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NEW TECHNOLOGIES AND THE RIGHT TO INFORMATION

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SUMMARY: 1) Introduction: Right to information and freedom of expression in Italy; 2) Regulation of information and new technologies; 3) Regulation of information activity under the Italian Copyright Law (n° 633/1941) and the advent of new technologies; 4) The press enterprise: Law n° 47/1948 on press activity and Law n° 62/2001 on publishing activity; 5) Information and protection of the rights of individuals.

1) Introduction: Right to information and freedom of expression in Italy

Pursuant to the first subsection of Article 21 of the Italian Constitution *"everybody has the right to freely express his/her thinking by words, writing and any other means of dissemination."*

The expression of thinking by way of means of dissemination represents the exercise of that particular aspect of the right provided for by Article 21 of the Constitution, known as freedom of information, which has been acknowledged to have constitutional relevance since the first ruling of Italian Constitutional Court[1], and which, depending on the standpoint of the subject of reference, can be conceived as freedom to *inform*, freedom to *seek information* and freedom to *be informed*[2].

The *freedom to inform*, *i.e.* the freedom to divulge information, constitutes the active side of the freedom of information and makes reference to the subject who professionally disseminates news, facts and

[1] Corte Cost., 14th June 1956 in Corasaniti, *Diritto all'informazione*, Cedam, 1999, p. 10.

information among the public. The Italian Constitutional Court has repeatedly affirmed that freedom of information, in its forms of "giving and divulging news, opinions and comments", is comprised within the freedom of expression of thinking provided for by Art. 21 of the Constitution, and that the latter covers press freedom[3].

The *freedom to be informed, i.e.* the freedom to receive information, constitutes the passive side of freedom of information and has to be intended as freedom of receiving news and opinions divulged by others without censorship or interference. Actually, the tendency of the doctrine and the case-law of Italian Constitutional Court has been not to acknowledge the existence of an individual right to be informed, but rather the existence of a social right or diffused interest, having constitutional relevance, implicitly contained in art. 21 of the Constitution. However, the recent research has underlined on one hand the existence of an interest of the subject who provides information to the removal of obstacles which impede the recipient to have knowledge of the information the former has divulged, and on the other hand the existence of an individual *right* of the recipient to receive such information[4].

Finally, the concept of *freedom to seek information* refers to the interest of the subject who elaborates and then disseminates the information, *i.e.* the subject who professionally carries out the activity of informing, and is conceived of as the right of free access to information sources[5]. However, the existence of a *general* right to seek information under Art. 21 of the Constitution has been excluded especially with reference to the limits set out by the respect of individuals' private sphere as the right to privacy is acknowledge to have constitutional relevance itself[6].

In summary, although we are unable to find the specific expressions "*freedom*" or "*right*" to information within the text of our Constitution, the existence at a constitutional level of such freedom and right is commonly acknowledged to have its basis in the right to expression of thinking provided for by Art 21.

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[2] Polvani, *La diffamazione a mezzo stampa*, Cedam, 1988, p.18.
[3] Polvani, *op. cit*., p. 19. The author specifies that the concepts of *active* and *passive* sides of the freedom of expression of thinking were used by Italian Constitutional Court in its ruling of June 15, 1972, nr. 105.
[4] Polvani, *op. cit*., p. 20.
[5] Corte Cost., 15 giugno 1972, n. 105 in Corasaniti, *op. cit.* , p. 10; Polvani, *op.cit*., p. 21.
[6] Polvani, *op. cit*., *ibidem*..

Furthermore, the acknowledgment of the existence of a right to information in the meanings described above is in line with Art. 19 of the *Universal Declaration of Human Rights* adopted by the United Nations in 1948, which acknowledges to any individual the right to freedom of opinion and expression, including that to "*seek, receive and impart information and ideas through any media and regardless to frontiers*" and with Art. 10 of the *European Convention for the Safeguard of Human Rights and Fundamental Liberties* – implemented in Italy by Law nr. 848 of August 4, 1955 - which acknowledges the right to freedom of expression and specifies that "*this right shall include freedom to hold opinions and to receive and impart information an ideas without interference by public authority and regardless of frontiers*". Eventually, the acknowledgment of the existence of a freedom to *seek* information is contained in Art. 19.2 of the *International Covenant on Civil and Political Rights* adopted by the General Assembly of the United Nations on December 19, 1966 – implemented in Italy by Law nr. 881 of October 25, 1977 - which states that "*everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of any kind, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice*".

