

ITALY

	2011	2012
INTERNET FREEDOM STATUS	Free	Free
Obstacles to Access (0-25)	6	4
Limits on Content (0-35)	8	7
Violations of User Rights (0-40)	12	12
Total (0-100)	26	23

* 0=most free, 100=least free

POPULATION: 61 million
INTERNET PENETRATION 2011: 57 percent
WEB 2.0 APPLICATIONS BLOCKED: No
NOTABLE POLITICAL CENSORSHIP: No
BLOGGERS/ICT USERS ARRESTED: No
PRESS FREEDOM STATUS: Partly Free

INTRODUCTION

Italy's internet penetration rate—which stood at approximately 57 percent at the end of 2011—lags behind many other European 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, and, as in previous years, no bloggers were imprisoned as of mid-2012. In 2011, several decrees that posed a challenge to internet freedom in Italy either expired or were put on hold. In addition, a number of judicial decisions asserted that intermediaries are not liable for the content posted by users. Despite these positive developments, some government efforts to restrict political content were documented, including the shuttering of a well-known blog. Moreover, overbroad interpretations of liability in defamation or intellectual property rights cases resulted in unusual judicial decisions and disproportionate burdens placed on online news providers.

The push to restrict internet freedom in recent years had stemmed in part from the media ownership structure in Italy. Former Prime Minister Silvio Berlusconi owns, directly and indirectly, a large private media conglomerate, and his previous political position also gave him significant influence over the appointment of state television officials and telecommunications regulators. Such financial and editorial dominance over the broadcast media created an incentive for the country's leadership to restrict the free flow of information online, whether for political reasons or to influence the competition for viewers arising from online video. Berlusconi's November 2011 resignation and replacement by

Mario Monti changed these dynamics and appeared to reduce the government's pressure to restrict online communications.

A group of nuclear physicists created Italy's first computer network in 1980, with the intent of connecting all nuclear research institutes in the country. 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.

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 56.8 percent at the end of 2011, an increase from 38 percent in 2006.¹ While Italy's internet penetration rate is higher than the global average, it is lower than the overall rate in Western Europe. The relatively low penetration rate is not due to infrastructural limitations as much as unfamiliarity with the internet among the older generations and a general affinity for mobile phone devices rather than desktop computers.

The main point of internet access is the home, with some 22 million people using home connections at least once a month, as of October 2011.² The workplace is the second most common access point, followed by schools and universities. Less than half of Italy's internet users are female, though women comprise 55 percent of new users.³ Cost is not a significant

¹ 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#>.

² Giancarlo Livraghi, ed., "Dati sull'internet in Italia" [Data on the Internet in Italy], accessed February 20, 2012, <http://www.gandalf.it/dati/dati3.htm>.

³ Ibid.

barrier to access. The price for a broadband connection may range from €20 to €40 (US\$26-52) per month, compared to average monthly per capita income of around US\$2,600.⁴

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.⁵ ADSL broadband connections are available on about 96 percent of Italy's territory.⁶ This is the basic service and it covers the whole territory. However, the faster broadband subscription rate is still relatively low (22 percent), as not all internet subscribers opt for higher speeds.⁷ Meanwhile, fiber-optic cables remain underdeveloped. In 2010, the three large telecommunications operators Fastweb, Wind, and Vodafone Italia, announced plans to invest €2.5 billion (US\$3.3 billion) over a five-year period to connect 15 of Italy's largest cities using fiber-optic cable. Telecom Italia announced a similar plan of its own to invest €9 billion (US\$11.8 billion) in infrastructure. These plans have subsequently been put on hold, however, as Italy faces the most serious financial crisis in its modern history. Nevertheless, in February 2012, the government of Prime Minister Mario Monti launched a "Digital Agenda" initiative, which aims to expand broadband access and e-government efforts.⁸ As of May 2012, few additional details of the program were available.

Mobile phone use is much more widespread than internet access, with the penetration rate reaching 152 percent in 2011.⁹ The majority of subscriptions are prepaid. Telecom Italia

⁴ "Broadband—Italy," Socialtext, accessed March 4, 2011, <https://www.socialtext.net/broadband/index.cgi?italy>; "Italy," Population Reference Bureau, accessed August 21, 2012, <http://www.prb.org/DataFinder/Geography/Data.aspx?loc=453>.

