

SPAIN

Alberto Bercovitz*

and

Germán Bercovitz**

Milagros del Corral***

SYNOPSIS

Bibliography

§ 1

Introduction

[1] Development

- [a] Prior Copyright Law**
- [b] The 1987 Copyright Act**
- [c] Revision; Implementation**

[2] Current Copyright Law

- [a] The 1996 Copyright Act**
- [b] Amendments**
- [c] Transitional Issues**

§ 2

Subject Matter

[1] Standards for Protection

- [a] Formal Requirements**
- [b] Substantive Criteria**

[2] Categories or Types of Works

[3] Derivative Works, New Versions, and Compilations

[4] Special Problem Areas

* Attorney, Madrid; Professor, Universidad Nacional de Educación a Distancia; former President, Mediation and Arbitration Commission for Intellectual Property, now the Copyright Commission.

** Professor, University of León; Fellow, Royal College of San Clemente, Bologna. Professors Alberto and Germán Bercovitz have contributed this chapter since 1993.

*** Director, Biblioteca Nacional de España, Madrid; former Director, the Book and Copyright Division of UNESCO. Ms. del Corral initially contributed this chapter in 1990, when she was Secretary General of the Federation of Spanish Publishers' Associations. The chapter did not, and does not, necessarily express the position of any of these organizations.

SPAIN

Alberto Bercovitz*

and

Germán Bercovitz**

Milagros del Corral***

SYNOPSIS

Bibliography

§ 1

Introduction

[1] Development

- [a] Prior Copyright Law**
- [b] The 1987 Copyright Act**
- [c] Revision; Implementation**

[2] Current Copyright Law

- [a] The 1996 Copyright Act**
- [b] Amendments**
- [c] Transitional Issues**

§ 2

Subject Matter

[1] Standards for Protection

- [a] Formal Requirements**
- [b] Substantive Criteria**

[2] Categories or Types of Works

[3] Derivative Works, New Versions, and Compilations

[4] Special Problem Areas

* Attorney, Madrid; Professor, Universidad Nacional de Educación a Distancia; former President, Mediation and Arbitration Commission for Intellectual Property, now the Copyright Commission.

** Professor, University of León; Fellow, Royal College of San Clemente, Bologna. Professors Alberto and Germán Bercovitz have contributed this chapter since 1993.

*** Director, Biblioteca Nacional de España, Madrid; former Director, the Book and Copyright Division of UNESCO. Ms. del Corral initially contributed this chapter in 1990, when she was Secretary General of the Federation of Spanish Publishers' Associations. The chapter did not, and does not, necessarily express the position of any of these organizations.

- [a] Titles
- [b] Characters
- [c] Works of Applied Art; Design Protection
- [d] Computer Software
- [e] Government Works

§ 3**Duration****[1] General Rules**

- [a] Collaborative and Audiovisual Works
- [b] Collective, Anonymous, and Pseudonymous Works
- [c] Posthumously Disclosed Public-Domain Works

[2] Special Terms

- [a] Copyright-Related Rights
 - [i] Performances, Recordings, and Broadcasts
 - [ii] Photographic Pictures Not Constituting Works
 - [iii] *Sui Generis* Right in Databases
- [b] Prior and Revived Rights; Reliance Interests
 - [i] Works in Copyright Before December 7, 1987
 - [ii] From December 7, 1987, to October 14, 1995

[3] Foreign Works

- [a] In General
- [b] Affected by Bilateral Agreements
- [c] Affected by Berne and the U.C.C

§ 4**Ownership and Transfer****[1] Initial Ownership**

- [a] Joint Works
 - [i] Collaborative Works
 - [ii] Audiovisual Works
- [b] Works Made for Hire
 - [i] Collective Works
 - [ii] Works Made in Employment Relationships
 - [iii] Works Made for the Press
 - [iv] Works Made on Commission
 - [v] Works Made for Advertising

[2] Transfers

- [a] Interests Subject to Transfer
 - [i] Inheritance and Marriage
 - [ii] Contractual Transfers

