

ITALY



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1. Legislation and Self-Regulation	
Topic:	Data Protection
Who:	Italian Government
When:	June 2003
Where:	Italy
What happened?	
(i) Legislation:	On June 30 th , 2003 a Consolidated Act on protection of personal data was approved (by Legislative Decree no. 196).
The new "Data Protection Code"	<p>Clearly pursuing a harmonizing intent, the Consolidated Act concentrates in a unified text all the domestic rules previously issued on topics involving protection of personal data. It also adds several new provisions intended to enforce general principles and criteria established by the local Data Protection Commissioner ("<i>Garante della Privacy</i>", an independent Authority in charge of controlling the enactment of all the rules on protection of personal data), set by EU Directives as well as by domestic Statute Law.</p> <p>The Code consists of 186 articles, divided into three sections, containing:</p> <ol style="list-style-type: none">1) general provisions on collection and processing of personal data performed by private subjects or public entities (in detail, the section deals with required conditions, data bases' and systems' security, data transfer abroad),2) regulations for specific sectors, as judicial proceedings, police force, public administration, health services, education, statistical, historical and scientific researches, employment and social security, banking, financial and insurance systems, electronic communications, journalism, direct marketing,3) special provisions on: administrative and jurisdictional measures for infringement of the Code, sanctions, functions of the Privacy Commissioner. <p>Key topics dealt with by the new "Data Protection Code":</p> <p>- <i>Notification</i>: Previously required as a binding condition for the collection and the processing of any kind of personal data, is now necessary only if the treatment: (a) concerns sensitive data, (b) is performed through</p>

electronics means and is aimed at "profiling" of consumers' habits and purchasing approach, at employees' monitoring or at market surveys. Notification procedure has been greatly simplified (i.e. may now be filed also on-line, by following guidelines and using forms published on the Privacy Commissioner's website).

- *Consent*: The data subject's prior consent is still required as a condition for legal data processing, but a broad range of exemptions have now been set, e.g. data treatment performed: within the context of banking services, by non-profit associations (in the interest of their members), by use of lists or registers publicly available,

- *Information*: While requirement of preliminary information of the data subject on purposes and modalities still stands as a requirement, the Privacy Commissioner may establish a simplified procedure (e.g. when performed by call-centers),

- *Health*: Procedure has been greatly simplified. Now the patients may deliver their formal consent once to the family's doctor or to the sanitary office; from that moment on the consent will be considered as given for any future sanitary service. Additional measures have to be observed for granting patient's privacy when undergoing sanitary treatment (courtesy's distance, prohibition of patient's roll call in the waiting room, caution as to information given by phone or referring to patients in a hospital).

Genetic data treatment requires a special authorization from the Commissioner's office (which will coordinate with the Ministry for Health).

- *Work*: A deontological code will be issued and govern information and consent procedure for employees' monitoring and curricula treatment. As to the workers' distance control, the Code, in compliance with the regulation already in force (Law, no. 300, dated 20.05.1970 "Workers' Statute", article 4), bans the use of audio-visual means and other tools aimed directly at workers' activity distance control. Audio-visual systems required for productive or organizing needs or for security and organizations purposes, but likely to consent the workers' activity distance control, can be settled only with the prior union agreement. Servants must keep privacy with respect to home life.

- *Electronic Communication*: Following the general principles set by the EC Directive no. 2002/58/EC, the Code provides a new - and reduced - maximum term for the maintenance of traffic data stored for control and crimes' repression purposes (previously 5 years, now 30 months). With respect to processing of location data of mobile phone holders, the Code requires data subject's consent.

- *Processing of Personal Data for judicial purposes*: The Code strengthens measures aimed at protecting the privacy of parties in the context of judicial proceedings (e.g. data subject may ask that the verdict leaves out his personal data if the decision will be published on juridical magazines or diffused through electronic means). Special protection is

