THE BALANCE OF COPYRIGHT IN ITALIAN NATIONAL LAW

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SUMMARY: 1. Introduction. – 2. Questions and answers.

1. At present, Italian copyright law is, in essence, established by an antiquated statute (law no. 633 of 22nd April 1941) and by Title IX (articles 2575-2583) of Book V of the Italian Civil Code (dated 1942 and, with regard to copyright law, never reformed).

So, mainly to bring copyright law into line with the changes in society and the progress of the digital communications revolution, a need for a substantial reform has been felt for many years.

Consequently, after the failure of many reform projects, in 2007 the Council of Ministers approved a bill to Government for the drafting of an Italian Copyright reform. One of the most important players in this project was the "*Comitato Consultivo Permanente per il diritto d'autore*", chaired by Prof. Gambino; the Committee, in the last few years, has heard proposals from the academic world and from the principal associations representing interests most affected by Copyright Law (e.g. consumers, libraries, SIAE, providers, open content, creative commons, mass media).

On 18th December 2007, this preliminary work was merged into the submission of all proposals to the Minister delegated (*id est*, the "*Ministro per i beni e le attività culturali*").

However, under the present government, the reform process of Italian Copyright Law has been stopped and the dialogue with the most relevant stakeholders, established by Gambino's Commission, has been interrupted. This multilateral comparison method failed especially because the Bureau of Council of Ministers, on 15th December 2008, instituted a special committee against digital and multimedia piracy ("*Comitato tecnico contro la pirateria digitale e multimediale*", also called "*Comitato Antipirateria*"). The main criticism is that this committee does not involve any exponent of user rights, sector industries and culture associations.

With regard to the user rights, from a lexical (and substantial) point of view, it is necessary to point out that Italian copyright law does not take "user rights" or "fair use" into account, but only exceptions to the copyright. Indeed, with the 2003 reform, the title of Chapter V of law no. 633/1941 was changed from "*Free Utilisation*" to "*Exceptions and Limitations* [to copyright]".

Finally, one should specify that a central role in the exercise and administration of authors' economic rights is granted to Società Italiana degli Autori ed Editori (Italian Society of Authors and Publishers) - S.I.A.E.

This organization was established in 1882 as a private corporation, but in the course of time and, mainly, in the thirties, it was qualified as a public body by the Court of Cassation (cf. Cass. no. 1192/1937). At present, as a consequence of further decisions by the Italian Supreme Court, S.I.A.E. is considered as an economic public agency grounded on an association agreement (cf. Cass., sez. un., no. 2431/1997 or Cass., sez. un., no. 8880/1998).

Article 180 of law no. 633 of 1941 grants to this organisation the exclusive right to act as an intermediary in any manner whether by direct or indirect intervention, mediation, agency or representation, or by assignment of the exercise of the rights of performance, recitation, broadcasting, satellite broadcasting and mechanical and cinematographic reproduction of protected works.

Moreover, SIAE carries on its activities in those foreign countries in which it possesses organized representation. This exclusivity of powers does not, however, prejudice the right of the author or his successors in title to exercise directly the rights recognized in their favour by this Law.

2. Questions and answers.

***1. To what extent does national law differentiate in terms of the effects of copyright law*:**

National law differentiates in terms of the effects of copyright law to a great extent.

Main differentiation criterion: The main difference is between moral rights and economic rights. Moral rights are ensured by law to protect the author's personality and are preserved even after the assignment of the economic rights. The most important moral rights are paternity of the work (i.e. the right to claim one's own status as author); integrity of the work (i.e. the possibility to oppose any change that might damage the author's reputation) and publishing right (the possibility to decide whether to publish the work or not).

On the other hand, the economic rights allow the author to grant or deny authorization for the use of his work and economically benefit from it. The most important economic rights are reproduction right (i.e. the right to reproduce an unlimited number of copies in any way); performance, recitation, or public reading right (i.e. the right to present the work to the public in all the above-mentioned forms); communication to the public right (i.e. the right to diffuse the work through radio, television, satellite, cable, Internet, etc.); distribution right (i.e. the right to sell

the work); adaptation right (i.e. the right to change the original work, modify it, adapt it, etc.).

Anyway, Italian copyright law, as established in law no. 633/1941, differentiates in terms of the effects of copyright law according to various categories of works and, in particular cases, to factual aspects (e.g. different markets and competitive conditions).

a) <u>According to the various work categories</u>: Regarding the first criterion of differentiation, Chapter IV of Part I of the Italian statute distinguishes the effects of copyright law according to the following work categories of works:

- dramatic-musical works, musical compositions with words, choreographic works and pantomimes (art. 33-37),
- collective works, magazines and newspapers (art. 38-43),
- cinematographic or audiovisual works (art. 44-50),
- works broadcast (art. 51-60),
- works recorded on mechanical devices (art. 61-64),
- software (art. 64/*bis*-64/*quater*),
- databases (art. 64/*quinquies*-64/*sexies*).

The basis of differentiation is the specific features of these work categories, regarding exploitation rights. However, generally, these statute rules are applied only when there is not a different agreement between the interested parties (except for software and databases).

A specific provision, connected only to works of figurative arts and manuscripts, concerns the right of the author in respect of the increase in value of his work ("*diritto di seguito*"), provided by art. 144-155 law no. 633/1941.

This right attributes to the author of these particular categories of work a credit operative *erga omnes* (with the important exceptions of private agreements reached by non professional operators or museums) and consisting of a percentage of the selling price paid in every sale of his work subsequent to the first one.

As noted, this specific regulation applies only to particular categories of works:

- works of figurative art, in the form of paintings, collages, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glass works and photographs, as well as original manuscripts, which are original creations made by the author or replicas considered as original works of art (art. 145, par. 1);
- replicas of works of art made in limited number by the author or under his authority are considered as originals, when numerated, signed or otherwise duly authorized by the author (art. 145, par. 2).

