

(This is not an official translation of the law)

Law No. 92/2019

September 4th

Summary: Establishes the permitted uses of works for the benefit of blind people, transposing Directive (EU) 2017/1564, of the European Parliament and of the Council, of September 13, and decriminalizes the unauthorized public performance of commercially edited phonograms and videograms (Fourteenth Amendment to Decree-Law No. 63/85, of March 14th, Second Amendment to Decree-Law No. 252/94, of October 20th, Third Amendment to Decree-Law No. 332/97, of November 27th, and the first amendment to Decree-Law n.° 122/2000, of July 4th).

Establishes the permitted uses of works for the benefit of blind people, transposing Directive (EU) 2017/1564, of the European Parliament and of the Council, of September 13, and decriminalizes the unauthorized public performance of commercially edited phonograms and videograms (Fourteenth amendment to Decree-Law no. 63/85, of March 14, second amendment to Decree-Law no. 252/94, of October 20, third amendment to Decree-Law no. 332/97, of 27 November, and first amendment to Decree-Law n.° 122/2000, of July 4).

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

Article 1

Object

The present law proceeds to:

- a) Fourteenth Amendment to the Code of Copyright and Related Rights, approved by Decree-Law No. 63/85, of March 14, and amended by Laws No. 45/85, of September 17, and 114/91, of 3rd September, by Decree-Laws 332/97, of 27th November, and 334/97, of 27th November, and by Laws 50/2004, of 24th August, 24/2006, of June 30, 2008/16, of April 1, 65/2012, of December 20, 82/2013, of December 6, 2015/32, of April 24, 2015/49, of 5 June, 36/2017, 2 June, and 100/2017, 23 August;
- b) Second amendment to Decree-Law no. 252/94, of October 20th, amended by Decree-Law no. 334/97, of November 27th, which transposed Directive no. /250/EEC, of the Council, of May 14, 1991, concerning the legal protection regime for computer programs;
- c) Third amendment to Decree-Law no. 332/97, of November 27, amended by Laws no. 24/2006, of 30 June, and 16/2008, of 1 April, which transposed Directive No. 92/100/EEC, of the Council, of 19 November 1992, on the right rental, lending right and certain rights related to copyright in the field of intellectual property, and
- d) First amendment to Decree-Law no. 122/2000, of 4 July, which transposed Directive no. 96/9/EC, of the European Parliament and of the Council, of 11 March 1996 on the legal protection of databases.

Article 2

Amendment to the Code of Copyright and Related Rights

Articles 75.º, 195.º, 205.º and 221.º of the Code of Copyright and Related Rights, approved by Decree-Law no. 63/85, of March 14, in its current wording, are replaced by the following wording:

«Article 75.º

[...]

1 - ...

two - ...

The) ...

B) ...

w) ...

d) ...

It is) ...

f) ...

g) ...

H) ...

i) The reproduction, public communication and making available to the public in favor of people with disabilities of work that is directly related and to the extent strictly required by those specific disabilities and provided that they are not, directly or indirectly, for profit, without prejudice to the provisions of articles 82.º-A, 82.º-B and 82.º-C;

j) ...

l) ...

m) ...

n) ...

O) ...

P) ...

q) ...

r) ...

s) ...

t) ...

u) ...

3 - ...

4 - ...

5 - ...

Article 195.º

[...]

1 - ...

two - ...

3 - ...

4 - The provisions of the previous numbers do not apply to situations of public communication of commercially edited phonograms and videograms, punishable as an administrative offense, under the terms of paragraphs 3, 4 and 6 to 12 of article 205.

Article 205.º

[...]

1 - It constitutes an offense punishable by a fine between 250 (euro) and 2500 (euro):

a) The lack of communication by importers, manufacturers and sellers of material supports for phonographic and videographic works of the quantities imported, manufactured and sold, under the terms of paragraph 2 of article 143;

b) The lack of communication by the manufacturers and duplicators of phonograms and videograms of the quantities they pressed or duplicated, under the terms of paragraph 3 of article 143.

2 - Failure to comply with the provisions of article 97, paragraph 4 of article 115, paragraph 2 of article 126, in articles 134.º, 142.º, 154.º, in n.º 3 of article 160.º, in articles 171.º and 185.º, as well as, not dispensing with the indication of the name or pseudonym of the artist, in n. 1 of article 180.

3 - It constitutes an offense punishable by a fine between 125 (euro) and 1500 (euro), in the case of natural persons, and from 250 (euro) to 7500 (euro), in the case of legal persons, the communication to the public of previously edited phonograms commercially,

works and performances incorporated therein, without authorization from the respective author, producer of the phonogram or their representatives, if this is legally required, in the following ways:

a) In the form of public performance, by any means and in any public place, within the meaning of paragraph 3 of article 149;

b) In the form of audiovisual broadcasting of phonograms previously incorporated into audiovisual works with the authorization of the respective owners.

