

**RESOLUTION NO 189/23/CONS**

**AMENDMENT OF THE REGULATION CONCERNING THE PROTECTION OF  
COPYRIGHT ON ELECTRONIC COMMUNICATION NETWORKS AND  
IMPLEMENTING PROCEDURES IN ACCORDANCE WITH LEGISLATIVE  
DECREE NO 70 OF 9 APRIL 2003, REFERRED TO IN RESOLUTION  
NO. 680/13/CONS**

**THE AUTHORITY**

AT THE Council meeting of 26 July 2023;

HAVING REGARD TO Law No 249 of 31 July 1997 on the '*Establishment of the Communications Regulatory Authority and standards governing telecommunications and broadcasting services*' and in particular Article 1(6)(b)(3) and (4a), and Article 1(6)(c) (2);

HAVING REGARD TO Law No 481 of 14 November 1995 on '*Rules relating to competition and the regulation of public utility services. Establishment of regulatory authorities for public utility services*';

HAVING REGARD TO Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society;

HAVING REGARD TO Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights;

HAVING REGARD TO Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC;

HAVING REGARD TO Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce');

HAVING REGARD TO Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (hereinafter also referred to as the Digital Services Act or 'DSA') and, in particular Articles 4, 5, 6 and 8 thereof;



HAVING REGARD TO Legislative Decree No 207 of 8 November 2021 on the *‘Implementation of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (recast)’*;

HAVING REGARD TO Legislative Decree No 208 of 8 November 2021 on the *‘Implementation of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the consolidated act for the provision of audiovisual media services in view of changing market realities’*;

HAVING REGARD TO Legislative Decree No 177 of 8 November 2021 on the *‘Implementation of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market and amending Directives 96/9/EC and 2001/29/EC’*;

HAVING REGARD TO Law No 633 of 22 April 1941 entitled *‘Protection of copyright and other rights related to its exercise’* (hereinafter referred to as ‘LDA’);

HAVING REGARD TO Legislative Decree No 70 of 9 April 2003 on the *‘Implementation of Directive 2000/31/EC on certain legal aspects of information society services in the internal market, with particular reference to electronic commerce’* (hereinafter also the Decree);

HAVING REGARD TO Law No 167 of 20 November 2017 on *‘Provisions for the fulfilment of obligations arising from Italy’s membership of the European Union - European Law 2017’* (hereinafter, ‘European Law 2017’) and, in particular, Article 2 thereof; entitled *‘Provisions on copyright. Full compliance with Directive 2001/29/EC and Directive 2004/48/EC’*, which sets out that *‘1. For the implementation of the provisions of Article 8 of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001, and Articles 3 and 9 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004, upon application of the rights holders the Communications Regulatory Authority may order, as a precautionary measure, information society service providers, to immediately put an end to infringements of copyright and related rights, if these infringements are identified on the basis of a summary assessment of the facts and there is a threat of an imminent and irreparable detriment to the rights holders. 2. Using its own rules, the Authority regulates the procedures with which the precautionary measure referred to in paragraph 1 is adopted and communicated to the parties involved, as well as the parties entitled to lodge a complaint against this provision, the terms within which to lodge a complaint, and the procedure whereby the Authority’s final decision is adopted. 3. By the Regulation referred to in paragraph 2, the Authority shall identify appropriate measures to prevent the recurrence of infringements already established by the Authority’*;



HAVING REGARD TO Directive 2015/1535/EU of the European Parliament and the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services;

HAVING REGARD TO the European Parliament resolution with recommendations to the Commission on '*Challenges of sports events organisers in the digital environment*' (2020/2073(INL)) of 19 May 2021 (hereinafter also referred to as the 'Resolution');

HAVING REGARD TO the European Commission Recommendation on combating online piracy of sports and other live events (C (2023) 2853 final) of 4 May 2023 (hereinafter also the 'Recommendation');

HAVING REGARD TO Law No 93 of 14 July 2023 laying down '*Provisions for the prevention and enforcement of the unlawful dissemination of content protected by copyright through electronic communications networks*' (hereinafter also the 'anti-piracy law') published in the Official Gazette of the Italian Republic, General Series No 171 of 24 July 2023;

HAVING REGARD TO the jurisprudence of the Court of Justice of the European Union and the European Court of Human Rights and Fundamental Freedoms on the protection of copyright and related rights, as well as on electronic commerce;

HAVING REGARD TO Resolution No 680/13/CONS of 12 December 2013 on the '*Regulation on the protection of copyright on electronic communications networks and implementing procedures pursuant to Legislative Decree No 70 of 9 April 2003*' (hereinafter the '*Copyright Regulation or DDA Regulation*');

HAVING REGARD TO Resolution No 223/12/CONS of 27 April 2012, on the '*Adoption of the new Regulation on the organisation and operation of the Communications Regulatory Authority*', as last amended by Resolution No 434/22/CONS;

HAVING REGARD TO Resolution No 107/19/CONS of 5 April 2019 on '*Regulation on consultation procedures in proceedings falling under the Authority's competence*';

HAVING REGARD TO Resolution No 445/22/CONS of 20 December 2022 on the '*Start of a public consultation on the draft resolution amending the Regulation on the protection of copyright on electronic communications networks and implementing procedures pursuant to Legislative Decree No 70 of 9 April 2003*', referred to in Resolution No 680/13/CONS'.



HAVING REGARD TO the notification made pursuant to Directive (EU) 2015/1535, dated 22 March 2023, to the European Commission through the Central Notification Unit at the Ministry of Enterprises and Made in Italy (2023/0123/I);

HAVING REGARD TO the contributions received in the context of the public consultation by the following stakeholders: AIIP – Italian Internet Provider Association (Ref. No 0054646 of 27 February 2023), CFWA – Coalition for Fixed Wireless Access (Ref. No 0038993 of February 2023), CRTV – Association of Radio and Television Broadcasters (Ref. No 0054049 of 24 February 2023), Dazn Limited (Ref. No 0053529 of 24 February 2023), Discovery Italia (Ref. No 0053441 of 24 February 2023), FAPAV – Federation for the Protection of Audiovisual and Multimedia Content Industries (Ref. No 0053835 of 24 February 2023), Fastweb Spa (Ref. No 0035185 of 8 February 2023) following an extension request (Ref. No 0019494 of 24 January 2023), FPM – Federation against Musical and Multimedia Piracy and DCP (Digital Content Protection) (Ref. No 0037842 of 10 February 2023), Iliad Italia Spa (Ref. No 0043738 of 16 February 2023), LBA – Lega Basket Serie A (Ref. No 0022781 of 27 January 2023), Lega Pro – Lega Italiana Calcio Professionistico (Ref. No 0029619 of 2 February 2023), LNPA – Lega Nazionale Professionisti Serie A (Ref. No 0022343 of 27 January 2023), LNPA – Lega Nazionale Professionisti Serie B (Ref. No. 0018744 of 24 January 2023), RTI – Reti Televisive Italiane Spa (Ref. No 0053663 of 24 February 2023), Paramount (Ref. No. 0054647 of 27 February 2023), Sky Italia Srl (Ref. No 0037769 of 10 February 2023), Telecom Italia S.p.A. (Ref. No 0052460 of 23 February 2023), Vianova Spa (Ref. No 0036192 of 9 February 2023), Vodafone Italia Spa (Ref. No. 0056379 of 28 February 2023) following an extension request (Ref. No 0018765 of 24 January 2023), Wind Tre Spa (Ref. No 0053700 of 24 February 2023), following an extension request (Ref. No 0021330 of 26 January 2023).

HAVING EXAMINED the comments made during the hearings by the following stakeholders who so requested: AIIP – Italian Internet Provider Association, hereinafter also AIIP (Ref. No 0023696 of 30 January 2023), CFWA – Coalition for Fixed Wireless Access, hereinafter also CFWA (Ref. No 0038993 of 13 February 2023), CRTV – Association of Radio and Television Broadcasters, hereinafter also CRTV (Ref. No 0027362 of 1 February 2023), Dazn Limited, hereinafter also Dazn (Ref. No 0023666 of 30 January 2023), FAPAV – Federation for the Protection of Audiovisual and Multimedia Content Industries, hereinafter also FAPAV (Ref. No 0002468 of 5 January 2023), Fastweb Spa, hereinafter also Fastweb, with a simultaneous extension request (Ref. No 0019494 of 24 February 2023), FPM – Federation against Musical and Multimedia Piracy and DCP (Digital Content Protection), hereinafter also FPM (Ref. No 0037842 of 10 February 2023), Iliad Italia Spa, hereinafter also Iliad (Ref. No 0015619 of 20 January 2023), LBA – Lega Basket Serie A, hereinafter also LBA (Ref. No 0022781 of 27 January 2023), Lega Pro – Lega Italiana Calcio Professionistico, hereinafter also Lega Pro (Ref. No 0029619 of 2 February 2023), LNPA – Lega Nazionale Professionisti

Serie A, hereinafter also LNPA (Ref. No 0022343 of 27 January 2023), LNPNB – Lega Nazionale Professionisti Serie B, hereinafter also LNPNB (Ref. No 0018744 of 24 January 2023), RTI – Reti Televisive Italiane Spa, hereinafter also RTI (Ref. No 0016528 of 20 January 2023), Sky Italia Srl, hereinafter also Sky (Ref. No 0018382 of 24 January 2023), Telecom Italia Spa, hereinafter also TIM (Ref. No 0027155 of 1 February 2023), Vianova Spa, hereinafter also Vianova (Ref. No 0018500 of 24 January 2023), Vodafone Italia Spa, hereinafter also Vodafone (Ref. No 0009415 of 13 January 2023), Wind Tre Spa, hereinafter also Wind Tre (Ref. No 0021303 of 26 January 2023)

HAVING ACKNOWLEDGED, as a preliminary step, the amendments made to the European Union and National Reference Regulatory Framework;

HAVING REGARD TO in particular the following with regard to the Reference Regulatory Framework:

- at the European level, the approval of Regulation 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (hereinafter also referred to as the Digital Services Act or ‘DSA’) introduces significant changes in combating the online dissemination of illegal content;

- Article 89 of the DSA, amending the E-Commerce Directive, provides that Articles 12 to 15 of that directive are to be deleted and that references to those articles shall be construed as references to Articles 4, 5, 6 and 8, respectively, of the new Regulation;

- the aforementioned articles 4, 5 and 6, on the basis of the definition of ‘intermediary service’ pursuant to Article 3 of the same DSA Regulation, define the services of ‘mere conduit’, ‘caching’ and ‘hosting’, respectively, without making, as far as is of interest for the purposes of this provision, significant changes to the previous definitions. Moreover, Article 8 confirms the exemption of liability for the same subjects, understood as the absence of general obligations to monitor or establish facts actively;

- it follows that the scope of application of Articles 14, 15 and 16 of the Decree - currently not amended by the national legislature - and the European Union and national case-law established pursuant thereto remain firm in particular for the purposes set out in this provision. Those provisions provide that a judicial or administrative authority having oversight functions may require, even as a matter of urgency, the provider, in the exercise of its activities as defined therein, to prevent or put an end to the infringements committed, by acting immediately to remove illegal information or disable access thereto. Indeed, it remains valid, as provided for in Article 17 of the Decree, that *‘The provider is civilly liable for the content of such services if, requested by the judicial or administrative authority having oversight functions, it has not acted promptly to prevent access to said content, or if, being aware of the illegal or prejudicial nature towards a third party of a service to which it provides access, it has not informed the competent authority*



*concerned*’;

- the Recommendation on the fight against online piracy of sports and other live events confirms the particular attention paid at the European level to copyright protection through appropriate and effective action to combat all forms of online piracy and, specifically, of that relating to live events with respect to which the resulting damage in employment and economic terms is known;

- the Recommendation, recalling the binding provisions deriving from other European regulatory frameworks (Directives 2000/31/EC, 2001/29/EC, 2002/58/EC, Regulation (EU) 2022/2065, Directive (EU) 2019/790 and Directive 2004/48/EC), aims to encourage Member States (and on their behalf, national competent authorities, rightholders and providers of intermediary services) to take effective, appropriate and proportionate measures *‘to combat unauthorised retransmissions of live sports events and other live events in accordance with the principles set out in this Recommendation and in full compliance with Union law, including the Charter of Fundamental Rights of the European Union’*;

- in particular, the Recommendation pursues, inter alia, the objective of minimising the damage caused by the unauthorised retransmission of sports events through timely intervention (during retransmission) by the provider of intermediary services. To this end, rightholders and providers of intermediary services cooperate, *‘developing and using technical solutions aimed at facilitating the processing of notices, such as application programming interfaces’*. To ensure maximum effectiveness for the intervention, the Recommendation provides that orders are *‘dynamic’* in nature;

- at the same time, in order to balance the different interests at stake, it is envisaged that *‘Member States are encouraged to ensure that holders of rights in live transmission of sports events regularly update the information on the internet locations which are no longer used for unauthorised retransmission of sports events, so that the restrictions on these internet locations may be removed’*;

- on the basis of the guidelines set out in the aforementioned Recommendation, the anti-piracy law, which will enter into force on 8 August 2023, strengthens the powers already conferred on Agcom in the field of online copyright protection and combating piracy by introducing provisions that are entirely consistent with the contents of the measure which is the subject of the public consultation initiated by Resolution 455/22/CONS. In particular, Article 2 provides that the Authority shall adopt *‘dynamic orders’* in so far as the measure by which it orders service providers to disable access to illegally disseminated content by blocking the DNS resolution of domain names and blocking the routing of network traffic to IP addresses uniquely intended for illegal activities is also extended *‘to any other future domain name, subdomain name, where technically possible, or IP address, to anyone attributable, including changes in name or simple declination or extension (so-called top level domain), which allows access to the same illegally disseminated content and content of the same nature’*;



- where conditions of ‘criticality and urgency’ apply to providing live content, including sports events, the Authority, by means of a precautionary measure adopted by a shortened procedure without an adversarial procedure at the request of the qualified parties – also identified therein – shall order service providers, including providers of network access services, to disable access to content that is illegally disseminated by blocking domain names and IP addresses. In order to ensure maximum effectiveness, the provision provides that the measure shall be adopted and enforced before the start or, at the latest, in the course of transmission. This is without prejudice to the right to lodge a complaint against this decision;

- the list of domain names and IP addresses through which the illegally disseminated content is made available, which the holder indicates in the application and which are indicated in the precautionary measure, may be updated by the rightholder or his/her successors in title and ‘communicated directly and simultaneously by the Authority to the subjects to whom the measure is addressed, who must promptly remove or disable it, in any case within a maximum period of 30 minutes from the communication’ (emphasis added);

- in particular, pursuant to Article 2(5) of Law No 93, *‘Network access service providers, search engine operators and information society service providers involved in any way in the accessibility of the illegal services website shall implement the Authority’s action without delay and, in any event, within a maximum period of 30 minutes after notification, disabling DNS resolution of domain names and routing of network traffic to the IP addresses indicated in the list referred to in paragraph 4 or otherwise by taking the necessary technological and organisational measures to make the illegally disseminated content unusable by end-users’*;

