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PRESS RELEASE

Copyright: AGCOM issues a draft Regulation and starts a 60 days public consultation

AGCOM Board, chaired by Corrado Calabrò, has approved a draft Regulation about Copyright protection in electronic communications networks.

As a result of a public consultation on general principles and guidelines (with 55 participants representing all Stakeholders) the Draft will be subject to a new 60 days public consultation with the aim of acquiring proposals and comments of stakeholders and thus enable a further participation of the public opinion on the debate on the current draft regulation.

Chairman Calabrò said: *"We have issued a carefully fine tuned text, from which we deleted possible ambiguities and problems, thus dispelling any doubts about the proportionality of the measures and limits of AGCOM powers and about the relationship between administrative interventions and the prominent powers of the Judiciary. The text will now undergo a new broad term public consultation aimed to acquire comments and suggestions."*

"It is AGCOM intention to stimulate a thorough debate, open to all contributions and all the voices of civil society, the Web community and all the relevant Stakeholders. With this in mind, I have also expressed my availability to be heard by the competent Parliamentary Committees on the draft regulation whereas the Parliament deems it appropriate."

The outline of the draft Regulation is divided into two parts.

The first concerns the measures to be developed to encourage an effective legal offer of contents and to promote users access to those content (also through the establishment of a Technical Committee to which all stakeholders are invited to participate).



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The second part contains a number of measures for the protection of copyright and is divided into two phases: one relating to proceedings before the website owner, the second in the proceedings before AGCOM.

An innovative conflict resolution procedure is introduced:

- In the first stage, if the website owner acknowledges that the rights of the reported content are in fact attributable to the alleged copyright holder, the website owner can remove it within 4 days (*notice and take down*)
- In the second stage, whereas the outcome of the notice and take down procedure is not satisfactory to either party, they can apply to AGCOM, which, following a clear and transparent cross-examination phase of the last 10 days, will issue - within the following 10 days (extended by up to additional 15) an order of selective removal of illegal content or, respectively, of their recovery, depending on the requests.
- This procedure **does not replace the judicial process** but it's an alternative and freezes in the event of an appeal of either party to the Court. Moreover, similar to all AGCOM measures, the decisions regarding copyright can be challenged at the TAR (the Administrative Court) of Lazio.

It is important to note that:

- The procedure does not apply (based on the principle of *fair use*) to:
 - websites not having commercial nature;
 - the exercise of Freedom to report, comment, criticise or discuss;
 - scientific or educational purposes;
 - The partial reproduction, in quantity and quality, of content *vis-a-vis* the original and integral work that is not detrimental to its commercial exploitation.
- The procedure **does not provide any measure of inhibition of access to Internet sites**



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- it does not address end users, nor it impacts on peer-to-peer applications;
- it does not limit the freedom of expression and information, but ensures the full guarantee of the rights of inform, comment, discuss and the educational and scientific purposes; and any use not adversely affecting the normal exploitation of the content;
- it does not affect the legal interactions between the parties involved, providing adequate time to do so in their interests;

As a major innovative element, in addition, differently from what happens in most European countries, in case of upload, the *uploader* receives the alert notification and could start the counter-notification procedure.

Finally, if - following investigation activity - Agcom should request the removal of specific contents from websites based in foreign countries, aimed to the Italian public in violation of copyright law and the website does not comply with the request, the case will be reported to the Court in order to adopt the measures as provided by the Law.

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