Rights of the author in respect of the increase in value of works of figurative art and manuscripts shall subsist for the lifetime of the author and until the end of the seventieth calendar year after his death (art. 148). These rights are recognized also to the authors not belonged to European Union, when their country laws provide the same treatment in favour of Italian citizens (reciprocity clause: art. 146, par. 1).

b) <u>According to factual aspects</u>:

- ***<u>Different markets</u>:*** Regarding the second criterion and, specifically, differentiation based on different markets, we can refer, in the field of literary works, radio works or works made public by other means, to the articles of current interest of an economic, political or religious character, published in magazines or newspapers, that may be freely used or reproduced (with certain conditions: see art. 65 law no. 633/1941).
- ***<u>Competitive conditions</u>*:** With regard to this criterion, the competition between authors is regulated by art. 4 law no. 633/1941. This article provides that, without prejudice to the rights subsisting in the original work, works of a creative character derived from any such work, such as translations into another language, transformations into any other literary or artistic form, modifications and additions constituting a substantial remodelling of the original work, adaptations, arrangements, abridgments and variations which do not constitute an original work, shall also be protected. It also should be noted that if a work has been created by the indistinguishable and inseparable contributions of two or more persons, the copyright shall belong to all the joint authors in common and in the absence of proof of written agreement to the contrary, the indivisible shares shall be presumed to be of equal value (art. 10, paragraphs 1 and 2, law no. 633/1941). Regarding the competition between authors of a collective work, the person who organizes and directs its creation shall be deemed the author (art. 7 law no. 633/1941). In the absence of agreement to the contrary, art. 38 provides that, in this case, the exploitation rights shall belong to the publisher of the work, without prejudice to any right deriving from the application of art. 7. The individual contributors to collective works shall have the right to utilize their own contributions separately, provided they observe existing agreements or, in the absence of agreements, the rules set by art. 39-43 law no. 633/1941.
- ***<u>Other factual aspects</u>*:** Only with regard to computer programs, databases and industrial designs, it is important if the work is created by an employee in the course of his duties. In fact, in this case, unless

otherwise agreed, the employer shall be the owner of the exclusive right of economic use of the computer program or database created by his employee in the course of his duties or on instructions given by the said employer (art. 12/*bis* law no. 633/1941). Similarly, unless otherwise agreed, where an industrial design has been created by the employee in the course of his duties, the employer shall be the owner of the exclusive rights of economic exploitation of the work (art. 12/*ter* law no. 633/1941).

c) <u>According to other criteria</u>:

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2. Which of the following instruments are used by national copyright law in order to achieve a "balance" of interests and to what extent are they used:

With regard to achieving a "balance" of interests, Italian national law uses different legal instruments.

<u>Specific preconditions</u>: First of all, the Italian Civil Code (like article 1 of law no. 633/1941), as interpreted by the most relevant jurisprudence and doctrine, provides four specific preconditions to protecting works:

a) a particular degree of creativity;
b) novelty;
c) work's objectification or externalization;
d) work's affiliation to art or culture (specified by art. 2 law no. 633/1941 in ten works categories protected: **1.** literary works, **2.** musical works, **3.** choreographic or pantomimic works, **4.** sculpture, picture and design, **5.** architectural works, **6.** cinematographic works, **7.** photographic work, **8.** software, **9.** data base and **10.** industrial design).

The function of these preconditions is to guarantee a balance between the protection of individual creativity and the extension of copyright law, as well as to set this law apart from other laws regarding intellectual property (like patent or trademarks laws).

<u>Period of protection</u>: Regarding the period of protection, Italian statute law distinguishes non-economic (or moral) and economic rights.

Regarding the period of protection, moral rights are not subject to legal terms of protection. The right of economic exploitation of the work lasts throughout the

author's life and until 70 years after his death. At the end of this period, the work becomes part of the public domain. In case of collaborations, the work becomes part of the public domain when 70 years have elapsed since the death of the last co-author.

Consequently, the function of this restriction in the period of paternity is to reconcile the interests of the author (and heirs) with that of society and cultural progress. Clearly, a suitable length of time of patrimonial rights acts as an incentive for intellectual works, guaranteeing the author a true prospect of earning money over time.

On the other hand, the fact that the moral rights are not included represents a natural choice by Italian Law (also found in most other systems) to guarantee indefinitely to each author the recognition of certain rights over his intellectual creation (*in primis*, the patrimony of the same).

The duration of the exploitation rights belonging to the State, the provinces, the communes, the academies or public cultural organizations, or to private legal entities of a non-profit making character, shall be **twenty years** as from first publication, whatever the form in which publication was effected. In the case of communications and memoranda published by academies and other public cultural organizations, the term shall be reduced to **two years**, after which the author shall wholly recover his right to the unrestricted disposal of his writings (art. 29 law no. 633/1941).

With regard to the period of protection, another important difference concerns the neighbouring rights, which have a shorter duration than copyright. Specifically, the period of protection, after the date of first publication or public communication, is:

- **50 years** for: phonographic producers (art. 75), producers of cinematographic or audio-visual works (art. 78/*ter*), radio and television broadcasting companies (art. 79) and performers (art. 85);
- **25 years** for: works published or communicated to the public for the first time after the author's economic rights have expired (art. 85/*ter*);
- **20 years** for: critical or scientific editions of works of public domain (art. 85/*quater*), photographs (art. 92) and engineering projects (art. 99)
- **5 years** for: designs for stage sets (art. 86).

Specific user rights, free of charge, granted by the law in favor of third parties: As concerning user rights and, particularly, user rights granted free of charge, these are stipulated in Chapter V of the Italian copyright law (e.g. article 65, 66, 67,

68, paragraph 1 and 2, 68/*bis*, 69, 79 etc.) and are understood not as user rights, but as exceptions and limitations to the authors' rights.

Particularly interesting, for example, is the hypothesis (art. 65, par. 1, law no. 633/1941) concerning the possibility of freely reproducing (in other magazines, newspapers, or broadcast) articles of current interest of an economic, political or religious character, published in magazines or newspapers unless such reproduction is expressly reserved, provided an indication is given of the magazine or newspaper from which they are taken, the date and the number of the said magazine or newspaper.

Furthermore, with regard to free user rights, an extremely important prevision is that introduced with paragraph 1/*bis* of article 70, which allows the unrestricted publication of low-quality and degraded images and music on the internet without charge, as long as these are for educational or scientific purposes without commercial gain. This law has caused a wide debate in Italian law circles, as to the correct definition of "low-quality and degraded".

***Specific user rights granted by the law in favor of third parties subject to the payment of a remuneration to the right holders*:** Chapter V of law no. 633/1941 also regulates user rights that are subject to payment. With regard to these rights, it should be pointed out that Italian copyright law, in art. 68, par. 3, while prohibiting the reproduction of sheet music or musical parts, allows an intellectual work to be reproduced for personal use, up to a limit of 15% of each volume or publication, by means of a photocopier, xerox or similar system. In this case, those responsible for the place of reproduction, either using a photocopying, xerox or similar system themselves or allowing others to do so, also free of charge, must pay a fee to the authors and publishers of the works reproduced.

