[IT] Videotape Piracy - Recent Case-law Confirms Criminal Sanctions Apply despite the Opposite View Expressed by the Supreme Court

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In a judgement of 5 February 1998, the Milan Court of Appeal (Corte di Appello) held that the sale or rental of videotapes not bearing the seal of SIAE (Italian Collecting Society for Authors and Publishers - Società Italiana Autori ed Editori) is punishable under article 171 third comma of the Italian Copyright law with imprisonment for between 3 months and 3 years and a fine from 500,000 up to 6 million Italian Liras. This judgement clearly differs from the interpretation of the Criminal Section by the Italian Supreme Court (Corte Suprema di Cassazione) in two judgements (of 12 July and of 16 October 1997) on the same point. The view of the Supreme Court was that the new version of article 171 third comma of the Italian Copyright law (as amended by Legislative Decree no. 685 of 1994 which implemented the EC Directive 92/100 of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property into Italian Law - OJEC No. L 346 of 27 November 1992 p. 61) was unenforceable as it referred to an Implementing Regulation not yet made.

The Court held that in the absence of the Implementing Regulation, article 171 third comma of the Copyright law must be considered to be a "criminal provision in blank": this means a provision which is generally considered enforceable only if adequately implemented by another law or regulatory provision. By adopting this interpretation, the Supreme Court refused to consider the sale and rental of "pirate videotapes" to be criminally punishable under article 171 third comma of the Italian Copyright law and consequently held that the seizure of videotapes ordered by the upheld Court of Merit in the two Supreme Court cases was illegal.

Conversely, the Milan Court of Appeal held that the criminal sanctions provided for by article 171 third comma of the Italian Copyright law were fully enforceable, re-opening a legal debate that seemed settled by the judgements of the Supreme Court.

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Milan Court of Appeal 5 February 1998, case: G.N. Stringav. SIAE

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Corte Suprema di Cassazione - III Sez. penale- 12 July 1997

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Corte Suprema di Cassazione, II Sez. penale- 16 October 1997

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