



“Awareness raising on children’s privacy protection”

The legal protection of minors over the Internet: *2 cases of Italian sentences*

Fare clic per modificare lo stile del sottotitolo dello schema

Giuseppe Cricenti

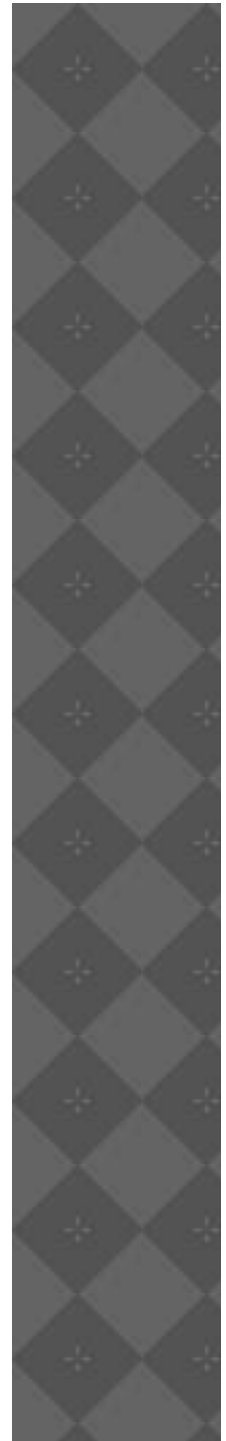
Judge, 2 Sez. Civile Tribunale di Roma



*How is conceived the **responsibility**
of the **providers** or of those that
allow or permit the publication of
material on the Web?*



**THE CASE OF
TWO ITALIAN SENTENCES**



1. Sentence of the Criminal Court of Milan - 22nd of February 2010

CASE: through Google, it was possible to freely access to a video of a bullying episode against a child affected by the Down syndrome

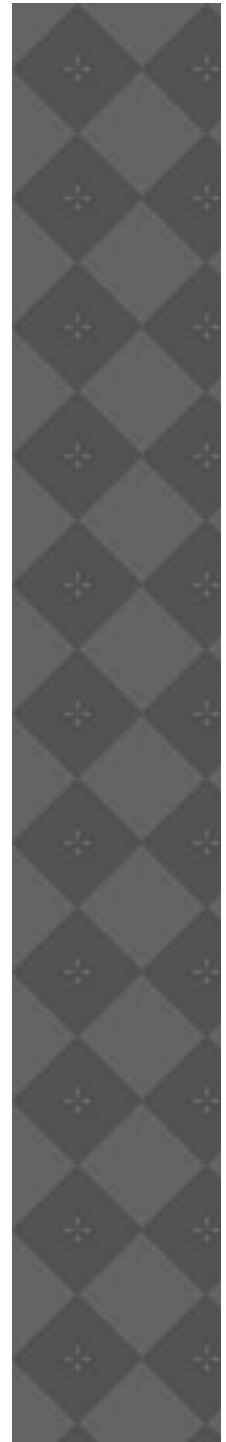
COURT TASK: to establish the responsibility of Google in the dissemination of the video, based on the fact that it had not previously checked the contents published by third parties.

The sentence excluded the penal responsibility of the provider with the argument that *it is very difficult for those who provide Internet access services and contents to control everything that is upload to the Web and that can be find through the search engine.*



Directive 200/31/CE:
the provider is considered responsible for any damage or tampering of files uploaded on the Internet by third parties.

Art. 17 of Legislative Decree N. 70 of 2003:
there is no general obligation for the provider to monitor the contents uploaded on the Internet through its server.