⁵ Lorenzo Pupillo, *Duct and Pole Sharing: An Operator's Perspective* (Rome: Telecom Italia, April 10, 2008), slide 14, <http://www.oecd.org/dataoecd/35/61/40460866.pdf> (site discontinued).

⁶ "Domestic Market," Telecom Italia, November 7, 2011, <http://www.telecomitalia.com/tit/en/about-us/profile/domestic-market.html>.

⁷ "OECD Key ICT indicators, Broadband subscribers per 100 inhabitants in OECD countries," OECD, last updated on June 23, 2011, <http://www.oecd.org/internet/broadbandandtelecom/oecdkeyictindicators.htm>; "OECD Key ICT indicators, Availability of Digital Subscriber Lines (DSL) in OECD countries," OECD, last updated on June 30, 2011; Including portable and hand-held devices; "OECD Key ICT indicators, Households with access to a home computer," OECD, last updated on November 9, 2011; International Telecommunication Union (ITU), *Measuring the Information Society 2011* (Geneva: ITU, 2011), p.152; "OECD Key ITC indicators, Availability of Digital Subscriber Lines (DSL) in OECD countries," OECD, last updated on June 30, 2011, http://www.oecd.org/document/23/0,3746,en_2649_34449_33987543_1_1_1_1,00.html; Including portable and hand-held devices; OECD Key ITC indicators "Households with access to a home computer," OECD, last updated on November 9, 2011; ITU, *Measuring the Information Society 2011*, p.152.

⁸ Riccardo Luna, "Migliaia di aziende al via I giovani imparino a creare lavoro" [Thousands of companies launch and young people learn to create jobs], *La Repubblica*, February 6, 2012, http://www.repubblica.it/politica/2012/02/06/news/profumo_piano_digitale-29408048/; "Profumo: 'Priorità Internet per tutti'" [Profumo: Priority internet for all], *Corriere delle Comunicazioni*, February 6, 2012, http://www.corrierecomunicazioni.it/pa-digitale/13686_profumo-priorita-internet-per-tutti.htm; Andrea Di Maio, "Italy and its Digital Agenda: New Government, Old Risks," *Gartner Blog*, February 9, 2012, http://blogs.gartner.com/andrea_dimaio/2012/02/09/italy-and-its-digital-agenda-new-government-old-risks/

⁹ International Telecommunication Union (ITU), "Mobile-cellular telephone subscriptions," 2011, accessed July 13, 2012, <http://www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx#>.

Mobile (TIM), Vodafone, Wind, and 3 Italia are the major carriers, and all of them operate third-generation (3G) networks. Access to the 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 a positive development, the year 2011 witnessed the final demise of the Pisano decree, a regulation requiring businesses to obtain a license from the police in order to offer WiFi access to customers. The decree also required users to produce identification documents to access WiFi in public places and for operators to preserve records of internet use. The measures were instituted for security reasons in the wake of terrorist bombings in London in 2005 and were renewed annually over the next several years. They were widely viewed as having stunted the spread of WiFi in Italy, as many businesses chose not to offer such services given the added nuisance and cost involved in complying with the decree. In November 2010, the government announced that it would abolish the decree and remove restrictions on public access to WiFi starting in January 2011. In practice, it was only in December 2011 under the new Monti government, that the Pisano decree was finally allowed to expire.¹¹

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, 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.¹² Although Berlusconi resigned from his position in November 2011, concerns remained that his significant economic and political influence could still effect government decisions related to audio-visual broadcasts, including the allocation of digital television frequencies.

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 with data

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

¹¹ "Decreto- Legge 29 dicembre 2011, n. 216," *Gazzetta Ufficiale*, December 29, 2011, www.gazzettaufficiale.biz/atti/2011/20110302/011G0260.htm.

¹² 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>.

protection laws, and “banning or blocking processing operations that are liable to cause serious harm to individuals.”¹³ It is generally viewed as professional and fair in carrying out its duties.