4 - It constitutes an administrative offense punishable by a fine between 125 (euro) and 1500 (euro), in the case of natural persons, and from 250 (euro) to 7500 (euro), in the case of legal persons, the communication to the public, anywhere public, within the meaning of paragraph 3 of article 149, of previously edited or commercially premiered videograms, through television broadcasts and retransmissions made available to the public, as well as the works and performances incorporated therein, without the authorization of the respective author, producer of videograms or their representatives, if legally required.

5 - The acts of making available to the public, by wire or wireless, a phonogram or videogram, in order to make them accessible to any person from the place and at the time chosen by him, as well as the cinematographic exhibition, shall not authorized, do not constitute acts of communication to the public for the purposes of paragraphs 3 and 4, being punished under the terms of article 195.

6 - The use of a phonogram and videogram by who, being authorized to use it for the purposes set out in paragraphs 3 and 4, exceeds the limits of the authorization granted.

7 - Negligence and an attempt are punishable, with the minimum and maximum amounts of applicable fines being reduced by half in the case of negligence, and the penalty being particularly reduced in the event of an attempt.

8 - In determining the amount of the fine, in addition to the general criteria applicable, the seriousness of the injury, its frequency and the extent of illicit dissemination of phonograms and videograms are taken into account, ensuring that the amount of the fine actually imposed does not will be, outside the cases of voluntary payment of the fine, lower than the amounts that would be due if the offender had requested authorization to use the rights in question.

9 - In case of recurrence, the minimum and maximum amounts of applicable fines are doubled.

10 - In situations where an administrative offense is required, depending on the seriousness of the offense and the fault of the agent, the following additional sanctions may be applied simultaneously with the fine:

paragraphs 3 to 5 of article 201 being applicable with the necessary adaptations ;

b) Temporary ban on carrying out the activity in which the offense occurred;

c) Temporary deprivation of the offender's right to participate in fairs or markets.

11 - (Previous No. 4.)

12 - The initiation of an administrative offense procedure for the facts provided for in paragraphs 3, 4 or 6 does not affect the recourse, on the part of the holders of rights, injured or offended, to any other legally foreseen means of protection.

Article 221.º

[...]

1 - Effective measures of a technological nature cannot constitute an obstacle to the normal exercise by beneficiaries of free and permitted uses, provided for in paragraph 2 of article 75, article 81, article 82-B, in paragraph 4 of article 152 and in paragraph 1 of article 189

two - ...

3 - ...

4 - ...

5 - ...

6 - ...

7 - ...

8 - ...»

Article 3

Amendment to the Code of Copyright and Related Rights

Articles 82-A, 82-B, 82 are added to the Copyright and Related Rights Code, approved by Decree-Law no. 63/85 , of March 14, in its current wording. º-C and 206º-A, with the following wording:

«Article 82.º-A

Definitions

For the purposes of this section, it is understood to:

a) 'Work or other material' means a work protected under this Code, published or lawfully made available to the public, in the form of a book, a periodical publication, a newspaper, a magazine or other types of writing or notation, including sheet music , as well as related illustrations, regardless of their support, including in sound format, such as audiobooks, and in digital form;

b) 'Beneficiary person' irrespective of any other disability means a blind person or a person with a visual impairment that cannot be reduced so as to provide a visual function substantially equivalent to that of a person unaffected by that impairment, and who, to that extent, is unable to read printed works to the same extent as a person not affected by that disability; or a person who has a perception or reading difficulty and who consequently is unable to read printed works to the same extent as a person not affected by such difficulty; or a person who is unable, owing to a physical disability, to hold or handle a book or to fix or displace the eyes in a way that permits reading;

c) 'Accessible format copy' means a copy of a work or other material, in an alternative medium or format that allows the beneficiary person access to the work or other material, namely that allows him to have access as easy and comfortable as a person not affected by the deficiencies or difficulties referred to in the previous paragraph. Accessible formats include, inter alia, braille, large print, adapted digital books, audiobooks and broadcasting;

d) 'Authorized entity' means an entity authorized or recognized by a Member State to provide beneficiaries with non-profit services in the field of education, pedagogical training, adapted reading or access to information. This includes public institutions or non-profit organizations that provide the same services to beneficiaries as part of one of their main activities, institutional obligations or as part of their public interest missions.

Article 82-B

permitted uses

1 - It is lawful, without the consent of the owner of the copyright and related right, to use a work or other material, without profit, for the benefit of beneficiaries under the terms of this article.

