

ITALY

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2012 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: Italy should remain on the Watch List in 2012.

Executive Summary:¹ As the Italian Communications Regulatory Authority (AGCOM) moves forward with important regulations to address online infringement in 2012, IIPA urges the U.S. Government to remain engaged with Italy to ensure that this important momentum results in effective measures against Internet piracy, as well as needed legal and enforcement improvements. As a country where piracy levels top worldwide charts and a number of enforcement and legal weaknesses remain, Italy must brace for long-term focus if it is to counter such high levels of physical, digital, and end-user piracy. While a number of important hubs for online piracy in Italy have been shut down in the past two years, some Italian consumers have smartly adjusted their behavior to other activities, such as linking to foreign-hosted pirate content. As a result, legitimate content distribution continues to have difficulty accessing the Italian market. To fully address online piracy, further improvements in civil, administrative and criminal enforcement are needed. The Data Protection Authority and Italy's civil courts have interpreted privacy laws in such a way as to immunize heavy online infringers against civil enforcement measures. Enforcement authorities continue to be generally cooperative in conducting raids, but need better resources to meet demands in 2012. Courts suffer from a variety of hindrances, including: low prioritization for IP crimes; insufficient resources for the civil IP specialized courts, especially in the framework of the newly created specialized sections for company law that handle both IP and corporate matters; penalties that are not sufficiently deterrent in some cases; and laws that need to be updated to reflect the online environment. The Supreme Court recently held that self-employed professionals involved in software piracy would not be subject to criminal liability, making it virtually impossible to prosecute software pirates engaged in the professions.

PRIORITY RECOMMENDED ACTIONS FOR ITALY IN 2012

- Complete efforts to adopt AGCOM's proposed regulations, establishing an effective system for the active cooperation of Internet service providers with rights holders against online infringement.
- Take additional criminal actions against peer-to-peer (P2P) services that meet the criteria for injunctions and liability established in the PirateBay decision and order ISPs to block access to those services.
- Coordinate government bodies at a high level toward focused IP enforcement efforts, increased IP training, and more dedicated resources within the police and the judiciary.
- Eliminate legal obstacles for rights holders to gather non-personally identifying IP addresses and, consistent with the European Court of Justice (ECJ) decision in the *Promusicae v. Telefonica* case, identities of infringers to take appropriate civil actions for the protection of their rights in the online environment.
- Effectively enforce the anti-camcording law to curb the increasing problem of theatrical camcord theft and theft of dubbed soundtracks.
- Eliminate the stickering requirement with respect to business and entertainment software and recorded music.
- Clarify that professionals, like corporations, who infringe copyright on software in the framework of their activities are criminally liable under Art. 171bis of the Copyright Act.

¹For more details on Italy's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2012SPEC301HISTORICALCHART.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA's 2012 global issues, see our cover letter at <http://www.iipa.com/pdf/2012SPEC301COVERLETTER.pdf>.



COPYRIGHT PIRACY IN ITALY

Internet piracy generally: Internet piracy continues to pervade the Italian market, in a variety of forms. Despite some enforcement successes against major online piracy operations, many forms of digital piracy continue to be unaffected and widespread. Many of the trends seen in 2010 continue in 2011: where illicit P2P file sharing once held the position as the single most damaging form of piracy online, sites linking to infringing content, including to foreign cyberlocker sites, now also are gaining in popularity. Mobile device piracy of music and videogames is also growing rapidly. As a result of this and enforcement deficiencies, the country's market of 30 million Internet users – the fourth largest in the EU – is less accessible to legitimate digital content providers than it should be.²

ISPs are not sufficiently cooperative with efforts to tackle illegal file sharing and other copyright infringements online. Some of the copyright sectors report that website operators were more responsive in the past year to takedown notices; still, the existing takedown process is too cumbersome to be effective against hosted piracy, and hosted piracy is only a fraction of Italy's online piracy problem. The initiative of Italy's Regulatory Communication Authority (AGCOM), launched in December 2010 and detailed below under "**Reform for Cooperation on Internet Piracy**," shows promise to address some of the escalating problems that rights holders face online, but does not appear poised to address problems related to P2P piracy directly.

