

# Italy

	2013	2014		
<b>Internet Freedom Status</b>	<b>Free</b>	<b>Free</b>	Population:	59.8 million
Obstacles to Access (0-25)	5	4	Internet Penetration 2013:	58 percent
Limits on Content (0-35)	6	6	Social Media/ICT Apps Blocked:	No
Violations of User Rights (0-40)	12	12	Political/Social Content Blocked:	No
<b>TOTAL* (0-100)</b>	<b>23</b>	<b>22</b>	Bloggers/ICT Users Arrested:	No
			Press Freedom 2014 Status:	Free

\* 0=most free, 100=least free

## Key Developments: May 2013 – May 2014

- In a controversial plan, Italy's communications regulator AGCOM empowered itself to make decisions to order the takedown of content and blocking of websites that violate copyright laws in a process that involves no judicial oversight. The move did not follow any parliamentary approval (see **Limits on Content**).
- Orders to block copyright-infringing websites increased dramatically over the past year, with one monitoring organization recording almost 450 blocked websites in Italy as of May 2014, up from less than 150 one year previously (see **Violations of User Rights**).
- In a positive ruling, Italy's Supreme Court upheld a 2013 decision that stated three Google employees did not violate privacy protections and could not be held responsible for failing to obtain the consent of individuals featured in online videos posted to their site. The case revolved around a video, posted in 2006, that showed Italian schoolchildren bullying an autistic student (see **Violations of User Rights**).

## Introduction

Italy's internet penetration rate—which remained at around 58 percent this year—lags behind many other European countries.<sup>1</sup> Italian authorities do not generally engage in political censorship of online speech, and, as in previous years, no bloggers were imprisoned as of mid-2014. Despite a number of judicial decisions asserting that intermediaries are not liable for the content posted by users, overly broad interpretations of liability in defamation or intellectual property rights cases resulted in unusual judicial decisions and disproportionate burdens placed on online news providers. In the past, proposals have been put forward by past governments that raised alarm bells for free expression advocates.<sup>2</sup> This year, the central development has been the extension of the powers of the telecom regulator, the Authority for Communications (AGCOM), to order hosting providers to take down content if an internal administrative panel deems that it violates copyright protections. If no action is taken within 72 hours, AGCOM may order ISPs to block a website, even if hosted domestically, with no court order. Italy is reportedly the first European country to have such a regulation in force.<sup>3</sup>

After the general election of February 2013, a new government was formed under the young premier Enrico Letta, who promised to kick-start reforming the country. The government was backed by all the major parties, including Silvio Berlusconi who still owns, directly and indirectly, a private media conglomerate. Nonetheless, the government lasted less than a year. In December 2013, the center-left party held primaries that were won by Matteo Renzi, the mayor of Florence. Soon Renzi claimed the premiership and Italy's youngest ever government, as measured by members' average age, was sworn in. Berlusconi forged a tacit alliance with the new premier, after the media mogul was sentenced on charges of fraud and had to keep a low profile in politics.

If Berlusconi and his party, Forza Italia, no longer have the political power to steer through controversial initiatives such as the wiretapping bill, they still intend to check any move that might undermine Berlusconi's position in the media market. Italy's traditional media ownership has remained basically unaltered. Berlusconi's center-right party still favors television interviews. Twitter, Facebook, and blogs are more effectively used by Renzi, as well as the populist leader Beppe Grillo.<sup>4</sup>

Italy's first computer network emerged in 1980, when a group of nuclear physicists connected all of the country's nuclear research institutes. At the beginning, the internet was just one of several packet-switching networks that coexisted in Italy. The dominant telecommunications firm at the time, Telecom Italia, tried to impose its privately owned system, while various center-left governments, aware of the importance of interconnectivity, supported integration among the networks. Ultimately, the adaptability and simplicity of the internet prevailed. Access to the internet was available to private users after 1995, and the number of internet service providers (ISPs) soared within a short period of time. Remaining obstacles to greater internet penetration include users' lack of familiarity

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1 ITU, "Core Indicators", accessed 19 May 2014, <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>.

2 In previous years one blog dealing with a sensitive criminal trial had been shut down, but that has been an exception rather than the rule.

3 See "International recording industry welcomes Italian AGCOM regulation," International Federation of the Phonographic Industry (IFPI), December 18, 2013, <http://www.ifpi.org/news/international-recording-industry-welcomes-italian-agcom-regulation>.

4 Grillo's blog is one of the most read, reported by and discussed in the traditional media in Italy, <http://www.beppegrillo.it>.



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though this represents a 40 percent increase from 2012.<sup>12</sup> There is no plan by telecom companies to achieve ultrafast broadband over 100 Mbps any time soon.

Mobile phone remains at almost 160 percent as of 2013.<sup>13</sup> The majority of subscriptions are still prepaid, but flat tariffs are becoming more common.<sup>14</sup> Telecom Italia Mobile (TIM), Vodafone, Wind, and 3 Italia are the major carriers, and all of them operate third-generation (3G) networks with 4G quickly replacing it. As in other countries, sales of tablet computers are on the rise among the younger generation and are likely to keep growing in the coming years.

