ITALY

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Questionnaire

The traditional justifications for copyright and related rights

In your country, which justifications for copyright have been presented in connection with your national legislation, for example in the preamble of the Statute or in its explanatory remarks or similar official documents?

The justification of copyright can be examined from different points of view, among which the legal regime; in general, copyright protection is based also on cultural considerations and has social and economic grounds. This articulation is reflected in the legal sources that grant copyright its status at global level, from Unversal Declaration on Human Rights (art. 19), and the European Convention on Human rights (art. 10) to EU Treaty (art. 17),

Coming to Italy, the Italian Copyright Law (Law 22 April 1941 n. 633, hereinafter the Copyright Law or the Law) does not include a preamble explaining the fundamental (legal or philosophical) grounds on which "authors' rights" lay. The main grounds for copyright protection are found in a few articles of the Italian Constitution, that are expressly referred to in several decisions issues when the Copyright Law was submitted to the scrutiny of the Consittutional Court.

The inspiration for the original text of the Law can be easily found in the "Commentary to the new Copyright Law" published in 1943 by E. Piola Caselli[1], the president of the special committee appointed in 1936 to write the new copyright law, to replace the one in force since 1925. In his introduction to the Commentary, Piola Caselli outlines the history of Copyright from the invention of the press and the related

[1] Eduardo Piola Caselli *Codice del diritto d'autore,* Utet, Turin, 1943.

"privilegi Librari" in the Republic of Venice in XVI century. After the unification of the country under the Savoia dynasty, a few copyright laws were enacted in the Kingdom of Italy before the overall reform of 1941, during the fascist period. Despite that, copyright definition and legal framework do not appear to be affected by political bias where it refers essentially to the Convention of Berne of 1886; the Law is influenced by the civil code enacted in 1941, where copyright is qualified as a right of a special nature in the framework of the legal regime applicable to labour.

Piola Caselli excluded explicitly that legal regime of property (even in the form of intellectual property) could adequately reflect the nature of "author's right", and help identify the peculiarity of its moral and cultural content. In fact, said special nature would be contradicted and damaged by the assimilation to property, even if it could be mitigated by the insertion of copyright in the category of intangible goods (beni immateriali). Piola Caselli objected as well to the classification of copyright as a personality right, qualifying copyright rather as a special category, partaking both in personality and economic rights.

Notwithstanding its fascist genesis, and possibly thanks also to the explicit link with labour rules of the Civil Code, the Law resisted to several submissions to the Constitutional Court and to the Supreme Court after the fall of fascism.

For the Italian Republic, Copyright foundations lay on more than one article of the Constitution. Art. 3 states that the Republic shall support the "full development of the human person", and copyright is a tool to this purpose as explained in decisions 88/361 and 95/368 of the Constitutional Court. In the decision 95/108 the protection of copyright is also considered as linked to the freedom of thought (article 21), freedom of the art and of culture (article 33) and to the development of culture (art. 9) The Court has also clearly stated that the exclusive right of the author does not conflict with the freedom of expression since this latter refers to the expression of one's own thought and not to the thoughts expressed and communicated by others (decision 73/38). It is solid case law that the protection of authors' economic rights is covered by article 41 of the Constitution, stating that the private economic enterprise is free.

These Constitutional rules on freedoms are interpreted as a justification of Copyright and a guarantee that exclusive rights granted by Copyright Law do not to conflict with the principles in the Constitution. However, exclusive rights are possible legal means to ensure copyright protection, but other legal options are and can be available; the final choice of the tools, therefore, can be referred to market economy rules and practices, as enshrined also in international treaties, rather than to constitutional justifications.

Are there any similar justifications for related rights? Are the arguments the same as for copyright in literary and artistic works or are there different or additional justifications?

This is a complex issue. In the past, usually the main justification of authors' right was linked to cultural elements as well as to personality rights, while the justification of related rights was mainly focussed on the incentives to industrial and economic development; this distinction, however, was not absolute, since performers' rights have got also moral protection, on one hand, and, on the other hand, authors' economic rights are at the core of important industrial sectors, such as media and entertainment. In the framework of European harmonization, the enhancement of the protection granted to related rights has blurred the distinction between copyright/author's right (traditionally considered as the cornerstone of the whole

system) and related rights. Even the stress on the link between copyright and the freedom of private enterprise has favored this convergence, so that we can find quite small differences between copyright and related rights today, if compared to the concepts prevailing when the Italian Law was enacted.

Is it possible with any certainty to trace the impact of such justifications in the provisions of the law, or is their influence more on a general (philosophical) level?

See above.

Are there similar, or different or supplementary justifications for copyright and related rights expressed in the legal literature?

Is there any distinction between the historical justification for originally introducing the protection and for maintaining it in modern society?

