[IT] AGCOM Adopts a Regulation on Copyright Protection

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On 12 December 2013, the Italian communications authority - AGCOM (Autorità per le garanzie nelle comunicazioni) gave final approval, by deliberation no. 680/13/CONS, to a regulation concerning the protection of copyright on electronic communication networks, pursuant to the Italian Audiovisual and Radio Media Services Code (legislative decree no. 177/2005, as amended in 2010: see IRIS 2010-2/25 and IRIS 2010-4/31) and to the E-Commerce Directive, following a public consultation launched in July 2013 by deliberation no. 452/13/CONS.

The approval of this regulation ends a process started in 2010, with three public consultations (in 2010, 2011 and 2013) and a workshop in May 2013 aimed at comparing the different models used at international level to protect online content from copyright infringement. AGCOM's intervention on the matter of copyright protection has been two-fold and takes into equal consideration both, firstly, the support of the legal offer of digital works and the promotion of education and information for the public, and secondly, enforcement proceedings in case copyright violations should occur. Within the framework of the so-called Transparency Directive (98/34/EC), the draft regulation was sent to the European Commission. During the standstill period (90 days), the European Commission delivered its observations, which have been taken into consideration in the adoption of the final text, on which the Commission has made no further comments and thus, positively closed the procedure.

The regulation is composed of five chapters: the first gives the definitions and outlines the aim and the scope of the regulation (which does not apply to peer-to-peer programmes aimed at a direct file-sharing activity or to end-users). The second part is centred on the measures proposed by AGCOM to boost the development and protection of the legal offer of digital works: AGCOM promotes the education of the users, especially youngsters, and encourages the legal fruition of online contents and the development of innovative and competitive commercial offers. With this aim, the regulation establishes a Committee for the development and the protection of the legal offer of digital works, whose members are chosen from among the associations representing the interests of all involved stakeholders: consumers, authors, artists, producers, AVMS providers and ISPs, as well as representatives of Italian institutions in charge of matters related to copyright protection.

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The third and the fourth chapters describe the enforcement proceedings in the case of copyright violations online or on audiovisual media services (or radio services). Proceedings are launched only after a complaint has been made by a rightsholder. All interested parties (e.g. service providers, uploaders, page/site owners) are then invited to participate and present relevant documentation. Where an actual infringement of the copyright law is attested in the online environment, AGCOM can adopt different measures depending on the location of the server hosting the content: in cases where the server is located in Italy, AGCOM may order the hosting provider to remove the digital work from the website; if the server is located outside Italy, AGCOM may intervene only towards mere conduit providers who may be ordered to disable the access to the website. With regard to AVMS providers, on-demand providers may be ordered to remove illegal content from their catalogues and linear service providers may be ordered to refrain from retransmitting illegal works in their future schedules. In cases of non-compliance with the orders, AGCOM can impose a fine from EUR 10,000 up to EUR 250,000, pursuant to Article 1, para 31, of the law no. 249/1997, establishing the Authority.

The regulation will enter into force on 31 March 2014.

Delibera no. 680/13/CONS "Regolamento in materia di tutela del diritto d'autore sulle reti di comunicazione elettronica e procedure attuative ai sensi del decreto legislativo 9 aprile 2003, n. 70", 12/12/2013

http://www.agcom.it/default.aspx?DocID=12228

Deliberation no. 680/13/CONS "Regulation on copyright protection on the electronic communication networks and proceedings pursuant to legislative decree 9 April 2003, no. 70", 12 December 2013

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