2) Regulation of information and new technologies

The revolution brought about by new data transmission technologies, and in particular Internet, consists principally in a different, more agile and more economical *mode* of providing information. However, adoption of advanced technological tools is nothing new for the publishing world. For some years now we have witnessed the increasing use of systems of remote transmission that permit printing and immediate circulation of the same newspaper in more than one predetermined geographical area and that use telephone lines used only for data transmission[7] to decentralized printing facilities, which then print the whole editions of the newspaper for the circulation area assigned to them.

Internet can be considered as the next step development of circulation of information: web "pages", once they have been put on the network, can be consulted by millions of people in even the most remote part of the globe at extremely low cost to the publisher.

[7] Polvani, *op. cit.*, p. 312, this is the so-called "Mercurio network" run by Italtel.

The literature has raised the question as to whether, from a legal point of view, the new means of reproduction and circulation of information form a "separate" world from traditional systems, or whether they may be described within the existing legal categories.

Furthermore, known is the dispute between those who claim that Internet should be considered as a "free area", a place where it is possible to find, circulate and exchange *any* kind of information without rules and those who, on the contrary, believe that it should be subjected to rules.

Focusing our attention in particular on the circulation of information, we underline that in Italy regulations regarding information services find their source, not only in Article 21 of the Constitution as already mentioned above, but also in a number of ordinary and special laws, amongst which the most important, for the purposes of this document, are Law n° 633 dated 22nd April 1941 (the Italian Copyright Law), Law n° 47 dated 8th February 1948 on the press, the very recent Law n° 62 dated 7th March 2001 on publishing as well as a number of criminal provisions regarding the protection of the rights of individuals.

3) Regulation of information activity under the Italian Copyright Law (n° 633/1941) and the advent of new technologies

3.1. – Under Article 3 of Law n° 633 dated 22nd April 1941 (the Italian Copyright Law) daily newspapers and periodicals enjoy protection as *collective works*, defined as those works formed by the "*assembling of works or parts of works, and possessing the character of a self-contained creation resulting from the selection and co-ordination with a specific literary, scientific, didactic, religious, political or artistic aim, such as encyclopaedias, dictionaries, anthologies, magazines and newspapers*", which are protected as original works.

The author of a collective work is, according to Article 7 of Law n° 633, "*the person who organizes and directs its creation"*, that is, with specific regard to journalism, the director, whose creative contribution consists in the work of selecting and coordinating the elements that constitute the newspaper or the magazine for which he is responsible.

Article 38 of the same law reserves the right of economical exploitation of the collective work to the publisher, without prejudice to the status of author attributed to the director (chief editor) as stated in

Article 7 mentioned above or to the right of individual contributors to use their own work for publication in other newspapers or magazines, provided that they observe existing agreements with the publisher of the collective work and in any case Articles 39 to 43 of Law n° 633.

The attribution to the publisher of the rights of economical exploitation of the collective work is justified by the fact that the publisher not only sustains the usual costs of reproduction and circulation of the work, but also those related to its *assembly* and indeed, usually, the chief editor and the contributors are bound to the publisher by contracts in which they expressly or implicitly assign their respective economical rights to the publisher[8].

3.2. – The system of exclusive rights reserved to author and publisher is lessened by Articles 65-71 on the subject of free uses.

In respect of news articles, Article 65 of the above mentioned Law n° 633/1941 states that "*Articles of current interest of an economic, political or religious character, published in magazines or newspapers, may be freely reproduced in other magazines or newspapers, or may be broadcast, unless such reproduction is expressly reserved, provided mention is made of the magazine or newspaper from which they are taken, the date and the issue of the magazine or newspaper and, in the case of a signed article, the name of the author*".

Their reproduction by third parties does not therefore require the consent of the author, provided that the obligation of indicating the name of the magazine or newspaper from which the article was taken is complied with and also provided that reproduction has not been expressly prohibited.

The provision is not open to wider interpretation and therefore consent of the author is always necessary for the publication of the article, for example, in collections or on discs, since in this case the purpose would no longer be that of information but rather of documentation[9].