- [b] **Formal Requisites for Transfers**
- [c] **Contractual and Related Presumptions**
- [d] **Recordation; Priority of Transfers**
- [3] **Limitations of Transfer**
 - [a] **Proportionate Remuneration of Authors**
 - [b] **Standard Types of Copyright Contracts**
 - [i] **Publishing Contracts**
 - [ii] **Performance and Broadcast Contracts**
 - [iii] **Audiovisual Production Contracts**
 - [c] **Contracts Relative to Future Works**
 - [d] **Liens and Foreclosures on Copyright Interests**
 - [e] **Resale Rights in Art Works: *Droit de Suite***

§ 5**Formal Procedures**

- [1] **Special Copyright Jurisdiction**
- [2] **Functions of Special Agencies**
- [3] **Registration of Copyright**
 - [a] **Works Published Before 1988**
 - [b] **Under Current Law; Software**
- [4] **Notice, Legends, or Marking on Copies**
- [5] **Recordation of Transfers**
- [6] **Other Formalities**
- [7] **First Publication**
- [8] **Waiver Pursuant to Treaty**

§ 6**Protection of Foreign Claims**

- [1] **Requirements for Eligibility**
 - [a] **Copyright**
 - [b] **Neighboring Rights**
 - [c] ***Sui Generis* Right in Databases**
- [2] **Multilateral Conventions**
- [3] **Bilateral Agreements**
- [4] **Cross-References**

§ 7**Moral Right**

- [1] **Particular Rights**
- [2] **Limitations**
 - [a] **Audiovisual Works**
 - [b] **Computer Programs**
- [3] **Duration**

[4] Waiver and Transfer**§ 8****Economic Rights; Enforcement****[1] General Content of Rights****[a] Infringement Analysis****[b] Scope of Economic Rights****[i] Reproduction****[ii] Distribution; Rental; Lending****[iii] Adaptation; Translation****[iv] Communication to the Public****[c] Party Liability****[i] Information-Society Service Providers****[ii] Technological Safeguards; Rights Information****[2] Exceptions and Limitations****[a] Private Use, Quotation, and Parody****[b] Educational, Archival, Governmental, and Charitable Uses****[c] Official, Media, and Other Informational Uses; Transient Copies****[d] Legal License for Private Copying: the Levy Regime****[3] Enforcement Proceedings****[4] Civil and Criminal Remedies****[a] Civil Remedies****[i] Pre-Suit Relief****[ii] Preliminary Relief****[iii] Monetary Relief****[b] Criminal Remedies****[c] Border Controls****§ 9****Miscellaneous****[1] Overlapping and Neighboring Rights****[a] Neighboring Rights****[i] Performing Artists****[ii] Phonogram and Audiovisual Producers****[iii] Broadcasting Organizations****[iv] Publishers of Public-Domain Works****[v] Photographers Whose Shots Are Not Works****[b] *Sui Generis* Rights****[i] Database Contents****[ii] Designs of Integrated Circuits**

[2] Collecting Societies; Other Organizations

[a] Legal Framework

[b] Current Collecting Societies

BIBLIOGRAPHY¹

Periodicals

- | | |
|--|---|
| Actas de Derecho industrial y Derecho de autor | Annual review of industrial property and copyright (last numbered year, 2007) |
| ALADDA Boletín | Bulletin of the Spanish branch of the ALAI (articles in Spanish and French) |
| Pe.i | Quarterly review on intellectual property (Madrid, Bercal) |

Articles and Books

- | | |
|---|---|
| Albaladejo, Manuel, and Díaz Alabart, Silvia (eds.) | <i>Comentarios al Código civil y compilaciones forales</i> , vols. 4-A (art. 428 y 429 del C.c. y LPI) and 4-B (arts. 428 y 429 del C.c. y LPI), Madrid, EDERSA, 1994 and 1995, respectively |
| Baylos Corroza, Hermenegildo | <i>Tratado de Derecho Industrial</i> , Madrid, Civitas, 2d ed., 1993 |
| Bercovitz Álvarez, Germán | “Contrato de exposición de obra propia. Derecho moral del autor a la integridad de su obra (Comentario a la STS de 3 de junio de 1991),” <i>Cuadernos Civitas de Jurisprudencia Civil</i> 1991, 27, 739 |
| Bercovitz Álvarez, Germán | “Contrato de edición” and “Contrato de exposición,” in Bercovitz, A. <i>Contratos mercantiles</i> , Pamplona, Aranzadi, 2001 |
| Bercovitz Álvarez, Germán | <i>Obra plástica y derechos patrimoniales de su autor</i> , Madrid, Tecnos, 1997 |
| Bercovitz Álvarez, Germán | “La protección del diseño tras la directiva 98/71/CE. El derecho de autor sigue siendo clave,” <i>Pe. i. Revista de Propiedad Intelectual</i> , 2000, no. 5, 9 |
| Bercovitz Álvarez, Germán | Merchandising de personajes animados: la absoluta compatibilidad y acumulación de la tutela del diseño mediante derechos de propiedad industrial y derechos de propiedad intelectual,” <i>Aranzadi Civil</i> , 2000, no. 11, 15 |

