

ENHANCING DIGITAL IP CONTENT PROTECTION IN PORTUGAL

Those who unlawfully make I available P-protected content on Internet and network service providers will have 48 hours to remove such content from the digital environment. They will have also to cooperate with IGAC.

CONTACTS

CLÁUDIA MARTINS

CMARTINS@MACEDOVITORINO.COM

JEFFERSON FERNANDES

JFERNANDES@MACEDOVITORINO.COM

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Law 82/2021, of 30 November strengthens the control and monitoring of access to contents protected by copyrights and related rights in the digital environment. These control and supervision powers will be carried out by the Inspectorate General for Cultural Activities (*Inspecção-Geral das Atividades Culturais* - IGAC), the local supervisory authority for copyright and related rights.

Several creations/works are protected by copyright, among others: (i) literary works such as books, magazines, newspapers, lectures, lessons, speeches, poems; (ii) dramatic and dramatic-musical works; (iii) choreographic works; (iv) musical compositions with or without lyrics; films; television programs; (v) artistic works such as drawings, paintings, sculptures, ceramics, photographs, applied arts, illustrations, architectural designs and advertising slogans.

The digital environment is suited to illicit sharing of IP protected content, which rapidly surfs the Internet and may be difficult to control. The illicit disclosure of IP-protected content may occur by means of:

- (a) Communication, sharing, or storage of protected content without consent from the holders of copyright and related rights;
- (b) Making services or means intended for use by third parties in violation of copyright and related rights, or intended to interfere with the normal and regular functioning of the market for works and performances available; and/ or
- (c) Provision of services to counteract effective technological measures for the protection of copyright and related rights or information devices for electronic rights management.

In a recent Portuguese case involving the illicit sharing of IP protected periodicals and cinematographic/audio-visual works by Telegram channels, the Intellectual Property Court prohibited this practice ordering an injunction filed by Gedipe - Association for the Management of Copyrights, Producers and Publishers and one of its associates Visapress.

It is, therefore, no coincidence the time chosen for the publication of this law, which comes into force on 29 January 2022, and defines a set of specific measures for the removal of illicit IP protected content available on the Internet. Among these measures are:

- (a) Following an inspection by IGAC (by its own initiative or complaint), the person responsible for the illicit making available of protected content will have 48 hours to cease and remove the service or content, after notification by IGAC;
- (b) If the 48-hour deadline is not followed, IGAC will notify the intermediary network service providers to remove or to disable access to the protected content, for example, by

preventing access to a certain URL or associated domain name system (DNS), or, in certain cases, access to content provided by a certain IP;

- (c) If it is not possible to identify the person responsible for making the content available or when the 48-hour period does not have the desired useful effect, for example because the content is available for a limited time or in real time, IGAC will directly notify the intermediary providers to proceed with the removal of the content;
- (d) Intermediary network service providers must adopt a proactive and cooperative conduct with IGAC: (i) immediately inform IGAC when they become aware of illegal activities taking place via the services they provide (in case of obvious illegality) and (ii) comply with IGAC's requests to identify the recipients of the services with whom they have storage agreements.

Without prejudice to other sanctions, the illicit sharing of IP protecting content is an administrative offense punishable by a fine between €5,000 (five thousand euros) and €100,000 (one hundred thousand euros).

IGAC's final decision must be notified to the complainant, the person responsible for the website or service and the intermediary provider of hosting services, being subject to appeal, in first instance, to the Intellectual Property Court, and in second instance, to the Court of Appeal.

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