

CNMC
COMISIÓN NACIONAL DE LOS MERCADOS Y LA COMPETENCIA
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PRO/CNMC/0002/14
PROPOSAL ON THE AMENDMENT OF ARTICLE 32.2
OF THE BILL TO AMMEND THE RECASTED INTELLECTUAL PROPERTY ACT

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PRESS RELEASE

The CNMC publishes its proposal to amend the Intellectual Property Bill

The report questions the fact that content aggregation services should offer 'fair compensation' for the publishers of periodical publications or news websites.

It considers that the bill generates an access barrier for other companies wishing to enter the content aggregation market.

It indicates that the unrelinquishable nature of the compensation should be eliminated, and that intellectual property management companies' exclusive right to collect compensation for doing so should be modified.

Madrid, 28 May 2014 - The National Committee on Markets and Competition (CNMC – Comisión Nacional de los Mercados y la Competencia) approved the Proposal Report (PRO) on the amendment made to article 32.2 of the Bill amending the Recast Intellectual Property Act (*Proyecto de Ley por el que se modifica el Texto Refundido de la Ley de Propiedad Intelectual*) approved by legislative decree No. 1/1996 of 12 April.

In this report, the CNMC analyses this amendment's ramifications from the standpoint of effective competition of markets and efficient economic regulation and recommends that the Bill amendment be changed.

The paragraph was included in the Bill after the Spanish Competition Authority had approved and published IPN 102/13 on the Draft Bill to amend the Recast Intellectual Property Act and the Civil Procedure Code, and the Competition Authority therefore has not had the opportunity to provide an opinion on the right to fair compensation.

Article 32.2 includes a new paragraph on publishers' and other rights holders **unrelinquishable right to receive 'fair compensation'** for content aggregation service providers who provide the public with **content or non-significant fragments** of content disseminated in periodically updated news websites, or those which generate public opinion or provide entertainment. This right is to be unrelinquishable and shall become effective **through intellectual property right management entities**.

According to the CNMC, the measure generates several impacts on effective competition and efficient economic regulation. In its report, the CNMC has made the following **observations** in this regard:

- The main reason put forward to substantiate 'fair compensation' makes reference to the direct competition that would occur between the original site and the news aggregation service providers or, when applicable, press-clipping companies in the access to certain information without the aggregator sharing the costs that this creative effort would involve. It

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remains questionable however i) whether this direct competition exists; ii) whether there is a need for such compensation, and even iii) the direction this compensation would take on the market.

- The 'fair compensation' requirement would pose an access barrier that current, consolidated aggregators have not had thus far and in parallel would de incentivize access of new providers of this type of service.
- The bill also forces 'fair compensation' to be made exclusively through intellectual property management entities without substantiation having been duly provided.

In its report, the CNMC therefore makes the following recommendations:

- It requests that the figure in the bill be reconsidered with an in-depth analysis of legislation that would enable the legislation's potential negative impact to be reduced.
- Should the bill be decided to be pursued, it is recommended that at least i) the unrelinquishable nature of the compensation be amended, and ii) that the exclusivity for intellectual property rights management entities be eliminated.

The CNMC is an independent body that regulates markets and ensures and promotes effective competition. This report was issued on the Committee's own initiative in the exercising of its jurisdiction as set forth in article 5.1 of Law No. 3/2013 of 4 June establishing the National Commission on Markets and Competition.

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