

ITALY

	2012	2013
INTERNET FREEDOM STATUS	FREE	FREE
Obstacles to Access (0-25)	4	5
Limits on Content (0-35)	7	6
Violations of User Rights (0-40)	12	12
Total (0-100)	23	23

POPULATION: 60.9 million
INTERNET PENETRATION 2012: 58 percent
SOCIAL MEDIA/ICT APPS BLOCKED: No
POLITICAL/SOCIAL CONTENT BLOCKED: No
BLOGGERS/ICT USERS ARRESTED: No
PRESS FREEDOM 2013 STATUS: Partly Free

* 0=most free, 100=least free

KEY DEVELOPMENTS: MAY 2012 – APRIL 2013

- Despite limited progress, Italy continued to lag behind most other countries of the European Union in terms of internet penetration and average speed (see **OBSTACLES TO ACCESS**).
- Dozens of file-sharing and video-streaming websites were blocked over the past year for illegally hosting copyrighted materials (see **LIMITS ON CONTENT**).
- The Court of Cassation clarified that a 1948 law prohibiting “clandestine press” could not be applied to blogs, easing fears that blogs could face blocking for failing to register with the authorities (see **LIMITS ON CONTENT**).
- Social media and blogging were critical in the nascent Five Star Movement’s success in the February 2013 parliamentary elections, in which it received more votes than any single party (see **LIMITS ON CONTENT**).
- A Livorno court decided that an insulting Facebook post can be considered as defamation by “other means of publicity,” since the social network allows for the broad diffusion of posts. In the case, a user was found guilty of defaming her former employer and ordered to pay a fine. The ruling may open the door for further defamation cases related to Facebook posts (see **VIOLATIONS OF USER RIGHTS**).

INTRODUCTION

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. Among the remaining obstacles to greater internet penetration include a lack of familiarity with computers and with the English language, as well as the dominance of commercial television and the diversion of consumers' telecommunications spending to mobile telephony.

High ownership concentration in the media sector continued to impact the country's information landscape in late 2012 and early 2013.¹ Former prime minister Silvio Berlusconi still owns, directly and indirectly, a private media conglomerate. After his *Il Popolo della Libertà* (The People of Freedom, PdL) party withdrew its support, the technocratic government of Mario Monti collapsed in December 2012. While the PdL did not have sufficient political power to push through controversial initiatives such as the wiretapping bill, it did manage to block any move that might undermine Berlusconi's position in the media market.² When fresh election did arrive in February 2013, the use of social media and the web proved to be a major innovation, resulting in a strong showing from the digitally-savvy *Movimento 5 Stelle* (Five Star Movement, M5S). The highly-fragmented outcome of the elections, in which no party was able to obtain an outright majority, is unlikely to produce the stable environment required for new prime minister Enrico Letta to address some of the outstanding legal issues regarding freedom of expression online.

Italy's internet penetration rate lags behind many other European Union countries. Mobile telephone usage is ubiquitous, however, and internet access via mobile phones has grown significantly in recent years. Italian authorities do not generally engage in political censorship of online speech, although authorities are highly active in blocking file-sharing and live-streaming sites if they are shown to illegally provide access to copyrighted content. As in previous years, no bloggers were imprisoned as of mid-2013, though a Facebook user was fined over a defamatory post concerning her former employer. Defamation and libel are central issues in the country, particularly when sensitive information obtained from government wiretaps is leaked to the public, often at the expense of high-profile individuals. Furthermore, despite a number of judicial decisions asserting that intermediaries cannot be prosecuted for content posted by users, existing laws are

¹ For an overview see, for example, the ITU, "Europe: Level of Competition" Report at http://www.itu.int/ITU-D/icteye/Reporting/ShowReport.aspx?ReportFormat=PDF&ReportName=%2FTREG%2FLevelOfCompetition2007&RP_intRegionID=5&RP_intLanguageID=1&RP_intYear=2012&ShowReport=true, accessed February 08, 2013.

² As an important political leader, and supporter of the Monti government (albeit quite reluctantly) Silvio Berlusconi also retained significant influence over the appointment of state regulators. Such conditions also made the country's leadership resistant to confront the peculiar "imperfections" of Italy's editorial and broadcasting sectors.

applied in a contradictory manner and are often overturned at every appeal, resulting in extended legal battles.

OBSTACLES TO ACCESS

Since the 1990s, the Italian government has supported the internet as a catalyst for economic growth, increased tourism, reduced communication costs, and more efficient government operations. According to the International Telecommunication Union (ITU), Italy had an internet penetration rate of 58 percent at the end of 2012, an increase from 40.8 percent in 2007.³ While Italy's internet penetration rate is higher than the global average, it is below the norm for the European Union (EU). The relatively low penetration rate is often attributed to unfamiliarity with the internet among the older generations, as well as a lack of understanding about the internet's utility among certain segments of the population.