Online piracy of entertainment software: The Entertainment Software Association (ESA) reports that Internet piracy remains a severe problem for its members in Italy, which again in 2011 placed first in the world in the number of connections by peers participating in the unauthorized file sharing of select ESA member titles on public P2P networks.³ ESA research also identified Italian ISPs as three of the top ten ISPs worldwide in terms of the number of subscribers participating in peer connections to swarms where ESA member titles were illegally shared, with Telecom Italia ranking first. 2011 was also witness to a growth in sites offering hyperlinks to videogame content.

Online piracy of music and sound recordings: In the last major third party report commissioned by the recording industry in 2010, according to the Tera Consultants study, online music piracy accounted for losses of \$200 million in 2010—far higher than what the industry generated in legitimate sales. The local recording industry associations, FIMI and FPM, report that more than 7 million people were using P2P networks for illegal uploading and downloading of music files in 2010. While piracy of physical product was still around 23% of the market, 95% of the global music downloads were unauthorized.

Online piracy of audiovisual works: P2P piracy and forums directing users to illegal copies of movies continue to damage the industry, while cyberlocker sites and links to them have caused a dramatic worsening in online piracy of motion pictures in Italy. The Motion Picture Association (MPA), through its local affiliate the Audiovisual Antipiracy Federation (FAPAV), reports that the overall incidence of audiovisual piracy in Italy has grown by 5% since 2009,⁴ much of this due to online piracy, for a total loss of €496 million (US\$670 million). According to 2011 FAPAV-IPSOS research, 37% of consumers have used an illegal copy at least once during the period under review and an estimated 384 million total infringements took place, an increase of almost 30 million over the previous year. With regard to MPAA members content, MPAA notes that Peer Media Technologies reported that during 2011, users initiated over 90 million downloads/uploads of unauthorized copies of major U.S. movie titles via certain P2P protocols in Italy.⁵ A phenomenon unique to the audiovisual industry is the illicit recording of Italian language audio

²There are an estimated 30 million Internet users in Italy as of June 2011, a 49.2% penetration rate. <http://www.internetworldstats.com>.

³ESA's reporting on P2P activity does not take into account downloads of these titles that occur directly from hosted content, such as games found on "cyberlockers" or "one-click" hosting sites, which appear to account each year for progressively greater volumes of infringing downloads.

⁴Italy's piracy rate for 2010 was 37%.

⁵A major U.S. movie is defined as a movie released in 1,000 or more theaters in the U.S., so these numbers reflect only a small subset of movie-related piracy activity (since it excludes non-major releases, including local titles, other peer-to-peer protocols, and non-peer-to-peer ones, such as websites, and streaming via other technologies). Also, since local language title versions for scanning are not always available from established sources, and access to foreign language BitTorrent sites may fluctuate, results in certain countries are likely underrepresented.

tracks in theaters immediately following a film's release, which are then added to good quality pirate video found on the Internet.

The independent segment of the film and television industry (IFTA) reports that Internet-based piracy has affected business in Italy and prevents the establishment of legitimate online distribution platforms and services for consumers, which independent producers may use to finance future productions. For independent producers who license content country-by-country, online piracy instantly exports troubled marketplaces and high piracy rates to other markets. The independent production sector is limited in its ability to shift to technology-enabled new business practices that might limit piracy.

Online piracy of business software: The Internet is a growing source of unauthorized productivity software and contributes to this sector's piracy losses. Cracked software, illegally downloaded using false codes or certificates of authenticity (COAs), is increasingly commonplace. Illegal software is available via infringing filesharing services, from illicit websites, and through infringing use of cyberlockers, and auction sites. The Internet is also a major source for manuals and packaging. Organizations dedicated to cybercrime exacerbate these problems as they continue to grow in technological sophistication.