- the effective implementation of the measures is expected to take place through an automated-operation, single technological platform for all recipients of the disabling measures, which will contribute to the definition of technical and operational requirements within a technical panel set up at Agcom;

IT IS FURTHER NOTED that, according to Article 4 of the Decree, *‘copyright’* and *‘assimilated rights’* are excluded from the application of the specific provisions pursuant to Article 3(1) and (2) concerning the prohibition, in the *‘regulatory scope’*, to *‘limit the free circulation of information society services originating from a provider based in another Member State’*;

Hence, the NEED to supplement the Regulation in order to introduce a procedure aimed at a rapid and effective protection of the legitimate use of audiovisual content of live and assimilated sporting events through the adoption of a precautionary injunction. Functional to the need for speed is the easy assessment, during the preliminary investigation, of the ownership of the rights because, as already noted, also due to the methods of allocation of licenses and the prior knowledge of the platforms/sites through

which the dissemination of content is authorised, it is possible to verify with certainty, *a contrario*, which electronic addresses are unauthorised;

NOTING therefore the following with regard to the procedure for the adoption of precautionary injunctions to combat the illegal dissemination of live and assimilated sporting events:

- the purpose of the procedure is to ensure the cessation of illegal conduct, but also to block and prevent its recurrence. The precautionary proceedings shall be initiated at the request of the rightholders or their assignees who bear the burden of providing any evidence as to the ownership of the rights and the electronic addresses that can disseminate the content lawfully, as well as indicating those which disseminate live or assimilated content unlawfully;

- the Authority, having ascertained the *fumus boni iuris* and the *periculum in mora*, issues the precautionary order. As regards the *fumus*, as noted on the basis of the Euro-Unitary jurisprudence, the infringement must be objectively detectable, by way of example also through: the presence of advertising or promotion activities in violation of the applicant's rights through illegal services; the encouragement, even indirectly, to use digital works disseminated in violation of the applicant's rights through illegal services; the provision to users of information on the technical methods for accessing digital works illegally disseminated through illegal IPTV services; the profit-making aim of the illegal offer of the digital works in question, which can also be deduced from the costly nature of their use; as regards the *periculum in mora*, again by way of example, also having regard to the damage to the value of the work, due to the times and methods of placing on the market typical of the same, as well as the economic value of the infringed rights and the consequent damage to the owner. The order must be executed within the deadline set by the Authority and in any case within 24 hours of notification;

- following the issuance of the precautionary order, rightholders may report to the Authority any additional website other than those previously indicated in the first instance, through which infringements of the same rights as those already considered to exist by the Authority occur. The reporting can be made on the condition that rightholders, also providing documentary evidence regarding the relevance of the illegal conduct, indicate, under their sole responsibility, that the IP addresses identifying the 'Main server' and 'Delivery Server' of the sites in question and the domain names associated therewith, have the character of uniqueness: the technical data communicated to the recipients by the holder must be unequivocally intended to infringe the intellectual property rights of the applicant holder. The Authority, also via the technological platform, shall verify the compliance and completeness of the reports received, which must be promptly received by the service providers in order to ensure blocking within the 30 minutes stipulated by law;



- whereas information society service providers are required to comply with the ‘*duty of care which can reasonably be expected from them and is specified by national law, in order to identify and prevent certain types of illegal activities*’, they shall ensure the execution of the precautionary administrative injunctions adopted by the Authority;

- the execution of the precautionary injunction does not impose on the service provider an obligation to monitor nor a general obligation to actively seek facts or circumstances indicating the presence of illegal activities: it therefore takes place in compliance with the guaranteed regime of exemptions therefrom;

- as provided for by the current Article 9a of the DDA Regulation, the service providers receiving the order, as well as the uploader and the page and website operators are granted the power to lodge a complaint against the precautionary measure within five days of receipt of the same;

- in any case, following subsequent reports, the addressees of the measure disable access to all the other websites through which infringements occur;

CONSIDERING, therefore, in light of the above, that it is consistent with European and national law to provide for a specific precautionary measure aimed at the adoption by the Authority of an order to disable access to audiovisual works concerning live and similar sports events disseminated illegally online, in which the applicants — the ownership of the rights to the aforementioned content being proved, the electronic addresses authorised to broadcast and those that, on the other hand, disseminate content unlawfully being identified, and the existence of the *fumus boni iuris* and of the *periculum in mora* being proved - request at the same time that the same order be executed by the recipients also with respect to the additional electronic addresses subject to subsequent reports. For subsequent reports, disabling must be carried out immediately and in any case no later than thirty minutes from receipt of the communication. In fact, this procedure, in addition to allowing for the issuance of a measure that immediately inhibits infringements already committed through the sites, allows the prevention of subsequent and further unlawful conduct, since the electronic addresses subsequently identified convey content equivalent to those already subject to an injunction, without the provider being burdened by any surveillance burden. The reports following the first request, due to the automated procedure through which they are managed within the stringent time frame for ensuring adequate protection to rightholders, are not communicated to the uploader and the page and website operators, or in any case to the subjects to whom the electronic address can be traced back, which can be traced. However, in order to ensure full compliance with the procedural guarantees in this case, too, the redirection page referred to in Article 8(5) of the Regulation in this case contains the notice of the possibility of lodging a complaint, also via a link that refers to the Authority’s website where the relevant methods are detailed;



CONSIDERING that the full unfolding of the effects of the precautionary procedure in question is linked to the implementation of a platform, as also provided for in Law No 93/2023, that uses technological measures that allow automated management of alerts following the precautionary order so that the service provider can disable access to the electronic addresses covered by the alert in time to ensure effective protection. Furthermore, the Authority, pursuant to Article 2 of the aforementioned Law, shall extend the described procedure, following another public consultation to be launched by next September, to all live or similar audiovisual events in order to ensure the most effective protection of copyright and related economic exploitation rights;

NOTING the end of the standstill period following the notification of a technical regulation made pursuant to Directive (EU) 2015/1535. In particular, following requests from the European Commission for clarifications received through the Central Notification Unit at the Ministry of Enterprises and Made in Italy on 19 April 2023 (Ref. No 0106318), the Authority provided the requested clarifications within the deadline indicated. The Commission made no further comments. It follows that the measure may be definitively approved;

HAVING REGARD TO Article 18 of the Online Copyright Regulation, which contains a reviewability clause whereby the Authority may *‘review the Regulation on the basis of the experience resulting from its implementation, as well as in light of technological innovation and market developments, after hearing the interested parties’*;

WHEREAS:

- with reference to the amendments and/or supplementary proposals made by the participants in the consultation on the substance of the proposals for amendments to the Online Copyright Regulation, the main positions represented are reconstructed below, providing, on a case-by-case basis, an indication of the reasons that led to a solution rather than another as incorporated in the final text of the Regulation:

### **General comments**

#### **Main positions of the participating stakeholders**

Several parties express their appreciation for the Authority’s work and the commitment made by it to copyright protection and agree with the choice to introduce a regulatory amendment providing for the possibility for the Authority, upon a justified request, to order mere conduit operators to put an end to copyright infringements, in a swift and certain time frame, on the assumption that an effective protection against copyright infringements cannot disregard legal instruments of precautionary intervention

characterised as such by speed and immediacy.

Another respondent underscores Agcom's central role in combating copyright infringements and the Regulation, which it defines as a *unicum* at the international level which has achieved enormous results in terms of protecting intellectual property. This party particularly appreciates the introduction of the dynamic order, a measure already tested both in criminal and civil proceedings and which has proved to be extremely effective during the last period and able to respond to the challenges posed by recent technological innovations in the field of protection of intellectual property rights. The party stresses that the proposed changes are a valuable tool for targeting the piracy that is growing exponentially, including in the field of music, such as live concerts broadcast on the web and on social networks, DJ sets broadcast live on different platforms or live events of a different nature involving the use of protected music. The party believes that in the future the new regulation could also be very useful in targeting the unauthorised use of music content in the metaverse. Finally, the party notes that the concept of 'live event' should be understood in broad terms, also including so-called 'time-sensitive' content such as the dissemination of pre-releases or the live streaming of playlists not authorised on the streaming platforms through dedicated bots or in closed or open listening groups.

The party also points out, in general, that the introduction of the proposed amendments creates a strong imbalance between the protection afforded to broadcasters and that guaranteed to other copyright industries. This is because the obligation for Internet Service Providers (hereinafter also ISPs) to apply the block within 30 minutes is linked to the specificity of the phenomenon and, except for special cases such as live-streamed concerts and similar events, it is correct to provide this measure for the sector in question, while other measures, such as IP and DNS blocking and new reporting procedures, both in quantitative terms and in terms of timing, introduce an unacceptable imbalance, offering rightholders of live events intervention tools and procedures that are decidedly advantageous and much more effective.

The same party then points out that all copyright industries have strongly requested, since the approval of the Regulation, the application of the joint IP and DNS block, a measure that would exponentially increase the effectiveness of the Regulation itself. Stressing that the possible introduction of IP blocking only for one industrial sector would represent incomprehensible discrimination, the party therefore calls for IP blocking to be provided immediately for all infringements of the copyright rule. The party also calls for the other copyright industries to be given access to more streamlined infringement reporting procedures to increase the number of reported infringements, in order to avoid further increasing the aforementioned imbalance.

Another party, as a preliminary point, hopes that proposals for amendments to the Regulation will generate a proper rebalancing in favour of rightholders on copyrighted content. This is because the illegal spread of content related to live sports events generates significant financial damage to the sector as a whole, and to the entities



operating in the sporting world, undermining their economic viability. The party stresses that the damage resulting from the unlawful transmission of copyright-protected content is measured not only in relation to the very serious financial and social impact, but also in terms of the damage resulting from the serious impact on the commercial image of the rightholder, especially with reference to the streaming of live sports events. The party argues that the Authority is not only justified but, above all, called upon to play an active role in the intervention through measures against ongoing violations, but also of repeated and equivalent actions. However, the party considers that precautionary action, as proposed in the text under consultation, risks not fully and concretely meeting the need to protect the legal situation for which it is invoked. The party stresses that it is essential and indispensable to introduce a maximum time frame, no later than the start of the next season of the Serie A football league, for the adoption and implementation of the Regulation, since if the regulatory intervention were to produce its effects at a later date, there would be a serious injury resulting from the non-timely adoption of a Regulation whose social need is objective and, by now, largely shared.

One party highlights the lack of legitimacy of the Authority in the field of copyright and notes the anti-competitive effect of the measure proposed for consultation, which exposes small and medium-sized operators to higher costs and legal liabilities that they are not entitled to assume, thus jeopardising the sustainability of their business models.

One party recognises the seriousness of the phenomenon and – as a mere conduit — is willing to cooperate with all stakeholders to find the best possible solution. The party notes, however, that the Authority’s valuable analytical work does not take into account and does not adequately assess the economic impacts resulting from the envisaged provisions on access operators. The technical, bureaucratic and administrative procedures underlying the possibility of enforcing the prohibition obligations (blocking access via DNS or IP), for the numerous offences that are perpetrated online, entail additional costs that are not reflected in the rates charged to users and that therefore result as extraordinary charges for individual companies and for which in none of these cases is any form of financial compensation recognised for the provider receiving the prohibition order for the activity carried out to protect the third party’s economic rights. In addition, the party considers that the case of protecting live sports broadcasts includes hitherto unprecedented peculiarities and time frames that would put a mere conduit in serious crisis. The measure in question requires – for proper execution by the access provider – additional financial, technological and specialised personnel, elements emphasised by several ISPs, which will have to be taken on exclusively in order to be able to fully execute the prohibition orders as they are envisaged in the measure, namely within the time frame envisaged. Finally, the party points out that, while the mere conduit legislation is clear with regard to the failure to comply with monitoring obligations, the new ruling reveals a liability that the Internet access provider might incur for not having immediately – all the more so if within the 30-minute time limit – complied with Agcom’s precautionary prohibition order. According to the respondent, it is impossible to

imagine that the new tasks envisaged in the resolution under review and to be borne by mere conduits – in the absence of any form of financial compensation – can be performed with the human and financial resources currently available.

Therefore, the party immediately calls for a closer examination and consideration of the enforcement phase of the measure under consideration, since some measures designed to curb the phenomenon of online piracy to the detriment of rightholders of live sports events could lead to an objective and material impossibility of enforcing the obligation intended to be imposed on access providers.

**[OMISSIS]**

Several stakeholders share concerns about the increasing illegal online dissemination of content related to live sports events and confirm their commitment to putting in place all appropriate measures to combat digital piracy.

Some parties note that the fight against piracy could take place by the company holding rights in the content using conditional access solutions. Such conditional access systems, together with watermarking, allow the rightholder to identify which user made the content available online and to provide for disabling it quickly, thus cancelling the pirate transmission, and ensuring faster intervention times.

One respondent notes that there are then technical structural limitations in relation to the disposal capacity of block orders. In particular, these aspects concern the overall processing capacity of the platform (the number of Internet addresses/FQDNs that will be contained in each blocking communication) the frequency of sending the blocking order (minimum time lapse between one blocking order and the next, i.e. the maximum number of blocking/unblocking operations that can be carried out in a given time interval), the impossibility of proceeding with further blocking/unblocking while the previous list is being processed (the network order acts on the entire list, proceeds to block new IPs/FQDNs in the list and to unblock IPs/FQDNs no longer in the list, and it is not possible to enter new blocking/unblocking orders, at least until the completion of the blocking/unblocking operations contained in the list being processed).

On this issue, another party provides some estimates regarding the ability to process and dispose of block orders and identifies, in addition, other technical aspects of fundamental importance to be brought to the attention of the technical panel: the storage of information, the definition of the maximum number of rows of files as well as the maximum number of blocks/unblocks achievable in 30 minutes. On this last aspect, this



party assumes an average block value of 500 in 30 minutes to take into account the indications that have so far emerged from the various parties at the table.

Another operator notes that the platform can only be effectively used where it ensures, in order: i) that access to it for the data subjects is done using an authentication system able to guarantee the certain origin of the alert (e.g. fingerprinting); ii) two separate lists, one for IP addresses, another for blocked sites; iii) that domains are specified in the *punycode* format; iv) the publication of lists as .txt files, containing only the resources to be hidden net of any resources whose blackout is no longer necessary; v) that the lists should not be manipulated downstream, either manually or by any automatic scripts; vi) that .txt files are only published on static links. On the basis of the experience gained in recent years, also in the management of blackout requests from other Authorities, this party considers that the above requirements are fundamental for developing an automatism capable of carrying out, without human aid, the blackouts that the precautionary measure covers. The presence of formal errors (for example the presence of an incomplete domain as it lacks the TLD, indication of the URL instead of the domain name, incorrect IP address) may prevent the automatic execution of blackouts, requiring human intervention for correct and error-free handling. Moreover, in view of the deadline for compliance provided for by the regulation, namely 30 minutes from the receipt of the communication, this party considers that it is difficult to foresee a channel through which any errors can be promptly reported and removed. Therefore, the inclusion of non-standardised resources (for example, invalid IP addresses, characters not allowed in DNS) should exclude non-compliance by Operators/ISPs if the blackout occurs beyond the expected limit or excludes a resource characterised by syntactic error. To this end, it was suggested to publish a list of sites and another one for IP addresses free of formal and syntactic errors, so that the Operators/ISPs are not in a position to not be able to hide something regardless of their will. In conclusion, the respondent considers the automated script option to be the best choice on a technical level, preferable to human management of the blackout activity, which would necessarily require an extension of the time frame envisaged by the regulation. However, in order for this automatism to be error-free, Operators/ISPs will have to be given sufficient time to technically develop the script and carry out the relevant tests, only after obtaining the necessary clarifications from the Authority regarding the communication and publication of lists and the management of the platform.