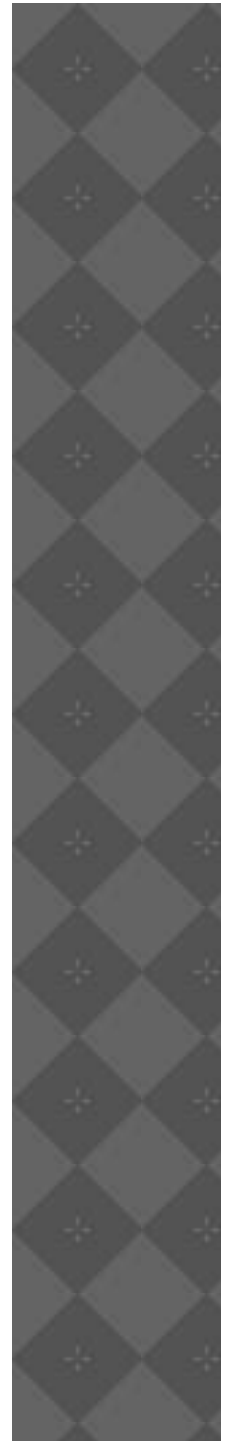
In the U.S.A. ...

Communication Decency Act (CDA):

"no provider or user of an interactive electronic service will be treated as publisher of information provided by another content provider"

“Good Samaritan Blocking and Screening of Offensive Material”:

providers are not responsible for potential damages caused by preventing, in good faith, the access to materials deemed potentially detrimental to the rights of others, regardless if the materials in question are given a specific constitutional protection.

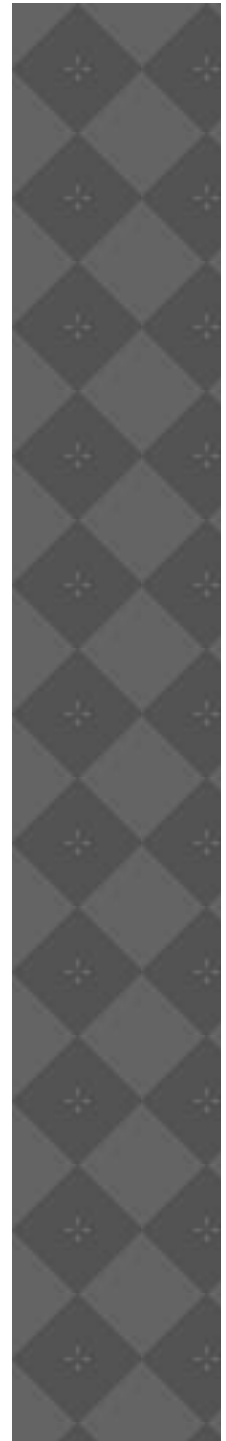


DOCTRINAL DOUBTS

1. General inability to equalize, to compensatory purposes, the provider of a rethead service to a publisher came up at the first jurisprudential applications
2. The Act had been issued to combat the minors' access to pornographic sites.



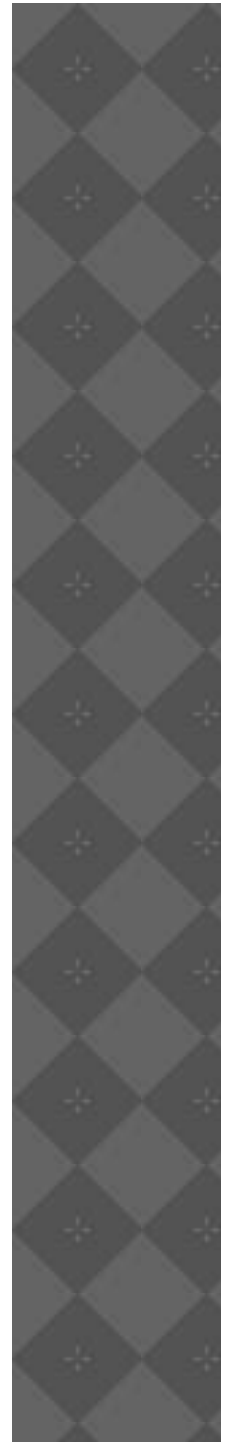
The U.S. Supreme Court declared the partial unconstitutionality of the CDA for its infringement of the First Amendment to the U.S. Constitution.