If we analyse the literature on this subject starting from the Copyright Law in 1941, we seean evolution in the original justification of the protection, that – as mentioned above – was rooted in labour law. The trend to highlight the cultural justification emerged soon, and was essential for the acceptance of copyright at political level thanks to its strong and visible link with the republican Constitution. The economic justification became apparent later, possibly in the '90s, in particular in the framework of globalization and even more in the digital era.

There is also a link between the enhancement of the protection of copyright economic rights and the growth in the international dissemination of intellecual works, in parallel also with the increase of international trade. If we try to determine when this trend became explicit in the legal environment, we can trace it back to the Marrakesh treaty of 1994, when intellectual property, copyright included, was officially regulated by TRIPs, under the control of WTO. We can also see that copyright is mentioned in several bilateral treaties for cultural and economic cooperation signed by Italy and non EU countries.

Is there any recent or ongoing debate about the justification of copyright and related rights in your country? Please explain the main issues and positions, including the main justifications advanced for not having, or significantly weakening, those rights.

Several reasons are exploited to propose restrictions to the scope of Copyright and to envisage the introduction of new exceptions or the enlarging of the existing ones. The main one is linked to an alleged conflict between authors' right and freedom of speech and the circulation of ideas. This is only a partial and often superficial position aiming at weaking copyright. A more consistent criticism comes from librarians' circles and their association. Libraries and Universities in Italy suffer from chronic scarce funds and some librarians see weakening copyright for non profit usages as a remedy or a mitigation for their financial difficulties.

The anti-copyright position of consumers' associations is well known, both at the European and national levels and Italy is no exception.

In reality, there are also powerful vested interests that can profit from lowering the level of copyright protection. We can see evidence of these interests in the persistence of the liability exemptions established in the European e-commerce directive. Even nowadays, after 17 years from the approval of said directive,

these rules are left unchanged and have become "untouchable", eventhough it is absolutely clear that the exempted intermediary providers have developed completely different business models and the reasons justifying their exemptions are not valid or real any more.

Is it a debate which takes place in narrow academic or similar circles, or is it in the general public media?

Nowadays, the debate takes place both in academic circles and in the general public, thanks to the growing influence of the web and the intermingling with other media.

Among the main academic organizations that criticise exclusive rights, we can mention Centro Nexa (Politecnico in Turin, that is closely linked to the Berkman Center for Internet & Society of Harvard University. The same University host the Italian branch of Creative Commons.

It is to note that this debate does not concern only Copyright but various field of Intellectual property are facing in a similar way the impact of the Digital transformation (see JIPLP Editorial by Neil Wilkof: *The passing of the Golden Age of IP: Quo Vadis*?[2])

Do the national justifications or the debate distinguish between the protection at national and at international level?

There is no clear distinction between national and international levels. In a confused and confusing manner, Italian criticisms try to depict the US fair use system as a more adaptable and fairer way to deal with copyright limitations, ignoring (more or less in good faith) the general deep differences existing between Common Law and Civil Law.

The public opinion does not take into consideration the international framework; the main arguments debated at the international level are imported by the Consumers' associations, that are particularly active against private copy remuneration and against strict rules to enforce copyright in the web.

In your personal view, is there a general acceptance of copyright and related rights as a legal institution in your country?

This question requires a nuanced reply.

We can simplify as follows:

In the past, the legal institution of copyright was usually ignored by the public at large and it was accepted as to its justification and scope by commercial and professional users; small premised called to pay music performing royalties mostly took copyright as a tax and treated its payment accordingly. At a highe level, copyright licenses and enforcement used to involve entertainment, media and publishing industries, all directly engaged in the exploitation of intellectual works and protected materials. There was, therefore, a shared comprehension of the rules and their effects; the main differences could concern copyright tariffs and the level of remuneration of authors and rightowners, but the principles stayed unchallenged.

This began to change in the '80s when Italy legalized private commercial broadcasters and copyright was challenged in Court by thousands of private radios and by the main commercial broadcaster Mediaset. It

[2] https://academic.oup.com/jiplp/article/12/1/1/2585056/The-passing-of-the-Golden-Age-of-IP-Quo-Vadis

was a period of turmoil for copyright acceptance, but not as deep and wide as the following introduction of the Internet.

The digital transformation has produced a fundamental shift in the general approach to copyright. Unprecedented possibilities to create and to disseminate digital content are available to the public; peaple are quite reluctant to understand and accept the complexities and technicalities of the copyright system. A usual reasoning to criticize copyright is that where technology does allow personal "creativity" to expand in the form of mash-up, remix and similar derivative creations (for simplicity's sake, we refer to UGC), copyright does impose limits and rules and therefore it is an obstacle to the free expression of said creativity. Less intellectually sophisticated (and possibly more realistic) justifications for willful copyright infringements concern the unavailability of copyright protected products in the Internet (for example, windows for films and other audiovisual content) or the expectation that online content has to be free.