2 - The uses foreseen in the previous number refer to the acts of reproduction, broadcasting, communication to the public, including making them available to the public, distribution, lending, as well as the acts foreseen in articles 7 and 12 of the Decree-Law no. 122/2000, of 4 July, and those provided for in articles 5 and 8 of Decree-Law no. 252/94, of 20 October, in its current wording, provided that are necessary so that:

a) A beneficiary person or a person acting on their behalf makes an accessible format copy of a work or other material to which they have lawful access for their exclusive use;

b) An authorized entity makes an accessible format copy of a work or other material to which it has legal access or which it communicates, makes available, distributes or lends out, on a non-profit basis, a copy in an accessible format to the beneficiary or other authorized entity for the exclusive use of that entity.

3 - Each copy in an accessible format must respect the integrity of the work or other material, taking into account the changes necessary to make the work or other material available in an alternative format.

4 - The exception and ways of exercising the uses provided for in this article must not affect the normal exploitation of the work or other material, nor cause unjustified damage to the legitimate interests of the holder of the right.

5 - A contractual clause that aims to eliminate or prevent the normal exercise, by the beneficiary person, of the uses provided for in this article is null and void.

Article 82-C

Authorized Entities

1 - Authorized entities established in the national territory that carry out the activities provided for in paragraph b) of paragraph 2 of the previous article must guarantee, in their practices:

a) That the distribution, communication and making available of copies in an accessible format only be made in favor of beneficiary persons or other authorized entities;

b) The adoption of appropriate measures to discourage the reproduction, distribution, communication or making available to the public of unauthorized copies in an accessible format;

c) The adoption of due diligence to ensure the proper registration and correct use of the works or other material, as well as the respective copies in an accessible format;

d) The publication and updating, on its website, if applicable, or through other channels, online or offline, of information on how it complies with the obligations set out in the previous paragraphs.

2 - The practices referred to in the previous number must be established and followed with respect for the rules applicable to the processing of personal data of beneficiary persons.

3 - Authorized entities established in national territory may carry out the acts provided for in subparagraph b) of paragraph 2 of the previous article in favor of a beneficiary person or other authorized entity established in any other Member State.

4 - A beneficiary person or entity authorized in its territory may obtain or have access to a copy in an accessible format from an authorized entity established in any Member State.

5 – Authorized entities established in the national territory, which carry out the activities referred to in paragraph b) of paragraph 2 of the previous article, must provide the following information, upon request and in an accessible manner, to any beneficiary person, authorized entity or right holder:

a) The list of works or other material of which they hold copies in an accessible format and the formats available; It is

b) The name and contact details of the authorized entities with which they have exchanged copies in an accessible format under the terms of paragraph b) of paragraph 2 of the previous article.

6 - Authorized entities carrying out the activities referred to in subparagraph b) of paragraph 2 of the previous article, under the terms of paragraphs 3 and 4, must communicate to the National Institute for Rehabilitation, IP, the names and contacts of the other entities.

Article 206-A

Rules relating to the administrative offense procedure

The entities that, under the terms of paragraph 2 of article 201, are competent to carry out the seizure, in cases of flagrante delicto, are competent to collect the respective report and carry out the seizure referred to in paragraphs 2 and 3 . , for committing the crimes set forth in this Code.

2 - The entity that raises the report must immediately inform the General Inspectorate of Cultural Activities (IGAC) of this fact, which, in cases where this is admissible, notifies the offender for the voluntary payment of the fine provided for in paragraphs 2 . 6 and 7.

3 - In case of recurrence, including cases in which the warning provided for in the following number is not respected, the phonograms, videograms, as well as the respective supports, material casings, machines, devices, equipment and other instruments about which there is suspicion are seized. that they have been used or that are intended to commit an infringement.

4 - In cases of flagrante delicto, the authority carrying out the collection of the report must warn about the prohibition of continuing the public communication of phonograms and videograms edited or premiered commercially, without previously obtaining the missing authorizations, under penalty of the practice of a crime of disobedience.

5 - Upon receiving a notice of administrative offense for the facts provided for in paragraphs 3, 4 or 6 of article 205, the IGAC must notify the collective management entities that represent the respective holders, of the lifting of the respective notice, of the time circumstances , place and manner of the infraction and the identity of the presumed infringer.

6 - Voluntary payment of the fine for the minimum amount is only allowed if the offender, until the moment he requests it, demonstrates that he has obtained the missing authorization and provided that the circumstance provided for in paragraph 9 of article 205 does not occur. th

7 - For the purposes set out in the previous number, obtaining the missing authorization is understood to be the supporting document issued by the author, by the holders of related rights, or by the entities that respectively represent them, regarding the granting of authorization relating to the year in which the administrative offense has been committed, in the case of continued practice, and since the start date of such use, in the case of

occasional and isolated practice, without prejudice to the general legal rules that legitimize the refusal to grant the authorization.

8 – The final decision of the administrative offense procedure determines the destination of the seized goods, depending on their seriousness, in accordance with the provisions of article 210-I.”

