

Newsalert

IP, TMT and Data Protection Department

Press release of the Italian Communications Regulatory Authority on the illegal distribution of editorial content on Telegram

On April 23, 2020, the Italian Communications Regulatory Authority (Autorità per le Garanzie nelle Comunicazioni, the "**Authority**") published a press release in relation to a case of copyright infringement perpetrated through the well-known instant messaging platform Telegram, which allows its users to access, in addition to private chats, so-called public "channels" on which content can be shared.

Most notably, the case stems from a petition filed on April 10, 2020 by the Italian Newspaper Publishers' Federation (Federazione Italiana Editori Giornali, "**FIEG**"), whereby the latter complained about the **illegal distribution of full digital editions of certain newspapers on eight different channels of the Telegram service** and requested the Authority, in the exercise of its supervisory and enforcement powers, the **removal of all contents illegally distributed as well as the suspension of access to the platform**.

With resolution no. 490/18/CONS of December 12, 2013, the Authority approved its "**Regulation on copyright protection on electronic communications networks and implementation procedures pursuant to Legislative Decree no. 70 of April 9, 2003**" - subsequently amended by resolution no. 490/18 - with the aim of protecting copyright on electronic communications networks also through effective, proportionate and dissuasive enforcement procedures in implementation of the provisions of European Directive 2000/31/EC of June 8, 2000 (the "**Regulation**").

Following the application filed by FIEG, **the Authority initiated an investigation procedure against Telegram** to evaluate the removal of the channels on which the illegal distribution of journalistic contents in violation of online copyright protection occurred, with consequent serious damage to the publishing industry and information pluralism.

In examining the petition - the press release clarifies - **The Authority's Board highlighted that its authoritative power must be exercised within the scope of applicability and the limits set out in the Regulation**, in accordance with national and European legislation.

In this regard, it should be noted that direct recipients of the measures ordered by the Authority can only be sites hosted by servers located in the Italian territory (see Art. 8, no. 3 of the Regulation). **As in the present case the infringements occurred on the channels of a site located outside the national territory** (i.e. Telegram), nor it was possible to order Telegram to selectively remove illegal contents only – since this would have required using filtering techniques deemed incompatible with EU law by the European Court of Justice – the intervention of the Authority could have only address the Italian internet access providers, by ordering them to disable access to the entire site (see Article 8. No. 4 of the Regulation).

Under European law, however, the measure of disabling access to a platform requires that certain criteria of proportionality be met, which the Authority did not consider existing in the present case.

Also, the Authority stressed that, in order to rely on a legal basis for its direct intervention against Telegram, **it would be necessary to amend the primary legislation** so that providers offering information society services on the Italian territory by using national numbering resources may be regarded as established in Italy for the purposes of the rights referred to in Article 4, section 1, lett. a) of Legislative Decree no. 70 of April 9, 2003 (i.e. the decree implementing the European directive on electronic commerce in Italy). According to the Authority, **such a provision would allow it to adopt selective removal orders for contents uploaded in violation of copyright addressed directly to subjects such as Telegram**. However, at this stage, the Authority clarified that it has no choice but to apply its own Regulation.

In light of the foregoing, the Authority **has therefore resolved to dismiss the proceeding and transmit the documents to the Judicial Authority pursuant to Italian copyright law**, also involving the Postal Police and the Financial Police to prosecute users who upload and share copies of newspapers on the platform, as well as reporting the violation to the main online app stores.

Despite the dismissal of the proceeding the publishers' requests were nevertheless – albeit only partially - satisfied, as **Telegram decided to remove seven of the eight channels reported by FIEG**.

Pending the publication of the dismissal resolution, here is the link to the Authority's press release (only available in Italian language).

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