[IT] Court of Appeal of Rome confirms that video-sharing platforms shall take down content even if the cease-and-desist letter does not include URLs

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With decision no. 2833 published on 29 April 2017, the Court of Appeal of Rome confirmed in its entirety last year's ruling issued by the First Instance Court of Rome in the RTI vs. Break Media case (see IRIS 2016-6/18).

Break Media is an Internet portal that publicly offers free videos, created by Break Media itself or uploaded by users, on a platform that bases its business model on advertising. The platform, in fact, has an editorial team which manually categorises the videos on the basis of several criteria. Along with the videos, users are shown targeted advertising decided on the basis of users' preferences.

RTI - one of the major Italian broadcasters - is the copyright owner of a series of videos of TV shows published, without its authorisation, on the Break Media portal. RTI initially sent a cease-and-desist letter to Break Media requesting it to take down audiovisual content in violation of RTI's copyright. The letters did not include the URLs but mentioned the TV shows' names.

Break Media failed to comply with RTI's requests, and therefore the latter filed a suit to have the Court order Break Media to remove the content at issue.

The first instance Court ascertained that Break Media violated RTI's copyright by allowing the videos to remain online despite the cease-and-desist letters received. As a result, it ordered Break Media to pay RTI the amount of EUR 115,000 as damages for reimbursement, plus legal fees and expenses.

Break Media filed an appeal with the Court of Appeal of Rome against the first ruling. The panel rejected the appeal on all grounds and fully confirmed the first decision.

First, the Court of Appeal rejected Break Media's objection that the Court of Rome has no jurisdiction over the case. So, it confirmed the Italian Court's jurisdiction on copyright matters where the illicit conduct creates damage that produces its effects within the Italian territory.

Further, the Court confirmed that Break Media should be classified as a content-provider and not as a hosting provider. As such, it cannot benefit from the liability

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exception provided by the E-Commerce Directive (Directive 2000/31/EC) and the E-Commerce Decree (Legislative Decree no. 70 of 2003).

In any case, the Court also rejected Break Media's argument that it was not obliged to take down the content as RTI failed to indicate the URLs of the content at issue. Indeed, the Court ascertained that Italian law does not provide for an obligation to indicate the specific URLs in a cease-and-desist letter. The provider's actual knowledge exists when the copyright owner highlights with enough precision the content in violation of its right, so that the provider can identify and take them down.

Corte d'Appello di Roma - Sezione specializzata in materia d'impresa, sentenza n. 2833 del 29 aprile 2017

http://www.leggioggi.it/wp-content/uploads/2017/05/Corte-di-Appello-di-Roma-sez.-Impresa-sentenza-n.-2833-del-29-4-2017.pdf

Court of Appeals of Rome, Specialized Division for Business Matters, decision no. 2833 of 29 April 2017

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