

Italian Communications Authority

REGULATION ON THE COPYRIGHT ENFORCEMENT ON ELECTRONIC COMMUNICATIONS NETWORKS AND IMPLEMENTATION PROCEDURES PURSUANT TO LEGISLATIVE DECREE OF APRIL 9, 2003, NO. 70

CHAPTER I General principles

Article 1 Definitions

For the purposes of this Regulation the following terms shall bear the following meanings:

- a) “Authority”: the Italian Communications Authority, established by the Article 1, paragraph 1 of Law of July 31, 1997, no. 249;
- b) “Copyright Law”: the Law no. of April 22, 1941, no. 633 on the “*Copyright and neighbouring rights protection*” and subsequent modifications and integrations;
- c) “Consolidated Act”: the “*Consolidated Act on audiovisual and radio media services*” approved by Legislative Decree of July 31, 2005, no. 177, as amended by Legislative Decree of March 15, 2010, no. 44;
- d) “Code”: the “*Electronic Communications Code*” approved by Legislative Decree of August 1, 2003, no 259 and subsequent modifications and integrations;
- e) “Decree”: the Legislative Decree of April 9, 2003, no. 70, regarding the “*Implementation of directive 2000/31/CE on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market*”;
- f) “service provider”: the provider of services of the information society pursuant to Article 2, paragraph 1, letter a), of the Decree, who delivers *mere conduit* or *hosting* services, as respectively defined by the Articles 14 and 16 of the same Decree;
- g) “website manager”: the information society service provider, other than those referred to in Articles 14, 15 and 16 of the Decree, who, on the Internet, manages a space including digital works or parts thereof or hyperlinks (*link or torrent*) to the same, also uploaded by third parties;
- h) “webpage manager”: the information society service provider, other than those referred to in Articles 14, 15 and 16 of the Decree, who, within a website, manages a space where are present digital works or parts thereof or hyperlinks (*link or torrent*) to the same, also uploaded by third parties;

- i) “payment service provider”: the subjects provide the services pursuant to Article 1, paragraph 1, letter b), of Legislative Decree of January 27, 2010, no. 11;
- l) “electronic communications network”: the networks as defined by the Article 1, paragraph 1, letter dd), of the Code;
- m) “audiovisual media service”: the service as defined by Article 2, paragraph 1, letter a) of the Consolidated Act;
- n) “radio media service”: the service as defined by Article 2, paragraph 1, letter a), of the Consolidated Act applied by analogy to radio services pursuant to Article 2, paragraph 2, of the same Consolidated Act;
- o) “media service provider”: the service provider as defined by the Article 2, paragraph 1, letter b), of the Consolidated Act;
- p) “digital work”: a work, or parts thereof, with audio, audiovisual, photographic, videoludic, editorial and literary nature, including the applicative programs and the computer operating systems protected by Copyright Law and diffused on electronic communication networks;
- q) “program”: a sequence of animated pictures, with or without sound, as defined by the Article 2, paragraph 1, letter e), of the Consolidated Act;
- r) “program schedule”: the set of a series of programs as defined by the Article 2, paragraph 1, letter g), of the Consolidated Act;
- s) “catalogue”: the set, organized in accordance with pre-established criteria by a non-linear audiovisual media service provider, of programs which may be enjoyed at the time chosen by the user;
- t) “right-holder or licensee”: any right-holder or licensee of copyright or neighbouring rights related to the digital work referred to in letter p);
- u) “entitled subject”: right-holder or licensee of the right referred to in letter t) or collective management organizations or professional associations mandated by the right-holder or the licensee of the right referred to in letter t);
- v) “link”: hyperlink to the digital work referred to in letter p);
- z) “torrent”: connection alphanumeric code by which users can interact for the purpose of enjoying the digital works referred to in letter p);
- aa) “uploader”: any natural person or legal entity who uploads digital works over electronic communications network making them available to the public also by means of specific *links* or *torrent* or by any other linking mean;
- bb) “downloading”: download of digital works, through electronic communications network, on users’ terminal or on a shared space;
- cc) “streaming”: audio/video data flow transmitted by one source to one or more destinations through electronic communications networks and simultaneously reproduced on the user’s device;
- dd) “notice and take down procedure”: procedures aimed to the removal of infringing contents from electronic communications networks;
- ee) “server”: processing system connected to the network which hosts resources directly usable by other elaborators which may ask for;
- ff) “selective removal”: removal from the Internet page of the digital works diffused in violation of copyright or neighbouring rights or of the connection to such works throughout *link* or *torrent* or by any other means;

