615	0	0	3.332	10.873
CEDRO	8.032	7.077	5.255	6.086	0	0	0	0	2.777	991
VEGAP	4.615	4.919	1.255	1.473	1.575	1.515	814	908	971	1.023
DAMA	3.539	3.307	-	1	3.531	3.258	0	0	9	48
De derechos de artistas, intérpretes o ejecutantes	48.679	52.437	0	0	47.438	50.840	0	0	1.240	1.597
AISGE	20.497	23.533	0	0	19.999	22.913	0	0	498	619
AIE	28.182	28.904	0	0	27.439	27.927	0	0	742	977
De derechos de productores	35.454	41.912	3.279	3.499	31.696	36.956	0	0	479	1.457
EGEDA	15.264	19.528	0	0	15.264	18.704	0	0	0	824
AGEDI	20.190	22.384	3.279	3.499	16.432	18.252	0	0	479	633
DISTRIBUCIÓN PORCENTUAL	100	100	100	100	100	100	100	100	100	100
De derechos de autor	75,9	73,5	93,6	92,8	72,5	69,8	100,0	100,0	80,5	80,9
SGAE	71,2	69,2	80,9	77,2	70,7	68,2	0,0	0,0	37,8	68,0
CEDRO	2,3	2,0	10,2	12,6	0,0	0,0	0,0	0,0	31,5	6,2
VEGAP	1,3	1,4	2,4	3,0	0,5	0,5	100,0	100,0	11,0	6,4
DAMA	1,0	0,9	0,0	0,0	1,2	1,1	0,0	0,0	0,1	0,3
De derechos de artistas, intérpretes o ejecutantes	14,0	14,7	0,0	0,0	16,5	17,5	0,0	0,0	14,1	10,0
AISGE	5,9	6,6	0,0	0,0	6,9	7,9	0,0	0,0	5,7	3,9
AIE	8,1	8,1	0,0	0,0	9,5	9,6	0,0	0,0	8,4	6,1
De derechos de productores	10,2	11,8	6,4	7,2	11,0	12,7	0,0	0,0	5,4	9,1
EGEDA	4,4	5,5	0,0	0,0	5,3	6,4	0,0	0,0	0,0	5,2
AGEDI	5,8	6,3	6,4	7,2	5,7	6,3	0,0	0,0	5,4	4,0

Fuente: MECD. Subdirección General de Propiedad Intelectual
(f) Véanse notas a este cuadro en el apartado Notas metodológicas

Source: General Sub-directorate of Statistics and Studies of the Ministry of Education, Culture and Sport
Annual Report of Cultural Statistic, 2016

5.4. Cantidades repartidas por las entidades de gestión de derechos de propiedad intelectual según tipo de derecho por tipo de entidad ^(f)

	TOTAL		Reproducción / Distribución		Comunicación Pública		Participación		Copia Privada	
	2014	2015	2014	2015	2014	2015	2014	2015	2014	2015
VALORES ABSOLUTOS (Miles de euros)	320.301	311.470	42.619	40.698	268.421	259.516	618	692	8.643	10.564
De derechos de autor	241.178	225.852	39.842	36.450	195.573	181.372	618	692	5.145	7.337
SGAE	231.309	212.950	35.443	31.874	192.121	177.796	0	0	3.745	3.280
CEDRO	4.148	7.241	3.185	3.464	0	0	0	0	963	3.776
VEGAP	3.012	3.135	1.214	1.112	856	1.068	618	692	324	263
DAMA	2.709	2.526	0	0	2.596	2.508	0	0	113	18
De derechos de artistas, intérpretes o ejecutantes	49.040	53.611	0	0	46.037	51.012	0	0	3.003	2.600
AISGE	18.052	23.899	0	0	16.931	23.462	0	0	1.121	437
AIE	30.988	29.712	0	0	29.106	27.549	0	0	1.882	2.163
De derechos de productores	30.083	32.007	2.777	4.248	26.811	27.132	0	0	495	627
EGEDA	10.273	13.499	0	0	10.273	13.453	0	0	0	46
AGEDI	19.810	18.508	2.777	4.248	16.538	13.679	0	0	495	581
DISTRIBUCIÓN PORCENTUAL	100	100	100	100	100	100	100	100	100	100
De derechos de autor	75,3	72,5	93,5	89,6	72,9	69,9	100,0	100,0	59,5	69,5
SGAE	72,2	68,4	83,2	78,3	71,6	68,5	0,0	0,0	43,3	31,0
CEDRO	1,3	2,3	7,5	8,5	0,0	0,0	0,0	0,0	11,1	35,7
VEGAP	0,9	1,0	2,8	2,7	0,3	0,4	100,0	100,0	3,7	2,5
DAMA	0,8	0,8	0,0	0,0	1,0	1,0	0,0	0,0	1,3	0,2
De derechos de artistas, intérpretes o ejecutantes	15,3	17,2	0,0	0,0	17,2	19,7	0,0	0,0	34,7	24,6
AISGE	5,6	7,7	0,0	0,0	6,3	9,0	0,0	0,0	13,0	4,1
AIE	9,7	9,5	0,0	0,0	10,8	10,6	0,0	0,0	21,8	20,5
De derechos de productores	9,4	10,3	6,5	10,4	10,0	10,5	0,0	0,0	5,7	5,9
EGEDA	3,2	4,3	0,0	0,0	3,8	5,2	0,0	0,0	0,0	0,4
AGEDI	6,2	5,9	6,5	10,4	6,2	5,3	0,0	0,0	5,7	5,5