<p>(ii) Spamming: Guidelines from the Privacy Commissioner</p>	<p>granted to minors involved in any kind of proceedings (criminal as well as civil or administrative ones).</p> <p>- <i>Public Administration</i>: All judicial or administrative documents are to be inserted into sealed envelope if they are served to a person different from the addressee. Public entities are required to adopt additional internal regulations as to processing of sensitive data.</p> <p>- <i>Electoral Registers</i>: They cannot be used for commercial or advertising purposes, but only for electoral procedures or for statistical, scientific, historical or social-welfare purposes.</p> <p>- <i>Internet, Video monitoring, Direct Marketing</i>: It was felt that a specific Ethical Code should deal with those sectors, where the nature of the technical means used is likely to give rise to peculiar problems of privacy's rights violations.</p> <p>A huge number of claims filed during the last two years by Internet users induced the Data Protection Commissioner to issue (in May 2003) specific instructions meant to limit the excessive amount of unsolicited advertising and promotional materials distributed on-line without consent from the targeted public. According to those instructions, which apply to all operators active on Internet, sending unsolicited advertising e-mails without the addressee's consent is totally banned. Such unsolicited distribution - especially if performed methodically for commercial (profit making) purposes – may be considered as a criminal offense.</p> <p>Therefore, the use of e-mail for commercial and promotional purposes, can be legally performed only if it fulfils the following requirements:</p> <ul style="list-style-type: none"> - the users'/subscribers' e-mail address can be used only with their prior consent, - such consent must be obtained before any message is sent and after the users have been clearly informed as to the purposes for which their personal data will be used (the so called opt-in rule), - anonymous messages are forbidden: operators must specify their address and the nature of their message, - the data operator must grant to data subjects the application of privacy protection rules. <p>Any infringement of these provisions is punished with a fine up to 90.000,00 Euro and with imprisonment from 6 months to 3 years.</p> <p>As to spamming from abroad, usually Italian law for privacy protection does not apply. But the data subject can ask the Foreign Authority competent on privacy protection in the sender's country to check the compliance of the received mail with domestic privacy regulation.</p> <p>But when spamming results in criminal offense, Italian criminal law states that, even if the illegal action/behavior originates from abroad, the crime will be considered as committed in Italy when the injuring and damaging effects have occurred in Italy.</p>
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	In such case national law becomes applicable.
Comment:	<p>The new Code will come into force on January 1st, 2004.</p> <p>The spamming regulation is already in force.</p> <p>Through the above-mentioned provisions the regulation's privacy protection has been greatly renewed and harmonized in compliance with the guidelines and principles set by the respective European Directives.</p>

2. Self- Regulation Rules	
Topic:	Minors and Internet
Who:	Non-profit Associations for minors protection and Internet Providers
When:	2003
Where:	Italy
What happened:	<p>The protection of minors, already greatly increased through a recent Self-Regulation Code concerning television and broadcasting, is going to receive additional strength with respect to Internet use by minors.</p> <p>The Minister for Communication has announced that a Self Regulation Code for the protection and the defense of minors from the risks of uncontrolled Internet access will be soon enacted.</p> <p>A special Committee, formed by members representing associations for minors' protection as well as Internet providers, was established by the Minister and started its work.</p> <p>The final draft version of the Code was presented recently to the Internet providers for their approval.</p> <p>The Code is aimed at providing protective measures, deontological rules and special duties imposed on providers, in order to reduce the risks linked to Internet access by minors.</p> <p>Police has significantly increased control on Internet use, especially as to pornography and pedophilia.</p>
Comment:	The upcoming Code should improve the protection of minors during Internet access. In addition, the Secretary of Communication declared that – in his view - the problem ought to be approached on a transnational level and that for that reason he would sustain any European initiative for financing programs and projects aimed at developing proper software or technical means able to offer better control on Internet use by minors.

