

ANNEX A to Resolution no. 3/23/CONS

**REGULATION ON THE IDENTIFICATION OF BENCHMARK
CRITERIA FOR DETERMINING FAIR COMPENSATION FOR THE
ONLINE USE OF PRESS PUBLICATIONS, AS SET FORTH UNDER
ARTICLE 43-bis OF LAW NO. 633 OF 22 APRIL 1941**

**Chapter I
General principles**

**Article 1
*Definitions***

1. For the purpose of this regulation, the following definitions are laid down:
 - a) “Authority”: the Communications Authority, established by Article 1(1) of Law no. 249 of 31 July 1997;
 - b) “LDA”: Law no. 633 of 22 April 1941, concerning the “Protection of copyright and of other rights connected to its use” and subsequent amendments and additions;
 - c) “Sanctions Regulation”: procedural rules concerning the Authority’s administrative sanctions and obligations, adopted with Resolution no. 410/14/CONS;
 - d) “information society service provider” or “provider”: the natural person or legal entity or the unrecognised association that provides an information society service that enables the online use of press publications;
 - e) “information society service”: service set forth under Article 1(1)(b) of Law no. 317 of 21 June 1986, as amended by Legislative Decree no. 223 of 15 December 2017 and subsequently amended and supplemented;
 - f) “media monitoring and press review enterprise (or MMPRE)”: an enterprise providing an information society service that consists, inter alia but not exclusively, in the selection, indexing, organisation, collation, extraction, transmission, making publishing content available, typically upon payment, remotely, even via digital means for processing and storing data and upon individual request of a service recipient, including via hard copy to be digitalised subsequently;

- g) “press publication”: a set mainly consisting of literary press works, which may include other works and protected material, such as photographs or videos, and represents one single element within a periodical or regularly updated publication, which bears one single title, such as a newspaper or generalist or specific magazine, whose function is to inform the general public as to news or other topics, published in any means of communication under the initiative, the publishing responsibility and the control of a publisher or a news agency. Periodical publications with a scientific or academic purpose are not considered press publications;
- h) “press publication publisher” or “publisher”: the party that, either individually or in association or consortium, when performing an economic activity publishes press publications, even if operating in another Member State;
- i) “very brief excerpt”: any press publication portion that does not exempt the general public from the need to read the whole press article;
- j) “collective management organisation”: organisation set forth under Article 2(1) of Legislative Decree no. 35 of 15 March 2017;
- k) “independent management organisation”: organisation set forth under Article 2(2) of Legislative Decree no. 35 of 15 March 2017;
- l) “contractor”: natural person or legal entity or unrecognised association that, for any reason, signs a contract, including to the benefit of a number of end users, for the provision of a media monitoring or press review service;
- m) “end user”: any natural person that enjoys an information society service, including a media monitoring or press review service signed by a contractor;
- n) “Directorate” and “Director”: the Digital Services Directorate and the Director of said Directorate.
- o) “Collegiate Body”: the Authority’s Council.

Article 2

Purpose and scope of the request

1. This regulation lays down the criteria and procedures to be adopted by the Authority for the purpose of determining the fair compensation due by information society service providers to publishers for the online use of their press publications

intended for the Italian general public and it also regulates their information and communication obligations and associated supervisory functions. For the purpose of qualifying the publication as intended for the Italian public, account is taken, by way of example, of the language used or revenues produced in Italy.

2. The criteria and procedures referred to under paragraph 1 are designed to guarantee pluralism and information accuracy as well as freedom of economic initiative and the principle of free competition, respect for the rights and freedoms of communication, expression of thought, reporting of current affairs, commentary, criticism and discussion, copyright and related rights, as well as the exceptions and limitations referred to in the Copyright Law (LDA).

3. This regulation does not apply in the case of private or non-commercial use of press publications by individual users, nor in the case of hyperlinks or use of single words or very brief excerpts from press publications.

