

Kluwer Copyright Blog

The Italian Antitrust Authority investigates Meta for abuse of economic dependence

Giovanni Maria Riccio (University of Salerno) · Tuesday, May 30th, 2023

The Italian Antitrust authority (AGCM) has launched an [investigation](#) to assess whether the conduct of META towards SIAE, the largest Italian copyright collecting society, is unlawful due to abuse of economic dependence (for a previous post on the copyright dimension of the META v. SIAE dispute, see [here](#)).

Let's start with the background. META and SIAE had previously entered into an agreement for the use of the latter's musical repertoire. Once this agreement expired, the parties started negotiations from July 2022. SIAE provided Meta with the estimates made for the calculation of the amount relating to the flat fee (i.e. a lump sum for all uses of its repertoire), asking the platform to share the real royalties obtained from such uses.

According to the text of the measure, Meta refused to provide the real data and formulated an offer for the renewal of the license, threatening SIAE that, in the case of non-acceptance of this proposal, Meta would eliminate the SIAE content from its platforms (Facebook and Instagram). Indeed, following the non-acceptance, Meta unilaterally terminated the negotiations and, currently, the musical works managed by SIAE cannot be used in the Instagram and Facebook stories and reels.

According to Meta, on the other hand, SIAE asked for a 310% increase compared to the previous agreement. Meta denied having unilaterally interrupted the negotiations.

The AGCM, in the measure [issued on the 4th of April](#), stated that Meta had not provided SIAE with all the information necessary to carry out the negotiations in full compliance with the principles of transparency and fairness and had unduly removed the content managed by SIAE.

The measure recalls directives 2014/26 (Barnier directive) and 2019/790 (Copyright in the Digital Single Market Directive), transposed respectively in Italy with Legislative Decrees no. 35/2017 and no. 177/2021, stating that the remuneration for the use of the works, by the digital platforms, could not disregard the disclosure of the information necessary to establish a remuneration



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parameterized to the actual uses. Meta's conduct, in addition to harming SIAE, would also harm the authors, including those represented by other collecting societies, who are co-owners of the rights with the authors protected by SIAE.

On May 13, SIAE and Meta entered into an agreement by which the parties agreed to extend the licensing agreement that expired in December 2022 under the same conditions. Then, SIAE's repertoires came back on the Meta platforms and are now available to the users of Facebook and Instagram.

SIAE has probably won a battle, but the war still seems to be long.

However, the dispute between SIAE and Meta could also involve other users. In fact, article 23 of the Legislative Decree no. 135/2017 holds that users must provide collective management organizations (CMOs), in an agreed or pre-established format, with the relevant information at their disposal, necessary for the collection of rights and for the distribution and payment of amounts due to authors.

The last paragraph of article 23 states that the *"failure to fulfill the information obligations or the provision of false or erroneous data constitutes grounds for termination of the license agreement"*.

Therefore, according to some users, the data should be provided where the parties entered into a prior license agreement. This interpretation is causing a barrier in the collection of rights by the CMOs from many users (for example, video-sharing platforms) which refuse to provide data on the works used.

Thus, it is likely that the investigation issued by the AGCM shall be used also against all the internet platforms (such as Spotify, TikTok, etc.), which do not provide their data, hiding behind the aforementioned interpretation of article 23.

As for the controversy involving Meta and SIAE, as said, the dispute is not over. At the moment, the parties agreed to extend the duration of the 2022 agreement. In the meanwhile, they are expected to negotiate a new license agreement, which could be strongly influenced by the results of the AGCM's investigation.

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