End-user piracy of business software: At roughly one half of the PC software market, the level of piracy of business applications software by corporate end-users – the major cause of losses to the business software industry in Italy – is quite high by Western European standards.⁶ According to a 2010 report prepared for BSA by market research firm IDC, the information technology sector's contribution to the Italian economy could be even bigger if Italy's PC software piracy rate were to be lowered 10 percentage points over the next four years. This would create an additional 7,538 jobs, US\$5.2 billion in local industry revenues, and nearly US\$1.8 billion in additional tax revenues.⁷

Camcord Piracy: The level of camcord piracy in Italy continues to be unacceptably high, rising yet again in 2011. This is particularly disappointing given that Italy was the first EU country to adopt an anti-camcording law. The problem in Italy is a lack of enforcement and the fact that it takes literally years to move a criminal complaint. Audio captures is the biggest problem in Italy; camcord thieves capture the Italian audio track and marry it to a video capture available online. In this way, the infringer can select the highest quality visual image and pair it with an Italian soundtrack; the product is then uploaded to the Internet and burned to discs to be sold through street vendors. In 2011, there were 81 audio captures and 12 video camcords sourced to Italy. Designed to target the Italian market, these illicit audio and video captures have an immediate and direct detrimental impact on the legitimate Italian marketplace.

Piracy of physical product generally: Organized criminal syndicates remain heavily involved in the production and distribution of infringing product, particularly in Southern Italy.

Business software: As a fast-growing market for consumer PCs, Italy faces a new trend in the increasing reuse of old computers, which often contain pre-installed pirated software.

⁶BSA's 2011 software piracy statistics will not be available until after the filing deadline for this submission, but will be released in May 2012, at which time piracy rates and U.S. software publishers' share of commercial value of pirated software will be available at www.iipa.com. In 2010, the software piracy rate in Italy was 49%, representing a commercial value of unlicensed software attributable to U.S. vendors of US\$1.13 billion. These statistics follow the methodology compiled in the Eighth Annual BSA and IDC Global Software Piracy Study (May 2011), <http://portal.bsa.org/globalpiracy2010/index.html>. These figures cover packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA's 2012 Special 301 submission at <http://www.iipa.com/pdf/2012spec301methodology.pdf>.

⁷The Economic Benefits of Reducing PC Software Piracy, commissioned by BSA and conducted independently by International Data Corporation (IDC), released September 15, 2010, looks at the bottom-line economic benefits of reducing piracy in 42 countries that together account for 93 percent of the total packaged software market. It is available online at <http://www.bsa.org/idcstudy>.

Entertainment software: Although sales of pirated hard copies of video games persist, online piracy is now the predominant problem facing the industry in Italy. Still, unauthorized copies of games downloaded from the Internet are of no use without circumvention devices, which enable users to make and play unauthorized copies on game systems. Despite improvements in courts' understanding and handling of cases involving circumvention devices, they remain widely available to users.

Audiovisual works: MPA reports that while physical piracy remains a problem (about 24% of total infringements), online piracy, as well as camcord piracy, are the predominant problems confronting its members in Italy.

IFTA reports that physical piracy of DVDs remains a significant export constraint for independent film producers and distributors, the majority of which are small- to medium-sized businesses. Independent producers partner with local authorized distributors to finance and distribute film and television programming. These authorized distributors find it nearly impossible to compete with pirates and report that the Italian marketplace has been decimated by piracy. Producers and distributors confirm that DVD sales have been significantly impacted since pirated DVDs are readily available on the street, at kiosks and in shops throughout Italy. Unable to compete with free, legitimate distributors often cannot commit to distribution agreements, or they offer license fees drastically below market rates, which are inadequate to assist in financing independent productions. Piracy undermines and may permanently damage the legitimate distribution networks essential to reaching consumers and leaves little confidence for investment in intellectual property in Italy.

Books and journals: Unauthorized commercial photocopying continues to plague academic publishers. Italy's Anti-Piracy Law allows a certain amount of photocopying, upon payment of remuneration to a collecting society. Industry reports some success with licensing educational institutions (namely libraries), but copy shops unfortunately continue unauthorized activities with little interference. Abuse of the law's provisions is common, adversely affecting Italian and foreign publishers alike. Copy shops are reportedly using increasingly sophisticated digital equipment in undertaking their activities—a growing trend that makes detection of unauthorized copying activities more difficult as scanned copies of reading materials are stored for printing on demand, rather than stockpiled.

