

[IT] Court of Turin rules YouTube liable for copyright infringements

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On 7 April 2017, the Court of Turin delivered a significant judgment affecting Internet service providers' (ISPs) liability for the removal of copyrighted content published without authorisation of the rightsholders.

In particular, the decision followed prior proceedings in 2014 in which YouTube had been ordered to takedown the content that constituted copyright infringement referenced by the plaintiff (DeltaTV) through the relevant URL, and to adopt the necessary technical steps in order to prevent users from again uploading the same content.

According to the Court of Turin, the evolution of the nature of the Internet services may not call into question the passive and neutral role and, accordingly, the legal regime applicable, to providers operating video-sharing platforms. The advent of new characteristics (including the supply of advertising messages related to the content or the classification of the same into different categories), indeed, may not deprive ISPs of the liability exemptions for third parties' content or activities.

In the case at hand, DeltaTV complained that YouTube had not actually removed the copyrighted content set forth in the injunction dated 2014. Indeed, the videos at issue were not removed but rather "hidden" from the Italian version of the website. Thus, the same were still accessible from any country other than Italy. Furthermore, Italian users could still access this content through the use of appropriate devices to change their IP address and, accordingly, hide their respective location.

According to the Court of Turin, once a specific and detailed notice of copyright infringement has been filed, and the uploader has brought no evidence to claim his/her right over the relevant content, the ISP is deemed to have actual knowledge of the existence of a copyright infringement. As such, it is expected to take the necessary steps in order to comply with the relevant provisions implementing the E-Commerce Directive into the domestic legal order.

In the view of the Court, then, an ISP that is notified of a copyright infringement is no longer "neutral" and shall act accordingly, by preventing users from uploading the same material.

As DeltaTV brought evidence that the content listed by the 2014 order had been displayed even after having been removed from the Italian version of YouTube, the Court of Turin found these measures to be inappropriate, and ordered YouTube to pay DeltaTV EUR 250,000 damages for having permitted users to display the said copyrighted materials.

