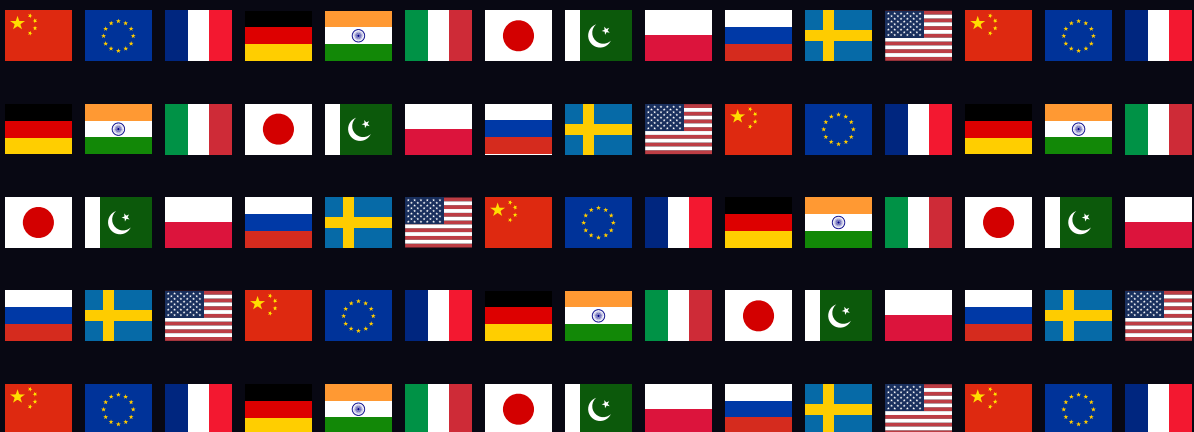


# COPYRIGHT

## Italy



# Copyright

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Quick reference guide enabling side-by-side comparison of local insights into copyright issues, including online and digital regulation; extraterritorial application; role of centralised copyright agencies; protectable works and rights; copyright notice, deposit and registration; ownership and transfer; copyright duration, renewal and extension; infringement (liability, remedies, and prevention); relationship to foreign rights; relationship to international copyright conventions; and recent trends.

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## LEGISLATION AND ENFORCEMENT

### Relevant legislation

What is the relevant legislation?

The main source of law regulating copyright in Italy is Law No. 633 of 22 April 1941 (the Copyright Act), as supplemented and amended by subsequent laws (most recently by Legislative Decree No. 177/2021, which implemented Directive (EU) 2019/790).

The Italian Civil Code also contains some provisions concerning copyright (articles 2575 to 2583).

Moreover, as a member of the European Union, Italy is also subject to European legislation (regulations and directives) concerning copyright.

Finally, Italy is also a member state of several international treaties concerning copyright law, including the Berne Convention for the Protection of Literary and Artistic Works of 1886 .

*Law stated - 30 March 2023*

### Enforcement authorities

Who enforces it?

Copyright can be enforced before civil courts that specialise in intellectual property matters (created by Legislative Decree No. 168/2003 ). An action may be brought by the copyright holder, the author or their heirs, as well as by an exclusive licensee (it is still disputed whether the non-exclusive licensee can enforce copyright). Finally, the Italian Society of Authors and Publishers (SIAE) can also enforce copyright on behalf of its members.

Moreover, in 2018 ( Resolution No. 490/18/CONS ), the independent Italian Communications Regulatory Authority (AGCOM), which was established in 1997 as the national media regulatory body, introduced some amendments to the existing regulation on copyright enforcement in electronic communications networks. The above-mentioned claimants may consequently also seek a remedy for copyright violations before the AGCOM, which has specific powers for further combating copyright infringement, such as the power to adopt precautionary measures against specific violations. For example, the AGCOM can, following a specific administrative procedure, order that an internet service provider remove or block access to websites hosting copyright-infringing materials.

Following the implementation of Legislative Decree No. 177/2021, the AGCOM now also has the power to:

- issue a decision on a complaint lodged by the copyright holder against decisions of the online content-sharing service provider (OCSSP) not to remove or disable content that is allegedly infringing its rights (article 102-decies, Copyright Act); and
- determine fair compensation for press publishers for the online use of their journalistic content by information society service providers (ISSPs), in case they fail to negotiate a fee for such use.

*Law stated - 30 March 2023*

### Online and digital regulation

Are there any specific provisions of your copyright laws that address the digital exploitation of works? Are there separate statutory provisions that do so?

Article 70(1-bis) of the Copyright Act allows the publication, through the internet, of low-resolution or degraded images

and music for educational or scientific purposes only, provided that such use is not for profit.