### **Comments by the Authority**

As a preliminary point, it should be noted that the proposals for amendments proposed for consultation form part of the powers conferred on the Authority by the current regulatory framework. It should also be remembered that the DDA Regulation has been examined by the TAR (Regional Administrative Court), the Council of State and the Constitutional Court, which have confirmed the powers and legitimacy of the Authority to act in the field of copyright protection. Recognition of the Authority's powers as an administrative authority competent in the field of online copyright protection was further strengthened



by the aforementioned anti-piracy law, which reads: *‘Provisions for the prevention and enforcement of the unlawful dissemination of content protected by copyright through electronic communications networks’*.

With particular reference to the responsibility of the recipients of the Authority’s orders concerning copyright infringements or related infringements, including those relating to live sports events, it is emphasised that these fall within the scope of the e-Commerce Directive and the corresponding implementing decree. These rules govern the liability of the service provider in exercising mere conduit, caching and hosting activities, as well as the powers of the competent authorities in this regard. Therefore, even with regard to orders issued for infringements related to live sports events, the same rules will apply, something that the European Commission also recalls in the Recommendation.

The Recommendation encourages Member States to provide for orders that may consist of blocking access to unauthorised retransmissions of live sports events against providers of intermediary services whose services are used for these purposes, *‘regardless of the lack of responsibility of the intermediary’*, for the purpose of ending or preventing such retransmissions.

The European Commission also encouraged Member States to allow rightholders of live sports events to apply for an injunction prior to the start of the sports event, including by submitting to the competent authority evidence that the operator in question has already provided access to the unauthorised retransmission of similar sports events for which they hold rights, as well as that the injunction *‘may be extended to allow the blocking of pirate services carrying out unauthorised retransmissions of live sports events, even where those pirate services have not been identified at the time of the request for an injunction, provided that it concerns the same sports event’*.

It should also be recalled that since 2018, following the amendments introduced by Law No 167 of 20 November 2017 laying down *‘Provisions for the fulfilment of obligations arising from Italy’s membership of the European Union – European Law 2017’*, the Authority may intervene to protect copyright and related rights to the adoption of precautionary orders. The aforementioned Law in fact extended the tools available to the Authority to combat copyright infringements on electronic communications networks by granting the power to issue, at the request of rightholders, administrative injunctions of a precautionary nature against information society service providers referred to in the Decree aimed at *‘immediately’* ending infringements of copyright and related online rights, as well as specific powers in the event of repeated infringements already established by the Authority. In implementation of the aforementioned European Law, on 16 October 2018, the Authority approved, following a detailed public consultation phase, Resolution No 490/18/CONS by which Articles 8a and 9a of the Regulation were added to introduce provisions concerning precautionary measures and measures against repeated infringements. Since that date, in exercising this precautionary power, the Authority has effectively adopted numerous precautionary orders that have become definitive pursuant to Article 9a(5) since no complaint has been received from the interested parties.



At the time of the adoption of Resolution No 490/18/CONS, the Authority decided to interpret the adverb ‘immediately’ as a time frame then deemed sufficiently effective, namely three days from receipt of the application.

However, rightholders of sports events have expressed the need to take action in a shorter period of time. Moreover, the European Parliament, in its aforementioned Resolution, also stressed that, unlike other sectors, most of the value of the transmission of a sports event lies in the fact that it is live and most of that value is lost at the end of the event. The Resolution, in particular, points out that illegal streaming of sports events broadcasts is more harmful in the first 30 minutes they are available online and that an immediate reaction is needed to end the illegal online broadcasting of sports events. The European Parliament therefore stressed that the objective to be pursued is real-time removal in cases of illegal broadcasts of live sports events, provided that there is no doubt as to the ownership of the rights and the fact that the broadcast has not been authorised. In the same vein, the European Commission pointed out in its recommendation that *‘It is important to ensure that remedies available to holders of rights allow prompt action, which takes into account the specific nature of the live transmission of an event, in particular its time sensitive element.’*

In the same vein, the anti-piracy law provides that the addressees of the orders of the Authority shall execute the measure *‘without delay and, in any case, within a maximum period of 30 minutes after notification.’*

Given the above and in light of the spirit of cooperation established between the Authority and the recipients of orders issued pursuant to the law from before the adoption of the Regulation annexed to Resolution 680/13/CONS, the Authority considers that it should make the full implementation of the effects of the procedure referred to in the amendments in consultation conditional on the implementation of a platform that uses technological measures that allow automated management of alerts following the precautionary order so that the service provider can disable access to the electronic addresses covered by the alert in time to ensure effective protection, as also provided for by the approved law.

Therefore, the Authority intends to develop a platform that, through a machine-to-machine system, allows for automated management of the reporting of holders in order to ensure, on the one hand, timely and effective protection of rights and, on the other hand, the least costly technological solutions for ISPs.

The platform must use technology that enables the automatic and timely prohibition of technical data (FQDNs, IP addresses) used for the unauthorised broadcasting of live audiovisual content via the Internet and be based on an application capable of automatically communicating and exchanging data via a web interface and REST APIs.

The platform will meet the blocking needs of any type of live event and not only sporting ones. Consequently, in a second phase, it can also be applied to live events of other kinds, already offering the necessary functionalities.

The Authority has already initiated a dialogue with service providers that receive orders



to disable access to sites that unlawfully broadcast live sports events, in order to identify the most appropriate technological solutions for the purpose of the Regulation and make it less burdensome for ISPs.

At the same time, preliminary discussions with the National Cybersecurity Agency were initiated in order to provide for a validation of the security measures by the Agency.

As provided for in Article 2 of the anti-piracy law, the definition of the technical and operational requirements of the single technological platform necessary to allow the disabling of domain names or IP addresses through which protected content is unlawfully disseminated will take place within the technical panel that the Authority establishes with the National Cybersecurity Agency.

The technical specifications, shared with the participants in the panel, will feed into specific guidelines dedicated to the implementation and operation of the platform.

Therefore, with reference to the observation that the procedure should be applied from the beginning of the football league, it is noted that the need for protection of rights, already guaranteed by the application of the Regulation, must be balanced with the needs of the operators of communications relating to the technical timing for the implementation of the platform.

With regard to the findings relating to implementation costs, it is emphasised that the Authority shall bear the burdens related to the construction, operation and maintenance of the platform, which will enable human intervention to be minimised by service providers and related resources, through the contribution paid by the entities identified for this purpose by law.

With regard to the observations relating to the blocking of IP addresses, it is recalled that the Regulation already provides for the possibility for the collegial body to order IP blocking, as per Article 1(1)(gg). This measure, however, expressly provided for by the anti-piracy law, appears necessary for infringements for which the DNS blocking measure alone might be insufficient. Since 2014 (the year of entry into force of the Regulation), the evidence gathered by the Authority over the years of application of the Regulation shows that some sites, as a result of the measures adopted, have regenerated dozens of times, through aliases corresponding to the same IP address, the same identity of the parties who registered the domain name, and the same graphic layout.

In this sense, the evidence of effectiveness provided by enforcement practice, to which the Authority, in 2013, made the application of IP address blocking conditional, suggests that Agcom may proceed with the adoption of an order to disable access to a site by blocking the IP address. On the other hand, the European Commission, in the aforementioned Recommendation, in the definition of dynamic injunctions as '*a useful remedy to tackle the resilience strategies developed by pirate services*', also refers to switching to different IP addresses to circumvent blocking measures, assuming that the latter can be not only of the domain name, but also of the IP address. The anti-piracy law,



then, explicitly provides that the Authority may order '*disabling access to illegally disseminated content by blocking the DNS resolution of domain names and blocking the routing of network traffic to IP addresses unequivocally intended for illegal activities*'.

In any case, the Authority's intervention reconciles the principles of graduality and proportionality with that of adequacy so as to respond to the rationale underlying the regulation on copyright and related rights.

With reference to the suggestion to consider the concept of 'live event' in broad terms, it should be noted that the amendments to the Regulation that is the subject of consultation and the subject matter of this resolution have been limited to the protection of live sports events, the exclusive ownership of which is in the hands of a limited number of subjects that can be identified with certainty, in the light of the Recommendation. However, following the publication of the anti-piracy law, the Authority will also extend the scope to other live events outlined therein by launching a new public consultation by September 2023.

Finally, as regards the unblocking procedures, please refer to the comments on the duration of the blocking.

**Appropriate technological measures and/or equipment to ensure the completeness and/or regularity of reporting**

**Main positions of the participating stakeholders**

Several respondents agree with the need highlighted by the Authority that, as provided for in the DDA Regulation, it is necessary to use a platform that allows an automated management of alerts following the precautionary order. The adoption of automated tools capable of unambiguously detecting unlawful transmissions of live events would allow operators/ISPs to intervene in near real time and in any case within the time frame indicated in the provision under consultation.

Some respondents believe that, at a technological level, it is certainly feasible and not costly to create a communication system between the various parties involved and managed by Agcom.

One respondent points out that a purely technical discussion with the Authority itself is essential to address issues mostly related to interaction with the platform. This party places as a condition for the full operation of the automated platform, the start of a trial period characterised by the following characteristics: i) it is extended to all ISPs; ii) it is governed by a set of rules that guides the rightholder to the correct identification of the Internet addresses for which to request blackout; iii) it allows the rightholder, under his own responsibility, to forward the request for hiding directly to the ISP, without prejudice to what is already provided for in Article 17 of Legislative Decree No 70/2003' iv) it provides for checks (on a sample basis or ex post checks) by the same Authority in order to monitor compliance with these rules by the content holder. The same party underlines



the importance of involving all the actors who can participate in various capacities, including those who offer DNS resolution services (e.g., Google DNS, OpenDNS) in the new blackout process so that the fight against the phenomenon of piracy is as broad and effective as possible.

Another respondent considers it appropriate to point out that DNS blocking may not be sufficient to stop the illegal transmission of sports or similar events. The latter, in fact, is eluded in the cases of open DNSs; on the contrary, IP-based blocking is more efficient and less easy to evade as it could only turn out to be flawed if a VPN service or a Reverse Proxy is used. On the other hand, since it is considered unlikely, due to the nature of the activity in question, that IPTV servers will reside on platforms dedicated to that service, with static and unique IP addresses, the IP address-based blackout order could affect a variety of resources, even if not involved in the illegal spread of sports events.

Another operator notes that, without prejudice to the need for a new primary source that legitimises the regulation, with reference to the machine to machine platform, given the time frame envisaged in the Regulation under consultation and in order to avoid errors in the execution of the blocking and consequent liabilities, the adoption of an automated platform through which, subject to an order by the Authority, an automatic blocking of the reported sites can take place, is an essential requirement. In this sense, a machine to machine platform is the only solution to consider, taking into account the timeliness of the requested blocking and the necessary exact correspondence between the alert and the address to be blocked. In conclusion, the provisions of the draft Regulation, from a technical point of view, can only be carried out in the presence of an automated platform whose technical specifications and methods of implementation must be defined within a technical panel coordinated by the Authority and which cannot be the Committee pursuant to Article 4 provided for by the Regulation, as it does not have adequate technical expertise and does not lend itself to ensuring the participation of all interested parties. The panel's work must be completed within a time frame defined according to the complexity and the high technicality of the activity, with particular attention to the security profiles of the platform, due to the fact that it must be able to interact with the platforms of all operators. In light of the platform's relevance to the security of telematic communications, the National Cybersecurity Agency will also have to participate in the panel for the definition of the platform's requirements and operating methods.

Another respondent agrees that the best solution, once there is an officially published primary standard that identifies the responsibilities of the parties in a timely manner, able to allow the blocking of content in a time frame compatible with the needs of live events or similar events and of the different stakeholders involved, is the preparation of a platform that automates the information flows between the stakeholders involved and the execution of the technical blocking operations, so that the operators that will have to apply the blocking can do so automatically upon input by the Authority (which will have first carried out all the verifications on what to block or the holders for the subsequent requests concerning the same content subject to the Authority's measure or content of the



same nature). The details of the platform and the technical means of exchange must be defined in a dedicated technical panel involving operators and Authorities. The automated platform under the control of Agcom or another institutional body, but managed by and under the responsibility of Agcom, will essentially handle: 1) requests from rightholders to Agcom, 2) reports from IP/DNS assigners to Agcom, 3) blocking orders from Agcom to TLC/ISP Operators and 4) subsequent reports by rightholders, 5) linking block orders to Operators' systems, in order to automate blocking and unblocking operations<sup>3</sup> of DNS/IP addresses and any related reporting. The functional and technical characteristics of the platform must be defined through a technical/regulatory discussion, to be started under the coordination of Agcom, to be concluded within definite time frames [OMISSIS] by all interested stakeholders, paying particular attention to safety aspects as well.

Some respondents claim that they are not aware of appropriate technological measures and/or equipment in order to ensure the completeness, regularity and/or soundness of the report.

One entity considers it appropriate to remove the criterion of *relevance* and to *mitigate* the *burden of proof*. Limiting infringement to the relevance criterion not only renders measures unwieldy and ineffective, but may also excessively reduce the scope of possible notifications and the range of actions available for rightholders. In addition, it can offer a loophole to those responsible for the infringements. The infringement may be non-current at the time of the report, but it can be continuous or even occasional, without this in any way diminishing its seriousness and/or the damage resulting from it to the rightholders. The burden of proof would imply that the reporter must declare '*under its own responsibility, also providing reliable documentary evidence*' that the infringement is, in addition to *relevant*, also *unambiguous*.

Two respondents considered that the proposed amendment to introduce an obligation for the recipients of the precautionary measure taken by the Authority to disable the reported site within thirty minutes of the rightholder's notification would be a significant step forward compared to the status quo. In particular, with reference to the urgent measures issued by the ordinary court that provide for an 'immediate' intervention by service providers without, however, providing for a defined time frame for intervention, these entail, in operational practice, significant deviations in the implementation times guaranteed by the different ISPs, in any case generally exceeding the thirty minutes provided for by the regulatory change. They also consider that the checks provided for in the new paragraph 4e should only cover the compliance and completeness of the alerts (not also their validity), thus allowing for automatic verification by the IT platform set up for this purpose. In this regard, it points out that established case-law already provides for so-called 'dynamic' blocking orders (i.e. extended to each subsequent change of address used for unlawful transmissions), without any verification of the merits of such reports by the ordinary courts, which merely indicate the requirements that the reports must meet. They also suggest that reference should be made, in the new paragraphs 4c, 4d and 4e,



not to 'websites' only but to 'websites and/or electronic addresses', due to the fact that the phenomenon of pirated IPTV is based only partly on the use of websites, normally used to promote illegal activities and not for the transmission of content, which takes place rather through servers linked to precise electronic addresses (main object of blocking orders).