Article 70 of the Law in question permits reproduction of excerpts or parts of works for the purposes of criticism, discussion and also instruction within the limits justified for such purposes, and provided that such reproduction does not conflict with the economical exploitation of the work.

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[8] Piola-Caselli, *Codice del diritto d'autore*, p. 377; Jarach, *Manuale del diritto d'autore*, p. 79; Marchetti-Ubertazzi, *Commentario breve al diritto della concorrenza*, p. 1840.

[9] Greco-Vercellone, *I diritti sulle opere dell'ingegno*, II, p. 173; Marchetti-Ubertazzi, *op. cit.*, p. 1862.

3.3. – Besides the provisions mentioned, which are intended to protect the rights of authors with regard to the use of news articles by third parties, Law n° 633 dated 22nd April 1941 also contains a provision which exclusively regards "competition", that is it concerns relations between newspaper *enterprises*.

Under Article 101 of the said Law "*The reproduction of information and news shall be lawful, provided it is not effected by way of acts which are contrary to fair practice in journalism, and provided the source is given. The following shall be deemed unlawful acts: a) the reproduction or broadcasting, without authorization, of information bulletins distributed by press or news agencies before sixteen hours have elapsed from the distribution of the bulletin and, in any case, before their publication in a newspaper or other periodical authorized by such agency. For this purpose and in order for the agencies to have a right of action against persons who make unlawful utilization, bulletins must bear precise information on the day and the time of their issue; b) the systematic reproduction of published or broadcast information or news, with gainful intent, by newspapers or other periodicals or by broadcasting organizations*".

The provision quoted therefore aims to prohibit acts of unfair competition which have the purpose of using information in other newspapers[10]. It is more specific than the general provision of the Italian Civil Code on unfair competition, that is Article 2598 thereof, as also stressed by Decision n° 5346 of the Supreme Court dated 10th May 1993: "… *Article 101 of the copyright law states a particular form of unfair competition at the expense of press or news agencies or newspapers or other periodicals, consisting of unjust reproduction of information and news, which is performed 'with the use of acts which are contrary to fair practice in journalism', an expression which is a specific qualification of those 'means which are contrary to fair professional practices' to which Article 2598 of the Civil Code refers more generally*".

In conclusion, depending on the subject of the news article, the following hypotheses are possible:

- articles on artistic, cultural, scientific, geographic, historical and technical subjects cannot be reproduced in any circumstance, whether or not a reservation has been placed upon them;
- news articles of a political, economic or religious nature may be reproduced, provided that no special reservation has been placed upon them and that such reproduction complies with the limits stated in Article 65 of Law n° 633/1941;

[10] Giannini, *IDA*, 58, 183; Ronga, *IDA*, 62, 1; Greco-Vercellone, *op. cit.*, p. 410.

- the reproduction of information and news is free if performed in compliance with fair journalist practice (Art. 101) and in particular, when with gainful intent, it does not form part of a systematic practice.

3.4. – It is useful to observe that the use of computerized means will determine the need to correctly identify the time and the place in which the "reproduction" takes place, for example for the purposes of determination of the applicable law, jurisdiction and territorial competence. It has in fact been pointed out that reference to "multiplication into copies" seems to be based on a materialistic concept which is therefore immediately intelligible of the medium upon which the work is reproduced, whereas in the computer environment "*the electronic format does not permit immediate intelligibility of the medium if not at a stage subsequent to viewing on the screen and/or printing as a hard copy, operations which in any case take place at a time separate from and subsequent to the actual reproduction. In conclusion, it is possible to make copies (reproductions) electronically which are not however perceivable, recognizable and identifiable as such*"[11].

3.5. – At systematic level, it is thought that agreement is possible with those[12] who conclude that a distinction must be made between "pure" *on-line* transmission of the work (that is not for the purposes of storage), which may be considered as exercise of the right of diffusion or communication to the public[13], which exclusively involves exercise of this right, and transmission with the purpose of supplying the user with a permanent copy of the work, which involves exercise both of the right of diffusion and of the right of reproduction.

