

ITALY

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2015 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA asks that USTR monitor Italy through special engagement in 2015 for full resolution of key enforcement challenges.¹

Executive Summary: The first year of implementation of Italy's Internet anti-piracy regulations has resulted in positive actions against harmful online infringers, making use of a fast-track procedure to address large-scale piracy and underscoring the value of procedures to handle illegal linking sites and repeat infringers. During 2014, several of the most popular infringing torrent search engines used in Italy, located abroad, were subject to enforcement measures through the antipiracy framework under the Italian Communications Regulatory Authority (AGCOM) that went into effect in March 2014, and by the Fiscal Police. Continued anti-piracy actions by the Fiscal Police included the removal of a major foreign-based infringing cyberlocker. Yet overall, extremely high levels of piracy in the country persist. IIPA asks the U.S. Government to continue to monitor Italy's anti-piracy actions closely, toward ensuring that the efforts of AGCOM and the Fiscal Police continue at full strength, and that legal loopholes in Italy's copyright and privacy laws are closed to prevent infringers from developing new business models that skirt enforcement anew. We also highlight the importance of removing IPR offenses from the scope of present draft decriminalization legislation, which could undermine much of the progress made in recent years.

PRIORITY ACTIONS REQUESTED IN 2015

- Maintain full support for the AGCOM process and encourage the Authority to ensure that remedies authorized under the regulations are as effective as possible against massive infringers, while minimizing unintended collateral consequences
- Coordinate government bodies at a high level, and encourage cooperation to continue important criminal actions and injunctions against illegal P2P and linking services.
- Amend current draft decriminalization legislation to remove IPR offenses from its application.
- Provide the legal tools and resources for specialized judges and staff within the specialized corporate judiciary section to effect more timely resolution of IP cases.
- Raise awareness among enforcement authorities to effectively enforce the Anti-Camcording Law against the increasing problem of illegal camcording in theaters and theft of dubbed soundtracks.
- Eliminate legal obstacles for rights holders to take civil actions for the protection of their rights online, including by gathering 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 establish underlying infringement in cases against major infringing web operators.
- Promote respect for legitimate content through an effective public awareness campaign.

AGCOM PROCEDURES TO COMBAT INTERNET PIRACY

IIPA members report positive results from the first year of operation of Italy's antipiracy procedures, which came into force on March 31, 2014. As a result of the procedures, several important infringing sites are no longer

¹For more details on Italy's Special 301 history, see previous years' reports at <http://www.iipa.com/countryreports.html>. For the history of Italy's Special 301 placement, see <http://www.iipa.com/pdf/2015SPEC301HISTORICALCHART.pdf>.



operating in Italy, while others have removed infringing material in response to administrative orders or even begun voluntarily to cooperate with rights holders.

The regulations under the Italian Communications Regulatory Authority (AGCOM) establish a procedure by which rights holders may submit complaints to an authority (the “Authority”) requesting removal of infringing activity online. The Authority passes complaints on to the relevant ISPs and, where possible, to website managers and uploaders. If recipients do not comply with the request, the Authority initiates a review of the case that must be concluded within 35 days or, in the case of “serious” piracy, within a 12-day expedited process. The Authority may order the hosting ISP to remove or disable access to the infringing files (or, if the files are hosted on a server outside of Italy, it may order ISPs to disable access to the website) within three days. Importantly, the procedures may be applied to linking sites, and provide specific actions against repeat infringers. The AGCOM process is subordinate to a judicial process; therefore, any AGCOM case will be deferred to the Court if the interested parties appeal to a court of law.

Since the AGCOM regulations’ entry into force (as of November 30)², the Authority has received 142 complaints. There were 95 proceedings (some involving multiple cases), on behalf of photographic works, visual works, sound recordings, publishing texts, literary works, audiovisual works, and video games. Among these, 71% proceeded according to the “ordinary” procedure and 29% through the “expedited” procedure upon the demonstration of massive infringement. As a result of the procedure, 62% of the subject service providers voluntarily responded to notices; 29% resulted in take-down orders from the Authority; and 9% were dismissed.