3. Legislation	
Topic:	EU Directives implemented in Italy
Who:	Italian Parliament
When:	2003

Where:	Italy
What happened:	<p data-bbox="467 237 586 260"><u>Foodstuff</u></p> <p data-bbox="467 264 1390 359">The European Directive no. 2000/13 concerning "<i>Labeling, presentation and advertising of foodstuff</i>" has been implemented in Italy through the Law by Decree, no. 181, dated June 23rd, 2003.</p> <p data-bbox="467 394 1369 489">The new provisions, amending the legislation already in force (Law by Decree no. 109, dated 27.01.1992), follows the guidelines issued by the Directive as to the compulsory indications on the labeling of foodstuff.</p> <p data-bbox="467 525 1114 548">In particular, the most relevant provisions concern:</p> <ul data-bbox="513 558 1406 814" style="list-style-type: none"> - the date of minimum durability (including the day, the month and the year), or in case of highly perishable foodstuff, the "use by" date; - the name or business name and the address of the producer or packager, as well as of the place of origin where failure to give such information might mislead consumers; - as to alcoholic beverages containing more than 1,2% by volume of alcohol, the effective alcoholic strength by volume. <p data-bbox="467 850 1341 945">The implementing Italian law states that any infringement of the said provisions is punished with a fine ranging from Euro 3.500,00 to Euro 18.000,00.</p> <p data-bbox="467 980 1304 1041">Those provisions apply also to the presentation and advertising of foodstuff.</p> <p data-bbox="467 1077 1411 1171">As to advertising consumers benefit from additional protection through Law by Decree, no. 74, dated 25.01.1992 on misleading and comparative advertising.</p> <p data-bbox="467 1207 1401 1367">In a recent case, the Market and Competition Commissioner held an advertising message on a chocolate package as misleading consumers with respect to the applied price. According to the Authority, the cursive character used for indicating the applied price (Euro 2,30) resulted in an unclear presentation, as the number 2 was likely to be confused with a 1.</p> <p data-bbox="467 1402 591 1425"><u>Tobacco:</u></p> <p data-bbox="467 1436 1382 1530">The European Directive no. 2001/33, concerning "<i>Manufacture, presentation and sale of tobacco products</i>", has been implemented in Italy through the Law by Decree, no. 184, dated June 24th, 2003.</p> <p data-bbox="467 1566 1336 1627">The Directive has been entirely implemented without any significant additional provision.</p> <p data-bbox="467 1663 1252 1686">As to transitional provisions, the implementing law states that:</p> <ul data-bbox="513 1696 1406 1822" style="list-style-type: none"> - cigarettes not in compliance with the provided requirements may be sold till the September 30th, 2003 while; - tobacco products, different from cigarettes, not in compliance with said provisions may be sold till the September 30th, 2004. <p data-bbox="467 1858 1411 1881">Any infringement of the said provisions, as long as it does not amount to a</p>

	<p>crime, is punished with a fine ranging up from Euro 10.000,00 up to Euro 50.000,00. If the case is particularly serious the fixed amounts may be doubled.</p> <p><u>E-commerce:</u> The European Directive no. 2000/31, concerning "<i>Electronic Commerce</i>", has been implemented in Italy through the Law by Decree, no. 70, dated April 9th 2003.</p> <p>The Directive has been entirely implemented without any significant additional provision.</p> <p>On providers' liability the implementing Italian provisions state that - save cases of "<i>mere conduit</i>", <i>hosting</i> and "<i>catching</i>", the providers are required:</p> <ul style="list-style-type: none"> - to promptly notify the authorities about illegal activities ascertained with respect to the recipients of their service, - to provide the competent authorities, on their request, with information enabling the identification of recipients of their service, whom providers have storage agreements with as to caching. <p>As to out-of-court-dispute-settlement, the implementing law states that providers and recipients of the service may bring an action before a special Body. The procedure may be started also on-line</p> <p><u>Copyright</u> The European Directive no. 2001/29, concerning "<i>Copyright and related rights in the information society</i>" has been implemented in Italy through the Law by Decree, no. 68, dated April 9th, 2003.</p> <p>The implementing law is partially amending the previous copyright regulation (Law no. 633, dated April 22, 1941) in compliance with the guidelines given by the Directive.</p>
Comment:	Through such implementation Italy has greatly improved the local regulation with respect to the main topics actually involved by the European process of harmonization of national laws: the personal data protection and the consumers protection.

4. Self regulation:	
Topic:	Cosmetics
Who:	Review Board of the Institute for Self-Regulation in Advertising
When:	June 2003
Where:	Italy, Milan
What happened:	<p>The Review Board stopped an ad of a famous cosmetic producer promoting a gel for weight loss as infringing Articles 2 (misleading advertising) and 23 (cosmetics for personal health) of the Self-Regulation Code.</p> <p>In its injunction the Review Board stated that the advertising messages about the promised slimming effects of the product were greatly</p>

	<p>deceiving for consumers with respect to the real results achievable by using the gel.</p> <p>The claimed ad pretended to affirm that the simple use of the product - without any additional other effort, except a massage - could achieve results identical to those deriving from a low-calories diet and from practice of physical activity. Consumers would therefore be induced to believe that the promised results could be promptly achieved without efforts; such claim was likely to deceive consumers and to induce them to purchasing the promoted product.</p> <p>The Review Board also found that the claim on how the gel was supposed to perform its effects resulted lacking of substantiation. The message pretended to claim that the product was based on aromatherapy, i.e. caffeine contained in the gel would decompose fat; in addition, a special aroma, reaching the brain, would stimulate the metabolism and burn the fat.</p> <p>In the Board's view, a cosmetic product can have only a superficial effects at epidermic level - aimed at hydrating and toning up the skin - but is not likely to perform slimming effects.</p> <p>Therefore the term "thinning" appeared improperly used in the message, since it indirectly referred to a therapeutic effect of high complexity, which is reserved to medical treatment.</p>
Comment:	<p>According to Industry Self-Regulation advertising messages must take into due account consumer perceptiveness, i.e. their tendency of being more sensitive towards claims which promise the achievement of extraordinary results.</p>