4. The rights set forth under Article 43-bis of the Copyright Law (LDA) shall lapse from the date established under paragraph 14 of the same Article namely 1st January of the year following the date of publication of the press article.

5. The Authority shall supervise compliance with the requirements set out in this Regulation.

Article 3 ***General principles***

1. Pursuant to Article 43-bis of the Copyright Law (LDA), publishers of publications of a journalistic nature shall receive fair compensation when they grant the right to reproduce and communicate their press publications to service providers, including media monitoring and press review enterprises.

2. Publishers shall pay fair compensation to the authors of press articles in accordance with the provision of paragraph 13 of Article 43-bis of the Copyright Law (LDA).

3. The Authority shall promote the maximum diffusion of the legal offer of digital works, encouraging the development of innovative and competitive commercial offers and promote awareness of the services that allow the legal use of works protected by Copyright Law (LDA), as well as access to the services themselves.

4. With full respect for the negotiating autonomy of the parties, the Authority shall promote forms of self-regulation, also to encourage cooperation between the parties involved for the purpose of determining fair compensation.

Chapter II

Online use of press publications by information society service providers other than media monitoring and press review enterprises

Article 4

Criteria for determining fair compensation

1. The fair compensation due to publishers by information society service providers, other than media monitoring and press review enterprises, for the online use of press publications is calculated on the basis of the provider's advertising revenues deriving from the online use of the publisher's press publications, net of the publisher's revenues attributable to the redirected traffic generated on its website by the press publications used online by the provider.
2. The method for determining the calculation basis referred to under paragraph 1 takes into account the way the provider's services function and their related business model.
3. A rate of up to 70% is applied to the calculation basis referred to under paragraph 1, determined on the basis of the following criteria, considered cumulatively and with decreasing importance:
 - a) number of online consultations of the publisher's press publications on the provider's services, expressed in terms of views and user interactions and measured in accordance with criteria of methodological correctness, transparency and verifiability;
 - b) importance of the publisher in the market, expressed in terms of online audience and surveyed on a periodic basis by organizations that are highly representative of the entire sector of reference also in light of multimedia convergence processes, or by accredited third-party sources, whose measurement methodologies are correct, transparent and verifiable and whose organization complies with principles of impartiality, autonomy and independence;

- c) number of journalists, employed in accordance with national collective agreements of the trade, employed by the publisher for the creation of press publications disclosed online;
- d) proven costs incurred by the publisher for technological and infrastructural investments intended for the creation of online press publications;
- e) proven costs incurred by the provider for technological and infrastructural investments dedicated exclusively to the reproduction and communication of press publications disclosed online;
- f) compliance, by the publisher and by the service provider, each for their part, with codes of conduct, including the professional code adopted by the National Council of the Order of Italian Journalists, Code of Ethics and international information quality and fact-checking standards;
- g) years of activity of the publisher, also in relation to the historical significance of the publisher's newspaper at national and local level.

4. Without prejudice to the freedom of negotiation of the parties, the calculation basis referred to under paragraph 1, as well as the rate and criteria referred to under paragraph 3, contribute to determining fair compensation by the Authority in accordance with the procedure referred to in Chapter IV.

Article 5

Communication and information obligations

1. Providers other than media monitoring and press review enterprises shall make available, upon request by an interested party, also through collective management organisations or independent management organisations, if they are representatives, or by the Authority, the data required in order to apply the criteria referred to under Article 4 for determining the amount of fair compensation, in compliance with the legislation referred to in Legislative Decree no. 196/2003, as amended following Regulation (EU) 2016/679.

2. Fulfilment of the obligation referred to under paragraph 1 does not exempt publishers from respecting the confidentiality of commercial, industrial and financial information of which they have become aware, in compliance with the rules on competition.

3. The Authority shall monitor compliance with the obligations set out in this Article.

4. The Authority may at any time acquire any element necessary for the determination of fair compensation, including the main operating parameters of the services provided by the information society, through requests for information and documents and through inspections.