Economic aspects of copyright and related rights

Has there in your country been conducted research on the economic size of the copyright-based industries? If yes, please summarize the results.

Has the research been conducted in accordance with a generally accepted and described methodology in order to make it comparable to similar research abroad?

Has other research been conducted in your country to assess the impact of copyright and related rights protection, such as qualitative research? If yes, please summarize the results and the methodology used.

Has there been any discussion in your country regarding the significance of such research outcome? If yes, please summarize the main issues and positions.

Has there been any empirical research in your country showing who benefits economically from copyright and related rights protection? If yes, please summarize the results and the methodology used.

Has there been any debate on who benefits from copyright and related rights? If yes, please summarize the main issues and positions? Has the debate taken place in narrow academic or similar circles, or is it in the general public media?

As to the economic dimension of copyright, we can quote two different assessments, the first one determining the economic impact and value of creative industries is commissioned by the interested sectors and sponsored by the Ministry of Culture; the second one is periodically realized by the Communications Authority and aims at a comprehensive quantitative evaluation of the media market in Italy.

i) Italia Creativa

Recognizing that the value of copyright and creativity in Italy is not sufficiently acknowledged, a study was commissioned to E & Y to determine the economic weight of the creative industries in Italian economy, published in 2016. The second edition of the study has been published in February 2017 and is available on

line[3]. The foremost associations and industry representatives were involved in the 2014 research and in its update.

The most recent Study covers the following ten creative sectors: advertisement; architecture; audiovisual production & distribution (broadcasting included); books; music; newspapers & magazines; performing arts; radio; videogames; visual and plastic arts.

The study aims to portray this Industrial sector from a comprehensive perspective, with the intent to quantify its current value, both in terms of business volume and employment[4]. For this purpose, the study offers a wide insight into players and supply chains of each analysed sector.

A to its methodology, the E & Y Study refers to Unesco definitions and includes in its scope all the industries producing and distributing cultural goods or services, i.e. industries related to or based on "those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activities may be an end in themselves, or they may contribute to the production of cultural goods and services."[5]

The analytical approach of the Study subdivides the relevant market in distinct sectors, in such a way that each productive chain peculiarities can be taken into account.

A bottom-up methodology applies to all concerned sectors, using factual data whenever available, but also recurring to statically elaborated estimates in cases where direct data are not available. The most important indexes highlighted in the Study are two:

- the economic value, calculated at the level of end consumes as indicator of the monetization of creative works

[3] http://www.italiacreativa.eu/settore/scarica-lo-studio/

[4] According to the Study, the Creative Industries' key figures in 2015 are:
"**The Creative Industry is worth almost 48 billion euros…**
In 2015, the Italian Cultural and Creative Industry reached a total economic value of 47.9 billion euros. Direct revenues represent 86% of this value, coming from activities such as design, production and distribution of cultural and creative works and services. The rest results from indirect revenues, related to collateral or subsidiary activities.
… and employs more than one million people
The creative sector employed in 2015 more than one million people, the 86% of whom in direct activities. With around 880,000 jobs, direct workers of the Italian Cultural and Creative Industry account for 4% of the entire Italian workforce.
Revenues in the Italian Cultural and Creative Industry grow more than national GDP
The growth rate experienced by revenues in the Cultural and Creative Industry in 2015 was higher than in 2014; most notably, it was higher than national GDP growth in the same period. There was in fact a 2.4% increase in direct revenues (or 951 million euros), compared to a 1.5% increase in Italian GDP.
Direct employment increased twofold compared to Italian average
In 2015, direct workers of the Cultural and Creative Industry increased by 1.7% (or 15,000 units) compared to the previous year, a growth rate higher than that of overall employment in Italy (0.8%)."

[5] Art. 4, Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005, Unesco, 2005; Italy ratified the Convention on Fb. 19, 2007.

- employment levels of the sectors

The results so obtained include all the stages of the production chain of each sector. The complexities and the fragmentation of the market covered by copyright sectors have required the aggregation of data coming from heterogeneous sources, supplied in several cases by trade associations or based on the press and specialized publications. The calculation of the indirect economic impact is subject to interpretation and adjustments, also distinctly per sector.

The full description of the methodology is found at page 46 of the first edition of the Study (www.italiacreativa.eu/pdf/ItaliaCreativa.pdf).

The "Integrated System of Communications" (SIC)

An economic evaluation of copyright related sectors is made for very specific purposes by the Communications Authority. (AGCom) Since the legal grounds for such assessment is media specific, these data must be considered very carefully. However, they can give some interesting indications of the overall size and economic weight as well as of the trends of the media sector in its various articulations, as the AGCom assessment is updated every year since 2004-2005.

