

ITALY

***MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL
COOPERATION***

*Inter-ministerial Committee for Human Rights
Comitato Interministeriale per i Diritti Umani*

**ITALY'S REMARKS
ON THE COMPARATIVE STUDY
ON BLOCKING, FILTERING AND TAKE-DOWN OF ILLEGAL
INTERNET CONTENT**

March 9th, 2016

ITALY'S REMARKS

The Government of Italy is in a position to provide the following information, to be eventually considered for inclusion in the Study under reference:

Introductory remarks

1. The Basic Law determines the political framework for action and organization of the State. The fundamental elements or structural principles of the constitutional law governing the organization of the State are as follows: Democracy, as laid down in Article.1; the so-called *personalistic* principle, as laid down in Article. 2, which guarantees the full and effective respect for human rights; the pluralist principle, within the framework of the value of democracy (Arts. 2 and 5); the importance of work, as a central value of the Italian community (Arts. 1 and 4); the principle of solidarity (Article.2); the principle of equality, as laid down in Article.3 (it is also the fundamental criterion applied in the judiciary system when bringing in a verdict); the principles of unity and territorial integrity (Article 5); and above all the relevant principles, including the social state, the rule of law and the respect for human rights and fundamental freedoms, such as freedom of correspondence, freedom of movement, freedom of religion or belief, and freedom of opinion and expression – as also mentioned in your report (para.10).

2. The Italian legal system aims at ensuring an effective framework of guarantees, to fully and extensively protect the fundamental rights of the individual. Indeed, we rely on a solid framework of rules, primarily of a constitutional nature, by which the respect for human rights is one of the main pillars.

Turning to specific comments and proposals for integration

3. Mention has to be made of the following:

(i) P. 351: We recommend to refer to the EU legislation on data protection, especially:

- Directive 95/46/EU, to be soon replaced by an EU Regulation on data protection, as well as by the specific EU Directive on data protection within counter activities. Both are to be finalised; and their publication has been envisaged for spring 2016 and their entry into force in a two-year lapse time (spring 2018).

<http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/4443361>

- Directive 2002/58/EU ("e-Privacy" – under revision).

(ii) P. 353, last two lines: in addition to Art.143 of the Privacy Code, mention must be made of Art. 154, (c) and (d), which envisage among the powers of the National Data Protection Authority, as follows: in accordance with Article 143, it can prescribe to those in charge of the data treatment, those measures when considered either necessary or a matter of opportunity, in order to align that treatment to the provisions in force; either prohibits, including *ex officio*, totally or partly, the treatment of data when illegitimate or incorrect, or it can decide for blocking measures in accordance with Art.143. (Lgs Decree No. 196/2003, available in English, at: <http://194.242.234.211/documents/10160/2012405/DataProtectionCode-2003.pdf>)

(iii) P.355: by its Guidelines on Emails and the Internet at Workplace, the National Authority under reference has pointed out to the use of preventive filters at workplace – targeting the access to those websites not related to the job – which appear to be preferable if compared to *ex post* controls (the above Guidelines, English version, are available at:

<http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/1408680>)

(iv) P.361: With regard to the report on data and copyright protection, by decision, adopted on February 28, 2008 ("Peppermint" case <http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/1495246>), the national Authority has: stipulated the illegitimacy of data treatment from a private society when it consists in a systematic monitoring aimed to detect web users exchanging music or games on the internet; and then prohibits the further treatment of personal data, by deciding for cancellation.

(v) P. 364, para.2.2.4, the so-called right to forget/to be forgotten (*diritto all'oblio*), it is now included in the above draft EU Regulation on data protection (Art. 17). On that, please also refer to the position of the Art.29 Group that, by Document adopted on November 26, 2014, provides Guidelines in view of the enforcement of the verdict Google-Spain (See http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2014/wp225_en.pdf).

4. At the domestic level, the National Authority on Data Protection has intervened several times on requests from citizens, aimed at deleting news resulting from a web research which is to be considered harmful.

5. Plus, each case has been – and is – considered by a case-by-case approach, to ensure a correct balance between right to privacy and right of chronicle (<http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/3623678> <http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/3623678> e <http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/3822823> <http://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/3822823>)