



A s s o c i a z i o n e I t a l i a n a E d i t o r i

Public consultation by the European Commission on on-line content in the Single market

Position of the Italian Publishers Association

The Italian Publishers Association (AIE) is the trade association of publishers of books, magazines and digital publishing products active in Italy. It represents over 90% of the Italian book publishing market and is a member of the Federation of European Publishers (FEP) and the International Publishers Association (IPA).

In this capacity, the AIE can provide assurance that publishers are in favour of the development and application of any means offered by new technology to distribute works of intellectual property more efficiently, provided that this takes place within economically sustainable business models.

In recent years Italian publishers have invested vast resources in the use of technology both in the production phase and to create new products, services and commercial channels. There have been numerous initiatives in the field of distance training (especially in the legal and medical sectors), the establishment of digital databases of legislation, the creation and distribution of off-line and on-line didactic materials (for example in *DigiScuola* publishers have cooperated with the AIE in the creation of a national Learning Object repository), the supply of "loose-leaf" publishing products, making available to the public on-line single articles, chapters or paragraphs, and the use of the DOI (Digital Object Identifier) international standard to identify and catalogue digital content.

The AIE is also involved in numerous international projects in the field of digital publishing, such as *mEDRA*, the European Agency for DOI registration, *Ormee*, the European Observatory on rights management in the field of eLearning, and *Eleonet*, the European Learning Object Repository.

Italian publishers are ready for the challenge presented by the Information Society and interested in developing any form of digital publication of content that they have created, transformed and channelled. This desirable development should not, however, be interpreted as a confrontation between the digital and the analogical worlds. Publishers have understood the requests which are emerging, especially in certain segments of the market such as schools and university and professional training, for access to digital publishing content also through the new means opened up by new technologies. However, they believe that it is not a question of replacing the book but rather one of reorganizing an integrated supply in which digital products and services are positioned alongside the traditional offer exploiting different characteristics and specific added values.

Copyright and its protection

In the first place, a sustainable market must be based upon the clear recognition and defence of a fundamental production factor: the exclusive right held by the author, and/or other entitled parties, to the economic exploitation of content created, in whatever form it is published.

Through the Italian law 248/2000, and further decrees implementing EU directives: 2001/29/CE on copyright in the Information Society, 2000/31/CE on electronic commerce and 2004/48/CE on the enforcement of intellectual property rights, Italy is equipped with a clear and up-to-date set of rules for dealing with the environment created by new technologies.

Italian legislation, in complete harmony with international norms, also provides a situation of equilibrium between the interest of authors and the content industry to be remunerated for their creative and productive efforts and the public interest to have easy access to cultural products. Through law 248/2000 and the implementation of directive 2001/29/CE, the rules on limits to exclusive rights of economic exploitation of intellectual property have been enriched by further provisions, such as those concerning permission for the photocopying of books and periodicals for personal use in exchange for payment of fair compensation and permission for libraries and research institutes, in agreement with rights holders, to make available works within their collections on their own dedicated terminals.

It should, however, be noted that the regulations concerning the responsibility of the hosting providers, and the corresponding obligation on the part of these subjects, to remove from their network materials which have been illegally reproduced and made available to the public, are not totally compliant with the provisions laid down by directive 2000/31/CE. Article 14 of the directive states that the hosting provider may not be considered responsible for the illegal information transmitted through his system only if, **as soon as he is aware of the illegality, he acts immediately to remove** the information or prevent access. By contrast, Article 16 of the decree implementing the directive (D.Lgs. 70/2003) states that the obligation for removal takes effect "on communication by the relevant authorities". This additional provision seriously compromises the indispensable speed and efficiency with which removal of information should take place and thus the effective defence of violated content. It is essential that, as has happened in France, Belgium and the United Kingdom, Italy too should adopt the *Notice and Take Down* mechanism: the removal of illegal material resulting from the simple, albeit circumstantial, communication on the part of the rightsholder who has been damaged.

The fundamental problem afflicting the Italian publishing market is piracy. The reproduction of books and periodicals through illegal photocopying causes losses estimated at over 300 million euros per year for the publishing sector as a whole: although within the university and professional publishing segment the loss equals, or even exceeds, total turnover. This illegal activity, which is "evolving" and spreading through the digital environment, finds fertile ground in a context in which controls by the relevant authorities are inefficient and there is a lack of defensive tools which, at least on the digital side, could help to contain the damage (for example the *Notice and Take Down* procedure).

The development of the digital market is partly dependent on the correct education of the public with regard to the importance of copyright and the need for appropriate defence, which should be aimed particularly at the world of school and, even more, at that of university.

The campaign of sensitization could also make it clear that the phenomenon of unauthorised *peer to peer* and *file sharing* can cause great damage to cultural production. Data from the 2006 edition of the AIE Observatory on digital publishing indicates that the phenomenon of file sharing has reached alarming levels, with 42% of young Internet users between the ages of 14 and 24 stating that they have downloaded and shared at least one Internet file in the last year. This is happening despite an awareness, among 50% of regular Internet users, that such behaviour is incorrect and outside the law. There is also a widespread conviction that downloading protected works, photocopying books and copying CDs do not constitute real crimes.