AGCom proceeds yearly to the quantitative economic assessment of the "integrated system of communications" as defined in the consolidated text of audiovisual media and radio services (art. 43 Law 177/2005, as amended by Legislative Decree n. 44/2010). This assessment aims at safeguarding the media pluralism, by enforcing precise limits to the ownership or control of media, as indicated in the mentioned law. These provisions forbid the creation of dominant positions in single relevant markets covered by the integrated system; moreover, in general, no entity can control in any direct or indirect form media assets over a market share of 20% of the economic value of the system itself.

The integrated system is assessed summing up the values of all the distinct markets selected on the basis of antitrust rules according to substitutability criteria. The assessment covers the following relevant markets: radio and TV broadcasts (free and pay); news agencies, news publishing (paper and web); web advertising & sponsoring, including search engines and social networks (since 2012)[6].

The differences in scope, purposes and methodology between the E & Y Study and the SIC assessment by AGCom make their respective results non-comparable.

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economic sector	Revenues (Mio €)		market share %	
	2014	2015	2014	2015
Audiovisual media services	8435	8449	49,2	49,5
Publishing & Press	4682	4489	27,3	26,3
Online advertising	1624	1660	9,5	9,7
Cinema	811	872	4,7	5,1
Street signage (excl.)	364	380	2,1	2,2
Communication (excl.)	422	387	2,5	2,3
Sponsoring	799	839	4,7	4,9
Total revenues	**17137**	**17076**	**100**	**100**
• **Net total (excl. Copyright non-related rev.)**	• **16351**	• **16309**	• **x**	• **x**

When policy issues regarding copyright and related rights are discussed in your country, whether in academic or similar narrow circles or in broader political contexts or in the general public media, do the results of empirical research play a role as part of the argumentation? Do they have a significant impact on the decisions/compromises made?

In general, empirical research does not play a significant role in political decisions concerning copyright in Italy, although – as mentioned above – we see the approach evolving toward a more economy-focussed attitude

Public opinion is not well informed and media usually provide only very generic information (if any) on the economic impact of creative industries on the domestic product, employment, etc.; unfortunately creative industries are seldom taken into consideration as economic engines for innovation and creativity, but in this case the stress is on technology and software, rather than on "traditional" copyright. Political contexts are sensible to public opinion and therefore their awareness of the economic weight of copyright industries is not on the forefront of political decisions, eventhough they are discussed in seminars and public consultations or in researches about specific sectors.

As to academic circles, the dialogue between legal specialists and economists is limited; in the legal field, the economic analysis is mainly focused on antitrust and competition matters, which makes copyright a sort of "natural" adversary. In addition, due to the European developments and obligations, recent discussions were actually addressed mainly to collective management of rights, rather than to substantial rules, which creates a sort of negative overlapping between the existence and regime of copyright, on the one hand, and its exercise and organizational structure, on the other.

Individual and collective licensing as a means of improving the functioning and acceptance of copyright and related rights

Is there a wide-spread culture of collective management of copyright and related rights in your country, or is it limited to the 'core' areas of musical performing rights and reprography rights? Please describe the areas where collective management is used.

In Italy, there is a wide-spread culture of collective management of copyright, that covers areas much more articulated than music and reprography. The experience in related rights field is more recent and more controversial.

Historically, the Italian Society of Authors and Publishers (SIAE- www.siae.it) has been playing a central role, covering the management of a wide range of rights and different types of works. Collective right management originated to administer theatrical rights in operatic works in 1882; the organization was formed only by authors and based on solidarity principles, while music publishers joined some years later. The model was adopted subsequently for the management of music performing rights and, in time, the Society was organized in five "sections", administering distinct types of works. In addition to the original "Sezione Lirica", devoted to operatic works, there was the Music Section, that is the most developed in the current SIAE structure; a Section reserved to dramas, operettas and similar works "Sezione DOR"; a Section regrouping movie authors and producers, which has had no administrative tasks until the introduction in Italy of the levy compensating private copy of videograms in 1992. The smallest Section, under the name of

"Sezione OLAF" (Opere Letterarie – Arti Figurative), is destined to manage a limited bundle of rights for Literary works and works of figurative and plastic arts.

This articulated structure, unified in a single organization under a President and one Board of Directors, was confirmed when the Society was nationalized in 1941, becoming EIDA (Ente Italiano Diritto d'Autore). When the Copyright Law was enacted, it regulated in its articles 180 and 181 the collective right management intermediation exclusively entrusted on SIAE.