With regard to the period of validity of the block provided for in the draft Regulation, the same entities propose to reassess the proposal contained in paragraph 4c (block implemented '*for the transmission time of the sports event concerned*') because: (i) it would be a step backwards from the blocks ordered by the Court, which are permanent; (ii) it would create operational problems, making the management of alerts for rightholders and blocks for ISPs much more complex; (iii) it is unjustified, in light of the established illegality of the blocked sites/addresses, exclusively dedicated to illegal activities (essential requirement for blocking in paragraph 4d). In this regard, it is pointed out, inter alia, that the blocks concern addresses used exclusively for illegal activities and a time-limited block would be an inexplicable '*gift*' to criminal organisations that manage illegal IPTVs.

With regard to the 'certainty' regarding the indication of the sites reported, one party points out that it can only come from the rightholders (who granted them to the media authorised for broadcast) or from exclusive assignees or concessionaires of rights (who should indicate the sites they manage or authorise for broadcast), considering in this regard a self-declaration of the reporter sufficient. In addition, in order to speed up the monitoring of the applications received, it considers it advisable to identify the 'trustworthy' reporters by means of a list of assignees of sports rights to be acquired through agreements with the sports federations, and considers it desirable to adopt a centralised monitoring system carried out, for example, with watermarking and web crawling technologies.

One party emphasises that the maximum effectiveness for tracking and 'certifying' the presence of unauthorised content, in terms of speeding up the reporting of offences, would be achieved by combining the use of watermarks with an API exposed by Agcom that would automate many of the data collection and sending procedures. For rightholders, however, it would be easier, at least at an early stage and during setup, to use, for the purpose of reporting, a dedicated, simple and intuitive dashboard, where one is to insert in real time and as soon as the events start, the data related to the site/network to be blocked.

Another party considers that the effectiveness and timeliness of the report submitted pursuant to paragraph 4d must be ensured; if this were not the case, no substantial protection would be guaranteed for those events whose value is expressed in the transmission of the broadcast. The party considers that the verification of the formal correctness of the alert can be carried out during the submission of the application referred to in sub-paragraphs 4a and 4c; verification of its validity can be obtained, in contrast, using the lists referred to in 4c and comparing them to those reported. The party



notes that thorough checks on the presence of legitimate and lawful content can be delegated at a later stage. The party considers that, with a view to the substantive validity of the report submitted pursuant to paragraph 4d, it is sufficient that rightholders state what is specified in the last sub-paragraph of 4c (the lists), including directly to the addressees of the measure; this must be considered adequate and sufficient to immediately adopt an injunction order against infringing sites.

### **Comments by the Authority**

With regard to the request to remove the requirement of the relevance of unlawful conduct, it is emphasised that this requirement justifies the measures introduced by this Resolution, namely the disabling of access to sites/electronic addresses that disseminate live content in real time. This given that majority of the value of the transmission of a sports event lies in the fact that it is live and most of that value is lost at the end of the event.

With regard to the need to initiate a purely technical discussion on the platform, it is recalled that the Authority has already initiated a dialogue with service providers that receive orders to disable access to sites/electronic addresses that unlawfully broadcast live sports events in order to identify the most appropriate technological solutions for the purpose of the Regulation and make it less burdensome for ISPs.

As already mentioned, pursuant to Article 6 of the anti-piracy law, the Authority, in cooperation with the National Cybersecurity Agency, will convene a technical panel with the participation of service providers, Internet access providers, holders of rights, content providers, audiovisual media service providers and the most representative associations in charge of protecting copyright and related rights, in order to define the technical and operational requirements of the tools necessary to enable the disabling of domain names or IP addresses, through a single technological platform with automated operation for all recipients of disabling measures. The technical specifications thus shared will feed into specific guidelines dedicated to the implementation and operation of the platform.

Concerning the checks provided for in the new paragraph 4e, which according to some respondents should only concern the compliance and completeness of the reports and not also their validity, it is emphasised that by using the platform, the Authority will carry out an automatic verification of the reports following the adoption of the precautionary order. With particular reference to the merits of these reports, the Authority will define with the interested parties within the aforementioned technical panel the evidence and the necessary documentation to be attached to the alert for the purpose of executing the block.

As regards the blocking of IP addresses, please refer to what has already been observed. With specific reference to the risk, conceivable in the event of IP blocking arrangements, of overblocking, i.e. that sites unrelated to the infringing site may also be blocked – since different sites may be hosted by the same IP address, or more than one service may be



present on the site – the Regulation provides that the party entitled to do so must declare under their own responsibility that the domain names and IP addresses reported are unequivocally intended for the infringement of copyright or related rights of audiovisual works concerning live broadcast sports events and the like. Furthermore, the right of interested parties to lodge a complaint pursuant to paragraph 5 of Article 9a is always guaranteed.

Finally, and in response to the requests of several parties, the Authority considers that it should not limit the blocking to the transmission time of the sports event concerned. On this point, please refer to the comments on the duration of the blocking.

**Quantification of illegal broadcasts for each live sports event and similar events falling within the scope of application of the new precautionary procedure**

**Main positions of the participating stakeholders**

Some respondents provided general information noting that there are numerous infringements of intellectual property rights found for sports events. These respondents point out that it is also necessary to include in the concept of ‘similar’ broadcasts the summary contents, the highlights, the extracts and/or any content that derives directly from the broadcast of the sports event live and in its entirety as well.

Among these, some stated that digital piracy has reached a level and acquired operating methods capable of causing serious damage to the Italian economy, generating, in 2021, a loss in terms of turnover for Italian companies of EUR 1.7 billion and in terms of GDP of about EUR 716 million, which also corresponded to a rise in the incidence of audiovisual piracy among Italians who illegally enjoyed audiovisual content to 43%. One respondent has also provided accurate data on the number of blocks activated (IPTV services, domain names, IP addresses) from the 2018/2019 sports season to the current one (at 31/12/2022) executing the Court’s orders. This data is very significant in their aggregate size and attest to the growing development of piracy in recent years.

One respondent reported that according to estimates in 2022, piracy of audiovisual content involved 43% of the adult population and 51% of children under the age of 15. More data compared to the previous survey confirm that the fight against this illegal phenomenon is more important than ever. The previous focus of the survey, covering the 12 months after the first COVID-19 lockdown, showed that 30% of respondents stated that they had subscribed to at least one new subscription to a legal audiovisual content platform in the period between 2020 and 2021. However, live sport stood out among the content for the biggest increase in terms of illegal broadcasting and did not see any decrease in acts of piracy compared to 2019, but rather recorded an increase (32.5 million acts of piracy in 2021, +5% compared to 2019). The most widespread type of piracy, in the 2021 survey as well, proves to be digital piracy, which has soared during the pandemic and now includes almost all pirates (40% of the Italian population). Among the methods of access to pirated content, the use of illegal IPTVs is particularly impactful,



the growth of which remains worrying, and which today emerges as the main method of audiovisual piracy in the Italian context: its incidence at the end of 2021 is 23%, more than double what it was two years ago. Finally, for the first time in 2021, the harm linked to live sport piracy was also estimated: 11 million lost accesses and a consequent loss in turnover of EUR 267 million. In conclusion, considering all three content types (not only films and series as was the case in the past, but also sports), the Italian economy was estimated to have suffered an approximately EUR 1.7 billion loss in terms of companies' turnover (not only for the audiovisual industry), implying a GDP loss of about EUR 716 million and about 9,400 jobs.

Finally, another respondent provided timely data noting that in 2021 there were 32.5 million acts of sports event piracy (+5% compared to 2019). Also in 2021, the number of Italians who committed at least one act of piracy was 43% (+6% compared to 2019). The Company notes that piracy through illegal IPTVs is growing rapidly, recording a 23% incidence in 2021, equal to more than twice the amount two years before. A loss of 11 million in (legal) accesses is estimated to have been suffered in 2021, with a loss of EUR 267 million. Considering all kinds of content, companies suffered damages amounting to EUR 1.7 billion, with a loss of EUR 716 million in GDP and of 9,400 jobs.

One respondent highlights that the data analysed for the 2017-2020 period show a decrease in online rights infringements, also due to the improvement of content protection tools and technologies. From that point of view, it states, therefore, the data on the phenomenon are overestimated in the measure under consultation, including those on the piracy of live sports events.

Other respondents provided precise estimates of the amount of illegal broadcasts for each live broadcast sports events and similar broadcast falling within the scope of application of the new precautionary procedure. Among them, one respondent, in quantifying the phenomenon in the order of many thousands per matchday, notes, at the same time, that it is necessary to distinguish between the illegal transmission of live events (in whole or in part) and the transmission of images, video clips, rebroadcasts of broadcasters' content illegally obtained at the stadium and/or by clipping operator broadcasts and content. Moreover, it stresses that at present it is not possible to provide an exact quantification of the relevant illegal broadcasts, but it can be said that several infringements are generally observed: access to illegal IPTVs by users, through authentication and payment systems that can be similar to legitimate business organisations; access to OTT websites and services run by foreign operators that broadcast the content regularly in their free or paid markets, through a VPN and/or by infringing the systems of the aforementioned operators, including through link repost operations and by sharing accounts between multiple subjects; acquisition of images directly at the stadium by 'professional' operators who profit on sports content through social activities; acquisition of protected content and images belonging to the broadcaster by clipping videos, then retransmitting it on websites and social networks (including professional information and entertainment channels) and presenting it without appropriate authorisation and credits. Considering the cases listed

above, the respondent quantifies the phenomenon in the order of many thousands for each matchday.

With specific reference to pirate sites that share links to multiple events, the average number of illegal broadcasts is around 650 illegal web links per event; this means that for several matches you can reach 2,000/3,000 links per day.

Another respondent, although it believes that an exact quantification of the phenomenon is very difficult, given its extreme dynamism and the difficulties inherent in monitoring the phenomenon, assumes, in any case, that in the case of linking sites, one can estimate an average of about 100 sites that at any given time offer the opportunity to watch unauthorised sports events. The video streams used by these sites number a few dozen, and the party notes that hitting them directly would put almost all linking sites out of business. In the case of IPTVs, the networks that allow the use of illegal content amount to a few hundred (it hypothesises an average of 500). These numbers refer to platforms/networks providing content from Italian channels, whereas if one includes sites and IPTVs broadcasting the same content in a foreign language (e.g. a football match broadcast by a foreign authorised channel), these would grow exponentially.

**[OMISSIS]**

One respondent points out that there are numerous infringements of intellectual property rights found in relation to premium events (the Olympics, football World Cup and European Football Championships), in addition to those relating to the unlawful transmission, by third parties, of highlights with a duration longer than that permitted by the licence agreements or those relating to the legislation governing the right to report. For this reason, the party considers it appropriate to specify in the draft Regulation the so-called ‘similar’ broadcasts too, such as highlights or video clips, in order to strengthen their protection (see paragraph 1, p. 7 of Resolution 445/22/CONS).

According to another respondent, infringements are numerous, difficult to monitor and quantifiable. It remains necessary to include in the concept of ‘similar’ transmissions the summary contents, the highlights, the extracts and/or any content that derives directly from the broadcast of the sports event live and in its entirety too. Any extract from the sports event, even if broadcast later and within a period of time close to the event, is fully covered by the right to protection.

Finally, some respondents did not provide any indication as they were not aware of the average amount of illegal transmissions that could fall under the new precautionary procedure.



**Extendability of technological measures suitable for verifying the completeness and validity of reports in the field of sports broadcasts to other audiovisual events protected by copyright that are broadcast live (or similar).**

**Main positions of the participating stakeholders**

The majority of respondents is, in principle, in favour of extending the proposed technological procedures and measures to manage reporting on live (or similar) sports events to other copyright-protected audiovisual events as well.

Some of them point out that, in their view, there are no technical contraindications that may affect their use, given that the technical solutions used for their identification are the same; others note that in the specific field of sports events, in particular football, there is a peculiarity in the granting of exclusive rights, in respect of which the parties authorised to broadcast are easily identifiable, even if a protection that is quick, concrete and effective can only be well adapted to other audiovisual events protected by copyright.

Some respondents point out that in the event of the implementation of an automated platform, and subject to the ISPs/TLC operators being fully reimbursed for the investments and management costs incurred internally to interface with the platform, nothing would prevent the extension of the procedure to be defined to other live (or similar) copyrighted audiovisual events as well.

One respondent notes that at present there are no technological measures capable of verifying, alone and without human intervention, the validity of reports of alleged infringements of audiovisual sports rights. It is therefore denied that the protection proposed by these instruments can be extended to other areas.

One respondent is in favour of extending the new regime to all protected content, at least with reference to 'similar broadcasts'. As regards proof of ownership of the right to the work, the Association considers that a simple statement is sufficient, especially where the reporter is a professional operator (e.g. radio and television broadcasters). It stresses that it has always been committed to the protection of copyright, and in particular, to the affirmation of the notice and stay down principle, which is considered the only means of effectively protecting the rights of rightholders in view of the fact that the notice and take down principle does not prevent users who upload content from putting protected works back on the platforms. As a result, the Association considers it necessary to ensure that the user has made the utmost effort to prevent the downloading of the reported protected material or equivalent material in the future (also in light of CJEU judgement C-18/18, of 3.10.19, *Eva GlawischnigPiesczek vs Facebook Ireland Limited*).

One respondent notes that the same procedures used for the identification and reporting of unauthorised sports events could also be used for events of a different nature, provided that the sites/networks that broadcast them are the same (linking sites, IPTVs etc.). The party believes, in fact, that any presence of live content on videostreaming platforms and social networks would present different criticalities and the only, or at least the most



effective, method of intervention would be to request the platform itself to delete the content.

Another respondent observes that in the specific field of sports events, in particular football, there is a peculiarity in the granting of exclusive rights, in respect of which the parties authorised to broadcast are easily identifiable, but states that experience in the field can be a useful driver for other copyright-protected audiovisual events. The party adds that it is necessary to tighten administrative sanctions and to widen the categories of parties that may be subjected to them. In that regard, it points out that an administrative, civil and criminal tightening of the consequences of the infringements, both for the party who provides illegal content and with regard to the private party who benefits from or uses it, may help to achieve the general objective of maximum protection of copyright in a broad sense.

This is because the sanctions currently in place risk not giving rise to a real disincentive to infringement, because they are small and have a reduced social and media impact.

In this sense, the party considers it necessary to revise Article 171 of Law No 633/1941 on the protection of copyright, something that was also encouraged by the Authority, in order to extend the conduct affected to include those who benefit from works disseminated in violation of the same law; to reinforce the criminal consequences of the aforementioned infringements by providing for the penalty of imprisonment not only if the offences are committed with respect to others' work not intended for publication, but also if it is exclusively/co-exclusively attributed to one or more authorised parties; and to substantially increase the minimum and maximum values of the applicable fine imposed.

### **Comments by the Authority**

As a preliminary point, it is recalled that the amendments to the DDA Regulation under consultation and the subject matter of this resolution have been limited to the protection of live sports events, the exclusive ownership of which is in the hands of a limited number of parties that can be identified with certainty, in light of the Recommendation. Following the entry into force of the anti-piracy law, the Authority, following a public consultation that will be launched by this September, will outline the scope of the measures with reference to live content, first viewings of cinematographic and audiovisual works or entertainment programmes, audiovisual content, including sports, or other similar original works, sports events as well as events of social interest or of great public interest pursuant to Article 33(3) of Legislative Decree No 208 of 8 November 2021.

