[IT] Communications authority launches two public consultations on draft regulations, and related guidelines, concerning the Italian implementation of Articles 15 and 17 of the DSMCD

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AGCOM has launched the first public consultation in the context of the adoption of the package of regulations to implement the legislation that transposed Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market (DSMCD). The consultation concerns the draft regulation for the identification of the reference criteria to quantify the remuneration for the online use of press publications referred to in Article 43-*bis* of Law of 22 April 1941, no. 633 (Copyright Law). Such provision transposes Article 15 DSMCD, introducing a new, related right for publishers covering the online use of their press publications.

The most innovative element of Article 43-*bis* is precisely that the rights to authorise the reproduction and communication to the public of press publications online are directly bestowed on press publishers, who shall, as a result, be entitled to receive remuneration for such use by information society service providers (ISSPs), including media monitoring and press review agencies. In this context, the Draft Regulation on Article 43-*bis* of Copyright Law governs the negotiation and determination of the remuneration due by way of consideration, to be further detailed by AGCOM, as delegated under paragraphs 8 and 12 of Article 43-*bis* Copyright Law.

In the foreword to the Draft Regulation on Article 43-*bis* of Copyright Law, AGCOM clarified that for the purposes of identifying the reference criteria for the quantification of the remuneration, the multiple interests underlying the publishing sector have been taken into account. In fact, the main objective is to protect the value of press publications and in general of intellectual works in the digital environment. Thus, the criteria identified by AGCOM aim to promote fair and proportionate remuneration for publishers, to overcome the so-called “value gap”, also with a view to preserving incentives to produce a socially adequate amount of information, given the characteristics of information as a public good.

AGCOM also launched a second public consultation, this time on the draft regulation and the related guidelines concerning the implementation of the complaint and redress mechanisms that online content-sharing service providers (OCSSPs) shall put in place under Article 102-*decies* of Copyright Law – which transposes Article 17 (7) DSMCD.

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Articles 102-*sexies*-102-*decies* of Copyright Law transpose, in a divided batch of provisions, Article 17 DSMCD, making up a brand-new Title II-*quater* to the Copyright Law governing the use of protected content by OCSSPs. To implement para. 1-3 of Article 102-*decies* of Copyright Law, AGCOM issued its draft guidelines concerning the complaint and redress mechanism that OCSSPs are required to set up. The complaint and redress mechanism is essentially a procedure for the disabling/removal of content that OCSSPs shall make available to their users, to allow a for preliminary, non-litigation venue for dispute resolution, where users can question the disabling or removal of their allegedly infringing content. In this context, OCSSPs are required to set up a rapid and effective procedure so that users can challenge the decision taken.

As mentioned in the foreword to the Draft Guidelines on Article 102-*decies* of Copyright Law, in the light of the scope and novelty of the provisions, as well as of the relevance of the role entrusted to AGCOM, such Draft Guidelines are aimed at specifying the elements necessary to ensure compliance by OCSSPs. In fact, as reflected in Recital 70 DSMCD, the complaint and redress mechanism is seen by AGCOM as an important instrument for users to challenge the measures taken by OCSSPs in relation to the their content, particularly when it has been unjustly removed or disabled (e.g., despite the fact that the reported content does not infringe any copyright).

Finally, AGCOM has been chosen as the ADR body for the resolution of disputes in the event of a disagreement over the decision taken by an OCSSP in the context of the complaint and redress mechanism. This is without prejudice to the parties right to litigate before the judicial authority. To implement the relevant provision (paragraph 4 of Article 102-*decies* Copyright Law), AGCOM issued its draft regulation setting out the procedural rules to be followed for such ADR procedure.

During these two public consultations, stakeholders had the opportunity to submit written observations and request hearings with AGCOM. The deadlines for submissions having passed, AGCOM is now conducting hearings, at the outcome of which it will draft and publish final regulations and guidelines.

AGCOM Delibera n. 195/22/CONS - Consultazione pubblica sullo schema di regolamento in materia di individuazione dei criteri di riferimento per la determinazione dell'equo compenso per l'utilizzo online di pubblicazioni di carattere giornalistico di cui all'articolo 43-bis della legge 22 aprile 1941, n. 633

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=27193607&_101_INSTANCE_FnOw5lVOIXoE_type=document

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AGCOM Resolution No. 195/22/CONS - Public consultation on the draft regulation for the identification of the reference criteria to quantify the remuneration for the online use of press publications referred to in Article 43-bis of Law of 22 April 1941, no. 633

AGCOM Delibera n. 276/22/CONS - Avvio della consultazione pubblica sullo schema di linee guida concernenti i meccanismi di reclamo predisposti dai prestatori di servizi di condivisione di contenuti online e sullo schema di regolamento concernente la risoluzione delle controversie tra prestatore di servizi di condivisione di contenuti online e utenti, in attuazione dell'articolo 102-decies della Legge 22 aprile 1941, n. 633

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=27503982&_101_INSTANCE_FnOw5lVOIXoE_type=document

AGCOM Resolution No. 276/22/CONS - Launching of public consultation on the draft guidelines concerning complaint and redress mechanisms that online content-sharing service providers shall put in place and the draft regulations concerning resolution of disputes in the event of a disagreement over the decision taken by an OCSSP in the context of the complaint and redress mechanism, implementing Article 102-decies of Law No. 633 of April 22, 1941

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