After World War II, EIDA took back its previous denomination and was institutionalized as a "public enterprise" ("ente pubblico", a public body in charge of an economic function, operating under civil law), which SIAE is still nowadays. The definition of the legal constitution of SIAE as public enterprise based on voluntary membership is explicitly asserted in Law 2/2009, following several decisions of the Supreme Court and Constitutional Court stating the same.

SIAE has no *ex-lege* right owners' representation, but receives mandates of administration from its members. The content and terms of such mandates can differ according to the type of works involved[7]. Moreover, SIAE members are allowed to withdraw certain rights or territories from its administration, according to its Association Rules.

When considering the central role of SIAE in the copyrigt arena, it should be noted that, in addition to the rights conferred by its members, SIAE is mandated by Law to collect the amounts due to all categories of beneficiaries, whether they are SIAE members or not:

a) the equitable remuneration for private copy of videograms and phonograms was introduced in 1992 and reformed in 2003. SIAE collects the relevant amounts, that are then allocated 50% to authors and their

[7] SIAE is structured in five distinct sectors, called Sections, that are in charge of documentation and distribution of works, managed basing on direct mandates by its members or on representation agreements with foreign CMOs.

a. *Music*
This Section administers performing, public communication and reproduction rights for composers and lyricist of musical works, including parts of operas and simphonies and publishers.

b. *Operatic works and ballet*
This Section administers performing, public communication and reproduction rights for composers, authors of "grand right" works, and coreographers, as well as publishers.

c. *Cinema*
This Section administers the equitable remuneration that the Copyright Law (art. 46-bis) grants to the author and/or adaptor-translator of cinematographic and similar works, such as works made for television, video distribution or on line publication. Minimum requirement for membership is the publication of one audiovisual work, (by means of public projection or broadcasting or reproduction on carriers, etc.).

d. *Theatre and TV works (DOR)*
This Section administers the performing, reproduction and public communication rights in theatrical works, including works with original music scores, such as operettas and musical comedies, and works made for radio/TV exploitation. Even in this case, the publication of at least one work is a requirement for membership.

e. *Literary and Visual Arts (OLAF)*
This Section administers:
1) rights relating to public performance, broadcast and public communication of literary works as well as their partial reproduction (except in graphic form).
2) rights relating to the reproduction of visual art works, the public communication of the works or their reproductions through broadcasting, on the Internet, etc.. To apply for membership, the author must sell, publish in books, catalogues, magazines or communicate to the public at least one work.

rightowners (to be distributed directly by SIAE) and 50% to record producers through their representative collective management organizations. Record producers' organizations are subject to the obligation to pay half of this amount to performers or their organizations.

Video levy is collected by SIAE and allocated to authors (through SIAE itself), to audiovisual producers throught their representative organizations and to performers through Nuovo Imaie or the organizations created after the liberalization of the related rights management in 2012.

b) Since 2000, SIAE is in charge of the collection of reprographic fees for printed works, on behalf of all rightowners (not only its writer- and book publisher- members).

c) Since the transposition of the satellite/cable directive, SIAE is in charge of the mandatory collective management of cable retransmission fees.

d) Since the implementation of the resale right directive, SIAE is in charge of the mandatory collective management of the remuneration for the resale right of visual and plastic art works. This task too is carried out in the interest of author members and non-members as well.

Because of its multiple tasks in the field of copyright administration, SIAE is possibly one of the most comprehensive organizations of this kind.

Are there legislative provisions in your national law aiming at facilitating the management of copyright and related rights? If yes, please summarize.

Cooperation between SIAE and the Finance Ministry

The central role of SIAE in right management is due not only to its being a multipurpose society as described above, but also because since 1921 is has cooperated with the Italian Finance Ministry for the collection of the "Entertainment Tax", and VAT in public entertainment premises. This task is now limited to administrative controls on behalf of the Finance Ministry; it has been and is quite important in ensuring a good level of copyright compliance for all kinds of public performances.

Since it dates back to the first half of 20th century, this longstanding cooperation between SIAE and the Italian tax administration has legitimized SIAE in its infancy as a committed and reliable entity, eliminating any doubt about its representativeness and authority. Subsequently, the cooperation has been maintained because there is a positive synergy in the territorial dissemination of specialized agents, in charge of the controls on behalf of the tax administration and of royalty collection on behalf of SIAE.

This positive effect is partially counterbalanced by the impression that copyright may be a tax; since the end of last century, SIAE is engaged in initiatives to clarify and communicate that copyright fees are not taxes but the authors' remuneration. More recently, in its communication campaigns SIAE has been stressing the economic importance of the main copyright based industries (see above information on the Study "Italia Creativa").