With regard to the suggestion to tighten administrative penalties in the event of infringement of copyright and related rights, it should be noted that these sanctions have already been tightened following the adoption of Law No 77 of 17 July 2020 on: *'Conversion into law, with amendments, of Decree-Law No 34 of 19 May 2020 laying down urgent measures in the field of health, support for employment and the economy, as*

*well as social policies related to the COVID-19 epidemiological emergency* ('Relaunch Decree') and, in particular, Article 195a, heading 'Provisions on copyright protection'.

Paragraph 8 of Article 9a in fact provides that in the event of non-compliance with orders and failure to lodge or reject the complaint, the penalties referred to in Article 1(31) of Law No 249 of 31 July 1997 shall apply, notifying the judicial police bodies pursuant to Article 182b of the Copyright Law. The above-mentioned provision states that for non-compliance with orders given by the Authority when acting to protect copyright and related rights, an administrative fine of between EUR 10 000 and 2% of the turnover of the last financial year shall be applied to each party concerned prior to notification of the dispute.

Finally, the anti-piracy law strengthens the system of sanctions, with the amendment of Law No 633 of 22 April 1941 as well as the Criminal Code.

### **Duration of the blocking**

#### **Main positions of the participating stakeholders**

Many respondents believe that the blocking related to reports by the rightholders should be implemented 'for the transmission time of the sports event concerned', sports event meaning the league, tournament or other event of which the individual sports event on the occasion of which the blocking is ordered forms part. In fact, since this is a dynamic blocking of addresses that are used exclusively for unlawful activities, the blocking limited to the duration of the individual sports event and consequently the possibility of being able to reactivate these addresses at the end of sports events would pose a serious risk that these addresses would then be used again for unlawful activities.

Some operators also argue that the provision of limited blocking would be a step backwards from the blocking ordered by a Court, which is permanent, and would create operational problems, making the handling of alerts for holders and of blocking for the same ISPs much more complex.

Some operators suggest providing for a procedure to allow unblocking at the request of the parties concerned and conditional on the Authority's finding that the addresses are not and will no longer be used for illegal activities.

One operator suggests a blocking duration time (e.g. 2 hours or a time to be defined by the technical panel) so that after that defined time, that IP address or DSN can be unblocked automatically.

In contrast, another respondent emphasises that limiting the blocking to the duration of a single event clashes with the concept of a dynamic injunction, as it would in fact force rightholders to report the same site each time during different events. The procedure, moreover, as it is designed, would risk extending the time needed for the blocking to take effect and, especially in the case of short events, could be ineffective. Alternatively, one

could consider limiting the blocking to the duration of an event as a whole (e.g. the entire duration of a football league). The measure thus designed would streamline procedures, maximise results and be perfectly in line with the concept of a ‘master application’ provided for in the amendments to the Regulation.

### **Comments by the Authority**

Accepting the request made by the majority of the respondents to the public consultation, and taking into account the wording of the provisions contained in the law that has just been approved, the Authority considers that it should not limit the blocking to the duration of the broadcast of the sports event concerned.

First, it should be pointed out that the blocking ordered by the judicial authority is permanent, so a different provision would risk making the protection less impactful, thus marking a step backward compared to what is already happening. In addition, the temporary nature of the blocking could create operational problems, making the management of alerts for holders and blocking for ISPs much more complex. Finally, in light of the proven illegality of the sites/electronic addresses subject to disabling, which is set out as a prerequisite for blocking in paragraph 4d of Article 9a, this provision would be unjustified and would risk making the measure adopted ineffective. In fact, it is established that the websites/electronic addresses in question are hosted on addresses used exclusively for illegal activities, and making them inaccessible for a time limited to the duration of the sports event would allow piracy organisations to perpetrate the offence.

With particular reference to live sports events, these sites systematically place links that lead to the live broadcasting of matches of the Italian football league, in breach of the aforementioned Law No 633/41. Such links are made available in a timely and systematic way on all matchdays. There is therefore a serious infringement of rights, due to the continuity of the conduct over all the days of the league, the systematic nature of the infringement and the significant value of the rights of the audiovisual production of the league affected by the conduct.

Therefore, also in light of the evidence gathered by the Authority during the nine years of application of the Regulation, which will be discussed below, it is necessary to take effective measures that do not allow the infringement to be renewed at the end of the broadcast of the individual event.

In the context of the notification procedure under Directive (EU) 2015/1535, the Authority also informed the European Commission, which had asked for clarification as to whether the injunction was limited in time, of this intent due to the duration of the sports event to be protected. The procedure was concluded without further comments from the Commission.

Finally, the anti-piracy law, in explicitly referring to blocking, does not provide for its temporary nature: it follows that the legislature intended the blocking to be definitive.



In those circumstances, certain service providers who took part in the consultation brought up the need for blocked IP addresses, after a certain period of time, to, in any case, be unblocked when reallocated to lawful uses. Given that the Authority is not vested with any specific power in this regard, it reserves the right to assess the advisability of sharing ad hoc procedures for the possible unblocking within the framework of the technical panel involving the stakeholders.

### **IP/DNS disabling methods**

#### **Main positions of the participating stakeholders**

One respondent notes a critical issue related to the blocking methods, believing that the two blocking tools (IP and DNS) should not be used together, namely that where the Authority orders an IP-based blocking, indicating precisely the IP for which it is requesting an IP-based blocking through the machine-to-machine platform, the FQDN-level blocking solution (i.e. DNS) should not be ordered, and vice versa.

Other respondents illustrate the differences in the blocking mechanism at the IP and FQDN level. Through IP blocking, the ISP can make an effective and instantaneous IP-level block because the current protocols of video streaming are bidirectional. In the event, however, that streaming were started before the blocking and a one-way protocol were used, the blocking would not be effective. Similarly, IP-level blocking cannot work if the user uses a VPN. With regard to DNS blocking at the domain name level, the FQDN block is not ‘instantly effective’ as soon as it is applied to the DNS of the ISPs because there exists – according to the DNS protocol – a time of ‘caching’ (TTL - Time To Live) the information within the client’s terminal systems that keeps the information in the client’s memory before querying the DNS again. Thus, the blocking is only effective for ‘new connections’ established by a client to the FQDN to be blocked. DNS-level blocking could also be easily circumvented for the end user by using settings that use the DNS servers of specialised companies instead of those provided by the access provider and, therefore, deems it useful to involve those parties who offer DNS resolutions services as well.

#### **[OMISSIS]**

Some respondents suggest referring, in the new paragraphs 4c, 4d and 4e, not only to ‘websites’, but rather to ‘websites and/or electronic addresses’. This is because the phenomenon of pirated IPTV, which is intended to counteract the proposed regulatory changes, is only partially based on the use of websites. In fact, websites are normally used to promote illegal activities, but not for the broadcasting of content, which does not take place through websites, but through servers linked to precise electronic addresses (the main target of blocking orders).

Finally, one respondent notes that the concept of the uniqueness of IP and DNS addresses is likely to lend itself to exploitation and poses some interpretation risks. Many sites,

particularly critical in terms of the quantity and visibility of illegal content, cannot technically be considered uniquely dedicated to the dissemination of illegal content, as they often contain lawful or borderline lawful content or reside on shared IP addresses. This party therefore recommends that the text should be changed to be less restrictive. They also raise the possibility of requiring DNS blocking only in cases where the site's IP is shared or served by reverse proxy or CDN services.

### **Comments by the Authority**

Referring back to the general remarks on IP address blocking, it should be noted that it is always possible to request the blocking of a DNS only.

However, data on requests received by the Authority, published on a regular basis on the website [www.agcom.it](http://www.agcom.it), show that the number of cases concerning repeated, already established infringements represents a very high number. Specifically, looking at the time frame from May 2022 to May 2023, 89% of the cases received were dealt with by an abridged procedure, of which 71% concerned recurrences of previously established infringements. A large part of cases (84%) end with orders to disable access, by blocking the DNS, addressed to mere conduit service providers that operate in Italy, i.e. with orders for the selective removal of content. 74%, the numerically largest proportion, are repeat infringement orders concerning sites that have already been the subject of disabling orders that have changed their domain name (so-called. aliases).

In general, the alleged infringements very often concern the illegal dissemination of audiovisual works. The DNS similarity analysis shows a strong presumption of aliasing, namely a constant repetition of infringements by certain parties and with the identity of the operators of the same site. Most sites maintain the same IP address during all domain name changes.

Evidence shows that some sites, as a result of the measures taken, have regenerated dozens of times, through aliases corresponding to the same IP address, the same identity of the parties who registered the domain name, and the same graphic layout.

These sites, moreover, often link to the same profiles, pages or groups on social networks, where, moreover, users are directly and explicitly notified of the change of domain name after the Authority's order.

Since the entry into force of the amendments to the Regulation in October 2018, there has been some cyclicity with regard to sites that have regenerated through domain name changes.

In addition to being a more effective measure, blocking IP addresses would also be in line with the principle of administrative efficiency, as the incidence of repetitions in copyright proceedings involves a waste of resources that could well be limited by blocking IP addresses.

### **Type of checks to be carried out**

#### **Main positions of the participating stakeholders**

For one respondent, it is not clear what checks on the correctness of the report the Authority proposes to carry out in the aforementioned period of time (for example, a match lasting 105 minutes) and, if a given IP address is blocked in error, who is responsible for the incorrect blocking. In fact, it is important for this person to make it clear that the access provider is in such a case completely relieved by the Authority of any liability for damages caused to the holder of the IP address that may have been temporarily and erroneously suspended. For the reasons set out above, the respondent requests that the Authority convene a technical panel to better specify the injunction procedures, within the framework of the progress and technical definition of the measure under review, which, at present, seems to take into account only the validity of the notifications that may be received from rightholders, rather than the executive part of the orders - entirely entrusted to the ISPs - on which, however, the entire scaffolding that is to be put in place rests.

Another respondent considers it very important, in order to make the thirty minutes effective, to avoid Agcom checks from becoming a possible obstacle, committing the Authority to provide answers in a very short time and most often in non-working days and hours. To that effect, the checks provided for in the new paragraph 4e should not concern the validity of the reports, but only their compliance and completeness, thus allowing for automatic verification by the IT system that will be set up for this purpose. Moreover, the copious and consolidated case-law provides for so-called 'dynamic' blocking orders, that is to say, extended to any subsequent change of address used for unlawful broadcasts, without any review by the Court as to the merits of those reports. In fact, the Court merely sets out the requirements to be met by the alerts, without carrying out any checks on them.

One respondent held that the verification of the formal correctness of the alert can be carried out during the submission of the application referred to in sub-paragraphs 4a and 4c; verification of its validity can be obtained by difference using the lists referred to in 4c and comparing them to those reported. A subsequent phase of thorough checks may be entrusted with the objective of detecting whether the site subject to an alert and immediate blocking also broadcasts legitimate and lawful content. Therefore, with specific regard to live events broadcast by unauthorised sites, for the purposes of the substantive validity of the report submitted pursuant to paragraph 4d, it is sufficient that the Rightholders indicate what is specified in the last paragraph of 4c (the lists), including directly to the addressees of the measure; this must be considered adequate and sufficient to immediately adopt an injunction order against infringing sites.

One respondent considers that it is necessary to eliminate the relevance criterion as well as reduce the burden of proof. In particular, the latter would imply that the reporter must



declare ‘under its own responsibility, also providing reliable documentary evidence’ that the infringement is, in addition to current, also unambiguous. In their opinion, delimiting the infringement with the criterion of its being current may make the measures difficult and more often than not ineffective, excessively reducing the field of possible notifications and therefore also the range of action of rights holders who intend to request the intervention of the Authority for their own protection and offering, albeit unintentionally, a loophole to those responsible for the infringements. The infringement, in fact, may be non-current at the time of the report, but it can be continuous or even occasional, without this in any way diminishing its seriousness and/or the damage resulting from it to the rightholders. The same burden of providing ‘documentary evidence’ should probably be specified and detailed in order to avoid turning the right to protection into a burden that, moreover, is difficult to fulfil, and therefore, in fact, hinder it. For example, a copy of the contract attesting to the ownership of the rights infringed, dated screenshots or links to the sites/platforms (if active) could be regarded as illustrative – but also sufficient – documentary evidence.

Another respondent believes that at a technological level, it is certainly feasible and not costly to create a communication system between the various parties involved and managed by Agcom. This system can easily verify the completeness and formal correctness of the reports, as well as the substantive merits, if correctly understood as above and indicated below. Specifically, it is considered that the verification should be linked to the list of parties and sites/electronic addresses authorised for broadcast, a list that rightholders will file in the first instance and that Agcom will be able to assess and verify within the three days indicated by the new paragraph 4b and that may be updated over time if necessary. The subsequent verification of the non-attributability of new reports to authorised sites/addresses can be carried out easily and unequivocally in an automated manner by Agcom, without prejudice to the possibility of the Authority's carrying out *a posteriori* or sample checks, if necessary.

Other respondents consider that the automatic system can easily verify, automatically, the completeness and formal correctness of the reports, as well as the substantive merits, if correctly understood as above and indicated below. Specifically, it is considered that the verification should be linked to the list of parties and sites/electronic addresses authorised for broadcast, a list that rightholders will file in the first instance and that Agcom will be able to assess and verify within the three days indicated by the new paragraph 4b and that may be updated over time if necessary. The subsequent verification of the non-attributability of new reports to authorised sites/addresses can be carried out easily and unequivocally in an automated manner by Agcom, without prejudice to the possibility of the Authority's carrying out *a posteriori* or sample checks, if necessary.

Another respondent claims that Agcom’s verifications (Article 9a, paragraph 4e) should concern only the compliance and completeness of the reports, but not their merits, which can be verified *a posteriori* and/or by samples, as is already the case for the orders of the Civil Court of Milan, which provide for so-called ‘dynamic blocking’.



One respondent considers that the procedure referred to in paragraph 4e risks jeopardising the effectiveness of the measure in terms of speed of intervention. This is because of the time required in order to forward the list of sites and the verification phase by Agcom risks creating a bottleneck that would jeopardise the possibility of blocking the transmission of events in good time. The party adds that the portals/networks communicated with on the occasion of single events could amount to hundreds. The party believes that the problem could be overcome, at least in part, by eliminating the obligation to unblock sites at the end of the event, as most pirate networks would remain blocked and would not be reported during subsequent events. Finally, the party calls on the Authority to consider eliminating the verification phase, allowing rightholders, under their full responsibility, to communicate directly to the providers the networks to be blocked.

Another respondent points out that the text under consultation proposes a method of 'detection' of copyright-infringing sites concerning live-streamed sports events, which can be defined as 'contrary'. However, the party considers that in order for effective action to be taken against piracy without delay, it must be deemed necessary and sufficient simply to indicate the sites on which live sports events in breach of copyright are available in order to proceed to their immediate, even automated, blocking, without the need to verify the merits of the report.