From March 2012 to March 2013, over 250,000 broadband subscription lines were added, sending the total to 13.82 million. Average download speeds also increased, with almost 89 percent of Italian subscribers achieving nominal speeds of 2 Mbps or more.⁴ Despite the progress, Italy has fallen behind most EU countries in this area, and the country's users access the internet at an average speed of 4.4 Mbps; by comparison, the average speed in the Netherlands is 9.9 Mbps, in the Czech Republic 9.6 Mbps, and in Portugal 5.3 Mbps.⁵

The main point of internet access is the home, with some 22 million people using home connections at least once a month, as of early 2012.⁶ The workplace is the second most common access point, followed by schools and universities. While less than half of Italy's internet users are female, women comprise 55 percent of new users. Cost is not a significant barrier to access. The price for a broadband connection may range from €20 to €40 (\$27 to \$53) per month, compared to average monthly per capita income of around \$2,750.⁷

ADSL broadband connections are available on about 97 percent of Italy's territory and plans were outlined to bring it to 99 percent by the end of 2012 with the help of mobile broadband.⁸ Little

³ International Telecommunication Union (ITU), "Percentage of individuals using the Internet, fixed (wired) Internet subscriptions, fixed (wired)-broadband subscriptions," 2011 & 2006, accessed July 13, 2012, <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>.

⁴ "Quarterly Telecommunications Markets Observatory, AGCOM, March 31, 2013, <http://www.agcom.it/Default.aspx?message=visualizzadocument&DocID=11333>.

⁵ Akamai, "State of the Internet: 1st Quarter, 2013," Volume 6, Number 1, http://www.akamai.com/dl/whitepapers/akamai_soti_q113.pdf?curl=/dl/whitepapers/akamai_soti_q113.pdf&solcheck=1&WT.mc_id=soti_Q113& (subscription required).

⁶ Giancarlo Livraghi, ed., "Dati sull'internet in Italia" [Data on the Internet in Italy], accessed February 15, 2013, <http://www.gandalf.it/dati/dati3.htm>.

⁷ "Broadband—Italy," Socialtext, accessed February 19, 2013, <https://www.socialtext.net/broadband/index.cgi?italy>; "GDP per capita (current US\$)" The World Bank, 2008-2012, accessed August 5, 2013, <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD>.

⁸ "Domestic Market," Telecom Italia, March 3, 2012, <http://www.telecomitalia.com/tit/en/about-us/profile/domestic-market.html>. The goal of 99 percent by the end of 2012 appears still unfulfilled as of early 2013. Socialtext puts the figure for ADSL at 88 per cent (as of October 2012).

progress has been made on the five-year, €2.5 billion (\$3.3 billion) plan to connect 15 of Italy's largest cities using fiber-optic cable, proposed in 2010 by Italy's three largest telecommunications operators. A similar investment plan for €9 billion (\$11.8 billion) by Telecom Italia also faced delays. These plans are now suspended given Italy's precarious financial crisis.

Mobile phone use is much more widespread than internet access, with the penetration rate reaching 158 percent in 2012, which translates to 4.3 mobile subscribers for every fixed-line subscriber.⁹ The majority of subscriptions are prepaid. Telecom Italia Mobile (TIM), Vodafone, Wind, and 3 Italia are the major carriers, and all of them operate third-generation (3G) networks. Access to mobile internet has been increasing in recent years, and as of 2011, some 59.4 percent of internet users reported accessing the internet through their smart phones.¹⁰ As elsewhere, sales of tablet computers have been on the rise among the younger generation since 2010 and are likely to keep growing in the coming years.

In March 2012, the government launched the "Digital Agenda" initiative, intended to expand broadband access and e-government functions.¹¹ A project of the infrastructure and economic development minister, several other ministries (economy, research and university, public health, and so on) should be involved in this operation, which is supposed to profoundly "transform" Italy's public administration. 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. As recent as April 2013, Prime Minister Enrico Letta reiterated the need to pursue many of the Digital Agenda items first proposed by his predecessor, Mario Monti.¹²

Access to the internet for private users is offered by 13 different ISPs. Telecom Italia has the largest share of the market, followed by Vodafone, Fastweb, and Tiscali. Telecom Italia owns the physical network, but it is required by European Union (EU) legislation to provide fair access to competitors. Further, Telecom Italia has announced plans to divest its infrastructure holdings into a separate subsidiary in a bid to increase profits and avoid legal repercussions associated with its current monopoly holdings.¹³

The main regulatory body for telecommunications is the Authority for Communications Security (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. The parliament's majority party appoints AGCOM's president,

⁹ International Telecommunication Union (ITU), "Mobile-cellular telephone subscriptions," 2012, accessed February 19, 2013 <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>.

¹⁰ ITU, *Measuring the Information Society 2011*, p.154, <http://www.itu.int/net/pressoffice/backgrounders/general/pdf/5.pdf>.

¹¹ Italian text at http://www.gazzettaufficiale.it/moduli/DL_181012_179.pdf. See also http://www.agenda-digitale.it/agenda_digitale/.