Moreover, through the implementation of Legislative Decree No. 177/2021 the following additional provisions on the digital exploitation of copyright-protected works were introduced:

- the right of press publishers to receive fair compensation from ISSPs for the online publication – upon authorisation – of their journalistic work (article 43-bis, Copyright Act). Authorisation and compensation are not required for private and non-commercial uses, acts of hyperlinking, use of single words or very short extracts. On February 24 2023 the AGCOM adopted the regulation to provide criteria to determine the amount of fair compensation;
- the right of the authors to receive, from press publishers, a fair amount, which is to be calculated between 2 per cent and 5 per cent of the compensation received by the press publishers from the ISSP;
- the necessity for OCSSPs to obtain authorisation from the rightsholders (ie, through a licence agreement) to make copyrighted works available to the public on their platforms, even if such content is uploaded by the users of the OCSSP (article 102-sexies, Copyright Act). If no authorisation is granted, OCSSPs shall be liable for unauthorised acts of communication to the public of copyrighted works, unless they demonstrate that they have (1) made their best efforts to obtain an authorisation, (2) made their best efforts to ensure the unavailability of specific works and other subject matter for which the rightsholders have provided the service providers with the relevant and necessary information, and (3) in any event, acted expeditiously, upon receiving a sufficiently substantiated notice from the rightsholders, to disable access to or to remove from their websites the works or other subject matter flagged by the rightsholders, and made their best efforts to prevent future uploads of the same (article 102-septies, Copyright Act).

*Law stated - 30 March 2023*

### **Extraterritorial application**

Do your copyright laws have extraterritorial application to deal with foreign-owned or foreign-operated websites that infringe copyright?

Yes, according to Italian case law, in a certain way, copyright laws are applicable to foreign-owned or foreign-operated websites that infringe copyright, as long as the infringing material is directed at the Italian public or is visible from Italy. In particular, the consequence of such content on a foreign-owned or foreign-operated website is that it would be blocked in Italy.

*Law stated - 30 March 2023*

### **Agency**

Is there a centralised copyright agency? What does this agency do?

Until 2017, the SIAE was the only administrative body acting as a register and a collecting society of authors, publishers, composers and other owners of copyright. From 2017, it became possible for other organisations to perform the same functions, according to the provisions under Legislative Decree No. 35/2017 (see article 180 of the Copyright Act).

The main function of these organisations is intermediation in the field of authors' rights. They are entrusted with authorising the use of works, collecting fees due from users and distributing fees to the rightsholders.

*Law stated - 30 March 2023*

## SUBJECT MATTER AND SCOPE OF COPYRIGHT

### Protectable works

What types of works may be protected by copyright?

Article 2 of Law No. 633 of 22 April 1941 (the Copyright Act) protects creative works of literature, music, fine arts, architecture, theatre and cinematography, computer programs, databases and, under specific conditions, objects of industrial design. According to Italian case law and doctrine, this list is 'open', ie, it can be extensively interpreted and thus does not exclude the potential for other creative works to be protected by copyright.

*Law stated - 30 March 2023*

### Rights covered

What types of rights are covered by copyright?

Copyright law covers the moral rights (article 20 of the Copyright Act) and economic rights (article 12) of the author or rightsholder.

*Law stated - 30 March 2023*

### Excluded works

What may not be protected by copyright?

An idea that is not expressed in any form or expression cannot be protected by copyright (article 1 of the Copyright Act).

Moreover, the official documents of Italy and of the Italian and foreign public administrations are excluded from copyright protection as well (article 5).

*Law stated - 30 March 2023*

### Fair use and fair dealing

Do the doctrines of 'fair use' or 'fair dealing' exist, and, if so, what are the standards used in determining whether a particular use is fair?

In Italy, the doctrine of fair use has not been implemented. However, some limitations to the exclusive right of the copyright owner are set forth in the following articles of the Copyright Act:

- Article 70, which provides that summaries, quotations, reproductions and communications to the public of mere abstracts of works are allowed, if carried out for criticism or discussion purposes, or for teaching or scientific research purposes. This also holds for summaries, quotations, reproductions and communications to the public of mere abstracts of works carried out through digital means, provided that such uses take place under the responsibility of the educational institution in a secure digital environment, accessible only to staff and students of the institution (article 70-bis).
- Article 70-ter, which allows the reproduction of copyrighted works made by research institutes (such as universities or other research institutes operating without a commercial aim and pursuing purposes of public interest) and institutions for the protection of cultural heritage (such as libraries, museums or archives open to



the public) for scientific research purposes, in order to extract text and data from works available in the databases to which they have access.