1998 - Digital Millennium Copyright Act

Providers cannot be considered responsible if:

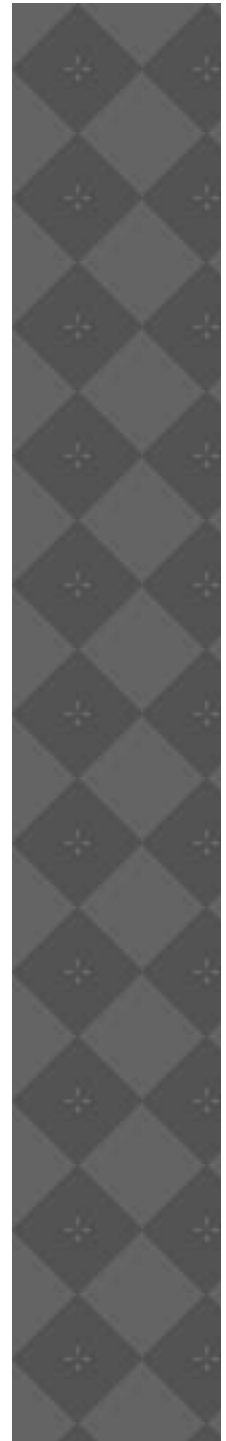
- 1) the information is disseminated by third parties;
- 2) the transmission, connection or storage of information belongs to a technical process and the operator has not selected the content to be disseminated;
- 3) the intermediary has not selected the recipients;
- 4) the content is not recorded and not maintained for a period of time exceeding the one strictly necessary to achieve the technical purposes;
- 5) the information is not modified by the intermediary.



The solution adopted through the DMCA essentially exempts providers from any supposition of contributory liability, in case of copyright infringement by Internet users, when their participation to the event that produces a damage to third parties only have **technical character**.



Disincentive for ISPs to use filter programs



2. Decision concerning the television broadcasting of videos taken from the Internet and not fitting with a minors audience (2000)

CASE: the 20:00 edition of RAI 1 newscast aired a five minutes service on the discovery of a criminal organization, operating in Italy and abroad in the field of child abuse, disseminating images and photographs, taken from Internet sites, depicting nude children or adolescents in poses and attitudes, which explicitly and implicitly, alluded to the consummation of acts or conducts of a sexual nature and also with connotations of violence.

AUTHORITY DECISION:

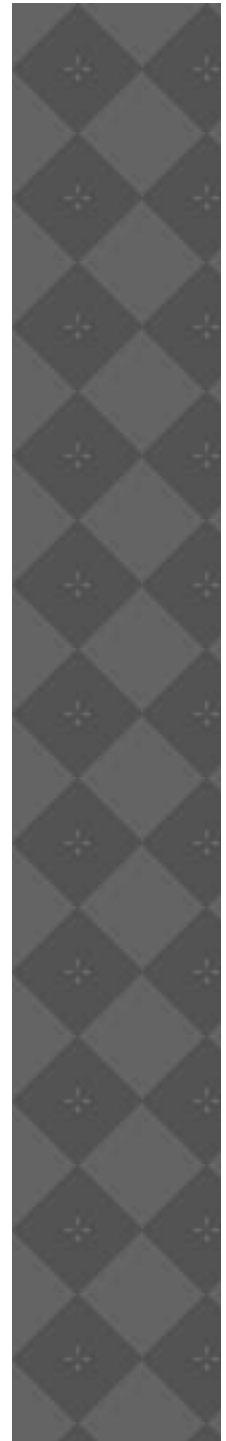
Violation of the **Article 15, Section 10 of the Act of 6 of August 1990, n. 223**, stating that "it is however prohibited the broadcasting of programs that can harm the mental or moral development of minors, which include scenes of free violence or pornography“.

It **sanctioned RAI**, considering prevailing - in the comparison of values, rights and interests involved in this case - the protection of human dignity and therefore of minors, with specific regard to content, terms and circumstances surrounding the broadcasting of the service in question.

RAI invoked the **right to inform citizens**.

The Authority condemned the "pornographic" or "violent" character of the scenes broadcasted and its reflection in the "psychic or moral development of minors".

