[IT] Court of Rome rules Wikimedia Foundation not liable for content posted by users

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On 14 July 2015, the Court of Rome, First Civil Section, rejected in Decision no. 15422 the claims filed by the Italian Parents' Non-profit Organisation (MOIGE) concerning Wikimedia Foundation Inc., aimed at seeking compensation for damages deriving from a defamatory description of the same organisation on the Wikipedia online encyclopaedia.

MOIGE sued Wikimedia Foundation Inc., the foundation which owns and manages the famous online encyclopaedia Wikipedia, before the Court of Rome in order to seek compensation for damages deriving from MOIGE's description provided on the relevant Wikipedia page, which under the claimant's perspective was detrimental to its name, image and reputation.

Based on the Court of Rome's reasoning, although the provisions set forth under the Italian E-Commerce Decree are not directly applicable to Wikimedia Foundation Inc., since such provisions apply exclusively to services carried out by subjects established in EU countries, Wikimedia Foundation Inc. can be considered in any case as a hosting provider according to the general principles of Italian law.

Since - acting as hosting provider - Wikimedia Foundation Inc.'s activity consists solely of hosting information provided by users on its servers, under the Court's perspective it is clear that the defendant's position is neutral in respect of the content provided by users. In particular, such neutrality is related to the possibility for users to create and amend the content of the encyclopaedia regardless of the possibility for the hosting provider to delete unlawful content, if aware of it, following its posting.

Furthermore the Court of Rome states that the defendant's behaviour cannot be considered a "dangerous activity" under Section 2050 of the Italian Civil Code, given the presence on the Wikipedia web pages of a disclaimer, whereby Wikimedia Foundation Inc. provides a series of preventive information clarifying that it is not able to ensure the validity of the content posted by users. For this reason, the defendant cannot be considered jointly liable with the user who posted the content since the strict liability regimen set forth under Section 2050 does not apply.

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Based on the above arguments, the Court of Rome concluded that Wikimedia Foundation Inc. cannot be considered liable for the defamatory description of MOIGE on the relevant Wikipedia page because: (i) as hosting provider, the defendant's position is neutral in respect of the content posted by users on the Wikipedia pages; (ii) such neutrality is not undermined by the fact that the hosting provider may delete the content, if aware of its unlawfulness; (iii) given the presence of a general disclaimer, Wikimedia Foundation Inc.'s activity cannot be considered a "dangerous activity" under Section 2050 of the Italian Civil Code; and (iv) there is no obligation for the defendant to ensure that unlawful content shall not be posted on Wikipedia's pages since the hosting provider renders a service the main feature of which is the freedom of users to add and amend content.

Tribunale Ordinario di Roma, Prima Sezione Civile, Sentenza n. 15422 del 14 luglio 2015

https://upload.wikimedia.org/wikipedia/foundation/1/12/MOIGE_v._Wikimedia_Foundation_judgment.pdf

Court of Rome, First Civil Section, Decision no.15422 of 14 July 14 2015

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