A further important regulation in the field of user rights granted for payment, is that concerning the right of private copying: article 71/*sexies* establishes that any private reproduction of phonograms or videograms on any memory device for personal use is permitted as long as not for commercial gain either directly or indirectly and in respect of DRM. The payment for this right is, in the case of machines exclusively made for the analogue or digital recording of phonograms or videograms, a proportion of the price paid by the final purchaser to the retailer; in the case of audio and video recording devices, analogue or digital, and fixed or transferable memory recording devices, the payment is proportionate to the amount of memory offered by the device. For distance video recording the payment is made by the individual offering the service and is proportionate to the monies earned for the said service (article 71/*septies*).

The structure of user rights in Italian Law seems mainly well-balanced, with a series of important exceptions to the exclusive rights of the author, which however do not undermine the overall body of law in any significant way. It should be

considered that Italian judges, used to making judgements in terms exceptions to holders' rights rather than users' rights, class these provisions as exceptional and tend to interpret them in a very restrictive manner.

***Obligations to conclude a contract established by law to grant a third party specific user rights in return for payment of a fee (mandatory licenses)*:** Italian law does not provide any obligation to conclude a legally established contract. This is based on the idea of a wide contractual autonomy granted to the parties in the relationship, who (apart from a number of mandatory rules) are free to define how best to balance their relative interests.

On the basis of this fundamental idea, many provisions are of a supplementary nature, in the sense that they are applied only if the contract does not already contain a relevant point. The parties, thus, are free to choose if to regulate or not their relationship in a contract, when, lacking agreements, the law may become applied.

***Rules on misuse*:** There is no specific rules on "misuse" in Italian copyright law.

3. Does national law regulate the user right pursuant to Question 2 c) to e)

- ***abstractly (for instance using general clauses),***
- ***concretely (for instance in the form of an enumeration),***
- ***by means of a combination of the two?***

Regarding user rights regulation, the Italian copyright law provides a concrete system of rules, specifically contained in the art. 65-71/*decies* of law no. 633/1941. Some other (specific) provisions with regard to user rights are provided by the General Regulations of SIAE, an administrative decree, recently modified on 6th November 2009 (e.g. adjusting the amount of fee determination etc).

It should be mentioned that the single cases of exceptions and restrictions to authors' rights, while being listed, are often based on general clauses that, in practice, sometimes become broadened and at other times restricted, depending on the matter in hand: e.g. art. 71/*quinquies* on DRM or art. 71/*sexies* on private copy for personal use.

Moreover, with regard to user rights regulation, in Italian copyright law, there is only one real general clause: this is art. 71/*nonies*, which provides that all the exceptions/limitations to author's rights must be interpreted in a way as to not

impinge upon the normal use of the work or other material, nor cause an unjustifiable prejudice to the interests of the rights holders.

4. What is the role played by the "Three-step test" in national law in connection with the user rights pursuant to Question 3?

In particular:

Has the "Three-step-test" been explicitly implemented in national copyright law (legislation)?

The "Three-step-test" has been implemented in national law with some articles of law no. 633/1941. For instance: paragraph 4 of art. 71/*sexies*, article 71/*nonies*, article 64/*quater* and *sexies*.

However, regarding the application of the "Three-step-test" in national law, the most important provision is article 71/*nonies*, because this is a general rule not dedicated to a specific work category and not strictly related to the private copying regulation.

Has it played a specific role in the determination of the legal standards (limitations and exceptions)?

Is it directly applied by judicial practice?

So, in statute procedure, it can definitely represent a general interpretative standard for limitations and exceptions of copyright, but, in law, it is principally connected to and put in practice with regard to new technologies.

Thus, the judicial practical application of the "Three-step-test" is not particularly widespread outside the scope of private copying disputes.

Is the "Declaration on a Balanced Interpretation of the "Three-step-test" in Copyright Law" well known and if so what role does it play (legislation, judicial practice, academic discussion etc.)?

Similarly, the "*Declaration on a Balanced Interpretation of the Three-step-test in Copyright Law*" is used more often in academic discussion than in judicial practice.

5. If categories of works are distinguished according to Question 1, to what extent do the legal instruments in Question 2 a) to f) differentiate according to those categories?

- ***specific preconditions or thresholds allowing a work's protection only when it surpasses a particular degree of creativity***

Italian copyright law does not make distinctions connected to creative preconditions of copyright.

Specifically, referring to originality and novelty criterions, Italian courts always apply the same method of analysis with regard to all categories of works protected and, generally, a work only needs to show a small level of creativity in order to be protected by copyright (see, *ex multis*, Cass. no. 425/2005, Cass. no. 5089/2004, Cass. no. 13937/1999 and Cass. no. 908/1995).

For more details, see text in answer to Question 6/a).

- ***specific user rights, free of charge, granted by the law in favour of third parties,***
- ***specific user rights granted by the law in favour of third parties subject to the payment of a remuneration to the rights holder(s)***

Regarding users' rights, whether free or by payment, Italian Copyright Law does not make distinctions.

On the one hand, limitations and exceptions to copyright (art. 65-71/*decies* law no. 633/1941) do not differ according to different categories of works and, on the other, the statute clarifies specifically the content of the patrimonial rights in the general clauses of articles 12 et seq. of law no.633/1941.

Moreover, the laws on "computer programs" (articles 64/*bis*-64/*quater*) and "databases" (articles 64/*quinquies*-64/*sexies*) specify which are the rights of economic utilisation belonging to the authors of these types of intellectual works.

The purpose of these is to establish a balance between the authors' rights and those of the users. In particular, with regard to computer programs, the author can never prevent a legitimate user of the work to make a back-up copy of the program, when that copy is a valid necessity.

Moreover, the author's permission is not necessary to reproduce, transform, adapt or translate the program, when these operations are indispensable to achieving compatibility with other programs, also autonomously created programs. Similarly, for databases, the right holder's permission is not necessary for the activities of permanent or temporary reproduction, total or partial, with whatever means and in whatever form, nor the translation, adaptation, of different arrangement or any other modification, carried out by a legitimate user of the database or a copy, if these activities are necessary to gain access to the content of the said database or for its regular use.

These conditions relating to software and databases that establish a balance between the copyright holder and the user are mandatory and any other agreement to the contrary is invalid.

In any case, both article 64/*quater* on computer programs and article 64/*sexies* on databases explicitly provide that the rights granted to the user cannot be contrary to the rules fixed by the Berne Convention and, in particular, to the principles of the Three-step-test.

- ***period of protection***

See the answer no. 1, par. "*period of protection*".

- ***rules on misuse***

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6. Please cite and/or describe as completely as possible:
a) the legal instruments and/or the relevant judicial practice concerning Question 2a)

Regarding the preconditions for the copyright protection of an intellectual work, the relevant law is article 2575 of the Italian Civil Code (the content being the same as article 1 of law no. 633/1941), according to which those works that may be subject to copyright protection are intellectual works having a creative character and appertaining to literature, music, the graphic arts, architecture, the theatre and cinematography, whatever their mode or form of expression.