With specific reference to paragraph 4e, the party considers that the in-depth verification of the compliance of the report should only be provided for at a later stage than the adoption of the blocking. In its view, checks must necessarily be transposed downstream because they require procedures and actions to be carried out in a time not consistent with the objective of triggering a block within 30 minutes following the order, and subsequent reports, of an illegal broadcast.

The party considers that qualified persons may, following the adoption of the order referred to in paragraph 4a, also report directly to ISPs, not necessarily only to Agcom but keeping it in copy, the sites on which live sports events are available in breach of copyright so that immediate blocking is carried out. This is because the order referred to in paragraph 4a acts as a framework measure.

According to this respondent, the carrying out of separate preliminary and subsequent checks could allow the adoption of blocking orders with the possibility of unblocking any lawful content if it was erroneously blocked; allow the Authority to suspend the blocking, where deemed necessary and pending due verification, and possibly disable it again if the infringements are confirmed; confirm the power to warn which the Authority already has in respect of those sites that repeat infringements; offer substantial protection in the event of administrative litigation that may be initiated by the persons affected by injunctions.

On the other hand, the party considers that if the current approaches were maintained, adding to the Copyright Protection Regulation would end up being even more detrimental to rightholders.



### **Comments by the Authority**

With regard to verifying reports, it is underlined that using the platform the Authority will carry out an automatic verification of the alerts following the adoption of the precautionary order. With particular reference to the merits of these reports, the Authority will define with the interested parties within the technical panel the evidence and documentation necessary to update the list of electronic addresses/sites to be disabled.

On this point, it is important to note the provisions of Article 2(4) of the anti-piracy law, according to which: *The rightholder or licensee of the right or the collective or category management association which the rightholder or licensee has mandated or a party belonging to the category of trusted reporters referred to in paragraph 3, shall, **under their own responsibility** submit to the Authority a request for immediate blocking of the DNS resolution of domain names and the routing of network traffic to IP addresses, including at the same time. The party mandated under the first indent shall attach to the request the necessary documentation, including the list of domain names and IP addresses through which the illegally disseminated content is made available. **This list may be updated by the rightholder or their assignees and communicated directly and simultaneously by the Authority to the parties to whom the measure is addressed, who must promptly remove or disable it, in any case within a maximum period of 30 minutes from the communication*** (emphasis added)

Referring back to what has already been emphasised regarding the responsibility regime provided for internet service providers, it is recalled that the Regulation provides that the mandated party must declare under its own responsibility that the domain names and IP addresses of the reported websites are unequivocally intended for the infringement of copyright or related rights to audiovisual works concerning live sports events and similar events. Furthermore, the right of interested parties to lodge a complaint pursuant to paragraph 5 of Article 9a is always guaranteed.

### ***The notification procedure to the European Commission under Directive (EU) 2015/1535***

The draft Regulation was also communicated to the European Commission under the so-called Transparency Directive, through the Central Notifications Unit in the MIMIT, which, on 22 March 2023, sent the documents to the Commission, resulting in the expiry of the standstill period of 3 months on 23 June 2023. The Commission requested some clarifications in a letter received, again through the Notifications Unit in the MIMIT, on 19 April 2023 (Ref. no. 0106318). The clarifications requested were as follows: ‘1. *With regard to orders that the Authority may impose on service providers to prevent or terminate an infringement of copyright or related rights relating to live sports events, the Commission requests clarification as to whether the Authority may also address such orders to mere conduit service providers established in other Member States.* 2. *The Commission requests clarification as to whether the injunction applies for a limited time*

*corresponding to the duration of the sports event to be protected. 3. The Commission requests clarification as to whether paragraph 4e of Article 9a of the proposed amendment applies only after at least 24 hours from the notification of the order. 4. What happens if the internet service provider does not comply with the order referred to in paragraph 4e of Article 9a within thirty minutes of the notification? According to the Italian authorities, is it always proportionate to require mere conduit providers to act within thirty minutes? 5. What are the deadlines for the adoption of amendments to the Regulation under consultation?’* The Authority replied on 28 April 2023 (Ref. no 0114638). By the aforementioned deadline of 23 June 2023, the Commission made no further requests. However, Article 5(3) of Directive (EU) 2015/1535, which provides that ‘Member States shall communicate the definitive text of a technical regulation to the Commission (via the Central Notification Unit) without delay’ remains valid, so that the definitive text of the measure is to be communicated to the Commission in the same manner and through the same MIMIT Unit.

CONSIDERING, therefore, following the comments and observations made in the context of the public consultation by stakeholders and the observations of the European Commission, the need to amend and supplement the current text of the Regulation approved by Resolution No 680/13/CONS as set out above;

HAVING HEARD the report of Commissioner Massimiliano Capitanio, rapporteur pursuant to Article 31 of the ‘*Regulation on the organisation and operation of the Authority*’;

## **RESOLVES**

### **Article 1**

1. The amendments to the ‘*Regulation on the protection of copyright on electronic communications networks and implementing procedures pursuant to Legislative Decree No 70 of 9 April 2003*’, referred to in Annex A to this resolution, are approved.
2. The coordinated text of the *Regulation* is set out in Annex B to this Resolution.
3. Annexes A and B form an integral and substantial part of the Resolution.

This resolution shall enter into force upon the definition of the technical and operational requirements of the tools necessary to enable the disabling of domain names or IP addresses through the single technology platform by the technical panel, but no later than 1 January 2024.



COMMUNICATIONS  
REGULATORY  
AGCOM AUTHORITY

This resolution is published on the Authority's website.

Rome, 26 July 2023

COMMISSION SPOKESPERSON  
Massimiliano Capitano

THE PRESIDENT  
Giacomo Lasorella

Attesting to the conformity of the Resolution  
THE SECRETARY-GENERAL  
Giulietta Gamba



**Annex A to Resolution 189/23/CONS**

**AMENDMENTS TO THE REGULATION CONCERNING THE PROTECTION OF COPYRIGHT ON ELECTRONIC COMMUNICATIONS NETWORK AND IMPLEMENTATION PROCEDURES PURSUANT TO LEGISLATIVE DECREE NO 70 OF 9 APRIL 2003, REFERRED TO IN RESOLUTION NO 680/13/CONS AS AMENDED BY RESOLUTIONS NOS 490/18/CONS, 295/20/CONS AND 233/21/CONS**

1. The Regulation on the protection of copyright on electronic communications networks and implementing procedures pursuant to Legislative Decree No 70 of 9 April 2003, referred to in Resolution No 680/13/CONS of 12 December 2013, as amended and supplemented by Resolutions No 490/18/CONS of 16 October 2018, No 295/20/CONS of 7 July 2020 and No 223/21/CONS of 22 July 2021, hereinafter also referred to as the Regulation, is amended as follows:

- a) in Article 1e(a), the words “Anti-piracy law” are added: Law No 93 of 14 July 2023 laying down: *'Provisions for the prevention and enforcement of the unlawful dissemination of content protected by copyright through electronic communications networks'*;
- b) in Article 9a, paragraph 4a is added: ‘By the request referred to in Article 6(1), a reasoned request may be made to the Authority to order, as a precautionary measure, the mere conduit service providers operating in Italy to put an end to the infringement of copyright or related rights concerning audiovisual works relating to live broadcast sports events and assimilated broadcast, pursuant to Article 8(4). The directorate shall issue the precautionary order if the infringement is manifest within the meaning of the last sentence of paragraph 1’;
- c) in Article 9a, paragraph 4b is added: ‘The precautionary order referred to in paragraph 4a shall be adopted within three days of receipt of the request or of the supplementary documents requested by the directorate for the purposes of admissibility of the request and executed by the addressees of the measure within the deadline set by the Authority and in any case within 24 hours of notification thereof’;
- d) in Article 9a, paragraph 4c is added: ‘By the request referred to in paragraph 4a, a mandated party may also request that, once the precautionary order referred to in paragraph 4a has been adopted, the addressees of the measure proceed, with successive reports, with the blocking of any other future domain and sub-domain names, or IP addresses, including variations of the name or simple declination or extension, that can be traced back to the same content and through which the infringements occur. For this purpose, the request shall indicate the websites operated or authorised by the rightholder to broadcast audiovisual works relating to live broadcast sports events and similar broadcasts’;



- e) in Article 9a, paragraph 4d is added: With the subsequent reports referred to in paragraph 4c, the mandated party shall communicate to the Authority the websites/electronic addresses on which, after the adoption of the precautionary order referred to in paragraph 4a, audiovisual works concerning live broadcast sports events and similar broadcasts infringing copyright or related rights are available. The mandated party also declares, under their own responsibility, also providing, for each reported IP address and domain name, documentary evidence regarding the current nature of the illegal conduct, that the domain names and IP addresses reported are unequivocally intended to infringe copyright or related rights on audiovisual works concerning live broadcast sports events and similar broadcasts’;
- f) in Article 9a, paragraph 4e is added: ‘The Authority shall, by means of appropriate technological measures identified in the technical panel set up together with the National Cybersecurity Agency, verify, including through the collaboration of members of the Guardia di Finanza (Financial Police) and the Postal and Communications Police, pursuant to Article 1(13) and (15) of Law No 249 of 31 July 1997, the compliance and completeness of the reports received pursuant to paragraph 4d and communicate the same to the recipients of the precautionary measure that immediately, and in any case no later than 30 minutes from receipt, disable access to the websites/electronic addresses reported, with simultaneous automatic redirection to an internet page drawn up in the manner indicated by the Authority. The internet page contains a notice of the right of the interested parties to lodge a complaint in accordance with paragraph 5, as well as the procedures for lodging a complaint’;
- g) in Article 9a, paragraph 5, after the words ‘of the precautionary order’, the following are added: ‘as well as the communications referred to in paragraph 4e’;
- h) in Article 9a, paragraph 6, after the words ‘referred to in paragraph 1’, the following are added: ‘and referred to in paragraph 4a, as well as the reports referred to in paragraph 4e’, in addition the words ‘the order assumes’ shall be replaced by the following: ‘the same assume’;
- i) in Article 9a, paragraph 7, after the words ‘referred to in paragraph 1’, the following are added: ‘and referred to in paragraph 4a, as well as the reports referred to in paragraph 4d’;
- j) in Article 9a, paragraph 8, after the words ‘referred to in paragraph 1’, the following are added: ‘and referred to in paragraph 4a, as well as the reports referred to in paragraph 4d’;



**Annex B to Resolution 189/23/CONS**

**REGULATION ON THE PROTECTION OF COPYRIGHT ON ELECTRONIC  
COMMUNICATIONS NETWORKS AND IMPLEMENTING PROCEDURES  
PURSUANT TO LEGISLATIVE DECREE NO 70 OF 9 APRIL 2003**

**Chapter I General Principles**

**Art.1 Definitions**

1. The following definitions are set out for the purposes of this regulation:
  - a) ‘Authority’: Communications Regulatory Authority, established by Article 1(1) of Law No 249 of 31 July 1997;
  - b) ‘Copyright Law’: Law No 633 of 22 April 1941, on the ‘*Protection of copyright and other rights relating to its exercise*’;
  - c) ‘Consolidated Act’: *Consolidated Act on audiovisual and radio media services* approved by Legislative Decree No 177 of 31 July 2005, as amended by Legislative Decree No 44 of 15 March 2010;
  - d) ‘Code’: *Electronic Communications Code* approved by Legislative Decree No 259 of 1 August 2003;
  - e) ‘Decree’: Legislative Decree No 70 of 9 April 2003, on the ‘*Implementation of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market*’;
  - (e)(a) ‘Anti-piracy law’: Law No 93 of 14 July 2023 laying down: ‘*Provisions for the prevention and enforcement of the unlawful dissemination of content protected by copyright through electronic communications networks*’;
  - f) ‘service provider’: the information society service provider, as per Article 2(1) (a) of the Decree, that carries out the mere conduit or hosting activities, as defined respectively by Articles 14 and 16 of the same Decree, as well as the information society service providers as defined in Article 195-bis(1) of Decree-Law No 34 of 19 May 2020, converted with amendments by Law No 77 of 17 July 2020, that use national numbering resources either directly or indirectly;
  - g) ‘website manager’: an information society service provider, other than those referred to in Articles 14, 15 and 16 of the Decree, that manages a space, on the internet, containing digital works, parts of them or hyperlinks to them (links or torrents), including those uploaded by third parties;



- h) ‘web page manager’: an information society service provider, other than those referred to in Articles 14, 15 and 16 of the Decree, that manages a space, within a website, containing digital works, parts of them or hyperlinks to them (links or torrents), including those uploaded by third parties;
- i) ‘payment service providers’: the parties that perform the services referred to in Article 1(1)(b) of Legislative Decree No 11 of 27 January 2010;
- l) ‘electronic communications networks’: the networks as defined by Article 1(1)(dd) of the Code;
- m) ‘audiovisual media service’: the service as defined by Article 2(1)(a) of the Consolidated Act;
- n) ‘radio media service’: the service as defined by Article 2(1)(a) of the Consolidated Act applied by analogy to radio services pursuant to Article 2(2) of this Consolidated Act;
- o) ‘media service provider’: the service provider as defined by Article 2(1)(b) of the Consolidated Act;
- p) ‘digital work’: a sound, audiovisual, photographic, video game, editorial or literary work or part thereof, including computer applications and operating systems, protected by the Copyright Law and disseminated on electronic communications networks;
- q) ‘programme’: a series of moving images, with or without sound, as defined by Article 2(1)(e) of the Consolidated Act;
- r) ‘programme schedule’: a range of programmes as defined by Article 2(1)(g) of the Consolidated Act;
- s) ‘catalogue’: a set of programmes, prepared according to criteria predefined by a non-linear audiovisual media service provider, that can be accessed at the moment chosen by the user;
- t) ‘rightholder or licensee’: any holder party or licensee of copyright or related rights with reference to the digital work referred to in paragraph (p);
- u) ‘entitled person’: right holder or licensee as referred to in paragraph (t) and, if they have received a mandate from the right holder or the licensee, trade associations, collective management organisations or independent management entities, as defined in Article 2(1) and (2) respectively of Legislative Decree No 35 of 15 March 2017;
- v) ‘link’: a hyperlink to the digital work referred to in paragraph (p);
- z) ‘torrent’: alphanumeric connection code through which users are placed in a position to interact for the purpose of using the digital works referred to in paragraph (p);



- aa) ‘uploader’: any natural or legal person that uploads digital works on electronic communications networks, making them available to the public, including through specific links or torrents or other forms of connection;
- bb) ‘downloading’: transfer of digital works on one’s own terminal or on a shared space through electronic communications networks;
- cc) ‘streaming’: a flow of audio/video data transmitted by a source to one or more destinations through electronic communications networks and reproduced in real time on the user’s terminal;
- dd) ‘notice and take-down procedures’: procedures aimed at removing illegal content from electronic communications networks;
- ee) ‘server’: processing system connected to the network hosting resources that can be used directly by other computers that request them;
- ff) ‘selective removal’: deletion from the web page of digital works that were disseminated infringing copyright or related rights or of the connection to them through links or torrents or in other forms;
- gg) ‘disabling access’: disabling access to digital works or to the web site that is uniquely identified by one or more domain names (DNS) or IP addresses associated therewith;
- hh) ‘Committee’: Committee for the development and protection of the legal offer of digital works, as referred to in Chapter II;
- ii) ‘Directorate’ and ‘Director’: the competent directorate of the Authority and the director of the aforementioned Directorate;
- ll) ‘board’: the Commission for services and products of the Authority which, pursuant to Article 1(6)(b)(4a) of Law No 249 of 31 July 1997, as amended by Article 11(2), of Law No 248 of 18 August 2000, exercises supervisory and investigative functions pursuant to Article 182a of the Copyright Law and the rights referred to in the Decree.

