[IT] Transposition of Copyright Directive

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On 8 November 2021, the Italian Government approved legislative decree no. 177/2021 ("Legislative Decree") implementing Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC ("DSM Copyright Directive"). The Legislative Decree substantially amended law no. 631/1941 (the Italian "Copyright Law").

As is customary in Italy, the European Delegation Act 2019-2020 entrusted the Government with the transposition of several EU Directives into national law, with Article 9 dictating the guiding principles to be followed in the implementation of the DSM Copyright Directive. The Government was bound to safeguard the rights of press publishers and authors without hindering the free flow of press information; set the rates of payment due to authors and publishers pursuant to Articles 15(5) and 16 of the DSM Copyright Directive, as well as the modalities of application of the mechanisms of contractual adjustment and rights revocation; and to define the level of diligence required from online content sharing service providers to satisfy the "best efforts" clause pursuant to Article 17 of the DSM Copyright Directive.

The draft bill implementing the DSM Copyright Directive was approved on 5 August 2021. Thereafter, it was submitted to Parliament for the required opinion of the competent committees of the Chamber of Deputies and of the Senate of the Republic. In October 2021, they expressed a favorable opinion, while making a few editing suggestions to the Government. Detailed comments were also delivered by the Italian Competition Authority (AGCM) and by the Italian Communications Authority (AGCOM). A revised draft, reflecting several of the suggested changes, was approved on 8 November 2021 and the resulting Legislative Decree was published in the Official Gazette on 27 November 2021, making it effective as of 12 December 2021.

The Italian transposition of the DSM Copyright Directive is, overall, consistent with the original text. However, there are a few significant differences on certain subjects. Below are some very quick insights on the most debated provisions and deviations from the DSM Copyright Directive.

Article 1 paragraph 1 (c) of the Legislative Decree transposes Article 15, introducing a new press publisher's related right by adding Article 43-bis to the

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Copyright Law. Publishers of press publications are granted the exclusive right to authorise the reproduction and communication to the public of press publications online by information society service providers – including media monitoring and press review agencies ("ISSPs") - with some exceptions for academic and scientific publications. For the online use of press publications, ISSPs shall grant to news publishers an "equitable remuneration". In this regard, it is worth noting that the Italian Communications Authority has been delegated to adopt a regulation for the identification of the criteria to quantify such "equitable remuneration". In addition to regulatory powers, AGCOM has been chosen as the impartial body before which parties may carry out an assisted negotiation procedure for the purposes of reaching an agreement on equitable remuneration. For the purposes of quantification, disclosure obligations have been introduced, backed by fines in case of non-compliance. Again, supervising and sanctioning powers have been granted to AGCOM as the competent authority of choice.

Article 1 paragraph 1 (n) of the Legislative Decree transposes Article 17 by introducing new Title II-quater to the Copyright Law, including Articles 102-sexies – 102-decies. According to the new provisions, online content-sharing providers ("OCSSPs") shall obtain an authorisation from rightsholders when they give public access to copyright-protected works or other protected materials uploaded by their users. A possible way to obtain such authorisation is by entering a licensing agreement, directly with rightsholders or indirectly, through collective management organisations ("CMOs") and independent management entities ("IMEs"). The latter option is one of the many examples whereby the Legislative Decree empowers CMOs and IMEs, overall broadening and strengthening their role in the Italian copyright scene. Exceptionally, OCSSPs can be exempted from liability upon meeting certain conditions, amongst which the making of their "best efforts" to obtain said authorisation from rightsholders and ensuring of specifically unauthorised works, though these efforts shall be assessed in the light of the proportionality principle.

Article 1 paragraph 1 (p) of the Legislative Decree implements Article 18 adding the principle of appropriate and proportionate remuneration to the current provision on the transferability of economic rights pursuant to the new paragraph 2 added to Article 107 of the Copyright Law. Namely, authors and performers shall enjoy the right to appropriate and proportionate remuneration, to be exercised directly or through the CMOs and IMEs to which they have given appropriate mandate. According to the Italian implementation, this remuneration shall be adequate and proportionate to the value of the rights licensed or transferred, as well as commensurate with the revenues deriving from their exploitation. The remuneration cannot be waived, as any pact or agreement contrary to Article 107 paragraph 2 of the Copyright law is expressly qualified as null and void. The transposition of the remuneration Chapter apparently provided a chance to review and amend a number of pre-existing provisions of the

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Copyright Law. Among other things, in the AV sector the categories of authors and performers have been broadened to include dubbers and dubbing directors.

Article 1, paragraph 1 (q) of the Legislative Decree transposes Articles 19, 20, and 21 by introducing specific provisions setting forth the transparency obligation – the subject of a detailed and far-reaching implementation, including biannual reporting, VOD-specific obligations and pecuniary sanctions in case of non-compliance – the new contract adjustment mechanism, and the ADR procedure for rightsholders and representative bodies of rightsholders to bring claims over the transparency and contract adjustment provisions. Dispute resolution powers in this respect have been attributed to the Italian Communication Authority, without prejudice to the right to go to court. Again, pacts or agreements derogating from transparency, contract adjustment and ADR provisions cannot be enforced against authors and performers.

Lastly, the new Article 180-ter of the Copyright Law – introduced by Article 1, paragraph 1 (s) of the Legislative Decree – transposes Article 12, introducing collective licenses with an extended effect in Italy. In that system, the three most representative CMOs for each category of rightsholders (to be identified by an ad hoc regulation to be adopted by AGCOM) may enter license agreements for the exploitation of works or other materials also having an effect on rightsholders not associated with them or other CMOs in the relevant sector. These CMOs shall ensure equal treatment for all rightsholders, who on the other hand shall be able to exclude their works or other materials from the extended collective licensing mechanism at any time, in a simple and effective way.

Decreto Legislativo 8 novembre 2021, n. 177 Attuazione della direttiva (UE) 2019/790 del Parlamento europeo e del Consiglio, del 17 aprile 2019, sul diritto d'autore e sui diritti connessi nel mercato unico digitale e che modifica le direttive 96/9/CE e 2001/29/CE. (21G00192)

https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2021-11-08;177

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