This law, besides having the aim of distinguishing the field of application of copyright law from that of patents, highlights the essential element that must exist in order that legal protection may arise: creativity (physically manifested in one of the macrocategories listed in the law).

Jurisprudence and legal theory, over time, have clarified that the legal understanding of creativity has no connection with that of creation, i.e. originality and absolute novelty, but refers to the personal and singular expression of individuality within one of the categories listed in the examples in article 1 law no. 633/1941. This means that, for an intellectual work to receive legal protection, the existence of a creative act is sufficient, even if only minimal, capable of being manifested in the outside world (see, *inter alios*, Court of Cassation, 12th March 2004, no. 5089). Thus, the creativity cannot be excluded only because the work consists of simple ideas or notions expressed by experienced people in the field (this principle was handed down,

ex ceteris, by the Court of Cassation 2nd December 1993 no. 6452, and has been constantly reasserted by successive pronouncements).

Moreover, the fundamentals of legal theory and jurisprudence have always agreed upon the fact that a work can be the subject of specific protection only when it has been externalised, i.e. when the simple "*originator*" becomes "*author*". The idea itself, therefore, cannot be protected: this is a principle that is constantly found in the decisions of judges (e.g. Court of Cassation, 13th February 1987, no.1558).

It should be noted that in Italian courts and doctrinal debate on the categories of works protected by copyright there is no agreement as to whether the work categories enumerated in art. 1 law no. 633/1941 should be regarded stringently or as simply exemplificative. At present, however, it seems that the exemplificative character position is predominant, expressed, *ex ceteris*, by Cass. no. 908/1995, Cass. no. 11953/1993, Cass. no. 7397/1990.

On the basis of this approach, Italian courts have sometimes identified many atypical works, not expressly mentioned in law no. 633/1941, protected by copyright. For example:

- critical editions (cf. Cass. no. 559/2001 and Court of Appeal, Rome, 13th March 1995);
- restorations (cf. Trib. Bologna 23rd December 1992);
- cultural and sports events (cf. Pret. Rome 18th November 1987: at present, this approach is minor);
- advertising works (cf. Cass. no. 16919/2003 and Trib. Genoa 27th March 2000);
- fantasy characters (cf. Cass. no. 810/1978, Trib. Milan 27th May 2005 and Trib. Rome 3rd November 1981);
- broadcasting formats (cf. Cass. no. 17903/2004, Court of Appeal, Turin, 8th April 1960 and Trib. Rome 6th July 1999);
- maps (cf. Trib. Milan 30th June 2004);
- flower arrangements (cf. Trib. Milan 23rd January 1967) and
- political party symbols (cf. Trib. Rome 27th April 1981).

Lastly, it should be noted that a work does not have to be lawful in order to be protected by copyright (cf., *inter alios*, Cass. no. 908/1995, Trib. Milan 29th January 1996 and Court of Appeal, Rome, 10th October 1957).

b) the provisions covered by Question 2c) to e)

c) where appropriate, the relevant judicial practice concerning Question 2c) to e)

As already seen, with regard to users' rights, Italian copyright law considers these as exceptions or limitations to the rights belonging to the author of the work, as

can be understood immediately from the title of Chapter V of the law no. 633/1941, "*Exceptions and Limitations*", that contains the majority of the provisions aimed at balancing the interests of the author and third parties.

Jurisprudence has, also, always interpreted these provisions as absolutely exceptional, in so much as the courts consider matters of free utilisation of a work as special hypotheses, lying outside the remit of the sole right held by the author (among the many decisions that have asserted this principle, cf. Court of Appeal, Milan, 28th May 1999). This means that, in respect of these provisions, in jurisprudential practice, a particularly restrictive interpretation is generally taken.

Specifically, exceptions and limitations provided by Chapter V of the law no. 633/1941 are related to:

- Articles of current interest of an economic, political or religious character, published in magazines or newspapers, may be freely reproduced in other magazines or newspapers, or may be broadcast, unless such reproduction is expressly reserved, provided mention is made of the magazine or newspaper from which they are taken, the date and the issue of the magazine or newspaper and, in the case of a signed article, the name of the author (art. 65, par. 1);
- The reproduction or public communication of protected works or material used in current events is permitted as part of freedom of speech and provided it has an informative aim, as long as, unless impossible, the source, including the name of the author, is reported (art 65, par. 2);
- Speeches upon matters of political or administrative interest given in public assemblies or in any other public manner may be freely reproduced in magazines or newspapers, or broadcast, provided the source is mentioned, together with the name of the author and the date and place in which the speech was given (art. 66);
- Works or portions of works may be reproduced for use in judicial or administrative proceedings, provided the source or the name of the author is mentioned (art. 67);
- The reproduction of single works or of portions of works for the personal use of the reader, when made by hand or by a means of reproduction unsuitable for marketing or disseminating the work in public, shall be permitted (art. 68, par. 1);
- Permission is given for the free photocopying of works found in public and scholastic libraries, public museums and public archives, undertaken by these said bodies for their own duties, without any direct or indirect economic or commercial gain (art. 68, par. 2);

- While the reproduction of sheet music and musical parts remains prohibited, the reproduction for personal use of an intellectual work by means of a photocopier, xerox or similar machine, is permitted, up to a limit of 15% of each volume or book, excluding advertising (art. 68, par. 3);
- Except for the legal responsibilities of internet service providers set out in e-commerce law, exemption from the right of reproduction is granted to acts of temporary non-commercial reproduction of a transitory or accessory nature and an integral and essential part of a technological procedure, carried out with the sole aim of allowing the network transmission between third parties by use of an intermediary, or the legal use of an intellectual work or material. (art. 68/*bis*);
- Loans from libraries and record libraries belonging to the State or to public authorities, made exclusively for purposes of cultural promotion and personal study, shall not require authorization by the right holder, to whom no remuneration shall be due, and shall exclusively concern: *(a)* printed copies of the works, except for music scores; *(b)* phonograms and videograms containing cinematographic or audiovisual works or sequences of moving images, with or without sound, provided that at least 18 months have elapsed since the first exercise of the right of distribution or, where the right of distribution has not been exercised, provided that at least 24 months have elapsed since the making of the said works and sequences of moving images (art. 69, par. 1);
- The departments of the libraries and record libraries belonging to the State or to public authorities shall be permitted to reproduce a single copy of the phonograms and videograms containing cinematographic or audiovisual works or sequences of moving images, with or without sound, which are held by those same State libraries and record libraries and by the public authorities (art. 69, par. 2);
- The abridgment, quotation or reproduction of fragments or parts of a work for the purpose of criticism or discussion, or for instructional purposes, shall be permitted within the limits justified for such purposes, provided such acts do not conflict with the commercial exploitation of the work; if they are carried out for educational or research purposes their use must be illustrative and not for commercial ends (art. 70, par. 1);
- Permission is granted for the free publication on the internet, without restriction, of images and music of low or degraded quality, for educational or scientific use and only if their is no commercial gain. A decree of the Ministry for Arts and Culture, approved by the Ministry

of Education, the Ministry of Universities and Research and the competent Parliamentary commissions, limits the aforementioned educational and scientific use (art. 70, par. 1/*bis*);