## **Article 2**

### ***Purpose and scope of application***

1. This regulation shall govern the Authority’s activities concerning the protection of copyright on electronic communications networks. In particular, the Regulation aims to promote the development of the legal offer of digital works and the education for their proper use, and contains the procedures for identifying and eliminating infringements of copyright and related rights, howsoever committed, implemented on electronic communications networks.
2. In carrying out the activities referred to in paragraph 1, the Authority shall operate in compliance with the rights and freedoms of communication, expression of thought, press, comment, criticism and discussion, as well as the exceptions and



limitations set out in the Copyright Law. In particular, the Authority shall protect the rights of freedom in the use of electronic means of communication, as well as the right of economic initiative and its exercise in a system of competition in the electronic communications sector, in compliance with the regulations referred to in the European Convention for the Protection of Human Rights and Fundamental Freedoms and the EU Charter of Fundamental Rights, and Articles 101 and 102 of the Treaty on the Functioning of the European Union. The Authority shall also assess the necessary balance between the protection of copyright and related rights and the promotion of technical and economic progress, as well as the development of new products and services to the benefit of the consumers.

3. This Regulation does not refer to end users who use digital works in downloading or streaming mode, or to computer applications and programs through which end users directly share digital works on electronic communications networks, without prejudice to the services offered by providers that use national numbering resources either directly or indirectly, as referred to in Article 195a of Decree-Law No 34 of 19 May 2020, converted with amendments by Law No 77 of 17 July 2020, if they allow an act of communication to the public.

4. The Authority shall monitor compliance with the provisions of this Regulation and verify the implementation of the measures referred to in Chapters III and IV.

## **Chapter II**

### **Measures to encourage the development and protection of digital works Art. 3**

#### ***General principles***

1. The Authority shall promote the education of users in relation to the legal use of digital works, with particular reference to younger ones.

2. The Authority shall promote the widespread dissemination of the legal offer of digital works, encouraging the development of innovative and competitive commercial offers and promoting awareness of services that allow the legal use of digital works protected by copyright, as well as access to these services.

3. The Authority shall promote the development of codes of conduct by information society service providers pursuant to Article 2(1)(a) of the Decree, in order to facilitate cooperation for the purpose of protecting copyright.

#### **Article 4**

##### ***Committee for the development and protection of the legal offer of digital works***

1. The Committee for the development and protection of the legal offer of digital works is hereby established. The Committee shall be chaired by the General Secretary of the Authority or by a delegate of the Authority and shall be composed of the



following members, who shall participate in the meetings without charging costs to the Authority:

- a) a representative for each of the main industry associations of the following categories: consumers, authors, artists and performers, publishers, producers, distributors, media service providers, and information society service providers as referred to in Article 2(1)(a) of the Decree;
  - b) a representative for each of the following bodies: Italian Society of Authors and Publishers (Società italiana degli autori ed editori (SIAE)); Permanent Advisory Committee for Copyright of the Ministry of Cultural Heritage and Activities (Comitato consultivo permanente per il diritto d'autore presso il Ministero per i beni e le attività culturali); Technical Committee against Digital and Multimedia Piracy (Comitato tecnico contro la pirateria digitale e multimediale) set up at the Department for Information and Publishing of the Presidency of the Council of Ministers; Committee for the application of the Media and Minors Self-Regulatory Code (Comitato per l'applicazione del Codice di autoregolamentazione media e minori) established at the Communications Department of the Ministry of Economic Development; Postal and Communications Police (Polizia postale e delle comunicazioni); Broadcasting and Publishing Special Unit of the Financial Guard (Nucleo speciale per la radiodiffusione e l'editoria della Guardia di finanza); Specialist Tribunals on industrial and intellectual property pursuant to Legislative Decree No 168 of 27 June 2003, as amended by Law No 27 of 24 March 2012;
  - c) representatives of the Authority.
2. The Committee shall encourage agreements to be reached between the categories referred to in paragraph 1(a), taking advantage of the unpaid collaboration of research centres, with reference, among others, to the following themes:
- d) the simplification of the distribution chain of digital works in order to facilitate access to them, including through tools such as distribution frames and license agreements developed *ad hoc* for the dissemination of digital works, without prejudice to free negotiation between parties;
  - e) the adoption of codes of conduct by the information society service providers referred to in Article 2(1)(a) of the Decree, including with reference to instruments for law enforcement, developed in collaboration with payment service providers based on the analysis of economic transactions and business models related to the offer of content in violation of copyright (follow the money).
3. The Committee, in collaboration with other public or private entities, shall be responsible for:
- f) promoting educational measures with regard to the legal use of digital works,



- including through the adoption of automatic redirection procedures to specific web pages for this purpose;
- g) drawing up measures to support the development of digital works, to remove existing barriers and to promote commercial initiatives for wider availability;
  - h) monitoring the development of the legal offer of digital works;
  - i) monitoring the application of this Regulation, including with reference to the methods for implementing the Authority's provisions;
  - j) formulating hypotheses for adapting this Regulation in relation to the technological innovation and the evolution of the markets.
4. The Committee shall avail itself of a technical secretariat set up within the Directorate.

### **Chapter III**

#### **Online copyright protection procedures pursuant to Legislative Decree No 70 of 9 April 2003**

##### **Article 5**

##### ***Methods of intervention***

1. Without prejudice to any self-regulated notice and take-down procedures, for the purposes of copyright protection on electronic communications networks, the Authority shall intervene upon application of one of the parties, pursuant to this Chapter and the subsequent Chapter.

##### **Article 6**

##### ***Application to the Authority***

1. If a digital work is believed to have been made available on the internet in violation of the Copyright Law, including through the offer of products, components or services in violation of copyright and related rights, or through the advertising, promotion or description of activities in violation of copyright and related rights, an entitled person may submit an application to the Authority, requesting its removal.
2. The application to the Authority referred to in paragraph 1 shall be submitted by using and filling out in its entirety, under penalty of inadmissibility, the form made available on the Authority's website and by attaching any useful documentation to prove ownership of the right.
3. The proceedings before the Authority must not be conducted if proceedings before the Judicial Authority are pending for the same rights relating to the same works.
4. The Directorate shall administratively archive applications that are:
- a) inadmissible due to a failure to comply with the provisions referred to in



- paragraph 2 or due to lack of essential information;
- b) inadmissible pursuant to paragraph 3 or due to elimination of the alleged infringement;
  - c) inadmissible as they do not fall under the scope of application of this regulation;
  - d) manifestly unfounded;
  - e) withdrawn after notice is sent of the initiation of the proceedings referred to in paragraph 7 and before the decisions of the board referred to in Article 8.
5. The directorate notifies the applicant about the archiving pursuant to paragraph 4(a), (b), (c) and (d), and the addressees of the communication on the initiation of proceedings referred to in Article 7(1), about the archiving pursuant to paragraph 4(e). The Directorate shall periodically inform the board of the aforementioned archiving.
6. With reference to the applications that have not been administratively archived, the Directorate shall initiate the proceedings pursuant to Article 7.
7. The Directorate shall initiate the administrative archiving or the proceedings within 7 days of receipt of the applications or of the additional documents requested by the Directorate for the purpose of admitting these applications.
8. If the reported conduct amounts to cases that fall within the competence of other administrations, the Directorate shall transmit the documents of the applications archived pursuant to paragraph 4(c) and (d) of this Article.

**Article 7**  
***Procedure of inquiry before the Directorate***

1. The Directorate shall report the initiation of proceedings to the party that submitted the application pursuant to Article 6(1), the service providers identified for this purpose, as well as, if traceable, the uploader and the web page and website managers. The notice of the initiation of proceedings shall contain the exact identification of the digital works that are alleged to have been disseminated in violation of the Copyright Law, a list of the provisions that are alleged to have been violated, a summary of the facts and of the results of the investigations carried out, the name of the competent office and of the person in charge of the proceedings to whom any rebuttal arguments are to be submitted, and the deadline for the conclusion of the proceedings.
2. With the same notice referred to in paragraph 1, the Directorate shall inform the service providers, as well as the uploader and the web page and website managers, if they are traceable, that they may spontaneously comply with the request of the applicant, as referred to in Article 6(1).
3. If the service providers, the uploader or the web page or website managers



spontaneously comply as referred to in paragraph 2, they shall simultaneously notify the Directorate.

3a. If the spontaneous compliance referred to in paragraph 2 has taken place, the Directorate shall initiate the administrative archiving, notifying the addressees of the notice of the initiation of proceedings.

4. If the service providers, as well as the uploader or the web page or website managers decide to rebut the alleged infringement, they shall forward to the directorate within five days of receiving the communication, as referred to in paragraph 1, all useful elements for the purposes of the related inquiry.

5. In the event of preliminary enquiries or in the light of the complexity of the case, the Directorate may allow for an extension of the deadlines referred to in Article 6(7) and in paragraph 4 of this Article, without prejudice to the deadlines laid down in Article 8(6) and Article 9(1)(d). If further background information is required for the investigation, the Directorate may also request it from the relevant parties, pursuant to Article 1(30) of Law No 249 of 31 July 1997.

6. Except for the case of spontaneous compliance referred to in paragraph 3, the Directorate shall forward the documents to the board, and shall propose to either archive the case or adopt the measures referred to in Article 14(3) and Article 16(3) of the Decree. The documents shall not be forwarded to the board prior to the deadline referred to in paragraph 4.

7. If, in the course of the proceedings, the applicant brings the matter before the Judicial Authority for the same rights relating to the same works, he/she shall promptly notify the Directorate, which shall archive the documents and forward them to the Judicial Authority, even if they have already been sent to the board pursuant to paragraph 6, and shall also notify the addressees of the notice of the initiation of proceedings.

8. The Directorate shall inform the board periodically of any archiving performed pursuant to paragraphs 3 and 7.

### **Article 8** ***Copyright protection measures***

1. The board, having examined the documents, shall initiate the archiving if it does not consider there to be an infringement of copyright or related rights.

2. If the board considers there to be an infringement of copyright or related rights, it shall require, in compliance with the criteria of graduality, proportionality and appropriateness, that the service providers to whom the notice referred to in Article 7(1) is addressed prevent or put an end to this infringement, pursuant to Article 14(3) and Article 16(3) of the Decree and to Article 195a of Decree-Law No 34 of 19 May 2020, converted with amendments by Law No 77 of 17 July 2020. For this purpose, the board shall adopt the measures referred to in paragraphs 3, 4, 4a and 5 against the service



providers, and shall indicate the appropriate measures to prevent the repetition of the infringements. The service providers must comply with the orders within 3 days of being notified.

2a. If the board considers there to be an infringement of copyright or related rights, but does not consider it possible to adopt the orders referred to in paragraphs 3, 4, 4a and 5 against the service providers, in light of the criteria of graduality, proportionality and appropriateness, it shall archive the documents and report the identified infringement to the judicial police bodies, pursuant to Article 182b of the Copyright Law.

3. If the site, on which digital works are made available in violation of copyright or related rights, is hosted on a server located on the national territory, as a general rule the board shall order service providers that perform hosting activities referred to in Article 16 of the Decree, to take steps for the selective removal of the digital works themselves and to take the necessary measures to prevent the upload of these works. In the case of mass infringements, the board may order service providers, instead of selectively removing the works, to disable access to said digital works.

4. If the site, on which digital works are made available in violation of copyright or related rights, is hosted on a server located outside the national territory, the board may order service providers who perform mere conduit activities, referred to in Article 14 of the Decree, to disable access to the site. In order to prevent the repetition of infringements that are already the subject of disabling orders issued by the Authority, the service providers that perform mere conduit activities shall be required to disable access to the websites indicated in the list in .txt format, which is made available by the Authority.

4a. If the digital works made available, as provided for in Article 6(1), in violation of copyright or related rights are disseminated to the public through service providers that use national numbering resources either directly or indirectly, the board shall normally order these providers to selectively remove the digital works in question, namely to adopt any measures available to prevent the upload of these works. In the case of serious or mass infringements, the board may order service providers, instead of selectively removing the works, to disable access to said digital works, through the adoption of measures sufficiently effective to ensure the effective protection of the aforesaid rights.

5. If the board adopts the measures provided for in paragraph 3, second sentence, and paragraph 4, it shall order service providers, pursuant to Article 71(2c)(a) of the Code, to automatically redirect the requests for access to the web page on which the presence of digital works disseminated in violation of copyright or related rights was identified to a web page drawn up according to the procedures indicated by the Authority.

6. The measures referred to in paragraphs 1, 2, 2a, 3, 4, 4a and 5 shall be adopted by the board within 35 days of receipt of the application referred to in Article 6, or of the additional documents requested by the Directorate for the purpose of admitting this



application. The addressees of the communication on the initiation of proceedings are notified about the measures.

6a. If further background information is required for the investigation, the board may arrange for an extension of the deadline referred to in paragraph 6, for a duration not exceeding 15 days.

7. In the case of non-compliance with the orders referred to in paragraphs 2, 3, 4, 4a and 5, the Authority shall apply the penalties referred to in Article 1(31) of Law No 249 of 31 July 1997, and shall notify the judicial police bodies pursuant to Article 182b of the Copyright Law.

### **Article 8a**

#### ***Repetition of infringements which have already been identified by the Authority***

1. If the entitled person believes that there has been a repetition of an infringement of copyright or related rights that has already been established by the Authority pursuant to Article 8(2) and Article 9a(7), he/she shall notify the Authority, attaching any useful documentation. The provisions of Article 6 shall apply.

2. If the existence of the repetition of an infringement of copyright or related rights already subject to a selective removal order or to an order to disable access to the digital works pursuant to Article 8(3) and (4a) is established, the Authority shall take action pursuant to Article 8(7).

3. If the existence of the repetition of an infringement of copyright or related rights already subject to an order to disable access to the website pursuant to Article 8(4) is established, the Directorate shall take a measure to update the list referred to in the aforementioned paragraph.

4. The measure shall be taken within 3 days of receipt of the application or the additional documents requested by the Directorate for the purpose of admitting the application. Notice of the measure shall be sent to the service providers identified for this purpose, as well as, where traceable, to the uploader and to the web page and website managers, who may appeal within 5 days of being notified. The appeal shall not suspend the effectiveness of the measure. The entitled person who submitted the application referred to in Article 6(1) shall also be notified of the measure. If an appeal is submitted, the Directorate shall initiate proceedings, notifying the persons entitled to submit an appeal and the person who submitted the application referred to in Article 6(1). Rebuttal arguments must be submitted by the deadline referred to in Article 9(1)(b).

The board shall decide on the appeal within 7 days from the date of its submission.

