



**Law No. 28 of October 11, 1995,
on the Incorporation in Spanish Law of
Council Directive (EEC) No. 93/83 of September 27, 1993,
on the Coordination of Certain Rules Concerning Copyright and
Rights Related to Copyright Applicable to Satellite Broadcasting and
Cable Retransmission***

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**Title I
Broadcasting by Satellite**

(General Provisions Applicable to Satellite Broadcasting Rights)

Art. 1.

(1) For the purposes of this Title:

(a) "Satellite" means any satellite operating on frequency bands reserved under telecommunications law for the broadcasting of signals for reception by the public or for non-public, individual communication. In the latter case, however, the circumstances in which the individual reception of the signals takes place must be comparable to those prevailing in the former case.

(b) "Communication to the public by satellite" means the act of introducing, under the control and responsibility of the broadcasting organization, the program-carrying signals intended for

* *Spanish title:* Ley 28/1995, de 11 de octubre, de incorporación al Derecho español de la Directiva 93/83/CEE del Consejo, de 27 de septiembre de 1993, sobre coordinación de determinadas disposiciones relativas a los derechos de autor y derechos afines a los derechos de autor en el ámbito de la radiodifusión vía satélite y de la distribución por cable.

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Note: Translation by the International Bureau of WIPO.

** Added by the International Bureau of WIPO.

reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth.

(2) For the purposes of the provisions of this Title, communication to the public by satellite occurs solely in a Member State of the European Union in which, under the control and responsibility of the broadcasting organization, the program-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth. The normal technical processes relating to program-carrying signals shall not be considered interruptions of the said chain of communication.

(3) Where the program-carrying signals are encrypted, there is communication to the public by satellite on condition that the means of decrypting the signals are made available to the public by the broadcasting organization or with its consent.

(4) Where the communication to the public by satellite occurs in the territory of a State not belonging to the European Union that does not afford the level of protection provided for in this Law to the relevant system of communication to the public, the following shall be taken into account:

(a) If the program-carrying signals are transmitted to the satellite from an uplink station situated in a Member State, that act of communication to the public by satellite shall be deemed to have occurred in that Member State.

In that case, the rights provided for in the following Articles with respect to satellite broadcasting may be exercised against the person operating the uplink station.

(b) If there is no use of an uplink station situated in a Member State but a broadcasting organization established in a Member State has commissioned the act of communication to the public by satellite, that act shall be deemed to have occurred in the Member State in which the broadcasting organization has its principal establishment.

In that case the rights provided for in the following Articles with respect to satellite broadcasting may be exercised against the broadcasting organization.

(Protection of the Copyright in the Satellite Broadcast)

Art. 2.

As provided in Article 17 of the Law on Intellectual Property, authors have the exclusive right to - authorize the communication to the public by satellite of works protected by copyright, which shall be governed by the provisions of this Title.

(Protection of the Rights of Owners of Related Rights in the Satellite Broadcast)

Art. 3.

The rights of performers, producers of phonograms and broadcasting organizations shall be protected, in cases of communication to the public by satellite, in accordance with the provisions of Articles 5, 6, 7 and 9 of Law No. 43 of December 30, 1994, on the Incorporation in Spanish Law of Council Directive (EEC) No. 92/100 of November 19, 1992, on Rental Right and Lending Right and on Certain Rights Related to Copyright in the Field of Intellectual Property. For those purposes, the expression "wireless broadcast" in Law No. 43 of December 30, 1994, on the Incorporation in Spanish Law of Council Directive (EEC) No. 92/100 includes communication to the public by satellite.

With regard to the exercise of the rights referred to in the foregoing paragraph, the provisions of Article 7(3) of Law No. 43 of December 30, 1994, on the Incorporation in Spanish Law of Council Directive (EEC) No. 92/100 shall apply as appropriate.

(Acquisition of Satellite Broadcasting Rights)

Art. 4.

(1) The authorization of communication to the public by satellite referred to in Article 2 may be acquired only by agreement.

(2) Communication to the public by satellite authorized by a co-producer shall require prior authorization by the other co-producers whom it might prejudice for reasons of linguistic exclusiveness or comparable reasons where the work consists solely of images.

Title II Cable Retransmission

(General Provisions Applicable to the Right of Cable Retransmission)

Art. 5.