- Bands of the armed forces of the State may perform musical pieces or portions of musical works in public without payment of any fees in respect of copyright, provided the performance is not made for profit (art. 71);
- Permission is granted for disabled people to reproduce, for their own personal use, protected works or material or their public transmission, as long as this reproduction is directly connected to their handicap, has no commercial ends and is limited to a use necessitated by the handicap (art. 71/*bis*);
- Permission is granted for the communication or availability to the individual user, for research or private study, on dedicated terminals situated in public libraries, educational establishments, museums and archives, of the works and other material contained in their collection and not subject to binding transfer or licence agreements (art. 71/*ter*);
- The reproduction of television broadcasts carried out by public hospitals and penitentiary institutions, solely for internal use, provided that the rights holder receives the fee laid out in a decree of the Ministry for Arts and Culture, is permitted (art. 71/*quater*);
- According to art. 71/*quinquies*, technical protection measures must be removed, by public authority request, for public security or to allow the correct course of administrative, parliamentary or legal proceedings, as well as to allow the exercise of the exceptions provided by the law.
- Lastly, articles 71/sexies-71/octies regulate private reproduction and personal use, which consists of "private reproduction of phonograms and videograms on any equipment, carried out by an individual exclusively for personal use, provided there is no direct or indirect commercial gain".

As general "closing" regulation on the subject of exceptions and restrictions, art. 71/*nonies* provides that all the exceptions/limitations to author's rights "*must be interpreted in a way as to not impinge upon the normal use of the work or other material, nor cause an unjustifiable prejudice to the interests of the rights holders*".

In addition to the exceptions and restrictions laid out in Chapter V of law no. 633/1941, further exceptions are regulated in other parts of the copyright law:

- in particular, regarding databases, the following activities are not subject to the authorization of the rights holder: "*access to or consultation of the*

database for purely teaching or scientific research purposes outside the framework of a company, as long as the source is mentioned and to the extent justified by the non-commercial purpose to be achieved; in the case of access or consultation, however, the permanent reproduction of all or a substantial part of the contents on another medium shall be subject to authorization by the owner of the rights" and "*use of a database for public security purposes or for the purposes of an administrative or judicial procedure*" (art. 64/*sexies*);

- regarding the performance or recitation of works, which takes place on the premises of officially constituted assistance centers or institutions, or benevolent associations, on condition that they are intended solely for members and guests and that they are not carried out with gainful intent (art. 15/*bis*, par. 1);
- with regard to the performance of radio works by the broadcasting body and the performances of radio works in public (art. 51 et seq.);
- regarding to the reproduction of photographs in anthologies intended for school use and, in general, in scientific or didactic works, and the reproduction of photographs published in newspapers or other periodicals, and which concern persons or current events or matters of any public interest (art. 91).

d) the rules on abuse according to Question 2f)

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7. Have certain legal instruments according to question 2a) to f) only been introduced in the course of time or repealed in the course of time and if so why?

First of all, we have to realise that the fundamental principles of Italian copyright law have not undergone many changes in the last sixty years and so lawyers (and especially judges) have had to make great interpretative efforts to attempt to bring this statute law into line with the new needs identified since its establishment.

All of the numerous subsequent reforms have regarded particular situations or specific sectors (e.g. databases and software), but have not altered the essential features of the law established back in 1941 and reasserted in the Civil Code of 1942.

- ***specific preconditions or thresholds allowing a work's protection only if it surpasses a particular degree of creativity***
- ***period of protection***

With regard to specific preconditions providing protection to works or period of protection, there have been no relevant innovations or repeals in the course of time.

- ***limitations/exceptions***

However, major changes have been introduced regarding user rights, specially brought about new technology: e.g. the private copying right was introduced into the Italian system only in 1992 and digital rights management in 2003. Furthermore, in these years, Italian copyright law has been reformed principally because of requirement of international and supranational law (in particular, because of EU regulations and directives).

Specifically, the laws concerning exceptions and limitations were modified by the effect of EU Directive no. 01/29 on copyright in the information society, implemented in the Italian system by d.lgs. 9th April 2003, no. 68. Because of this statute, Chapter V of the law no. 633/1941 modified the name of "*Fair Use* (*Utilizzazioni libere*)" to the present one of "*Exceptions and limitations* (*Eccezioni e limitazioni*)" and it was split into three sections:

- Reprography and further exceptions and limitations (art. 65-71/*quinquies*);
- Private copy for personal use (art. 71/*sexies*-71/*opties*) and
- General rules (art. 71/*nonies*-71/*decies*).

In the end, d.l. no. 262/2006 and the subsequent implementation law no. 286/2006 affected articles 65 and 69 of law no. 633/1941, but only the reforms on the latter article were preserved at the moment of implementation.

However, the exceptions and limitation rules currently in force are, on the one hand, consistent with the individualistic idea which inspires law no. 633/1941 and, on the other hand, congruent with the continental Western legal tradition, which provides specific exceptions to exploitation rights.

In conclusion, on this point, it should be highlighted that Italian lawmakers have always been very reluctant to reform the Copyright Law in any substantial way, in fact the present structure of law no. 633 of 1941 represents the progressive stratification of a series of additions over time that, in some way, have eroded its

overall homogeneity. In any case, as stated in the introduction, an integral reform has been proposed for many years, with the repeal of law no. 633/1941 and its replacement with a more modern body of law (on this point, cf. the work of the Gambino Commission)

8. Are there rules that restrict the scope of the user rights according to Question 2c) to e), in particular:

• by laying down specific preconditions for the applicability of individual user rights,

• by laying down abstract preconditions for the applicability of individual user rights?

Regarding its scope, Italian copyright law provides both specific and abstract preconditions for the applicability of individual user rights.

In particular, there are some exceptions to the copyright based on specific rules. For instance: photocopying of works is permitted only for personal use with a limit of 15% (with the exclusion of advertising pages); quotations from economic, political and religious news articles are generally permitted provided that the source, date and author's name is cited; summary or quotations of other work categories is consented only for purposes of criticism, discussion or scientific research.