An ambitious infrastructural plan entitled “Growth 2.0” was announced in 2012 with the aim of closing Italy’s “digital divide”, or regional discrepancies in fast internet access, within two years. In February 2014, the deadline was moved to 2015.<sup>15</sup> The same plan included a “Digital Agenda” initiative (based on the EU Agenda 2020), intended to expand broadband access and e-government functions (including “digital identity”, public e-services, “intelligent communities”, and others).<sup>16</sup> In June 2013, Enrico Letta, prime minister at the time, appointed Francesco Caio as the country’s commissioner for the digital agenda. Caio, a manager with extensive experience in telecoms, presented a comprehensive report in January 2014. As a result, the infrastructure and economic development minister, along with the ministries of the economy, research and university, public health, and others, were tasked with profoundly “transforming” Italy’s public administration.<sup>17</sup> However, after the collapse of the Letta government, Caio left to become CEO of the national postal service Poste Italiane and the project was put on hold. Prime Minister Renzi has again emphasized the centrality of the digital agenda, but with the intermittent paralyses that characterize Italy’s political system, the country is unlikely to fulfill this EU goal.

The main regulatory body for telecommunications is the Authority for Communications (AGCOM), an independent agency that is accountable to the parliament. Its responsibilities include providing access to networks, protecting intellectual property rights, regulating advertisements, and overseeing public broadcasting. AGCOM’s president is appointed by the majority party or coalition in parliament. Past commissioners have come under pressure when it came to television broadcasts, particularly during Berlusconi’s premiership, but today the agency’s main priority is digital copyright, for which it has proposed a tax on all electronics products.<sup>18</sup> Angelo M. Cardani, AGCOM’s current

12 Akami, “Second Quarter 2013 ‘State of the Internet’ Report”, Press release, 16 October 2013, [http://www.akamai.com/html/about/press/releases/2013/press\\_101613.html](http://www.akamai.com/html/about/press/releases/2013/press_101613.html).

13 International Telecommunication Union (ITU), “Mobile-cellular telephone subscriptions”, accessed September 8, 2014, <http://www.itu.int/en/ITU-D/Statistics/Pages/publications/wtid.aspx>.

14 AGCOM “Osservatorio Trimestrale sulle Telecomunicazioni”, 30 September 2013, [http://www.agcom.it/default.aspx?DocID=12264&Search=abbonati\\_mobile](http://www.agcom.it/default.aspx?DocID=12264&Search=abbonati_mobile).

15 A. Longo, “Lombardo (Infratel): ‘Banda larga fra le pastoie della burocrazia’”, Corriere Digitale, 18 April, 2014, [http://www.corrierecomunicazioni.it/tlc/25848\\_lombardo-infratel-banda-larga-fra-le-pastoie-della-burocrazia.htm](http://www.corrierecomunicazioni.it/tlc/25848_lombardo-infratel-banda-larga-fra-le-pastoie-della-burocrazia.htm).

16 Italian text at [http://www.gazzettaufficiale.it/moduli/DL\\_181012\\_179.pdf](http://www.gazzettaufficiale.it/moduli/DL_181012_179.pdf). See also <http://www.agenda-digitale.it/agenda-digitale/>.

17 “Rapporto Caio” Achieving the Objectives of the Digital Agenda for Europe (DAE) in Italy: Prospects and Challenges, 30 January 2014, <http://www.governo.it/Notizie/Palazzo%20Chigi/dettaglio.asp?d=74619>.

The six “strategic areas of the “Digital Agenda” include infrastructure and cyber security, e-commerce, e-government, e-learning (e-books, digital policy literacy and e-participation), research and innovation in ICT, and smart cities and communities.

18 Yahoo Finance, “Telefonini e musica, torna la tassa per i diritti d’autore?”, 5 March 2014, <https://it.finance.yahoo.com/notizie/telefonini-musica-torna-tassa-diritti-autore-155034196.html>.

president, is a staunch supporter of the regulation that allows the agency to act immediately and without judicial approval in case of copyright infringement.<sup>19</sup>

Another important player in the field of communications is the Italian Data Protection Authority (DPA). Set up in 1997, the DPA has a staff of more than 100 people, and four of its main members are elected by parliament for seven-year terms. The DPA is tasked with supervising compliance by both governmental and nongovernmental entities of data protection laws, as well as “banning or blocking processing operations that are liable to cause serious harm to individuals.”<sup>20</sup> It is generally viewed as professional and fair in carrying out its duties. In April 2014, the authority launched a public consultation to assess public support for a large database (SIT, *Sistema Informatico Integrato*) on “bad payers” for telecom companies, which can consult it before accepting a new customer.<sup>21</sup> The clear privacy issues are one of the rationales for the consultation.