¹ References to European periodicals in this chapter are in European order, that is, title, year, volume or issue number, and page(s).

- Bercovitz Álvarez, Germán *Los derechos inherentes a la persona en la sociedad de gananciales* Pamplona, Aranzadi-Thomson, 2003
- Bercovitz Álvarez, Raúl "Las traducciones electrónicas ante el Derecho de autor," *Revista General del Derecho*, 1996, no. 621, 6917
- Bercovitz Rodríguez-Cano, Alberto "The Relationship between the Berne Convention and Copyright Law in Spain," *Copyright (W.I.P.O.)*, 1986, 345
- Bercovitz Rodríguez-Cano, Alberto "Las medidas cautelares en la nueva legislación sobre bienes inmateriales y derecho de la competencia," in *Estudios sobre derecho industrial, Homenaje a H. Baylos*, Barcelona, Grupo Español de la AIPPI, 1992, 49
- Bercovitz Rodríguez-Cano, Alberto "Vermögensrechte in den Informationsautobahnen," *GRUR*, 1996
- Bercovitz Rodríguez-Cano, Alberto "Marken und Urheberrecht," *GRUR Int.* 2001, 7, 611; "Marcas y derecho de autor," *Revista de Derecho Mercantil*, 2001, 240, 405
- Bercovitz Rodríguez-Cano, Alberto (ed.) *Derechos del Artista Plástico*, Pamplona, Aranzadi, 1996
- Bercovitz Rodríguez-Cano, Rodrigo "Propiedad intelectual sobre piezas de joyería: falta de originalidad (Comentario a la STS de 26 de octubre de 1992)," *Cuadernos Civitas de Jurisprudencia Civil*, 1992, 30, 959
- Bercovitz Rodríguez-Cano, Rodrigo (ed.) *Comentarios a la Ley de Propiedad Intelectual*, Madrid, Tecnos, 3rd edition, 2007
- Bercovitz Rodríguez-Cano, Rodrigo (ed.) *Manual de propiedad intelectual*, 3rd ed., Valencia, Tirant lo Blanch, 2006
- Bercovitz Rodríguez-Cano, Rodrigo "La protección jurídica de las bases de datos" *Pe.i* 1999, no. 1
- Bercovitz Rodríguez-Cano, Rodrigo "La comunicación pública en las habitaciones de hotel," in *AIPPI Homenaje a Alberto Bercovitz* Barcelona, 2005, 171
- Bercovitz Rodríguez-Cano, Rodrigo *et al.* *Las reformas de la Ley de Propiedad Intelectual*, Valencia, Tirant lo Blanch, 2006
- Bondia Roman, Fernando *Propiedad Intelectual, Su significado en la sociedad de la información*, Madrid, Trivium, 1988