Fuente: MECD. Subdirección General de Propiedad Intelectual
(f) Véanse notas a este cuadro en el apartado Notas metodológicas

Source: General Sub-directorate of Statistics and Studies of the Ministry of Education, Culture and Sport
Annual Report of Cultural Statistic, 2016

3. Individual and collective licensing as a means of improving the functioning and acceptance of copyright and related rights.*

3.1. Is there a wide-spread culture of collective management of copyright and related rights in your country, or is it limited to the 'core' areas of musical performing rights and reprography rights? Please describe the areas where collective management is used.

In Spain, collective management is widely spread for both copyright and related-rights. Before the LPI1987 (Act 22/1987), there was only one CMO in Spain (SGAE -basically devoted to the management of musical works, dramatic arts and audiovisual works). After the LPI1987 (Act 22/1987), several (new) CMOs were created in Spain (and obtained the authorization by the Ministry of Culture), covering a diversity of works and subject matter (hence, authors and owners). CMOs must be nonprofit organizations; commercial lucrative organizations are (so far) not allowed. CMOs must be built on an associative basis and must be authorized by the Spanish government to operate in the specific areas provided for in their statutes and are subject to its supervision. Spanish CMOs can operate on the whole Spanish territory. Through the reciprocal representation agreements, they manage the rights of their respective associates as well as those in the catalogues of "sister" CMOs from other countries.

Sociedad General de Autores y Editores (SGAE) represents authors of musical, audiovisual, and dramatic works, as well as music publishers. SGAE, a member of CISAC [International Confederation of Authors and Composers Societies], licenses exclusive rights, manages the compensation for private copying, the remunerations for communication to the public (including the making available) of audiovisual works, the remuneration for rental, and the compensation for public lending. <http://www.sgae.es>

Centro Español de Derechos Reprográficos (CEDRO) represents authors and publishers of literary works. CEDRO, a member of IFRRO [International Federation of Reproduction Rights Organisations], licenses exclusive rights, and manages compensation for private copying and compensation for public lending. <http://www.cedro.org>

Asociación de Gestión de Derechos Intelectuales (AGEDI) represents phonogram and audiovisual recording producers. AGEDI licenses exclusive rights and manages compensation for private copying. <http://www.agedi.es>

Artistas Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE) represents music performers, conductors, singers. AIE manages the remuneration rights granted to performers by the Spanish IP Law: public communication to the public of phonograms and audiovisual recordings, making available of both phonograms and audiovisual recordings, rental right, the so-called "annual supplementary remuneration" and the compensation for private copying. <http://www.aie.es>

Visual, Entidad de Gestión de Artistas Plásticos (VEGAP) represents authors of works of plastic art and visual art (graphics, designs and photographs, etc.). VEGAP licenses the exclusive rights of reproduction

* Raquel Xalabarder. Patricia Riera. Montserrat Benzal.

and communication to the public, as well as the compensation for private copying and the resale right. <http://www.vegap.es>

Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA) represents audiovisual producers. EGEDA licenses the right of communication to the public, and manages the compensation for private copying. <http://www.egeda.es>

Artistas Intérpretes, Sociedad de Gestión (AISGE) represents actors and dancers. AISGE licenses the exclusive rights, and manages the compensation for private copying, the remuneration for rental, as well as the remuneration for making available online. <http://www.aisge.es>

Asociación Derechos de Autor de Medios Audiovisuales (DAMA) represents literary authors and directors of audiovisual works. DAMA licenses exclusive rights and manages the compensation for private copying, remuneration for rental and compensation for public lending. <http://www.damautor.es/>

Accordingly, Spanish CMOs cover all copyright authors (audiovisual works, musical works, literary works, works of plastic art), performing artists (musical and audiovisual), and owners (audiovisual producers, phonogram producers, literary publishers).