- Article 70-quater, which allows the acts of reproduction and extraction of text and data from copyrighted works that are contained in networks or databases that are accessed legally, provided that the copyright owners or the database owner did not expressly restrict the use of the works. Such reproduction or extractions may be stored only as long as is necessary for the purpose of text and data extraction.
- Article 70-sexies, which provides that when a copyright owner adopts technological measures to protect their work, educational institutions and research institutes and institutions that have legally acquired a sample of such work may extract a copy of it, provided that such copy does not infringe the copyright of the owner.
- Article 68(2-bis), according to which the institutions for the protection of cultural heritage may always make a copy of the copyrighted works that are permanently present in their collections.

More in general, Italian case law's conclusion with reference to fair use, as recently confirmed by an interesting decision by the Italian Supreme Court discussing the caricature of a character protected under copyright, is that the exploitation of any protected work or content can be considered fair only if it does not cause prejudice to the interest (including economic) of the author of the original work.

*Law stated - 30 March 2023*

## **Architectural works**

### **Are architectural works protected by copyright? How?**

Architectural works are protected as long as they manifest the personal imprint of the author and can be recognised as their unique creation due to precise choices in the composition of their elements. The choices must not be dictated by the necessity to solve a technical or functional problem (article 2 of the Copyright Act).

*Law stated - 30 March 2023*

## **Performance rights**

### **Are performance rights covered by copyright? How?**

Performance rights are covered by Italian copyright law (article 80 et seq of the Copyright Act). In particular, performers (including voice actors) have the exclusive right (for 50 years following the performance) to authorise the reproduction, distribution or rental of their performance (article 85).

According to the Copyright Act, a performer can also enforce their moral rights against any communication or reproduction of their performance that might be prejudicial to their honour or reputation (article 81).

Moreover, performers who transfer or license the rights of exploitation of their works are entitled to receive compensation that is adequate and proportionate to the value of their rights and to the revenue generated by the exploitation (article 107, Copyright Act). With specific regard to cinematographic works, the primary and co-primary performers are entitled to receive additional compensation as a percentage of the revenue generated from public viewings of the work (article 46, Copyright Act).

Performers (as well as authors) are also entitled to receive additional adequate compensation in cases that agreed on in the licence or transfer agreement turns out to be disproportionately low compared with the revenue generated by the exploitation of the works (article 110-quinquies, Copyright Act).

*Law stated - 30 March 2023*

## Neighbouring rights

### Are other 'neighbouring rights' recognised? How?

Italian copyright law recognises specific rights for those individuals who have certain connections to the author of the work. These rights protect interests related to the exercise of the author's rights and work that are the result of an industrial activity in the cultural and creative field. In addition to performers, the most important neighbouring rights are those reserved for:

- phonographic producers (article 72 et seq of the Copyright Act);
- producers of cinematographic or audiovisual works (article 78-bis et seq);
- radio and television broadcasting companies (article 79 et seq); and
- photographs (article 87 et seq).

Neighbouring rights are characterised by a shorter period of protection than copyright.

*Law stated - 30 March 2023*

## Moral rights

### Are moral rights recognised?

Moral rights are recognised under Italian copyright law (article 20 of the Copyright Act). They correspond to the right of the author to be recognised as author of the work (right of paternity) and prevent any third party from modifying the work without the author's permission (right of integrity). Moral rights are perpetual and cannot be assigned or waived (article 22 to 23).

*Law stated - 30 March 2023*

## COPYRIGHT FORMALITIES

### Notice

#### Is there a requirement of copyright notice?

No, there is no general requirement of copyright notice.

*Law stated - 30 March 2023*

#### What are the consequences for failure to use a copyright notice?

None, since copyright notice is not required by law.

*Law stated - 30 March 2023*

## Deposit

## Is there a requirement of copyright deposit?

Article 105 of Law No. 633 of 22 April 1941 (the Copyright Act) provides a general requirement of copyright deposit, requiring authors and producers to file a copy of the work with the Office of the President of the Council of Ministers within 90 days of publication or the start of the commercialisation of the work (this term is 60 days from the first representation, showing or public performance for works of public entertainment).

This deposit obligation does not apply to photographs, except for those photographs that reproduce works of figurative or architectural art or photographs of a technical or scientific nature or outstanding artistic value (article 105, paragraph 4 of the Copyright Act).

Moreover, article 103 provides for the possibility to deposit, on a voluntary basis, a work of software with the register kept by the Italian Society of Authors and Publishers. This registry indicates the name of the owner of the economic rights and the date of publication of the software (publication being the first act of exercise of the exclusive rights).

