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MINISTERIO
DE EDUCACIÓN, CULTURA
Y DEPORTE

SECRETARÍA
DE ESTADO
DE CULTURA

- DERECHOS DE AUTOR EN LÍNEA. EL MODELO REGULADORIO ESPAÑOL
- Copyright online. The Spanish regulatory model

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State of affairs

- Copyright is necessary to ensure cultural creation and protect cultural diversity.
- Misuse of new technologies is provoking, worldwide, heavy losses in economic and employment terms.
- Changes in consumer habits (legal offer / copyright protection).
- Difficulties to achieve minimum safety standards from state legislations.
- Solutions will not go through measures on a single approach measures or adopted unilaterally.

Regulating the Spanish domain extension “.es”

- Red.es is the public entity of the Ministry of Industry, Energy and Tourism in charge of consolidating the development of the Information Society in Spain. Its mission is to implement projects related to technologies of the information society according to the State strategic priorities and in collaboration with the Autonomous Communities, local authorities and the private sector.
- Domains “.es” grew 10,68% in 2012, reaching a total of 1.614.149 at 31.12.2012.
- Domains “.es” provide differences, reinforcing the identity and proximity of projects and favouring identification with Spain, with Spanish language and culture in Spanish.
- Domains “.es” provide stronger safety standards than other domains. They are subject to Spanish legislation and jurisdiction of the Spanish courts.

Domain ".es" cancellation procedure

- A domain ".es" can be cancelled by the public company Red.es or on request, in the following cases:
 - When domain names are requested by persons or firms with no interest or no relation with Spain.
 - When the beneficiaries of domain names composed exclusively of proper names and surnames are not directly related to these names and surnames.
 - When identification data stating in the Register of Red.es are false or incorrect.
 - When it violates the rules and technical conditions established by the Assignment Authority in Red.es.

The Interministerial Commission to advise the Government about IPRs on the Internet (2009) recommended...

- To set up an administrative quick and effective procedure to restore legality, developing Article 11 of the LSSI, not affecting Internet end users, and including mandatory judicial intervention.
- To analyze civil judicial procedure, excluding, for the moment, criminal procedure modifications .
- To promote legal digital offer.
- To create a legal content official mark/seal.
- To carry out awareness and education actions.
- To establish a flexible mechanism for solving IPR conflicts about Internet content.

Functioning of Section 2 of the Intellectual Property Commission and procedure for its implementation

ACT 34/2002 ON SERVICES INFORMATION SOCIETY AND E-COMMERCE (LSSI)

- Article 11. Cooperation duty of the Internet Service Providers (ISP)



EU scope:

- Article 118, Treaty of Lisbon: "In the context of the establishment and functioning of the internal market, the European Parliament and the Council will establish, under the ordinary legislative procedure, the measures ... (...) ... to ensure uniform protection of intellectual property rights (IPRs) in the EU... "
- Telecom Package (reform of several Community instruments adopted by European Parliament on 24.11.2009). Its amendment 138/46 requires Member States that give powers to an organ for protecting IPR in the Internet:
 - respect of the principle of contradiction,
 - respect of the principle of judicial review.

Act 2/2011, of March 4, of Sustainable Economy (LES). Final disposal 43rd.

- It creates an administrative body: Section Two of the Intellectual Property Commission.
- It establishes an administrative-judicial restoration of legality procedure, focused on Websites that infringe IP rights

Administrative-judicial procedure

- Focused on Websites that violate IP rights involving profit-making or real or potential property damage.
- Only on request from interested person.
- Identification of the Web responsible after judicial approval and hearing to the Public Prosecutor .
- Contradictory procedure: hearing step.
- The administrative decision can not be implemented until authorization by the Central Court for Administrative Issues.
- Within 4 days, the judge, after hearing the Public Prosecutor, the Administration and stakeholders, authorizes or not the implementation of the administrative decision .
- Implementation by the ISP: removal of content or, in severe cases, interruption of the Website.
- Possibility of judicial appeal to the competent Tribunal at National High Court.

Section 2 of the Intellectual Property Commission (IPC)

- Chaired by the Secretary of State for Culture or person he delegates.
- Members from the Ministries of:
 - Education, Culture and Sport.
 - Industry, Energy and Tourism.
 - Presidency.
 - Economy and Competitiveness .
- Secretariat: a public officer from the MEC&S.
- Requirements for the work of Section 2:
 - Evidence of a violation of IP rights through a service of the Information Society .
 - Profit-making or real or potential property damage.
 - Request from interested person (IPR holders or their representatives).

