

PRESS RELEASE

The CNMC fines the General Society of Authors and Editors (SGAE) for anti-competitive practices in the management and exploitation of intellectual property rights

- It has abused its dominant position in the management and exploitation of the intellectual property rights of authors and publishers of musical and audiovisual works.
- It imposes contractual conditions that require authors to entrust to it the management of all the rights to their works.
- It requires the joint sale, without itemisation, of authorisations for the public reproduction and broadcast of musical and audiovisual content.
- The total amount of the fine is 2.95 million euros.

Madrid, 31 May 2019 – The CNMC has fined the General Society of Authors and Editors (SGAE) for abusing its dominant position in the management and exploitation of the intellectual property rights of authors and publishers of musical and audiovisual works. The amount of the fine totals 2.95 million euros. ([S/DC/0590/16](#)).

The investigation began in 2017 after complaints from Derechos de Autor de Medios Audiovisuales, Entidad de Gestión (DAMA) and Unison Rights. The illegal conduct involved several actions undertaken by the SGAE in markets in which it has a dominant position by virtue of having either a monopoly or a controlling share in managing copyrights in said markets. These are the markets for collectively managing the intellectual property rights of authors and publishers of musical and audiovisual works, and the markets for granting authorisations and remunerating the public reproduction and broadcast rights for the same works.

Contractual conditions for authors

First, SGAE has abused its dominant position by imposing statutory and contractual conditions that unjustifiably restrict the freedom of its members to decide whether to attribute to or partially withdraw from the SGAE the management of their rights.

The abuse occurs both when the management right is initially attributed and throughout the duration of the contract, since the partial withdrawal of part of the rights is prevented. In both cases, the author is required to attribute to the SGAE the

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management of all their intellectual property rights. That is, authors cannot freely decide if they want to attribute the management of only a part of their rights, since the SGAE groups the rights into certain categories beforehand through its Statutes, and does not allow them to be managed separately.

The obligation to adhere to this classification limits the freedom of the members, since it groups different rights and modes of exploitation into the same category, which prevents them from being managed separately. As a result, it has created obstacles to the free management of rights and the development of management entities other than the SGAE, making competition difficult.

Public broadcast

The SGAE has also abused its dominant position in the granting of authorisations and remunerating the rights for the public reproduction and broadcast of authors and publishers of musical and audiovisual works. In this case, it did so through two methods: the joint sale (bundling) of authorisations for the public reproduction and broadcast rights for the intellectual property rights it manages, and the lack of a price breakdown for the audiovisual and musical repertoire.

The joint sale took place both in the lodging and catering sectors. As a result, since no price breakdowns were available for the audiovisual and musical repertoire, the user (the restaurant or hotel with musical or audiovisual playback devices) was unable to determine the actual costs incurred by their use, nor could it compare them against other potential offers made by possible competitors to the SGAE.

In addition, the joint sale in packages requires any hotel or restaurant establishment that wishes to offer musical content for its clients to acquire the audiovisual rights at the same time. SGAE is the only operator that offers public reproduction and broadcast rights for phonograms or musical content, thus preventing alternative offers from other management entities or market operators.

Both the joint sale without an itemisation of prices, as well as the application of rights categories that impedes the separate management of said rights, promote the objective of strengthening the SGAE's position and hindering the entry of alternative management entities. Therefore, these behaviours have impeded the entry and growth of new operators in the market for managing the intellectual property rights of authors and publishers, and distorted the activity in the lodging and catering markets.

The CNMC finds evidence for a single and continued infringement of Article 2 of Law 15/2007 of 3 July, on Free Competition (LDC), and of Article 102 of the Treaty on

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the Functioning of the European Union (TFEU), by the SGAE as a result of its abuse of its dominant position:

- by imposing on its partners conditions that unjustifiably restrict both the initial attribution to the SGAE of the partial management of property rights, as well as the revocation or partial withdrawal of the management of said rights.
- through the joint sale, with no itemised breakdown, of the audiovisual and musical repertoire when granting authorisations and remunerating the public reproduction and broadcasting rights in the lodging sector.
- through the joint sale and a price structure that makes it difficult to compare and contract with other operators in the granting of authorisations and remuneration of public reproduction and broadcasting rights in the catering sector.

For this reason, the CNMC imposes a fine of 2.9 million euros on the SGAE and urges it to refrain from conduct similar to that sanctioned in this resolution. ([S/DC/0590/16](#)).

The CNMC notes that this Resolution cannot be appealed through administrative channels, though the companies may bring an application before the National Court within two months after the day the Resolution is filed.

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