REFORM FOR COOPERATION ON INTERNET PIRACY

Since Italy adopted the "*Decreto Romani*" in 2010, assigning Italy's Regulatory Communication Authority (AGCOM) with the responsibility to establish rules for the protection of copyright over the Internet, AGCOM has undertaken extensive work to draft regulations with the goal of tackling some of the most blatant and damaging forms of online piracy that plague the Italian market. The copyright industries are very supportive of AGCOM's efforts to seek broad-based support for this initiative, which is especially crucial in a time when opponents spread misinformation to disrupt such efforts. IIPA has provided comments to AGCOM⁸ and urges the Italian Government to push the regulations forward in 2012.

At the heart and purpose of AGCOM's work is the need for a solution to online piracy that is effective and efficient, while respecting due process. When new copyrighted works are released, rights holders frequently have just a matter of weeks to recoup their considerable investment before consumer interest begins to wane. If copyright owners must compete with free unauthorized copies that can remain online for up to two months, that opportunity is lost. Central to the AGCOM draft regulations is a multi-step "notice and take down" procedure that applies to hosts or uploaders of infringing content. IIPA encourages AGCOM to ensure that the notice and takedown process incorporates speedy procedures that incentivize parties to cooperate with authorities and rights holders. AGCOM should also eliminate loopholes for infringing sites that are anonymous or fail to provide contact points for receipt of

⁸A copy of the comments IIPA submitted to AGCOM in September 2011 are available at http://www.iipa.com/pdf/2011_Sep13_IIPA_ITALY_Submission_to_AGCOM.PDF.

infringement notices, and it should provide swift due process, avoiding the current judicial review system that can take years to conclude. Finally, IIPA recommends that AGCOM incorporate mechanisms to address repeat infringers, sites that facilitate infringement by aggregating links to infringing material, and operators that promote certain sites.

AGCOM currently has plans to establish a Technical Committee to promote dialogue among all relevant stakeholders, following the release of the new AGCOM framework. AGCOM is expected to take up a number of the recommendations that it included in its December 2010 resolution through the Technical Committee.

IIPA encourages all parties to work toward the following initiatives:

- Establishment of a roundtable discussion held by AGCOM of the technical issues surrounding the implementation of the proposed measures. The copyright industries look forward to continued engagement with AGCOM in this effort.
- A review of the Italian copyright law by the Government and Parliament. The IIPA recommends that the process initiated by the Parliament, aimed at improving rules on ISPs liability, is resumed and concluded successfully. In addition, consideration of the data protection law should be included as a crucial component to these initiatives, so that the momentum behind the AGCOM proposal may also drive the government and Parliament to establish either a firm basis in the law, or a specific process or authorization approved by the Italian Data Protection Authority, to address P2P piracy. Italian law currently does not incentivize ISPs to cooperate with rights holders with respect to material transiting their networks (the mere forwarding of infringement notices to potentially infringing subscribers is routinely refused), and has been interpreted by the Data Protection Authority and the courts so as to block rights holders even from identifying infringers for purposes of civil actions.
- Development of educational and informational activities on copyright protection addressed to end users, and especially to young people. IIPA members welcome efforts by AGCOM to promote campaigns for better awareness of the importance of copyright protection for the creative industries.

Adoption of these recommendations would be an important step in combating the common misperception in Italy that certain infringing activities, such as providing links to pirate content on foreign sites, are not serious violations of the law.

The Government of Italy should strive for a high-level, coordinated effort to ensure that matters such as Internet cooperation and other enforcement efforts move forward efficiently and expeditiously. Several such initiatives were launched in 2011. Unfortunately, these initiatives, while welcome, do not appear coordinated. With the mandate of AGCOM's President and Board scheduled to conclude in May 2012, it is imperative that clear leadership within the Government is established.

COPYRIGHT ENFORCEMENT IN ITALY

Internet-specific enforcement of copyright in Italy's courts has seen both successes and failures in recent years. The copyright industries report that local police and customs authorities take positive actions against IP crimes, but specialized forces – particularly prosecutors – are resistant to the idea that copyright crimes are serious offenses and fail to prioritize copyright cases. A number of weaknesses in the overall Italian enforcement system prevent the copyright industries from obtaining effective remedies and deterrent penalties against all forms of piracy, whether physical, online, or by software end-users. A coordinated government approach is needed for an effective anti-piracy campaign in Italy.