¹² Mauro del Vecchio "Agenda Digitale, nuova corsa", Punto Informatico, April 30, 2013, <http://punto-informatico.it/3780111/PI/News/agenda-digitale-nuova-corsa.aspx>.

"Telecom Italia: CDA approva il progetto di societizzazione della rete di accesso", [Telecom Italia: CDA approves corporate reorganization of the network grid," ¹³ Telecom Italia, May 30, 2013, <http://www.telecomitalia.com/tit/it/archivio/media/comunicati-stampa/telecom-italia/corporate/economico-finanziario/2013/05-30a.html>

and commissioners have been known to come under pressure from the government to take certain actions regarding television broadcasts, particularly when Berlusconi was prime minister.¹⁴ Angelo Marcello Cardani was appointed as AGCOM president in July 2012 and remains the current head under Prime Minister Letta.¹⁵

Another important player in the field of communications is the Italian Data Protection Authority (DPA). Set up in 1997, the DPA today 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 with data protection laws, and “banning or blocking processing operations that are liable to cause serious harm to individuals.”¹⁶ It is generally viewed as professional and fair in carrying out its duties.

LIMITS ON CONTENT

In Italy, websites are principally blocked or taken down for offenses related to defamation or copyright infringement. There are little restrictions on politically-orientated content, although the vague legal environment does lead to a degree of self-censorship as ISPs and users seek to avoid prosecution. Intermediaries and content providers often required to take down illegal content at the request of executive bodies or judicial authorities. Facebook, Twitter, YouTube, and international blog-hosting sites are freely available. Further, social media and blogging has been employed by political groups to mobilize potential voters and even crowd-source party decisions.

Websites related to gambling, child pornography, and illegal file-sharing are blocked in Italy. Since 2006, online gambling has been permitted only through state-licensed websites; ISPs are required to block access to a list of international or unlicensed gambling sites identified by the Autonomous Administration of State Monopolies (AAMS), available on its website and updated regularly.¹⁷ A similar list of illegal sites is maintained by the National Center for the Fight against Child Pornography on the internet, established in 2006 within the Postal and Communications Police Service. This list, which is forwarded onto ISPs for implementation, is formulated through internal research as well as complaints submitted by users.¹⁸ The public availability of the child pornography blacklist has drawn consternation from some child advocates, who have expressed concern that this encourages visits to the sites by users with circumvention tools. Internet subscribers can also pay a small fee to sign up for a voluntarily “family internet” package from ISPs, in which access to adult pornography and sites with violent content is blocked.

¹⁴ Michael Day, “Silvio Berlusconi caught out trying to stifle media,” *The Independent*, March 18, 2010, <http://www.independent.co.uk/news/world/europe/berlusconi-caught-out-trying-to-stifle-media-1923147.html>.

¹⁵ 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>.

¹⁶ “The Italian Data Protection Authority: Who We Are,” Data Protection Authority, November 17, 2009, <http://www.garanteprivacy.it/garante/doc.jsp?ID=1669109>.

¹⁷ The blacklist is available (in Italian) at <http://www.aams.gov.it/site.php?id=2484>.

¹⁸ “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/>.

The website Avaxhome.ws was blocked on November 23, 2012, after a Milan court received a complaint from Mondadori, a publishing company owned by the Berlusconi family.¹⁹ Among other things, the site hosted links to several global newspapers and magazines available in PDF form. Since the website profited from the hosting of copyrighted publications, Mondadori argued that it could not enjoy the protection granted to ordinary news websites. Nevertheless, information on how to circumvent the blocking was soon abundantly available on social media and elsewhere.²⁰ Following an order from a court in Monza, near Milan, ISPs were also asked to block the web forum downloadzoneforum.net, which hosted links to movies and other copyright protected material.²¹ Both of these actions were made possible by a 1941 Law on Author Rights,²² explicitly amended by the Berlusconi government in 2005 to include the web.²³

In April 2013, the Postal and Communications Police of Rome blocked 27 websites that allowed users to illegally download or stream music and movies online.²⁴ Italy's *Guardia di Finanza* (GdF, Finance Guard) has continually targeted file-sharing websites for disseminating material that infringes copyright.²⁵ Several popular BitTorrent sites, such as The Pirate Bay and BTjunkie, remain blocked. Access to Proxyitalia.com, a proxy often used to circumvent government censorship, is also blocked since April 2011.

At the end of 2011, Italy's Supreme Court overturned a lower court's verdict by declaring that editors of online magazines were not responsible for defamatory comments posted by readers, taking note of the difference between the printed and electronic press.²⁶ Nevertheless, in the ensuing years defamation cases have still been brought against online content providers and intermediaries that have led to the removal or blocking of content (for more on Italy's legal environment, see "Violations of User Rights").²⁷ For example, in February 2010, three Google executives were sentenced in absentia to imprisonment for allowing the circulation of an offensive video on YouTube.²⁸ However, since early 2011, other decisions have ultimately asserted that

¹⁹ Il Messaggero "Avaxhome sotto sequestro per ricettazione: sul sito giornali pirata", November 28, 2012, http://www.ilmessaggero.it/primopiano/cronaca/avaxhome_sequestrato_sito_edicola_digitale/notizie/234594.shtml. The web site is originally from Russia, and for the first time the charge was that of "receiving of stolen goods" (a more serious action) in addition to copyright violation.

