

# Ministry of Culture and Sports fines website owner €375,000 for copyright infringement

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### Introduction

On 15 June 2018 the Ministry of Culture and Sports fined a website owner under the Consolidated Text of the IP Act for allowing users to download copyrighted content from Spain.

Although several similar websites had been taken down prior to this case, this was the first time that a fine of this magnitude was imposed. The main reason for this was that the administrative infringement in this case was classified as 'very severe'.

### Legal framework

Article 195.6 of the IP Act establishes that in order for copyright infringement to qualify as a very severe administrative offence, a service provider must resume its infringing activities at least twice after being ordered to remove the infringing content from its website.

### Facts

The owner of the website 'www.x-caleta.com' (subsequently renamed '[www.x-caleta2.com](#)') was a Peruvian national who, prior to the case at hand, had already been required to remove various copyrighted content from his website. These initial copyright infringement proceedings had resulted in a judicial authority blocking access to the website.

Nevertheless, the website owner resumed his infringing activities, which led to another administrative procedure being initiated against him in April 2017. Subsequently, in December 2017, a further procedure was initiated after the website owner continued to offer downloadable copyrighted works on his website. These two resummptions established the grounds for his behaviour to be classified as a repeated infraction under Article 195 of the IP Act.

Further, Article 195 states that a resumption of infringing activities will occur when the individual responsible for the initial proceedings restarts the exploitation of copyrighted works belonging to the same copyright owner (even if the copyrighted works exploited in each resumption are different). This was the situation in the present case, as both resummptions concerned the works of the same copyright owner – namely, the AGEDI Society (Intellectual Rights Management Association), which is the Spanish institution in charge of managing the IP rights of phonographic producers.

### Decision

In its disciplinary resolution, the Ministry of Culture and Sports concluded that all of the above facts rendered the website owner's behaviour a very severe administrative offence which consisted of a resumption of copyright infringement. As such, it ordered the infringer to:

## AUTHOR

Ana  
Ramognino



- cease its activity as a service provider for a maximum of one year;
- pay a €375,000 fine; and
- pay for the condemnatory resolution to be published in the *National Official Gazette*, which took place on 20 June 2018.

The ministry calculated the fine by taking into account several facts, such as the duration of the infringement, (more than one-and-a-half years) and the fact that the infringing website had profited from the ads which it had hosted.

The disciplinary resolution also highlighted that there was a clear intention to infringe in this case, as the website owner had not only resumed his activities twice (despite his website having previously been taken down for contravening copyright infringement requirements), but was also using so-called 'mirror domains' in order to avoid the corresponding legal control.

Finally, according to the very severe nature of this administrative offence and its social impact, these measures were extended to all websites that may:

- be used by the service provider;
- redirect users to the website for which he was fined or to proxy websites; or
- serve as intermediaries to access any of the above websites.

This resolution is final as per the administrative proceedings.

*For further information on this topic please contact [Ana Ramognino](mailto:a.ramognino@ga-ip.com) at Grau & Angulo by telephone (+34 93 202 34 56) or email ([a.ramognino@ga-ip.com](mailto:a.ramognino@ga-ip.com)). The Grau & Angulo website can be accessed at [www.ga-ip.com](http://www.ga-ip.com).*

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