Internet Piracy Enforcement: Several actions against Internet piracy in the past three years demonstrate that, in cases where rights holders take initiative and have a strong footing in the law, anti-piracy efforts have the support of law enforcement. Major piratical hubs have been successfully brought to justice in Italy. Still, online enforcement in Italy's court system is hampered by (1) inconsistent holdings as to ISP responsibilities in cases of

online piracy, and (2) limitations on monitoring and collecting Internet piracy data, based on Italy's Privacy Code and the March 2008 ruling of the Data Protection Authority, resulting in a lack of civil enforcement against filesharing .

On December 23, 2009, the Italian Supreme Court, in a landmark decision, held that the PirateBay P2P filesharing service was engaged in criminal conduct through the unauthorized distribution of pirate content for profit through advertising on the site. Italy thus joined Sweden, Denmark and the Netherlands in declaring PirateBay a criminal enterprise. The site operators were held criminally liable for distribution in Italy to Italian users, even though the site is located outside of the country. The court confirmed that precautionary measures (including the seizure of even a foreign-hosted website) to prohibit the continuation of the crime can be issued by courts on the merits, and that courts may order, by way of injunction, ISPs to block access to the site under the EU's E-Commerce Directive.

Since the PirateBay case, authorities have successfully shut down other major sites involved in illegal file sharing, streaming, and downloading. In April 2011, the Italian Court of Cagliari (Sardinia) shut down the incredibly popular infringing bitTorrent site, BTjunkie.org, which was included in USTR's Notorious Markets List in February 2011. The site drew over 500,000 views per day in Italy and a total of 2 million per day overall, earning it an estimated 3.5 million Euros per year in advertising revenue. In September 2011, the Fiscal Police of Milan obtained the closure of two other important illegal websites, filmrealstream.net and crazyproject.org. These sites offered links allowing users to stream the latest audiovisual products and content unreleased in the Italian market. In November 2011, the Fiscal Police of Salerno, in collaboration with FAPAV, FPM, and AESVI, took down one of the largest networks for filesharing of unauthorized movies and games and charged all of its administrators. Five illicit portals were connected with this network, which allowed indexing and illegal downloading through links to cyberlockers and torrent files to more than 30,000 files of copyrighted material. Italian law enforcement also closed two websites offering pirated videogame content (CrazyProject and Gameternity), and stopped the activities of two other major online piracy forums (Animeonline and Angelmule). In 2011, over 96,000 cyberlocker links were removed.

Some civil enforcement efforts against ISPs have been facilitated by a few important decisions, according to which ISPs that received a specific notice from a right holder and failed to act were held to be in breach of the law (see the case RTI against Yahoo!, High Court of Milan, 9 September 2011, and the case RTI against Italia Online, High Court of Milan, 7 June 2011). Unfortunately, another online piracy case against an ISP that is still ongoing has brought mixed results for efforts to obtain injunctive relief in civil cases. In 2009, FAPAV sent a cease and desist letter to Telecom Italia requesting the blockage of major infringing websites and for measures to be put in place to prevent the widespread piracy of motion pictures over the Telecom Italia network. Telecom Italia's response was negative on all fronts. As a result, FAPAV filed a request for an injunction against Telecom Italia before the Rome Court's specialized section on intellectual property. In a momentary success for FAPAV, when the Data Protection Authority joined the case to challenge the methodology FAPAV used for the piracy data it submitted to the court, FAPAV was able to demonstrate that no privacy rights had been infringed in the process. In April 2010, however, the Court rejected FAPAV's request that Telecom Italia block access to infringing websites, accepting the ISP's argument that such legal actions were only appropriate against the host providers of the websites in question. This was despite specific ECJ jurisprudence ruling that Article 8.3 injunctions should also be available against access providers and the above-cited Supreme Court ruling directed at access providers as the key intermediaries for site blocking. The Rome Court did reject allegations that FAPAV violated the Privacy Code, and ordered the provider and other ISPs to report complaints and cooperate with judicial and administrative authorities against piracy infringements. After this partial success, the case is now continuing on the merits but is expected to drag on for a number of years.