²⁰ Giornalettismo "Avaxhome chiuso: come raggiungerlo", November 28 2012, <http://www.giornalettismo.com/archives/629365/avaxhome-chiuso-come-raggiungerlo/>. As of February 2013, the web site is easily accessible.

²¹ Mauro Vecchio "Italia, DownloadZone al cimitero warez", January 31, 2013, <http://punto-informatico.it/3705271/PI/Brevi/italia-downloadzone-al-cimitero-warez.aspx>.

²² Law n.633 of April 22, 1941, available at <http://www.altalex.com/index.php?idnot=34610>

²³ Law decree n.7 of January 31, 2005, available at <http://www.altalex.com/index.php?idnot=5918>.

²⁴ "Italian police blocks access to 27 file-sharing websites," Telecompaper, April 24, 2013, <http://www.telecompaper.com/news/italian-police-blocks-access-to-27-file-sharing-websites--939415>.

²⁵ Enigma, "Italian Court Orders All ISPs to Block KickAssTorrents," TorrentFreak, May 24, 2012, <http://torrentfreak.com/italian-court-orders-all-isps-to-block-kickasstorrents-120524/>.

²⁶ "Italian Supreme Court: web magazines are not to be held responsible for readers' comments," Law & the Internet (blog), December 14, 2011, <http://www.blogstudiolegalefinocchiaro.com/wordpress/?p=279>.

²⁷ M. Del Vecchio, "Espressione digitale, libero bavaglio", Punto Informatico July 9, 2013 Il senatore Torrisi (PdL) <http://punto-informatico.it/3845739/PI/News/espressione-digitale-libero-bavaglio.aspx>.

²⁸ This is related to a video posted by a user that showed a mentally disabled child being bullied by his classmates, although Google removed the video as soon as it was notified. The appeal decision for the "Vivi Down" case, as it was known, was expected at the end of December 2012, but as of early 2013, there had been no update. See Cristina Sciannamblo "Caso

content hosts are not responsible for prescreening content. For example, in July 2011, a Rome court specializing in intellectual property overturned a lower court's decision and found that Yahoo was not liable to punishment for listing search results that allowed users to access websites that may violate copyright."²⁹ Similarly, in March 2013, the Courthouse of Milan ruled that phrases stemming from Google's "Autocomplete" or "Related Searches" features could not be seen as defamatory, since results were based on software calculations and did not represent the views of the search engine company.³⁰

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 an individual's reputation. The case involved a story about the 1993 arrest of a politician on corruption charges in northern Italy. Although the man was ultimately acquitted, news of his arrest continued to appear in search results. Following the European Union (EU) principle of "the right to oblivion" (or "the right to be forgotten"), the Supreme Court ordered the outlet to update the story to indicate the new facts. However, it also found that there were no grounds for libel since the events recounted in the article were true, even if they were incomplete or outdated.³¹

In a case from January 2013, a court in Milan ordered the blocking of 10 online platforms that index links to the online streaming of sports events.³² In 2011, RTI, a subsidiary of the Berlusconi-owned Mediaset media conglomerate, had sued Google for allowing users, via its blog-hosting platform "Blogger," to stream Italian soccer matches. In December of that year, a Rome court ruled that web platforms were not in breach of the law so long as users removed streamed copyrighted materials upon being notified.³³ However, in the more recent case from 2013, the Milan court ruled that, even if the soccer game itself was not protectable, distributors could seek copyright protection over its broadcast.³⁴

Vividown, aspettando la sentenza d'Appello", December 7, 2012, <http://punto-informatico.it/3666664/PI/News/caso-vividown-aspettando-sentenza-appello.aspx>.

²⁹ Giulio Coraggio, "Yahoo! Liable for Searchable Contents!" *IPT Italy Blog*, April 3, 2011, http://blog.dlapiper.com/IPTItaly/entry/yahoo_liable_for_searchable_contents; "PFA vs Yahoo: la decisione del Tribunale di Roma riapre il dibattito sulla responsabilità degli ISP nei casi di violazione del diritto d'autore" [PFA vs Yahoo: the decision of the Court of Rome reopens the debate on ISP liability in cases of violation of copyright], *Key4biz*, July 14 2011, http://www.key4biz.it/News/2011/07/14/Policy/About_Elly_yahoo_pfa_film_internet_service_provider_isp_diritto_d_autore_204511.html.

³⁰ Mauro Vecchio, "Google completa senza pensare", *Punto Informatico*, March 20, 2013, <http://punto-informatico.it/3754530/PI/News/google-completa-senza-pensare.aspx>.