3.2. Are there legislative provisions in your national law aiming at facilitating the management of copyright and related rights? If yes, please summarize.

Because of its importance and eminently technical nature of collective management, legislative provisions designed to facilitate it would be highly valuable. Nevertheless, only a few provisions exist in the Spanish TRLPI designed to facilitate collective management.

Spanish law specifically facilitates collective management in three main ways:

- On a general basis, Spanish IP Law allows authorized CMOs to seek **injunctions and precautionary measures and to sue for copyright infringement** (claims).
- CMOs have **standing to sue** (in front of courts and governmental agencies) and are legitimized to act on behalf of their members without the need to provide evidence of the individual management contracts.
- In some specific cases (remuneration rights or licensing) Spanish TRLPI sets **collective management as “mandatory”** (the license or remuneration can only be managed by a CMO) – this is the case, for instance, of the remuneration for private copying, the remuneration for news aggregation, etc. (see list below).

Specially, since the last amendment (Nov. 2014), the First Section of the CPI (Commission of Intellectual Property) at the Ministry of Culture may also help facilitate collective management by means of the **broader procedures of mediation and arbitration for the resolution of any conflicts (disputes) arising between CMOs and licensees** in the negotiation and agreement on fees, and CMOs may even ask the Sec.1 CPI to establishment of amounts to substitute for fees in cases of conflicts among CMOs or between them and users’ associations.

3.3. Which models for limitations and exceptions have been implemented in your national law? Such as free use, statutory licensing, compulsory licensing, obligatory collective management, extended collective management, other models? Please provide a general overview.

The TRLPI makes **no distinction between limitations and exceptions**, and formally refers to them as “limits”. Some limits allow for **free uses** of works, other are **subject to compensation or remuneration** (the Spanish TRLPI tends to use these terms rather loosely, resulting in abundant caselaw and scholarly debates as to their significance). **Non-voluntary (compulsory or statutory) licenses are not “formally” known** within the Spanish copyright tradition. However, similar effects are *de facto* achieved by two other means:

- under **remunerated limitations**: for instance, this is the case of the remunerated limitation for private copying, the remunerated limitation for use of publications by universities or the more recent remunerated limitation for news aggregation online;
- or as **“simple remuneration rights”** (term used by doctrine to refer to remunerations granted by law which do not derive from a limitation): for instance, the box-office share for audiovisual authors.

All together, these “remuneration rights” produce the same effects as non-voluntary licensing. See the **list of remunerations (of different nature) provided for in Spanish law**, under Annex 1.

Most (but not all) of these remunerations are subject to mandatory collective management. However, even when the statute is silent about it, CMOs end up in practice managing these remunerations.

Spain does not formally know the regime of ECL – Extended Collective Licenses – but, in practice, the same (or very similar) effect is achieved when a license / remuneration is subject to **mandatory collective management**: in that case, the CMO will be the only one entitled to manage that right (remuneration) for all authors/works under its scope (also for those authors who have never mandated the management of the specific right to the CMO). This effect is enhanced by the fact that most remunerations subject to mandatory collective management are also set as **“unwaivable and inalienable”** thus, securing that the CMO will be able to operate in the most efficient manner (no need to prove mandates and no risk of waivers).