- Bondía Roman, Fernando; Rodríguez Tapia, José Miguel
Bouza López, M.A. *Comentarios a la Ley de Propiedad Intelectual* Madrid, 1997
- Cámara Aguila, Ma. del Pilar *La protección jurídica de los videojuegos* Marcial Pons 1997
- Carrascosa González, Javier *El Derecho Moral del autor*, Comares, Granada, 1998
- Casado Cerviño, Alberto *La propiedad intelectual en el Derecho internacional privado español*, Granada, Comares, 1994
- De Benito, P. "Interrelación entre Propiedad Industrial y Propiedad Intelectual: su tratamiento en la vigente legislación española," in *Estudios sobre derecho industrial. Homenaje a H. Baylos*, Barcelona, Grupo Español de la AIPPI, 1992, 97
- Delgado Porras, Antonio *Las obligaciones del autor en el contrato de edición*, Bosch 1998
- Dietz, Adolf *Panorámica de la protección civil y penal en materia de Propiedad Intelectual*, Madrid, Civitas, 1988
- Erdozain López, José Carlos *Das Urheberrecht in Spanien und Portugal*, Nomos Verlagsgesellschaft, Baden-Baden, 1989, published in Spanish translation as *El Derecho de Autor en España y Portugal*, Madrid, Ministerio de Cultura, 1992
- Espín Alba, Isabel *Las Retransmisiones por Cable y el Concepto de Público en el Derecho de Autor*, Pamplona, Aranzadi, 1997
- Esteve Pardo, M.A. *El contrato de edición literaria*, Granada, Comares, 1994
- Fernández-Albor Baltar, A. *La obra multimedia en la legislación española*, Pamplona, Aranzadi, 1997
- Garrote Fernández-Díez, Ignacio *La obra cinematográfica reproducida en cintas de video (Home video exploitation)*, Madrid, 1995
- Gimeno, Luis *El derecho de autor en Internet*, Comares, Granada, 2nd ed., 2003
- "Copyright subject matter in Spain," *European Intellectual Property Review*, 1996, no. 6, 352

- Gómez Peral, M. *La cesión de uso de los programas de ordenador* Colex, Madrid, 1999
- González Gozalo, Alfonso *La propiedad intelectual sobre la obra audiovisual*. Comares, 2001
- Marco Molina, Juana *La propiedad intelectual en la legislación española*, Madrid, Marcial Pons, 1995
- Massaguer Fuentes, José *El derecho comunitario en materia de propiedad industrial y de propiedad intelectual*, Madrid, 1997
- Massaguer Fuentes, José "Los requisitos de forma en la contratación de derechos de propiedad industrial e intelectual," *La Ley* 1995, no. 4
- Massaguer Fuentes, José/ Salelles, José Ramón "El derecho de propiedad intelectual ante los desafíos del entorno digital. Perspectiva general y problemas particulares para las bibliotecas" *RGD* 1997, no. 636
- Ministerio de Cultura *La copia privada a examen: el derecho de remuneración compensatoria en el ámbito de la propiedad intelectual*, Madrid, Ministerio de Cultura, 1996
- Orozco Pardo, Guillermo "Algunos problemas sobre las funciones de las entidades de gestión de derechos de autor," *Actualidad Civil*, 1993, 33, 575
- Perdices Huetos, Antonio B. "La muerte juega al gin rummy (la parodia en el derecho de autor y de marcas)," *Pe.i. Revista de Propiedad Intelectual*, 1999, no. 3, 9
- Pérez de Castro, Nazareth *Derecho de Autor: la facultad de decidir la divulgación*, Madrid, Civitas, 1993
- Puente García, Esteban de la "La elaboración de la Ley, Apuntes para su historia," *República de las Letras*, 1988, 20, 11
- Ribera Blanes, B. *El derecho de reproducción en la propiedad intelectual* Dykinson, 2002
- Rodríguez Tapia, José Miguel *Siete derechos en busca de autor: la nueva de Propiedad Intelectual de 11 de noviembre de 1987*, Madrid, Instituto Nacional de Estudios Jurídicos, 1988
- Rodríguez Tapia, José Miguel *La cesión en exclusiva de los derechos de autor*, Madrid, 1992
- Rogel Vide, Carlos *Autores, coautores y propiedad intelectual*, Madrid, 1984

- Rogel Vide, Carlos *Estudios sobre propiedad intelectual*, Barcelona, 1995
- Sanchez Aristi, Rafael *La propiedad intelectual sobre las obras musicales*, 2nd ed. Comares, Granada, 2005
- Serrano Gómez, E. *Los derechos de remuneración en la propiedad intelectual* Dykinson, 2000
- Sol Muntañola, Mario *El régimen jurídico de la parodia*, Madrid, Marcial Pons, 2005
- Valero Martín, E. *Obras fotográficas y meras fotografías*, Tirant lo Blanch, 2000

§ 1 Introduction

The phrase *Ley de Propiedad Intelectual*, that is, “Intellectual Property Act,” has been used as the title for a succession of Spanish copyright statutes since the 19th century. A substantively new Copyright Act went into effect on December 7, 1987, but was frequently amended between 1988 and 1996. A formally new Copyright Act, effective April 23, 1996, and subsequently amended, now incorporates all current legislation in the field.¹

[1] Development

[a] Prior Copyright Law. From 1879 through 1987, the Act of January 10, 1879, coupled with its accompanying Regulations of September 3, 1880, protected copyright in Spain.