## Limits on Content

The Italian authorities do not generally restrict political content, although there has been a dramatic increase in the amount of websites blocked on grounds of selling forged goods, illegal streaming, the downloading of copyrighted content, and unlicensed gambling. According to “Osservatorio Censura,” (Censorship Observatory), the amount of websites blocked in Italy rose from 149 in May 2013 to 439 in May 2014.<sup>22</sup> Because of Italy’s civil-law system, some judges may occasionally issue rulings that impose responsibilities on intermediaries to regulate user-generated content, although other judges have repeatedly affirmed that intermediaries should not be liable for content posted by users. Italians have access to the full range of domestic and international news sources and human rights websites. The social-networking site Facebook, the Twitter micro-blogging service, the video-sharing site YouTube, and international blog-hosting sites are all freely available. Indeed, the use of social media has become a mandatory element of Italian politics, particularly over the past two years.

Since 2006, online gambling has been permitted only via state-licensed websites, and ISPs are required to block access to international or unlicensed gambling sites identified on a blacklist compiled by the Autonomous Administration of State Monopolies (AAMS). The list of banned sites is available on the AAMS website and updated regularly.<sup>23</sup> A similar blacklist system is in place for websites containing child pornography. A law passed in February 2006 (Law No. 6) called for the establishment of a National Center for the Fight against Child Pornography on the Internet within the Postal and Communications Police Service. Based on its own research and on complaints from citizens, the center maintains a list of sites deemed inappropriate and forwards it to ISPs for blocking.<sup>24</sup> As with the AAMS list, the child pornography blacklist is publicly available, though some child advocates have raised concerns that this encourages visits to the sites by users with

19 Cardani is a former chief of staff of Mario Monti when the latter was EU Anti-Trust commissioner. He also worked within the EU Commission for a while; <http://www.agcom.it/Default.aspx?message=contenuto&DCId=184>.

20 “The Italian Data Protection Authority: Who We Are,” Data Protection Authority, November 17, 2009, <http://www.garanteprivacy.it/garante/doc.jsp?ID=1669109>.

21 “Avviso pubblico di avvio della consultazione su ‘Costituzione di una banca dati dei clienti morosi nell’ambito dei servizi di comunicazione elettronica”, April 16, 2014, .

22 See <http://censura.bofh.it/grafici.html>.

23 The blacklist is available (in Italian) at <http://www.aams.gov.it/site.php?id=2484>.

24 “Centro nazionale per il contrasto alla pedopornografia sulla rete” [National Center for the Fight against Child Pornography on the Internet], State Police, March 10, 2010, <http://www.poliziadistato.it/articolo/view/10232/>.

circumvention tools. ISPs also offer subscribers “family internet” packages that automatically block access to adult pornography and sites with violent content, in exchange for a small premium.

In December 2013, AGCOM granted itself the power to order content hosts to take down sites or remove content if a review by an internal administrative panel detects a violation of copyright.<sup>25</sup> If no action is taken within 72 hours, AGCOM may now order ISPs to block offending websites with no need for a court order. The new regulations also allow punishments of up to EUR 250,000 for users uploading copyright-infringing content and for ISPs failing to comply with the orders in a timely fashion.<sup>26</sup> The controversial plan, which has been strongly criticized by users’ organizations and ISP representatives for lacking a requirement for prior judicial approval, entered into force on March 31, 2014.<sup>27</sup> It did not come under parliamentary review.<sup>28</sup> AGCOM’s mandate includes sites that contain links to other websites that provide copyrighted-infringing content, as well as the hosts. However, when the first orders went out at the end of April, it became apparent that all of the targeted websites were hosted outside of the country, thus limiting the reach of the Italian authorities. For this reason, AGCOM invited Italian ISPs to block access to those sites on the basis that the court order would “eventually” arrive.<sup>29</sup> This would give ISPs a highly discretionary power, without a judicial order or ruling, to filter access.<sup>30</sup>

Consumer rights organizations and ISP associations are worried that the procedures may end up unjustifiably inhibiting users from accessing content that they have uploaded to the web but legally own. Of further concern is the fact that links to legal content can also be removed or rendered inaccessible if the authority overreaches in its duty. On April 9, 2014, the administrative court of Rome ruled that opposition to the resolution was justified and asked AGCOM to begin a moratorium on the process until June 2014 pending further consideration and examination. AGCOM, however, decided to proceed with their plans and to run the risk that, after a future contrary ruling, its executive decisions may all be found void and unlawful.<sup>31</sup> Laws passed in 2000 and 2003 gave AGCOM an executive mandate to act in violations of copyrights.<sup>32</sup>

These developments come after the European Court of Justice ruled that national courts may order ISPs to cut off users’ access to copyright-infringing websites. In the case, involving a German-Austrian film company and an Austrian ISP, the ECJ clarified that ISPs can be considered

25 AGCOM, “Regolamento in materia di tutela del diritto d’autore sulle reti di comunicazione elettronica”, December 12, 2013, [www.agcom.it/Default.aspx?DocID=12229](http://www.agcom.it/Default.aspx?DocID=12229).

26 Bogdan, “Italian telecom authority gets the power to block websites,” EDRI, December 18, 2013, <https://edri.org/italian-telecom-authority-gets-power-block-websites/>.

27 “Subject: Internet censorship in Italy—via administrative procedure,” European Parliament, July 13, 2011, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2011-006948+0+DOC+XML+V0//EN> accessed February 2, 2013.

