

# PLACING THE DIGITAL PROTECTION ONUS ON ISPS - PEDRO PINTO BESSA MONTEIRO REIS BRANCO E ASSOCIADOS

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**César Bessa Mo**

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Internet service providers must take more responsibility for the content they host and for the rights of IPholders, agreed an influential conference of IPprofessionals recently

La preocupación por el aumento de las violaciones de los derechos de propiedad intelectual e industrial en Internet está moviendo a sus titulares a pedir una protección más intensa en el entorno digital, y a centrar la atención en los Proveedores de Servicios de Internet (ISP), dice César Bessa Monteiro, de Pedro Pinto Bessa Monteiro Reis Branco e Associados (pbbr).

Concerns around the growth of copyright and trademark infringements across the internet is prompting rights holders to call for stronger digital protections and a growing focus on the role of

internet service providers (ISPs), says César Bessa Monteiro, Head of Intellectual Property at Lisbon's Pedro Pinto Bessa Monteiro Reis Branco e Associados (pbbr).

"Concerns are increasing not only because of the fact of the rise in illegal downloads but because of the increasing ease of infringers to store, copy and distribute protected works. This is already acute in the music and film sectors and is now a growing issue for the literary world."

Bessa Monteiro who is a member of the Board of the Portuguese delegation at the International Association for the Protection of Intellectual Property's (AIPPI) recently attended its Annual Conference, where agreement was reached on the need for greater protections against digital copyright infringement. Such a position reflects the growing number of international accords to tackle illegal downloading, he says.

"The AIPPI can play a role in influencing judicial thinking but it cannot make laws. We are however already seeing legislative developments in the UK and France that contain stronger protections, harsher penalties for infringers, and a greater focus on the role of ISPs – an issue in the Anti-Counterfeiting Trade Agreement talks, which has representatives from 37 states, including the 27 EU members.

To date ISPs have been relatively insulated against claims for facilitating illegal downloads and the distribution of protected materials. But the AIPPI is among those calling for them to take on new responsibilities and to tackle persistent offenders.

"The position of the AIPPI is that ISPs should have a fair and reasonable duty to ensure the protection of digital rights, and to block the downloading, uploading or distribution of copyrighted material on the production of substantial evidence from rights holders."

In addition, a consensus is emerging that ISPs should also be liable to legal action if they are found to be enabling,

co-operating or tacitly acknowledging digital theft. "The general view is that ISPs are under no obligation to monitor infringement activity, but it is also a logical view that if an ISP is made aware of infringements and fails to act it should be treated as if it is wilfully facilitating the offences."