

24 October 2024

D.L. No 113 of 9 August 2024 (Omnibus Decree) IP related news

The Decree Law No 113 of 9 August 2024 (the so-called «**Omnibus decree**») completed its legislative process with the publication in the Official Gazette (No 236 of 8 October 2024) of the **Conversion Law No 143 of 7 October 2024**, which came into effect on 9 October 2024.

Among the “*Urgent measures of fiscal nature, extensions of regulatory deadlines and interventions of an economic nature*” **art. 6-bis and 6-ter** of the Omnibus Decree are geared toward strengthening and making more effective the **prevention** and **repression** of digital piracy, in order to protect **copyright**.

Omnibus Decree – art. 6-bis

MAIN AMENDMENTS TO LAW NO 93 OF 14 JULY 2023

- A. The Omnibus Decree **amended art. 2, co. 1**, of Law No. 93 of 14 July 2023, (the so-called «**Antipiracy Law**»).

AGCOM will be able to order service providers (including network access providers) «[...] *to disable access to abusively disseminated content by blocking DNS resolution of domain names and blocking the routing of network traffic to IP addresses **predominantly** [previous version: «uniquely»] intended for illicit activities*».

Points of attention: (i) the criterion of «*prevalence*» is not clearly and unambiguously identified; (ii) the fact that each IP address is connected to numerous virtual servers is not taken into account, so it is not easy to determine which of them is «*prevalent*»; and (iii) the risk of so-called «*overblocking*» (i.e., accidental blocking of lawful IP addresses) remains, as happened on 19 October 2024 with the erroneous blocking of *Google Drive*.

- B. The Omnibus Decree **introduced art. 5-bis** into the Antipiracy Law, according to which «*IP address assignment service providers, the Italian Registry for the country code Top Level Domain (ccTLD) .it, domain name registration service providers for ccTLDs other than the Italian ccTLD and for generic Top Level Domain (gTLD) names, shall periodically **rehabilitate** domain name resolution and routing of network traffic to IP addresses blocked pursuant to this article, after at least **six months** have elapsed since the blocking, and which **are not found to be used for illicit purposes***».

Points of attention: (i) interpretative and applicative uncertainty of the new provisions and coordination difficulties with those already contained in the Antipiracy Law; (ii) control and rehabilitation activities reserved only for the entities mentioned in art. 5-bis, without also involving additional players in the information services market (e.g. hosting services and cloud servers, DNS resolver providers, etc.).

Omnibus Decree – art. 6-*bis*

MAIN AMENDMENTS TO LAW NO 93 OF 14 JULY 2023

- C. The Omnibus Decree **introduced art. 7-*bis*** into the Antipiracy Law, according to which AGCOM establishes, limited to the **first year** of operation of the platform (the so-called «**Piracy Shield**», operative as of 31 January 2024) «*maximum quantitative limits of IP addresses and Fully Qualified Domain Name (FQDN) that can be blocked at the same time. **After the first year of operation of the platform, no quantitative limit is allowed.***

*The Authority, in order to ensure the proper functioning of the process of obfuscation of FQDNs and IP addresses, based on the achievement of the maximum capacity of the blocking systems implemented by Internet Service Providers (ISPs) according to the technical specifications already defined or also based on the reporting of the subjects referred to in paragraph 4, **orders to rehabilitate** the DNS resolution of domain names and **unblock** the routing of network traffic to IP addresses **that have been blocked for at least six months**, publishing the updated list of IP addresses and DNS domain names on the single technology platform with automated operation, referred to in Article 6, paragraph 2».*

Points of attention: (i) difficulty of operational coordination between artt. 5-*bis* and 7-*bis*, with particular reference to the rehabilitation and/or unblocking procedures provided therein; (ii) elimination of the maximum limit of IP addresses that can be blocked at the same time (after the first year of Piracy Shield's operation), resulting in an aggravation of monitoring and reporting activities; (iii) inevitable reduction of the overall IP addresses accessible.

Omnibus Decree – art. 6-ter

AMENDMENTS TO LAW NO 633 OF 22 APRIL 1941

Art. 6-ter of the Omnibus Decree introduced art. 174-sexies into the Law No 633 of 22 April 1941 (the *Law on the protection of copyright and other rights related to its exercise* - «LdA»). The new provision is aimed at ensuring a more effective fight against online piracy, including through the provision of specific reporting and disclosure obligations, the omission of which is now criminally sanctioned.

In particular:

Art. 174-sexies, co. 1, LdA provides that (i) network access service providers, (ii) search engine operating entities, (iii) information society service providers, (iv) content delivery network operators, (v) internet security and distributed DNS service providers, (vi) hosting providers acting as reverse proxy servers for websites «*when they become aware that criminal conduct is being or has been committed or attempted under this Law [i.e., LdA], Article 615-ter [i.e., crime of abusive access to a computer or telematic system] or Article 640-ter [i.e., crime of computer fraud] of the Criminal Code, they shall immediately report such circumstances to the judicial authority or the judicial police, providing all available information*».

Art. 174-sexies, co. 2, LdA obliges the entities listed in para. 1 above to designate and notify AGCOM of «*a point of contact that allows them to communicate directly, electronically, with the Authority itself, for the purpose of the execution of this law [i.e., LdA]*».

Art. 174-sexies, co. 3, LdA provides that, outside the cases of complicity in the crime, the omission of **reporting** (as per co. 1) or **communication** (as per co. 2) shall be punished by imprisonment of up to one year, without prejudice to the application of the sanctions provided for in art. 24-bis of Legislative Decree No 231 of 8 June 2001.

Omnibus Decree – art. 6-ter

AMENDMENTS TO LAW NO 633 OF 22 APRIL 1941

Points of attention: *(i)* continuous and generalized surveillance obligations on network access operators; *(ii)* risk of excessive reporting, due to the lack of objective criteria for the identification of suspicious and/or illegal conduct; *(iii)* need for coordination with European (and, in particular, to EU Regulation 2022/2065 - «**Digital Services Act, DSA**»)* and with national legislation on the protection of personal data (Legislative Decree 196/2003 - «**Privacy Code**»)**.

(*) The **DSA** identifies an exclusion of liability for intermediary service providers consisting of (among others) services (the so-called «mere conduit»), unless the intermediary service provider plays an active role capable of conferring knowledge or control over such information. For access operators, the exemption of liability with respect to omissive conduct is reiterated.

(**) Article 132 of the **Privacy Code** provides for the option of retaining telephone and telematic traffic data, with the exclusion of all content related to communications. However, Art. 174-*sexies* LdA provides that, in case of suspected illegality, each provider shall monitor and retain web surfing content.

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