³¹ "Italian Supreme Court: the right to oblivion to be protected with newspaper archive updates," *Law & the Internet (blog)*, April 23, 2012, <http://www.blogstudiolegalefinocchiario.com/wordpress/?p=360>. See also, Morena Ragone, "Il diritto alla memoria, tra privacy e oblio" [The right to memory, including privacy and oblivion], *LeggiOggi.it*, April 10, 2012, <http://www.leggioggi.it/2012/04/10/il-diritto-alla-memoria-tra-privacy-e-oblio/>.

³² Mauro Vecchio, "Mediaset, sequestro per lo streaming pallonaro" [Mediaset, seizure for soccer streaming], January 16, 2013, <http://punto-informatico.it/3691462/PI/News/mediaset-sequestro-streaming-pallonaro.aspx>.

³³ Guido Scorza, "Mediaset e Google: tra copyright e libertà" [Mediaset and Google: between copyright and freedom], *Punto Informatico*, December 16, 2011, <http://punto-informatico.it/3368416/PI/Commenti/mediaset-google-copyright-liberta.aspx>; <http://www.telecompaper.com/news/google-not-responsible-for-streaming-football-from-mediaset>; "Court of Rome: not to precautionary controls of online content by intermediaries," *Law & the Internet (blog)*, January 17, 2012, <http://www.blogstudiolegalefinocchiario.com/wordpress/?tag=rti>.

³⁴ Mauro Vecchio "Mediaset, sequestro per lo streaming pallonaro", January 16, 2013, <http://punto-informatico.it/3691462/PI/News/mediaset-sequestro-streaming-pallonaro.aspx>.

While intermediaries are not liable to prosecution for hosting content, they must remove illegal content upon receiving notice from a judicial authority in line with provisions laid out in the EU E-Commerce Directive.³⁵ For example, Google received 27 requests in the period of July to December 2012, two more with respect to the previous six-month reporting period.³⁶ The vast majority of all court orders involved material that was broadly interpreted as defamatory.

Decisions related to the blocking of illegal websites are made by the Postal and Communications Police,³⁷ which falls under the Ministry of Interior, and intervenes in areas of cyberterrorism, copyright, hacking, protection of critical infrastructure, online banking, forensics, and online gambling.³⁸ Sites can also be shut down and their data seized by the Financial Police (GdF), a division of the Ministry of Economy and Finance, which combats cybercrime, fraud, and a range of other illegal activities.³⁹ Beginning in December 2010, AGCOM has continually sought new powers to conduct administrative filtering in a bid to combat online copyright infringement.⁴⁰ Under the proposal, the agency could block websites hosted outside of the country and remove content on Italian servers through an internal five-day review without any degree of judicial oversight. The move was criticized by the European Parliament and by internet freedom advocates.⁴¹ As of late April 2013, AGCOM stated that it had still not yet taken a final decision on the matter, which has been delayed several times.⁴²

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. However, coverage in traditional media does affect what is published on news websites, giving the outlets controlled by former Prime Minister Berlusconi an indirect influence over online reporting.

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

³⁵ Martine Wubben, “Court of Appeal Rome: no monitoring requirement for hosting provider Yahoo,” *Future of Copyright*, July 16, 2011, <http://www.futureofcopyright.com/home/blog-post/2011/07/16/court-of-appeal-rome-no-monitoring-requirement-for-hosting-provider-yahoo.html>.

³⁶ Google Transparency Report, “Italy,” Google, accessed August 6, 2013, <http://www.google.com/transparencereport/removals/government/IT/>.

³⁷ Polizia postale e delle comunicazioni, <http://www.poliziadistato.it/articolo/23393/>.

³⁸ “Attività ed organizzazione,” Polizia di Stato, accessed August 7, 2013, <http://www.poliziadistato.it/articolo/view/23395/>.

³⁹ Guardia di Finanza, <http://www.gdf.it/GdF/it/Home/index.html>.

⁴⁰ “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>.

⁴¹ “Italian Agency to Review Internet Filtering Project,” Reporters Without Borders, July 7, 2011, http://en.rsf.org/italy-italian-agency-poised-to-assume-05-07-2011_40595.html; “Internet Blocking Stopped in Italy (for Now),” *Digital Civil Rights in Europe*, July 13, 2011, <http://www.edri.org/edriagram/number9.14/internet-blocking-agcom-italy>.

⁴² “Italian regulator says still no decision on online copyright,” *Telecompaper*, April 24, 2013, <http://www.telecompaper.com/news/italian-regulator-says-still-no-decision-on-online-copyright--939469>.

national journalists' association.⁴³ The law led to many users, including those conducting scholarly research, to collaborate with registered journalists in order to protect themselves from legal action. However, in a September 2012 ruling by the Court of Cassation, it was clarified that blogs cannot be considered clandestine press.⁴⁴ The decision came after an appeal from the Sicilian blogger Carlo Ruta, who had been ordered to pay a fine of €150 (\$200) for defamatory remarks made on his blog "accadeinsicilia.net" back in 2008. In any case, these rules were not generally applied to bloggers and, in practice, millions of blogs are published in Italy without repercussions.