Despite the advances that FAPAV made in data privacy issues in the case against Telecom Italia, Italian jurisprudence still appears to limit the ability of rights holders to use collected data in actions against individual infringers. At yet another level of online enforcement, civil enforcement against peer-to-peer (P2P) piracy has been severely hampered by the Rome High Court's interpretation of Italy's Privacy Code in the famous Peppermint cases, and by a March 2008 ruling of the Data Protection Authority to the effect that use of tools to gather IP addresses of

infringers would violate the Privacy Code.⁹ Unless rights holders can obtain IP addresses and thereafter the names of subscribers via a civil court order, civil enforcement against infringing users will, as a practical matter, be impossible.

End-user software piracy: In December 2009 the Italian Supreme Court issued a decision creating a major impediment to software piracy enforcement. The case held that unincorporated professionals (such as architects and engineers) using illegal software in the carrying out of their activities cannot be held liable under the criminal provision of Article 171*bis* of the Copyright Act, even for the same behavior that would render a company criminally liable under this provision. The decision limits criminal enforcement against non-corporate professionals, among whom the piracy rate is believed to be even higher than among companies.

Criminal enforcement: The recording, audiovisual, entertainment and business software industries all report continued good cooperation with the Italian police forces in 2011, including the Italian Fiscal Police (*Guardia di Finanza*, or GdF) and local police forces. Police and customs authorities continue to take *ex officio* actions with the assistance of copyright holders, in the form of preliminary information and technical assistance. However, the problem of slow court processes, lack of judges and prosecutors who have expertise in copyright issues, and lack of deterrent penalties overall have limited the deterrent effect of police action and cooperation. Prosecutors are slow to bring criminal copyright cases, sometimes delaying enforcement of a seizure or raid by months or even years from the time a complaint is brought. In the rapid distribution world of electronic communications, even a delay in terms of days and weeks is enough to create enormous harm let alone years. Once the case is filed, often two to three years or more pass before final judgment, significantly reducing the deterrent value of the increased raiding activity undertaken by the police. Criminal sanctions in practice vary from four months to one year, including in cases of repeat infringers, for whom the law provides a minimum term of one year.

Few judges and prosecutors have expertise in copyright issues, a particular difficulty for cases brought under local jurisdiction. Many Italian judges remain reluctant to impose deterrent sentencing on individuals charged with copyright infringement, especially where a large corporation owns the copyright. There are no specialized IP criminal courts.

The business software industry reports that its relationship with enforcement authorities remains generally good, particularly with GdF, which is the primary agency responsible for software piracy enforcement. However, public prosecutors do not inform injured parties of pending criminal proceedings, and prosecutors and judges continue to show a lack of interest with criminal enforcement of IPR violations.

AESVI, the Italian association representing the entertainment software industry also reports that its positive working relationship with law enforcement continued to strengthen in 2011, in particular with the Fiscal Police General Command. AESVI provides technical and legal support on *ex officio* activities carried out by GdF, and has continued its collaboration with the Italian Customs Agency Bureau. AESVI supported law enforcement efforts that led to the closure of three prominent sites engaged in the piracy of video game content.

The recording industry, as represented by its local anti-piracy organization, FPM, reports that the coordination with Italian enforcement agencies continued on a positive basis. The relationship with the GdF is very positive and led to successful operations. In particular, major cases in 2011 included the IP and DNS block of

⁹The Peppermint case was brought by the Germany music publisher Peppermint Jam Records GmbH, and has created a domino effect, on the controversial issue of monitoring P2P networks to acquire IP addresses of infringers. It started with an injunction issued by the Court of Rome (Procedure n. 81901/2006) that required Telecom Italy to disclose about 3,636 names of Italian Internet customers/infringers. The case was based on the use of anti-piracy software managed by the Swiss company, Logistep, on behalf of Peppermint, and the data collected consisted essentially of IP addresses of customers sharing copyrighted files through platforms like eMule or BitTorrent. Peppermint proceeded to send letters to some of the identified infringers with a settlement proposal of €330.00 (US\$452), in exchange for a pledge to refrain from turning the names over to the criminal authorities. There were a number of other similar proceedings brought by Peppermint and a Polish videogame publisher, Techland. While the Rome Court initially sided with the rights holders, in a later injunction proceeding, after intervention by the Data Protection Authority, the court reversed its ruling and denied the rights holders' requests. This eventually led to the March 2008 rule by the Authority that use of such software violated the Italian Privacy Code and the EU privacy directive and the resulting names could not be disclosed.

