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Law No. 82/2021

November 30th

Summary: Surveillance, control, removal and impediment of access to protected content in a digital environment.

The Assembly of the Republic decrees, under the terms of paragraph c) of article 161 of the Constitution, the following:

CHAPTER I

General provisions

Article 1

Object

1 - This law establishes:

a) The procedures for monitoring, controlling, removing and preventing access in the digital environment to content protected by copyright and related rights;

b) The administrative procedure to be adopted in the event of unlawful provision of content protected by copyright and related rights, including the obligations, within the scope of that procedure, of intermediary providers of network services, defined in paragraph 5 of article 4 ° of Decree-Law n.° 7/2004, of January 7th, in its current wording.

2 - The provisions of this law do not apply to providers of online content sharing services, as defined in paragraph 6 of article 2 of Directive (EU) 2019/790 of the European Parliament and of the Council, of 17 April 2019, on copyright and related rights in the digital single market, which are held accountable under the terms of article 17 of the same diploma and the legislation that transposes it into the national legal order.

3 - This law does not affect the application of the provisions:

a) In Directive (EU) 2019/790 of the European Parliament and of the Council, of 17 April 2019, on copyright and related rights in the digital single market, and in the legislation that transposes it into the national legal order;

b) In the Code of Copyright and Related Rights, approved by Decree-Law No. 63/85, of March 14, in its current wording;

c) In Directive 2001/29/EC of the European Parliament and of the Council, of 22 May 2001, on the harmonization of certain aspects of copyright and related rights in the information society, and in Law no. 2004, of August 24, in its current wording, which transposes it to the national legal order;

d) In Directive 2004/48/EC of the European Parliament and of the Council, of April 29, 2004, on the respect of intellectual property rights, and in Law No. 16/2008, of April 1, which transposes it to the national legal order.

Article 2

Competence

1 - It is incumbent upon the General Inspectorate of Cultural Activities (IGAC), as the sectoral supervisory body in matters of copyright and related rights, within the scope of Decree-Law no. 7/2004, of 7 January, in its wording current legislation, supervision, control and regulation under the terms set out in this law.

2 - It is incumbent upon the general inspector of cultural activities to determine the removal or impediment of access to protected content.

CHAPTER II

Sector supervision

Article 3

Supervision and control powers

1 - Whenever the IGAC, ex officio or following a complaint, identifies the provision, by a website or Internet service, of contents protected by copyright and related rights, without the authorization of the holders of those rights, it notifies the person responsible for providing the content in question in order, within a maximum period of 48 hours, to stop this availability and remove the service or content from the Internet.

2 - The notification referred to in the previous number must also be made known to the intermediary provider of accommodation services, whenever elements are available that allow it to be identified and contacted.

3 - For the purposes of this law, anyone who: unlawfully makes available content protected by copyright and related rights is considered to be:

a) In any way communicate, make available to the public or store protected content, without authorization from the holders of copyright and related rights;

b) Provides services or means intended to be used by third parties for the violation of copyright and related rights, or which are intended to interfere with the normal and regular functioning of the market for works and services;

c) Provide services aimed at neutralizing effective measures of a technological nature for the protection of copyright and related rights or information devices for the electronic management of rights.

4 - Once the period provided for in paragraph 1 has elapsed without the cessation of availability being verified, the IGAC notifies the intermediary providers of network

services so that they remove or make access to the content in question impossible, in accordance with the procedures provided for in article 5th

5 - There is no need for the notification provided for in paragraph 1, with immediate notification to the intermediary providers of network services provided for in the previous number, in the following situations:

a) When the application of the 48-hour period substantially reduces the usefulness of the determination of removal or access impediment, namely due to the fact that the availability occurs in real time and for a limited period;

b) When it is not possible to obtain the identification and the way to contact the person responsible for making the content in question available.

6 - Without prejudice to the possibility of resorting to means of judicial protection of protected rights, there is no reason to notify intermediary providers of network services under the terms and for the purposes set out in paragraph 4, when the elements contained in the procedure give rise to doubts based on the ownership of the rights in question or the legitimacy of the use of the contents by the person responsible for making them available.

7 - This procedure does not affect the determination of possible criminal responsibility, in general terms.

Article 4

Complaint

1 - The holder of the injured copyright or related right, or whoever represents him, submits to the IGAC the denunciation of the illicit availability on a network of content over which he holds the title.

2 - The complaint must contain, namely, the following elements:

a) Designation of the site, page or blog and domain and subdomain name, whenever applicable, the form and location of the works, artistic performances, phonograms, videograms or transmissions, in the cases provided for in paragraph a), or of the services referred to in b) and c), all of paragraph 3 of the previous article, as well as the date and time when the respective availability was verified;

b) Indication of the links, hyperlinks, screen prints and any elements capable of identifying the protected contents and the website where they are unlawfully made available or the services referred to in paragraphs b) and c) of paragraph 3 of the previous article;

c) Identification, in the cases provided for in subparagraph a) of paragraph 3 of the previous article, of a sample of the works, artistic performances, phonograms, videograms or transmissions illicitly made available, of the respective rights holders, and, whenever applicable, of the collective management entities that represent them;

d) Indication, whenever possible and applicable, of the number of works, artistic performances, phonograms, videograms or transmissions made available on the website without authorization from the holders of copyright and related rights;

e) Identification, whenever possible, of the person allegedly responsible for making the content in question available and of the intermediary provider of the hosting service associated with the Internet Protocol (IP) where the illicit content is hosted;

f) Declaration, under oath, that the use, on the site in question, of the protected content referred to in subparagraph c) was not authorized by the holders of copyright and related rights, nor by their legitimate representatives.