Nevertheless, those deposits rarely take place in practice and the failure to make the deposit is not sanctioned by the law.

*Law stated - 30 March 2023*

## What are the consequences for failure to make a copyright deposit?

Article 106 of the Copyright Act provides that the failure to make a copyright deposit does not affect the acquisition and exploitation of the economic rights of the copyright over a protected work.

Nevertheless, the copyright deposit may be useful as proof of authorship and to establish the date of creation and date of publication of the works, in case they are disputed (article 103, paragraph 5).

*Law stated - 30 March 2023*

## Registration

### Is there a system for copyright registration, and, if so, how do you apply for a copyright registration?

No, Italian legislation does not provide for a copyright registration system.

*Law stated - 30 March 2023*

### Is copyright registration mandatory? If voluntary, what are the benefits of registration?

No, there is no mandatory or voluntary registration. The Copyright Act provides a general requirement of copyright deposit, requiring authors and producers to file a copy of the work with the Office of the President of the Council of Ministers within 90 days of publication or the start of the commercialisation of the work.

*Law stated - 30 March 2023*

### What are the fees to apply for a copyright registration?

Italian legislation does not provide for a copyright registration system.

*Law stated - 30 March 2023*

## What are the consequences for failure to register a copyrighted work?

Italian legislation does not provide for a copyright registration system.

*Law stated - 30 March 2023*

## OWNERSHIP AND TRANSFER

### Eligible owners

#### Who is the owner of a copyrighted work?

In general terms, the owner of a copyrighted work is its creator, the author. More specifically, article 8 of Law No. 633 of 22 April 1941 (the Copyright Act) stipulates that the author is considered to be the person identified as such in the forms of use (ie, the person who is announced as such in the recitation, representation, performance or broadcasting of a protected work).

Specific rules are provided in these cases:

- the author or owner of collective works (ie, works consisting of different and separate contributions coordinated for a specific and common purpose) is the person who organises and coordinates the creation of the work (article 7 of the Copyright Act);
- works that are made with the indistinguishable and inseparable contribution of several persons belong to all such persons, collectively (article 10); and
- works made and published in the name, on behalf of and at the expense of the state administrations belong to the state administrations (article 11 of the Copyright Act). The same applies for non-profit-making organisations, academies and other cultural organisations with reference to their records or publications (or both).

*Law stated - 30 March 2023*

### Employee and contractor work

#### May an employer own a copyrighted work made by an employee?

Yes, the exploitation rights of certain copyrighted works, in particular software, databases and industrial design (see article 12-bis and 12-ter of the Copyright Act), made by employees in the performance of their duties are automatically owned by the employer. The owner, in this case, is not the author.

In all other cases, such ownership is not automatic: the alleged owner must be able to offer written evidence of their rights.

*Law stated - 30 March 2023*

#### May a hiring party own a copyrighted work made by an independent contractor?

Yes, the exploitation rights of a copyrighted work made by an independent contractor are owned by the hiring party. Such ownership is automatic; thus, a written agreement is not necessary, but it is always advisable to be able to provide

written evidence of the hiring relationship.

*Law stated - 30 March 2023*

## **Joint and collective ownership**

### **May a copyrighted work be co-owned?**

Yes. This is the case in works of joint authorship, which are created by several persons whose contributions are indistinguishable and inseparable. Copyright of those works is jointly co-owned by all co-authors and is governed by the provisions on community of property (article 1100 et seq of the Italian Civil Code). In such cases, all co-owners may individually act to defend the moral rights of a co-owned work.

By contrast, the publication, modification or new use of the work in a form other than that of its first publication must be approved by all the co-authors (article 10 of the Copyright Act). However, in the event of an unjustified refusal by one or more of the co-authors, the publication, modification or new use of the work may be authorised by the judicial authorities.

*Law stated - 30 March 2023*

## **Transfer of rights**

### **May rights be transferred? If so, what rules and procedures apply?**

Yes, the economic exploitation rights of a copyrighted work may be transferred by deed between living persons or mortis causa (article 107 of the Copyright Act), and the transfer must be proved in writing (article 110). The transfer agreement may include all of the exploitation rights or only some of them, in which case the other rights remain at the assignor's disposal (article 119). Furthermore, the transfer of some exploitation rights does not extend to the rights to use any elaboration or transformation of the copyrighted work (article 119).

Specific rules apply in the following cases.