BTJunkie (the most used Bit Torrent tracker site in Italy), the seizure of ItalianShare.net (the biggest linking site in Italy for music, videogames and movies); the seizure of Crazyproject.org (a music and videogames torrent and cyberlocker linking site); and the closure (notice & takedown procedure) of 90 websites offering streaming of musical videos and other copyright protected materials (movies, live sport events). Other criminal cases have been carried out against uploaders of pre-releases. The cyberlocker site's notice and takedown system led to the removal of 800,000 infringing music files. Operations for violation of rights of broadcasting or other communication to the public (i.e. public performance) continued in 2011. Radio stations, web radio, discos, music providers, and gyms using unlicensed music have been identified, and more than 30 criminal cases were started in 2011. The co-operation with FAPAV (local MPAA branch), AESVI (Italian Entertainment Software Association) – both now members of FPM – and SKY Tv Italy proved to be very successful in the effort to fight digital piracy.]

The motion picture industry reports that the police continue to support FAPAV's efforts yet lack necessary resources. FAPAV reports that although the Italian enforcement authorities continue to conduct raids, little information is made available to rights holders. Hard goods piracy activity is fragmented in nature and conducted by numerous small operators, making effective enforcement raids difficult to organize. As is the case for other copyright industries, ultimately effective enforcement is bottlenecked by insufficient judicial resources and the dismissive attitude of the Italian judges towards piracy in general.

Civil Enforcement: Specialized IP civil courts suffer from a lack of resources that can mean major delays in proceedings. It is extremely important that new competent judges are allocated to the IP specialized courts, to avoid creating further delays in civil proceedings. This is all the more important now that IP specialized sections have been transformed into company law specialized sections. If there is no allocation of new judges, IP proceedings will suffer badly from this development.

The Business Software Alliance (BSA) continues to use the civil court system for enforcement against business users of unauthorized software. While many of BSA's civil searches result in early settlements out of court, in rare cases the actions are resolved in court. In these cases, BSA reports a positive degree of understanding among the courts of both the nature of the claim and of damages.

However, BSA reports a need to clarify in some courts that the search order procedure does not require a hearing for the confirmation of the order (as was the case in the past). Specialized IP courts set hearings after search orders are executed based on rules for other interim measures such as seizures and injunctions, which are not required by law and create unnecessary burdens, risks, and costs for the copyright holder. The process has never resulted in a revocation of the order in question, and as a result serve only to delay the judicial process.

COPYRIGHT LAW REFORM AND RELATED ISSUES

Implementation of the EU E-Commerce Directive: Italy's laws do not yet firmly establish fundamental liability when an ISP fails to take action in response to a notice of infringement provided by a relevant rights holder. In its implementation of the E-Commerce Directive (in Legislative Decree No. 70 of 2003), Italy appears to require takedown procedures to be available only upon application to, and order from, the "relevant authorities." This apparent requirement for the intervention of an undefined judicial or administrative authority is contrary to Article 14 of the E-Commerce Directive and is hampering cooperation from ISPs in taking down infringing files. Article 14 provides that an ISP may be liable merely when it is informed that an infringement over its facilities exists, triggering the obligation to takedown the infringing content. A recent initiative was taken by the Italian parliament that aimed to bring Italy into compliance with this provision of the E-Commerce Directive. On January 19th, 2012, the Italian Parliament Commission of EU Affairs approved an amendment to a bill for the European Community Law, referring to articles 16 and 17 of the Italian decree implementing the E-Commerce Directive. The draft amendment would have confirmed the existence of an ISP's duty of care when it becomes aware of an infringement based on information provided by rights holders, and of an ISP's responsibility to take actions to remove or to disable access "upon request [i.e. notice from] the competent authorities or any interested person." While the introduction of these provisions

was an important step forward, they were, unfortunately, withdrawn from consideration at the end of January, and future work remains uncertain.