Problem areas with tax

All forms of cultural content should be subject to the same VAT treatment regardless of the format in which they are distributed. Directive 77/388/CEE allows EU states to apply reduced rates to the sale of books and periodicals in paper format. It is desirable that the distribution of any other format containing the materials published in books and periodicals, i.e. the diffusion on-line of the same materials, should be accorded similar treatment.

State incentives

At present state intervention, whether at national or EU level, is directed exclusively at the development of new technologies. There is no intervention to support the digitization of intellectual property available in the publishing houses, to encourage research and development programmes aimed at the production of new materials in digital format or to promote the creation of a digital content market among end users, unlike what was done, for example, for the adoption of broadband and digital TV.

Technology also has a significant impact on the entire production and distribution chain of the publishing sector and, in this context, specific intervention is needed aimed at encouraging the adoption of technologies for Digital Content Management and Digital Rights Management, particularly within small and medium sized firms. Such projects could be developed within a logic of public-private partnership, resulting from cooperation between businesses and university research centres.

A successful example is mEDRA, a company created by AIE and Cineca – the technology consortium of Italian universities. Initiated thanks to the eContent European financing, it manages the second biggest DOI agency in the world and generates 70% of its turnover abroad, selling advanced technologies.

Likewise it would be desirable to provide incentives for companies which invest in training and refresher courses for their internal staff in this field and in the use of technologies in general.

An example of state intervention aimed at creating conditions facilitating the development of the content market, which we believe to be of particular interest, is the DigiScuola project (www.digiscuola.it) which, for the first time in Italy, has made financial aid directly available to schools for the acquisition of digital educational content, thus contributing to the creation of a non-assisted market in which the publishers involved can compete on equal terms.

Technological infrastructures – Digital Rights Management (DRM) – Licensing

In the light of what has been described above concerning the situation of the digital publishing market and the importance of having correct understanding and handling of issues related to copyright, one of the fundamental elements for the growth of this market is surely the development of technologies for the protection and management of content and the creation of business models based on forms of licensing shared between producers and users, and respected by the latter.

The results of the Ormee Observatory (available at the site www.ormee.org), coordinated by AIE, have shown how DRM technologies are still little used both because they are considered costly by digital content producers and because they are not felt to be "friendly" by end users.

The trend instead is to establish various modes of user licensing which allow access to content in different ways based on the rights conceded by each individual license and which enable effective control over the use of digital content by the various users. In this regard it is fundamental to establish open and international standards for the management of licensing to permit interoperability between different platforms. In particular the Association is cooperating in the definition of the standard *Onix for licensing terms*.

In order to encourage the development of the market at an international level we believe that it is essential to promote active management of copyright among publishing houses through initiatives based on public-private cooperation. Such initiatives should be aimed at a broadening of the management of rights on the international market. With the cooperation of SEPS and contributions from the Ministero del Commercio Internazionale and the Istituto Nazionale per il Commercio Estero, the AIE has recently developed the TIB project (Translation of Italian Books www.tib.it) with the objective of promoting the internationalisation of Italian non-fiction publishing of a high cultural level through the creation of an Internet site. This site will enable Italian publishers to sell, and foreign publishers to buy, the translation rights for a series of titles chosen by SEPS, for which a financial contribution towards translation costs has been budgeted.

Digitization carried out by state bodies and on-line accessibility to content

Publishers regard libraries, educational institutions, museums and public archives as essential partners in the development and circulation of culture at both the national and international level. They are ready to cooperate with these bodies to achieve these aims, provided that the business models are ones in which the creative activity of authors and the investment of publishers are adequately protected.

While the AIE has shown interest in the initiatives of the EU Commission as part of its programme "*i2010 – digital libraries*", it has made clear, through the Federation of European Publishers, that only works which have fallen into the public domain can be digitized and made freely available through the Internet. This can only be done for works protected by copyright when there is explicit authorisation from the rightsholders.

It is not necessary to change the law to carry out such initiatives, but it is essential to encourage – also through state incentives – the drawing up of appropriate agreements between publishers and public bodies guaranteeing fair copyright compensation for documents which are digitized and distributed. Similar considerations apply to the production and diffusion of new digital content: in this area too the rights of authors and publishers must be safeguarded through the development of voluntary schemes for the depositing of digital materials enabling adequate compensation for these rights.

There should also be provision for rights holders to have precise information about the uses to which materials are put and the means by which content is made available to the public, as well as suitable technological measures for tracing uses and checking on any possible abuses which may be carried out.

Importance of spreading standards

One of the elements which the AIE considers to be of major importance for the development of the digital content market is the definition of non-proprietary and international standards for the identification and cataloguing of the content itself. This would enable increased interoperability within the publishing sector as a whole, for example facilitating the management of data along the commercial chain, the presence of European content in international repositories, increased visibility and accessibility through search engines and, not least, the handling of information on rights and – in some cases – the collective exercise of these rights.

Role of public institutions

We believe, therefore, that public institutions, both national and supranational, must intervene in the following areas:

- at the national level, introduction of the *Notice and Take Down* procedure;
- equalisation of VAT treatment between publishing products on paper and in digital form;
- European projects and financial support aimed at:
 - encouraging publishers to digitalize their publishing products on paper and to produce and distribute new digital content;
 - spreading open and international standards;
 - promoting public-private cooperation for the development of innovative technological solutions;
- at the national level, intensification of controls and action against all phenomena violating copyright;
- initiation and support of a campaign to sensitise public opinion over copyright, especially in the school and university environment.