LIMITS ON CONTENT

The Italian authorities engage in some blocking of internet sites, though this does not involve restrictions on politically-oriented content for the most part. Italians have access to the websites of a wide range of domestic and international news sources and human rights groups. In a positive development, throughout 2011 and early-2012, several court decisions affirmed that intermediaries are not liable for the content posted by users, though in Italy’s civil-law system, some judges occasionally still issued rulings imposing responsibilities on intermediaries to regulate user-generated content. At the same time, at least one blog dealing with a sensitive criminal trial was shut down and, as in previous years, the government considered several proposals that raised alarm bells for free expression advocates, though after local and international outcry, these were dropped. The social-networking site Facebook, the Twitter microblogging service, and international blog-hosting sites are all freely available.

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.¹⁴ 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.¹⁵ 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 circumvention tools. ISPs also offer subscribers “family internet” packages that block access to adult pornography and sites with violent content, in exchange for a small premium.

¹³ “The Italian Data Protection Authority: Who We Are,” Data Protection Authority, November 17, 2009, <http://www.garanteprivacy.it/garante/doc.jsp?ID=1669109>.

¹⁴ The blacklist is available (in Italian) at <http://www.aams.gov.it/site.php?id=2484>.

¹⁵ “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/>.

In 2011, two controversies arose surrounding the regulation of copyrighted content. In July, AGCOM was considering a resolution that would give it the power to block websites and remove content upon review by an internal panel but without prior judicial approval.¹⁶ Following domestic and international opposition to the plan, AGCOM voted to review the proposed resolution,¹⁷ and a decision is expected by the summer of 2012. Also in July 2011, the Guardia di Finanza (GdF, the police entity responsible for cybercrime) ordered the blocking of access to the website Proxyitalia.com, a general proxy site that among other websites, enabled access to Btjunkie, a torrent search engine. The GdF justified the block by stating that the domain had been created after magistrates had ordered Btjunkie blocked in April 2011 and had censured two ISPs for failing to stop users from accessing it.¹⁸ As of May 2012, the website was still blocked.¹⁹

In March 2012, AGCOM also ordered the block of an online fashion retailer website following complaints by customers who claimed that the website included content that could mislead consumers about the availability of certain products. Such an executive decision was quite controversial as, until then, provisional orders against third parties had always been given by the ordinary courts. The case remains open as of mid-2012.²⁰

Italian authorities have also requested the removal of specific content. According to Google, the government issued 65 requests for content removal between January and December 2011, including 20 without a court order. Google complied with 74 percent of the requests. In one notable example, Google reported receiving a request from the Central Police in Italy to “remove a YouTube video that satirized Prime Minister Silvio Berlusconi’s lifestyle,” but the technology firm refused.²¹ In an indication of the sensitivity to content broadly

¹⁶ “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>; Francesca Biggio, “Freedom of the Web at Risk in Italy, Copyright to Hide Censorship,” Toonari Post, July 2, 2011, <http://www.toonari.com/2011/07/world-news/freedom-of-the-web-at-risk-in-italy-copyright-to-hide-censorship/>.

¹⁷ “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>.

¹⁸ “Diritto d’autore e caso Btjunkie: oscurato anche Proxyitalia. Gli Isp favoriscono la pirateria?” [Copyright and case Btjunkie: Proxyitalia also obscured. Do ISPs promote piracy?], Key4biz, July 15 2011, http://www.key4biz.it/News/2011/07/15/Policy/proxyitalia_AIIP_fastweb_ngi_Btjunkie_torrent_diritto_d_autore_interne_t_provider_Enzo_Mazza_204544.html.

¹⁹ See, <http://proxyitalia.appspot.com/btjunkie.org>; The Guardia di Finanza at times displays excessive zeal in seizing web sites, because in addition to blocking the Btjunkie, it also blocked “two innocent websites, italianstylewebsite.net and freeplayclub.org. See, “Italian Police blocks sites that had banners to alleged illegal websites,” Digital Civil Rights in Europe, November 30, 2011, <http://www.edri.org/edriagram/number9.23/italian-police-blocks-legal-websites>.

²⁰ “Italy: Problematic Internet blocking decision against fraudulent website,” Digital Rights Europe, March 28, 2012, <http://www.edri.org/edriagram/number10.6/italy-internet-blocking-case>.