Data protection and online enforcement: The overall legal environment in Italy makes private sector online enforcement efforts particularly difficult, if not impossible, in light of a 2008 decision rendered by the *Garante per la Protezione dei Dati Personali* (Data Protection Authority). In conjunction with the so-called Peppermint Case, the Data Protection Authority ruled that systematic monitoring of P2P users, and the collection of their IP addresses is an illegal activity under Italy's law on the protection of personal data despite the fact that IP addresses do not personally identify the individual. Because this results in the practical absence of civil remedies, Internet piracy enforcement necessarily falls to the criminal authorities. While criminal enforcement has been quite difficult, the recent PirateBay court decision should significantly improve the situation (see discussion above).

Problematic amendments to the copyright law: A recently adopted amendment to Article 70 of the copyright law allows the uploading to the Internet of images and sounds without permission or payment, so long as the resolution is low and the purpose is educational. This overbroad exception calls into question Italy's international treaty obligations. Another amendment was passed to Article 71^{septies} extending the private copy levy to "remote videorecording systems" wherein a cable, satellite or other provider of such a service could reproduce audiovisual works on a remote server (presumably at the request of its customer) and then transmit such copy to the customer upon its request for viewing. MPA views this amendment as incompatible with the EU Copyright Directive and international norms with respect both to the reproduction and making available rights, and sought EU Commission intervention. The EU Commission intervened, directing the Italian government to change its law. This has not yet happened; however, the Government has also not yet implemented the law.

Amend Article 171^{bis} of the Copyright Act: The Italian Supreme Court has held self-employed professionals are not within the scope of Article 171^{bis}, which requires that, for criminal liability to attach the infringing act had be carried out by corporate entities acting for commercial purposes. An amendment to Article 171^{bis} should therefore be enacted to specify that the provision also criminalizes infringements carried out with a professional purpose.

Eliminate the SIAE sticker requirement for business and entertainment software and music recordings: This problem remains a major concern for the business and entertainment software industries and, more recently, also for the recording industry. Specifically, Article 181^{bis} of Italy's Anti-Piracy law contains an extremely burdensome (and unnecessary, since software is not subject to collective administration of rights) requirement that requires software producers either to physically place a sticker on each work sold in Italy or to file complex "product identification declarations." Legitimate business software publishers who fail to sticker their products have found their products subject to seizure. For the recording industry, the SIAE sticker represents an additional and burdensome level of bureaucracy and extra costs for the commercialization of physical music carriers. The sticker system is not useful in the fight against online piracy, which represents around 90% of music consumption today. The sticker is also limiting the free circulation of musical recordings within the EU and puts the recording industry in Italy at a competitive disadvantage with respect to other countries.

Article 181^{bis} of the Copyright Law, providing for the stickering duty, conflicts with some basic principles of the EU Treaty (such as the "free flow of goods") as well as Directives 98/34 and 98/48, the TRIPS Agreement,¹⁰ and the Italian Constitution. As a consequence, IIPA urges that Article 181^{bis} be revised to exempt all software from the stickering requirement. Article 171^{bis} of the Copyright Law, which deals with criminal penalties for software, must also be amended if stickering is eliminated for software. The recording industry calls for the complete exclusion of

¹⁰Article 9 of TRIPS requires compliance with the provisions of the Berne Convention, including Article 5(2), which prohibits countries from subjecting the "enjoyment and the exercise" of copyright rights to any formality. Italy's stickering, associated fee and declaration requirements represent prohibited formalities. The burden imposed by the requirement makes criminal enforcement unnecessarily complicated and costly, and creates a barrier to legitimate trade, contrary to the requirements of TRIPS Article 41.

physical carriers of recorded music from the stickering obligation. Entertainment software publishers have also raised concerns with the SIAE labeling requirement, and have similarly requested that the stickering requirement not be made applicable to video game software. IIPA supports these calls.