

**ITALY**



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<b>Topic:</b>	<b><i>Providers' liability or Web censorship?</i></b>
<b>Who</b>	<b><i>AG in Milan</i></b>
<b>When:</b>	<b><i>November 2006</i></b>
<b>Where:</b>	<b><i>Northern Italy</i></b>
<b>What Happened?</b>	<p>1. <u>The facts</u>: Recently the public opinion in Italy was shaken by an episode of “bullying”, which involved a group of minors who recorded themselves with a mobile phone while harassing and beating a young disabled. The video was then posted on a web portal (in the Section “<i>Funny Videos</i>”).</p> <p><i>Vivi Down</i>, a not-for-profit organization, assisting people affected by Down's syndrome, became aware of the existence of the video, felt that the episode resulted in a criminal offense and therefore brought the facts to the attention of the AG in Milan.</p> <p>The AG decided to extend his inquiry about the criminal offenses performed against two of Google's country managers. This despite the fact that Google, when informed about the video's posting, had arranged for the video's immediate removal (even before the AG's action).</p> <p>The national press reported widely about what happened and an intense debate heated up, involving the general public as well as politicians (calling – once more – for stricter control on Internet content) and legal experts.</p> <p>2. <u>The legal aspects</u>: While the episode itself clearly left no space at all for disagreement (nobody obviously intending to question the need of immediate action against the youngsters responsible for the bullying), the discussion focused on the legal aspects implied by the proceeding against Google's country managers.</p>

(i) A spokesman of the Internet company stressed that, once achieved awareness about the episode, instant action had been taken in order to remove the video and unconditional cooperation had been offered to the local police. He also explained that Google has a very clear and strict policy, warning users not to post improper content and alerting them that non-compliance would lead to immediate removal as soon as awareness about violations had been achieved. On the other hand, it did not appear reasonable to pretend continuous in-advance control with respect to the videos posted on its sharing service, being such monitoring factually impossible given the amount of contributions uploaded by users. He concluded by stating that, while the company was performing every effort to individuate technical means allowing to prevent improper content to be posted, right now the most effective preventive filter appeared to be “community control”, as users generally were eager to report the presence of unacceptable videos.

(ii) Domestic legal experts questioned the AG’s action in the specific case, considering it hardly compatible with general principles set by EU Law as well as by local provisions.

Specifically it’s been noted that the EU Directive no. 2000/31 on E-Commerce contains several provisions on provider liability. When implementing the Directive (through Legislative Decree no. 70 dated April 9th, 2003) Italian Statute Law established that providers do not bear a general obligation of controlling the information transmitted or memorized nor of investigating actively facts or circumstances indicating illegal acts. In addition, identical exemptions from content control and liability apply: to cases of “mere conduit”, to automated, intermediate or temporary memorizing (caching) and to permanent or long term information storage (as hosting services performed by a third party). Quite clearly providers have an obligation to report illegal acts, when acknowledged, to the competent authorities and must comply with instructions for immediate access blocking to (and removal of) illegal content.

Considering Google’s prompt reaction in the specific case, it’s hard to see why and from which perspective the AG in Milan is finding that the company’s conduct could result in wrong doing and in a criminal offense.

Various options appear possible, but the following two seem to be most likely to explain the AG's position:

- either the intention is to achieve an exact idea about how posts are placed by users on the portal's video sharing service and about the technical proceedings involved when content is uploaded,
- or the background of the action is to be found in a recent judgment issued by a first instance Court (*Tribunale*) in Aosta, which – while dealing with defamatory content posted on a blog – established that a blog owner's liability had to be considered equal to that of an editor in chief of a

newspaper (being the AG's idea that of extending the principle to providers).

**(iii)** Politicians perceived the ongoing discussion as an appealing playground for gaining consensus and called for stricter rules, meant to tighten control on Internet content.

One of the arguments brought forward is that currently a disproportion occurs between liability of publishing houses with respect to newspapers' or magazines' content and responsibility of Internet Providers as to web posts. The Secretary of the Department of Justice called for additional regulation, in order to set 'equal rules' for content liability, unconditional of the media used for content diffusion. He also announced that the Government was planning to look into the problem of proper control of web access by minors as well as into that of violent video games.

Recently a group of local MPs had also expressed serious concern about a "vacuum of legislation", which, they felt, occurred with respect to improper exposure of minors to harmful web content and which they planned to fill through a bill meant: (a) to prevent providers from accepting content submitted by users aged less than fourteen, and (b) to make posting of content by adolescents aged between fourteen and seventeen conditional to parental consent. In addition, sanctions for non-compliance would be significantly tightened and would involve – in terms of co-liability - minors, their parents and providers (who could face website blocks).