[IT] New Italian Draft Regulation on Online Copyright

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On 6 July 2011, the Autorità per le garanzie nelle comunicazioni (Italian Communications Authority - Agcom) approved (with seven votes in favour, one vote against and one abstention) a draft regulation of online copyright, Delibera 668/2010 (Decision 668/2010).

The regulation establishes that for the removal of content protected by copyright, Agcom's procedure is an alternative procedure, not substitutive in respect of the judicial procedure, intended to cease from the moment one of the parties appeals to the courts.

The publication of the draft in the Gazzetta Ufficiale (Official Gazette) will be followed by a public consultation for sixty days (ending on 15 September 2011) that will give stakeholders the opportunity to make their contribution.

At a later date, according to the statement of Agcom's President Calabro, Agcom will accept contributions and suggestions, as the final version of the regulation will not be adopted before November.

The new draft has addressed some of the issues raised by previous consultations.

Although important changes have been included compared to the previous versions of the draft, the final version still remains quite controversial.

The regulation has two important parts. The first part concerns the measures that need to be developed with regard to the legal demand and the effective promotion of access to content by users.

The second part provides several measures designed to protect copyright. Two stages can be distinguished: one concerning the procedure with the web server and a second concerning the procedure with Agcom.

During the first phase a so-called "notice and take down" rule is applied, in accordance with which the web server has 4 days to desist from infringement. In the second phase, if the "notice and take down" is ignored, one of the parties concerned can apply to Agcom. Following a cross-examination process of 10 days, Agcom will be able to give a decision on the removal of illegal content or its restoration within the following 20 days (with a possibility of delaying for a further

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15 days).

The ISP will then have a 4 day period in which to remove the challenged material following the notice from the rightsholder. If removal fails to occur within that timeframe, the rightsholder may send notice to Agcom within the following 7 days.

If Agcom believes that the notice from the rightsholder is well grounded, it will first check whether the ISP intends to voluntarily comply with the request for removal. If this does not occur, the Agcom board can order an Italian website manager to remove the challenged material and can also order audiovisual service providers to block the transmission of challenged material.

In the case of foreign websites, Agcom can adopt 3 procedural steps, a form of "three strikes", with an initial warning followed by the request for the removal of the challenged material and the final notification to the judicial authorities.

As mentioned above, the Agcom procedure is an alternative procedure and is not intended as a substitute for the judiciary procedure; it is blocked from the moment that one of the parties applies to the judge. Furthermore, as with all Agcom decisions, any decision is subject to appeal before the Tribunale Amministrativo Regionale del Lazio (Regional Administrative Court of Lazio).

On the principle of non-commercial use, this regulation will exclude and will not concern the following: blogs and websites that do not have a commercial scope; freedom of the press issues; comments, criticisms, or discussions; didactic and scientific uses; the partial reproduction, concerning quality or quantity, of the content of the entire work that does not affect or damage its commercial development.

During the previous phase of consultation a White Paper on copyright and protection of fundamental rights on the Internet was presented on 14 June 2011 in the Italian Parliament. The White Paper consisted of 125 pages of international studies, independent research, 500 references, and fifteen authors from the world of journalism, business and academic research.

Consultazione pubblica sullo schema di regolamento in materia di tutela del diritto d'autore sulle reti di comunicazione elettronica, delibera n. 398/11/CONS, 6 luglio 2011

http://www.agcom.it/default.aspx?DocID=6693

Public consultation on the draft Regulation on online copyright, Decision n. 398/11/CONS, 6 July 2011

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Delibera N. 668/10/CONS, 17 dicembre 2010

http://www.agcom.it/Default.aspx?message=downloaddocument&DocID=5413

Decision n. 668/10/CONS, 17 December 2010

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