

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | INTELLECTUAL PROPERTY, MEDIA AND IT

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NEWSLETTER INTELLECTUAL PROPERTY, MEDIA AND IT

I LEGISLATIVE PROPOSAL ON PRIVATE COPYING

On 21 August 2014, the Council of Ministers approved the Draft Law of Private Copying, which brings up to date the provisions of the *Código do Direito de Autor e dos Direitos Conexos* (Copyright and Related Rights Code) on the fair compensation, provided for in the European legislation and payable for the reproduction or recording of works – intended to benefit the authors – on the sales price of all the devices that may be used for that purpose.

This Draft Law aims to promote the amendment of Law No. 62/98, of 1 September, which, in turn, governs Article 82 of *Código do Direito de Autor e dos Direitos Conexos*, which is intended to compensate copyright holders and the holders of related rights, whenever mechanical, chemical and electronic devices, as well as digital and analog virgin data carriers, with the exception of paper, enabling to fix and reproduce the works. This is the case of video recorders, combined TV + video reader-recorder or combined reader - DVD + video reader-recorder, cassette reader-recorder, cassette reader radios, audio and video cassettes, CD, DVD, among others.

Among the amendments made by the Draft Law, noteworthy are (i) the clarification and extension of the scheme of exemptions currently provided for, (ii) the inclusion of digital fixing and reproduction equipment and (iii) the application of fair compensation.

The exhaustive list of devices subject to fair compensation has been eliminated and the same now applies to “any devices the sole or main purpose of which is to enable to fix works”, including the digital equipments.

The 3% percentage of the sales price before VAT no longer applies, while provision is now made for “fair compensation of right holders for the pecuniary damages sustained as a result of the private copy.” Attached to the Draft Law is a table which will set out the value of the compensation applicable for each of the said appliances and devices.

The value of the compensation shall be included in the price of the first sale in the national territory of each appliance, device and analog and digital data carrier enabling to reproduce and store works.

Finally, with regard to exemptions, the range of subjects covered has been extended, as a result both of the activities carried out and of the equipments in question.

II LEGISLATION

Law No. 38/2014. D.R. (Portuguese official gazette) No. 130, Series I of 2014-07-09

Amending for the first time Law No. 54/2010, of 24 December, which enacted the Law of Radio, and altering the timeframe for the concession of the public radio service.

Law No. 39/2014. D.R. (Portuguese official gazette) No. 130, Series I of 2014-07-09

Approving the second amendment of Law No. 8/2007 of 14 February, which restructures the public radio and television service concessionaire, as well as the new by-laws of *Rádio e Televisão de Portugal, S.A.*

Law No. 40/2014. D.R. (Portuguese official gazette) No. 130, Series I of 2014-07-09

Amending for the second time Law No. 27/2007 of 30 July *Lei da Televisão e dos Serviços Audiovisuais a Pedido* (Law of Television and Audiovisual Services on Demand), changing the content of the programmes included in the public broadcasting service concession.

Portaria (Ordinance) No. 149/2014. D.R. (Portuguese official gazette) No. 141, Series I of 2014-07-24

Regulating Decree-Law No. 21/2013 of 15 February, on the rules of the use of electronic data transmission for compliance with formal requirements in the areas of customs, excise taxes and of vehicle tax and repealing *Portaria* (Ordinance) No. 767/2007 of 9 July.

Law No. 73/2014. D.R. (Portuguese official gazette) No. 168, Series I of 2014-09-02

Authorising the Government to legislate on the legal framework of the operation and playing of on-line games.

Resolution of the Council of Ministers No. 52-A/2014. D.R. (Portuguese official gazette) No 166, Supplement, Series I of 2014-08-29

Approving the Strategic Plan to Combat Copyright and Related Rights Infringement.

Decree-Law No. 131/2014. D.R. (Portuguese official gazette) No. 166, Series I of 2014-08-29

Regulating Law No. 12/2005 of 26 January, with regard to the protection and confidentiality of genetic information, to human genetic data bases with a view to the provision of healthcare and health research, to the conditions of the provision and performance of genetic testing and to the terms under which medical genetic consultation is provided.

Draft Law approved by the Council of Ministers of 2014-08-21

Draft Law regulating copyright and related rights' collective management societies, including with regard to their establishment in the national territory and the free provision of services by entities formerly established in another Member State of the European Union or of the European Economic Area.

Draft Law approved by the Council of Ministers of 2014-08-21

Draft Law transposing the European Union directive on certain permitted use of orphan works and amending the *Código do Direito de Autor e dos Direitos Conexos* (Copyright and Related Rights Code) accordingly.

Strategic Plan approved by the Council of Ministers of 2014-08-21

Strategic Plan to combat the breach of Copyright and Related Rights Infringement.

Decree-Law No. 143/2014. D.R. (Portuguese official gazette) No. 186, Series I of 2014-09-26

Adopting the Regulation of the Literary and Artistic Works Registry.

III RESOLUTIONS, RECOMMENDATIONS, OPINIONS, OTHERS

Commission Recommendation of 14 July 2014. OJEU L 214/38 of 2014-07-19

On principles for the protection of consumers and players of online gambling services and for the prevention of minors from gambling on line.

Member States Information. OJEU C 278/1 of 2014-08-22

List of competent authorities which are authorised to search directly the data contained in the second generation Schengen Information System, pursuant to Article 31(8) of Regulation (EC) No 1987/2006 of the European Parliament and of the Council and Article 46(8) of Decision 2007/533/JAI, on the establishment, operation and use of the second generation Schengen Information System.

Commission Implementing Decision of 1 September 2014. OJEU L 263/29 of 2014-09-03

On harmonised technical conditions of radio spectrum use by wireless audio programme equipments in making programmes and special events in the Union.

**Executive Summary of the Opinion of the European Data Protection Supervisor.
OJEU C 328/3 of 2014-09-20**

On the proposal for a Regulation on the European Parliament and of the Council on structural measures improving the resilience of the EU credit institutions and on the proposal for a Regulation of the European Parliament and of the Council on the reporting and transparency of securities financing transactions.

List of community trade mark courts and community design courts in accordance with Article 95(4) of Council Regulation (EC) No 207/2009 on the community trade mark and Article 80(4) of Regulation (EC) No 6/2002 on community designs. OJEU C 332/4 of 2014-09-24.

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