4) The press enterprise: Law n° 47/1948 on press activity and Law n° 62/2001 on publishing activity

4.1. – It is useful to make some mention of Law n° 47/1948 since it offers a description of publishing enterprises and the professionals who work in them. At the same time we will analyze the very recent

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[11] R. Clarizia, *Rassegne stampa e illecita riproduzione di articoli giornalistici*, in Diritto dell'Informazione e dell'Informatica, 1997, p. 577.
[12] B. Cunegatti, *op. cit.* , p. 53.
[13] The terms "*diffusion*" used in Article 16 of the Italian Copyright Law n° 633/1941 and "*communication to the public*" used in Articles 11 and 11-*bis* of the Berne Convention, are deemed to be equivalent, both having the aim of "*transmission of the work in an immaterial way, by wire or wireless means, to a public for the purposes of permitting the latter to enjoy it*". Cp. B. Cunegatti, *op. cit.* , p. 53.

Law n° 62/2001 on publishing, issued precisely to take new technologies used in the publishing business into account.

According to Article 3 of Law n° 47/1948 "*each newspaper or other periodical must have a chief editor*". When the editor of a newspaper or other periodical is invested with Parliamentary mandate, a deputy editor must be appointed, who will take charge of the newspaper or periodical and to whom the provisions concerning the editor will apply.

Newspapers and other periodicals must be registered in a registry at the competent Court (art. 5 of the mentioned Law) and their publication without registration configures the crime of "*underground press*" under Article 16 of the same Law.

Article 8 of the same law states that the editor in chief, or in any case, the person in charge, must allow the publication free of charge in the newspaper or periodical or press agency bulletin of declarations or amendments made by parties of whom pictures have been published or to whom acts or thoughts or statements have been attributed that they hold to be detrimental to their dignity or contrary to the truth, provided that the declarations or amendments do not contain anything criminally relevant.

Article 11 states that both the owner of the publication and the publisher are jointly and solidly liable under civil law for offences committed in the press together with the authors of the offence. It should be noted that this is one of the rare cases of objective liability contemplated by the Italian legal system (such as, for example, liability of the producer, liability due to exercise of dangerous activities and so forth), in which attribution of liability is provided for regardless of the existence in the offender of any psychological element that may be linked with the cause of the harmful event.

Furthermore Law n° 47/1948 states that the party damaged by defamatory publication has the right to pecuniary redress further to compensation for damages due according to Article 185 of the Criminal Code and provides for special punishments in relation to defamation committed by the attribution of a specific fact (Art. 13), to publication of shocking and horrifying contents (Art. 15) and to the protection of childhood and adolescence (Art. 14).

4.2. - Art. 1 of Law n° 47/1948 on the press defines the concept of "*press*" as follows: "*for the purposes of this law, the terms press and printed matter refer to all typographical reproductions or those in any case obtained by mechanical or physical-chemical means in whatever way intended for publication*".

The need to update the law to include the new means of divulging information brought about the issue of the very recent Law n° 62 dated 7th March 2001[14] entitled "*New regulations on publishing and on publishing products and amendments to Law n° 416 dated 5th August 1981*" in which the concept of the "*press*" has in fact been redefined even though it contains no explicit repeal of the definition given in Art. 1 of Law n° 47/1948.

Art. 1, first paragraph of the new Law n° 62 in fact states that "*for the purposes of this law, the term 'publishing products' refers to products created on paper, including book, or on computer media, intended for publication or, in any case, for diffusion of information to the public by any means, even electronic, or by sound or television broadcasting, with the exclusion of phonographic and cinematographic products*".

The new publishing law states that articles 2 and 5 of Law 47/1948 apply to electronic newspapers and therefore that on-line newspapers published at regular intervals, have an identifying "logo" and that divulge information to the public must be listed in the special registry held by the competent Courts. Furthermore, they must state the elements set down in Art. 2 of Law n° 47/1948, and that is the place and date of publication, the name of the owner, editor in chief and deputy editor in charge, as well as the name and address of the printer which, for *on-line* newspapers, could be identified as the provider[15].

Even without explicit legislative reference, all the other provisions set down in Law n° 47/1948 and mentioned above may clearly be applied to *on-line* publications.

The fact that the lawmakers chose to update laws on the press to include new techniques for divulging information indicates that they opt for the application of existing laws rather than creating specific laws on the so-called *cyberspace*.

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[14] Published in Gazzetta Ufficiale n. 67 dated 21st March 2001, Serie Generale.