The 1879 Copyright Act immediately superseded the Act of June 10, 1847, and reincorporated its basic principles according to which copyright was protected as a kind of property. These 19th century laws were strongly influenced by the seminal French Laws of 1791 and 1793, enacted during the French Revolution, but not by subsequent European developments.² In the 20th century, the 1879 Copyright Act and 1880 Regulations were supplemented by two specific ministerial orders concerning the protection of sound recordings, one dated July 10, 1942, and the other April 24, 1945, as well as the Cinematography Act of May 31, 1966, and the Book Act of March 12, 1975.³

The 1879 Copyright Act granted a general term of protection of 80 years after the author’s death. It also established the absolute and exclusive character of copyright, providing for only a minimum number of exceptions to the liability that, at least in principle, should have been incurred for the unauthorized use of protected works. Neither the underlying property doctrine nor the letter of the law were systematically enforced to preclude private copying, although such uses were not exempted from

¹ The presently effective *Ley de Propiedad Intelectual* (cited below as the LPI) will be referred to in the text as the Copyright Act or the Act. Absent indications to the contrary, all statutory citations refer to this Copyright Act. Unless otherwise indicated, the law cited here is current through January 1, 2009.

² On the French Laws of 1791 and 1793, see Geller, “International Copyright: An Introduction,” herein, at § 2[1][b] (hereinafter “Introduction”). The 1847 Act only granted protection to an adaptation of an original work when that adaptation had “such merit and relevance that it can be considered a new work or when it provides a general usefulness.” It thus retained one vestige of the pre-copyright system in which, according to the *Pragmática* of the Catholic Kings of July 8, 1502, “no Privilege should be granted to those works being apocryphal, superstitious, reproachable, vain, and unprofitable,” a restriction the *Ordenes* of Charles I and Phillip II reincorporated in slightly different terms.

³ See, generally, § 1[2][c] *infra* (extent to which current copyright law superseded these laws). *N.b.*, an Act (*Ley*) may be implemented by a Decree (*Decreto* or *Real Decreto*, cited as R.D.). See, e.g., § 8[2][d] *infra* (implementation of the system of levies for private copying by decree). A Decree in turn can be implemented by Ministerial Orders (*Orden Ministerial*, cited as O.M.), which normally concern administrative or procedural matters, but can affect substantive law. Under Article 2(1) of the Civil Code, legislation or regulation becomes effective twenty days after publication in the State Official Journal (*Boletín Oficial del Estado*) unless, by its own terms, it provides otherwise.

liability. Nor did the 1879 Copyright Act or the Penal Code specifically characterize different types of copyright infringement, and the courts therefore encountered difficulties in imposing criminal sanctions for infringement. Also, the sanctions which were provided for infringement became outmoded in the course of the time.

Conceptualizing copyright as property, the 19th-century legislators left the transfer of rights subject only to the Civil Code, in particular its contract provisions.⁴ They did not contemplate collecting societies to administer royalties; however, from 1941 through 1987, the General Society of Spanish Authors was the only authorized collecting society in Spain, and all authors of dramatic and musical works were obligated to adhere to it.⁵

Under the Spanish legal system, international treaties, once ratified, are self-executing. Spain was one of the original signatories of the Berne Convention in 1886 and has since adhered to each of the revised Berne Acts. These Berne Acts permitted Berne claimants to benefit from copyright in Spain without fulfilling formalities.⁶ But, under the 1879 Copyright Act, Spanish claimants had to comply with registration formalities.⁷

No specific provisions on moral rights were to be found in the 1879 Copyright Act, although some provisions tending to protect such rights may be read into its accompanying Regulations of 1880.⁸ Nonetheless, Article 6*bis* of the Berne Convention provided a basis for such rights, at least with regard to works originating outside Spain. Judicial recognition of such rights for Spanish claimants was, however, uncertain and, as a result, criticized in the commentary.⁹

Starting in 1908, various groups repeatedly attempted to initiate revisions in the Spanish copyright law. Of course, dating back to 19th century, this law completely ignored the technical and media developments of the 20th century. Not only were scattered special regulations and statutes enacted in response to these developments, but the courts did attempt to adapt the principles underlying the 1879 Copyright Act to changing circumstances, generally with an eye to protecting authors' interests.