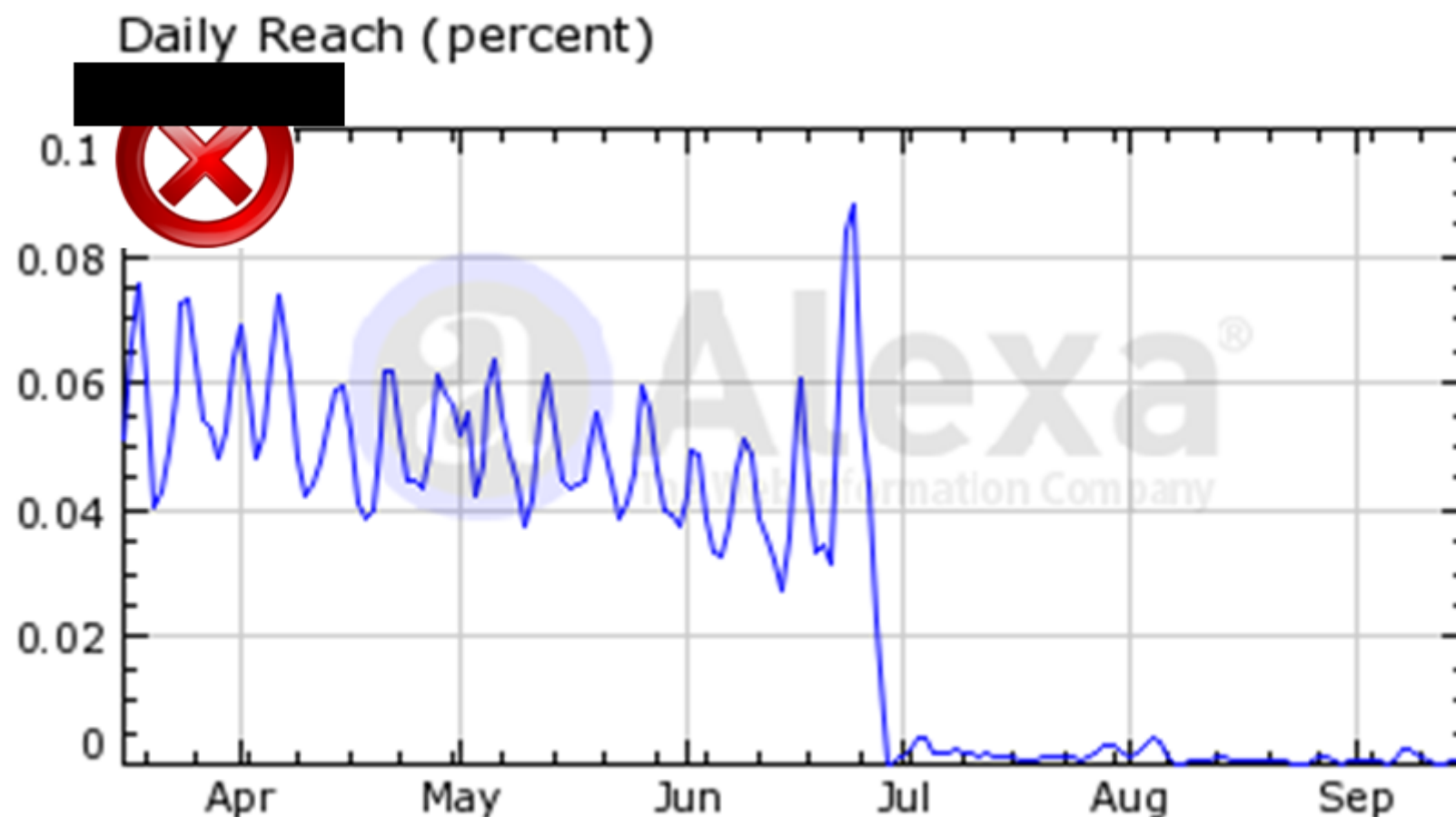
Situations unaffected by the actions of Section 2 of the IPC

- Internet end users.
- WebPages that use licensed content, or covered under limits of IP rights.
- Content covered by freedom of expression and information.

