[IT] Court of Rome: no need for a detailed notice to trigger ISP's liability

IRIS 2016-6:1/18

Ernesto Apa, Marco Bellezza
Portolano Cavallo Studio Legale

In its decision filed on 27 April 2016, the Court of First Instance of Rome (Tribunale di Roma) states that even a non-detailed cease-and-desist letter (i.e., a letter without any indication of the URLs), subject to specific conditions, may be deemed sufficient to oblige the relevant hosting provider to remove the infringing content.

RTI S.p.A. ("RTI"), a company which belongs to the Mediaset group, owner of the exploitation rights of several TV shows, requested to TMFT Enterprises LLC - Break Media ("Break Media") which operates a well-known video-sharing platform, the removal of RTI's content available on the platform.

In the cease-and-desist letters sent to Break Media, RTI communicated the names of the relevant TV-shows but failed to locate the URLs where the content was available. Break Media did not comply with RTI's requests and the latter initiated litigation to recover, amongst others, damages suffered as a consequence of the Break Media behaviour.

As a preliminarily issue, the Court affirms its jurisdiction following a consolidated trend in the Italian case law which considers relevant, for the application of the locus commissi delicti criterion, not only the place where the harmful event takes place, but also the one where the damages occur (i.e., in the Italian territory where RTI runs its business).

Concerning the merits of RTI's demands, the Court analyses in-depth the activities carried out by Break Media through its video-sharing platform. According to the Court, Break Media cannot be qualified as a passive and neutral hosting provider, but it is an "active" hosting provider. As an "active" hosting provider, Break Media, in the Court's opinion, is not bound to a general surveillance duty on the content hosted, but is not protected by the limitation of liability provided by the EU's E-Commerce Directive 2000/31/EC and the Italian implementing Legislative Decree (70/2003). In this respect, if the "active" hosting provider fails to remove the infringing content once it received a notice from the relevant rights holders, it is fully liable according to the general rules on torts.

The Court - in the case at hand has been supported by a court appointed expert - deems that Break Media is an "active" hosting provider because it: 1) hosts

© European Audiovisual Observatory (Council of Europe) 2026

millions of videos which are not user-generated content; 2) organises and manages such videos; 3) collects and organises the advertising relating to the videos on the basis of specific and targeted commercial choices; 4) uploads some of the videos; and 5) has a dedicated editorial team which manages the videos.

With the above clarified, the Court addresses the issue related to the "actual knowledge" of the provider which triggers its liability. According to the Court the right holders are not required to specifically indicate the URLs where the infringing content is uploaded, as argued by Break Media, but it is sufficient to notify the names of the relevant content. On this point, which is the most innovative of the decision - also considering that it appears in contrast to what was affirmed in January 2015 by the Milan Court of Appeal in the RTI/Yahoo! Decision (see IRIS 2015-3/19) - the Court stresses that the notoriety of the TV-shows at hand, and the presence of the Mediaset logo on the videos, make it not necessary for the right holder to identify and communicate to the provider the URLs where the content is hosted. In other words, Break Media, once it received the cease-and-desist letters from RTI was in a position to identify and remove the infringing content.

On the basis of the above, the Court: a) orders Break Media to stop its infringing behaviour and fixes a penalty of EUR 1,000 for any day of delay in the enforcing of said order and/or for any further infringement from Break Media; b) condemns Break Media to pay EUR 115,000 plus interests as compensation for the damages suffered by RTI; c) condemns Break Media to pay the fees of the court-appointed expert and the legal costs borne by RTI; and d) orders the publication of the decision twice on two main Italian national newspapers, at Break Media expenses, and on the Break Media platform homepage.

Tribunale civile di Roma, Sentenza n. 8437/2016 pubbl. il 27/04/2016. RG n. 24716/2012. Repert. n. 8012/2016 del 27/04/2016

http://www.leggioggi.it/wp-content/uploads/2016/04/2016_8437-tif.pdf

Court of First Instance of Rome, decision no. 8437/2016, issued on 15 March 2016, filed on 27 April 2016

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026