[IT] The Yahoo! Decision on the Removal of Links that Infringe Copyright

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A recent decision of the Court of Rome established for the first time liability for contributory infringement for search engines that do not take an active role in combating online piracy.

The Ninth Section of the Court of Rome accused Yahoo! of cooperation with (or failure to combat) online piracy. For ignoring the letter of formal notice from the copyright holders of the Iranian film “About Elly”, Yahoo! Italy was found to have become an accessory in the spreading of pirated links. The compatibility of this decision with the EU’s E-Commerce Directive’s provisions on the non-responsibility of search engines has been questioned.

The claim was placed by the film company PFA Films S.r.l., the exclusive licensee of the exploitation rights in the film “About Elly” by director Asghar Farhadi, which complained about the breach of copyright in the film by links to unofficial sites on search engines Yahoo!, Google and Bing (owned by Microsoft), allowing viewers to stream, download or exchanged the film on P2P networks without the rightsholder’s consent.

The court dismissed the case in relation to Google Italy S.r.l. and Microsoft S.r.l., as the Italian branches of these groups did not have an active role in the management of their search engines.

With regards to the principle of law, the judge of the Ninth Section of the Court of Rome (one of the sections in intellectual and industrial property) merely established that the search engine must remove access to the contested content as soon as its illicit nature is brought to their attention.

The judge stressed that Yahoo!, as far as the management of the search engine is concerned, is a caching provider for the purposes of the E-Commerce Directive 2000/31/EC. As Yahoo! was notified by PFA of the infringement, the search engine’s failure to remove links to the movie established Yahoo!’s contributory liability. Yahoo! was thus condemned for not using all means possible to tackle online piracy. The court of Rome prohibited Yahoo! Italy from "the continuation and repetition of the violation of PFA Films Ltd.’s economic rights over the film “About Elly” by connecting via search engine to sites that reproduce the work in whole or in part other than the film's official website."

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According to the decision, even if a search engine does not exercise ex ante control, after becoming aware of an offense it can no longer enjoy the liability exemptions of the E-Commerce Directive. The European Directive is thus "suspended" for the search engine and can no longer protect search engines on matters of copyright infringement. Yahoo! is responsible for linking to pirate websites, P2P website and streaming websites. The "liability for contributory infringement" is, therefore, the new head of charge for search engines that do not diligently remove contested links. Thus Yahoo!, although a search engine with an algorithm that scours links automatically, is assimilated to a hosting provider.

Tribunale di Roma, 20 marzo 2011

http://www.interlex.it/testi/giurisprudenza/rm110323.pdf

Decision of the Court of Rome, 20 March 2011

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