



**QUESTIONNAIRE – ALAI CONGRESS 2018 – MONTREAL**

**ITALY**

Name of the person(s) answering the questionnaire  
 Flavia Muller - Stefania Ercolani  
 ALAI ITALIA

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<b>QUESTIONS FOR THE SUMMARY TABLE</b>	1) Are statutory damages available? If so, please indicate the criteria for awarding them and the amount of such damages.	2) If punitive damages are available, indicate the criteria for awarding them.	3) Are class actions or class remedies available in copyright matters? If so, indicate in what circumstances they are used.	4) If seizures before judgment are available, indicate what gives rise to such procedures and the criteria for granting them.	5) Are there in your country 1) criminal remedies; 2) customs measures, in connection with copyright? If so, which ones?	6) Describe how circumvention of technological protection measures is dealt with, if such is done.	7) Is there a mandatory notice and notice regime or notice and take down regime for intermediaries in the case of alleged copyright infringement? If so, describe it briefly, and indicate if how it is dealt with differs based on which rights holder requests it.	8) Does the notion of secondary copyright infringement in the digital world exist in your country? If so, describe it briefly.	9) Indicate for which rights collective management is available.	10) With respect to collective management, indicate who sets the tariffs and how they are set.	11) Indicate whether copyright remedies are within the power of specialized courts or common law courts, and in the case of a mixed system, please specify in which cases an action should be brought before one rather than the other.

ANSWERS TO QUESTIONS FOR THE SUMMARY TABLE	According to Article 158 of the Italian Copyright Act damages are liquidated by the courts applying two alternative methods: a) lump sum based on equitable criteria; b) price of the consent; Interests and legal expenses must be awarded as well	According to a decision of the Supreme Court (no. 16601 ruled on 5 July 2017) the punitive damages would require a specific law provision in order to be applied in legal disputes In a decision issued on 25 January 2017, the Court of Justice ruled that the UE Enforcement Directive does not preclude the legal provision of punitive damages by the Member States in IP cases (case 367/15 OTK v. SFP), making explicit reference to Italian Copyright Law	YES.  Class actions have been introduced in Italy a few years ago. No cases of class action in the field of copyright yet.	Both Penal and Civil Code provide the remedy of seizure also in a pre-trial phase. In the criminal proceedings, the seizure can be obtained during the investigations, pursuant to the general rules provided for by articles 253 and 321 of the Penal Code. In the civil proceedings, Articles 670 and 700 of the Civil Procedure Code and Articles 161 and 162 of the Copyright Law apply. The seizure can be ordered also as a precautionary measure in case there are grounds to deem that very serious and/or irreparable damages may intervene in the delay required for the judgment on the merit.	Yes, criminal penalties for copyright infringements are based on Articles from 171 to 171-nonies of the Copyright Act. Administrative penalties can be imposed on the basis of Articles 174 bis (pecuniary sanction) 171 last paragraph; .171 quater and 172, para. 1 of the Copyright Law.  Customs measures are applicable both ex-officio or upon application of the interested parties	Articles 171 bis and 171 ter para.1, lett. f bis) and h ) of the Copyright Law concern the circumvention of technological protection measures, that is punished by fine and imprisonment. In Italy several Criminal Courts have sentenced the defendants for the crime in Article 171 ter (see for instance the Sony Play Station case - Supreme Court no.21621 25 May 2015) .	See optional answer on the Regulation of the Independent Authority for Communications.	In Italy the notion of secondary or contributory infringement (including liability for internet services providers) does not exist.  Nevertheless, the domestic courts have repeatedly acknowledged the joint liability of internet service providers for infringements committed directly by users of their services.	Collective management of copyright is available for reproduction, public communication and performance rights for musical, theatrical, audiovisual, literary and visual arts works.  In the field of related rights collective management is normally limited to the equitable remuneration for performance and broadcasting rights.	Tariffs are set through negotiations between the interested parties, namely the CMO on one hand, and the trade association representing each category of commercial users (e.g. concert promoters; associations of radio broadcasters; HORECA; etc.), on the other hand.	In the main Italian cities, there are specialized sections for proceedings related to IP and company law. Such courts have exclusive jurisdiction, both at first and second instance, also on copyright and related rights matter.
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FURTHER QUESTIONS (OPTIONAL)

QUESTION: Are there recent legislative or jurisprudential developments in your country that would be interesting to share with the ALAI public?

ANSWER : NO



QUESTION: Are there any special remedies in your jurisdiction that, to your knowledge, are less or not available in other jurisdictions?

ANSWER :Yes

The independent Authority for Communications ([www.AGCom.it](http://www.AGCom.it)) has issued the Regulation on Copyright on the electronic communication networks, exercising its administrative powers in copyright enforcement, through the introduction of specific notice and takedown procedures (NTD). AGCom is empowered to start the applicable procedure on request of rightholders whose works are infringed via broadcasting or online services. The Regulation does not apply to copyright infringements carried out via P2P networks, and no order or sanction concerns end-users. The main targets of the Regulation are mere conduit and hosting providers, who may have to comply with AGCom's orders for content removal or access blocking, if the infringers themselves do not comply directly.