

[IT] Online newspaper cannot publish “entertainment videos” without consent of the rightholder

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The Court of Rome handed down an interesting judgment in a case involving Reti Televisive Italiane S.p.A. (“RTI”) - the major Italian private broadcaster - and Gruppo Editoriale L’Espresso S.p.A. (“L’Espresso”) - an Italian publisher, which publishes, among other things, the online version of the national newspaper “La Repubblica” (“Repubblica”).

Starting from 2012, several excerpts of RTI TV programmes have been published in a specific section of the website of Repubblica without the authorisation of the broadcaster. RTI then filed a legal action against L’Espresso. The plaintiff sought a declaratory judgment that L’Espresso had infringed upon RTI copyright on the said TV programmes and that the publication of that content constituted unfair competition. Additionally, RTI asked the Court of Rome for an injunction ordering L’Espresso to stop using RTI content and to remove the same from its servers.

L’Espresso argued that the publication of the RTI videos on Repubblica was legitimate under the exceptions and limitation to copyright provided also for journalistic activities under Articles 65 ff. of the Italian Copyright Law (Law of April 22, 1941 no. 633, as amended).

After extensive evidentiary proceedings - which also included a court expert report to assess the pecuniary damages suffered by RTI - the Court partially upheld RTI’s claims. L’Espresso was found liable for copyright infringement and parasitic, unfair competition towards RTI. The Court ordered L’Espresso to pay RTI EUR 250,000 for pecuniary damages and established liquidated damages of EUR 1,000 accruing for each further infringement of RTI’s rights and for each day of delay in the enforcement of the decision. Also, the Court of Rome ordered the publishing of an excerpt of the decision in two leading national newspapers and on the homepage of the Repubblica website.

In this decision the Court has preliminarily indicated that the exemptions from liability established, as far as hosting providers are concerned, by Articles 16 and 17 of the E-Commerce Decree (Legislative Decree no. 70 of April 9, 2003 implementing in Italy the E-Commerce EU Directive 2000/31/EC) were not applicable to L’Espresso while operating the website of Repubblica. According to the Court of Rome, L’Espresso directly selects and manages the content made

available on Repubblica. Accordingly, it cannot be deemed a hosting provider.

Furthermore, the Court ruled that the limitation and exceptions provided under the Italian Copyright Law shall be interpreted in a restrictive way and are not applicable to the activity carried out by L'Espresso. Indeed, on one hand, those published on Repubblica were entertainment videos, having no connection with economic, political, or religious matters as required by Article 65 of the Italian Copyright Law in order for the freedom of information exceptions to be applicable. On the other hand, L'Espresso made use of such videos to pursue an economic goal (this circumstance has been confirmed by the L'Espresso when it maintained that the advertising revenues collected in connection with the publication of the said videos amounted to EUR 17,000). The Court held that the existence of an economic purpose is a sufficient basis to exclude that L'Espresso, by publishing the videos, was exercising the freedom of the press guaranteed by the Italian Constitution.

This crucial point of the decision has been further substantiated by the Court: "There is not a direct link between the (unauthorised) use of the RTI videos and the exercise of the journalistic activity by L'Espresso that, to make its editorial product more appealing from a commercial point of view, provides to its readers a service which is additional to the merely journalistic one. The circumstance that the videos are published in a separate sub-section of the website of Repubblica confirms that the video service is separate from the informative activity carried out through the digital version of the newspaper "La Repubblica"".

The decision of the Court of Rome, which is still subject to appeal by L'Espresso, follows a judgment released on a similar subject matter by the Court of Justice of the European Union (see IRIS 2015-10/3) and is the first decision on this specific issue in Italian case law.