Spanish law adopts **a closed system of (exhaustive) limitations** to copyright (art.2 TRLPI: “[...] without any limitations other than those specified in the Law”; art 17 TRLPI: “[...] except where this Law so provides”). No other limits to the authors’ exclusive rights are possible—except for the general doctrines of good faith and abuse of right (ex Art.7 Spanish Civil Code) and the rules on consumer protection (which might annul a contractual clause aimed at restricting or vacating a statutory limitation). In general terms, each limitation tends to specify which exploitation rights are being affected. Some limitations refer to the general term “use” (which is read as to cover all exploitation rights). Most of them apply to all kinds of works but some of them only apply to specific categories of works (such as databases and computer programs). Several limitations are subject to noncommercial purposes; others are not so, although, in general terms, a lucrative gain will always cast some doubt in terms of art.40bis (three-step-test). The question **whether limitations are mandatory or not** remains open. In some cases (e.g., art. 32(1) *in fine* and art.33 TRLPI), the exception is left to be governed by the parties as reflected in the conditions “unless the author has expressly opposed” or “provided that no reserved copyright notice appeared in the original.” The remaining exceptions should be, *a contrario*, considered mandatory.

As a general rule, **the person who makes the act of exploitation is obliged to pay** for the remuneration/compensation, as applicable in each case. The only exception to this rule is the compensation for private copy which since 2011 is being paid on the State General budget, rather than through the levy on equipment and supports (which had been the traditional system since 1987). The Act 21/2014 consolidated this regime but the CJEU ruling in *EGEDA* (declaring that the system was not conforming with EU law) will likely force the Spanish legislator to re-introduce the levy system.

On very rare occasions, the amount of a remuneration is set directly by law or government decree: this is the case of the equitable remuneration for public lending (an interim remuneration was first established by Act 4/2008 and later regulated by Royal Decree 624/2014 of July 18) and the equitable compensation for private copying (which is currently established annually by the Government, according to the criteria set by Royal Decree 1657/2012 of Dec. 7). After the CJEU ruling in *EGEDA* (C-470/14), the Spanish Supreme Court has derogated this RD 1657/2012 and it is foreseeable that compensation for private copying on the State budget will soon be discarded and substituted (most likely) by a levy regime (as existed in Spain until 2012).

As a general rule, the amounts of each remuneration are to be set by the CMO in charge of its management. CMOs must establish general fees for the use of their repertoire. Act 21/2014 and Order ECD/2574/2015 of December 2 regulated the criteria and methodology for the establishment of fees (for more detail, see Annex 2).

ANNEX 1: Remuneration rights in Spain

The following list shows the different “**remuneration rights**” granted by Spanish TRLPI (either under limitations, non-voluntary licenses or in exchange for the transfer of rights to the producer):

- 1) Equitable compensation for the **private copy exception** (arts. 25 y 31 TRLPI) for authors, performers and producers. Unwaivable as far as authors and performers. The amount is calculated annually by the Government and paid on the General State Budget. It is mandatorily managed by CMOs.
- 2) Equitable remuneration for authors of press articles, used in commercial **press-clipping** services (art. 32.1,II TRLPI). It is mandatorily managed by CMOs “unless reserved” by copyright owners.
- 3) Equitable compensation for press-publishers, in exchange for the authorization of **news aggregation** (art. 32.2 TRLPI). It is unwaivable and mandatorily managed by CMOs. This is a new “limitation” set by Act 21/2014, very criticized.
- 4) Equitable remuneration for authors and publishers of printed works partially used (up to a 10%) for **teaching purposes in universities** and for research purposes in public research centres (art. 32.4 TRLPI); the remuneration yields to any “previous specific agreement”, it is unwaivable and subject to mandatory collective management.
- 5) Agreed remuneration (failing an equitable one) for authors of works (articles) on **current events disseminated by media**, when used by other media (Art. 33.1 TRLPI)
- 6) Equitable remuneration for **public lending** (Art.37.2 TRLPI) of works; the remuneration is subject to mandatory collective management and calculated as regulated in RD 624/2014, of 18 July 2014.
- 7) Equitable remuneration for making available through **specialized terminals in library** premises (Art. 37.3 TRLPI).
- 8) Equitable compensation for the **use of an orphan work** (Art.37.bis TRLPI)
- 9) Equitable remuneration of authors for the **rental** of audiovisual recordings and phonograms (Art. 90.2 TRLPI) *ex* Art. 5 Directive 2006/115/CE; it is unwaivable and subject to mandatory collective management. SGAE & DAMA
- 10) Remunerations of co-authors of an audiovisual work for its communication to the public: **box office share** (Art.90.3 TRLPI), as well as **without an entrance fee, including making available online** (Art.90.4 TRLPI); these remunerations are unwaivable, inalienable and subject to mandatory collective management. The same remuneration also applies to the author of a pre-existing work adapted for the audiovisual work (art.90.6 TRLPI).
- 11) Equitable remuneration for **performers**, in exchange for a presumption of transfer of the right of **making available** to the producers (of phonograms or audiovisual recordings); it is inalienable and unwaivable, and subject to mandatory collective management (art. 108.3 TRLPI)
- 12) Equitable remuneration for **performers** (shared with producers) for the **public communication** of phonograms (art. 108.4 TRLPI) and of audiovisual recordings (art. 108.5 TRLPI); these remunerations are unwaivable, inalienable and subject to mandatory collective management. For performers: AIE and AISGE; For producers: AGEDI and EGEDA
- 13) An equitable remuneration of **performers** for the **rental** of phonograms and of audiovisual recordings (art. 109.3, ap.2º TRLPI); it is unwaivable and subject to mandatory collective management.
- 14) Equitable remuneration for the **producers of phonograms** for the **communication to the public** of phonograms (Art. 116.2 TRLPI), subject to mandatory collective management. This remuneration is “single” and shared with performers (Art.108.4 TRLPI).
- 15) Remuneration for the **producers of audiovisual recordings** for the **communication to the public** of audiovisual recordings (Art. 122.2 TRLPI), subject to mandatory collective management. This remuneration is “single” and shared with performers (Art.108.5 TRLPI).