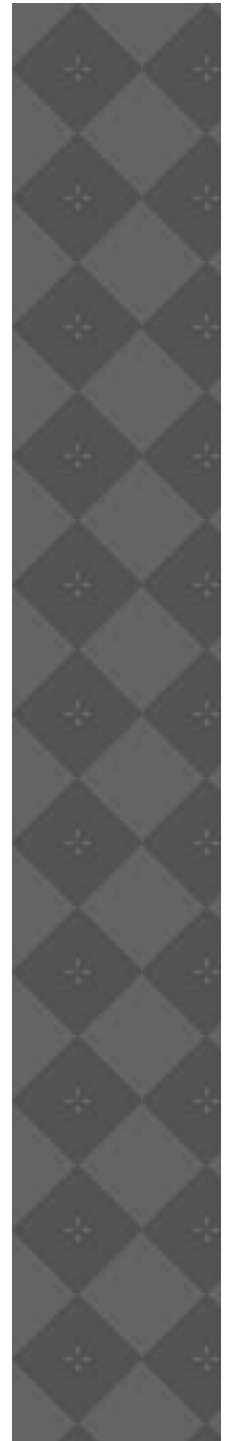
The “**child protection**” stands as a principle and value absolutely prevailing others rights which can also be guaranteed but in this case were recessive.



Protection of minors:

Italian Constitution: "the Republic...protects childhood" (Art. 31, paragraph 2)

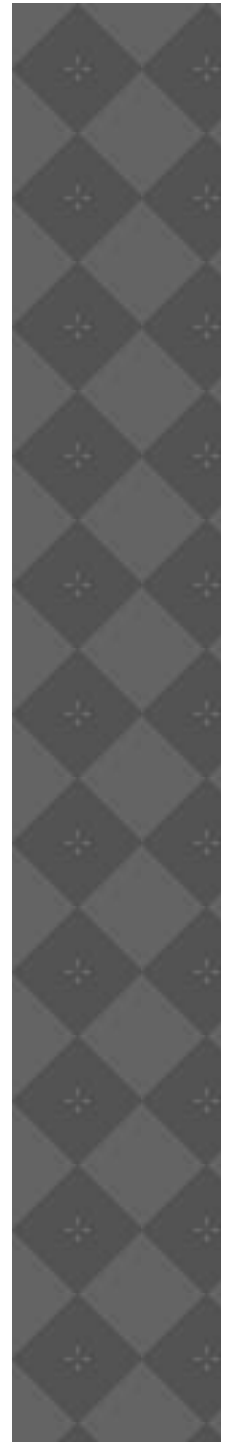
Convention on the Children and Adolescents Rights approved by the United Nations General Assembly on 20th of November 1989 and ratified by Italy on 27th of May 1991, by Law n. 176.



- The news and pictures broadcasted objectively resulted of pornographic and violent character to a point that would certainly disturb the sensitivity of the minors, with adverse effects on their mental and moral development, and even of the adults.
- Absence of specific and targeted warnings and of dedicated and specific precautions
 - Very realistic and explicit language

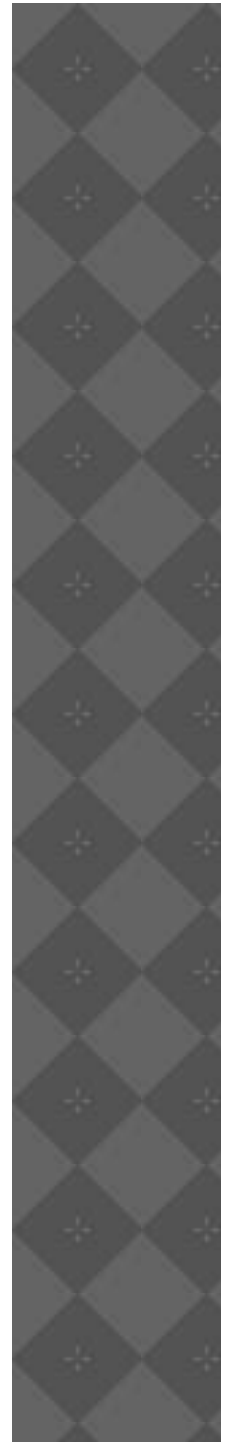
The contents of the service had to be assessed taking into particular account the protection of minors and thus RAI should have avoid the broadcast.