28 Fulvio Sarzana, “The ‘AGCOM’ law on website removal. Aa damage for internet-related businesses and freedom,” FULOG, December 16, 2013, <http://www.fulviosarzana.it/en/blog-en/the-agcom-italian-communications-authority-law-on-web-sites-removal-a-damage-for-internet-related-businesses-and-freedom/>.

29 G. Bottà, “AGCOM: a filtrare comincia tu”, Punto Informatico, April 18, 2014, <http://punto-informatico.it/4035622/PI/News/agcom-filtrare-comincia-tu.aspx>.

30 Alessandro Longo, “Dopo le prime denunce per Agcom cominciano i primi guai”, *Il Sole 24 Ore*, 27 April 2014, <http://www.ilsole24ore.com/art/tecnologie/2014-04-25/dopo-prime-denunce-agcom-cominciano-primi-guai--100719.shtml?uuid=ABgggeDB>.

31 Altroconsumo, “Regolamento AGCOM sul diritto d’autore: il Tar Lazio accoglie le richieste di Altroconsumo”, April 9, 2014, [www.altroconsumo.it/organizzazione/in-azione/azioni-in-corso/regolamento%20diritto%20d%27autore](http://www.altroconsumo.it/organizzazione/in-azione/azioni-in-corso/regolamento%20diritto%20d%27autore).

32 C. Tamburrino, “AGCOM approva il regolamento sul diritto d’autore”, Punto Informatico, December 12, 2013 <http://punto-informatico.it/3956367/PI/News/agcom-approva-regolamento-sul-diritto-autore.aspx>.

intermediaries and should prevent access to an offending website in a way that balances the right to information with intellectual property rights.<sup>33</sup>

At times, Italian authorities continue to request the removal of specific content, although the amount is limited. According to Google, the government issued 27 court orders for 135 items to be removed between January and June 2013 (compared to 23 requests over the previous six months), as well as 6 requests from executive bodies such as the police or regulating agencies.<sup>34</sup> Nearly half of the requests were accepted and involved material that was broadly interpreted as defamatory.

Decisions related to the blocking of websites for copyright violations are implemented by the *Guardia di Finanza* (GdF, Finance Guard), which handles issues of cybercrime, fraud, and trafficking.<sup>35</sup> In the infrequent cases in which websites containing news have to be blocked for copyright, this is made possible by a 1941 law, explicitly amended by the Berlusconi government in 2005 to include the web and computer communications.<sup>36</sup> Nonetheless, many in the Italian legal community now believe that, based on existing jurisprudence and thanks also to the provisions laid out in the EU e-Commerce Directive,<sup>37</sup> service providers are not required to censor search results. Likewise, since 2011, when Italy's Supreme Court declared that editors of online magazines were not responsible for defamatory comments posted by readers (thus taking note of the difference between the printed and electronic press), attempts at introducing bills that would require websites to engage in pre-publication censorship have mostly stalled. In 2011 and 2012, however, cases of defamation have been brought against online content providers and intermediaries that have led to the blocking or filtering of ICT content.<sup>38</sup> This legal uncertainty is due, in some part, to the inability to create new laws to compete with the fast changing technology. Existing laws are applied in a contradictory manner and are often overturned at every appeal, resulting in extended legal battles.

In October 2011, the European Court of Justice had ruled that soccer games could not be protected by copyright, and the same year, a Rome court ruled against RTI (a subsidiary of the Berlusconi-owned Mediaset) that tried to prevent Google's Blogger platform from streaming Italian football matches from Mediaset's TV channels. Nevertheless, in early 2013 a court in Milan ruled that, even if the soccer game itself was not protected, distributors could seek copyright protection over its broadcast.<sup>39</sup> Thus RTI-Mediaset won the case and ten indexing platforms with links to major sports streaming websites were shut down. This decision was reiterated again in September 2013 again by

33 For more on the case, see Court of Justice of the European Union, "An internet service provider may be ordered to block its customers' access to a copyright-infringing website," Press Release No 38/14, March 27, 2014, <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-03/cp140038en.pdf>.

34 Google "Rapporto sulla trasparenza, <http://www.google.com/transparencyreport/removals/government/countries/?p=2013-06>.

35 The Italian Police, acting on order by a judge in Rome, who ruled in favor of a film distribution company (Sunshine Pictures), ordered 27 Italian and international ISPs to proceed with a DNS blockade to prevent Italian users to see a French movie (*Un Monstre à Paris*) distributed by the company. Mauro Vecchio, "Italia, maxisequestro dello sharing in corso", *Punto Informatico*, April 15, 2013, <http://punto-informatico.it/3768010/PI/News/italia-maxisequestro-dello-sharing-corso.aspx>.

36 It is the law n.633 of April 22, 1941, <http://www.altalex.com/index.php?idnot=34610> and in particular it is art. 171/a/bis, amended by the law decree n.7 of January 31, 2005, <http://www.altalex.com/index.php?idnot=5918>.