[15] F. Abruzzo, *Registration of on-line newspaper is compulsory*, in www.interlex.com dated 23.05.2001, cites Court of Cuneo, 23rd June 1997 for which it is provider who "*permits access to the network, as well as the space on its server for publication of the information services performed by the supplier of information.*

We deem this to be the correct approach. Having acknowledged that the new channels for divulging information are nothing more than new *means* by which information is made known to the public, no reason can be seen to prompt the creation of specific laws when the existing laws may very well be applied.

5) Information and protection of the rights of individuals

5.1. - In Italy freedom of information is also governed with reference to interests, they also considered to be of constitutional importance, such as the interest in the achievement of justice[16] and the interest in the protection of the inviolable human rights such as honor, including dignity and reputation[17].

Article 57 of the Italian Criminal Code states that, in addition to the liability typical of the author of the publication and save the cases of complicity, editors in chief and deputy editor in charge are liable for criminal offences in the press if they do not exercise *"the necessary control"* over the contents of the periodical that they direct *"to prevent that criminal offences are committed in the publication"*[18]. The Criminal Code also contains provisions regarding non periodical press: Art. 57-*bis* states that in absence of an editor in charge, the principle mentioned above applies to the publisher, and Art. 58 deems as liable even the printer, in the case of the so-called underground press (that is without indication of the author and the publisher as required by the law on the press)[19].

5.2. - Article 595 C.P. states the offence of defamation, consisting of "*offence against the reputation of others*" committed by communicating with more than one person, for which more serious penalties are

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[16] In particular see Decisions n° 18 dated 3rd March 1966, and n° 18 dated 29th January 1981, Polvani, *op. cit.*, p. 15 underlines that interest in justice is also recognised by the European Convention for the protection of human rights and fundamental freedoms, which states that freedom of expression may be limited, amongst other things, by restrictions necessary for the prevention of crimes or to ensure "the authority and impartiality of the judiciary power".

[17] Constitutional Court 21st March 1974, n° 86 in *Giur. Cost.*, I, 1974, p. 677; Constitutional Court, 30th March 1974, n° 20, *ivi*, p. 73.

[18] Corasaniti, *op. cit.*, p. 189 furthermore specifies that in court rulings the nature of objective liability under Art. 57 C.P. attributed to the editor in charge of the periodical has diminished, admitting non-liability, for example, if the editor was on holiday at the time that criminal publication took place.

[19] It has been pointed out (Corasaniti, *op. cit.*, p. 190) that this is a system that on the one hand is anachronistic, in relation to modern production processes in which computer technologies for transmission and simultaneous graphic typesetting are used, which make it virtually impossible for one person to fully and integrally exercise control, and on the other hand is incoherent, given the different approach to the problem in the field of radio and television, in relation to which Law n° 223 dated 6th August 1990 states – even though with specific reference to obscene performances – the imposition for the concessionaire (public or private) *or for the person delegated to control transmissions* to "*exercise sufficient control over the content of the transmissions to prevent that crimes are committed*". The possibility of advance delegation is even more confusing if we consider that Art. 30 of the same Law n° 223 treats the radio and television sector as similar that of the press with regard to their editorial organisations.

envisaged in the case of attribution of a given fact[20], offences committed in the press or any other means of advertising, offences against political, administrative or legal bodies. With regard to the press, Art. 596-*bis* C.P. provides for joint liability of the author of the article, the editor or the deputy editor in charge under Art. 57 C.P.[21].

5.3. – Publication of newspapers and periodicals on line pose the problem of jurisdiction and competence with regard to suits for defamation and other offence or illicit acts committed when divulging news.

Italy has signed the Brussels Convention dated 27th September 1968 on Jurisdiction and the Enforcement of Decisions on Civil and Commercial Matters, Art. 2 of which, as is known, states as a general rule that in the case of controversies that are of an international nature, the plaintiff must start proceedings before the Judges of the contracting State in which the defendant is domiciled. For cases of obligations which derive from delict or quasi-delict[22] Art. 5, n. 3, of the Convention also provides for the concurrent jurisdiction of the Judges of the State in which the "*the injurious fact took place*".