The freedom of the press could still be exercised by giving notice of the fact without transmitting the images.



RAI also argued on its defence that it is its task to **raise awareness** among viewers about issues such as paedophilia.

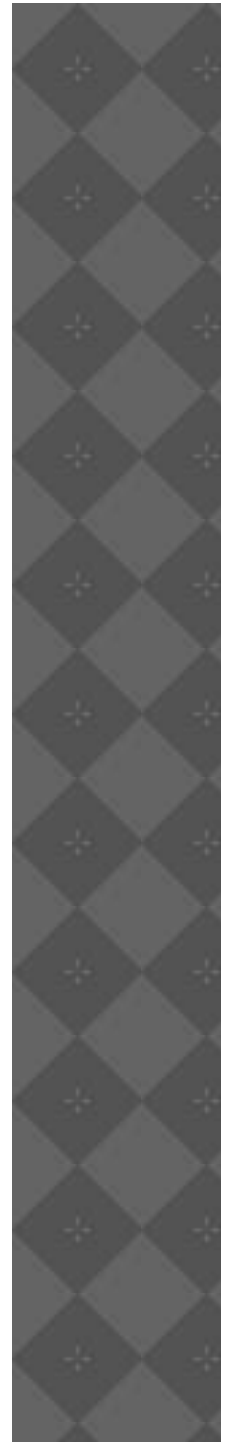
The awareness action, sharable in general terms, cannot disregard from the consideration of its methods of implementation (real or pretended), and this particular case objectively demanded the maximum rigor in the design of the service and the adoption of all the caution measures that the subject required in the interests of recipients.



TV allows different possibilities of control comparing to the Internet.

The law must take note of the **objective impossibility for the providers** to monitor everything that is upload and circulated on the Internet.

National laws are inadequate to regulate a phenomenon that is international. Although the national legislation imposed preventive filters to Internet uploads, it would not be enough to avoid violations in other countries.



The issue is about to use the tools that individual jurisdictions allow.

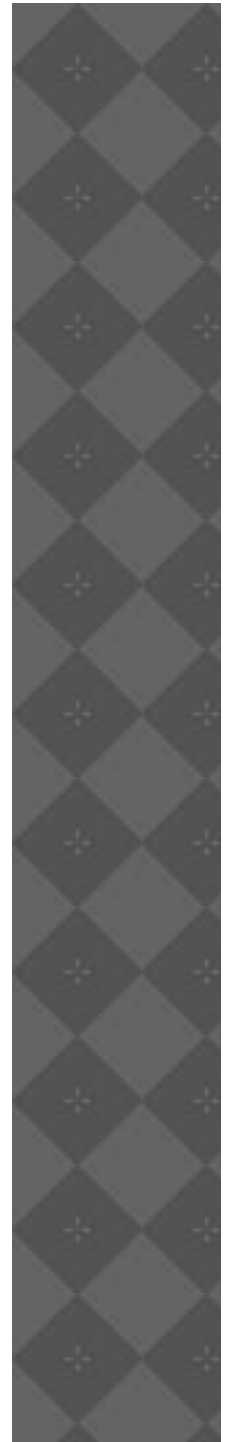
Examples:

Injunction, blamed on the collective action of the associations for the protection of minors.

Referral to **civil responsibility**, which allow to consider as illegal both the conduct of those uploading on the Internet harmful content and the omitted control of the provider.

The guilt of providers could be proved by referring to its **joint liability** with the person who physically uploaded on the Web the harmful material, allocating on the provider the burden of proving that there was no guilty contribution to publication.

The future of child protection on the Internet is in the hands of legislators, who still think on a **local scale** with respect to a phenomenon that, instead, has clearly an **international dimension**.



***Thank you for
your attention!***