- gg) “disabling of the access”: the disabling of the access of the digital works or of the Internet site as identified univocally by one or more domain names (DNS) or by the IP addresses associated with them;
- hh) “Committee”: the Committee for the fostering and the protection of the legal offer of digital works referred to in Chapter II;
- ii) “Direction” and “Director”: the Direction of media services of the Authority and the Director of the aforementioned Direction;
- jj) “collective body”: the Commission for the Authority services and products , which, pursuant to Article 1, paragraph 6, letter b), no. 4-*bis*, of Law of July 31, 1997, no. 249, as amended by the Article 11, paragraph 2, of Law of August 18, 2000, no. 248, performs the task of surveillance and verification pursuant to Article 182-*bis* of Copyright Law and the tasks pursuant to the Articles 14, 15, 16 and 17 of the Decree.

Article 2

Purpose and scope of application

1. This regulation applies to the activities of the Authority on the copyright protection on electronic communications networks. In particular, the Regulation has the purpose to foster the development of the legal offer of digital works and the education to the correct enjoyment of the same and regulates the procedures aimed at verifying and stopping the infringements of copyright and neighbouring rights, carried out in any way, on electronic communications networks.
2. In the activities referred to in paragraph 1, the Authority operates respecting the rights and freedom of expression, to information, to comment, to criticize and to discuss, as well as of the limitations and exceptions provided by the Copyright Law. In particular, the Authority protects the freedoms of use of electronic communication means, as well as the right to conduct business and its exercise within a competitive system in the electronic communications industry, taking into account the guarantees pursuant to the European Convention for the protection of human rights and fundamental freedoms and the Charter of fundamental rights of the European Union.
3. This Regulation does not refer to final users who enjoy digital works by downloading or streaming, nor to applications and software programs by which the direct sharing of digital works among final users through electronic communications networks is carried out.
4. The Authority monitors the observance of the provisions of this regulation and verifies the enforcement of the measures referred to in Chapter III and IV.

CHAPTER II
Measures to foster the development and protection of digital works

Article 3
General principles

1. The Authority promotes the users' education to the legality in the enjoyment of digital works, with particular reference to younger people.
2. The Authority promotes the largest diffusion of the legal offer of digital works, encouraging the development and diffusion of innovative and competitive commercial offers and favoring the knowledge of the services which allow the legal enjoyment of digital works protected by copyright, as well as the access to the same services.
3. The Authority promotes the development of conduct codes by the information society service providers referred to in Article 2, first paragraph, letter a), of the Decree, in order to favor their cooperation in light of the copyright protection.

Article 4
Committee for the development and protection of the legal offer of digital works

1. It is established the Committee for the development and protection of the legal offer of digital works. The Committee is chaired by the Secretary general of the Authority or by one of its delegates and is composed of the following subjects who attend the meetings, without any cost for the Authority:
 - a) a representative for each one of the main associations in the industry of the following categories: consumers, authors, artists and performers, publishers, producers, distributors, media service providers, information society service providers referred to in Article 2, paragraph 1, letter a), of the Decree;
 - b) a representative for each one of the following organizations: the Italian Society of authors and publishers [Società Italiana degli Autori ed Editori – SIAE], the Standing advisory committee for the copyright established within the Ministry of cultural heritage and activities, the Technical committee against digital and multimedia piracy established within the Department for the information and publishing of the Presidency of the Council of Ministers, Committee for the implementation of the media and minors self-regulatory code established within the Department for communications of the Ministry for economic development, Postal and Communication Police, Special police unit for broadcasting and publishing of the Finance Guard, Specialized courts in industrial and intellectual property referred to in Legislative Decree of June 27, 2003, no. 168, as amended by Law of March 24, 2012, no. 27;
 - c) representatives of the Authority.
2. The Committee, also by availing itself of the free collaboration of research centers, encourages the achievement of agreements among the categories referred to in paragraph 1, letter a), with reference, among others, to the following subject matters:

