

2011

Italy: a Creative Media Nation



THE AUDIOVISUAL INDUSTRIES' CONTRIBUTION
TO NATIONAL ECONOMIC AND SOCIAL DEVELOPMENT



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IsiCult, founded in 1992, is an independent research centre specialised in media cultural and economic policies with a special interest in comparative international scenarios. In the field of media economy studies, its customers include **Ebu**, **Mpa**, **Copeam**, **Agcom**, **Rai**, **Mediaset**, **Sky Italia**, **Doc/it**, **Apt**, while for matters of cultural policies, the customers for its studies range from the **Lazio Region**, **Filas**, **Sviluppo Lazio**, **Anci**, to the **Municipality of Rome**. Together with the **Luiss Business School**, **IsiCult** actively promotes the **Roberto Rossellini Osservatorio Internazionale sull'Audiovisivo e la Multimedialità** (International Audiovisual and Multimedia Observatory - **Oiam**). **Angelo Zaccone Teodosi** is the long-standing (10 years) incumbent columnist of **l'Osservatorio IsiCult** in the monthly magazine "Millecanali" of the Italian financial daily "Il Sole 24 Ore".

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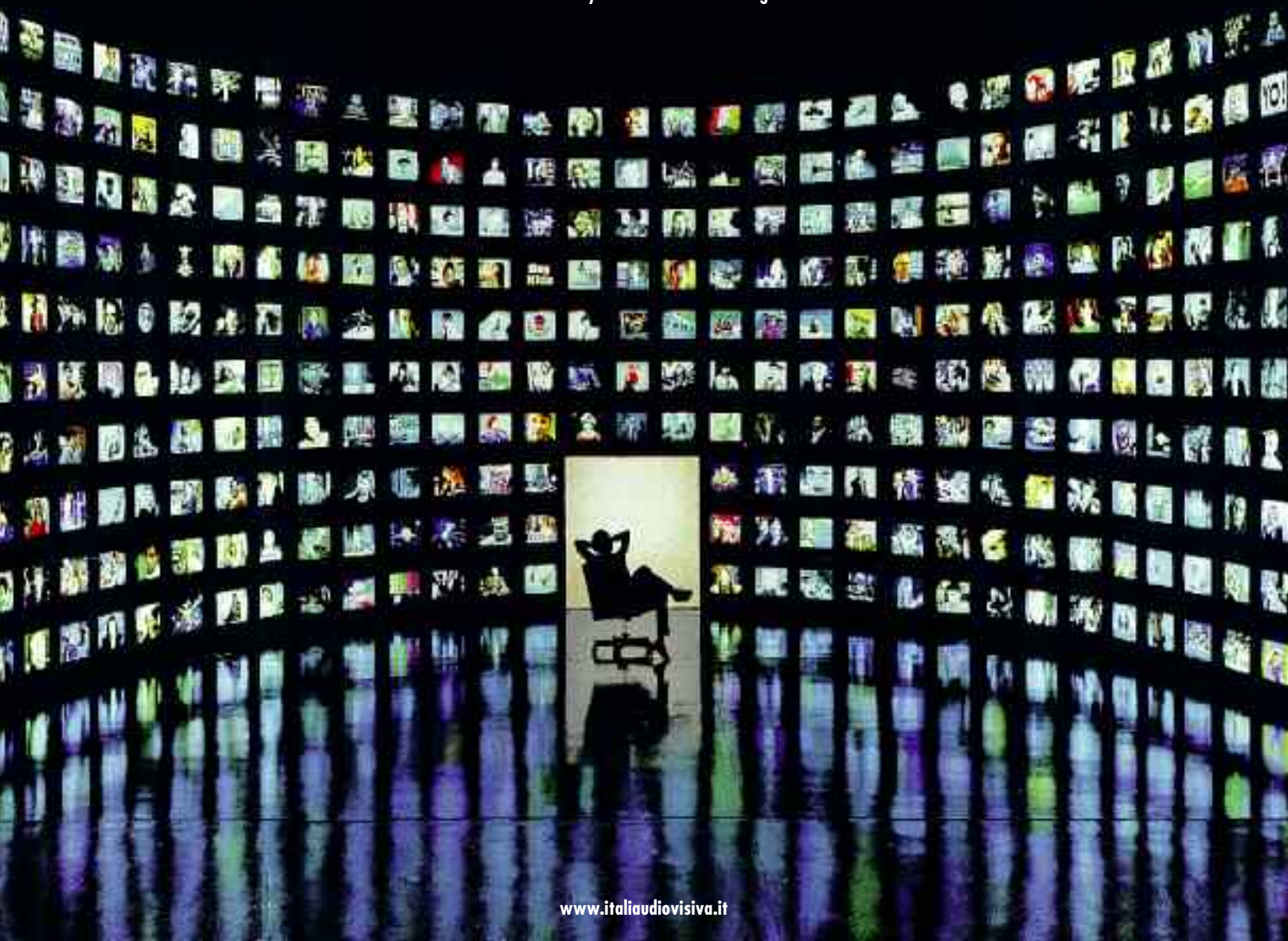
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Italy: a Creative Media Nation