5. Industry News	
Topic:	Wireless Advergame: the advertising challenge.
Who:	German car producer
What happened:	<p>A well known German motor producer promoted its last car model, by using, behind the traditional means (the TV and the press), a new communication technique: an advertising videogame, so called "wireless advergame".</p> <p>In an interview the company's general manager illustrated the huge advantages deriving from such new advertising format.</p> <p>In Italy almost 50 million are currently in use: therefore mobile phones clearly offer an appealing potential as a marketing vehicle.</p> <p>Moreover, the last generation of mobile phones has larger and colored display, able to receive a broad range of communication.</p> <p>Wireless advergames far result more effective than SMS. The latter tend to be promptly cancelled by receivers, while a videogame can be targeted to an audience ranging from 25 to 45 years and will be perceived as a form of entertainment, where the presence of the company's brand is</p>

	<p>not felt as an intrusion. The new technique contributes therefore to increasing brand awareness, as exposure to the targeted audience is superior to the one (usually not more than 30 seconds) offered by TV.</p> <p>In addition, advergames clearly favor an interactive relationship between companies and consumers.</p> <p>Finally such form of advertising is not so expensive. Production costs of wireless advergames range approximately between 10.000 and 20.000 Euro.</p>
Comment:	The challenge has been launched. We'll now have to see how consumers and their associations will react, especially with regard to personal data processing and to fair advertising practices.

6. Case Report:	
Topic:	Nasty guests
Who:	Market and Competition Commissioner
When:	April 2003
Where:	Italy
What happened:	<p>A consumer required action from the Market and Competition Commissioner (competent on misleading ads) against an promotional message, which a tour operator had put on his catalogue promoting with respect to a hotel on Mauritius Island.</p> <p>The message presented the hotel as "totally sheltered from the winds". The claimant stated that the message was misleading since the presentation did not correspond to the reality; he complained that during his stay in the hotel, he had supported a very heavy wind.</p> <p>The Commissioner's office investigated on whether in normal meteorological conditions the hotel was effectively totally protected from the winds. Experts were asked to verify the winds' periodicity nearby the hotel, taking into account the usual weather conditions on Mauritius Island.</p> <p>After such inquiry the Commissioner found that the message promised that guest could rely on a an holiday stay in a hotel well sheltered from the wind's. The claimant was right in affirming that during his stay heavy winds hit the hotel, but this occurred as a result of weather conditions, to be considered – according to the local meteorological station as unusually unfavorable and unforeseeable.</p> <p>Such – exceptional - weather conditions during a specific period, together with the fact that the hotel was actually situated in a well sheltered place (surrounded by hills creating a natural barrier), convinced the Commissioner that the message could not be considered as misleading.</p> <p>Therefore the claim was dismissed.</p>
Comment:	The case illustrates that the evaluation of the misleading character of a promotional message may have to take into account not only the

	consumer's perception and confidence, but also factual circumstances and their characteristics
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7. Self- Regulation	
Rules	
Topic:	Code of Advertising Self-Regulation
Who:	The Institute for Advertising Self Regulation (IAP)
When:	July 2003
Where:	Italy
What happened:	<p>On July 28, 2003, the IAP approved the 35th edition of the Code of Advertising Self- Regulation.</p> <p>The text of the new Code is substantially confirming the precedent edition with an amendment to article 40, referring to the publication of the Jury's decisions. The article provides that the extracts of all decisions shall be published only on the IAP website and no more in the newsletter.</p> <p>In addition, new provisions on the applicability of the Code have been introduced.</p> <p>The IAP has enacted six regulations alleged to the Code, providing the guidelines aimed at applying and enforcing the rules set by the Code:</p> <ul style="list-style-type: none"> - <i>Regulation for the required deadline for the self-regulation decisions' enforcement:</i> <p>An ads held as illegal must cease within seven working days from the moment of delivery of the desist order as to ads been diffused by the following media: TV, Radio, newspapers and posters.</p> <p>For ads diffused through media different from the mentioned ones, the cease order shall be enforced within the time strictly necessary with respect to the peculiar characteristics of the used media.</p> <ul style="list-style-type: none"> - <i>Regulation for filing advertising projects:</i> <p>Agencies wishing to protect their creative projects/proposals realized for a tender must deposit at the IAP Office a copy of such project and the alleged required documents in compliance with the given prescriptions. The regulation contains guidelines and forms.</p> <ul style="list-style-type: none"> - <i>Regulations for protection of planned/announced ads:</i> <p>Who intends to protect a specific idea/concept for a future advertising campaign, must deposit a description of the idea/concept and publish an abstract of the key characteristics in compliance with given guidelines.</p> <ul style="list-style-type: none"> - <i>Regulation for advertising campaigns run abroad:</i> <p>Whoever seeks protection against imitation in Italy of ads already run abroad, may deposit a copy of said ad with the IAP in compliance with the specific guidelines. The procedure grants a priority right valid for 5 years from the moment of said filing.</p>