(1) The cable retransmission on Spanish territory of programs from other Member States of the European Union shall take place, as far as copyright and related rights are concerned, in accordance with the provisions of Law No. 22 of November 11, 1987, on Intellectual Property, and subject to the terms of the contractual agreements, whether individual or collective, concluded between the owners of both categories of rights and the cable distribution companies.

(2) For the purposes of this Law, “cable retransmission” means the simultaneous, unaltered and unabridged retransmission by cable, for reception by the public, of initial broadcasts transmitted from another Member State of the European Union by wire or wireless means, including those transmitted by satellite, of television or radio programs intended for reception by the public.

(Exercise of the Cable Retransmission Right)

Art. 6.

(1) The right of copyright owners and holders of related rights to prohibit or authorize the cable retransmission of a broadcast shall be exercised exclusively through an entity for the administration of intellectual property rights.

(2) In the case of holders of rights who have not entrusted the management of their rights to an entity for the administration of intellectual property rights, those rights shall be asserted through the entity that manages rights in the same category.

Where there are two or more entities that manage rights in the relevant category, the owners of the rights concerned may entrust the management thereof to any of those entities.

The owners of rights referred to in these subparagraphs shall enjoy the rights and be subject to the obligations deriving from the agreement concluded between the cable distributor and the entity to which they are deemed to have entrusted the management of their rights on the same footing as the owners of rights who have actually entrusted the management thereof to the said entity. They may moreover claim their rights from the administration entity referred to in the first such subparagraph within three years calculated from the date of the cable distribution of their works or other protected subject matter.

(3) Where an owner of rights authorizes the initial transmission on Spanish territory of a work or other protected subject matter, it shall be presumed that he consents to the exercise on his behalf of his cable retransmission rights in accordance with the provisions of this Law, and that he waives his right to exercise them personally.

(Exception to the Exercise of Cable Retransmission Rights)

Art. 7.

The provisions of the foregoing Article shall not apply to rights exercised by broadcasting organizations in relation to their own broadcasts, irrespective of whether the rights in question are their own or have been transferred to them by other owners of copyright or holders of related rights.

(Mediation)

Art. 8.

(1) Where, for want of agreement between the parties, a contract authorizing the cable retransmission of a broadcast is not signed, the parties may apply to the Commission provided for in Article 143 of the Law on Intellectual Property for mediation.

(2) The provisions of Article 143 of the Law on Intellectual Property and its implementing provisions shall be applicable to the mediation provided for in this Article.

(Prevention of the Abuse of Negotiating Positions)

Art. 9.

Where one of the parties abuses his negotiating position to prevent the announcement or continuation in good faith of negotiations for the authorization of the cable retransmission of a broadcast, or without valid reason obstructs the negotiations or the mediation referred to in the foregoing Article, the provisions of - Title I, Chapter I of Law 16 of July 17, 1989, on the Defense of Competition shall apply.

First Additional Provision

(Relation Between Copyright and Related Rights)

The protection of related rights under this Law shall not affect the protection of copyright.

Second Additional Provision

(Functions of the Intellectual Property Mediation and Arbitration Commission)

Article 143 of the Law on Intellectual Property shall henceforth read as follows:

“Art. 143.

A Mediation and Arbitration Commission on Intellectual Property is hereby created at the Ministry of Culture, with the character of a collegiate body of national scope, for the exercise of the mediation and arbitration functions assigned to it by this Law.

(1) The mediation functions of the Commission shall be:

- (a) to collaborate in negotiations, on reference to it by the parties, where the latter fail to agree on a contract for the authorization of the cable retransmission of a broadcast, for want of agreement between the copyright owners and holders of related rights on the one hand and cable distribution companies on the other;
- (b) to submit proposals to the parties where appropriate.

All the parties shall be deemed to have accepted the proposal referred to in the foregoing subparagraph if none of them expresses opposition within a period of three months, in which case the finding of the Commission shall have the effects provided for in Law 36 of December 5, 1988, on Arbitration, and shall be subject to review before the civil courts.

The proposal and any opposition thereto shall be notified to the parties in accordance with the provisions of Articles 58 and 59 of Law No. 30 of November 26, 1992, on the Legal Regime of Public Administrations and on Common Administrative Procedure.

The mediation procedure and also the composition of the Commission for mediation purposes shall be specified by regulation, provided that, in all cases, two representatives of the entities for the administration of copyright and rights related to copyright under negotiation and two representatives of the cable distribution companies shall be entitled to form part thereof in any business that concerns them.