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research



commissioned by





ITALY: A CREATIVE MEDIA NATION 2011

Research objectives

This research sets out to:

- furnish a set of updated data and accurate analyses to stimulate focused reflections on the audiovisual industry's central role (special attention to be paid to television as it "mediamorphosis" into "tv 3.0", a conventional term to indicate the hybridization resulting from the merger between the TV and Web), in the overall framework of the "creative industries", and in terms of national economic and social development.
- argue that in order to ensure a sound development of the creative industry, the rights of authors and publishers (in the widest sense of the term, including television broadcasters) should be safeguarded – by implementing and maintaining one of the system's fundamentals, namely copyright, and forgetting the "manna myth" and the "free culture" (i.e. gratuitous) utopia. If we want to stimulate quality content production, multimedia convergence and multiplatform integration must be based upon solid foundations able to guarantee economic returns for the system.

As our initial title, "Italy: a Creative Media Nation", suggests, we have set out to emphasise the central role played by the creativity of the audiovisual industry, while the other term, Italy, signifies that the research is part of a European-wide project, with independent papers dedicated to each single nation of the European Union (but with special attention being paid to the five largest markets: France, Germany, Italy, the United Kingdom, Spain).

For the purposes of our research, we have adopted the most recent delimitation or demarcation of the sector formulated by the United Nations: the "audiovisual industry" is understood as a subset of the "media industries", which, in its turn, is a subset of the "creative industry" macro-sector (see below).

The approach therefore will be mediological-sociological-economic. The "field" of research refers to Italy, but insofar as a component of a European wide project, references to the other four leading European countries will not be missing.

It is our hope that this study will provide a better understanding of how the audiovisual industry contributes towards the socio economic well-being of the nation, producing wealth and jobs and stimulating an alert cultural consciousness, based upon diversity, which is fundamental for the development of a free, democratic, inclusive and responsible community. As stated under article 1 of the Universal Declaration on Cultural Diversity of Unesco, adopted in 2001: "As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature". As stated under article 17, subsection 2, of the Charter of Fundamental Rights of the European Union: "intellectual property must be protected". Furthermore, we also subscribe to the theses of the European Commission and its "Green Paper" of April 2010: "The cultural and creative industries open the road to a more imaginative, more cohesive greener and more prosperous future".

1.

The important contribution of creative industries to society and the Italian economy

PREMISES

THE AUDIOVISUAL INDUSTRY: THE CENTRAL ROLE IN THE CULTURAL INDUSTRIAL SYSTEM

TELEVISION REMAINS THE "SUPER MEDIUM"

THE TURNOVER OF THE CULTURAL INDUSTRY IN ITALY

THE TURNOVER OF THE ITALIAN AUDIOVISUAL INDUSTRY

ADVERTISING'S ROLE IN THE AUDIOVISUAL INDUSTRY

REVENUE/COST FLOWS IN THE ITALIAN TELEVISION INDUSTRY:
PRODUCING "ORIGINAL CONTENT"





The important contribution of creative industries to society and the Italian economy

CHAP. I

PREMISES

Some of the ("ideological") premises of this research:

- economic growth benefits a nation in terms of democracy, solidarity, and legality [▶ 1];
- the stronger, more solid and competitive an economy becomes, the more individual freedom, societal pluralism and cultural diversity increase;
- the cultural-media system plays a central role in the (sustainable and inclusive) socio-economic development of the nation [▶ 2];
- the solidier, richer and more plural the cultural and media industries, the greater the chances of expressive pluralism, the better the citizen's cognitive autonomy (in Norberto Bobbio's sense of the term) and the higher the level of individual freedom reached (as both user and author).

We shall not propound an "economistic" approach to national development (or social analysis), and although we do not deem views that actually advocate negative growth (above all as it would afford greater safeguards to the environment) to be a priori unfounded, we do hold that when living standard remain static or decline, society tends to reveal an uglier face and lose its vitality. Revenge-seeking and

conflict are fostered at the cost of tolerance, equity, mobility and social inclusion, and a nation's democratic institutions are put to the test. Therefore, it is our conviction that economic wellbeing is correlated to democratic freedom.