- a) the simplification of the distribution chain of digital works in order to favor the access to the same, also through instruments such as distribution windows and licensing agreements developed specifically for the diffusion of digital works, without prejudice to the free negotiation between the parties;
 - b) the adoption of codes of conduct by the information society service providers referred to in Article 2, paragraph 1, letter a), of the Decree, also with reference to counter-actions and related means, developed in collaboration with payment service providers and based on the analysis of the economic transactions and of the business models associated to the offer of copyright infringing contents (so called *follow the money*);
3. The Committee, also in cooperation with other private and public subjects, deals:
- a) the promotion of measures for educating to the legal enjoyment of digital works, also through the adoption of procedures of temporary automatic redirection to specific Internet pages aimed thereto;
 - b) the adoption of measures for supporting the development of digital works, removing existing barriers and promoting commercial initiatives with broad access;
 - c) the monitoring of the development of the legal offer of digital works;
 - d) the monitoring of the enforcement of this regulation, also with reference to the means of implementation of the decisions of the Authority;
 - e) the formulation of proposals of adaptation of this regulation in accordance with technological innovation and market evolution.
4. The Committee avails itself of a technical secretariat established within the Direction.

CHAPTER III

Procedures for the protection of online copyright pursuant to Legislative Decree of April 9, 2003, no. 70

Article 5

Intervention modalities

1. Without prejudice to the possible self-regulatory procedures of *notice and takedown*, for the purpose of the copyright protection on electronic communications networks, the Authority intervenes upon request of the interested party, pursuant to the present and the following chapter.

Article 6

Request to the Authority

1. A legitimate subject who considers that a digital work is made available on an Internet page in violation of copyright is entitled to file a request of removal to the Authority.
2. The request to the Authority referred to in paragraph 1 is transmitted using, and filling in each of its parts, under penalty of inadmissibility, the form available on the Authority's website, and attaching

- any document useful to prove the ownership of the right.
3. The proceeding before the Authority cannot be initiated in the event, between the same parties and on the same matter, there is a pending proceeding before a Court.
 4. The Direction shall dismiss the case on its own initiative if the requests are:
 - a) non-receivable for non-use of the form referred to in Annex 1 of this regulation or for lack of important information;
 - b) barred to further proceeding pursuant to paragraph 3;
 - c) inadmissible for falling outside the scope of this regulation;
 - d) plainly groundless;
 - e) withdrawn before the decision of the collective body referred to in Article 8.
 5. The Direction informs the requesting subject of the dismissals issued pursuant to paragraph 4, letters a), b), c) and d), and the addressees of the communication of the initiation of the proceeding referred to in Article 7, paragraph 1, of the dismissals issued pursuant to paragraph 4, letter e). The Direction periodically informs the collective body of the dismissals above referred.
 6. As regards the requests not-dismissed, the Direction shall initiate the proceeding pursuant to Article 7.
 7. The Direction shall dismiss the case or initiate the proceeding within seven days from the receipt of the requests.

Article 7

Preliminary proceeding before the Direction

1. The Direction shall communicate the start of the proceeding to the service providers identified for this reason, as well as, if traceable, to the *uploader* and the Internet page manager and website manager. The communication of the initiation of the proceeding contains the precise identification of the digital works allegedly diffused in violation of Copyright Law, the indication of the provisions allegedly violated, a brief description of the facts and of the outcomes of the verifications carried out, the indication of the competent office and of the responsible of the proceeding to whom it is possible to submit possible counter-claims as well as the indication of the deadline of the proceeding.
2. With the same communication referred to in paragraph 1, the Direction informs the service providers, as well as the *uploader* the Internet page manager, and the website manager, if traced, that they may spontaneously conform to the request of the requesting party referred to in Article 6, paragraph 1.
3. If the service providers, or the *uploader*, or the Internet page manager or the website manager spontaneously conform pursuant to paragraph 2, they shall give concurrent notice thereof to the Direction, which shall dismiss the case and give notice thereof to the requesting subject and to the addressees of the communication of the initiation of the proceeding.
4. If the service providers, or the *uploader*, or the Internet page managers or website managers consider to counter-claim in relation to the communicated infringement, they shall transmit to the Direction, within five days of the receipt starting from the communication referred to in paragraph 1, any element useful for the relevant verification.