Most policymakers, popular journalists, and figures in the entertainment industry 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. However, at times, some content on social-networking platforms has been aggressive enough to potentially incite violence.⁴⁵ Although blogging is very popular in Italy, television remains by far the leading medium for obtaining news.

The widespread use of social media and the web in the February 2013 general elections represented a major shift in political strategy. Online tools were central, not only as a communication medium, but also as a measure of political allegiances through Facebook "likes" and Twitter hashtags related to the many political players.⁴⁶ Indeed, even Mario Monti seemed to utilize new media more readily than Silvio Berlusconi, who preferred to rely on his traditional outlets to convey his political message. Furthermore, the Five Star Movement (M5S), co-founded by comedian Beppe Grillo, based its political campaign almost exclusively on the internet and declined to take part in political talk shows or television interviews.⁴⁷

After taking office, the Five Star Movement has used the web both to strengthen its political base as well as to conduct surveys. For example, the party used blogs and social media to select its candidate to run in Italy's presidential elections,⁴⁸ to vote on the expulsion of members who did not conform to the movement's rules and internal decisions, and to provide an outlet for statements by Grillo who, due to M5S rules, cannot stand for public office due to past criminal convictions.⁴⁹

⁴³ 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.

⁴⁴ Mauro Vecchio, "Cassazione: il giornale telematico non è stampa" [Supreme Court: the electronic journal is not a press], September 17, 2012, <http://punto-informatico.it/3606488/PI/News/cassazione-giornale-telematico-non-stampa.aspx>.

⁴⁵ For example, in 2009, fan pages for imprisoned Mafia bosses emerged, as did a Facebook group called "Let's Kill Berlusconi." See Eric Sylvers, "Facebook to Monitor Berlusconi Content," The New York Times, December 15, 2009, <http://www.nytimes.com/2009/12/16/technology/internet/16iht-face.html>.

⁴⁶ 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>.

⁴⁷ Stephan Faris and Marina di Bibbona, "Italy's Beppe Grillo: Meet the Rogue Comedian Turned Kingmaker," Time, March 7, 2013, <http://world.time.com/2013/03/07/italys-beppe-grillo-meet-the-rogue-comedian-turned-kingmaker/>.

⁴⁸ 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.

⁴⁹ See Grillo's blog at <http://www.beppegrillo.it/>. Grillo was criticized even on his blog for the advertisements revenues from his blog.

VIOLATIONS OF USER RIGHTS

As a signatory to the European Convention on Human Rights, freedoms of speech and the press, as well as the confidentiality of correspondence, are constitutionally guaranteed in Italy.⁵⁰ Nonetheless, the courts often issue conflicting decisions when passing judgments on similar cases related to internet freedom, particularly when related to intermediary liability. For this reason, online freedom of expression advocates have focused their efforts on proposing legal amendments to improve protections and prevent censorship rather than engaging in public interest litigation.⁵¹ Though criminal 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.

Defamation is a criminal offense in Italy, punishable by prison terms ranging from six months to three years and a minimum fine of €516 (\$670). In cases of libel through the press, television, or other public means, there is no prescribed maximum fine.⁵² Public debate on libel was renewed during the high profile case of Alessandro Sallusti, director of *Il Giornale* newspaper, which has dragged on for years.⁵³ Many observers have criticized the libel law that can still send a journalist to prison. Worryingly, when the parliament took up proposals for a bill that was meant to decriminalize libel for journalists, the final draft actually led to a worsening of penalties.⁵⁴ Discussions were left unfinished after the fall of the Monti government. Nevertheless, the lack of legal clarity continues to threaten freedom of expression for online journalists.

Furthermore, there are growing concerns over the enforcement of defamation law on Facebook. For example, a young woman who posted negative and racist remarks about her former employer on the social network was found guilty of libel and made to pay a fine of €1,000 (\$1,330) by a court in Livorno.⁵⁵ In that case, citing Article 595 of the penal code, the court found that a Facebook post could be interpreted as an “other means of publicity.” Given this, the judge ruled that a more aggravated form of defamation had occurred—defamation by means of the press—and was able to order the defendant to pay a higher sum than in a standard defamation case unrelated to the press.

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

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

⁵² 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>.

⁵³ Sallusti was found guilty of libel over an anonymous op-ed that had appeared in 2007 in the newspaper *Liberio*, of which he was director at the time. Following a number of legal mishaps in the appeal, he was given a prison sentence of more than one year due to the Italian law on libel. The sentence was later confirmed by a higher court until, in 2012, the sentence was converted into a house arrest. For more information in Italian, please see <http://www.ilgiornale.it/speciali/caso-sallusti.html>.