5. If the board concludes that there is no infringement of copyright or related rights as reported in the application referred to in paragraph 1, it shall archive the application in accordance with Article 8(1).



6. If the Directorate concludes that there has been no repetition of infringements as reported in the application referred to in paragraph 1, as the particular case could include the details of a separate infringement of copyright or related rights, it shall proceed pursuant to Article 7.

7. The Directorate shall periodically inform the board of the measures for updating the list referred to in Article 8(4).

### **Article 9** ***Abbreviated procedure***

1. If, on the basis of a first and summary examination of the facts that are the subject of the application referred to in Article 6, the Directorate considers that these facts constitute a case of severe infringement of the economic exploitation rights of a digital work or a case of mass infringement, the deadlines referred to in Articles 6, 7 and 8 shall be amended as follows:

- a) the administrative archiving and the initiation of proceedings, referred to in Article 6(7), shall take place within 3 days of receipt of the application or of the additional documents requested by the Directorate for the purpose of admitting the application;
- b) the submission of any rebuttal arguments, referred to in Article 7(4), must take place within 3 days of notice of the initiation of proceedings;
- c) the documents shall not be submitted to the board prior to the deadline referred to in subparagraph (b);
- d) the measures referred to in Article 8(1), (2), (2a), (3), (4), (4a) and (5) shall be adopted by the board within 12 days of receipt of the application or of the additional documents requested by the Directorate for the purpose of admitting the application;
- e) the extension of the deadline for the adoption of measures by the board, referred to in Article 8(6a), shall not exceed 5 days;
- f) the orders referred to Article 8(2), (3), (4), (4a) and (5) must be fulfilled within 2 days of being notified of the order.

2. For the purposes of recourse to an abbreviated procedure referred to in this Article, the Directorate shall assess, among others, the following elements:

- a) the significant amount of digital works that are alleged to have been disseminated in violation of copyright or related rights;
- b) the time of placement of the digital work on the market;
- c) the economic value of the infringed rights and the extent of the damage caused by the alleged infringement of copyright or related rights;
- d) the encouragement, even indirectly, to use digital works disseminated in



- violation of the Copyright Law;
- e) the misleading nature of the message, such as to lead the user to incorrectly believe that it is a lawful activity;
  - f) the provision of information on the technical methods for accessing illegally disseminated digital works;
  - g) the profit-making aim of the illegal offer of digital works, which may also be deduced from whether or not users are charged for access or from the dissemination of advertisements;
  - h) the origin of the application referred to in Article 6 by one of the associations referred to in Article 1(1)(u).

**Art. 9a**  
***Precautionary Procedure***

1. With the application referred to in Article 6(1), a justified request may be made to the Authority to order the service providers referred to in Article 1(1)(f), as a precautionary measure, to put an end to the infringement of copyright or related rights pursuant to Article 8(3), (4), (4a) and (5) within 2 days of being notified of the order. The Directorate shall issue the precautionary order if the infringement is identified on the basis of a summary assessment of the facts and there is a threat of imminent, serious and irreparable detriment to the rights holders.

2. The precautionary order referred to in paragraph 1 shall be adopted within 3 days of receipt of the application or the additional documents requested by the Directorate for the purpose of admitting the application.

3. Notice of the precautionary order referred to in paragraph 1 shall be sent to the service providers identified for this purpose and to the person who submitted the application pursuant to Article 6(1).

4. Notice of the precautionary order shall also be sent, where traceable, to the uploader and to the web page and website managers, who may put an end to the infringement. If this occurs, the Directorate shall revoke the precautionary order and administratively archive the application pursuant to Article 6(4)(b).

4a. By the request referred to in Article 6(1), a justified request may be made to the Authority to order, as a precautionary measure, the providers of mere conduit services operating in Italy to put an end to the infringement of copyright or related rights concerning audiovisual works relating to live broadcast sports events and similar broadcasts, pursuant to Article 8(4). The Directorate shall issue the precautionary order if the violation is manifest in accordance with the last sentence of paragraph 1.

4b. The precautionary order referred to in paragraph 4a shall be adopted within three days of receipt of the application or of the supplementary documents requested by the



Directorate for the purposes of admissibility of the application and executed by the addressees of the measure within the deadline set by the Authority and in any case within 24 hours of the notification thereof.

4c. By the request referred to in paragraph 4a, a mandated party may also request that, once the precautionary order referred to in paragraph 4a has been adopted, the addressees of the measure proceed, with successive reports, with the blocking of any other future domain and sub-domain names, or IP addresses, including variations of the name or simple declination or extension, that can be traced back to the same content and through which the infringements occur. For this purpose, the request shall indicate the websites operated or authorised by the rightholder to broadcast audiovisual works relating to live broadcast sports events and similar broadcasts.

4d. With the subsequent reports referred to in paragraph 4c, the mandated party shall communicate to the Authority the websites/electronic addresses on which, after the adoption of the precautionary order referred to in paragraph 4a, audiovisual works concerning live broadcast sports events and similar broadcasts infringing copyright or related rights are available. The mandated party also declares, under their own responsibility, also providing, for each reported IP address and domain name, documentary evidence regarding the current nature of the illegal conduct, that the domain names and IP addresses reported are unequivocally intended to infringe copyright or related rights on audiovisual works concerning live broadcast sports events and similar broadcasts’;

4e. ‘The Authority shall, by means of appropriate technological measures identified in the technical panel set up together with the National Cybersecurity Agency, verify, including through the collaboration of members of the Guardia di Finanza and the Postal and Communications Police, pursuant to Article 1(13) and (15) of Law No 249 of 31 July 1997, the compliance and completeness of the reports received pursuant to paragraph 4d and communicate the same to the recipients of the precautionary measure that immediately, and in any case no later than 30 minutes from receipt, disable access to the websites/electronic addresses reported, with simultaneous automatic redirection to an internet page drawn up in the manner indicated by the Authority. The internet page contains the notice of the right of interested parties to lodge a complaint pursuant to paragraph 5, as well as the procedures for lodging a complaint.

5. The recipients of the notification of the precautionary order and of the communications referred to in paragraph 4e may lodge a complaint within five days of the notification. The lodging of the complaint shall not suspend the execution of the precautionary order.

6. If no complaint has been lodged against the precautionary order referred to in paragraph 1 and referred to in paragraph 4a, as well as the reports referred to in paragraph 4e within the deadline referred to in paragraph 5, the same shall become final and the Directorate shall inform the board at the first relevant meeting.



7. If a complaint has been lodged in accordance with paragraph 5 against the precautionary order referred to in paragraph 1 and referred to in paragraph 4a, as well as the reports referred to in paragraph 4d, the Directorate shall initiate the procedure, giving notice to the parties entitled to lodge a complaint and to the party who has lodged the application referred to in Article 6(1). Rebuttal arguments must be submitted by the deadline referred to in Article 9(1)(b). The board shall adopt the final decision on the procedure pursuant to Article 8 within 7 days of the complaint being lodged. The provisions set out in Article 8(7) shall apply.

8. In case of non-compliance with the orders referred to in paragraph 1 and referred to in paragraph 4a, as well as the reports referred to in paragraph 4d and failure to lodge a complaint referred to in paragraph 5, the Directorate shall inform the board for the purposes of the application of the penalties referred to in Article 1(31) of Law No 249 of 31 July 1997, notifying the judicial police bodies pursuant to Article 182b of the Copyright Law. The aforementioned penalties shall be applied and communicated to the judicial police bodies even in the case of rejection of the complaint referred to in paragraph 5.

#### **Chapter IV**

#### **Provisions relating to the protection of copyright on media services Article 10**

##### ***General provisions***

1. Audiovisual media service providers shall operate in compliance with copyright and related rights, as well as with the principles referred to in Articles 3 and 32a of the Consolidated Act and as provided for in this Chapter.
2. Radio media service providers shall operate in compliance with copyright and related rights, as well as with the principles referred to in Article 3 of the Consolidated Act and as provided for in this Chapter.

#### **Article 11**

##### ***Application to the Authority***

1. If a programme or parts of it included in a programme schedule by a linear media service provider is/are believed to be broadcast in violation of the Copyright Law and of Article 32a(1) and (2) of the Consolidated Act, an entitled person may submit an application to the Authority requesting the programme not to be broadcast.
2. If the provision of a programme or parts of it in a catalogue by a non-linear media service provider is believed to take place in violation of the Copyright Law and Article 32a(1) and (2) of the Consolidated Act, an entitled person may submit an application to the Authority requesting the programme to be removed from the catalogue.
3. The applications referred to in paragraphs 1 and 2 shall be submitted by using



and filling out in their entirety, under penalty of inadmissibility, the forms made available on the Authority's website and by attaching any useful documentation to prove ownership of the right.

4. The proceedings before the Authority must not be conducted if proceedings before the Judicial Authority are pending for the same rights relating to the same works.

5. The Directorate shall administratively archive applications that are:

- a) inadmissible due to a failure to comply with the provisions referred to in paragraph 3 or due to lack of essential information;
- b) inadmissible pursuant to paragraph 4 or due to elimination of the alleged infringement;
- c) inadmissible as they do not fall under the scope of application of this regulation;
- d) manifestly unfounded;
- e) withdrawn after notice is sent of the initiation of the proceedings referred to in paragraph 8 and before the decisions of the board referred to in Article 13.

6. The Directorate shall notify the applicant of any archiving that takes place pursuant to paragraph 5(a), (b), (c) and (d), and shall notify the addressees of the notice of the initiation of proceedings referred to in Article 12(1), of any archiving that takes place pursuant to paragraph 5(e). The Directorate shall periodically inform the board of the aforementioned archiving.

7. With reference to the applications that have not been administratively archived, the Directorate shall initiate the proceedings pursuant to Article 12.

8. The Directorate shall initiate the administrative archiving or the proceedings within 7 days of receipt of the applications or of the additional documents requested by the Directorate for the purpose of admitting these applications.

9. If the reported conduct amounts to cases that fall within the competence of other administrations, the Directorate shall transmit the documents of the applications archived pursuant to paragraph 5(c) and (d) of this Article.

## **Article 12**

### ***Procedure of inquiry before the Directorate***

1. The Directorate shall notify the person who submitted the application, pursuant to Article 11(1), and the media service provider of the initiation of proceedings. The notice shall contain the exact identity of the programmes that are alleged to have been disseminated in violation of the Copyright Law, a list of the provisions that are alleged to have been violated, a summary of the facts and of the results of the investigations carried out, the name of the competent office and of the person in charge of the proceedings to whom any rebuttal arguments are to be submitted within five days of



receipt of this notice, and the deadline for the conclusion of these proceedings.

1a. With the same notice referred to in paragraph 1, the Directorate shall notify the non-linear media service providers referred to in Article 11(2) that they may spontaneously comply with the applicant's request. If the provider of non-linear media services spontaneously complies, he/she shall simultaneously notify the Directorate.

1b. If the spontaneous compliance referred to in paragraph 1a has taken place, the Directorate shall initiate the administrative archiving and shall notify the addressees of the notice of the initiation of proceedings.

2. In the event of preliminary enquiries or in the light of the complexity of the case, the Directorate may allow for an extension of the deadlines referred to in Article 11(8) and in paragraph 1 of this Article, without prejudice to the deadlines laid down in Article 13(3). If further background information is required for the investigation, the Directorate may also request it from the relevant parties, pursuant to Article 1(30) of Law No 249 of 31 July 1997.

3. Without prejudice to the case referred to in Article 14, the Directorate shall forward the documents to the board, and shall propose to either archive the application or adopt the measures with regard to warnings or orders, as referred to in Article 13(2).

4. If, in the course of the proceedings, the applicant brings legal action before the Judicial Authority on the same matter, he/she shall promptly notify the Directorate, which shall archive the documents and forward them to the Judicial Authority, even if they have already been sent to the board pursuant to paragraph 3, and shall also notify the addressee of the notice of the initiation of proceedings.

### **Article 13**

#### ***Copyright protection measures***

1. The board, having examined the documents, shall initiate the archiving if it does not consider there to be an infringement of copyright or related rights.

2. If the board considers there to be an infringement of copyright or related rights, it shall warn linear media service providers against broadcasting programmes that infringe the Copyright Law or it shall order on-demand media services providers to remove from the catalogue the programmes made available in violation of the aforementioned *Law*, within 3 days of notice of the order.

3. The measures set out in paragraphs 1 and 2 shall be taken by the board within 35 days of receipt of the application referred to in Article 11(1) and (2) or of the additional documents requested by the Directorate for the purpose of admitting this application. The addressees of the communication on the initiation of proceedings are notified about the measures.

3a. If further background information is required for the investigation, the board may arrange for an extension of the deadline referred to in paragraph 3, for a duration not



exceeding 15 days.

4. In the case of non-compliance with the warnings and orders referred to in paragraph 2, the Authority shall apply the penalties referred to in Article 1(31) of Law No 249 of 31 July 1997, notifying the judicial police bodies pursuant to Article 182b of the Copyright Law.

#### **Article 14**

##### ***Provisions pursuant to Article 1b(8) of the Consolidated Act***

1. If it is believed that there has been a significant infringement pursuant to Article 32a of the Consolidated Act by media service providers subject to Italian jurisdiction pursuant to Article 1a(4) of the same Consolidated Act, or not subject to the jurisdiction of any Member State of the European Union, but whose programme schedules or catalogues are received directly or indirectly by the Italian public, the Directorate shall issue a formal warning to the parties referred to in the second sentence of Article 1b(8) of the Consolidated Act, specifying the deadlines within which the warning must be complied with.

2. In case of failure to comply with the warning within the established deadlines, the Directorate shall forward the documents to the board, proposing to order the recipients of the warning to adopt any necessary measure in order to prevent the dissemination of the programme schedules or catalogues to the Italian public, referred to in paragraph 1.

3. The board, having examined the documents, shall archive them or adopt the order referred to in paragraph 2 within 70 days of receipt of the applications referred to in Article 11(1) and (2). Failure to comply with the order shall result in an administrative fine pursuant to the third sentence of Article 1b(8) of the Consolidated Act. 4. In the event of preliminary enquiries or in the light of the complexity of the case, the board may arrange for an extension of the deadlines referred to in paragraph 3, for a duration not exceeding 15 days.

### **Chapter V**

#### **Final provisions**

#### **Article 15**

##### ***Notices***

1. The notices referred to in this Regulation shall be sent exclusively by email, and where possible by certified email.



## **Article 16**

### ***Deadlines***

1. When calculating the deadlines referred to in this Regulation, only working days shall be taken into account.

## **Article 17**

### ***Legal protection***

1. An appeal may be brought before the administrative court against the provisions of the Authority provided for by this regulation, pursuant to Article 1(26) of Law No 249 of 31 July 1997 and Articles 133(1), (l), and 135(1) (c), of Legislative Decree No 104 of 2 July 2010.

## **Article 18**

### ***Review clause***

1. The Authority reserves the right to review this Regulation on the basis of the experience resulting from its implementation, as well as in the light of technological innovation and market developments, after hearing the interested parties, and within the Committee referred to in Article 4.

## **Article 19**

### ***Entry into force***

1. This Regulation shall enter into force on 31 March 2014.