Nonetheless, the copyright situation became increasingly unsatisfactory in Spain with the passage of time, especially since new technologies introduced a large number

⁴ See, e.g., Audiencia Provincial (Court of Appeal) Madrid, March 13, 1998, Aranzadi Civil 1998, no. 5219 (considering that, under the 1879 Act, copyright could be acquired like tangible property).

⁵ See § 9[2][a] *infra*.

⁶ As did the U.C.C., assuming use of the U.C.C. notice in lieu of national formalities. See § 5[8] *infra*.

⁷ See H. Baylos Corroza, *Tratado de Derecho Industrial* (Treatise on Industrial Law), 524 (2d ed., Madrid 1993).

⁸ See D. Espín Canovas, "El derecho moral de autor en el proyecto de Ley de Propiedad Intelectual" (The moral right of the author in the bill for a Copyright Act), *Análisis e Investigaciones Culturales*, 1986, 28, 91.

⁹ See A. Delgado, "La nueva ley española sobre propiedad intelectual" (in English trans.: "The new Spanish law on intellectual Property"), *Revue internationale du droit d'auteur*, 1988, no. 138, 1999, at 200–203.

of new uses of protected works, both legal and illegal, private and commercial, which the courts lacked sufficient power to stop.

Thus, in the course of the 20th century, a thoroughgoing reform of Spanish copyright law became imperative.

[b] The 1987 Copyright Act. The enactment of an altogether new Copyright Act effective December 7, 1987,¹⁰ took place against the background of diverse bodies of law, some older and some newer.

It should be noted, to start, that Article 429 of the Civil Code mandates enactment of specific copyright legislation in Spain, but states: “In cases that are not provided for or settled in the said special law, the general rules laid down in the present Code concerning property shall apply.”

In fashioning a modern copyright statute, the legislators also had to implement the Constitution which Spain adopted in 1978. Article 20 of the Constitution recognizes the right to create and produce literary, artistic, scientific, and technical works. Article 44(1) obligates the public administration to promote and ensure public access to culture and education, and Article 149(1) gives the central State exclusive power to enact “legislation on intellectual property.” Furthermore, the Constitution no longer made it possible for the General Society of Spanish Authors to continue as the exclusive collecting society in Spain.

Any new copyright law necessarily had to synthesize and supersede a variety of provisions enacted on an *ad hoc* basis to supplement the old 1879 Copyright Act, such as those found in the Cinematography Act of 1966, and the Book Act of 1975.¹¹ Further, the entire Spanish copyright law had to be adapted to the provisions of the international conventions, notably the Berne and the Universal Copyright Conventions, as revised in Paris in 1971 and ratified by Spain in 1974 and 1975, respectively. Neighboring rights were included in the overall statutory scheme, allowing Spain to adhere to the Rome Convention of 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, which it did on August 2, 1991. Finally, the new law had to provide a proper answer to the multiple questions posed by technological developments.

There were many fundamental differences between the 1879 Copyright Act and the 1987 Copyright Act which was ultimately adopted. Although still dubbed a law of “intellectual property,” the 1987 Copyright Act followed concepts of “author’s rights” as developed in France in the last century and a half and since applied there and in other countries with Latin legal traditions. In effect, the 1987 Copyright Act adopted the so-called dualistic system according to which, generally speaking, copyright or, more appropriately, author’s right is made up of two distinct types of rights: economic

¹⁰ Act 22 of Nov. 11, 1987.

¹¹ See, generally, § 1[2][c] *infra* (extent to which current copyright law has superseded these laws).

and moral rights.¹² The same dualistic system was extended to performing artists' neighboring rights.

