
Transposition of the Digital Single Market Directive

Status report on the transposition 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

Portugal - Legal Update

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Key aspects

- > Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 (DSMD) aims to harmonize the laws on copyright and related rights, focusing on the digital environment and aiming to protect authors while guaranteeing access to creative content.
- > The transposition and implementation of the DSMD in EU Member States—initially scheduled for June 7, 2021—has been repeatedly delayed.
- > Law 11/2023 of March 22 again authorizes the Government to legislate on the DSM within 180 days.



Main features of the Digital Single Market Directive (DSMD)

- > Constant technological developments require an ongoing review of how works and other protected subject matter are created, produced, distributed and exploited. Therefore, the DSMD provides for an EU-wide harmonization and modernization of the concepts and standards to be adopted for the protection of copyright and related rights.
- > The DSMD guarantees the use of protected works by cultural organizations and in education (for scientific research, educational and learning purposes), without needing to obtain authorization from the copyright holders. This includes crossborder access to online content.
- > The DSMD introduces a new related right for publishers of press publications which protects against unauthorized use of their online publications by information society service providers such as news aggregators. This protection does not extend to private or non-commercial use by individual users, or the use of hyperlinks or single terms or very short excerpts from press publications.
- > In this regard, it clarifies that publishers or authors of works included in press publications must receive an appropriate share of the revenue that press publishers receive for the use of their publications by information society service providers.
- > Providers of online content-sharing services will now have to obtain authorization from rightsholders to communicate works or other protected subject matter to the public or make them available to the public. They must also implement effective notice-and-takedown and stay-down mechanisms and will now be liable for protected content inserted by their users.
- > The DSMD establishes a principle of adequate and proportionate remuneration and requires rightsholders to give transparent and up-to-date information to the authors and performers that granted them the license about the exploitation of their works, including information about the types of exploitation, revenue and remuneration.
- > Authors and performers who receive remuneration that is disproportionately low in comparison to all the revenue and benefits generated from the exploitation of their works and performances are entitled to claim additional remuneration.
- > There is a new provision enabling authors and performers to fully or partially revoke the licenses granted if the work or other protected subject matter is not being exploited.
- > **Status report on the transposition of the DSMD in Portugal:** After the legislative authorization introduced by Law 11/2023, the Government launched the public consultation for the draft decree-law

that transposes the DSMD in Portugal. The current wording follows the guidelines established by the DSMD and there are no major adaptations to the Portuguese legal system for now. This public consultation will continue until April 25, 2023. Therefore, the draft decree-law may still undergo some changes.

Final provisions

Due to the significance of this matter, please note that the following:

- Any entity can participate in the Public Consultation running until April 25, giving their opinion on the legislation proposed by the Government.
- In anticipation of the transposition of the DSMD, the following providers should prepare to comply with the following obligations:
 - information society service providers: develop mechanisms or procedures to ensure compliance with the rules on authorization and the remuneration of publishers of press publications, including appropriate classification of press publications.
 - providers of an online content-sharing service: develop mechanisms or procedures to **obtain permission from the rightsholders of works or other subject matter protected by copyright or related rights**, uploaded by the users of these services, to be communicated or made available to the public, and **ensure compliance with the principles of adequate and proportionate remuneration and transparency**.

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