It is known that with the Decision dated 30th November 1976 in case 21/76, *Handelskwekerij G.J. Bier B.V.* versus *Mines de Potasse d'Alsace S.A.*[23] the European Court of Justice took the opportunity of specifying that the expression "*place in which the injurious fact took place*" refers "*both to the place in which the damage arose and to the place where the fact that generated the damage took place*".

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[20] Polvani, *op. cit.*, p. 67, explains well that the justification for the aggravating circumstances lies in the reliability with which the representation of a historical determined fact is normally presented, from which effective damage to the reputation of another person results.

[21] For complete information, it is underlined that the jurisprudence of the Supreme Court have drafted a number of criteria that must govern the legitimate use of sources of information and therefore the legitimate exercise of the right to inform, which are as follows:

a. *Objective truth* of the news item or advance *serious verification* of its veracity;
b. Existence of a clear and deducible *public interest for knowledge of the facts* in relation to the importance of these facts for the community and the formation of public opinion;
c. Respect of the limits of *objectivity* and *moderation*, the latter intended as *fairness with which the facts are stated*, avoiding all excess and ensuring that they are presented in a civil and critical manner. See lately Supreme Criminal Court, 1st August 2000, n. 8622.

[22] A notion of the Convention that covers, as explained by the European Union Court of Justice, "*any claim intended to prove the liability of the defendant which is not connected with the subject of the contract according to Art. 5, n° 1*" of the Convention itself, as ruled by the Court of Justice on 27th September 1988 in case 189/87, brought by the plaintiff Bundesgerichtshof, *A. Kalfelis* against *Banque Shröder, Münchmeyer, Hengst & Cie (HEMA), Banque Shröder, Münchmeyer, Hengst International SA* and *E. Markgraf*.

[23] In Pocar, *La convenzione di Bruxelles sulla giurisdizione e l'esecuzione delle sentenze*, Giuffrè 1995, p, 126.

This principle has been confirmed with regard to a case of defamation in the press in the Decision dated 7th March 1995, on petition of the House of Lords, *Fiona Shevill, Ixora Trading Inc., Chequepoint SARL and Chequepoint International Ltd.* versus *Press Alliance SA*, in which the Court ruled that when defamation occurs by means of a press article that circulates in more than one of the States who are parties to the Convention, the offended party may have recourse both to the Judges of the party State in which the *publisher* has its offices, so that the overall extent of the damage suffered may be assessed (and therefore the extent of the damage suffered in each country), and to the judges of each contracting State in which the offended party deems to have suffered damage by the diffusion of the press article, so that the "portion" of damage suffered in the State of the judge to which recourse is made may be assessed[24].

It is moreover underlined that in the grounds for the above mentioned Decision the place where the newspaper is distributed becomes important, also for jurisdictional purposes, only if "*the offended party is known there*" with implicit attribution of importance to the place of domicile of the offended party[25].

With regard to internal territorial competence a brief notation must be made. According to Art. 1 of Law n° 374 dated 3rd February 1939, any publication, before being distributed or circulated or even delivered to the customer, must be deposited by the printer at the State Public Persecutor's Office and at the Prefecture of the place of printing.

On the assumption that this deposit involves the first diffusion of the publication, the most common opinion is that the *locus commissi delicti* is precisely the place where the printer has deposited the publication[26].

It must moreover be specified that the above criterion is pertinent to the identification of the *forum commissi delicti* for the purposes of determination of the competence of the criminal courts.

In civil law and in particular with regard to proceedings for compensation of damages, which may be brought before civil Courts even regardless of whether criminal proceeding have been initiated (and in

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[24] Maria Beatrice Deli, *Giurisdizione competente ed illeciti transfrontalieri commessi a mezzo stampa*, in *Diritto dell'informazione e dell'informatica*, 1995, p. 830 ss.
[25] *Ibidem*, p. 832.

this case the civil Court may know the crime *incidenter tantum*), the consolidated thinking is that competence belongs, in alternative, to the Judge of the place in which the newspaper is printed and where the news item was published for the first time and therefore eligible to prejudice the rights of others (*forum commissi delicti*), or to the Judge of the place in which *the offended party resides or is domiciled* (*forum destinatae solutionis*), since the obligation due to an illicit fact is a debt of value the fulfillment of which must be made at the domicile that the creditor had at the time when it was due[27].

