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His Excellency
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Ministry of Foreign Affairs and
International Cooperation
Piazzale della Farnesina, 1 00135 Rome
Italy

Subject: Notification 2025/0148/IT

Issue of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015

Excellency,

As part of the notification procedure provided for in Directive (EU) 2015/1535 ⁽¹⁾, the Italian authorities notified to the Commission on 17 March 2025 *the draft Resolution amending the regulation on the protection of copyright in electronic communications networks and implementing procedures pursuant to Legislative Decree No 70 of 9 April 2003* (hereinafter referred to as “the notified draft”).

According to the notification message, the proposed amendments respond to the need to protect audiovisual content broadcast live, with faster and more effective remedies in case of infringements. These amendments build on previous legislation granting injunctions against illegal retransmission of sports live events. According to the notification message, the proposed amendments aim to adapt the “*Regulation concerning the protection of copyright on electronic communication networks and implementation procedures in accordance with Legislative Decree No 70 of 9 April 2003*”, adopted with Decision No 680/13/CONS (Agcom Regulation) to recent changes in the relevant legislative framework, which result from both EU and national instruments. As described in the notification message these are, in particular, Regulation (EU) 2022/2065 (DSA) ⁽²⁾, the Anti-Piracy Law no. 93/2023, the Omnibus Decree-Law converted with amendments by Law No 143 of 7 October 2024 and the new Consolidated Text on

¹) Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and rules on Information Society services, OJ L 241 dated 17.9.2015, p. 1.

²) Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (DSA), OJ L 277, 27.10.2022, p. 1-102.

audiovisual media services (Legislative Decree No 208 of 8 November 2021 implementing Directive (EU) 2018/1808 ⁽³⁾).

Notably, the notified draft includes a specific urgency proceeding in Article 10 on “*Interim proceedings for infringements of live audiovisual content*” which reflects the amendments in the Anti-Piracy Law that entrusted Agcom to implement the automated platform later called the “Piracy Shield”.

In the context of the notified draft, the Commission addressed to the Italian authorities a request for supplementary information on 1 April 2025 to obtain clarifications on the envisaged measures. The answer provided by the Italian authorities on 15 April 2025 (Reply) are taken into account in this assessment. The examination of the relevant notified provisions led the Commission to issue the comments below.

Comments

The Commission welcomes the efforts made by the Italian authorities in the fight against online piracy, which remains a serious concern for the creative and sports sectors across the EU.

The Commission notes that the notified draft reflects the objectives of the Commission Recommendation on combating online piracy of sports and other live events of 4 May 2023 (Recommendation). According to the Recommendation, it is important to ensure that remedies available to holders of rights allow prompt action, which takes into account the specific nature of the live transmission of an event, in particular its time sensitive element and whether there are any rights of the nature of copyright or related rights. In the case of live sport transmissions, the Recommendation encourages Member States to grant legal standing to sports event organisers to allow them to take action against unauthorised retransmissions. Through the Recommendation, Member States are encouraged to ensure that both right holders and sports event organisers have access to remedies allowing them to request disabling access to the unauthorised retransmissions of sport and other live events in a very fast manner. The Italian legal framework goes one step further by providing remedies applying to other types of time-sensitive content, such as the first viewings of cinematographic and audiovisual works or entertainment programmes.

As described in the notified draft and further confirmed by the Italian authorities in the context of the present notification, Articles 8, 8-*bis*, 9-*bis* and 10 of the notified draft intend to reflect into national law the requirements set out in Article 9 of the DSA concerning the conditions in the issuing of orders to act against illegal content. Pursuant to Article 9 of the DSA, only orders issued according to such conditions and requirements would trigger, under the DSA, the obligation on the addressee of those orders issued by competent administrative or judicial authorities to inform such authorities of the effect given to the order.