[c] Revision; Implementation. In revising the Copyright Act, Spanish legislators may use the technique of enacting amendments, typically in self-standing laws, and then subsequently incorporating such laws into a unified statutory text.

The 1987 Copyright Act was amended by Act 20 of July 7, 1992, affecting only the following, very specific points of the law: *droit de suite*, the legal license for private copying, compensation for producers and performers for the public communication of their sound recordings, rights in first editions of public-domain works, preliminary judicial relief, the Copyright Registry, the assistance of collecting societies, and the promotion and training of authors and performers.

A series of self-standing laws then implemented directives of the European Community (E.C.) in the field of copyright and neighboring rights.¹³ Act 16 of December 23, 1993, implemented the Software Directive; Act 43 of December 30, 1994, implemented the Rental and Neighboring Rights Directive, while amending the Copyright Act with regard to private copying; Act 27 of October 11, 1995, implemented the Term Directive; and Act 28 of October 11, 1995, implemented the Satellite and Cable Directive. While all these laws became effective upon publication after enactment, it was contemplated that their provisions would be ultimately integrated into a new, so-called unified text of the Copyright Act.

The 1996 Copyright Act represents just such a unified text. It was brought into effect by Government decree on April 23, 1996,¹⁴ within the terms agreed by the Parliament. The 1996 Copyright Act basically retains much of the structure and wording of the 1987 Copyright Act, as revised and supplemented by subsequent copyright legislation. Intended to unify and clarify the multiple statutes which had proliferated in this field, while formally superseding them all, the 1996 Copyright Act is in principle not supposed to change the substance of the prior provisions which it incorporates.

Therefore, where the legislators have indeed introduced substantial changes of prior provisions in the unified text, such new rules as result from those changes may be declared void by the tribunals. The Spanish Supreme Court has declared void the new rule of the 1996 Act concerning phonogram producers' neighboring rights that did not include these producers' exclusive rights of public communication as these existed in the prior Act.¹⁵ Such judicial review could take place in the future with other rules to the extent that the legislators have not limited themselves to unifying and clarifying the previous statutes.

¹² On the dualist system, see "Introduction," herein, at § 2[2][b][i]; Lucas and Kamina, "France," herein, at § 1[3] (hereinafter "France").

¹³ On these directives, see Smulders, "The European Community and Copyright," herein, at § 4[2] (hereinafter "E.C.").

¹⁴ R.D. 1 of April 12, 1996.

¹⁵ See Supreme Court (Administrative Section), March 1, 2001, Aranzadi Jurisprudencia 2001, nos. 1207 and 3071.

Many decrees had been issued under the 1987 Copyright Act to implement specific provisions. Since references to these decrees are largely reincorporated in the 1996 Copyright Act, they will be discussed below in connection with transitional issues.¹⁶

[2] Current Copyright Law

[a] The 1996 Copyright Act. The structure of the current Act is as follows:

A Preamble explains the background and rationale for Spanish copyright law, referring to the Civil Code and Spain's international commitments, notably those arising out of the Berne Convention.

Part 1 includes general provisions on copyright, including moral rights, the transfer of rights, and specific provisions on publishing and performance contracts, as well as on audiovisual works and computer programs.

Part 2 deals with neighboring rights and related topics.

Part 3 is dedicated to procedural matters, including rules governing the Copyright Registry and the collecting societies, and to the protection of technological safeguards.

Part 4 defines the field of application and the rights granted to foreign copyright owners.

The Additional Provisions concern legal deposit and payments to fund rights of remuneration.

The Transitional and Derogatory Provisions deal with transitional issues, as discussed below.¹⁷

The Final Provision authorizes the Government to enact regulations to implement the Act as needed.

[b] Amendments. Act 5 of March 6, 1998, amended the 1996 Copyright Act, implementing the E.C. Database Directive.¹⁸ It introduced, directly into the 1996 Copyright Act, specific copyright provisions regarding databases, notably in Articles 12, 20.2, 21, 31, 34, and new rules governing the *sui generis* right of database producers, notably in the new articles 133 through 137.¹⁹ Previous Articles 133 through 158 change their numbering to 138 through 163.

Act 1 of January 7, 2000, the new Civil Procedure Act, has specifically amended Articles 25, 103, 143, and 150, and derogated from Article 142, of the current Copyright Act.²⁰

¹⁶ See § 1[2][c] *infra*.