Reporting results

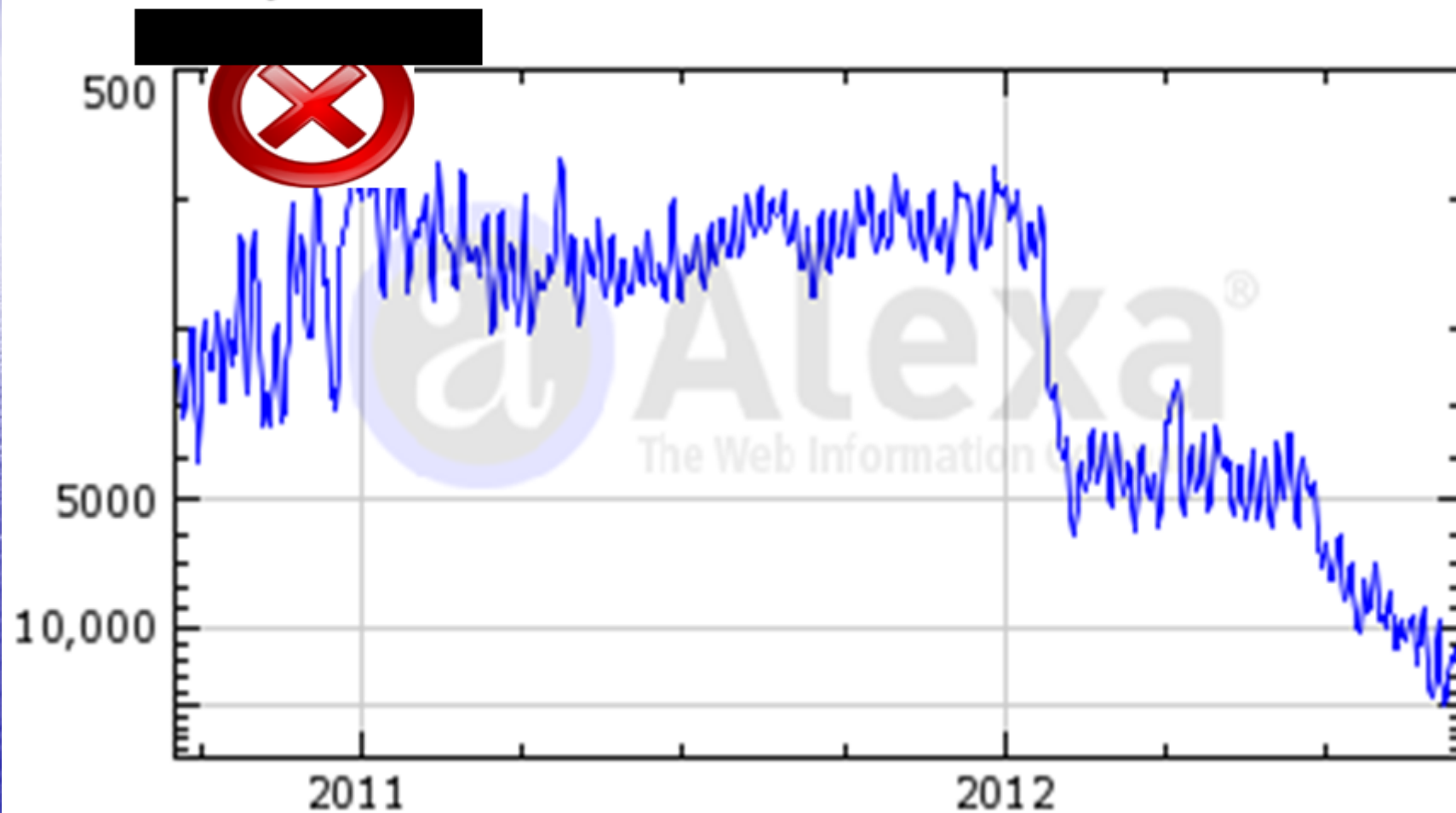
- Since the beginning of its activity (1.3.2012), Section 2 of the IPC resolved 291 of the 375 applications submitted, which has achieved the following results in 53 cases:
 - 28 cases (mostly “.com”) have been filed after the voluntary withdrawal of illegal content offered by cyberlockers (24 after the notification of the start of the procedure and 4 additional ones after the final resolution of Section 2).
 - Furthermore, in 22 cases linking websites notified as third-party intermediaries (mostly “.com”) have removed illegal links or have stopped their activity after being notified.
 - 3 “.es” domains have been cancelled.

Audience share evolution of linking website that stopped its activity after notification from the IPC



Audience share evolution of linking website that withdrew links after notification from the IPC

Daily Traffic Rank Trend



Learned lessons

- It is a global pioneer procedure. It is necessary to be guided by a principle of prudence.
- Loyal collaboration from IPR holders and their representatives is essential.
- Results of this first year are positive, especially in relation to services operating from Spain.
- It is crucial to get the collaboration of third countries from which cyberlockers and identity concealment services are operating.

Draft Law amending Intellectual Property Act and Civil Procedure Act (Council of Ministers, march 2013)

- Amendment of the regulation of Section 2 of the IPC:
 - Persecution of cyberlockers and also linking sites.
 - Going over the scheme work by work: possibility of removing all the works of the same IPR holder.
 - Fines up to 300.000€.
 - Collaboration of payment intermediaries and publicity agencies.
 - Electronic edicts board in the website of the Ministry.
- Amendment of the Civil Procedure Act:
 - Facilitating access to the civil courts.
 - Permitting the identification of the copyright infringer.

Grazie mille per l'attenzione

Thank you very much for your attention

Muchas gracias por su atención

<http://www.mcu.es/propiedadInt/index.html>