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# General notes on Law 82/2021 of November 30

Legal Flash Intellectual Property, Media and IT

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**Monitoring, controlling, removing and preventing access to content protected by copyright and related rights in the digital environment**



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## General notes on Law 82/2021 of November 30

Law 82/2021 of November 30 (“**Law 82/2021**”) complements the already existing legislation on copyright and related rights, reinforcing their protection in the digital environment.

People who unlawfully make available content that is protected by copyright and related rights are those who:

- communicate, provide to the public, or store protected content without the authorization of the holders of copyright and related rights.
- provide services or means intended for use by third parties to infringe copyright and related rights or to interfere with the normal and regular functioning of the market in works and performances; and
- provide services intended to evade technological measures that protect copyright and related rights or information devices for the electronic management of rights.

The main novelty arising from this law is the reinforcement of the powers of the *Inspecção Geral das Atividades Culturais* (“**IGAC**”), which is the supervisory entity for copyright and related rights, to adopt measures aimed at preventing violations of copyright and related rights, either ex officio or following complaints.

Law 82/2021 also establishes the obligations of intermediary network service providers, as defined in article 4(5) of Decree-Law 7/2004 of January 7: those who provide technical services for accessing, making available and using online information or services without generating the information or service themselves.

This law does not apply to the following:

- Online content-sharing service providers, as defined in Article 2(6) of Directive (EU) 2019/790 of the European Parliament and of the Council of April 17, 2019 (“Directive (EU) 2019/790”), on copyright and related rights in the digital single market: those that provide information society services whose main objective (or one of their main objectives) is storing and facilitating public access to a significant quantity of works or other copyrighted material uploaded by their users, which they organize and promote for profit.



- This is the case of social media platforms such as YouTube, Facebook and Instagram.
- Online encyclopedias, non-profit online encyclopedias, non-profit scientific and educational repositories, open-source software development and sharing platforms, and other similar service providers are not considered providers of online content-sharing services under Directive (EU) 2019/790.

Specifically, if IGAC verifies that a website or service makes available content protected by copyright and related rights, without the authorization of the respective holders of those rights, it:

- notifies the person responsible for making the content available to cease making it available and to remove the service or content from the Internet within 48 hours; and
- sends this notification to the intermediary provider of the hosting service, if information is available to be able to identify and contact it.

The IGAC will not notify the person responsible for making the content available, but will immediately notify the intermediary network service providers, when:

- the 48-hour time limit substantially reduces the usefulness of removing the content or preventing access to it, because, for example, the content is provided in real time and for a limited period (e.g., streaming platforms); and
- the identification or contact details of the person responsible for making the content cannot be obtained.

Intermediary network service providers are obliged to:

- comply, within 48 hours of being notified, with the IGAC's requests to remove or disable access, availability and use of protected content, namely by preventing access to a given uniform resource locator (URL) or associated domain name system (DNS), or access to content made available through a given IP;
- inform the IGAC immediately when they become aware of illegal activities carried out through the services they provide, whenever the illegality is manifest; and



- comply with requests for identification of service recipients with whom they have storage agreements.

However, no liability will fall on these providers as a result of their compliance with the IGAC's requests.

The IGAC is responsible for encouraging the creation of codes of conduct and self-regulation agreements between intermediary internet service providers, bodies representing holders of copyright and related rights, and other interested parties, with a view to speeding up the procedures established in this law.

The mechanisms provided for are supplementary to:

- the possibility of recourse to the means of judicial protection of the protected rights; and
- the establishment of possible criminal liability, under the general terms.

Fines for violating the provisions of this law range from €5,000 to € 100,000.

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## Final provisions

Law 82/2021 will come into force on January 29, 2022.



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