

# Royal Decree

## Implementing Article 72 of the Law on Intellectual Property, Concerning Verification of Print-Runs

(No. 396, of April 25, 1988)

Article 72 of Law No. 22 of November 11, 1987 on Intellectual Property, provides that the number of copies in each edition shall be subject to the verification of print-runs according to a procedure to be laid down by regulation after the professional sectors concerned have been heard. That procedure has to be laid down by the Government, according to the Fifth Additional Provision of the same Law, within six months following its entry into force.

The regulations for the implementation of the above legal provision have been drawn up within the appointed period, and for the first time in Spanish law a system for the checking of the copies printed is being introduced in order to ensure proof of proper compliance with one of the basic aspects of the publishing contract, and thereby promote mutual confidence between publisher and author.

The chosen means of achieving that end is a procedure for the certification of data on production with subsequent documentary verification, which is regarded as possessing the necessary characteristics of generality, ease of use and economy; this procedure is intended in addition to promote the participation of management bodies or associations of publishers and authors with a view to ensuring the greatest possible efficiency and also greater collective involvement in the solution of publishing problems.

This does not however preclude the use of the numbering or countersigning method for the verification of print-runs. That system, which may be agreed upon jointly by authors and publishers and, if so, has to be written into the publishing contract, constitutes one means of carrying out the verification in question, the specific characteristics of which the contracting parties have to decide upon by common consent.

The underlying purpose of this Royal Decree is to promote an element of understanding among the various professional sectors in the publishing field. In the drafting of the provisions, those sectors have been heard, not only in pursuance of the provisions of the Law on Intellectual Property, but also in view of the paramount importance that the regulations on the verification of the number of copies in print-runs have to be accorded in the development of relations in the publishing world.

In witness whereof, on the proposal of the Minister of Culture, the professional sectors concerned having been heard, with the consent of the Council of State and after deliberation by the Council of Ministers at its meeting on April 22, 1988,

### WE HEREBY DECREE AS FOLLOWS:

*Article 1.* Pursuant to the provisions of Article 72 of the Law on Intellectual Property, the number of copies of each edition shall be subject to the verification procedures specified in the present Royal Decree.

*Article 2.* Prior to the putting into circulation of copies of a work, whether in the form of a sole edition or reprint or successive editions or reprints, the publisher shall submit to the author an attestation specifying the number of copies constituting the print-run.

That attestation shall be accompanied by a statement by the person or body responsible for the establishment in which the work in question is to be printed, giving the number of copies printed and the delivery date thereof.

*Article 3.* The author may make a verification of the data and accounting documents of the publisher that relate to the production of the work.

That verification shall be made within a period not exceeding two years following the date of putting into circulation of each of the editions of the work.

*Article 4.* The verification may be made by legally competent experts or expert firms, that shall be appointed by the author in the following manner:

(i) They shall have been selected from a list of experts drawn up by common consent between the management bodies or associations of publishers and authors. The corresponding costs shall be defrayed by both bodies or associations in a proportion to be determined by them.

(ii) They shall be appointed without reference to previous lists, in which case the costs of verification shall be borne by the author.

Notwithstanding the foregoing, the publisher and the author may agree on the appointment of any person or persons for the carrying out of the verification in accordance with criteria different from those specified in this Article.

*Article 5.* The work of verification shall relate exclusively to the determination of the accuracy of the data concerning the production of the copies of the work, in the specific edition or print-run concerned, including their conformity with the data contained in the documents submitted by the publisher.

The person or expert appointed shall respect the confidential nature of his findings and shall communicate to the author only those data and facts that relate to the verification of the number of copies of the edition or print-run that has been examined.

The verification referred to in this Royal Decree shall not have the legal character of the auditing of accounts.

*Article 6.* Notwithstanding the provisions of the foregoing Articles, the author and the publisher may agree, in the contract, on the numbering or countersigning of the copies of each edition. In that case a mention shall also be made of the method that the two have agreed upon for the numbering or countersigning, and also the edition or editions to which that method is to be applied.

*Article 7.* The inclusion in the publishing contract of any specific method of numbering or countersigning shall exempt the publisher from the obligation specified in Article 2. It shall likewise not be necessary, for the same reasons, to take the verification measures provided for in Articles 3, 4 and 5 of this Royal Decree.

*Article 8.* The exercise of the right of verification provided for in this Decree shall be independent of the publisher's obligation under item (v) of Article 64 of the Law on Intellectual Property.

*Article 9.* In conformity with the provisions of Article 72 of the Law on Intellectual Property, failure by the publisher to comply with the requirements provided for in this Royal Decree regarding the verification of copies in each edition shall entitle the author or his successors in title to terminate the contract, without prejudice to any liability that the publisher may have incurred.

## TRANSITIONAL PROVISION

Print-runs of copies of works covered by publishing contracts entered into prior to the entry into force of this Royal Decree shall continue to be governed by the previous system.

## FINAL PROVISION

This Royal Decree shall enter into force on the day following that of its publication in the Official Bulletin of the State (*Boletín Oficial del Estado*).

*Spanish title:* Real Decreto por el que se desarrolla el artículo 72 de la Ley de Propiedad Intelectual sobre control de tirada.— WIPO translation.

*Entry into force:* April 29, 1988.

*Source:* Boletín Oficial del Estado, No. 102, of April 28, 1988.