Other “specific” remunerations are:

- 16) **The resale right (*droit de suite*)**, for authors of works of art (Art.24 TRLPI, as amended by Act 3/2008 implementing Directive 2001/84/CE) -it is not subject to mandatory collective management.

- 17) An equitable remuneration ("**best-seller**" clause) as a revision of the flat fee agreed by parties, when a "manifest disproportion exists between this remuneration and the profits" obtained by the transferee/licensee (Art. 47 TRLPI).
- 18) Only for **phonogram performers** (Art. 110 bis, 2 TRLPI) as amended by Act 21/2014, in transposition of the Directive 2011/77/EU: when performer agreed to a flat fee, the producer will pay him a minimum of 20% of his annual revenues/income, during the extended term of protection of phonograms -this remuneration is unwaivable and managed exclusively by CMO.

ANNEX 2: CMOs' Fees after Act 21/2014.

According to Act 21/2014, fees must be set according to **specific criteria** listed in art.157.1.b) TRLPI and following a **specific "methodology"** (see Government Order ECD/2574/2015).

Fees must be simple, clear and reasonable, and must take into account the economic value of the use of the work within the user's activity and must find the right balance between the interests of both parties (owners and users). The criteria listed include: the "effective use" (in terms of degree, intensity and relevance) of the CMO's repertoire within the economic activity of the user; the volume of repertoire managed by the CMO; the economic income obtained by the user from the commercial exploitation of the CMO's repertoire; the economic value of the service offered by the CMO; the fees set by the CMO with other users for the same acts of exploitation; the fees set by equivalent CMOs in other EU member states.

Following Act 21/2014, **Sec.1^a CPI must supervise the fees** set by CMOs and make sure that they are equitable and non-discriminatory..

The reform operated by Act 21/2014 forced CMOs to establish new general fees, according to the new legal criteria and methodology.

As regards statutory remunerations, the CPI (sec.1) will set the fees when no agreement has been reached within 6 months from starting negotiations (art. 158 bis TRLPI).

CMOs must negotiate fees with any users' association that requests it. Pending an agreement on the fees, users should -in theory- pay or at least make a judicial deposit of the corresponding amounts, however -in practice- this payment or deposit rarely (never) takes place. Another possibility is to ask the Sec.1st CPI to establish a substitute fee in order to make this payment or judicial deposit until an agreement is reached.

There is an obligation to create –among all Spanish CMOs- a one-stop-shop ("ventanilla única") (Art.157.1(e) TRLPI, Disp. Ad. 1^a Act 21/2014) of aggregated licenses, available online. Accordingly, all information regarding the applicable tariffs (for each CMO) can be obtained, and the user can calculate the fees to pay and also make the payment online. The one-stop shop is to be structured as a "private entity", independent from the CMOs, and it will be created, financed, managed, and maintained by all the Spanish CMOs; All CMOs are obliged to grant their services through it. However, this business will have no ability to negotiate any fees or licenses; Fees are set (independently) by each CMO. It allows for the user to have all the licensing information available on one website and to obtain and pay for all the necessary licenses.