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The Court of Rome on hosting liability

di
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The Court of Rome held an interesting decision, stating that a hosting provider is liable only if he has “not promptly complied with the order of the judicial or administrative authority aimed at preventing access to illegal information, or where he is aware of the illicit nature of the contents of a service he provides access to, and he has failed to inform the competent authority”.

The Court has dismissed an application made by RTI/Mediaset against Choopa, an US company which offers several services including a video-sharing platform.

RTI’s summons asked for “the immediate removal and the access disabling of all contents reproducing - in whole or in part, directly or indirectly, by any method of transmission - sequences of images of the TV programs “Squadra Antimafia 3 Palermo Oggi” and “RIS Roma 2” as well as the inhibition to “the continuation of the infringement of all RTI’s IP rights”.

According to the decision a formal notice sent by the rights-owners - RTI in this case - must include “detailed and specific instructions in order to remove the videos and the related web pages”. In other words, rights-owners are expected to report the list of the URLs of the infringing web-pages as well as any other technical instructions which can be useful for blocking or removing their own contents.

Furthermore, the Court of Rome reminded an important principle, repeatedly betrayed and forgotten by the Italian courts in the recent past, stating that judges are not entitled to order ISPs to “exercise a preventive control over any and all contents [published by third parties] on the web-sites that are hosted on their servers”.

Thus, ISPs providing hosting services can not be requested by the courts to prevent publication of similar contents to those originally reported because such a measure would be a general monitoring obligation, prohibited by article 15 of the e-commerce directive.