¹⁷ See § 1[2][c] *infra*.

¹⁸ On this Directive, see "E.C.," herein, at § 4[2][f], with text in Appendix 6.

¹⁹ See § 9[1][b][i] *infra*.

²⁰ Act 1 of Jan. 7, 2000, Derogatory provision 2.13 and Second Final Provision, Repertorio Aranzadi 2000, no. 34. It should also be noticed that the ending of previous Article 145, now with the same wording in Article 150, has been declared void by the Supreme Court in several decisions noted in § 9[2][a] *infra*. See also § 1[1][c] *supra* (explaining how the Supreme Court may void other legislative anomalies).

In 2006, the Copyright Act was amended by Act 19 of June 5, 2006, which implemented the I.P. Enforcement Directive,²¹ and by Act 23 of July 7, 2006, which implemented the Information-Society Directive and made other changes in the law.²² Act 10 of June 22, 2007, has amended several articles to implement the public lending right.

Act 3 of December 23, 2008, implemented the Resale-Right Directive,²³ by superceding the prior Article 24 of the Copyright Act with regard to *droit de suite*²⁴.

[c] Transitional Issues. As explained above, Spanish copyright legislation was substantively transformed at the end of 1987 and formally reorganized in 1996.²⁵ In this process, certain transitional issues arose.

The 1987 Copyright Act represented a new departure in copyright law for Spain after more than a century under the old law. Therefore, pre-1988 case law, which was in fact quite scarce, has not been very instructive in construing subsequent legislation.

The Final Provision of the 1987 Copyright Act, effective December 7, 1987, already revoked almost all legislation previously governing the field.²⁶ The Transitional Provisions of the 1987 Copyright Act imposed the principle of non-retroactivity, largely precluding the continuing effect of such prior law,²⁷ with the notable exceptions of moral rights and some terms of protection.²⁸ Also, the 1987 Act does not apply to previous contracts, signed before the implementation of the new Act.²⁹

The Royal Decree 1 of April 12, 1996, enacting the 1996 Copyright Act, formally revokes all statutory provisions passed in the field from 1987 through 1995, while substantively reincorporating and reorganizing these provisions into the unified text of the 1996 Copyright Act.³⁰

²¹ On this Directive, see “E.C.,” herein, at § 4[3][d], with text in Appendix 9.

²² On this Directive, see “E.C.,” herein, at § 4[2][g], with text in Appendix 7.

²³ On this Directive, see “E.C.,” herein, at § 4[2][h], with text in Appendix 8.

²⁴ See § 4[3][e] *infra*.

²⁵ See § 1[1][c] *supra*.

²⁶ *I.e.*, the 1879 Copyright Act; the Act of June 24, 1941 (concerning the General Society of Spanish Authors); Article 31 of the Labor Contract Act (as revised by Decrees of Jan. 26 and March 31, 1944); the Cinematography Act of 1966; Articles 5, 6(2), and 10 through 26 of the Book Act of 1975. On such prior law, see § 1[1][a] *supra*.

²⁷ See, *e.g.*, Audiencia Provincial (Court of Appeal) Cantabria, Sept. 9, 1997, Aranzadi Civil 1997, no. 1832 (applying the Second Transitional Provision of the current Copyright Act to allow the heirs of an author to assert economic and moral rights in a literary work which had been in the public domain before 1987 because it had not been registered, but which is protected after 1987 if it satisfies the requirements of the current Act, these no longer including registration).

²⁸ For further analysis of transitional provisions, see §§ 3[2][b], 5[3][a], and 5[8] *infra*.

²⁹ See Supreme Court (Civil Section), Jan. 24, 2000, Aranzadi Jurisprudencia 2000, no. 61.

³⁰ *I.e.*, the 1987 Copyright Act; Act 20 of July 7, 1992 (amending the 1987 Copyright Act); Act 16 of Dec. 23, 1993, Act 43 of Dec. 30, 1994, Act 27 of Oct. 11, 1995, and Act 28 of Oct. 11, 1995 (all amending the 1987 Copyright Act, for the most part to implement E.C. directives); Act 3 of Dec. 23, 2008,