

Kluwer Copyright Blog

Italy: Gay Pride photo doesn't infringe portrait rights

Giorgio Spedicato (Monducci Perri Spedicato & Partners) · Thursday, January 9th, 2014



“Those who take a train have to accept the risk of being identified abstractly in the crowd of passengers, as this is simply part of the ‘risks of the life’.”

The Italian Supreme Court rules that, according to Article 97 of the Italian Copyright Act, the public displaying of the portrait of a person is not an infringement of his rights when it is associated with facts or events, such as the Gay Pride parade, which are of public interest and which take place in public.

On October 24, 2013, the Italian Supreme Court published a [decision](#) concerning the public displaying of the portrait of a person without his consent in a context (i.e. the Gay Pride parade) where the honour and dignity of such person had been allegedly involved.

While this case also raised obvious privacy issues, the decision of the Supreme Court is specifically focused on the provisions of the Italian Copyright Act granting an exclusive right over one's portrait.

In fact, Article 96, para. 1, of the Law no. 633/1941 states that the portrait of a person may not be displayed, reproduced or commercially distributed without the consent of such person. Nevertheless, this right is adequately limited in order to ensure a fair balance with the freedom of information. To this end, Article 97, para. 1, states that the consent of the person portrayed shall not be necessary, when the reproduction of the portrait is justified by his notoriety or his holding of public office, by the needs of justice or the police, for scientific, didactic, or cultural reasons, or – which is more relevant in the case at stake – when the reproduction is associated with facts, events and ceremonies of public interest or which have taken place in public. Even in these instances, however, the portrait may not be displayed or commercially distributed when this would cause a prejudice to the honour, reputation or dignity of the person portrayed.

Background of the case

The facts of the dispute are easily summarized. The [Italian national public broadcasting company \(RAI\)](#) broadcasts, in the course of a political talk-show, the images of a group of people at the Milan train station, about to leave in order to join the Gay Pride parade held in Rome in 2000. The claimant, who was merely by chance at the train station, argues that he can be recognized in the

midst of the crowd, in a context which is, albeit indirectly, expression of habits and identity that does not belong to him. Therefore, he sues the national broadcasting company alleging that the public displaying of the images is an infringement of the right over his portrait under Articles 96 of the Italian Copyright Act.

While the Court of first instance holds in favour of the claimant, the Court of Appeal reverses the judgment, forcing the claimant to resort to the Supreme Court.

Decision

Confirming the Court of Appeal's decision, the Supreme Court states that, according to Article 97 of the Italian Copyright Act, the public displaying of the portrait of a person is not an infringement of his rights, when it is associated with facts or events, such as the Gay Pride parade, which are of public interest and which take place in public. When the facts or the events concerned have such features, the consent of the person portrayed is therefore irrelevant.

Obviously, the general interest in the public displaying of the portrait does not justify the prejudice to the honour, reputation or dignity of such person. However, the Court holds that the circumstances in this case were such that no prejudice could be deemed to exist.

In fact, on the one hand, the judges observe that the Gay Pride parade, as well as the sexual customs that it represents, is in itself an event entirely lawful and devoid of any intrinsic profile of negativity – as the claimant has tried to suggest in the proceedings – thus excluding any possible prejudice to the honour, reputation or dignity of a person portrayed in such a context. On the other hand, the Court further observes, the claimant had been portrayed for a very short time in the midst of an anonymous crowd of passengers, hence in a manner which was concretely unable to affect his honor and reputation.

The Court concludes, almost ironically, that those who take a train have to accept the risk of being identified abstractly in the crowd of passengers, as this is simply part of the “risks of the life”.

GS

The full summary of this case has been posted on [Kluwer IP Law](#).

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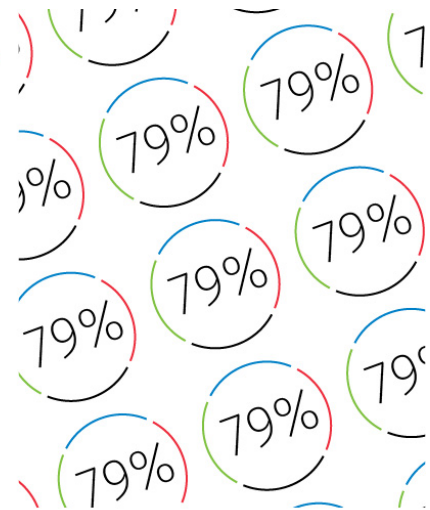
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