Consolidated Text of Public Security

Another provision that helps the enforcement of performing rights is contained in art. 68 of the Consolidated Text of Public Security (TULPS), stating that the entertainment organizer must present a declaration with the information on the spectacle, to the Police or to SIAE territorial office; for shows below 200 participants the declaration can be presented to the competent office of the municipality where the show takes place. In such a declaration, the organizer is required to confirm his compliance with copyright obligations. SIAE is legitimized to control such compliance also when the declaration is delivered directly to the municipal office.

SIAE Countesign on video and audio carriers

In order to counter the wide-spread piracy of sound and video carriers, SIAE manages a form of control on these products commercialized in Italy through a specific SIAE stamp, stuck on the carrier packaging. The stamp is a tool for determining the legality of the phonographic products. Detailed provisions on the function and destination of SIAE stamp are contained in Articles 181-bis and 181-ter of the Law.

After its initial implementation, the stamp became compulsory by Law in 1987, for all audio and video carriers. Law 248/2000 sanctioned as a crime the falsification or lack of the SIAE stamp and enlarged the number of matters subject to the stamping obligation. The distribution, importation, possession for sale,18 rental, public performance, and broadcast of carriers on which the mandatory SIAE stamp has not been affixed or has been altered or counterfeited is punished under Article 171-ter, par. 1, letter d).

The mandatory requirement to affix a “distinctive sign” to any medium containing protected works enables legitimate products to be easily distinguished from counterfeit ones. The stamp does not represent a requirement for the existence or the grant of copyright or of related rights but can be qualified as one of the “reasonable procedures and formalities” that Article 61 of TRIPS allows.

AGCOM Regulation on copyright on the electronic communication networks

On December 12, 2013, the Independent Authority for Communications (AGCOM) issued a Regulation on copyright on the electronic communication networks, exercising its administrative copyright enforcement powers, through the introduction of a specific notice and takedown procedure (NTD). This procedure is operated by AGCOM on request of rightholders whose works are infringed via online services or broadcasting. The Authority's power to issue copyright regulations and enforce copyright over the Internet would be granted by legislative decree n. 70/2003 by which Italy implemented the e-commerce Directive. The Regulation does not apply to copyright infringements carried out via P2P networks, and no order or sanction concerns end-users. The main targets of the Regulation are mere conduit and hosting providers, who may have to comply with AGCOM’s orders, if the infringers themselves do not comply directly.

The same Regulation institutes a Committee in charge to promote and realize initiatives for Copyright awareness. The Committee is chaired by the Secretary General of the Authority, formed by the representatives of stakeholders and of all public organisms involved. It has wide-ranging tasks involving the simpli□cation of the distribution chain of digital works; the adoption of codes of conduct by the information society service providers; the identification of measures to be developed in collaboration with paid service providers, based on an analysis of the economic transactions and of the business models associated with the o□er of copyright-infringing content. The Committee monitors also the enforcement of the Regulation

and may present proposals for its adaptation in accordance with technological innovation and market evolution.

Which models for limitations and exceptions have been implemented in your national law? Such as free use, statutory licensing, compulsory licensing, obligatory collective management, extended collective management, other models? Please provide a general overview.

The whole Chapter V, Part I of the Copyright Law was revised by Decree 68/2003, implementating EU directive 29/2001. The change in the Title shows the change in the approach to this sensitive issue, from the previous "Free Utilizations" to "Exceptions and Limitations". Exceptions and limitations of authors' rights apply also to all categories of related rights.

The three-step test is incorporated into the Law almost literally in several provisions concerning exceptions (Articles 64-quater, 64-sexies, 70, 71-nonies and 71-decies).
The Italian Copyright Law follows quite precisely the EU list of exceptions, therefore both proper exceptions (without any compensation) and limitations (with equitable compensation) are applicable depending to the type of utilizations.

The amended Chapter V has been subdivided in three Sections: I - Reprography and other exceptions and limitations; II - Private copying for personal use; III - Common Provisions.

In principle, without prejudice for moral rights, exceptions (**free utilizations)** are granted to:

1) public security as well as parliamentary, judicial or administrative proceedings.
2) Specific cases of broadcasting right, exclusively in favour of the public service broadcaster (ephemeral recordings made for subsequent broadcasting, live trasmissions from theatres, under certain conditions, special broadcasts aiming at the promotion of the Italian language and culture in foreign countries).
3) Preservation of the recordings of archived broadcast programs, on the ground of their exceptional documentary character both for the public service and the commercial broadcasters.
4) Re-use of news articles published by the press, broadcast or made available to the public.
5) Reproduction or free communication of works used in reports on current events, and speeches on matters of political or administrative interest, and extracts of lectures and conferences delivered in public (their collection and publication, however, remain reserved to the authors).
6) Use for study, teaching and research, through abridgment, quotation or reproduction of fragments or parts of a work and their communication to the public for the purpose of criticism or discussion, made without any commercial intent.
7) Reproduction and/or communication to the public reserved to handicapped persons in circumstances connected to their handicap.
8) Acts of communicating or making available works for research or private study through dedicated terminals inside public libraries, educational establishments, museums or archives.
9) "Publication on the Internet" of images and music provided that they are in low resolution and "degraded" (sic), without any payment and any gainful intent (Paragraph 1-bis of Article 70, inserted by Law 2/2008).