37 European Commission, "E-Commerce Directive", 2000/31/EC, [http://ec.europa.eu/internal\\_market/e-commerce/directive/index\\_en.htm](http://ec.europa.eu/internal_market/e-commerce/directive/index_en.htm).

38 M. Del Vecchio, "Espressione digitale, libero bavaglio", *Punto Informatico* July 9, 2013, <http://punto-informatico.it/3845739/PI/News/espressione-digitale-libero-bavaglio.aspx>.

39 Mauro Vecchio "Mediaset, sequestro per lo streaming pallonaro", January 16, 2013, <http://punto-informatico.it/3691462/PI/News/mediaset-sequestro-streaming-pallonaro.aspx>.

a court in Rome that ruled that providing links to the streaming of soccer games cannot be justified on the basis of freedom of the press because it is a copyright violation, thus accepting Mediaset's viewpoint against the webzine *Il Post*.<sup>40</sup>

Some restrictions on internet content uncommon in other Western European countries remain in place in Italy. Drawing on a 1948 law against the “clandestine press,” a regulation issued in 2001 holds that anyone providing a news service, including on the internet, must be a “chartered” journalist within the Communication Workers’ Registry (ROC) and hold membership in the national journalists’ association.<sup>41</sup> With the exception of one case from late 2000s, these rules have generally not been applied to bloggers and, in practice, millions of blogs are published in Italy without repercussions. Nonetheless, many people who create websites on a range of issues (including scholarly research) still continue to collaborate with registered journalists to protect themselves from potential legal action.

Following the European Union principle on “the right to oblivion” (or “the right to be forgotten”), in April 2012, the Supreme Court imposed an obligation on publishers to update their online archives to ensure that outdated facts do not inadvertently damage someone’s reputation. Furthermore, on May 13, 2014, the European Court of Justice found that the 1995 Data Protection Directive did apply to the activities of search engines like Google, and that these companies may have to remove certain search results if the data is deemed to violate an individual’s right to privacy.<sup>42</sup> The court decided that by searching automatically, constantly, and systematically for information on the internet, search engines are “collecting” and “processing” data within the meaning of the directive. Based on this ruling, individuals within the European Union can now request that search engines remove links associated with their name, but only in searches for that individual’s name and under the condition that the information in the links is “inadequate, irrelevant, or no longer relevant” and is not considered to be in the public interest. Many critics of this ruling argued that the court should not have granted private companies the authority to arbitrate competing concerns between the right to privacy and the right to information, and that the court failed to establish clear guidelines regarding when links to data should be removed.<sup>43</sup>

Even in the absence of legal requirements, ISPs tend to exercise some informal self-censorship, declining to host content that may prove controversial or that could create friction with powerful entities or individuals. Online writers also exercise caution to avoid libel suits by public officials, whose litigation—even when unsuccessful—often takes a significant financial toll on defendants in the traditional media. The Italian government does not proactively manipulate news websites.

Blogging is now very popular in Italy, though television remains by far the leading medium for obtaining news. Most policymakers, popular journalists, and figures in the entertainment industry

40 Mauro Vecchio, “Il link allo streaming non è diritto di cronaca”, Punto Informatico, 16 September 2013, <http://punto-informatico.it/3889990/PI/News/link-allo-streaming-non-diritto-cronaca.aspx>.

41 Law No. 62, March 7, 2001, “Nuove norme sull’editoria e sui prodotti editoriali” [New Rules on Publishing and Publishing Products], InterLex, accessed August 21, 2012, [http://www.interlex.it/testi/I01\\_62.htm](http://www.interlex.it/testi/I01_62.htm).

42 The court case in question is that of Google Spain SL, Google Inc. v. Agencia Española de Protección de Datos, Mario Costeja González. See Press Release No. 70/14, Court of Justice of the European Union, May 13, 2014, <http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-05/cp140070en.pdf>.

43 The Editorial Board, “Ordering Google to Forget,” The New York Times, May 13, 2014, <http://www.nytimes.com/2014/05/14/opinion/ordering-google-to-forget.html?hp&rref=opinion&r=0> and Natasha Lomas, “Jimmy Wales Blasts Europe’s ‘Right to Be Forgotten’ Ruling as a ‘Terrible Danger,’” TechCrunch, June 7, 2014, <http://techcrunch.com/2014/06/07/wales-on-right-to-be-forgotten/>.



have their own blogs, as do many ordinary citizens. Social-networking sites, especially Facebook and Twitter, have emerged as crucial tools for organizing protests and other mass gatherings, such as concerts, parties, or political rallies, although, at times, some content may be aggressive. As of end of 2013, the country was home to over 26 million Facebook users (42.4 percent of the population, up more than 5 percent from 2012), the 11th highest number in the world.<sup>44</sup>

The use of social media and the web in the general elections of February 2013 proved to be a major innovation. Online tools were central, not only as a communication medium, but also to measure political sympathies by measuring “Likes”, hashtags and tweets for the many political players.<sup>45</sup> The Five Star Movement, led by former comedian Beppe Grillo, based their political campaign almost exclusively on the internet and declined to take part in political talk-shows or television interviews.