- The transfer of one or more copies of a copyrighted work does not imply, unless otherwise agreed, the transfer of the exploitation rights as well (article 109). However, the transfer of a mould or other medium used to reproduce a work of art entails, unless otherwise agreed, the right to reproduce the work itself (article 109).
- After the artist's death, the exploitation right of the works, unless otherwise indicated by the artist, is shared by all heirs for three years, after which the heirs may decide whether to maintain the exploitation right as community property and for how long (article 115).
- In the case of an editing contract, the editor cannot transfer the acquired exploitation rights to third parties, unless otherwise agreed or in the case of transfer of the company (article 132).

Moral rights cannot be transferred and remain at the disposal of the author and of their heirs.

*Law stated - 30 March 2023*

## **Licensing**

### **May rights be licensed? If so, what rules and procedures apply?**

Economic rights in copyrighted works may be licensed according to the general rules and procedures provided by the

Italian Civil Code on freedom of contract. As with transfer agreements, the existence of a licence agreement must be proved in writing, although it may (at least in theory) also be concluded orally (article 110 of the Copyright Act).

*Law stated - 30 March 2023*

### Are there compulsory licences? What are they?

No, there are no compulsory licences for copyright under Italian law.

*Law stated - 30 March 2023*

### Are licences administered by performing rights societies? How?

The licensing activity can be carried out by the Italian Society for Authors and Editors as well as other organisations that respect the provisions indicated in Legislative Decree No. 35/2017 (see article 180 of the Copyright Act).

In particular, those organisations shall:

- grant licences and authorisations for the economic exploitation of copyrighted works (article 180, paragraph 2 of the Copyright Act) – such licensing shall take place on fair and non-discriminatory commercial terms, based on simple, clear, objective and reasonable criteria, and the fees shall be agreed on the basis of the economic value of the use of the rights, considering the nature and extent of the use of the copyrighted works (article 22, Legislative Decree No. 35/2017); and
- collect the proceeds of such licences and authorisations and distribute such sums regularly among the rightsholders (article 180, paragraph 2 of the Copyright Act) – such distribution shall take place within nine months of the end of the financial year in which the proceeds were received (article 1 of Legislative Decree No. 35/2017).

The copyright holders, when entrusting the management of their rights to one of those organisations, must specify in writing which rights they intend to entrust (article 4 of Legislative Decree No. 35/2017).

Nevertheless, licences, as well as any other economic right, may also be handled by the authors or their heirs or successors in title directly (article 180, paragraph 4 of the Copyright Act).

*Law stated - 30 March 2023*

## Termination

### Is there any provision for the termination of transfers of rights?

According to article 110-septies of the Copyright Act, in case of failure to exploit the rights deriving from the licensed or transferred work within the date established in the contract (and in any case, no longer than five years, or two years after the work was made available by the author), the author of the work can ask for termination of the agreement providing for the licence or transfer of their rights, or revoke any exclusivity provisions of the contract.

In any other case, general rules in contractual matters are applicable.

*Law stated - 30 March 2023*

## Recordal

Can documents evidencing transfers and other transactions be recorded with a government agency?

Deeds drawn up by living persons transferring all or part of the economic rights and other transactions related to rights on copyrighted works can be registered at the Office of Literary, Artistic and Scientific Property, established at the Office of the President of the Council of Ministers. The following must be filed: (1) a certified copy of the deed or the original of a private contract with certified signatures, accompanied by a copy of the deed; and (2) a declaration in duplicate containing the applicant's data, the nature and date of the deed to be registered, the name of the public official who received the act and authenticated the signatures, and the registration number of the deposit of the protected work (article 104 of the Copyright Act).

*Law stated - 30 March 2023*

## DURATION OF COPYRIGHT

### Protection start date

When does copyright protection begin?

Copyright protection begins with the creation of a work in an expressive form (article 6 of Law No. 633 of 22 April 1941 (the Copyright Act) and article 2576 of the Italian Civil Code), as the mere idea cannot be protected. However, it is not required that the work is fixed in a material support, as oral communication (eg, a professor's lecture) can be protected as well.

Indeed, there is no general requirement of notice, registration or deposit of the work to obtain protection, although article 105 of the Copyright Act formally provides that the work must be deposited with the Office of the President of the Council of Ministers. The failure to make such a deposit does not affect the acquisition or exercise of the economic exploitation rights in the work, as provided by the subsequent article 106 of the Copyright Act.

*Law stated - 30 March 2023*

### Duration

How long does copyright protection last?

The protection of moral rights is perpetual and, after the author's death, the rights belong to their spouse, children, and other ascendants and descendants (article 23, Copyright Act).