⁵⁴ Ordine dei Giornalisti “Diffamazione a mezzo stampa”, December 7, 2012, <http://www.odg.it/content/diffamazione-mezzo-stampa> and Francesco Maitoni “Ddl Salva Sallusti, il colpo di coda della democrazia di plastica”, *LeggiOggi.it*, <http://www.leggioggi.it/2012/10/25/legge-bavaglio-il-colpo-di-coda-della-democrazia-di-plastica/>

⁵⁵ Adriana Apicella, “Diffamazione a mezzo stampa, è reato anche su Facebook” [Defamation by medium of the press, also on 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, Mauro Vecchio, “Diffamazione, stampa e social pari sono?” [Defamation, are press and social equal?], *Punto Informativo*, January 15, 2013, <http://punto-informativo.it/3690966/PI/News/diffamazione-stampa-social-pari-sono.aspx>.

The ruling could open the door to similar judgments, in which victims of defamation over social networks could seek high amounts of compensation.

The monitoring of personal communications is permissible only if a judicial warrant has been issued, and widespread technical surveillance is not a concern in Italy. Nevertheless, the country's authorities are known for engaging in extensive wiretapping.⁵⁶ According to 2006 figures from the Max Planck Institute, a German think-tank, Italy led the world in terms of wiretaps, with 76 intercepts per 100,000 people.⁵⁷ Data from 2010 shows that the authorities bug the communication lines of roughly one in every 470 adults.⁵⁸ Wiretapping is generally restricted to cases involving ongoing legal proceedings and terrorism investigations. 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.⁵⁹

The past year witnessed the failure of a draft wiretap bill ("DDL intercettazioni") that aimed to address concerns over the right to privacy, particularly as information obtained from wiretaps is regularly leaked to the media. The bill, promoted by Berlusconi's PdL over the past few years, has been criticized by the Organization for Security and Co-operation in Europe Representative on Freedom of the Media and the United Nations Special Rapporteur on Freedom of Expression.⁶⁰ Indeed, several provisions appeared to threaten media freedom and the right of the public to access independent information. These included high fines and jail sentences for filming an individual without permission and obligations for websites and blogs to issue corrections within 48 hours of receiving notice of an alleged error.⁶¹ The bill was subsequently put on hold in late 2010 but revived in October 2011 after incriminating and embarrassing wiretaps of Berlusconi's conversations related to a sex scandal were published in newspaper and online.⁶² Although not a priority for the Monti government, the issue of wiretapping remains on the agenda of current Prime Minister Enrico Letta due to continued pressure from Berlusconi's PdL.⁶³

⁵⁶ See for example Cristina Bassi, "Intercettazioni, quante sono e quanto costano" [Interceptions, How Many and How Much They Cost], *Sky TG24*, June 13, 2010,

http://tg24.sky.it/tg24/cronaca/2010/06/12/intercettazioni_quante_sono_e_quanto_costano.html.

⁵⁷ Duncan Kennedy, "Italian bill to limit wiretaps draws fire," BBC, June 11, 2010, <http://www.bbc.co.uk/news/10279312> and "Intercettazioni: dati ufficiali" [Interceptions: official data], *Il Chiodo* (blog), June 19, 2010,

<http://ilchiodo.blogspot.it/2010/06/intercettazioni-dati-ufficiali.html>.

⁵⁸ Doug Longhini, "We'll be listening: Amanda Knox case reveals extent of Italian wiretapping," CBS News, November 23, 2011, http://www.cbsnews.com/8301-504083_162-57329774-504083/well-be-listening-amanda-knox-case-reveals-extent-of-italian-wiretapping/.

⁵⁹ Privacy International, "Italy: Privacy Profile," in *European Privacy and Human Rights 2010* (London: Privacy International, 2010), <https://www.privacyinternational.org/article/italy-privacy-profile>.

⁶⁰ "OSCE media freedom representative urges Italy to amend bill on electronic surveillance," OSCE Representative on Freedom of the Media, June 15, 2010, <http://www.osce.org/fom/69428>.

⁶¹ Nadine de Ninno, "Italian Wikipedia Shuts Down Prompted by New Wiretap Act," *International Business Times*, October 4, 2011, <http://www.ibtimes.com/italian-wikipedia-shuts-down-prompted-new-wiretap-act-321225>

⁶² Tom Kington, "Berlusconi wiretaps reveal suspected pimp had visa to join him in China," *The Guardian*, September 18, 2011, <http://www.guardian.co.uk/world/2011/sep/18/berlusconi-pimp-china-visa-wiretaps>; Jeffery Kofman, "Silvio Berlusconi Wiretaps: 'Only Prime Minister in His Spare Time,'" *ABC News*, September 18, 2011,

<http://abcnews.go.com/International/silvio-berlusconi-wiretaps-prime-minister-spare-time/story?id=14546921>; John Hooper, "Silvio Berlusconi faces fresh claims over parties, prostitutes and pay-outs," *The Guardian*, September 15, 2011,

<http://www.guardian.co.uk/world/2011/sep/15/silvio-berlusconi-claims-prostitutes-wiretap>.