As soon as the new parliament was in office following the February elections, Grillo and his movement used the internet both to strengthen their political basis and to survey it. The Five Star Movement used the web and social media (1) to select its candidate for the Italian presidential election,<sup>46</sup> (2) to vote on expelling party members, such as those MPs who do not conform to the movement’s rules and internal decisions, and (3) to provide an outlet for Grillo’s announcements and statements.<sup>47</sup>

Finally there has been a considerable talk about adopting an FOIA provision for Italy’s public administration (PA), modeled on the American act. Yet a comparison between the Italian (Law n. 241/1990) and U.S. legislation shows that, in the Italian case, data transparency is mostly a declared “intention” than a real, sanctioned obligation.<sup>48</sup> As of mid-2014, the government has opened a dedicated web site that offers data and information voluntarily made available by local and central administrations.<sup>49</sup> Such tools, while valuable for scholarly research, is still a far cry from constituting an Italian FOIA.

## Violations of User Rights

As a signatory to the European Convention on Human Rights and other relevant international treaties, freedoms of speech and the press, as well as the confidentiality of correspondence, are constitutionally guaranteed in Italy.<sup>50</sup> Yet, given the country’s civil law system, inconsistent judicial interpretations are not unusual. This has created some uncertainty when judges issue conflicting decisions on similar cases related to internet freedom, such as intermediary liability (see “Limits on Content”). For this reason, online free expression advocates have focused their efforts on proposing

44 , “Italy”, Social Times Daily, 10 September, 2013, <http://it.socialtimes.me/stat/IT>.

45 Luca Annunziata, “Chi vince le elezioni su Internet?”, *Punto Informatico*, February 8, 2013, <http://punto-informatico.it/3713780/PI/News/chi-vince-elezioni-internet.aspx>.

46 The first candidate was Milena Gaibanelli, a journalist, who declined then followed by Stefano Rodotà, former leader of the Privacy authority. In the end the incumbent president, Giorgio Napolitano, was re-elected.

47 See Grillo’s blog at <http://www.beppegrillo.it/>. Grillo was criticized even on his blog for the advertisements revenues from his blog.

48 Mauro Vecchio “PA, l’incubo della trasparenza tricolore”, February 6, 2013, <http://punto-informatico.it/3709875/PI/News/pa-incubo-della-trasparenza-tricolore.aspx>.

49 Governo Italiano, “Dati aperti della PA”, <http://www.dati.gov.it>.

50 An English copy of the constitution is available at, [http://www.senato.it/documenti/repository/istituzione/costituzione\\_inglese.pdf](http://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf). See especially Articles 15 and 21.

legal amendments to improve protections and prevent censorship rather than engaging in public interest litigation.<sup>51</sup>

In a positive ruling this February, Italy's Supreme Court found that three Google employees were not liable for failing to prevent the uploading of a video of Italian schoolchildren bullying an autistic student. The employees were initially handed six-month suspended sentences for a criminal breach of privacy laws in 2010. Italy's highest court agreed with the 2013 decision of an appeals court, which ruled that Google could not be held responsible for obtaining the consent of any individuals that may feature in videos uploaded to the site.<sup>52</sup>

Defamation is a criminal offense in Italy, punishable by prison terms ranging from six months to three years and a minimum fine of EUR 516 (US\$670). In cases of libel through the press, television, or other public means, there is no prescribed maximum fine.<sup>53</sup> Though these provisions are rarely applied, civil libel suits against journalists, including by public officials and politicians, are a common occurrence, and the financial burden of lengthy legal proceedings may have a chilling effect on journalists and their editors. As of May 2014, there have been extremely few libel suits against bloggers and other online writers in Italy.

Concerns exist over the disproportionate use of Italy's libel law over Facebook. In early 2013, a young woman who posted negative and racist remarks about her former employer on the social network and was found guilty of libel and made to pay a EUR 1,000 fine.<sup>54</sup> The prosecution successfully argued that libel can occur so long as the offense occurs through any medium, online or traditional, that can reach a larger public. Further, a third-level appeals court found a non-commissioned GdF officer guilty of libel for posting negative comments about a colleague on Facebook, even though the latter's name was never mentioned in the post. The court ruling reported that it is sufficient that enough details are included so that the offended person can be identified by as few as two persons.<sup>55</sup>

Monitoring of personal communications is permissible only if a judicial warrant has been issued, and widespread technical surveillance is not a concern in Italy. Wiretapping is generally restricted to cases involving ongoing legal proceedings, except for terrorism investigations. In such instances, since 2001, "pre-emptive wiretapping" may occur even if no formal prosecutorial investigation has been initiated. More lenient procedures are also in place for Mafia-related investigations.<sup>56</sup> The

51 Andrea Monti (lawyer specialized on Internet freedom and activist), in a conversation with author, February 20, 2012.

52 "Google Executives not 'data controllers' and not liable for privacy infringement, rules Italian Supreme Court," Out-Law.com, February 5, 2014, <http://www.out-law.com/en/articles/2014/february/google-executives-not-data-controllers-and-not-liable-for-privacy-infringement-rules-italian-supreme-court/>.

