[IT] User uploading content to online sharing platforms and copyright infringement: AGCOM adopts new measures relating to claims and disputes

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The Italian Communications Authority (AGCOM), following a public consultation (see IRIS 2022-9:1/12), unanimously adopted on 18 May 2023 Resolution no. 115/23/CONS implementing article 102-decies of the Italian law on copyright (law n. 633/1941).

This is the second measure adopted by AGCOM in implementation of EU Directive/2019/790 (Copyright Directive), following the approval of the Regulation on fair compensation referred to in Resolution no. 3/23/CONS (see IRIS 2023-4:1/4). The Guidelines contained in Annex A of the second Resolution identify both general principles and criteria with which providers of online content sharing services must comply. The provisions were introduced with the clear and direct aim of providing users with rapid and effective means to lodge complaints against the removal or disabling of content for copyright infringement.

In particular, the new complaint procedure allows the user, in a clear and transparent way, to dispute the decision taken by a platform. The latter is therefore obliged to respond to the user by sharing the grounds for its decision, including the arguments put forward by the right holder or any other legitimate subject. Furthermore, if the user is not satisfied, even partially, of the outcome of the complaint as managed by the platform, a further stage is foreseen to challenge the decision before AGCOM. The Authority will decide on the validity of the platform's decision in accordance with the provisions of the procedural regulation (Annex B of the Resolution).

Under this provision, for the first time, effective tools are introduced to act against decisions of platforms which, if not adopted after a careful assessment, risk having a material impact on users' freedom of expression. In fact, the aim of these measures is to prevent platforms from indiscriminately accepting all requests to disable and remove content, with the sole purpose of not incurring any liability towards the rights holders. This would be a clear side effect of provisions introduced to protect copyright which, if not properly executed, risk putting an end to creativity, which is the essential condition for copyright protection itself.

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Delibera n. 115/23/CONS "Linee guida concernenti i meccanismi di reclamo predisposti dai prestatori di servizi di condivisione di contenuti online e 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=30625304&_101_INSTANCE_FnOw5lVOIXoE_type=document

Resolution No. 115/23/CONS 'Guidelines concerning complaint mechanisms set up by providers of online content sharing services and regulations concerning the resolution of disputes between providers of online content sharing services and users, in implementation of Article 102-decies of Law No. 633 of 22 April 1941'

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