[IT] AGCOM landmark resolution on press reviews and copyright infringements

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By Resolution No. 169/20/CONS adopted on 5 May 2020, the Italian Communications Authority (AGCOM) marked a landmark in the enforcement of copyright on digital works. AGCOM's decision specifically concerns the legitimacy of press reviews. At the end of proceedings commenced upon a complaint filed by the leading Italian newspaper *Il Sole 24 Ore*, AGCOM ordered the website operated by *L'Eco della Stampa* to take down the infringing content available therein, pursuant to the regulation on copyright enforcement (Resolution No. 680/13/CONS).

In the context of the provision of press reviews, the website, in a special section accessible to users upon logging in using their username and password, hosted reproductions of editorial works, including articles posted by *Il Sole 24 Ore*. The service provider, *L'Eco della Stampa*, claimed that the pieces of content and the news and information included therein were available under a copyright exception and did not constitute an infringement.

AGCOM noted that, even if there is no regulation governing press reviews, newspaper articles do fall within the literary works protected under the Italian Copyright Law; accordingly, publishers have an exclusive right of economic exploitation over the same in the forms of reproduction and communication to the public. Pursuant to Article 65 of the Italian Copyright Law, in fact, articles of economic, political and religious content published by newspapers and magazines or disseminated to the public can be freely reproduced in other newspapers or magazines only if the rightsholder has not expressly reserved the use or the reproduction of the same. In any case, the said acts of reproduction and communication to the public are allowed provided that they indicate the source, the date of publication and the name of the author, where available. Accordingly, in the view of AGCOM, and also in accordance with Italian case law, press reviews are prohibited when made available despite the existence of a reservation made by the rightsholder.

The press reviews made available by *L'Eco della Stampa* were thus found to violate both Article 13 and Article 16 of the Italian Copyright Law, governing, respectively, the exclusive rights of reproduction and communication to the public.

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In the view of AGCOM, the dissemination of a press review such as that operated by *L'Eco della Stampa* constitutes an act of communication to the public. Although *L'Eco della Stampa* provides its service to a limited number of clients which does not correspond to the general public, the recipients of such a service could easily amount to an indefinite number of individuals and companies. According to AGCOM, the fact that *L'Eco della Stampa* provides such a service under terms and conditions which require an exclusively personal use of the press reviews does not, in fact, suffice to prevent the relevant copyright infringements: since the technical measures implemented by the website did not ensure that users could download only one copy of the works during the login phase and that the same could no longer be used nor disseminated after the expiration of the relevant session, the number of potential recipients of the same work is significant. Furthermore, AGCOM noted that the relevant audiences may overlap, as the same consumers interested in purchasing the newspaper could receive the press review in their capacity as subscribers of the service operated by *L'Eco della Stampa*.

In order to require the removal of the infringing content, AGCOM resorted to the legal qualification of *L'Eco della Stampa* as an active Internet service provider according to the latest developments in Italian case law. On this ground, it ordered *L'Eco della Stampa*, in its capacity as an information society service provider, to remove the digital works of an editorial nature corresponding to the articles published by *Il Sole 24 Ore* featuring the reservation of rights from the pool of content available in its press reviews.

Delibera n. 169/20/CONS - Provvedimento ai sensi degli articoli 8, comma 3, e 9, comma 1, lett. D), del 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 (proc. N. 1179/dda/bt - https://new.ecostampa.net)

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=18609017&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No 169/20/CONS - Measure pursuant to Articles 8(3) and 9(1)(D) of the regulation on the protection of copyright on electronic communications networks and implementation procedures pursuant to Legislative Decree No 70 of 9 April 2003, referred to in Resolution No 680/13/cons (proc. No 1179/dda/bt - https://new.ecostampa.net)

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