[IT] Court of Rome rules on professional press reviews and publishers' copyright

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On 18 January 2017, the Court of Rome handed down an awaited decision in a copyright and unfair competition case between Data Stampa and Eco della Stampa, two professional news agencies, and FIEG and Promopress, two associations representing Italian newspaper publishers. The lawsuit arose out of the publication, by Data Stampa and Eco della Stampa, of an on-demand and customised press review that included articles retrieved from newspapers or parts of the same.

According to the publishers, selecting pieces of newspapers to create a separate press review did amount to an act of reproduction or communication to the public. The latter is prohibited pursuant to the Italian Law on Copyright (Law no. 633/1941), unless the publisher omitted to reserve the right to reproduce or use the article. The newspaper publishers thus argued that, in the absence of their consent, the retrieval of articles constituted copyright infringement. In their opinion, the free speech exception provided by Article 65 of the Italian Law on Copyright should be limited to the reproduction of pieces on journals and newspapers for public information.

On the other hand, the news agencies maintained that the service they operated merely consisted of the cutting-out of articles from paper publications to form a report the content of which was customized with a view to meeting the specific needs of their subscribers. Then, no act of reproduction or communication to the public was at hand and, accordingly, no copyright infringement occurred.

The Court of Rome was then asked to take a position on a very controversial point, lacking a specific framework - at either domestic and EU law level - applicable to press reviews and to the use of articles by third parties after their publication in the relevant newspapers.

According to the Court, the restrictions and exceptions to the rightholders' copyright laid down by the Italian Law on Copyright are subject to strict interpretation. As a consequence of that, while allowing the free circulation of articles published in newspapers and journals unless the publisher reserved the exclusive right to reproduce or communicate to the public the same, Article 65 should not be applied when it comes to different means of information. Behind the

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restriction posed by Article 65, in fact, is the aim to prevent acts of unfair competition by making available content already published to the public.

The Court of Rome ruled that Article 65 applies to acts of reproduction and communication to the public occurring through the same means and targeting the same market. A press review, however, has a different target, as it aims to meet specific customers' demands rather than a general request of information that may be satisfied by a paper publication. On the contrary, according to the Court, a press review circulated to the public through a paper or online publication would fall within the scope of Article 65 and constitute an act of unfair competition.

In other words, the services provided by news agencies, which consist of the retrieval of articles already published in newspapers, is different from the one operated by publishers.

Then, the Court of Rome found that Data Stampa and Eco della Stampa had the right to use articles as well as parts of articles published by newspapers to provide customised press reviews without infringing their copyright.

Tribunale di Roma, sezione nona - impresa, sentenza n. 816 del 18 gennaio 2017

http://www.ecostampa.it/media/18648/sentenza-n-816-2017-pubbl-il-18-01-2017.pdf

Court of Rome, ninth section (companies court), decision no. 816 of 18 January 2017

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