
Transposition of directives on copyright and related rights

European Union Directives 2019/789 and 2019/790 on copyright and related rights are transposed by Decree-Laws 46/2023 and 47/2023 of June 19, respectively.

Portugal - Legal Update

June 21, 2023



Key aspects

- Decree-Law 46/2023 of June 19 (“Decree-Law 46/2023”) aims to improve the availability of television and radio programs in the European Union (“EU”) by providing for the authorization of copyright and related rights holders to be obtained for the online services of broadcasting organizations, re-transmission of programs other than by cable, and transmission by direct injection.
- Decree-Law 47/2023 of June 19 (“Decree-Law 47/2023”) ensures the proper functioning of the distribution market for works and other protected material. It also ensures the sustainability of the sector in light of new digital challenges.
- Broadcasting organizations should therefore obtain authorization from rights holders, ensure non-availability of protected content, update their website’s terms and conditions to comply with the new obligations, and implement a complaint and compensation system for users.



Main highlights of Decree-Law 46/2023

> **Broadcasting organizations' online ancillary services**

Based on the increasing simultaneous transmission and reproduction of programs online by broadcasting organizations, Decree-Law 46/2023 extends the country-of-origin principle to all radio programs and certain types of television programs.

As a result, to include certain programs in the online services they provide in several jurisdictions, broadcasting organizations will only need to obtain authorization from the holders of the rights to the works and other material contained in these programs for the EU country in which their main establishment is located.

> **Re-transmission of television and radio programs**

The re-transmission of programs now requires the authorization of the holders of the exclusive right of communication to the public. Therefore, right holders must transfer the management of their right to grant or refuse authorization for re-transmission to a collective management organization.

The collective management requirement does not apply to the rights of broadcasting organizations over their own transmissions, regardless of whether these rights belong to them or have been transferred to them by other right holders.

> **Direct injection program transmission**

Decree-Law 46/2023 establishes rules regarding the use of works or other protected subject matter by direct injection. This is a technical process through which a broadcasting organization transmits its program-carrying signals to a non-broadcasting organization in such a way that the program-carrying signals are not accessible to the public during that transmission.

When direct injection is used and there is no parallel transmission of the same programs by the distributors of the signal in question, the broadcasting organization and signal distributor are considered to be participating in a single act of communication to the public. In this case, each one must obtain authorization from the right holders.



Main highlights of Decree-Law 47/2023

> **New related right**

Decree-Law 47/2023 creates a new related right for press publishers regarding the use of their online publications by information society service providers. This right was expressly created for the digital world and is only enforceable against information society service providers.

Press publishers established in an EU Member State have the exclusive right to reproduce, communicate or make their press publications available online to the public, either themselves or through their representatives, or to authorize information society service providers to reproduce, communicate or make the former's press publications available online to the public, so that these are accessible to anyone at the time and place of their choosing.

Authors of works published in a press publication in the digital world must receive an appropriate share of the revenue that the press publishers receive for the use of their publications by information society service providers, as determined using a set of factors and criteria.

Consequently, providers of online content-sharing services must:

- > obtain authorization from the right holders, including by signing license agreements; and
- > use their best efforts to ensure the non-availability of protected content for which the right holders have provided them with the necessary information.

> **Duty of information and complaint mechanism**

Providers of online content-sharing services must make available appropriate information promptly to the right holders, at their request, about the functioning of their licensing practices. Also, when authorizations are granted or licensing agreements are signed by service providers and right holders, they must present information on the use of the content covered by these agreements.

Providers of online content-sharing services must also set up and provide a fast and effective complaint and compensation mechanism for all users of their services to complain—for example—about the improper removal or blocking of works or other protected material.

Therefore, it is important for these providers to inform their users, under the general conditions or terms of their websites, about:

- > the use of content covered by licensing agreements between service providers and right holders;
- > the complaint and compensation mechanisms available to users; and



- › the existing internal procedures for complying with the new obligations.

Arbitration for copyright and related rights

Decree-Law 47/2023 establishes the possibility of authorizing the creation of a new arbitration center or the extension of the jurisdiction of an existing arbitration center to include institutionalized mediation and arbitration for copyright and related rights.

Final provisions

- › Article 11 of Decree-Law 46/2023 establishes June 20, 2023, as the date of entry into force.
- › Article 15 of Decree-Law 47/2023 establishes that most of its provisions will enter into force on July 4, 2023.

For additional information on the contents of this document, please contact Cuatrecasas.

©2023 CUATRECASAS

All rights reserved.

This document is a compilation of legal information prepared by Cuatrecasas. The information and comments included in it do not constitute legal advice.

Cuatrecasas owns the intellectual property rights over this document. Any reproduction, distribution, assignment or any other full or partial use of this legal flash is prohibited, unless with the consent of Cuatrecasas



IS 713573