5. In the event of failure to communicate the information referred to under paragraphs 1 and 4 within thirty days after the request, the Authority, without prejudice to the possibility of acquiring it through an inspection and in accordance with the procedure referred to in the Sanctions Regulation, shall impose an administrative fine on the defaulting party of up to one per cent of the turnover produced on the national market in the last financial year which ended prior to the notification of the dispute. The benefit of reduced payment provided for by Article 16 of Law no. 689 of 24 November 1981, shall not apply.

Chapter III

Use of press publications by media monitoring and press review enterprises

Article 6

Criteria for determining fair compensation

1. Fair compensation due to publishers by media monitoring and press review enterprises for the online use of publications of a journalistic nature is calculated on the basis of the turnover of the media monitoring and press review company deriving from any activities related to media monitoring and press reviews activities, also taking into account the following criteria, considered cumulatively and in a decreasing order of importance:

- a) number of articles reproduced in the press review, also through the collation of articles or in the media monitoring service, in the year of reference;
- b) actual number of end users featured in the written contract;
- c) benefits deriving from the prominence of the publisher in the market of reference assessed in relation to the interests of the contractor;
- d) number of journalists employed by the publisher under the national collective agreements of the trade;
- e) years of activity of the publisher, also in relation to the historical importance of the newspaper at national and local level.

2. Without prejudice to the parties' negotiating freedom, for the purpose of determining fair compensation the criteria set forth under paragraph 1 contribute to the Authority determining fair compensation, in accordance with the procedure set forth under Chapter IV.

Article 7

Communication and information obligations

1. Media monitoring and press review enterprises shall make available, upon request of an interested party, also through collective-management organisations or independent management organisations, if they are representatives, or on request by the Authority, all the data required in order to apply the criteria set out under Article 6 for determining the amount of fair compensation.

2. Fulfilment of the obligation set out under paragraph 1 does not exempt publishers from respecting the confidentiality of the commercial, industrial and financial information which has come to their knowledge.

3. The Authority shall monitor compliance with the obligations referred to in this Article.

4. The Authority may at any time acquire any element deemed necessary for determining fair compensation, through requests for information and documents and through inspections.

5. In the event of failure to communicate the information indicated under paragraphs 1 and 4 within thirty days after the request, the Authority, without prejudice to the possibility of acquiring it through an inspection and in accordance with the procedure referred to in the Sanctions Regulation, shall impose an administrative fine on the defaulting party of up to one per cent of the turnover produced on the national market in the last financial year ended prior to the notification of the dispute. The benefit of reduced payment provided for by Article 16 of Law no. 689 of 24 November 1981, shall not apply.

Chapter IV

Procedure for requesting the Authority's intervention so as to determine fair compensation

Article 8

Form of action

1. Without prejudice to the right to appeal to the ordinary judicial authority referred to under Article 43-bis (11), of the Copyright Law (LDA), publishers and information society service providers, including media monitoring and press review enterprises, may apply to the Authority for determining fair compensation in accordance with the procedure referred to in this Chapter.
2. Information society service providers shall not limit the visibility of publisher content in search results during the negotiation.

Article 9

Initiating the procedure

1. If an agreement on the amount of the payment is not reached within thirty days after the request to start negotiations sent to the other party by certified e-mail or by any other means that guarantees proof of receipt by the addressees, publishers and information society service providers, including media monitoring and press review enterprises, may submit, within the following sixty days, under penalty of inadmissibility, a request to the Authority for the purpose of determining fair compensation.
2. The request to the Authority indicated under paragraph 1 shall be made by using and completing in all its parts, under penalty of inadmissibility, the digital form that is available on the Authority's website, attaching all requested documentation and the requesting party's economic proposal for fair compensation indicating also the party to whom the request is addressed. A single request concerning multiple parties shall not be valid.
3. The request, under penalty of inadmissibility, shall be signed by the requesting party or by a person holding a special power of attorney, conferred through a public deed, or an authenticated private deed, attached to the request.
4. The procedure brought before the Authority cannot be initiated if a proceeding before the judicial authority is pending involving the same parties and concerning a dispute for the same rights. If during the procedure the requesting party brings the same case before the judicial authority, it shall promptly inform the Directorate. In this case, the request shall be dismissed by the Director.
5. The request is dismissed (not processed) if:
 - a) it is inadmissible for non-compliance with the provisions set out under paragraph 2 or for lack of essential information;
 - b) it cannot be processed pursuant to paragraph 4;
 - c) it is inadmissible since its contents do not come under the scope of the request of this Regulation;