5. If evidences are required or the case is particularly complex, the Direction may decide to extend the terms referred to in paragraph 7 of Article 6 and paragraph 4 of this Article. If it is necessary to acquire further elements of evaluation, the Direction may request to the subjects who possess information and documents useful for the preliminary proceeding, pursuant to Article 1, paragraph 30 of law July 31, 1997, n. 249.
6. Except in case of spontaneous conformation referred to in paragraph 3, the Direction, transmits the documents to the collective body and proposes the dismissal of the case or the adoption of the measures pursuant to Articles 14, paragraph 3, and 16, paragraph 3 and 16, of the Decree. Transmission of documents to the collective body cannot be made before the term referred to in paragraph 4 expired.
7. If, in the course of the proceeding, the requiring subject starts a legal proceeding before a Court on the same matter, the requesting subject informs promptly the Direction, which shall dismiss the case and transmit all the documents to the judicial Authority, also in the event the same were already transmitted to the collective body pursuant to paragraph 6, giving notice thereof to the addressees of the communication of the start of the proceeding.
8. The Direction periodically informs the collective body of the dismissals ordered pursuant to paragraphs 3 and 7.

Article 8

Measures for the copyright enforcement

1. The collective body, after having examined the documents, shall dismiss the case where it judges that no infringement of copyright or related rights occurred.
2. Where the collective body deems that a violation of copyright or related rights has been made, it requires, taking into account the gradualness, proportionality and adequacy principles, the service providers addressee of the communication referred to in Article 7, paragraph 1, to prevent or stop the infringement, pursuant to Articles 14, paragraph 3, and 16, paragraph 3, of the Decree. To this end, the collective body shall issue orders to the service providers pursuant to paragraph 3, 4 and 5 to be complied within three days from the notification of the order.
3. In the event the website where the digital work are made available in violation of copyright or neighboring rights is hosted in a *server* located in the Italian territory, the collective body orders to the service providers performing hosting activities, referred to in Article 16 of the Decree, to proceed, as a rule, with the selective removal of the same digital works. In the presence of massive infringements, the collective body may order to the service provider to proceed disabling the access to digital works above, instead of their selective removal.
4. In the event the website where the digital works are made available in violation of copyright or related rights is hosted on a *server* located outside the Italian territory, the collective body may order to the service providers performing *mere conduit* activities, referred to in Article 14 of the Decree, to proceed disabling the access to the website.
5. In the event the collective body adopts the measures provided for in paragraph 3, second phrase, and 4, it orders to the service providers, pursuant to Article 71, paragraph 2-*quater*, letter a), of the Code, to arrange for the automatic redirection to the Internet page drafted according to the

modalities indicated in the order adopted by the Authority, of the requests of access to the Internet page where the Authority has verified the presence of digital works diffused in violation of copyright and neighboring rights.

6. The measures referred to in paragraphs 1, 2, 3, 4 and 5 are adopted by the collective body within thirty-five days from the receipt of the request referred to in Article 6. The afore-said measures are communicated to the requesting subject and to the addressees of the communication of the start of the proceeding.
7. In case of violation of the orders referred to in paragraph 2, 3, 4 and 5 the Authority shall apply the sanctions referred to in Article 1, paragraph 31, of Law of July 31, 1997, no. 249, giving notice to the judicial police pursuant to Article 182-ter of Copyright Law.