As of December 31, 2014, the Authority issued orders against several noteworthy websites dealing in unauthorized files of the copyright works of IIPA’s members, namely: *torrentz.pro*, *torrentdownloads.me*, *cineblog-01.net*, *torrentvia.com*, *movie4k.to*, *movie2k.tv*, *puntostreaming.com*, *tantostreaming.com*, *putlocker.is*, *watchseries.ag*, *solarmovie.is*, *watchserieshd.eu* and *liberostreaming.net*. The fact that nearly a third of the cases before the Authority were conducted through the fast-track procedure, and that nearly two-thirds resulted in voluntary take-downs of infringing material, are important factors in the regulations’ success in 2014. Experience suggests that any effective response to Internet piracy must take place in Internet time, and expedited processes are therefore greatly welcomed.

For example, the site *vstau.info* responded to industry’s complaint to the Authority by immediately beginning to collaborate with the local film industry association to remove illegal content. This type of voluntary result is a welcome outcome to the establishment of the procedures, that permits quick and cooperative removal of infringing material. We highlight that this process is intended to operate alongside present notice-and-takedown arrangements, and remedies through the Authority are aimed at sites that do not generally respond to notices.

COPYRIGHT PIRACY IN ITALY

Levels of piracy improved in 2014 for some sectors, including the film and music industry. Initial surveys indicate that visits to the websites targeted by AGCOM in the past year have dropped significantly. However, significant problems remain in the online environment, in addition to other issues. Unauthorized copying of textbooks is common across school campuses. The large-scale importation of circumvention devices, contributing to Italy’s status as having one of the world’s worst video game piracy rates, originates from the land-locked microstate of San Marino where adequate anti-circumvention laws are not in place. Illegal camcording in theaters and broadcast signal piracy are still major problems for the film industry.

Online and mobile device piracy: All of IIPA’s members are dramatically affected by online piracy in Italy. The most prevalent forms of piracy in Italy today have arisen where the current legal regime has been unable to

² Fully updated official data are available at <https://www.ddaonline.it/interventi.html>.

reach them. Cyberlocker platforms are currently the most popular source of illicit content among Internet users in Italy. Peer-to-peer (P2P) bitTorrent platforms dedicated to infringement are also seeing an increase in use. Both of these formats are facilitated by a growing base of web sites providing links to illegal material, many of which are small enough to nimbly relocate and proliferate before lengthy litigation can even be initiated against them. However, even the mainstream search engines in Italy provide results linking to illegal files when, for example, book titles followed by “pdf” are entered as search terms. The major cyberlockers and torrent search engines where these materials sit are primarily operated outside of Italy, thereby complicating criminal enforcement in Italy. Mobile device piracy of music, films, and video games is also growing rapidly via applications that share links to infringing content.

According to the study “Sala e Salotto” released in September 2014 by ANICA, Italy’s motion picture association, every day in Italy there are 1,239,000 unauthorized views or accesses of audiovisual content. Infringement of books and journals via P2P networks also continues to be a problem. The Entertainment Software Association (ESA) reports that Internet piracy remains a serious problem for its members in Italy, which in 2014 placed fourth in the world in terms of the number of connections by peers participating in the unauthorized file sharing of select ESA member titles on public P2P networks.³ The local recording industry associations, FIMI and FPM, report that more than six million people were using P2P networks for illegal uploading and downloading of music files in 2014.

The prevalence in Italy of circumvention devices such as video game copiers is a severe problem for ESA members, who report that many of the devices originate from San Marino (where local law enforcement lacks the legal tools to address circumvention of technological protection measures, or TPMs) and facilitate much of the illegal video game downloads in the country. Circumvention devices are found both in retail stores and on e-commerce sites. Because circumvention devices enable users to play pirated copies of games that are downloaded from the Internet, hard goods piracy of video games themselves is on the decline in favor of online piracy.

Camcorder Piracy: Illegal camcording in Italy is a very serious and growing problem for the motion picture industry, for which enforcement is sorely lacking. Much of the illicit activity involves the recording of Italian language audio tracks in theaters immediately following a film’s release, which are then added to good quality pirate video found on the Internet. This form of piracy accounts for 71% of the pirate movies available in Italy. Video captured in Italian theaters is also increasingly appearing in illegal copies online.