Economic rights are granted for the life of the author plus 70 years after their death (article 25, Copyright Act). Specific rules are provided in the following cases:

- The protection of anonymous or pseudonymous works expires 70 years after the first publication of the works, as long as the pseudonym is such as to guarantee the author's anonymity (article 27). However, if the author's name is disclosed – either by the author or by their heirs or authorised persons – before the expiry of that date, protection of the economic rights is granted for 70 years after the artist's death, according to the general rule.
- The copyright protection for works of joint authorship (ie, works created with the indistinguishable and inseparable contributions of several persons) expires 70 years after the death of the last surviving co-author (article 26, paragraph 1).
- The copyright protection for collective works (ie, works consisting of different and separate contributions

coordinated for a specific and common purpose) expires 70 years after the first publication, and the protection period for each contribution runs from its respective author's death (article 26, paragraph 2).

- The copyright protection for posthumous works (ie, works published for the first time after the author's death) expires 70 years after the author's death (article 31). However, the lawful publication of a work for the first time after the expiry of that protection period guarantees the rights of economic exploitation of the work for a period of 25 years after the first publication (article 85-ter).
- The copyright protection for works published in separate and subsequent volumes and parts runs from the publication of each volume or part (article 30).
- The copyright protection for cinematographic works expires 70 years after the death of the last surviving contributor among the following persons: the artistic director, the authors of the screenplay and the composer of the music specifically created for that work (article 32).
- The right to receive compensation for the online publication of journalistic works is effective starting 1 January of the year after publication and lasts for two years after publication (article 43-bis, Copyright Act).

Specific rules are also provided for 'neighbouring rights' (the rights granted to other persons who are connected with the author of the work and who offer the work for public use), as follows:

- The rights of the performing artists, of the producers of phonograms and cinematographic works, and of radio or television broadcasting, last for 50 years respectively from the first performance, fixation or broadcast of the works (articles 75, 78-ter, 79 and 85 of the Copyright Act).
- The rights of the author of critical and scientific editions of a work in the public domain last for 20 years from the first lawful publication of the edition (article 85-quater).
- The rights of the author of 'simple photographs' (ie, photographs that have no artistic value) last for 20 years from when they were produced (article 92). By contrast, the duration of protection for photographs reproducing works of figurative or architectural art or that have a technical or scientific nature or outstanding artistic value is 40 years, starting from the mandatory deposit of the work with the Office of the President of the Council (as required by article 105).
- The right to obtain compensation for an engineering project work lasts for 20 years from the mandatory deposit of the work at the Office of the President of the Council (article 99).

*Law stated - 30 March 2023*

## Does copyright duration depend on when a particular work was created or published?

In general terms, copyright duration does not depend on when the work was created or published; it depends only on the life of the author.

However, in some cases, the duration of protection specifically depends on the date of publication or creation of a work. According to the Copyright Act:

- anonymous or pseudonymous works are protected for 70 years after first publication (article 27);
- collective works consisting of different and separate contributions coordinated for a specific and common purpose are protected for 70 years after first publication (article 26, paragraph 2);
- works published in separate and subsequent volumes and parts are protected from the publication of each volume or part (article 30);
- 'simple photographs' (ie, photographs that have no artistic value) are protected for 20 years from their production (article 92);



- photographs reproducing works of figurative or architectural art or that have a technical or scientific nature or outstanding artistic value are protected for 40 years from the mandatory deposit of the work, as required by article 105;
- engineering project works compensation right lasts 20 years from mandatory deposit at the Office of the President of the Council (article 99);
- protection of performing artists, producers of phonograms and cinematographic works, and of radio and television broadcasting, lasts 50 years respectively from the first performance, fixation or broadcast of the work (articles 75, 78-ter, 79 and 85); and
- the right to receive compensation for the online publication of journalistic works is effective starting 1 January of the year after publication and lasts for two years after publication (article 43-bis, Copyright Act).

*Law stated - 30 March 2023*

## Renewal

### Do terms of copyright have to be renewed? How?

It is not possible to renew the term of copyright protection under Italian law. Once the protection period has lapsed, the work becomes part of the public domain and is freely available to everyone, except in the case that the work is protected under the Italian Code of Cultural Heritage (Legislative Decree No. 42/2004 (article 32-quater, Copyright Act)).

*Law stated - 30 March 2023*

## Government extension of protection term

### Has your jurisdiction extended the term of copyright protection?

The term of copyright protection was extended from 50 to 70 years by Law No. 52 of 6 February 1996 (article 17), which also extended the protection term for performing artists, producers of phonograms, cinematographic works and radio or television broadcasting, to 50 years.

*Law stated - 30 March 2023*

## COPYRIGHT INFRINGEMENT AND REMEDIES

### Infringing acts

#### What constitutes copyright infringement?

The general rule is that any unauthorised use of protected works by a third party constitutes copyright infringement.

