

# ITALY

## BLOCKING ITALY'S "GAG LAW"



### With the support of Centro Nexa

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## Introduction

After many attempts to restrict freedom of expression on the internet, the Italian government has proposed a new anti-internet law, the so-called "gag law". The proposed law will create a very special situation in the country, compared to the other G7 economies.

In Italy, 96.1% of households have a television, but only 47.3% are connected to the internet,<sup>1</sup> suggesting how far Italy lags behind other G7 countries. The digital divide impacts negatively on the concrete possibilities of using the internet for human rights. For instance, according to the Organisation for Economic Co-operation and Development (OECD), Italy shows the lowest broadband penetration among G7 countries (20.5% in December 2009). The development of internet infrastructure suffers from a lack of investment in technological improvement: according to employers' association Confindustria,<sup>2</sup> information and communications technology (ICT) investment represents less than 2% of Italy's GDP; recently an important public investment to overcome the digital divide (800 million euro) was first announced and then stopped.

By the end of 2008, broadband access was available in almost 95.7% of Italy, but the statistics do not consider that most of this coverage comes from ADSL technology which presents technical difficulties in interfacing with traditional copper phone lines. Fibre-to-the-home (FTTH) and fibre-to-the-business (FTTB) connections remain limited, while the majority of internet users currently use household connections with an average download speed of 3-4 Mbit/s.<sup>3</sup>

On top of the scarce internet infrastructure, information and media literacy in Italy is limited. In 2009, according to Confindustria, 38% of Italian

households had no computer literacy, and more than half of the IT users were not able to perform basic operations such as using spreadsheets or zipping files.

However, the recent success of mobile internet is opening new scenarios for the online world: if most 3G devices are still purchased by those who are already IT literate, the booming industry of smartphones in a country where 90% are mobile phone users is introducing a new wave of users to the internet.

## Political context

Italy's president of the Council of Ministers, Silvio Berlusconi, is also a media tycoon, controlling directly or indirectly five out of seven of the major TV channels in the country. Because of this he is not interested in helping to democratise mass communication. On the contrary, he fears that he may lose control over the production of information and audiovisual content.

Since his first nomination at the head of the government in 1994, the main priority of Berlusconi has been to consolidate and increase his control over traditional media: television, press and publishing companies. In order to do so he had to violate or ignore (or even repeal) a certain number of safeguards that had existed in Italian laws and regulation, including the Constitution.

In fact, the Italian Constitution – written just after twenty years of fascist regime – recognises freedom of expression in its Article 21:

- (1) Everyone has the right to freely express thoughts in speech, writing, and through other means of communication.
- (2) The press may not be controlled by the authorities or be censored.
- (3) Seizing media assets is permitted only by judicial order stating the reason for the action, and only for offences expressly determined by the press law or for violation of the obligation to identify the persons responsible for such offences.
- (4) In cases of absolute urgency where immediate judicial intervention is impossible, periodicals may be seized by the judicial police,

1 [www.istat.it](http://www.istat.it)

2 [www.confindustria.it](http://www.confindustria.it)

3 [www.sostariffe.it](http://www.sostariffe.it)

who must immediately and in no case later than 24 hours report the matter to the judiciary. If the measure is not validated by the judiciary within another 24 hours, it is considered revoked and has no effect.

(5) The law may, through a general provision, order the disclosure of financial sources of publications.

(6) Publications, performances, and other exhibits offensive to public morality are prohibited. Measures of prevention and punishment against violations are provided by law.

### The “gag law”...

Italy represents an interesting case study for online freedom of expression. It is a European democracy that has lived with the anomaly of a media tycoon in power for ten out of the last seventeen years. In fact, Berlusconi's massive conflict of interest impacts on the online world and is arguably at the heart of Italy's lack of internet infrastructure development.

The Italian establishment's hostility towards the internet is translated into two main behaviours by Berlusconi's power/political/media chain: either not developing any proactive policy to foster the online word and build internet infrastructure with public resources, or proactively trying to “regulate” the e-content sector and to undermine the public's perception of the internet.

Mainstream media and political leaders portray the internet most often as a threat to avoid than as an opportunity to grasp. Its negative aspects are constantly stressed, while the positive impact on freedom of speech is generally underestimated. This is particularly striking when dealing with libel and privacy concerns. The internet is often accused of spreading anxiety together with defamatory content, which in turn need to be blocked in some way in order to respect human dignity and the right to privacy.

However, Berlusconi and the Italian establishment have (so far) not succeeded in having any real influence on freedom of expression online, and the web is now enjoying a comparatively broader sense of pluralism and freedom. The indirect and “soft” strategies attempting to undermine online freedom of expression have so far been bypassed or ignored by users and e-content producers.

However, in 2010 newer, more aggressive strategies were put forward by the anti-internet establishment, and denounced by observers such as the Organization for Security and Co-operation in

Europe (OSCE) Representative on Freedom of the Media and Reporters Without Borders.

After many attempts to restrict freedom of expression on the internet agora – the crusades against peer-to-peer file sharing (P2P), anonymity, the right to oblivion – the Italian government introduced a new anti-internet law. Called the “gag law” and also known as the Alfano Bill, it has resulted in widespread opposition in Italy. Article 29 of the proposed law for the first time imposes responsibilities on online sites – including amateur ones – that are equivalent to restrictions on the press. In the case of defamatory comments, the proposal requires a right to reply within 48 hours, obliging the blogger to correct news content as required by the Italian Press Law of 1948, which provides for harsh penalties when this is not done.