²¹ Google, “Italy,” Google Transparency Report, accessed August 21, 2012, <http://www.google.com/transparencyreport/removals/government/IT/?p=2011-12>.

interpreted as defamatory, nearly half of the requests (32 in total) involved such materials. One incident that drew widespread criticism occurred in May 2011 when, per a judicial order, Google shut down the high-profile blog of freelance journalist Frank Sfarzo, a move that press freedom advocates said was inappropriate and disproportionate.²² Sfarzo's blog had closely tracked developments in the trial of Amanda Knox for the 2007 murder of British exchange student Meredith Kercher and was highly critical of the prosecution's handling of the case. The lead prosecutor filed a defamation case against Sfarzo, which led to the shuttering of his blog. Sfarzo responded by creating a mirror blog, which remained available as of May 2012.²³

In 2009 and 2010, several judicial decisions appeared to hold intermediaries liable for content posted by users, worrying free expression advocates and technology firms.²⁴ However, since early 2011, other decisions have ultimately asserted that content hosts are not responsible for prescreening content but only for removing it upon receiving notice from a judicial authority. Several of the decisions were based on the European eCommerce Directive that takes such an approach.²⁵ In July 2011, a Rome court specializing in intellectual property overturned an earlier decision that held Yahoo liable for not removing all of the links from its search results that allowed users to access illegal copies of the Iranian film, "About Elly."²⁶ The judge found that, based on existing jurisprudence, service providers could not be required to censor search results.²⁷

In another decision in December 2011, a Rome court ruled that web platforms were not in breach of the law if users streamed copyrighted materials, so long as they removed it upon being notified. The decision was in response to a complaint by RTI, a subsidiary of the

²² Steve Shay, "Google shuts down site run by Italian blogger critical of Amanda Knox prosecutor Mignini," West Seattle Herald, May 11, 2011, <http://www.westseattleherald.com/2011/05/11/news/google-shuts-down-site-run-italian-blogger-critic>; "Italian prosecutor files defamation lawsuit, shutter blog," Committee to Protect Journalists, May 11, 2011, <http://cpj.org/2011/05/italian-prosecutor-files-defamation-lawsuit-shutte.php>.

²³ Perugia Shock (blog), accessed August 21, 2012, <http://perugiashock.com/>

²⁴ See for example, a February 2010 decision in a case widely referred to as the "Vivi Down" case. A judge sentenced Google executives to jail sentences in abstentia for having allowed circulation of 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.

²⁵ 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>.

²⁶ 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.

²⁷ "'About Elly'—Yahoo! Appea granted," Law & the Internet (blog), July 27, 2011, <http://www.blogstudiolegalefinocchiaro.com/wordpress/?tag=about-elly>; Martine Wubben, "Court of Appeal Rome: no monitoring requirement for hosting provider Yahoo."

Berlusconi-owned Mediaset, against Google after users on the Blogger platform streamed Italian football matches from Mediaset's TV channels. RTI sought to impose the responsibility on Google to prevent users from doing so in the future. The court rejected RTI's argument, stating that to oblige providers to prescreen user content would be inconsistent with European Union rules and that, even if it were technologically feasible, it would be a violation of freedom of expression.²⁸ That same month, the Supreme Court said 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, and overturned a lower courts' guilty verdict.²⁹ Similarly, previously introduced bills that would require websites to engage in pre-publication censorship remained on hold as of early 2012, after facing public criticism.

Nevertheless, in 2011 and early 2012, cases of defamation have been brought against online content providers and intermediaries that have led to the blocking and/or filtering of ICT content. For example, in April 2011, an Italian businessman successfully sued Google for defamation in a Milan court because the autocomplete feature of the search engine had suggested terms like "fraud" and "conman" to the plaintiff's name when a search of his name was launched.³⁰ While Google argued that as a hosting provider, it was not liable for the content produced on its search engine, the Italian court maintained that Google was still responsible for producing the autocomplete suggestions, reasoning that not all users are quite capable or skilled enough to distinguish between what is a suggestion and what is an attribute to the search item.³¹ In addition to a fine of €3,800 (US\$5,500), the court ordered Google to filter the offending search results.

