[IT] AGCOM approves the Regulation on the fair compensation calculation to publishers for the online use of journalistic publications by information society service providers

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Francesco Di Giorgi
Autorità per le garanzie nelle comunicazioni (AGCOM)

With Resolution no. 3/23/CONS of 19 January 2023, the Italian Communications Authority (AGCOM), as a first step in protecting copyright and related rights in the digital single market envisaged by Directive 2019/790 (and in particular in Article 15), approved the Regulation on fair compensation.

A new right to fair remuneration granted to both publishers (right holders) and authors for the use online of journalistic publications by information society service providers has been introduced. In particular, in accordance with Article 43-bis of the Copyright Law (*Legge sul diritto d'autore* - LDA) AGCOM has set out the criteria to be followed during negotiations between involved parties (i.e. publishers and platforms). A procedure to facilitate the agreement has been introduced: in the case an agreement is not reached within 30 days from the request for negotiation, each party can contact AGCOM to have the fair compensation defined without prejudice to the right to appeal before the competent Court. In the 60 days that follow, and based on criteria established by the Regulation at hand, AGCOM shall select, among the submitted proposals, if any, the one which best fits the aforementioned criteria or explicitly defines the amount of the fair compensation. The Regulation defines the basis for calculation as: "the advertising revenues of the provider deriving from the online use of the publisher's publications of a journalistic nature, net of the publisher's revenues attributable to the redirect traffic generated on its website by the publications of a journalistic nature used online by the lender". As a result of the Regulation's criteria, following the negotiation, a publisher may even be assigned with shares up to 70 %. This maximum rate has been introduced with the purpose of allowing a flexible and agile procedure for the fair compensation calculation by considering different needs and different characteristics of parties involved. Following a public consultation (see IRIS 2022-9/12), AGCOM identified seven criteria for the fair compensation calculation that have to be applied cumulatively and with decreasing relevance:

(1) the number of online consultations of publications (to be calculated with the relevant reference metrics);

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(2) the relevance of the publisher in the market (its online audience);

(3) the number of journalists employed pursuant to national collective agreements for the category;

(4) the proven costs incurred by the publisher for technological and infrastructural investments intended for the creation of journalistic publications disseminated online;

(5) the proven costs incurred by the lender for technological and infrastructural investments dedicated exclusively to the reproduction and communication of journalistic publications disseminated online;

(6) adhesion and compliance, by the publisher and the lender, to self-regulatory codes (including codes of ethics for journalists) and international standards on matters of quality of information and fact-checking and, finally;

(7) the number of years of activity of the publisher in relation to the historicity of the masthead.

The Regulation also governs the determination of the fair compensation payable by media monitoring and press review companies. Due to the structural differences relating to the business models and services offered, the authority deemed it necessary to identify the criteria that responded to this specificity. The basis of the calculation was identified by the significant turnover of the companies deriving from the activities connected to those of media monitoring and press reviews. In this context, the authority preferred not to indicate a rate, suggesting, however, that consideration is given to those adopted by consolidated market practices, thus conferring the necessary flexibility to guarantee fairness and taking into account the differences existing within the publishers' audience and media monitoring companies and press reviews, as well as the different types of publications of a journalistic nature (online sources, articles with a restricted reproduction clause, freely reproducible articles).

Resolution no. 3/23/CONS "Regulation on the identification of the reference criteria for determining the fair compensation for the online use of journalistic publications pursuant to article 43-bis of the law of 22 April 1941 n.633"

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