Signal Piracy: Suppliers of illegal television programming operate in Italy by selling subscriptions to Pay-TV “card-sharing” groups, at a price of 15 euros per month, for access to an average of 20 European channels. Other operators illegally offer Pay-TV broadcasts through streaming live sites located on servers abroad, including in Ukraine, Russia, Romania, and Germany, at a price of eight euros per month. In March 2014, Italian police dismantled a card-sharing network located between Naples and Caserta that was illegally connected to SKY and Mediaset platforms.

Textbook piracy: Educational publishers, in particular, report persistent problems with infringing content in the form of unauthorized photocopying of textbooks, print piracy (from printing presses and reprints), and online piracy, all of which stifle the market for legitimate materials.

Optical disc piracy: Hard goods piracy of audiovisual products continues in Italy, but is on the decline. Naples serves as a production hub, with the highest number of DVD-R burners seized. Palermo and Catania have recorded the highest number of DVD-Rs seized, indicating that Sicily is a primary retail market, even if the grand total of activity is on a steady decline. Seizures of pirate hard goods are still recorded on the Adriatic coast during summer, but only in trivial amounts.

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.

COPYRIGHT LAW REFORM AND RELATED ISSUES

While the passage of the AGCOM Regulations was a significant advancement in Italy's anti-piracy regime, certain law reform needs still have not been addressed, and instead legislators have again in 2014 made proposals that would undermine copyright enforcement rather than strengthen it.

Weakened criminal remedies: Draft legislation was introduced in April of 2014 (decreto legislativo recante disposizioni in materia di non punibilità per particolare tenuità del fatto, a norma dell'articolo 1, comma 1, lettera (m), della legge 28 aprile 2014, n. 67. Atto n. 130) which permits prosecutors to drop cases for "criminal liability for conduct punished with monetary sanctions or imprisonment not exceeding a maximum of five years, when demonstrating the tenuous nature of the offense and when it is not a habitual behavior." This measure, through the use of the phrase "tenuous nature of the offense," would allow the Public Prosecutor to close proceedings on a highly subjective basis. Bearing in mind that all crimes against copyright protection, even the most serious (including massive piracy for profit purposes), shall be punished with a maximum 4-year sentence, and therefore meet the threshold condition of this provision, this provision is problematic and subject to abuse. Dismissal in all copyright cases would depend wholly on the prosecutor's attitude, and the impact of the legislation on the criminal enforcement of IPR could be lethal for rights holders. We urge the Government of Italy to address the issue and reaffirm the commitment against copyright infringement by removing the IPR violations from the list of crimes included in the draft.

Evidentiary Hurdles in Internet Piracy Enforcement: Amendments are needed to enable the collection of evidence needed for civil enforcement against operators of infringing P2P services. Limitations on monitoring and collecting Internet piracy data exist under Italy's Privacy Code, the Rome High Court's interpretation of Italy's Privacy Code in the famous Peppermint cases,⁴ and the March 2008 ruling of the Data Protection Authority, resulting in a lack of civil enforcement against file-sharing of infringing content. Italian jurisprudence still appears to limit the ability of rights holders to use collected data in actions against individual infringers. Unless rights holders can obtain IP addresses and thereafter the names of subscribers via a civil court order, civil enforcement in P2P piracy cases will, as a practical matter, be impossible.

Lack of ISP liability provision: 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. Italy's Legislative Decree #70 of April 9, 2003, implementing the e-Commerce Directive, requires judicial or administrative authorities to issue notices upon ISPs before they are obligated to remove infringing material. Until recently, this prevented voluntary take-downs on the part of ISPs. However, rights holders report that the steady processing of complaints under the AGCOM regulations has prompted better cooperation among hosting sites in Italy in response to initial complaints to the Authority. Difficulties still remain with some less cooperative ISPs, who face no negative consequences for failing to publicly provide identification and contact details in accordance with Article 5 of the E-Commerce Directive.