10) Reproduction by public libraries of a single copy of the phonograms and videograms available in their premises for their internal services.

Limitations (use without previous authorization, against payment) concern the following.

1) Public Lending

Libraries, archives and similar institutions are the beneficiary of the limitation for public lending right with reference to loans from public libraries and public phono-video libraries for purposes of cultural promotion and personal study (except sheet music). Loans of phonograms and videograms (phono-records, films, audiovisual works, etc.) are allowed, provided that at least eighteen months have elapsed since their distribution. This limitation is compensated through the so-called Fund for the Public Lending Right.

2) Reprography

A form of a **compulsory license assisted by extended collective management** exists with respect "the reproduction for personal use of intellectual works made by means of photocopying, Xerox-copying or like means". This applies to all kinds of printed works, except sheet music. The copy is exempted within the limit of 15% of each book or issue of a magazine, excluding advertising pages. The limit of 15% is not applicable to out-of-print books and to rare publications that cannot be retrieved through commercial channels. The distribution of such copies made for personal use and, in general, any use in competition with the exploitation rights of the author is prohibited.

For the copies made in their premises, libraries and similar public institutions pay a lump sum in favour of rightholders. This remuneration is paid on a yearly basis directly by the public institutions, out of the revenues of the photocopying service.

Reprographic copies made in copy centres, even for free, are subject to the payment of remuneration to the rightholders.

3) Private copy of phonograms and videograms

Like in other European countries, the most challenged provisions among copyright limitations are those on private copying for personal use, contained in Articles 71-sexies, 71-septies and 71-octies of the Italian copyright Law.

The remuneration is levied both on blank carriers and on reproduction devices. As to audio and video recording media (analogue carriers, digital carriers, fixed or removable memories), the level of the remuneration must take into account the recording capacity of each medium. The amounts charged and the devices subject to the payment are defined in a Ministerial Decree; the most recent decree was issued 20 June 2014.

With regard to the collection and distribution of the remuneration, the system operates by means of mandatory extended collective administration.

Have the structure of and the choice between such models been subject of discussion, whether in legal, professional or political circles? If yes, please summarize the main issues and positions.

It has been deplored in academic circles that the Government was too shy about inserting additional exempted uses, since not all options from the list of the EU Directive 2001/29 were implemented when the relevant Chapter of the Law was amended in 2003.

A general criticism that is raised refers to the scarce flexibility and complexities of copyright exceptions and limitations, especially when comparisons are made with the apparent simplicity of "fair use".

In the case of private copy provisions, the implementation has been accompanied by harsh discussions, concerning the scope and the amount of the remuneration, with complaints against the Ministerial decrees establishing them, because alleged non-compliance with the directive provisions and/or the criteria indicated in the Copyright Law. One of these complaints concerned the mandatory collection of the remuneration through SIAE. As a consequence, the Italian scheme of mandatory collective management of private copy remuneration was submitted to the scrutiny of the EU Court of Justice by the Council of State in Case C-110/15 Nokia and al. V. MBACT (Ministry of Culture); according to the relevant decision of Sept. 22, 2016, it is not compatible with EU *acquis*, that the exemption from the payment of the remuneration, related to professional devices, is subject to agreements between SIAE and entities liable to pay the compensation, or their trade associations. The solution of conventional agreements was introduced by SIAE even before the decision of EUCJ decision in case C-467/08 PADAWAN SGAE of October 21, 2010. However, is was deemed not fair because SIAE is supposed not to be neutral in its determinations concerning reimbursements, since it has a legal monopoly on the representation of the interests of authors, that are among the beneficiary of the remuneration itself.

Have there been attempts in your country to introduce new business models with a view to overcoming actual or perceived problems with the system of copyright and related rights protection? If yes, please describe.

Have there been attempts in your country to introduce new enforcement models, such as codes of conduct or voluntary cooperation agreements between rights owners and intermediaries or users? If yes, please describe.

Notwithstanding the theoretical support for the finalization of voluntary codes of conduct of the parties potentially involved, there has been no real implementation of soft law tools of this type in Italy.

Is it a general perception in your country that copyright and related rights are abused by or prevent access to culture and information due to the interaction of heirs (as opposed to the authors and performers themselves), trolls (rights owners who do not care for the dissemination of the works and performances, but only for their own economic benefit), orphan works (works and performances the rights owners of which cannot be identified or traced) or rights owners who fail to cooperate with users willing to take a license? If yes, please describe.

