[IT] AGCOM amends the regulation on the administrative enforcement of copyright online

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On 16 October 2018, the Italian Communication Authority (AGCOM), by resolution no. 490/18/CONS, amended the Regulation on Copyright Enforcement in Electronic Communications Networks (hereinafter the 'Regulation') which had been adopted by resolution no. 680/13/CONS. The goal of this Regulation, which became applicable on 31 March 2014, is to establish an ad hoc accelerated administrative procedure, meant as a public enforcement scheme alternative to the private enforcement mechanism provided for by the Italian law.

The Regulation had vested AGCOM with the power to order providers to remove specific content infringing copyright (in case of websites hosted by servers located in the Italian territory) or to disable access to websites (in case of massive violations or websites hosted by servers located outside the Italian territory).

The most significant amendments provided by resolution no. 490/18/CONS consist of the introduction of measures to assess the recurrence of violations already declared by AGCOM, and of interim measures applicable when, based on a preliminary assessment of the case, a serious harm is imminent.

Under the newly-introduced Article 8-bis of the Regulation, right holders are entitled to submit a new claim to AGCOM if they have already obtained an order requiring the internet service provider to take down or disable access to the website but the relevant violations recur. The procedure is started by a simple notice, on the basis of which AGCOM will investigate whether the claimed violations are still taking place. If AGCOM finds that the infringements are actually recurring, it shall impose an administrative pecuniary sanction ranging from EUR 10 000 to EUR 250 000 within three days, and inform the judicial authorities. When the recurring infringements are on websites hosted by servers located abroad, AGCOM will update the black list of websites to which mere conduit providers are banned from giving access.

Article 9-bis, instead, defines the simplified procedure by which AGCOM is entitled to adopt interim measures in case it is alleged that there is a risk of an imminent, serious, and irreparable harm. Also, in this scenario AGCOM may adopt within three days interim measures directed to hosting or mere conduit providers, on the basis of a preliminary assessment of the circumstances of the case. Once an

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interim measure is taken, providers shall comply within two days. In any case, they can appeal the order within five days of the notice.

In addition to these new procedures, the Regulation also now includes within the scope of copyright infringements a set of 'indirect violations', i.e. the acts of promoting means to search or access copyrighted works and providing means or devices allowing the search or access to the same or enable the circumvention of digital rights management measures.

Finally, the Regulation establishes that where AGCOM finds that an infringement actually occurred but deems that, based on criteria such as proportionality and adequacy, neither of the available orders (removal and disabling access) would be appropriate, the case is dismissed but notice is given to the law enforcement authorities.

Delibera n. 490/18/CONS, Modifiche al Regolamento in materia di tutela del diritto d'autore sulle reti di comunicazione elettronica e procedure attuative ai sensi del decreto legislativo 9 aprile 2003, n. 70, di cui alla delibera n. 680/13/CONS

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_ls3TZlzsK0hm&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_ls3TZlzsK0hm_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_ls3TZlzsK0hm_assetEntryId=12536311&_101_INSTANCE_ls3TZlzsK0hm_type=document

AGCOM, Resolution no. 490/18/CONS

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