In particular, the media industry plays a central role in a nation's economic, social and cultural development: the industry of imaginary/creative re-representation - the media, entertainment, graphic art, culture - is fast becoming a trend-setter, even for material consumption. The industry has been acutely defined as the "the Warhol economy" [▶ 3].

At the same time, we are aware that a "nation's wealth", as also its "quality of life" cannot be measured only in per capita GNP, or GNP terms.

It is our contention that culture plays a fundamental role in the quality of life and that, probably, the pursuit of happiness is for many (and apart from its ensuing legitimacy after being enshrined in the USA constitution, at the behest of Thomas Jefferson) the essential and ultimate objective of this "mortal coil", but without going so far as to actually postulate a provocative index of "gross national happiness" [▶ 4].

In place of the "gross national product" we would, in any case, prefer an indicator that pays more attention

▶1. We espouse Friedman's contention: economic growth "fosters greater opportunity, tolerance of diversity, social mobility, commitment to fairness and dedication to democracy" (Benjamin M. Friedman, "The Moral Consequences of Economic Growth", Knopf, New York, 2005, page 4).

▶2. US President Obama maintained: "Now, we remain the largest economy in the world by a pretty significant margin. We remain the most powerful military on Earth. Our production of culture, our politics, our media still have – I didn't mean to say that with such scorn, guys, you know I'm teasing – still has enormous influence. And so I do not buy into the notion that America can't lead in the world. I wouldn't be here if I didn't think that we had important things to contribute" (Barack Obama, Post G20 Economic Summit Remarks and Press Conference, London, 2 April 2009). Please note how "cultural production" ranks third, right after the economy and defence, and before politics and media, as an instrument for the US global leadership.

▶3. Elizabeth Currid, "The Warhol Economy. How Fashion Art & Music Drive New York City", Princeton University Press, Princeton, 2007. It can be noted that although art and culture account for one quarter of the jobs in the city of New York, Los Angeles remains the heart of the American entertainment industry, where the highest concentration of entertainment jobs in the nation is found: over 140,000 workers corresponding to about 40 % of the entire "entertainment" industry in the USA, comprising cinema, TV, video, music, and advertising. According to the estimates of the U.S. Bureau of Economic Analysis, in 2007 the "motion picture" and "sound

recording" industries generated over 23.3 billion dollars in sales in Los Angeles County, against 18.8 billion in 2001: a 24 % increase (see Jack Kyser, Nancy Sidhu, Kimberly Ritter, "Entertainment & the Media in Los Angeles 2010", Laecd Kyser Center for Economic Research, Los Angeles, 2010). The fundamental textbook on the economic and financial aspects of the cultural and media industry remains Harold L. Vogel, "Entertainment Industry Economics: A Guide for Financial Analysis", Cambridge University Press, Cambridge (the eighth edition was published in 2010).

▶4. It should be recalled that the definition "Gross National Happiness" was coined by Jigme Singye Wangchuck, King of Bhutan, in 1972, to measure the general level of his people's well-being. His idea was that the indices to measure the gross national product (GNP) were insignificant and that policymakers should use more "holistic" indicators that were closer to the authentic condition of the individual, citizen and humanity and not limited to the mere consumption of goods. See Derek Bok, "The Politics of Happiness. What Government Can Learn from the New Research on Well-Being", Princeton University Press, 2010. For the French approach see Isabelle Cassiers et al., "Redéfinir la prospérité. Jalons pour un débat public", Éditions de l'Aube, Paris, 2011, while for the Italian version see the monograph in "la Rivista delle Politiche Sociali", n. 1, January - March 2011, dedicated to "Il benessere oltre il Pil. Definire e misurare la qualità sociale", Ediesse, Rome. Furthermore, it should be noted that the Dalai Lama is not the only proponent of "GNF". In 2008, the French President Nicolas Sarkozy announced an initiative designed to measure the well-being of his fellow

to... human aspects; namely a measure such as the "human development index" developed by Undp, a UN programme [▶5], which takes into account – in its measurements – data on education and, albeit only marginally, the media, while totally disregarding culture.

However, we do find culture featuring in a publication of another United Nations agency, Unctad, which in 2008 released an interesting first report on the "creative economy", which was followed up at the end of 2010 [▶6]: by the second edition. Unfortunately, this worthwhile initiative is marred by an excessively economistic approach; our view, instead, is that creative industries are fundamental for a nation's overall development and not just for their economic function.