Article 9

Abbreviated proceeding

1. If on the basis of a preliminary and summary analysis of the facts subject of the request referred to in Article 6, the Direction considers that the signaled facts constitute a serious violation of the rights of economic exploitation of a digital work, or in the event of a massive violation, the terms referred to in Articles 6, 7, and 8 are amended as follows:
 - a) the dismissal on the Authority's own initiative and the initiation of the proceeding referred to in Article 6, paragraph 7, shall take place within three days after the receipt of the request;
 - b) the counter-claims referred to in Article 7, paragraph 4, , can take place within three days from the receipt of the communication of start of the proceeding;
 - c) the transmission of the documentation to the collective body shall not be made before the term under letter b) expired;
 - d) the measures referred to in Article 8, paragraphs 1, 2, 3, 4 and 5 shall be adopted by the collective body within twelve days from the receipt of the request;
 - e) the implementation of the orders referred to in Article 8, paragraphs 2, 3, 4 and 5 shall take place within two days from the communication of the afore-said order.
2. In the event shorter terms above apply under paragraph 1, provision of Article 7, paragraph 5, first phrase, shall not apply.
3. For the purposes of the application of the abbreviated proceeding referred to in this Article, the Direction shall consider, among others, the following elements:
 - a) the circumstance that, in connection with the same subject and following a previous request, the Authority has already judged as committed the violation of copyright or neighboring rights pursuant to Article 8, paragraph 2;
 - b) the significant quantity of digital works allegedly diffused in violation of copyright and neighboring rights;
 - c) timing of introduction of the digital work on the market;
 - d) the economic value of the violated rights and the seriousness of the damage caused by the alleged violation of copyright and related rights;
 - e) the encouragement, also indirect, to the enjoyment of digital works diffused in violation of Copyright Law;

- f) the misleading nature of the message, so as to induce the user to wrongly believe that the activity to which the message refers is legal;
- g) the making available of information on the technical modalities to access the digital works illegally diffused;
- h) whether the illegal offer of the digital works is for profit, inferable also from the required payment for enjoyment of the same, or from the diffusion of advertising messages;
- i) whether the request referred to in Article 6 has been transmitted by one of the associations referred to in Article 1, paragraph 1, letter u).

CHAPTER IV

Provisions related to the copyright protection on media services

Article 10

General provisions

1. The audiovisual media service providers operate respecting copyright and neighboring rights, as well as of the principles pursuant to Articles 3 and 32-*bis* of the Consolidated Act and of the provisions of this Chapter.
2. The radio media service providers operate respecting copyright and neighboring rights, as well as of the principles pursuant to Article 3 of the Consolidated Act and of the provisions of this Chapter.

Article 11

Request to the Authority

1. A legitimate subject which considers a program within a programming schedule of a linear media service provider to violate Copyright Law and Article 32-*bis*, paragraph 1 and 2 of the Consolidated Act, is entitled to transmit a request to the Authority asking that the program shall no more be diffused.
2. In the event it considers a program is made available within a catalogue by a non-linear media service provider in violation of Copyright Law and of Article 32-*bis*, paragraph 1 and 2 of the Consolidated Act, is entitled to transmit a request to the Authority asking the removal of the program from the catalogue.
3. Requests under paragraphs 1 and 2 are transmitted, under penalty of inadmissibility, using and filling the information in the forms available on the Internet site of the Authority.
4. The proceeding before the Authority cannot be initiated in the event, between the same parties and on the same matter, there is a pending proceeding before a Court.

5. The Direction shall dismiss the case on its own initiative if the request results:
 - a) non-receivable for not compliance with the requirements referred to in paragraph 3 or for lack of important information;
 - b) barred to further proceeding pursuant to paragraph 4;
 - c) inadmissible for falling outside the scope of this regulation;
 - d) plainly groundless;
 - e) withdrawn before the decision of the collective body referred to in Article 13.
6. The Direction informs the requesting subject of the dismissals issued pursuant to paragraph 5, letters a), b), c) and d), and the addressee of the communication of the start of the proceeding referred to in Article 12, paragraph 1, of the dismissals issued pursuant to paragraph 5, letter e). The Direction periodically informs the collective body of the dismissals above referred.
7. In relation to the requests not-dismissed on the Authority's own initiative, the Direction shall initiate the proceeding pursuant to Article 12.
4. The Direction shall dismiss the case or initiate the proceeding within seven days from the receipt of the requests.