3 - The IGAC has a maximum period of 10 days to carry out the acts provided for in this law, except in the case provided for in paragraph a) of paragraph 5 of article 3.

4 - The IGAC's final decision on the complaint is always notified to the complainant, to the person responsible for the site or Internet service in question and, whenever the available elements allow, to the intermediary provider of accommodation services.

Article 5

Duties of intermediary network service providers

1 - Without prejudice to compliance with other legal and regulatory duties relating to the exercise of their activity, intermediary network service providers are obliged to comply, within a maximum period of 48 hours from their notification, with the determinations of the inspector general of cultural activities in order to remove or disable access, availability and use of content protected by copyright and related rights.

2 - For the purposes of the preceding paragraph, they are obliged to comply with the determinations of the IGAC to remove or make access to protected works or content impossible, namely by preventing access to a certain uniform resource locator (URL) or system of names of associated domain (DNS), or access to content made available by a given IP, the following intermediary network service providers:

a) Intermediary providers of simple transport services, and those providing Internet access services;

b) Intermediary providers of network content association services;

c) Intermediary providers of storage services on a main, intermediary or other basis, provided that the protected content is stored on their servers.

3 - The removal or impediment of access to the contents made available, by preventing access to a certain IP, is conditioned to the verification that that address is typically and essentially, or repeatedly and recurrently, used for the illicit provision of works or other material protected by copyright and related rights, other uses being non-existent or marginal.

4 - Intermediary network service providers are also responsible for:

a) Immediately inform the IGAC when they become aware of illegal activities that are carried out through the services they provide, whenever there is manifest illegality;

b) Comply with requests for identification of recipients of services with whom they have storage agreements.

5 - In the cases provided for in paragraph a) of paragraph 5 of article 3, the intermediary providers of network services must adopt the measures referred to in paragraph 2, as soon as possible, after notification of the determination of IGAC.

6 - No responsibility falls on the intermediary provider of network services for the measures adopted in compliance with an IGAC determination.

Article 6

Duration of measures

1 - The measures adopted in compliance with the determination of the IGAC that imply the removal or impediment of access to illicitly made available content are in force:

a) In the cases provided for in paragraph a) of paragraph 5 of article 3, until the cessation of the illicit activity that gave rise to them, but never for a period exceeding 48 hours;

b) In other cases, for a maximum period of one year, unless, during this period, whoever has a legal interest in maintaining that content online demonstrates that he has put an end to the unlawful conduct;

c) In any case, until the cessation of the effects of the decision is determined by the IGAC itself, or by any competent judicial or judicial authority, without prejudice to such authority being able to order other measures to prevent access.

2 - The provisions of subparagraphs b) and c) of the previous number do not affect the possibility of any interested party to request, before the expiry of the period provided for therein, the extension of the effects of the decision, for an equal period, and for this purpose must demonstrate that they continue to be made available. unlawfully contents protected by copyright or related rights on the website or Internet service in question.

Article 7

Codes of conduct and self-regulation

IGAC is responsible for encouraging and encouraging the creation of codes of conduct and self-regulation agreements between intermediary Internet service providers, bodies representing copyright and related rights holders and other interested parties, with a view to streamlining the procedures provided for in present law.

CHAPTER III

Judicial appeal

Article 8

Appeal from court decision

1 - Decisions handed down by the IGAC may be appealed to the Intellectual Property Court.

2 - Decisions handed down by the Intellectual Property Court may be appealed to the Court of Appeal.

Article 9

Legitimacy

1 - Anyone who is directly and effectively harmed by the decision is a legitimate party to appeal the decisions of the IGAC.

2 - The opposing parties are:

a) In the appeal against decisions that determine the removal or impediment of access to protected content, the holders of copyright or related rights, or the entities that represent them, who have filed a complaint under the terms of article 4;

b) In appeals against decisions rejecting the application of the measures, those allegedly responsible for making the content in question available, namely the persons or entities that operate or own the websites or Internet services, pages or blogs or the IP owners through which it was the alleged offense has been committed.

3 - On an ancillary basis, anyone who, having not appealed the decision, demonstrates an interest in maintaining the IGAC's decisions may also intervene in the process.

4 - The provisions of the previous numbers do not affect the use, by interested parties, of the administrative or judicial means to which they intend to resort for the effective exercise of the rights they invoke.

Article 10

Term

The appeal must be lodged within 30 days from the notification of the decision to remove or prevent access to protected content or its rejection.

CHAPTER IV

Unlawful misdemeanour

Article 11

Infractions

paragraphs 1, 2, 4 and 5 of article 5 constitutes an administrative offense punishable with a fine of (euro) 5000 to (euro) 100 000.

2 - IGAC is responsible for instructing administrative offense proceedings relating to the infractions provided for in the previous number and the application of fines.

iii of this law not applying to the decisions provided for in this article .

CHAPTER V

Final dispositions

Article 12

Subsidiary right

The Code of Civil Procedure is subsidiary applicable to everything that is not expressly regulated in chapter iii of this law.

Article 13

Implementation

This law enters into force 60 days after its publication.

Approved on October 22, 2021.

The President of the Assembly of the Republic, Eduardo Ferro Rodrigues.

Enacted on November 23, 2021.

Published this.

The President of the Republic, Marcelo Rebelo de Sousa.

Countersigned on November 25, 2021.

The Prime Minister, António Luís Santos da Costa.