Similarly, in early February 2012, a court in Belluno found Tizziano Dal Farra, the webmaster of the disaster information site Vajont.info, guilty of defamation, leading to the website's seizure and blocking. The website's allegedly defamatory content concerned the 1963 Vajont dam disaster and the political cover-ups and court cases that had ensued, which parliamentarian Maurizio Paniz (the plaintiff) found to be libelous. In its guilty verdict

²⁸ 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.blogstudiodilegalefinocchiaro.com/wordpress/?tag=rti>.

²⁹ "Italian Supreme Court: web magazines are not to be held responsible for readers' comments," *Law & the Internet* (blog), December 14, 2011, <http://www.blogstudiodilegalefinocchiaro.com/wordpress/?p=279>.

³⁰ "Google Loses Defamation Case in Italy," *Legalzoom* (blog), accessed August 21, 2012, <http://blog.legalzoom.com/first-amendment/google-loses-defamation-case-in-italy/>.

³¹ "Il tribunale di Milano impone un filtro a Google Suggest," *Itespreso.it*, April 6, 2011, <http://www.itespresso.it/il-tribunale-di-milano-impone-un-filtro-a-google-suggest-51323.html>.

against the webmaster, the court ordered Italy's 226 ISPs to block the site altogether.³² Nevertheless, the website continued to be available via mirror sites and ultimately, a different judge ruled in March 2012 that the DNS/IP blocking was illegal while another judge ordered the website to be “un-seized.”³³

Some unusual restrictions on internet content remain in place in Italy that are uncommon in other Western European countries. Drawing on a 1948 law against the “clandestine press,” a regulation issued in 2001 holds that anyone who wants to provide a news service, including on the internet, must be a “chartered” journalist in the Communication Workers’ Registry (ROC), with membership in the national journalists’ association.³⁴ With the exception of one case from 2008, these rules have generally not been applied to bloggers, and in practice, millions of blogs are published in Italy without repercussions.³⁵ Nonetheless, as of early 2012, many people who create websites on a range of issues (including scholarly research) continued to collaborate with registered journalists to protect themselves from potential legal action.

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. 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 principle to “the right to oblivion,” the Supreme Court found that there was no ground for libel against the online news outlet that posted the story because the events in the article were true and just incomplete given subsequent developments. The court ordered the outlet to update the account.³⁶

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

³² “Digital censorship – Italian judges close down disaster information site,” Three Monkeys Online (blog), February 19, 2012, <http://www.threemonkeysonline.com/digital-censorship-italian-judges-close-down-disaster-information-site/>.

³³ For more details see the web page <http://www.vajont.info/>.

³⁴ 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/101_62.htm.

³⁵ A known case is that of author Carlo Ruta whom, in September 2008, a judge in Sicily found guilty of publishing a “clandestine newspaper” in the form of a blog (Ruta was fined €250 and forced to take down his blog). See, John Ozimek, “How an Italian Judge Made the Internet Illegal,” *The Register*, September 26, 2008, http://www.theregister.co.uk/2008/09/26/italian_law_kills_blog/.

³⁶ “Italian Supreme Court: the right to oblivion to be protected with newspaper archive updates,” Law & the Internet (blog), April 23, 2012, <http://www.blogstudiolegalefinocchiaro.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/>.

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.

Blogging has become popular in Italy, though television remains by far the leading medium for obtaining news. Most policymakers, popular journalists, and figures in the entertainment industry have their own blogs, as do many ordinary citizens. Social-networking sites, especially Facebook³⁷ 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 on social-networking platforms has been aggressive enough to potentially incite violence.³⁸ As of May 2012, the country was home to over 21 million Facebook users (about 37 percent of the population), the 11th highest number in the world.³⁹

Italian internet users and free expression advocates have recently mobilized against two legal initiatives perceived to threaten internet freedom. In October 2011, Wikipedia's Italian edition took all entries offline to protest the reintroduction of draft wiretap bill to parliament, threatening to take down its Italian site entirely if the law was passed. Meanwhile, Italian protestors wearing gags gathered outside the legislature's building in Rome.⁴⁰ After the change of government in November 2011, the bill was effectively put on hold. In February 2012, internet rights activists scored another victory when parliamentarians across the political spectrum rejected legal amendments that had been called by the media the "Italian SOPA," a reference to a controversial anti-piracy bill that was under consideration in the United States. If passed, the Italian amendments would have enabled any "interested party" (rather than only the "competent authorities") to ask hosting providers to remove any content by claiming it to be an illegal infringement of copyright, rendering the provider legally liable without any judicial or other authorized entity needing to evaluate the claim. The free expression group Agora Digitale and other civil society representatives organized a press conference in late January to alert the public and parliamentarians to the ramifications of the proposed amendment. After the change was rejected, Luca Nicotra, president of the Agora Digitale, commented that the vote was "a