While the proposal lists internet sites as part of the media obliged to provide this guarantee, critics say that such a provision seems inappropriate for bloggers, amongst others who have no professional or legal support and risk a huge fine if they do not comply within the strict time limit. If implemented, such a measure will push most bloggers towards self-censorship.

This is probably the real aim of such a proposal, especially if we consider that all the cases that have been raised as justifications for such a measure have concerned Berlusconi and his sexual affairs, his party's scandals, or cases of organised crime suspected of being connected to political parties.

Unlike formal media companies, bloggers and most informal websites are not in fact able to assess the merits of a request for correcting information. Typically this involves a complex chain of professionals backed by a legal department. The law, in short, is intimidating: politicians do not care about correcting the blog of a sixteen-year-old written on her bed and read only by a few friends. They are interested in what you write about them on Wikipedia.it.

For all these reasons bloggers took to the streets on 1 July 2010 in Rome, teaming up with the Italian Journalists Union and many civil rights associations in an attempt to block the law.

The protests and widespread commentary on the law would not have been possible without an information campaign using, ironically, the internet. Some 240,000 signatures protesting the proposed law were collected on the site nobavaglio.it and another 90,000 via Facebook. The protests received further exposure through the mainstream media that could not ignore the news.

## This attack is not isolated, but part of a general trend...

In the last five years, the internet in Italy has been subject to different legislative measures (or attempted measures) aimed to introduce new sets of regulations restricting users' rights to online information.

For instance, the "Pisanu Decree", justified as a temporary anti-terrorism measure after the attacks in the London underground in 2005, introduced the obligation for connectivity providers to secure administrative authorisation and to force those who access the internet at Wi-Fi hotspots and in internet cafés to register with an ID document. The measure has subsequently been extended by decree, with the end result of curtailing the development of free Wi-Fi in Italy, an anomaly considering that countries with a high risk of terrorist attacks such as Israel and the United States have no such laws, and Wi-Fi hotspots are widespread.

The "Gentiloni Decree", adopted in 2006, identified two main ways to block access to child pornography through domain name system (DNS) and internet protocol (IP) blocking. However, this does not pay due attention to the common practice of IP address sharing, which results in a potential risk of blackout for websites which share the same IP address with illicit ones.

In the few months preceding the announcement of the proposed "gag law", two other legislative initiatives raised concerns among online freedom observers. Firstly, the draft of a decree implementing the European AVMS Directive 2007/65/CE (the so-called "Romani Decree") extended part of television broadcasting regulation to audiovisual content on the internet, imposing unusual rules such as the obligation to obtain administrative authorisation for audiovisual streaming and a stricter copyright regime. Audiovisual producers and platforms, together with internet service providers (ISPs), expressed concerns about the repercussions of such a measure, given the possibility of being held liable for e-content hosted.

Secondly, a similar concern was expressed in the aftermath of a case known as "Google vs. Vivi Down",<sup>4</sup> in which the Milan Court found three Google executives criminally liable for data protection violations under the Italian Privacy Code because of a video temporarily hosted on Google Video. This case followed a large number of proposals from MPs that sought to introduce specific punishments for crimes committed on the internet.

These concerns were met with government assurances that it would intervene soon with specific proposals – assurance which amounted to little when the sentence on Google's executives was overturned by the courts and defined as a judiciary mistake.

## Conclusions

The internet allows new voices to enter debates by reducing the influence of gatekeepers and by allowing citizen journalism to flourish. This is why those who seek to control traditional media organisations are "enemies of the net". It is also why the Italian internet community has opposed the new "gag law".

Now that the grip of Berlusconi's majority party over the electorate seems to be becoming weaker, it is very likely that those in power will have less margin to manoeuvre in attempts to intervene and restrict the freedom of the internet.

In particular, the campaign over a referendum vote on 12 June 2011 has proved to the public and to the parties that control over traditional media is not enough to manipulate an entire country and to hide the truth.

The impact of the internet revolution on politics is beginning to be felt in Italy. The role of social networks and the use of mobile phones in support of campaigns are already well established. Opposition parties are now trying to use the same social media model to counter the control Berlusconi and his political allies have over traditional media in Italy: twelve million internet connections against five of the country's TV networks! It will be interesting to see over the next months how this conflict will evolve and who will win in the end.

## Action steps

Due to the current situation in the country, in order to produce real effects, actions need to intervene simultaneously on various fronts and tackle several problems at the same time.

The low rate of internet penetration, together with the legislative attempts to limit online freedom of expression, will continue to threaten online pluralism. Because of this, action steps in the field of enabling online freedom of expression and online access to information should be focused on tackling the issues hindering internet development:

### Infrastructure

- Policy makers should push to eliminate the digital divide by introducing different technological standards in order to spread broadband and wireless coverage.

<sup>4</sup> [www.reuters.com/article/2010/02/24/us-italy-google-conviction-idUSTRE61N2G520100224](http://www.reuters.com/article/2010/02/24/us-italy-google-conviction-idUSTRE61N2G520100224)

### *Legislation*

- Internet actors need a legal framework for the internet that is not just an extension of traditional press regulations.
- Freedom of expression should be considered a fundamental value embodied in the open and transparent management of the infrastructure of the internet.

### *Education*

- ICT and media literacy initiatives should be encouraged, in order to improve e-knowledge amongst the Italian population.

Concerning the specific problems posed by the “gag law”, possible actions could consist of:

- Monitoring the progression of the proposal in parliament
- Updating information on campaign sites
- Spreading the news amongst global networks
- Educating Italian citizens about the importance of freedom of expression on the internet and not only in the traditional media (this still represents the main focus of public attention). ■