(2) The arbitration functions of the Commission shall be:

- (a) to bring about the settlement, on reference to it by the parties, of any conflicts which, according to the provisions of paragraph (1) of the foregoing Article, may occur between administration entities and associations of users of their repertoires, or between the said entities and

broadcasting organizations; reference to the Commission by the parties shall be voluntary and shall be expressly recorded in writing;

- (b) to set an amount in lieu of the general tariffs, for the purposes specified in paragraph (2) of the foregoing Article, at the request of an association of users or a broadcasting organization where the said association or organization submits, for its part, to the jurisdiction of the Commission with the aim specified in subparagraph (a) of this Article.

(3) The procedure and composition of the Commission for the exercise of its arbitration function shall be laid down by regulation, provided that, in all cases, two representatives of the administration entities and two representatives of the association of users or of the broadcasting organization shall have the right to form part thereof in any business that concerns them.

The decision of the Commission shall be binding and enforceable on the parties.

The provisions of this Article shall be without prejudice to any action that may be brought before the competent jurisdiction. Nevertheless, reference to the Commission shall prevent judges and courts from hearing the dispute submitted for arbitration until such time as the arbitral decision has been handed down, and then only where the party concerned applies for a judicial ruling by filing the appropriate objection.”

Sole Transitional Provision

(Temporary Application of the Provisions on Satellite Broadcasting)

(1) The provisions on satellite broadcasting shall be applicable to all phonograms, performances, broadcasts and first fixations of audiovisual recordings that on July 1, 1994, were still protected by the copyright and related rights legislation of Member States, or on that date fulfilled the criteria necessary for protection under this Law.

(2) Application of the provisions of Article 3 of this Law shall be without prejudice to exploitation arrangements made and contracts entered into prior to its entry into force.

(3) This Law shall not be applicable to contracts in force on the date of its entry into force where the lapse of the said contracts is due to occur before January 1, 2000. On that date the parties may renegotiate the contract conditions according to the provisions of this Law.

(4) The provisions of this Law shall be fully applicable to exploitation contracts in force on January 1, 1995, with respect to the right of broadcasting and the acquisition thereof as from January 1, 2000.

(5) The exclusive right referred to in Article 3 of this Law shall be governed, where applicable, by the First Transitional Provision of Law No. 43 of December 30, 1994, on the Incorporation in Spanish Law of Council Directive (EEC) No. 92/100 of November 19, 1992, on Rental Right and Lending Right and on Certain Rights Related to Copyright in the Field of Intellectual Property.

(6) In international joint production contracts entered into before January 1, 1995, between a co-producer from a Member State and one or more co-producers from other Member States or third countries, the co-producer or his successor in title who wishes to authorize communication to the public by satellite shall obtain the prior consent of the owner of the exclusive rights, irrespective of whether the latter is a co-producer or successor in title, if all the following circumstances obtain:

- (a) the contract expressly provides for a system whereby the exploitation rights are shared among the co-producers according to geographical area for all public communication media, without any distinction being made between the regime applicable to satellite communication and that applicable to other forms of communication;
- (b) communication to the public by satellite of the joint production is implicitly prejudicial to the exclusive rights, and especially the exclusive linguistic rights, of one of the co-producers or his successors in title in a particular territory.

(7) Copyright and the rights of performers, producers of phonograms, producers of first fixations of audiovisual recordings and broadcasting organizations shall be protected during the corresponding periods provided for in the Law on the Incorporation in Spanish Law of Council Directive (EEC) No. 93/98 of October 29, 1993, Harmonizing the Term of Protection of Copyright and Certain Related Rights.



Sole Repeal Provision

(Repeal of Provisions)

All equal-ranking or lower-ranking provisions contrary to the provisions of this Law are repealed.

First Final Provision

(Legislative Authorization of the Government)

The provisions of this Law shall be incorporated by the Government in the recast text which, in the field of intellectual property, has to be issued before June 30, 1996, by virtue of the express authorization given in the Second Final Provision of Law No. 27/1995 on the Incorporation in Spanish Law of Council Directive (EEC) No. 93/98 of October 29, 1993, Harmonizing the Term of Copyright and Certain Related Rights.

Second Final Provision

(Entry into Force of the Law)

This Law shall enter into force on the day following that of its publication in the Official Bulletin of the State.