COPYRIGHT ENFORCEMENT IN ITALY

Problems in Italy's judiciary continue to pose major obstacles to general copyright enforcement, both in criminal and civil cases. But in 2014, the overall picture for copyright enforcement in Italy has improved thanks in large part to the efforts of the *Guardia di Finanza* (Fiscal Police).

Action Against Illegal Cyberlocker: During the month of July 2014, the Fiscal Police announced the conclusion of the operation "Italian Black Out," leading to the closure in Italy of *ddlstorage*, at the time the most popular cyberlocker in the country, operated out of Luxembourg with more than 120 servers. The operation was a

⁴The Peppermint case is detailed most recently in IIPA's 2013 Special 301 filing, available at <http://www.iipa.com/rbc/2013/2013SPEC301ITALY.PDF>.

collaboration between the Fiscal Police of Cagliari and the Technological Fraud Special Unit - Fiscal Police of Rome (GAT), with the technical support of the local music industry and the cooperation of the local movie industry. The business collected subscription fees that, in its last 15 months of operations, amounted to over one million euro with 460 million files downloaded.

Actions Against Distribution of Circumvention Devices: In May 2014, criminal proceedings concluded with convictions against two individuals providing TPMs circumvention devices/services for consoles, one of three such results in 2014. The video game industry reports a strong working relationship with law enforcement, which has a record of carrying out *ex officio* actions in cases of video games piracy.

Civil Enforcement: Despite some positive results in recent years, for the average copyright infringement case, severe delays make effective civil enforcement impossible. It is extremely important that competent new judges are allocated to the specialized courts with jurisdiction over IP, to avoid creating further delays in civil proceedings.

Italy's criminal provisions are effective only against commercial scale piracy committed for the demonstrated purpose of gain, criteria that prevent deterrent action against illegal downloading and streaming. For quick action, plaintiffs need to turn to injunctive measures, but these are largely unavailable in the absence of identifying information of the infringers. Italy's privacy laws are among the strictest in Europe, preventing any chance of identifying the name of on-line infringers outside of a criminal trial. Italian law provides rights holders with the ability to obtain a preventive attachment (seizure order) against foreign sites, and rights holders have done so, for example with respect to Pirate Bay and BTjunkie. But the process through the courts is lengthy and results are isolated, making the actions of Italian police forces and the AGCOM regulations indispensable to an effective antipiracy program in Italy.

Criminal enforcement: Public prosecutors do not inform injured parties of pending criminal proceedings, and prosecutors and judges continue to show a lack of interest in criminal enforcement of IPR violations. Many of the Fiscal Police's high-profile online cases resulted in success due to preliminary remedies. In some cases, however, preliminary *ex parte* searches are undermined by judges who fail to see the risk in alerting defendants of a scheduled raid. Cases requiring full proceedings face a multitude of procedural difficulties and members of the judiciary lack the resources to properly handle copyright cases. "Specialized" sections handle a variety of cases in practice, and are only "specialized" to the extent that a portion of their day is allotted to IPR crimes. In reality, these sections often fail to prioritize copyright cases. Severe delays in the judiciary ultimately undermine effective enforcement.

Illegal camcording: An area that is in need of more coordinated law enforcement attention is illegal camcording in theaters. IIPA encourages law enforcement to prioritize these cases and cooperate with the local industry group, FAPAV, to address the problem.

Book piracy: Neither the Ministry of Education nor Italian law enforcement authorities are engaged in combatting unauthorized photocopying or other activities involving infringing books and journals in and around schools. IIPA recommends the adoption of appropriate use and copyright policies within educational environments to promote use of legitimate content.

TRAINING AND TECHNICAL ASSISTANCE

During 2014, anti-piracy organizations took part in training programs planned with Fiscal Police offices in Latina, Rome, Napoli, Olbia, Cagliari, Gorizia, Novara, Padova, Vicenza, and Bologna that were attended by a total of about 500 officers. Topics addressed the efforts of a variety of creative industries with a primary focus on online piracy of copyrighted works, and included basic "computer forensics" training for law enforcement officers.