³⁷ As of November 2011, there were 21 million Italians on Facebook (out of 27 millions Internet users); see M. Vecchio, "Italia, la Repubblica di Facebook" [Italy, the Republic of Facebook], Punto Informatico, November 28, 2011, <http://punto-informatico.it/3349331/PI/News/italia-repubblica-facebook.aspx>.

³⁸ 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>.

³⁹ "Italy Facebook Statistics," Socialbakers, accessed August 21, 2012, <http://www.socialbakers.com/facebook-statistics/italy>.

⁴⁰ "Italy wiretap law: Wikipedia hides pages in protest," BBC, October 5, 2011, <http://www.bbc.co.uk/news/world-europe-15192757>.

sign that there is a small all-party group of MPs determined to defend the values of an open and free Internet.”⁴¹

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.⁴² 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 legal amendments to improve protections and prevent censorship rather than engaging in public interest litigation.⁴³

Defamation is a criminal offense in Italy, punishable by prison terms ranging from six months to three years and a minimum fine of €516 (US\$670). In cases of libel through the press, television, or other public means, there is no prescribed maximum fine.⁴⁴ 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 chilling effects on journalists and their editors. As of May 2012, however, libel suits against bloggers and other online writers remain rare,⁴⁵ with only one defamation case against the blogger Frank Sfarzo occurring in 2011 (see “Limits on Content”). Nevertheless, as also noted above, there have been a few defamation cases brought against online content providers in recent years, such as the defamation case against Google in April 2011 that resulted in a fine and court order to filter out the offending content.

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

⁴¹ “Internet—Italian free speech groups claim victory,” Giannifava.org, February 7, 2012, http://www.giannifava.org/it/doc-s-27-589-1-internet_italian_free_speech_groups_claim_victory.aspx.

⁴² 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.

⁴³ Andrea Monti (lawyer specialized on Internet freedom and activist), interview with author, February 20, 2012.

⁴⁴ 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>.

⁴⁵ See for example the case of Roberto Mancini in, Reporters Without Borders, “A Blogger Unfairly Convicted of Defamation,” news release, June 20, 2006, http://en.rsf.org/italy-a-blogger-unfairly-convicted-of-20-06-2006_18068.html.

country's authorities are known for engaging in a large number of wiretaps.⁴⁶ According to the most recent figures from the German think-tank, the Max Planck Institute, in 2006, Italy led the world in terms of wiretaps, with 76 intercepts per 100,000 people.⁴⁷ 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.⁴⁸

In early 2010, a draft wiretap bill was introduced in parliament. The bill's proponents said it aimed to address concerns over the right to privacy and the problem of news media regularly publicizing wiretap information that is leaked to them. However, 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. Both the Organization for Economic Cooperation and Development's (OECD) representative on freedom of the media and the UN special rapporteur on freedom of expression criticized the bill in its proposed form. 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.⁴⁹ However, after Berlusconi's resignation, the bill remained pending in parliament. Although not a priority for the Monti government, the executive branch, especially the minister for justice, decided not to drop entirely the matter as of spring 2012.

⁴⁶ 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. 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.

⁴⁷ Duncan Kennedy, "Italian bill to limit wiretaps draws fire," BBC, June 11, 2010, <http://www.bbc.co.uk/news/10279312>. It might be as high as 150,000 phones, which does not say anything about "people" (arguably one person has 2/3 fixed and mobile phones). See for example, "Intercettazioni: dati ufficiali" [Interceptions: official data], *Il Chiodo* (blog), June 19, 2010, <http://ilchiodo.blogspot.it/2010/06/intercettazioni-dati-ufficiali.html>.

⁴⁸ Privacy International, "Italy: Privacy Profile," in *European Privacy and Human Rights 2010* (London: Privacy International, 2010), <https://www.privacyinternational.org/article/italy-privacy-profile>.