Connected to these specific provisions, law no. 633/1941 contains a rather abstract regulation with regard to the private copying for personal use. These provisions were introduced in 1992 and substantially reformed in 2003 (on the basis of the EU Directive 2001/29/CE).

So, the Italian private copying provision creates an exception to the exclusive reproduction right belonging to authors, performers and producers and, because of this exception, a general principle is established: a consumer can legally reproduce music and videos for personal use only. Remuneration is due to authors, artists and producers to repay them for the "private copying" benefit of the consumer and this remuneration is paid on recording equipment and blank discs.

9. Are there rules to protect the existence of the user rights according to Question 2 c) to e)?

- ***What kinds of binding rules are there to prohibit the undermining of statutory user rights?***

As stated, Italian copyright law does not recognise a general rule on fair use or on user rights, but the third party's position is granted by exceptions and limitations to the copyright.

So, there are no binding or specific rules to prohibit the undermining of statutory user rights, simply because the Italian system does not have statutory user rights. Only a number of provisions, mainly on the subject of software and databases, explicitly protect the user's position, establishing that any possible agreements with the right holder to exclude or restrict that position are invalid (see, specifically, articles 64/*quarter*, par. 3, and 64/*sexies*, par. 3).

In other words, in these cases, the protection guaranteed to the users is consolidated contractually by invalidatory measures, restricting the private autonomous relationship between the parties.

- ***How is the relationship between technical protection measures/DRM (digital rights management) and statutory user rights regulated?***

Regarding the question of Digital Rights Management, the recent reform of the statutory law introduced in the Italian system a specific mechanism of balance of interests between right holders and third parties.

Specifically, the right holders (*ex* art. 102/*quater* law no. 633/1941) can use technical protection measures to prohibit or to limit non authorized copying or reproduction of the work. However, right holders are compelled to adopt suitable measures, also by specific agreement with a third party's representative associations or trade unions, to enable the exercise of exceptions and limitations granted by law (specifically, provided by art. 55, 68, paragraphs 1 and 2, 69, par. 2, 70, par. 1, 71/*bis* and 71/*quarter*: **for details see the answer no. 6**). In that case, third parties must have come into lawful possession of works or protected material and, if provided, must pay a fair remuneration (e.g. the case of art. 71/*quater*).

Moreover, article71/*sexies* establishes permission for private copying of sound and video recordings on any media support, done by a physical person for personal use only, without profit or (directly or indirectly) commercial purpose. To compensate the rights holders for this private copying, the following article (71/*septies*) states that a fee must be paid to them, determined as a proportion of the sales price of suitable equipment to record audio or video. This fee is fixed by a decree of the "*Ministro per i beni e le attività culturali*" and it is paid to SIAE by manufacturers or importers of the said equipment.

- ***Is there a decision (explicit and implicit) on the extent to which***
  - ***exclusivity rules to the benefit of the right holder,***
  - ***access possibilities in favor of third parties***

  should enjoy priority in the event of a doubt?

Finally, we can point out that the Italian system does not recognise any (explicit or implicit) decision on the extent to which exclusivity rules to the benefit of the right holder or access possibilities in favour of third parties should enjoy priority in the event of doubt.

Anyway, in the event of a doubt, generally exclusivity rules to the benefit of the right holder enjoy priority on the basis of the particularly restrictive interpretation of exceptions and limitations (see, *inter alios*, Cass. no. 2089/1997, Cass. no. 11143/1997, Trib. Rome 13th October 2004, Trib. Milan 13th July 2000).

10. a) How is the amount of the fee determined:

- ***for cases covered by Question 2d)***

  namely:
  - ***basically***

The Italian Copyright system does not provide a general rule about the determination of the amount of the fee. Generally, the articles of law no. 633/1941 only set that a "*remuneration*" (e.g. articles 15/*bis*, 46, 56, 68) or a "*fair remuneration*" (e.g. articles 18/*bis*, 46/*bis*, 58, 70, 71/*quater* and *quinquies*) has to be paid to the right holder, without any concrete difference of treatment resulting from this distinct terminology. So, regarding this profile, the statute law (and its enforcement regulation) refers to specific agreement between SIAE and the third party's representative associations or trade unions. Sometimes, to quantify the fee the copyright law directly refers to government measures (e.g. art. 15/*bis*, regarding the performance or recitation of works that take place on the premises of officially constituted assistance centers or institutions, or benevolent associations).

  - ***in the event of a conflict?***

There are no significant differences between basic determination of the fee basically and the same in the event of conflict, not even regarding the amount. However, to determinate the fee in the event of conflict, generally, the Italian courts rely on technical advisers, who make use of the agreements settled by SIAE with third party associations.

In any case, article 158, paragraph 2, of law no.633 of 1941 establishes that a judge can also settle the amount of damage caused by the infringement of copyright as a flat-rate based on the price of the rights that should have been recognised, if the transgressor had asked the right holder's permission to use the rights.

For a different perspective, we also can underline that some provisions of statute law set specific administrative sanctions, consisting of a pecuniary penalty generally fixed as double the work's value (cf. articles 71/*septies* and 174/*bis* law no. 633/1941).

- ***for cases covered by Question 2e)***

As noted, Italian Law does not provide any obligation to conclude a legally established contract.

b) Are there particular procedural rules:

- ***for cases covered by Question 2d),***
- ***for cases covered by Question 2e),***
- ***for cases covered by Question 2f),***

e.g. concerning

- ***the distribution of the burden of proof,***
- ***provisional measures,***
- ***other aspects?***

Regarding procedural rules, it should be said that on the matter of copyright, Italian law does not provide any specific procedural rules, differing in this respect to common civil procedure (in particular, it does not provide any form of the inversion of the burden of proof).

In any case, some particular rules, which usually do not change anything with regard to the Civil Procedure Code, are established in articles 156-170 of law no.633/1941.

And so, regarding pre-trial methods, it is interesting to note article 161 of law no. 633/1941 which establishes that a judge may order an inventory, a report, an expert appraisal or the seizure of all matter constituting an infringement of the right of utilization; also a judge can have recourse to preliminary enquiry proceedings. Moreover, when a party has furnished serious evidence from which it can be the validity of their claims can be deduced and have identified a document, evidence or information in the hands of the other party that confirm those deductions, the party

can expect the judge to order their disclosure or request the information from the other party. In addition, the judge can order the other party to furnish evidence that identifies the individuals implicated in the production and distribution of the product or service that constitutes a breach of the present law (cf.. art. 156/*bis* law no. 633/1941).