53 Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media, *Libel and Insult Laws: A Matrix on Where We Stand and What We Would Like to Achieve* (Vienna: OSCE, 2005), 79, <http://www.osce.org/fom/41958>.

54 Adriana Apicella "Diffamazione a mezzo stampa, è reato anche su Facebook", Justicetv.it, January 17, 2013, <http://www.justicetv.it/index.php/news/2992-diffamazione-a-mezzo-stampa-e-reato-anche-su-facebook> and also, *Punto Informatico* "Diffamazione, stampa e social pari sono?", <http://punto-informatico.it/3690966/PI/News/diffamazione-stampa-social-pari-sono.aspx>.

55 La Repubblica, "Cassazione: è diffamazione parlar male su Facebook anche senza fare nomi", 16 Aprile 2014, [http://www.repubblica.it/cronaca/2014/04/16/news/cassazione\\_diffamazione\\_su\\_facebook\\_anche\\_senza\\_fare\\_nomi-83786192/](http://www.repubblica.it/cronaca/2014/04/16/news/cassazione_diffamazione_su_facebook_anche_senza_fare_nomi-83786192/).

56 Privacy International, "Italy: Privacy Profile," in *European Privacy and Human Rights 2010* (London: Privacy International, 2010), <https://www.privacyinternational.org/article/italy-privacy-profile>.

overall perception is that the country's authorities are engaged in a large number of wiretaps,<sup>57</sup> although this may only be a perception. On the other hand, it is undeniable that news media regularly publicize wiretap information that is leaked to them and attempts to prevent the publication of wiretaps through the imposition of fines have failed.

In March 2008, the parliament approved a law (No. 48 of 2008) to ratify the Council of Europe's Convention on Cybercrime, which established how long internet-related communication data should be retained.<sup>58</sup> This matter was further refined with the inclusion in the Italian legislative system of the 2006 EU Data Retention Directive.<sup>59</sup> Under the current legal framework, ISPs must keep users' traffic records—though not the content of communications—for 12 months. This includes broadband internet data, internet telephony, internet use via mobile phone, and email activity. The records can only be disclosed in response to a request from a public prosecutor (a judge) or a defendant's lawyer, and, like their counterparts elsewhere in Europe, Italy's law enforcement agencies may ask ISPs to make such information readily available so that they can respond to the needs of criminal investigations. Given the technical burden of this directive, most ISPs now use a third-party service that offers the necessary security guarantees for encryption and data storage.

Data retention practices in Italy and other European Union member states were recently thrown into doubt by the European Court of Justice (ECJ).<sup>60</sup> On April 8, 2014, the court found the European Data Retention Directive (2006/24/EC) to be invalid and in contravention of articles 7, 8, and 52(1) of the European Charter of Human Rights. The ruling was lauded among privacy proponents who had long argued that requirements for the blanket retention constituted mass surveillance and far exceeded what was necessary for law enforcement purposes. However, the decision has also prompted debate among legal experts, with some member states now suspending their national implementations of the European directive, while others are drafting new data retention laws in order to compel internet service providers to continue to store user data.<sup>61</sup> The situation remains unclear in Italy, although Italian ISPs routinely retain data for a variable amount of time.

As Italy moves towards greater e-governance, some concerns have been raised over the protection of user data in the hands of public agencies. In the past, Poste Italiane's certified electronic mail (PEC) service was named as the public agency most damaging to individual privacy at the annual Big Brother awards for its gross mishandling of private information kept by the government's "Registro delle Opposizioni," a register of people who wish to keep their contact information hidden from

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57 Although it is difficult to determine the real number of people affected by wiretaps (estimates range from 25,000 to over 130,000), many individuals who are caught up in wiretaps have no incriminating connection to the main target of the eavesdropping. The current law stipulates that such peripheral communications cannot be transcribed and any recordings should be destroyed right away, though this is not always carried out in practice. Thus it may happen that some exchanges are recorded and leaked to the media. This is the problem that the proposed bill on electronic surveillance was meant to address.

58 For a useful timetable of the required retention periods, see Gloria Marcoccio, "Convention on cybercrime: novità per la conservazione dei dati" [Convention on Cybercrime: News on Data Retention], InterLex, April 10, 2008, <http://www.interlex.it/675/marcoccio7.htm>.

59 Legislative Decree No. 109, May 30, 2008.

60 The ECJ court ruling pertained to the cases *Digital Rights Ireland Ltd* (C-293/12) and *Kärntner Landesregierung* (C-594/12) and is available at <http://curia.europa.eu/juris/document/document.jsf?docid=150642&doclang=EN>.