Law No. 633 of 22 April 1941 (the Copyright Act) provides the following exceptions:

- the making of a copy of a volume or of a work or article for private use (article 68);
- the making of a copy, by the institutions for the protection of cultural heritage, of the works that are permanently present in their collections (article 68, paragraph 2-bis);
- the reproduction or communication to the public of articles concerning arguments of an economic, political or religious nature, provided that the name of the author, the source and the date of publication are specified and the reproduction and communication have not been expressly reserved (article 65);
- the reproduction and communication of summaries or quotations of works, provided that they are carried out for criticism or discussion purposes or for teaching or scientific research purposes, and that such use is not for

commercial purposes (article 70). This is valid also for summaries, quotations, reproductions and communications to the public of mere abstracts of works carried out through digital means, provided that such use takes place under the responsibility of the educational institution in a secure digital environment that is accessible only to staff and students of the institution (article 70-bis);

- the reproduction of copyrighted works made by research institutes and institutions for the protection of cultural heritage for scientific research purposes to extract text and data from works and materials available in the accessible database (article 70-ter);
- the reproduction and extraction of text and data of copyrighted works contained in networks or databases that are accessed legally, provided that the copyright owners or the database owner did not expressly restrict the use of the works (article 70-quater); and
- when a copyright owner adopts technological measures to protect their work, the educational institutions and research institutes and institutions that legally acquired a sample of such work may extract a copy of it, provided that such copy does not infringe the copyright of the owner (article 70-sexies).

*Law stated - 30 March 2023*

### **Vicarious and contributory liability**

**Does secondary liability exist for indirect copyright infringement? What actions incur such liability?**

Under Italian law, there is no distinction between primary or secondary infringement or liability. The general rule is that any unauthorised use of a protected work falls under copyright infringement and any user engaging in such an act is liable for infringement. As to contributory liability, article 156 of the Copyright Act specifically provides for the liability of intermediaries (such as internet service providers) whose services are used for the purpose of infringing a protected work.

*Law stated - 30 March 2023*

### **Available remedies**

**What remedies are available against a copyright infringer?**

The main remedy under Italian copyright law is a permanent injunction against the infringer (article 156 of the Copyright Act). Other available remedies are:

- delivery up or destruction of the infringing products or materials (article 158);
- seizure or description of infringing products or materials (article 161);
- withdrawal or recall of the infringing goods from the market (article 158); and
- publication of the decision in the press or on the internet (article 166).

*Law stated - 30 March 2023*

### **Limitation period**

**Is there a time limit for seeking remedies?**

Under Italian law, it is possible to enforce rights within the general duration of the single copyright. That said, for seeking remedies such as an interim injunction or seizure, Italian case law requires the existence of periculum in

mora , which means that the applicant will suffer serious and irreparable damage if the infringement is not immediately stopped.

*Law stated - 30 March 2023*

## **Monetary damages**

### **Are monetary damages available for copyright infringement?**

According to article 158 of the Copyright Act, monetary damages are granted to the copyright holder. The award of damages can be calculated by the court based on the infringer's profit or on the 'cost of consent', or both. The cost of consent is a virtual royalty that would have been applied if the infringer had obtained a regular licence.

Moreover, if an injunction is ordered, the court can also provide for a penalty to be paid for further infringements carried out in violation of the order.

In terms of recovering damages, according to article 2947 of the Italian Civil Code, a claimant can recover damages only for the five years preceding the beginning of the action.

*Law stated - 30 March 2023*

## **Attorneys' fees and costs**

### **Can attorneys' fees and costs be claimed in an action for copyright infringement?**

Yes, attorneys' fees and costs can be claimed. The general principle is that the losing party bears the costs of the action as well as attorneys' fees (article 91 of the Italian Code of Civil Procedure ).

*Law stated - 30 March 2023*

## **Criminal enforcement**

### **Are there criminal copyright provisions? What are they?**

Specific cases where the copyright infringement constitutes a crime under Italian criminal law provisions include the following:

- The wilful reproduction, transcription, offer for sale, performance, broadcast communication to the public or distribution of a third party's work without consent, or publishing online a copyrighted work, is punishable with a fine. If the infringing acts concern a work not intended for publication, or they constitute infringement of the author's right of paternity or of the integrity of the work, the punishment may include imprisonment (article 171 of the Copyright Act).
- The unlawful reproduction, import or distribution in Italy of computer programs or databases for profitable purposes can be punished by imprisonment and a fine (article 171-bis).
- Reproduction, broadcasting or disseminating of a work intended for television or cinematographic distribution, or in cases of offering for sale or hire recordings of musical, cinematographic or audiovisual works, literary, dramatic, scientific, musical or multimedia works (article 171-ter), can be punished by imprisonment and a fine.