⁴⁹ 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>.

In March 2008, Parliament approved a law (No. 48 of 2008) that ratified the Council of Europe's Convention on Cybercrime, which established how long internet-related communication data should be retained.⁵⁰ This matter was further refined with the inclusion in the Italian legislative system of the 2006 EU Data Retention Directive.⁵¹ 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.⁵² 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.

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 June 2011, the national postal service 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 advertisement companies.⁵³ Nevertheless, in November 2011, it became mandatory for all business to use the PEC service in their communications with the public administration, to cut costs and reduce paperwork.⁵⁴

Reports of extrajudicial intimidation or physical violence in response to online activity are rare in Italy, though individuals directly exposing the activities of organized crime in some parts of the country may be at risk of reprisals. Nevertheless, in April 2011, the Committee to Protect Journalists (CPJ) wrote to the Italian government to voice concerns over the harassment of blogger and freelance journalist Frank Sfarzo as he sought to cover the trial of Amanda Knox. According to the CPJ, Italian police regularly prevented Sfarzo from entering the courtroom, seized his mobile phone, and verbally insulted him. Moreover,

⁵⁰ 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>.

⁵¹ Legislative Decree No. 109, May 30, 2008.

⁵² Privacy International, "Italy: Privacy Profile."

⁵³ 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>.

⁵⁴ "Ulteriore Deroga fino a fine giugno 2012 per la casella PEC aziendale," IlSoftware.it, accessed July 24, 2012, <http://www.ilsoftware.it/2012/05/ulteriore-deroga-fino-fine-giugno-2012-la-casella-pec-aziendale/>.

Sfarzo reported that in September 2010 police forcibly entered his apartment, assaulted him, tried to get a psychiatrist to issue a statement questioning his mental capacity, and then took him before a judge, attempting to charge him with “injuring an officer.”⁵⁵

Defacement or launching denial-of-service (DoS) attacks against websites—mostly government-linked ones—as a form of political protest are becoming increasingly common in Italy. More serious cyberattacks—particularly against banks, government institutions, and business websites—are a problem in Italy, as in other European Union member states. Despite some problems, Italy does not seem to rank high on the list of countries identified as points of origin for cybercrimes.⁵⁶

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.⁵⁷ A special branch within the service, the National Center for Infrastructure Protection (CNAIPIC), is tasked with the protection of the country’s critical infrastructure.⁵⁸ However, in one incident that received widespread attention in July 2011, the hacker groups Anonymous and LulzSec claimed responsibility for hacking into CNAIPIC’s own website and posting

⁵⁵ “In Italy, journalists threatened for reporting on murders,” Committee to Protect Journalists, April 19, 2011, <http://www.cpj.org/2011/04/journalists-threatened-for-reporting-on-murder-cas.php>.

⁵⁶ “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>

⁵⁷ 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://daily.wired.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. For a recognition of the professionalism of Italy’s postal police, see Alessandra Talarico, “Lotta al cybercrime: avrà sede a Roma nuova task force Usa-Europa. Utilizzerà le tecnologie di Poste Italiane” [Fighting Cybercrime: A New U.S.-European Task Force Will Be Based in Rome. Will Use the Technologies of the Italian Post], Key4Biz, June 30, 2009, http://www.key4biz.it/News/2009/06/30/eSecurity/cybercrime_sicurezza_reti_European_Electronic_Crime_Task_Force_US_Secret_Service_Massimo_Sarmi.html.

⁵⁸ Critical infrastructure includes telecommunications networks, energy and water distribution systems, banking networks, and transportation and emergency services.

confidential information online in an apparent act of revenge for the arrest of group members in the United States and parts of Europe.⁵⁹

⁵⁹ “‘Anonymous’ attacks Italian cyber police website,” The Raw Story, July 25, 2011, <http://www.rawstory.com/rs/2011/07/25/anonymous-attacks-italian-cyber-police-website/>; “Hackers hit back with attack on Italian police,” Agence France-Presse, July 25, 2011, <http://www.google.com/hostednews/afp/article/ALeqM5h7VBHxiVebJWDXPGW5UCq0l2Mnw?docId=CNG.1c9bc08f90c82172428a633d1b6e8077.9d1>.