- d) it is withdrawn before the collegiate body, referred to under Article 12, issues its decisions.
6. The Directorate shall inform the requesting party that its request has been rejected in pursuance of paragraph 5, *letters a), b) and c)*.
7. The requesting party may file an objection with the Collegiate Body within ten working days after notification of the rejection.
8. With reference to the requests that are not rejected, the Directorate shall initiate the procedure in accordance with the provision of Article 10.

Article 10

Transmission of the request to the other party

1. The requesting party, where possible, shall inform the other party that it has submitted a request to the Authority. Where the Directorate does not proceed in pursuance of Article 9 (5), it shall, within five working days after receiving the request, notify the parties that the procedure has been initiated, also indicating the officer in charge of the case.
2. The summoned party, within ten working days after receiving the notification referred to under paragraph 1, shall provide the Authority and the requesting party with the information and data necessary for determining the fair compensation and shall submit its own economic proposal for fair compensation.

Article 11

Summoning the parties

1. The officer in charge of the procedure, within five working days after receiving notification from the defendant party, shall inform the parties of the date of the meeting which should take place, preferably digitally, no later than ten days after the convocation.
2. Except for the case in which the parties agree on fair compensation during the meeting, each of them can submit, within five days after the meeting, indications or supplementary proposals which shall be addressed to the officer in charge of the procedure and to the other party.

3. If the parties reach an agreement during the meeting, a report shall be drawn up and signed by the parties and shall become binding pursuant to Article 1321 of the Civil Code.
4. The signing of the report referred to under paragraph 3 by both parties shall have the value of withdrawing the request referred to under Article 9 (1) of this Regulation and the provision of Article 9 (5) shall come into effect.
5. The terms referred to under this Article shall be suspended up to a maximum of twenty days in the event that investigations are to be carried out.
6. Except in the cases of withdrawal of the request and of an agreement between the parties, the Directorate shall transmit the documents to the collegiate body by no later than fifteen days before the expiry of the term referred to under Article 12 (1).

Article 12

Determining compensation

1. Within sixty working days after receiving the request referred to under Article 9, the collegiate body with its own resolution shall decide, on the basis of the criteria referred to under Article 4 or under Article 6, which of the economic proposals formulated therein complies with the aforementioned criteria.
2. If the collegiate body does not deem the proposals formulated to be compliant with the criteria referred to under Article 4 or Article 6, it shall decide on the amount of the fair compensation by issuing its own measure.
3. If one of the parties does not participate in the meeting or, in any case, does not formulate a proposal for fair compensation, the collegiate body shall issue a resolution on the proposal formulated by the other party or on the amount of the fair compensation.
4. The collegiate body shall reserve the right, after the first year of application of this Regulation, to delegate the determination of fair compensation to the Directorate where the procedure concerns petty amounts.

Chapter V

Final provisions

Article 13

Communications

1. The communications referred to in this Regulation are made exclusively by certified email or by any other means that guarantees proof of receipt by the addressees.
2. The parties shall indicate in their first communication the e-mail address at which they intend to receive notifications.

Article 14

Review clause

1. The Authority reserves the right to review this Regulation, having heard the parties involved, in light of the complexity and novelty of the subject matter, taking into account also the experience accrued from its implementation.

Article 15

Entry into force

1. This Regulation shall enter into force on the thirtieth day following its publication on the Authority's website.