	<p>- <i>Regulation for the advertising of foodstuff supplements</i> Some main provisions:</p> <ul style="list-style-type: none"> - the product may not be presented as a slimming drug, - the proper function of foodstuff supplements is that of an "aid to weight reducing diets", - advertising messages have to specify that the supplements must be used in conjunction with – and not as substitute of - an appropriate slimming diet and a physical activity, - advertising messages may not use terms as: "ideal weight, "ideal figure" or similar. <p>- <i>Regulation for veterinary drugs.</i> For advertising of veterinary drugs the prescriptions set for pharmaceuticals apply.</p> <p>It must result clear that the product has to be considered as a pharmaceutical for medical treatment. Advertising may not suggest that prior veterinary counsel is useless and that the use of the product does not imply any risk for the animal.</p>
Comment:	<p>Industry Self-Regulation is sensitive changing habits and needs; it's eager to adapt its code to new developments.</p> <p>Recently the IAP's Jury has stated - as a general principle - that the Code's provisions clearly apply also to advertising brochures (the defendant had argued that the Code was not applicable to the brochure since the diffusing company had not accepted the self-regulation system).</p> <p>In the Jury's view the code was applicable as the adviser had signed the special acceptance clause inserted into standard the contracts used by agencies and their associations. The advertiser cannot pretend to go around the Code's prescription through a particular mean of communication or distribution mechanism.</p>

8. Self Regulation	
Topic:	Using women in advertising: not necessarily offensive or sexist
Who:	Jury of the Institute for Self-Regulation in Advertising
When:	July 2003
Where:	Italy, Milan
What happened:	<p>The Review Board of the IAP objected against a TV campaign – aired in June 2003 - for lemon, orange and grapefruit juices and filed a case with the Jury considering the ad as infringing articles 1 (Fairness in advertising), 9 (Violence, Vulgarity, Indecency) and 10 (Human dignity).</p> <p>The commercial showed a close-up of a prosperous breast, wearing a small bikini that was jumping rhythmically. Then the framing gradually enlarged, showing a girl sitting down on a rubber boat speeding on the sea.</p> <p>The boat's driver is looking stunned the breast's movement; sometimes he withdraws his eyes and drinks the juice. Meanwhile a voice comments:</p>

	<p>“Drink K juices and discover on labels how to win a rubber boat”.</p> <p>The Review Board claimed that the message was likely to exploiting the woman's image, offending the human dignity. Moreover the vulgarity deriving from the sexual hint to the body's and breast's movement exceeded the limits set up by the Code.</p> <p>The advertiser argued that the ad was based on an ironic tone where the woman is presented as part of the joke and the feminine beauty is not associated to any offensive side-meaning. It could be considered as ambiguous, but it's also quite clearly intended to be ironic without any vulgar association.</p> <p>According to the Jury the commercial, even seeking to cause impact on the public trough the initial scene, did not exceed the limits of decency imposed by the Code, as the presentation describes a joking situation, within the context of a the holiday atmosphere, which prevails over sexual association and vulgar outcome.</p> <p>Moreover the Jury stressed that checks performed on advertising with respect to its compliance with the Code's provisions have to be conducted on the ad as a whole an not just on single parts.</p> <p>Simple reference of anatomical parts of the female body (especially those traditionally considered as representative of woman's beauty) cannot be deemed as apt to automatically transform a scenario in an indecent or vulgar presentation.</p> <p>The Review Board's claim was dismissed.</p>
Comment:	Sex has always been a very common tool in advertising. What actually counts is not if , but how sex is associated to a marketing campaign