

Former AGCOM chief on online distribution of creative content

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By Antonella Barbieri and Federica De Santis

Introduction

In recent months Corrado Calabrò, formerly the chairman of the Communications Authority (AGCOM), took part - during his mandate at AGCOM - in parliamentary hearings⁽¹⁾ in order to clarify AGCOM's position on certain aspects of a draft regulation⁽²⁾ which is intended to ensure protection of copyright on electronic communication networks.

The draft regulation, which was issued on July 6 2011, followed a draft paper of December 17 2010⁽³⁾ (for further details please see "AGCOM: fight piracy with greater availability of content"). The draft regulation fuelled a fierce debate in Italy about copyright protection on the Internet and the most appropriate means of fostering the online distribution of creative content. AGCOM has yet to issue a definitive regulation. Moreover, since the process started, Parliament has elected new AGCOM commissioners, which may have an impact on how and when the new regulation is issued.

Theft of content impairs creativity

Calabrò emphasised that the protection of copyright plays an important role in the development of new products and services and in the creation and exploitation of creative content, thereby also supporting employment. The same aim is behind the adoption of the EU Information Society Directive (2001/29/EC), which foresees a "high level of protection of intellectual property" as means of ensuring substantial investments in creativity and innovation.⁽⁴⁾

Importance of agreement between stakeholders

On promoting the availability of legal, non-infringing digital media content, which is one of the goals of the draft regulation, Calabrò stressed the need to encourage agreements between stakeholders. As the draft regulation clarifies, contractual provisions on distribution windows for video-on-demand or other distribution channels can act as a barrier to the availability of content on digital platforms.

The public consultation on the draft regulation revealed that consumer associations, video rental organisations and audiovisual media service providers approve of AGCOM's proposals to improve the availability of media content. This process identified a need to review the framework of distribution windows in order to reduce the delay between the release of audiovisual content through traditional

channels and its availability through legitimate digital technology. However, rights owners appear to be reluctant to accept the imposition of contractual limitations, as clarified during Calabrò's hearing before the Parliamentary Commission on Commercial Counterfeiting and Piracy on April 4 2012.

Content industry versus 'over-the-top' operators

In addition, Calabrò suggested that digital content could be further promoted by making the European Union's traditional stakeholders more competitive with new operators (including 'over-the-top' service providers that are not linked to the access network or a particular device, thus can offer consumers new ways of accessing audiovisual content). He referred with approval to an initiative by a group of Italian publishers, which was launched in March 2012 when L'Espresso, Mondadori, RCS and Sole 24 Ore signed a memorandum of understanding to form a consortium which will provide for the creation of a multi-device platform for the purchase of digital publications.

Comment

Media stakeholders still await the final regulation. However, in early May 2012 the government agreed with Calabrò on the necessity of striking a balance between the protection of copyright and the increased distribution of digital content.

In particular, media content creators may have mixed feelings about the government's acknowledgement that prices for digital content should be lower than those set in the offline marketplace, and that pricing should reflect what internet users consider fair. Therefore, the ongoing discussions on how to encourage digital distribution are also expected to involve a debate on pricing.

Endnotes

(1) Hearings of March 21 and 24 2012 before the Seventh and Eighth Commissions of the Senate; hearing of April 4 2012 before the Parliament Commission on Commercial Counterfeiting and Piracy.

(2) Attachment A to Resolution 398/11/CONS, published in the Official Journal on July 15 2011.

(3) Attachment B to Resolution 668/10/CONS, published in the Official Journal on January 3 2011.

(4) See Recital 4 of the directive