*Law stated - 30 March 2023*

## Online infringement

Are there any specific liabilities, remedies or defences for online copyright infringement?

According to Resolution No. 490/2018 of the Italian Communications Regulatory Authority (AGCOM) and article 102-decies of the Copyright Act, there are specific procedures that can be used for removing copyright-infringing material from the internet.

As to liabilities, according to article 102-sexies of the Copyright Act, online content-sharing service providers are liable for giving access to copyrighted content uploaded by their users if they did not obtain the necessary authorisation from the rightsholder, unless they demonstrate that they have (1) made their best efforts to obtain an authorisation, (2) made their best efforts to ensure the unavailability of specific works and other subject matter for which the rightsholders have provided the service providers with the relevant and necessary information, and (3) in any event, acted expeditiously, upon receiving a sufficiently substantiated notice from the rightsholders, to disable access to or to remove from their websites the works or other subject matter flagged by the rightsholders, and made their best efforts to prevent future uploads of the same (article 102-septies, Copyright Act).

Moreover, the AGCOM may impose administrative sanctions on the information society service providers in the event that they refuse to provide the information necessary to determine the amount of fair compensation due to the press publishers for the online use of their journalistic content (article 43-bis, Copyright Act).

*Law stated - 30 March 2023*

## Prevention measures

How may copyright infringement be prevented (including, for example, customs enforcement measures and any technological notable developments)?

According to Regulation (EU) No. 608/2013 concerning customs enforcement of intellectual property rights, customs authorities must suspend the release of an imported good if they suspect that it may infringe an intellectual property right, including copyright.

*Law stated - 30 March 2023*

## RELATIONSHIP TO FOREIGN RIGHTS

### International conventions

Which international copyright conventions does your country belong to?

Italy belongs to the following conventions:

- the Berne Convention for the Protection of Literary and Artistic Works, ratified by Law 399/1978;
- the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- the World Intellectual Property Organization (WIPO) Copyright Treaty; and
- the WIPO Performances and Phonograms Treaty.

*Law stated - 30 March 2023*

## What obligations are imposed by your country's membership of international copyright conventions?

EU and international law prevails over Italian legislation.

*Law stated - 30 March 2023*

### UPDATE AND TRENDS

#### Key developments of the past year

Are there any emerging trends or hot topics in copyright regulation in your jurisdiction? Has there been any new copyright legislation passed or proposed within the past 12 months?

No relevant interventions were passed or proposed within the past 12 months.

That said, Italian doctrine is currently engaged in an extensively debated topic concerning the ownership of the copyright of artistic works made through AI and, more in general, the protectability of an AI realisation. At the moment there are no provisions, either internal or EU, to specifically regulate the AI phenomenon; the only law of support in Italy is still Law No. 633 of 22 April 1941 (the Copyright Act), according to which copyright protection applies (only) to works created by human beings.

The theoretical exclusion of AI-generated works from copyright protection is actually superseded by Italian doctrine with the prospect of an extensive application of article 12-bis of the Copyright Act, identifying the owner of the copyright as the programmer or user of an AI system or, on the basis of article 7 of the Copyright Act, considering the author of what can be defined as a 'collective work' as the person who organised and directed the process of creation of the work itself.

Very recently in January 2023, the Italian Supreme Court (confirming the necessity to regulate this new phenomenon organically) stated a certainly relevant principle in this regard: the fact that the use of software in the realisation of an artistic work does not exclude per se the presence of human creativity (which, under Copyright Act is necessary for obtaining the copyright protection) but, where the element of human creativity is challenged, it will be necessary to give evidence about whether and to what extent the use of the tool 'absorbed' the creativity of the artist who used the software.

*Law stated - 30 March 2023*

## Jurisdictions

	<b>China</b>	TianTai Law Firm
	<b>European Union</b>	Witzel Erb Backu & Partner Rechtsanwälte mbB
	<b>France</b>	Dechert LLP
	<b>Germany</b>	Meissner Bolte
	<b>India</b>	Anand and Anand
	<b>Italy</b>	Studio Legale Jacobacci & Associati
	<b>Japan</b>	Anderson Mōri & Tomotsune
	<b>Pakistan</b>	Ali & Associates
	<b>Poland</b>	Kobylanska Lewoszewski Mednis
	<b>Russia</b>	A Zalesov & Partners Patent & Law Firm
	<b>Sweden</b>	TIME DANOWSKY Advokatbyrå AB
	<b>USA</b>	Jenner & Block LLP