Furthermore, the author of a work which is the object of the right of utilization may, after the assignment of such right, intervene at any time, in order to protect his interests, in proceedings instituted by the assignee (cf. art. 165 law no. 633/1941).

In precautionary or provisional stages, the holder of the economic rights can request, also in the course of the proceedings, an injunction order against any activity that constitutes an infringement of those rights, applying the ordinary rules of precautionary proceedings (cf. article 163, par. 1, law no. 633/1941).

c) How is the fee paid to the rights holder by the party entitled to use:

- ***for cases covered by Question 2d),***

Generally, in every case, the fee is paid to the right holders through SIAE, which acts as an intermediary for the management of copyright. SIAE therefore grants licenses for the use of protected works, collects royalties and distributes them to right owners. It carries out its activities both in Italy (through its offices) and abroad (through the foreign societies of authors with which it has signed representation agreements).

In Italy this intermediary activity is reserved by law to SIAE on an exclusive basis.

However, membership to SIAE is not mandatory, but a free choice, so the right holder can theoretically manage his relationships with the users and protect his rights directly.

To manage his copyright, the author could also choose to become member of other foreign society of authors.

For more details on SIAE, see the introduction.

- ***for cases covered by Question 2e)?***

As noted, Italian Law does not provide any obligation to conclude a legally established contract.

d) Does national law contain rules that regulate the distribution of fees:

- ***for cases covered by Question 2d),***

between the various categories of right holders?

- ***If so which?***
- ***If not, how are such distributions determined?***

Regarding the division of the fees due from authors' rights among the different categories of author, Italian law generally permits autonomously reached agreements between the different individuals involved (that can also be established through mediation by SIAE).

The legal provisions, therefore, apply only in the absence of an autonomously reached agreement (see article 33 for dramatic-musical works and article 38 for collective works)

In any case, regarding dramatic-musical works, according to article 34, the profits derived from economic utilization shall be shared in proportion to the values of the respective literary and musical contributions. In the operas, the value of the musical part shall be regarded as being three-quarters of the total value of the work. In operettas, in melologues, in musical compositions with words, in dance and ballet music, the value of the two contributions shall be considered equal.

While, for cinematographic works, the exercise of the rights of economic utilization of a work shall belong to the person who has organized the production of the said work (see art. 45, par. 1, law no. 633/1941) but for the authors of music, of musical compositions and of the words which accompany music shall be entitled to collect directly from persons publicly showing the work a separate payment in respect of such showing (cf. art. 46, par. 2, law no. 633/1941).

Furthermore, the authors of the subject and of the scenario and the artistic director, in cases where they are not remunerated upon the basis of a percentage of the receipts derived from public showing of the cinematographic work, shall, in the absence of agreement to the contrary, are entitled to receive an additional payment when the receipts have attained a level to be fixed by contract with the producer. The form and amount of such payment shall be fixed by agreement between the categories of persons interested (see art. 46, par. 3, law no. 633/1941).

Finally, article 46/*bis* provides that the authors of cinematographic and similar works are entitled to an appropriate fee paid by the broadcasting bodies for each utilisation of the said work by means of public broadcast by signal, cable or satellite.

- ***for cases covered by Question 2e)?***

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11. Does national law contain general rules based on a differentiation between different categories of right holders, in particular:

a) binding rules on contractual relationships between different categories of right holders (copyright contract)?

Italian National Law contains many general rules that differentiate between different categories of right holders.

Main rules: The main rule concerns the inability of the original right holder to transfer the non-economic rights, attributed by the copyright, to others. Any different agreement is absolutely void.

With regard to the economic rights, there are general rules on user rights' transmission (art. 107-114 of law no. 633/1941) and some specific provisions dedicated to the publishing contracts to regulate the relationship between author and publisher (art. 118-135 of law no. 633/1941). However, most of the rules legally fixed are contractually changeable.

In short, the balance of the relationship between different right holders is entrusted to the contractual autonomy of the parties, while the law generally intervenes only in the absence of agreement between those different parties involved in the creation of a work.

Some specific provisions (art. 115-117) of law no. 633/1941 are dedicated to the transmission of user rights after death. Particularly, the heirs have to appoint only one individual (not necessary one of them) as administrator of the derivative user rights. Failing this, within one year, the appointment is made by SIAE. However, the administrator has limited power and he has to obtain the consent of the majority of the heirs with regard to all new translation and adaptation of the work.

Specific rules: As already seen, Italian Copyright Law classifies intellectual works in different categories only in relation to particular previsions concerning economic utilisation (cf. Chapter IV of law no. 633/1941).

In particular, these laws regulate in a specific manner the patrimonial rights linked to certain work categories (**listed in answer no. 1**), as well as the methods of exercising these rights.

In any case, the particular rules on "dramatic-musical works, musical compositions with words, choreographic works and pantomimes" , "collective works, magazines and newspapers", and "cinematographic or audiovisual works" are

intended, essentially, to regulate the relationship between the different right holders involved in the creation of a work, identifying those who can exercise the right of economic utilization. Besides this, the law clarifies specifically the content of the patrimonial rights in the general clauses of articles 12 et seq. of law no.633/1941.

For example, article 45 establishes that, for cinematographic works, the exercise of the rights of economic utilization of a cinematographic work belongs to the person who has organized the production of the said work (i.e. the producer). Similarly, article 38 provides in the case of a collective work belong to the publisher of the work.

It is important to point out that these provisions are generally only applied in absence of agreements between the parties involved in the creation of the work.

The conditions on "*works broadcast*" (articles 51-60), however, are aimed at regulating the relationship between the right holder and the broadcasting body, establishing the rights to one (for example, that of the remuneration based upon the number of transmissions) and to the other (for example, that of the recording of the said work upon a record or metal tape or by some analogous process, for the purpose of its deferred broadcast, when this is necessitated by considerations of time or technology, provided that after its use, the said recording is destroyed or rendered unusable).

Regarding "*works recorded on mechanical devices*" (articles 61-64), there are provisions intended to specify who holds the rights to adapt and record the work upon phonograph records, cinematographic films, metal tapes, or any analogous material or mechanical contrivance for reproducing sounds or voices; to reproduce, to distribute, to lease, to lend as well as to authorize lease and loan of copies of the work adapted or recorded as above; to perform in public and to broadcast the work by means of the record or other mechanical contrivance indicated above. The assignment of the right of reproduction or of the right of commercial circulation does not, in the absence of agreement to the contrary, include assignment of the right of public performance or of broadcasting. It is interesting to note now these laws establish that any copy on a device for reproducing sounds or voices must bear the title of the work reproduced, the name of the author, the name of the performing or interpreting artist or and the date of production.

c) other?