The DSA does not provide a legal basis for the issuing of orders by national administrative or judicial authorities, nor does it regulate the enforcement of such orders. Any such orders, and their means of enforcement, are to be issued on the basis of the applicable Union law or national law in compliance with Union law, in particular Article

³) Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

8(3) of Directive 2001/29/EC as regards copyright and Article 11 of Directive 2004/48/EC.

While the DSA is without prejudice to national civil and criminal procedural law, the Commission would like to remind the Italian authorities of the procedures and conditions set out in Article 9 DSA to ensure that these orders can produce all the intended effects within the broader goals of the DSA, including the obligation for Member States to ensure that the orders issued by national authorities meet at least the requirements laid down in paragraph 2 of that provision. In this context, the Commission notes that the notified draft would not reflect all the conditions listed in Article 9 of the DSA, in particular as regards the linguistic requirements set out in Article 9(2), point (c), of the DSA.

While the Commission takes note of the additional information provided by the Italian authorities in their Reply, which provide further context on the compliance of the notified draft with the conditions laid down in Article 9 of the DSA, the Commission invites the Italian authorities to clarify these aspects in the final text of the notified draft.

The Commission would also like to emphasise that the effective tackling of illegal content must also take into due account the fundamental right to freedom of expression and information under the Charter of Fundamental Rights of the EU. As stated in Recital 39 of the DSA *“[I]n that regard, the national judicial or administrative authority, which might be a law enforcement authority, issuing the order should balance the objective that the order seeks to achieve, in accordance with the legal basis enabling its issuance, with the rights and legitimate interests of all third parties that may be affected by the order, in particular their fundamental rights under the Charter”*.

As regards redress mechanisms against the orders adopted pursuant to Article 8, 8 bis, 9 bis and 10 of the notified draft, the notified draft envisages the possibility for the addressee of the order to lodge a complaint (“reclamo”) within 5 days from the notification of the order, while the order itself would have immediate effect. The Authority must then decide on these complaints within 10 days as laid down in Article 8-bis(4), 9-bis(7) and Article 10(9) of the notified draft. The Commission notes that there do not seem to be other measures available to the addressee of the order to help prevent eventual erroneous or excessive blocking of content. Furthermore, as also explained in the Reply, the technical specifications of the Piracy Shield envisage unblocking procedures limited to 24 hours from reporting in the event of an error. This limitation to 24 hours does not seem, in principle, to respond to any justified need and could lead to persisting erroneous blockings not being resolved.

In this respect, the Commission would like to invite the Italian authorities to ensure that the Piracy Shield operates with sufficient controls and safeguards to avoid overblocking and negative impact on information which is not illegal content.

Certain elements mentioned by the Italian authorities in their Reply provide useful indications on the safeguards provided to ensure a balanced functioning of the system. The Commission therefore invite the Italian authorities to consider whether such elements could also be included in the final text. This is for example the case of the Addendum annexed to the Operating Manual of the Piracy Shield platform according to which, authorised persons are required to provide a technical report describing the methodology for obtaining evidence on the predominantly illegal nature of domain name of IP address requested to be blocked. Another example is the requirement for flaggers to observe the utmost diligence when submitting applications for blocking and collecting

the relevant evidence and to consult the Authority in advance in cases of doubt with regard to the prevalence of illegal activities.

Finally, the Commission notes that Recital 27 of the DSA clarifies that the problem of illegal content and activities online should not be dealt with by solely focusing on the responsibilities of providers of intermediary services online. In this regard, Recital 27 further explains that *“where it is necessary to involve information society services providers, including providers of intermediary services, any requests or orders for such involvement should, as a general rule, be directed to the specific provider that has the technical and operational ability to act against specific items of illegal content, so as to prevent and minimise any possible negative effects on the availability and accessibility of information that is not illegal content”*.

The Commission invites the Italian authorities to take into account the above comments in the final text of the notified draft and its implementation.

The Commission furthermore reminds the Italian authorities that once the definitive text has been adopted, they are required to communicate it to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

I remain, your Excellency, yours faithfully,

For the Commission,

Roberto Viola
Director General for
Communications Networks, Content
and Technology