[IT] Telegram channels removed after urgent application filed by FIEG before AGCOM

IRIS 2020-6:1/15

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On 6 April 2020, the Italian Federation of Newspaper Publishers (FIEG) filed an urgent application with the Italian Communications Authority (AGCOM) requesting the removal of all digital editions of newspapers published on a few channels of the instant messaging platform Telegram, as well as the suspension of access to the entire platform. This application was filed under the regulation for the online enforcement of copyright (adopted by Resolution No. 680/13/CONS, as subsequently amended).

After the investigation started, Telegram partially complied on its own initiative. As a result, AGCOM found that—following Telegram's intervention—practically all of the digital editions of newspapers on which FIEG's application had been based were no longer accessible (the illicit contents were removed from 7 out of the 8 channels reported by FIEG), and that, overall, the number of users subscribed to these channels had decreased sharply.

In the decision adopted on 23 April by Resolution No. 164/20/CONS (text published on 27 April 2020), AGCOM clarified that it was aware of the dissemination of illicit content on Telegram channels and of the serious damage this causes to the entire newspaper industry. According to the resolution in question, Telegram offers an instant messaging service that is accessible from the web and that allows for the creation of private chats as well as public channels where users' access is free and contents can be shared. In association with this service, Telegram offers a hosting service that allows for such public content sharing activities by users. This is the context in which the illicit content was shared. AGCOM held, however, that a possible indiscriminate blocking of access to all Telegram channels appeared disproportionate. For this reason, FIEG's application was ultimately dismissed.

In its press release, AGCOM felt the need to clarify that under the applicable legislative and regulatory framework (namely under the national provisions implementing the E-Commerce Directive, that is, Legislative Decree No. 70/2003) and the regulation for the online enforcement of copyright, it currently lacked the power to order selective removals of content against operators that are based abroad. When a violation occurs outside national borders, as in the Telegram case, AGCOM can only order the Italian access providers that allow access to the

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website to disable access to the whole website.

In fact, AGCOM has called for amendments to the current legislation that would extend AGCOM's powers and allow its effective intervention in cases where orders to selectively remove infringing content should be issued directly against operators such as Telegram. Specifically, AGCOM urged that changes be made to Article 4(1)(a) of the E-Commerce Decree, with the aim of considering operators who offer information society services in Italy using national numbering plans as being established in Italy. Such an amendment would allow AGCOM to directly order operators like Telegram to selectively remove user-generated content.

Delibera n. 164/20/CONS

https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=18496688&_101_INSTANCE_FnOw5lVOIXoE_type=document

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