61 Martin Husovec, "First European Constitutional Court Suspends Data Retention After the Decision of the Court of Justice of EU," The Center for Internet and Society at Stanford Law School, April 28, 2014, <http://cyberlaw.stanford.edu/blog/2014/04/first-european-constitutional-court-suspends-data-retention-after-decision-court>.

advertisement companies.<sup>62</sup> Nevertheless, it is now mandatory for all business to use the PEC service in their communications with the public administration to cut costs and reduce paperwork.<sup>63</sup>

The law enforcement agency with primary responsibility for cybercrimes is the Postal and Communications Police Service. Police officers are primarily concerned with cybercrime in the form of child pornography, cyber-bullying, and various forms of fraud.<sup>64</sup> In 2013, according to intelligence reports, there were increasing fears that the country's economic crisis might push extremist groups to adopt cybercrime or cyberterrorism as a form of protest.<sup>65</sup> Despite the increasing emphasis on cybersecurity, in May 2013, the Italian Ministry of Interior was nevertheless attacked by the Italian branch of Anonymous as retaliation for the arrest of some cyberactivists only a few days earlier.<sup>66</sup> The country's official cybersecurity strategy was published in December 2013.<sup>67</sup>

Reports of extrajudicial intimidation or physical violence in response to online activity are rare, although individuals directly exposing the activities of organized crime in some parts of the country may be at risk of reprisals. More common is the defacement or launching of denial-of-service (DoS) attacks against websites—mostly government-linked ones—as a form of political protest.<sup>68</sup> More serious cyberattacks—particularly against banks, government institutions, and business websites—remain a problem in Italy, as in other European Union member states. Nevertheless, Italy does not rank highly on the list of countries identified as points of origin for cybercrimes.<sup>69</sup>

62 Cristina Sciannablo "Big Brother Awards Italia: tutti i vincitori," Punto Informatico, June 6, 2011, <http://punto-informatico.it/3182022/PI/News/big-brother-awards-italia-tutti-vincitori.aspx>.

63 "Ulteriore Deroga fino a fine giugno 2012 per la casella PEC aziendale," IISoftware.it, <http://www.i-node.it/2012/05/ulteriore-deroga-fino-fine-giugno-2012-la-casella-pec-aziendale/>.

64 Figures on cybercrime are difficult to assess, as the main providers of data are computer security companies such as Symantec or government entities like the postal police, as opposed to "third-party" sources. Nevertheless, Italy's rates appear to be slightly above the world average. See, Tiziana Moriconi, "Crimini online, i dati italiani" [Online Crime, the Italian Data], Daily Wired, November 23, 2010, <http://dailywired.it/news/internet/hacking-accordo-tra-symantec-e-polizia-postale.html>; Alessandra Talarico, "Cybercrime. Italia vittima e carnefice: è il paese che più abbocca al phishing e tra i più attivi negli attacchi web based" [Cybercrime. Italy Victim and Victimizer: It Is the Country That Takes the Bait in Phishing and Is Among the Most Active in Web-Based Attacks], Key4Biz, April 22, 2010, [http://www.key4biz.it/News/2010/04/22/e-Security/cybercrime\\_botnet\\_spam\\_ebanking\\_social\\_network\\_spyware\\_adware\\_phishing.html](http://www.key4biz.it/News/2010/04/22/e-Security/cybercrime_botnet_spam_ebanking_social_network_spyware_adware_phishing.html).

65 Il Corriere della sera, "Servizi: crisi alimenta tensione sociale", February 28, 2013, [http://www.corriere.it/cronache/13-febbraio-28/crisi-terrorismo-rapporto-servizi\\_4d7f35e8-8178-11e2-aa9e-df4f9e5f1fe2.shtml](http://www.corriere.it/cronache/13-febbraio-28/crisi-terrorismo-rapporto-servizi_4d7f35e8-8178-11e2-aa9e-df4f9e5f1fe2.shtml).

66 Matteo Campofiorito "Anonymous, attacco al ministero dell'Interno: Pubblicati sul blog documenti e email", La Repubblica, May 28, 2013, [http://www.repubblica.it/tecnologia/2013/05/28/news/anonymous\\_attacco\\_ministero\\_interni-59869466/](http://www.repubblica.it/tecnologia/2013/05/28/news/anonymous_attacco_ministero_interni-59869466/).

67 Presidenza Consiglio dei Ministri, "National Plan for Cyberspace Protection and ICT Security", <http://www.sicurezza nazionale.gov.it/sisr.nsf/wp-content/uploads/2014/02/italian-national-cyber-security-plan.pdf> and "National Strategic Framework for Cyberspace security", December 2013, <http://www.sicurezza nazionale.gov.it/sisr.nsf/wp-content/uploads/2014/02/italian-national-strategic-framework-for-cyberspace-security.pdf>.

68 The Police and the judiciary are often targeted, see for example Corriere della Sera "Gli hacker colpiscono ancora: attaccato sito della polizia campana" February 17, 2013, [http://www.corriere.it/cronache/13-febbraio-17/polizia-hacker-anonymous\\_1727d948-790b-11e2-a28b-a2fa92ae99be.shtml](http://www.corriere.it/cronache/13-febbraio-17/polizia-hacker-anonymous_1727d948-790b-11e2-a28b-a2fa92ae99be.shtml).

69 An independent report by HostExploit shows Italy scoring quite well on a "badness" scale (France, Germany and the United Kingdom, all get a worse score). These results are graphically visible in here: <http://globalsecuritymap.com/#nl>, accessed 19 May 2014.