Neighbouring rights holders: In Italian Copyright Law, a different category of rights holders is identified with the "neighbouring rights holders".

Neighbouring rights are those recognized by law not of the author of the work, but of those individuals connected to it (statute reference is Title II of the law 633/1941).

The most important neighbouring rights are those recognising

- phonographic producers (art. 72-78/*bis*),
- producers of cinematographic or audio-visual works (art. 78/*ter*),
- radio and television broadcasting companies (art. 79) and
- performers (art. 80-85/*bis*).

Other neighbouring rights, with a much weaker protection than that reserved to copyright, are those recognising the authors (or publishers) in connection with those works that do not properly represent "*intellectual works*". This is the case of:

- works published or communicated to the public for the first time after the author's economic rights have expired (art. 85/*ter*),
- critical or scientific editions of works of public domain (art. 85/*quater*),
- designs for stage sets (art. 86),
- photographs (art. 87-92),
- correspondence and portraits (art. 93-98),
- engineering projects (art. 99-99/*bis*) and
- title, headings and external appearance of works, and of articles and news (art. 100-102).

As noted, neighbouring rights are characterized by a shorter period of protection than copyright: for details see answer to Question 2.

Typical contracts: Finally, law no. 633/1941 provides two typical contracts, for which many specific rules, only some of which are binding, and some presumptions are established:

- publishing contracts, based on a given number of editions or a given period of time (art. 118-135);
- contracts for public performances (art. 136-141).

E.g. it is provided that in the absence of a stipulation to the contrary, it shall be presumed that the rights transferred are exclusive (cf. art. 119, par. 2); in the absence of an express stipulation, transfer shall not extend to the exploitation rights in later modifications and transformations which may be made to the work, including adaptations to cinematography, broadcasting and recording upon mechanical devices (art. 119, par. 4); in the absence of an agreement to the contrary, the transfer of one or more of the exploitation rights shall not imply the transfer of other rights which

are not necessarily dependent on the right transferred, even if they are included in the same category of exclusive rights (art. 119, par. 4).

With regard to binding rules, article 120 should be mentioned which establishes that if the contract relates to works not as yet created, the following rules shall apply:

1. any contract concerning all the works or all the works of a certain category which the author may create, without limitation in time, shall be null and void;
2. without prejudice to the provisions governing employment contracts and contracts for service, contracts which relate to the transfer of exclusive rights in respect of works to be created may not extend for a term in excess of 10 years;
3. if the work to be created has been specified, but the term within which such work is to be delivered has not been set, the publisher may at any time request the judicial authority to set such term. If the term has been set, the judicial authority may extend it.

Future rights which may be afforded by subsequent laws and which provide copyright protection of wider scope or longer duration may not be included in the transfer (art. 119, par. 2).

12. Which of the following legal instruments or mechanisms are used in national law outside copyright in order to achieve a "balance of interests"?

Outside copyright law, the principal instruments used to achieve a "balance" of interests are, surely, fundamental rights, competition law and contract law.

a) fundamental rights

Regarding fundamental rights, the principal reference of the Italian Copyright Law is surely the right to information, constitutionally reduced to art. 21. In particular, numerous laws exist which restrict the rights of the author with the aim of promoting the diffusion of culture and knowledge, as well as, more generally, public information (e.g. art. 5 law no. 633/1941). On this point, see also Italian Constitutional Court's decisions no. 108/1995 and 38/1973).

Moreover, we can also mention articles 9 on development of culture and progress of science and 33 Const. on freedom of art and science, sometimes used by Italian Constitutional Court as constitutional foundation of exceptions and limitations

to copyright (cf. Const. Court no. 108/1995). Instead, Constitutional articles 36 on the right to a remuneration commensurate with the quantity and quality of work, 41 on freedom of private economic enterprise and art. 42 on private property right was used by Italian Constitutional Court (cf. see again Const. Court no. 108/1995).

b) competition law

In terms of competition law, it should be noted that unfair competition law and trademark law are used in order to achieve a balance of interests.

As far as the law on unfair competition is concerned, copyright law is affected by the application of art. 2598, letter c), Italian Civil Code, which prohibits acts of competition which are not professionally correct.

In particular, violations of copyright law are regarded as anti-competitive illegal acts, as for example in the case of articles 100 and 102 law no. 633/1941 (cf. Cass. no.5346/1993, Trib. Milan 28th September 1976 or Trib. Genoa 19th June 1993), but in general the courts judge that such conduct can be classed as violating both the copyright law and the competition law (e.g. Trib. Turin 24th November 1994 and Trib. Genoa 3rd December 1997).

Recently, the non-authorized reproduction of the pictures of a well-known artist was regarded as also an act of unfair competition, damaging the company that held the exclusive rights to the latest collection (Trib. Rome 21st March 2002).

With regard to trademark law, art. 14, lett. c), d.lgs. no. 30/2005 (so called "*Industrial Property Code*") provides that the utilization as trademark of a sign covered by copyright is not lawful and, consequently, forbidden.

c) contract law

Regarding contract law, as already stated, there are a lot of provisions of law no. 633/1941 which are applied only in absence of a specific agreement between the interest parties. Consequently, one can see how Italian law tends to give a central role to the contract in defining the balance of interests of different parties involved in the utilisation of an intellectual work.

So, in field of copyright general contract and obligation laws of Italian Civil Code and, specifically, art. 1321-1469 will be applied.

Anyway, it should be noted that fundamental principles of contract and obligation law, like good faith principle (*ex* art. 1175 and 1374 c.c.), generally do not apply to copyright cases.

d) general rule on misuse

It is interesting to note that Italian Civil Code does not provide a general rule on misuse, but only a specific article in terms of property (art. 833), which forbids acts exclusively directed to damage others ("*atti emulativi*"). Anyway, even if this provision is interpreted as a general clause of Italian private law system, it is not generally applied in the copyright field by courts or doctrine.

On good faith principle, see the precedent section on contract law.

e) consumer protection law
f) media law

There are no relevant provisions dedicated to copyright in consumer protection and media law. These sectors of the law do not contain any specific regulations that directly affect copyright.

g) other?

Finally, outside copyright law, another important instrument used to achieve a "balance" of interests is patent law, currently regulated by d.lgs. 30/2005 (so called "*Industrial Property Code*").

The distinction between copyright law and patent law, with great differences in terms of the period of protection, very short in the latter case, is intended to avoid goods useful for technology and industrial application being protected by private individuals for an excessive period of time. The relevant laws in this matter are articles 1 and 2 law no. 633/1941 and article 45 d.lgs 30/2005.