[IT] Regulation on the SIAE Sticker

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The Italian Copyright Statute Law No 633 of 22 April 1941 (Article 181bis) lays down the mandatory requirement of affixing a distinctive sign bearing the initials of the Italian collecting society *Società Italiana degli Autori ed Editori* (Society of Authors and Publishers - SIAE) to any medium containing protected works. This operates as an authentication tool and a safeguard enabling legitimate products to be distinguished from pirated goods. In most relevant Italian court rulings (delivered prior to the Schwibbert ruling, see IRIS 2009-1: 15), the absence of the SIAE sign on a given medium has always been held by criminal courts to be strong evidence of its unauthorised duplication.

Article 181bis of the Copyright Statute does not distinguish between works in the SIAE register and those not included in it: the SIAE sticker must to be affixed to any medium containing works listed in Article 181bis, regardless of whether or not the author used the intermediation services of SIAE. In other words, Article 181bis requires that a SIAE sticker be affixed to every medium containing programmes, multimedia, sounds, voices or moving pictures for it to be put it onto the market or distributed for profit (including indirect profit). Accordingly, the main three elements of the Article are the following:

1) the medium (any material object in which a work can be permanently incorporated);

2) the object (content protected by copyright) embedded in the medium;

3) distribution of the medium to the public for profit.

In the last few months a broad debate has been opened over the interpretation of the judgment delivered by the European Court of Justice in case C-20/05 Schwibbert, which dealt with the obligation to affix the SIAE marking to CDs for the purpose of marketing them within the Italian territory. The ECJ established that such a requirement constitutes a “technical regulation”, which, if not notified to the Commission pursuant to Directive 83/189/ECC as replaced by Directive 98/34/EC, cannot be invoked against an individual (see IRIS 2008-1: 15).

Therefore, on 6 April 2009, the Italian Government, implementing Article 181bis of the Copyright Statute, published in the *Gazzetta ufficiale* (Official Gazette) a new

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regulation (Regulation No. 31 of 23 February 2009), which reaffirms the requirement of affixing the SIAE sticker. The new regulation came into force on 21 April 2009 and the Italian authorities have communicated it to the European Commission.

The new regulation would close the hoary question of the SIAE stickers opened by the ECJ. In effect, in the Italian copyright system, the mandatory requirement of affixing a distinctive sign bearing the initials of the SIAE to any medium containing protected works is reintroduced. Moreover, the Government regulation seems to be retroactive: Article 1 paragraph 2 states that only CDs and DVDs with the SIAE stickers are lawful, even if put into circulation after the ECJ ruling and before the recent law.

In Articles 2 and 3, the recent regulation describes the features of the stickers that have to be appended to the CDs and DVDs containing sounds, voices, moving pictures or software. Article 4 regulates the procedure for the issuance of stickers and Articles 5 et seq. specify in detail the exceptions to the requirement.

Decreto del Presidente del Consiglio dei Ministri 23 febbraio 2009, numero 31: "Regolamento di disciplina del contrassegno da apporre sui supporti, ai sensi dell'art. 181bis della legge 22 aprile 1941, n. 633"

http://www.siae.it/view.asp?pdf=Bg_Normativa_DPCM23feb2009_n31.pdf

Italian Government Act 23 February 2009, number 31

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