Article 12

Preliminary proceeding before the Direction

1. The Direction shall communicate the start of the proceeding to the media service provider. The communication shall contain the precise identification of the programs allegedly diffused in violation of Copyright Law, the indication of the provisions allegedly violated, a brief description of the facts and of the outcomes of the verifications carried out, the indication of the competent office and of the responsible of the proceeding to whom it is possible to submit counter-claims within five days from the receipt of the communication, as well as of the deadline of the proceeding.
2. If evidences are required or the case is particularly complex, the Direction may decide to extend the terms referred to in Article 11, paragraph 8, and in paragraph 1 of this Article. If it is necessary to acquire further elements of evaluation, the Direction may request to the subjects who possess information and documents useful for the preliminary proceeding, pursuant to Article 1, paragraph 30 of law July 31, 1997, n. 249.
3. Without prejudice to the case referred to in Article 14, the Direction, shall transmit the documents to the collective body and propose the dismissal of the case or the adoption of the measures of formal notice or of the order referred to Article 13, paragraph 2.
4. If, in the course of the proceeding, the requiring subject starts a legal proceeding before a Court on the same matter, the requesting subject shall inform promptly the Direction, which shall dismiss the case and transmit all the documents to the judicial Authority, also in the event the same were already transmitted to the collective body pursuant to paragraph 3, giving notice thereof to the addressees of the communication of the start of the proceeding.

Article 13

Measures for the copyright enforcement

1. The collective body, after the analysis of the documents, shall dismiss the case, if it concludes that the infringement of copyright or of neighboring rights has not occurred.
2. If the collective body concludes that the violation of copyright or of neighboring rights has occurred, it warns the linear service media providers against transmitting programs in violation of Copyright Law or orders to the on-demand service media providers to remove from the catalogue the programs made available in violation of the afore-said Law, within three days from the notice of the order.
3. The collective body adopts the measures referred to in paragraphs 1 and 2 within thirty-five days from the receipt of the requests referred to in Article 11, paragraphs 1 and 2. The afore-said measures are communicated to the requesting subject and to the addressees of the communication of the start of the proceeding.
4. In case of non-compliance with the orders referred to in paragraph 2, the Authority shall apply the sanctions referred to in Article 1, paragraph 31, of Law of July 31, 1997, no. 249, giving notice to the judicial police pursuant to Article 182-ter of Copyright Law.

Article 14

Measures pursuant to Article 1-ter, paragraph 8, of the Consolidated Act

1. If the Direction concludes that a significant violation pursuant to Article 32-bis of the Consolidated Act has been committed by media services subject to Italian jurisdiction under Article 1-bis, paragraph 4, of the same Consolidated Act, or by media services not subject to the jurisdiction of any Member State of the European Union, whose schedules or catalogues are directly or indirectly received by the Italian public, the Direction shall adopt a formal notice against the subject referred to in Article 1-ter, paragraph 8, second period, of the Consolidated Act, specifying the terms within which the same should comply with the notice.
2. In absence of voluntary compliance with the notice within the established term, the Direction shall transmit the documents to the collective body and propose to order to the addressees of the notice the adoption of any measure necessary to inhibit the diffusion to the Italian public of the schedules and catalogues referred to in paragraph 1.
3. The collective body, after the exam of the documents, shall dismiss the case or shall adopt the orders referred to in paragraph 2 within sixty days from the receipt of the request referred to in Article 12. In case of failure to comply with the order, the administrative fine referred to in Article 1-ter, paragraph 8, third period, of the Consolidated Act, shall apply.

CHAPTER 5
Final provisions

Article 15
Communications

1. The communications referred to in this regulation are made exclusively via certified e-mail, where possible.

Article 16
Terms

1. In the calculation of the terms referred to in this regulation reference is made only to working days.

Article 17
Appeal

1. Against the measures adopted by the Authority under this Regulation it is possible to file an appeal before the administrative judge, pursuant to Article 1, paragraph 26, of the law of July 31, 1997, n. 249, and to Articles 133, paragraph 1, letter l), and 135, paragraph 1, letter c), of the legislative decree of July 2, 2010, n. 104.

Article 18
Clause of revision

1. The Authority reserves the right to revise this regulation on the basis of the experience deriving from its enforcement, as well as in light of technological innovation and market evolution, after having heard the opinion of the interested subjects, also within the Committee referred to in Article 4.

Article 19
Entry into force

1. This regulation shall entry into force on 31 March 2014.