⁶³ "Intercettazioni, ritorna il ddl Alfano: è polemica" [Interceptions, the Alfano draft law returns], *Tgcom24*, May 15, 2013, <http://www.tgcom24.mediaset.it/politica/articoli/1095305/intercettazioni-ritorna-il-ddl-alfano-e-polemica.shtml>.

In March 2008, Parliament approved a law (No. 48 of 2008) that ratified the Council of Europe's Convention on Cybercrime, which established the period in which internet-related communication data should be retained.⁶⁴ This matter was further refined with the inclusion in the Italian legislative system of the 2006 EU Data Retention Directive two months later.⁶⁵ 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 e-mail activity.⁶⁶ 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 in the course 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.

As Italy moves towards greater e-governance, some concerns have been raised over the protection of user data in the hands of public agencies. "Certified Electronic Mail" (PEC), an initiative of the national postal service *Poste Italiane*, was named the public agency most damaging to individual privacy at the annual "Big Brother Awards" 2011. The shaming "prize" was given to PEC 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 advertisement companies.⁶⁷ Nevertheless, in November 2011, it became mandatory for all businesses to use the PEC service in their communications with the public administration to cut costs and reduce paperwork.⁶⁸

Reports of extrajudicial intimidation or physical violence in response to online activity are rare, although individuals who expose the activities of organized crime may be at risk of reprisals in certain areas of the country. According to intelligence reports, there are increasing fears that the country's economic crisis may push extremist groups to adopt cybercrimes as a form of protest or terrorism.⁶⁹ A special branch within the Postal and Communications Police, the National Center for Infrastructure Protection (CNAIPIC), is tasked with the protection of the country's critical infrastructure.⁷⁰ More common is the defacement or launching of denial-of-service (DoS) attacks against banks, business websites, and government institutions. In October 2012, Italian members of

⁶⁴ 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>. See also Andrea Monti, "Data Retention in Italy. The State of the Art," Digital Thought (blog), May 30, 2008, <http://blog.andreamonti.eu/?p=74>.

⁶⁵ Legislative Decree No. 109, May 30, 2008.

⁶⁶ Privacy International, "Italy: Privacy Profile."

⁶⁷ Cristina Sciannamblo "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>.

⁶⁸ "Ulteriore Deroga fino a fine giugno 2012 per la casella PEC aziendale," IlSoftware.it, accessed July 24, 2012, <http://www.inode.it/2012/05/ulteriore-deroga-fino-fine-giugno-2012-la-casella-pec-aziendale/>.

⁶⁹ 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.

⁷⁰ Critical infrastructure includes telecommunications networks, energy and water distribution systems, banking networks, and transportation and emergency services.

the hacktivist group Anonymous leaked 1.35 GB of data it had received in an attack on the Italian State Police. The information included details of existing wiretaps, interception techniques, and personal information on police officers.⁷¹ In February 2013, the websites of the police of the Campania region, the Courthouse of Milan, and the Department of Penitentiary Administration were hacked. The homepages of those sites were replaced with an image of the Anonymous emblem and a declaration of a “digital revolution” of young Italians against “government delinquents.”⁷² Nevertheless, Italy does not rank highly on the list of countries identified as points of origin for cybercrimes.⁷³

⁷¹ Mohit Kumar, “Anonymous Hackers leaks 1.35GB Italian State Police Data,” The Hacker News, October 25, 2012, <http://thehackernews.com/2012/10/anonymous-hackers-leaks-135gb-italian.html>.

⁷² “Gli hacker colpiscono ancora: attaccato sito della polizia campana” Corriere della Sera, February 17, 2013, <http://www.corriere.it/cronache/13-febbraio-17/polizia-hacker-anonymous-1727d948-790b-11e2-a28b-a2fa92ae99be.shtml>.

⁷³ “Italy leader in mobile attacks,” Global Cyber Security Center (blog), accessed August 21, 2012, <http://www.gcsec.org/blog/italy-leader-mobile-attacks>. It should be noted, nonetheless, that the Global Cyber Security Center has been established by Poste Italiane. As active stakeholder in the area of cyber security, the agency may have a vested interest in presenting a picture of Italy’s cyber security that is not reassuring by stressing weaknesses rather strengths of the Italian information infrastructure system. See, C. Giustozzi, “Italia patria del malware?” Punto Informatico, May 12, 2012 <http://punto-informatico.it/3513450/PI/Commenti/italia-patria-del-malware.aspx>. The “Symantec Threat report 2011” shows Italy as highly infected only as far as bots are concerned, http://www.symantec.com/content/en/us/enterprise/other_resources/b-istr_main_report_2011_21239364.en-us.pdf (published April 2012), and the independent report by HostExploit shows Italy scoring well on a “badness” scale (Germany and the Netherlands, for example get a worse score), <http://hostexploit.com/downloads/viewdownload/7-public-reports/39-global-security-report-april-2012.html>). These results are also graphically visible in here: <http://globalsecuritymap.com/#nl>.