Article 4

Amendment to Decree-Law No. 252/94, of October 20

Article 10 of Decree-Law No. 252/94 of 20 October, in its current wording, is replaced by the following wording:

«Article 10.

[...]

1 - ...

two - ...

3 - The permitted uses for the benefit of blind people, people with visual impairments or people with other difficulties in accessing printed texts, provided for in article 82.º-B of the Code of Copyright and Related Rights, apply to computer programs.»

Article 5

Amendment to Decree-Law No. 332/97, of November 27

Article 6 of Decree-Law No. 332/97 of 27 November, in its current wording, is replaced by the following wording:

«Article 6.

[...]

1 - ...

two - ...

3 - ...

4 - The provisions of article 82-B of the Code of Copyright and Related Rights are applicable to lending, with the necessary adaptations.»

Article 6

Amendment to Decree-Law No. 122/2000, of July 4

Articles 10 and 15 of Decree-Law No. 122/2000, of 4 July, are replaced by the following wording:

«Article 10.

[...]

1 - ...

The) ...

B) ...

w) ...

d) Permitted uses for the benefit of blind people, people with visual impairments or people with other difficulties in accessing printed texts, provided for in article 82.^o-B of the Code of Copyright and Related Rights;

e) [Previous subparagraph d).]

two - ...

Article 15

[...]

...

The) ...

B) ...

w) ...

d) Whenever it is a permitted use for the benefit of people who are blind, visually impaired or have other difficulties in accessing printed texts, as provided for in article 82.^o-B of the Code of Copyright and Related Rights. »

Article 7

Systematic amendments to the Code of Copyright and Related Rights

The following systematic changes are introduced to the Code of Copyright and Related Rights, approved by Decree-Law No. 63/85, of March 14, in its current wording:

a) Chapter ii of title ii is renamed “Free and permitted use”, comprising articles 75 to 82-C, and is divided into two sections, as follows:

i) Section i entitled “Of free use” and comprising articles 75 to 82;

ii) Section ii entitled “Permitted use” and comprising articles 82.º-A to 82.º-C.

Article 8

Transitional norm

1 - The administrative offenses provided for in paragraphs 3, 4 and 6 of article 205 of the Code of Copyright and Related Rights, approved by Decree -Law no. 63/85, of March 14, with the wording given by this law, are applicable to facts that occurred before its entry into force whenever such facts were criminally punishable on the date they were committed.

2 - The criminal proceedings covered by the provisions of the previous number, instituted up to the date of entry into force of this law, are converted into administrative offense proceedings, starting to be processed and instructed under the terms of the administrative offense regime provided for in the Code of Copyright and Rights Related, approved by Decree-Law No. 63/85, of March 14, with the wording given by this law, with the following specificities:

a) It is up to the Public Prosecutor's Office to determine the transfer of the records to the General Inspectorate of Cultural Activities (IGAC), which instructs the corresponding administrative offense proceedings, taking advantage of all the procedural acts already practiced in the meantime, the provisions of the Code of Copyright and Related Rights in terms of administrative offences;

b) In criminal proceedings that are in the investigation or judgment phase, the titular judges must send the file to the Public Prosecutor's Office, for the purposes set out in the previous paragraph.

Article 9

Assessment

1 - The application of this law is subject to evaluation 12 months after its entry into force.

2 - The assessment referred to in the previous number will be based on a report to be presented by the IGAC, which must contain, without prejudice to other elements, quantitative and qualitative information, namely:

a) The collection of administrative offense notices, their number, geographic areas and issuing authorities;

b) Procedures ended by voluntary payment of the fine, indicating the respective number;

c) Decisions at the end of proceedings, their meaning, archiving or application of a fine;

d) The amounts of fines imposed;

e) The number of procedures in which the defendants presented a written defense and the number of procedures in which an appeal was lodged;

f) The deadlines for processing the procedures, namely the average time elapsed between the collection of the report and the final decision, segmenting the information between the processes ended with voluntary payment and the rest;

g) Other relevant information regarding the human and technical resources available for processing and carrying out the procedures, cooperation and exchange of communications with collective management entities and the balance sheet and critical analysis of the solution adopted;

h) Contributions by entities for the collective management of copyright and related rights.

3 - The report referred to in this article must be sent to the Assembly of the Republic for information by the parliamentary groups.

Article 10

Revocatory norm

Article 80 of the Code of Copyright and Related Rights, approved by Decree-Law no. 63/85, of March 14, in its current wording, is revoked.

Article 11

Implementation

This law enters into force 30 days after its publication.

Approved on June 21, 2019.

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

Enacted on July 26, 2019.

Publish it.

The President of the Republic, Marcelo Rebelo de Sousa.

Countersigned on July 30, 2019.

By the Prime Minister, Augusto Ernesto Santos Silva, Minister of Foreign Affairs.