[IT] Court of Rome rules Vimeo liable for copyright infringement

IRIS 2019-3:1/20

Ernesto Apa & Marco Bassini
Portolano Cavallo & Bocconi University

On 10 January 2018, the Court of Rome handed down another judgment in the ongoing saga on the Internet Service Providers' liability for third-party illegal content and activities. The Court ordered Vimeo to pay damages amounting to EUR 8.5 million to the national broadcaster RTI because of multiple copyright infringements concerning the latter's audiovisual content which occurred on the Vimeo platform.

The Court drew this conclusion addressing the debated qualification of modern hosting providers as active rather than passive operators as a prerequisite for the applicability of the liability exemptions laid down by Legislative Decree No. 70/2003 (hereinafter also "E-Commerce Decree"), which implemented the E-Commerce Directive (Directive 2000/31/EC) into the Italian legal order.

Italian courts have shown a controversial attitude vis-à-vis the legal regime governing hosting providers. Some courts (especially the Court of Milan and the Court of Turin) have maintained that elements such as the organisation of content or the arrangement of internal search engines by ISPs do not imply the existence of an editorial activity; therefore, there would be no reason for excluding liability exceptions as enshrined in the E-Commerce Directive. In turn, other courts (most notably, the Court of Rome) have endorsed a different approach, considering ISPs as active providers, that is, providers that, being "more sensitive" to third-party content, would have access to a limited exemption from liability.

In RTI v. Vimeo, the Court of Rome has adhered to the latter view in respect of the role played by Vimeo, which was found to meet the conditions to qualify as an active provider. In the view of the Court of Rome (and consistently with its prior case law), in fact, the E-Commerce Directive granted liability exemptions to ISPs on the assumption that the service operated is of a merely technical, passive and neutral nature. When these characteristics are no longer met by an ISP, these cannot be eligible for the same immunity from liability as the passive ISPs.

According to the Court of Rome, the service provided by Vimeo went far beyond the simple processing of the content uploaded by users. In reaching this conclusion, the court considered various factors, including, among others: the requirement that users had to sign up to become members of the community; the

© European Audiovisual Observatory (Council of Europe) 2026

setting up of an internal search engine; the fact that the content uploaded by users was organised, indexed and categorised; the display of advertisements whose content reflected, for example, the keywords used to retrieve certain videos.

The Court of Rome thus concluded that the operations carried out by Vimeo were not merely aimed at making the management of content more efficient but were of such a nature as to vest in Vimeo a degree of control over and knowledge of this content.

These findings were sufficient, in the view of the court, to exclude the application of the liability exemptions but not to require Vimeo to carry out an ex ante monitoring of the content.

In order to determine whether the provider was responsible for the copyright infringements claimed by RTI, the court focused on whether Vimeo could be considered 'on notice' of the illegal content. In this specific case, Vimeo had been served with a generic notice mentioning only one URL as an example of one among many other items of content subject to infringements. But in respect of the other content for which RTI claimed the unauthorised publication, Vimeo had received no specific request. The level of detail of the notice which is required to trigger the obligation to take down content is another debated point in the case law of Italian courts. The Court of Rome, despite the absence of a specific and analytic reference to all the URLs of the content over which RTI claimed a copyright infringement, found that the said notice was nonetheless sufficient to urge Vimeo to take necessary action. Indeed, the techniques implemented by Vimeo based on video fingerprinting would have allowed it to both remove content found to be illegal (ex post) and to prevent the publication of illegal content right from the beginning (ex ante). Since these techniques were familiar to Vimeo and used by it, it was reasonable to expect that under the specific circumstances of the case, even a generic notice could trigger an obligation for the ISP to carry out the necessary controls. The Court of Rome thus presumed that, without prejudice to the absence of a general obligation to monitor, an active provider implementing such functions is required to search and remove content allegedly illegal; so that failure to do so results in ISP liability for not having promptly acted to cease the claimed violations.

Tribunale di Roma, sez. XVII civile, 10 gennaio 2019, n. 623

http://www.medialaws.eu/wp-content/uploads/2019/02/Trib.-Roma-Vimeo.pdf

Tribunale di Roma, sez. XVII civile, 10 January 2019, n. 623

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026