[IT] AGCOM passes modifications to the regulation on copyright enforcement online

IRIS 2021-8:1/28

Ernesto Apa& Marco Bassini
Portolano Cavallo

On 22 July 2021 the Italian Communications Authority (AGCOM) adopted Resolution No. 233/21/CONS, which contains significant amendments to the regulation on copyright enforcement online approved via Resolution No. 680/13/CONS (hereinafter, the 'Regulation'). Said modifications reflect both regulatory and technical developments occurred over the last years, as a result of the emerging challenges that digital technologies have posed to copyright protection.

The changes mainly concern two key aspects, that is the extension of the subjective scope of application of the Regulation, and the consequent extension of administrative sanctions for failure to comply with AGCOM orders.

Both modifications implement the provisions introduced by Article 195-bis of the Law-Decree No. 34 of 19 May 2020, passed into Law No. 77 of 17 July 2020 (the so-called "*Decreto rilancio*").

On one hand, in accordance with paragraph 1 of Article 195-bis, the power of AGCOM to issue orders for the enforcement of copyright online is extended against information society service providers that rely, albeit indirectly, on national phone numbers. This modification follows the spread of new channels that facilitate the unauthorized circulation of copyrighted materials via instant messaging services and constitutes a long-awaited achievement. Indeed, in a press release connected to a dismissal decision delivered in 2020 (Resolution No. 164/20/CONS), AGCOM had already made clear that services such as the one offered by Telegram by allowing users to create public channels that can be freely accessed by anyone, including for sharing every type of content, in fact created new avenues for copyright infringements. However, AGCOM pointed out that the only measure it could take pursuant to the Regulation under such circumstances, i.e., ordering mere conduit providers to disable access to the website in question, was disproportionate. Indeed, the Regulation did not grant AGCOM any power to order the selective removal of content in the case of service providers located outside Italy.

Following the introduction of Article 195-bis, paragraph 1, of *Decreto rilancio,* the reach of AGCOM powers in this respect has been extended. Article 8, paragraph 4-

© European Audiovisual Observatory (Council of Europe) 2026

bis, of the Regulation now provides that, in case digital works are made available unlawfully by service providers that rely, albeit indirectly, on national phone numbers (e.g., instant messaging services), AGCOM is entitled to require the selective removal of the relevant works or the adoption of measures aimed to prevent their further upload. AGCOM is now also empowered to order that providers disable access to infringing works by adopting appropriate measures for the effective protection of copyright. The extension of the enforcement powers derives from the inclusion of operators such as instant messaging service providers among the potential recipients of AGCOM orders directed to bring to an end or prevent copyright infringements (Article 8, paragraph 2).

As to the second novelty, Article 8, paragraph 7, of the Regulation now provides that in case Internet service providers fail to comply with AGCOM orders, including those adopted pursuant to the provisions above, AGCOM may apply the administrative sanctions established by Article 1, paragraph 31, of Law No. 249 of 31 July 1997. It is worth noting that the aforementioned Article 195 of the *Decreto rilancio*, under paragraph 2, introduced a specific provision regarding failure to comply with AGCOM orders adopted for the enforcement of copyright online. Under such circumstances, an administrative sanction ranging from Eur 10,000 up to 2% of the annual turnover of the financial year preceding the service of the notice of infringement shall apply. The provision established by Article 195, paragraph 2, aims to remedy to the debated lack of sanctioning powers by AGCOM after the Council of State (the top administrative court in Italy) ruling No. 4993 of 5 July 2019.

The amendments to the Regulation will become effective 30 days from the date of publication of the resolution in comment (2 August 2021).

Delibera n. 233/21/CONS - Modifiche al Regolamento in materia di tutela del diritto d'autore sulle reti di comunicazione elettronica

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=23845469&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution no. 233/21 / CONS - Amendments to the Regulations on the protection of copyright on electronic communications networks

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026