5.4. – The current regulation on the subject of protection of the rights of individuals disregards the *means* by which news items and pictures are divulged, which are taken into consideration, if at all, to *aggravate* the resulting application of sanctions to the act, already in itself illicit.

The first Decision on equivalence between Internet and the press for the purposes of the right to inform and its abuse, in particular for the importance that the latter may have both for criminal law purposes in relation to the offence of defamation and for civil law in relation to proceedings for compensation for damages and the request of urgent preliminary measures, was pronounced in 1997. With Decision dated 11th December 1997 in fact the Court of Teramo established that "*abuse of the right to inform may also take place by diffusion of messages on the Internet, since the means of diffusion does not change the substance of the fact, which can be assessed by the normal criteria governing free and legitimate exercise of the right to inform. The persistence of harmful information and news items on an Internet site creates irreparable harm that justifies the removal and the disabling of further diffusion of such information and news items by precautionary procedure*"[28].

In truth, there have been very few Court decisions to date on the subject of illicit acts which regard fundamental human rights' violations on the net, and only in two cases the Supreme Court had the opportunity to deal with them. The reference is to the Decision pronounced on 24th August 2000[29], with which the Supreme Court dealt with an issue that is now sadly famous, that is the trading and diffusion of pornographic material featuring minors, and to the Decision pronounced on 27th

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[26] Polvani, *op. cit*., p. 309-310.
[27] See, among others, Supreme Court, 29th March 1995, n. 3733.
[28] Ballarino, *Internet nel mondo della legge*, CEDAM 1998, p. 208.
[29] Criminal Supreme Court, n. 2421.

December 2000[30], in which the Court ruled that "*Italian judges are competent to know of defamation committed by introduction into telecommunication networks (internet) of harmful phrases and/or defamatory pictures, even when the website is registered abroad provided that the offence was perceived by more than one user in Italy; indeed, defamation is committed at the time and in the place in which third parties perceive the harmful expression*".

It is interesting to note that no cases of defamation committed by newspapers that operate *on-line* appear to have been decided and the question arises spontaneously as to whether in this case the offence should be classified as defamation *tout court*, with the resulting application of the related penalties provided for under Article 595, first paragraph C.P., or as defamation aggravated by the use of the press.

The qualification of the case as a defamation (aggravated) by the press according to Art. 596-*bis* C.P. entails extension of liability to the (equivalent of) the editor or deputy editor in charge (and to the printer in the case described above of underground press).

The reasoning underlying the ruling on defamation in the press under examination is clearly that, common to other crimes covered by the Criminal Code committed by means of communication, of protecting the honor and reputation of individuals against attacks made with means suitable to spread information to a particularly large group of receivers, with the resulting greater potential for harm.

Up to now, the definition of "*press*" used to qualify the criminal case in hand has been the one in the already mentioned Art. 1 of Law n° 47/1948 and therefore that of "*typographical reproductions or those in any case obtained by mechanical or physical-chemical means in whatever way intended for publication*".

We cite as an indicative example the Decision n° 259 of the Supreme Court dated 7th March 1989: "*for the purposes of configuring the circumstance as a criminal offence committed in the press, the definitions given in Article 1 of Law n° 47 dated 8h February 1948 gives of the press and printed material are not open to extensive and/or analogical interpretation. It follows that pre-recorded video cassettes which are reproduced with other than mechanical or physical-chemical means referred to in the above mentioned law cannot be made fit into the concept of press nor that of printed material*".

[30] Criminal Supreme Court, n. 4741.

There is no doubt that the definition given in Art. 1 of Law n° 47/1948 constitutes a limit to the application of the aggravating circumstance of the use of the press in cases of offences committed by newspapers or periodicals published on computer media and divulged on the network.

We believe that, in consideration of the identical harmfulness of defamatory conduct committed by "traditional" newspapers printed on paper and the newspapers operating *on-line*, it is to be hoped that the aggravating circumstance of use of the press should also be applied in the latter case, using the definition already examined of "*publishing products*" contained in Art. 1 of the recent Law n° 62/2001, comprehensive of products created on computer media and divulged by electronic means. From a strictly technical point of view, moreover, a system needs to be found to reconcile such an extension with the fundamental principle by which criminal law may not be applied beyond the cases and the times indicated therein.