Are there any statutory provisions aiming at solving such problems in your national legislation? If yes, please describe.

Historically, the main allegations of copyright abuse concern the tariffs applied by the Italian collective management society SIAE, i.e. its dominant position in the market of music performing right and its

obligations aimed to prevent abusive practices. Among the various cases relating to the formation and basis of calculation of the tariffs, I would quote only two decisions that have played an outstanding role in this respect

Judgment of the Constitutional Court 241 of 1990, Fininvest – SIAE.

According to the Court, being entrusted with the exclusive power to act as intermediary for copyright, SIAE is subject to the rules and obligations provided for monopolists and, specifically, it must comply with the principle of non-discrimination. Article 180 of the Copyright Law, recognizing SIAE's monopolistic stand in copyright management, was deemed to be compatible with the Italian Constitution, as far as SIAE is compliant with the monopolist's obligations to negotiate with all prospective licensees in equal conditions (Article 2597 of the Civil Code).

The obligations provided for in the Civil Code were further developed in the antitrust legislation in accordance with European rules with the enactment of Law 287/1990 and the institution of the Italian Independent Authority for Competition (AGCM).

Decision of AGCM in Case Silb – SIAE of 1995[8].

The case opposed the trade association of dancing halls and dicoteques to SIAE, for allegedly excessively hight tariffs of this latter. The differing rebates accorded by SIAE to the members of different trade associations were deemed unjustified and discriminatory and thus the AGCM imposed their correction as a remedy for the abuse of SIAE dominant position.

Generally speaking, there are not many specific complaints for abuse of copyright to such an extent as to arbitrarily prevent the dissemination of the work; the arguments used to show that copyright is an obstacle to culture or to information are very generic, aiming mostly at decreasing the value of copyright or at offering justifications for more or less blatant piracy.

A recent case offers a very interesting perspective as to the exercise of the moral rights. The case opposes the heirs of an Italian composer and the publisher in charge of the right administration, on the one hand, and the surviving co-author, on the other. The Court of Milan explains that the heir's moral right to oppose to any usage of the works is not absolute. Such moral right subsists against any act that can prejudice the professional artistic reputation of the author. Its scope cannot, however, be as arbitrary as to hinder any and all disseminations of the work. The exercise of moral right must be balanced with the general interest in the access to and knowledge of intellectual works.

Although it may still be appealed, the judgment of the Court of Milan is interesting because it defines borders to the extension of moral right; even without expressly defining the heir's exercise of moral rights as abusive, the court has granted the complainant co-author damages for a non-negligible amount.

Dispute resolution mechanisms

[8] Autorità Garante della Concorrenza e del Mercato, July 28, 1995, n. 3195, case SILB v. SIAE, www.agcm.it.

As to provisions to facilitate the **resolution of disputes** on copyright tariffs, Article 4 of Decree Law n. 440 of July 20, 1945, applies; It prescribes that, when no agreement is reached on a tariff for the exploitation of rights administered by SIAE, the tariff is set by an arbitration committee of three members, on the basis of reasonableness ex aequo et bono. The members of the Committee are appointed by SIAE and the trade association of the users involved.

These provisions were applied only once, precisely in 2013, for the determination of the level of the equitable remuneration to be paid by commercial broadcasters to the authors of audiovisual works (art. 46-bis of the Law). The arbitration took place between SIAE and Confindustria. Refusing to comply with the arbitration, satellite broadcaster Sky Italia Srl sued SIAE, alleging, inter alia, that Art. 46-bis is unconstitutional. On January 3, 2014, the Court of Milan rejected Sky's complaint and confirmed that, absent an agreement of the parties on the amount of the remuneration to pay to audiovisual authors, the Regulation articles on the arbitration procedure are in force. The same procedure is mentioned also in other articles of the Copyright Law, namely art. 18-bis on rental right, where there is a (rebuttable) presumption of assignment and a right to remuneration for the author.

As to disputes between rightsowners and beneficiaries of exceptions and limitations, in 2003 the Copyright Law was amended to introduce specific arbitration functions entrusted on the Standing Consultative Committee for Copyright (articles 190-195)

The most recent legal reference to copyright dispute resolution mechanism is contained in the Decree implementing the Directive 26/2014 (to come into forece in April 2017) on collective management organizations. No new competence or new body/tribunal is introduced on the basis of art. 35 of the Directive, and it is explicitly stated that disputes can be deferred to the mediation procedure provided for by art. 2 of legislative decree 28/2010, enabling any person for recourse to mediation as an alternative dispute resolution procedure for civil and commercial matters. Said mediation is, therefore, available for rights covered by the Directive.