We can also recall that the concept of "the creative economy" was pioneered at an international level by John Howskins [▶7], as early as 2001, and that this author, almost ten years on, came to theorise a "creative ecology"...The creative industries central role is social and economic, not just economic.

Culture and the media occupy a central place in the construction of an individual's value system and in the construction of political consensus. We believe that the solidier, richer and more plural a cultural and media system, the greater the chances for expressive pluralism and creative freedom.

And, in the final analysis, the prospects for democracy itself [▶8] will also improve..

citizens, and entrusted two Nobel prizewinners, the American Joseph Stiglitz and the Indian Amartya Sen, with the task of revising growth indicators (it should be noted that on this occasion Sarkozy announced the revolutionary decision to ban all advertising from public television). The Commission produced the final report in September 2009: see Joseph E. Stiglitz, Amartya Sen, Jean-Paul Fitoussi, "Report by the Commission on the Measurement of Economic Performance and Social Progress", Paris, 2009. Nor was the British Prime Minister any the less ambitious, whose views are clearly outlined as follows: "we should be thinking not just about what is good for putting money in people's pockets but what is good for putting joy in people's hearts" (cited in Rana Foroohar, "Money vs. Happiness: Nations Rethink Priority", in "Newsweek", 5 April 2007).

▶5. The so-called "human development index", or "Hdi" is a macro economic development indicator prepared by the Pakistani economist Mahbub ul Haq (and by his friend and co-scholar Amartya Sen) in 1990. Alongside the GNP, HDI has been used by the United Nations since 1993 in order to evaluate the "quality of life" of its member nations. See Undp -the United Nations Development Programme, "The Real Wealth of Nations: Pathways of Human Development", New York, 2010 (an extract from the summary of this 20th edition of this report can be found in Italian on the Web: "La vera ricchezza delle nazioni. Vie dello sviluppo umano"). HDI is a composite measure of the results obtained by a country according to 3 fundamental dimensions of human development: a long and healthy life (in practice, health), access to knowledge (in practice, education) and a decent standard of living. As regards the media, HDI only takes into account a few "infrastructural" indicators: Newspaper readership, and television and radio coverage in the total population. According to the data contained in the 2010 report, Italy ranks 23rd in the world; France 14th, Germany 10th, United Kingdom 26th and Spain 20th. As we can see, only Germany is classified among the "top 10", namely the nations characterised for having a "very high human development". The classification is headed by

THE AUDIOVISUAL INDUSTRY: THE CENTRAL ROLE IN THE CULTURAL INDUSTRIAL SYSTEM

We have outlined in our approach to the subject. The following paper will address what we hold to be one of the most important industries within that great "macro sector" conventionally defined as "the creative industries".

Figure 1 shows that the audiovisual industry is – in fact– only 1 among the 9 "creative industries" identified in a stimulating classification produced by the United Nations (Unctad) in 2008 [▶9]. This classification takes into account 4 areas:

1. Cultural heritage: ranging from archaeological and historical heritage to craftsmanship
2. the arts: from sculpture to theatre...
3. the media: from publishing to audiovisuals (this division also includes music)...
4. functional creations: from design to the new media (videogames, digital content)...

The classification is interesting [▶10], and not least because it conceptually aggregates "cultural industries" into a macro sector that eliminates historical discriminations rooted in traditional or reactionary ideological approaches: for example, the acrimonious divisions between "highbrow culture" and "lowbrow culture", between "elitist culture" and "mass culture"...

It is not possible to define a "hierarchy" between the various creative industries, at least not in "qualitative"

Norway, Australia, New Zealand, the USA, Ireland, Lichtenstein, Holland, Canada, and Sweden.

▶6. United Nations Development Programme - Undp, "Creative Economy Report 2010", New York, 2010. On the occasion of the public presentation of the second report, at the end of March 2011, Rebeca Grynsman, Under-Secretary-General and Associate Administrator of Undp, declared: "Creativity and talent are powerful drivers of inclusive, sustainable development". In addition, we would also like to mention another exploratory work produced over 10 years ago by yet another United Nations agency: Unesco, "Culture, Creativity and Market. World Culture Report 1998", Paris, 1998.

▶7. John Howkins, "The Creative Economy: How people make money from ideas", Penguin, London, 2001 (second edition was published in 2007). Between 2009 and 2010 he also published "Creative Ecologies: Where Thinking is a Proper Job", University of Queensland Press, Brisbane, 2009.

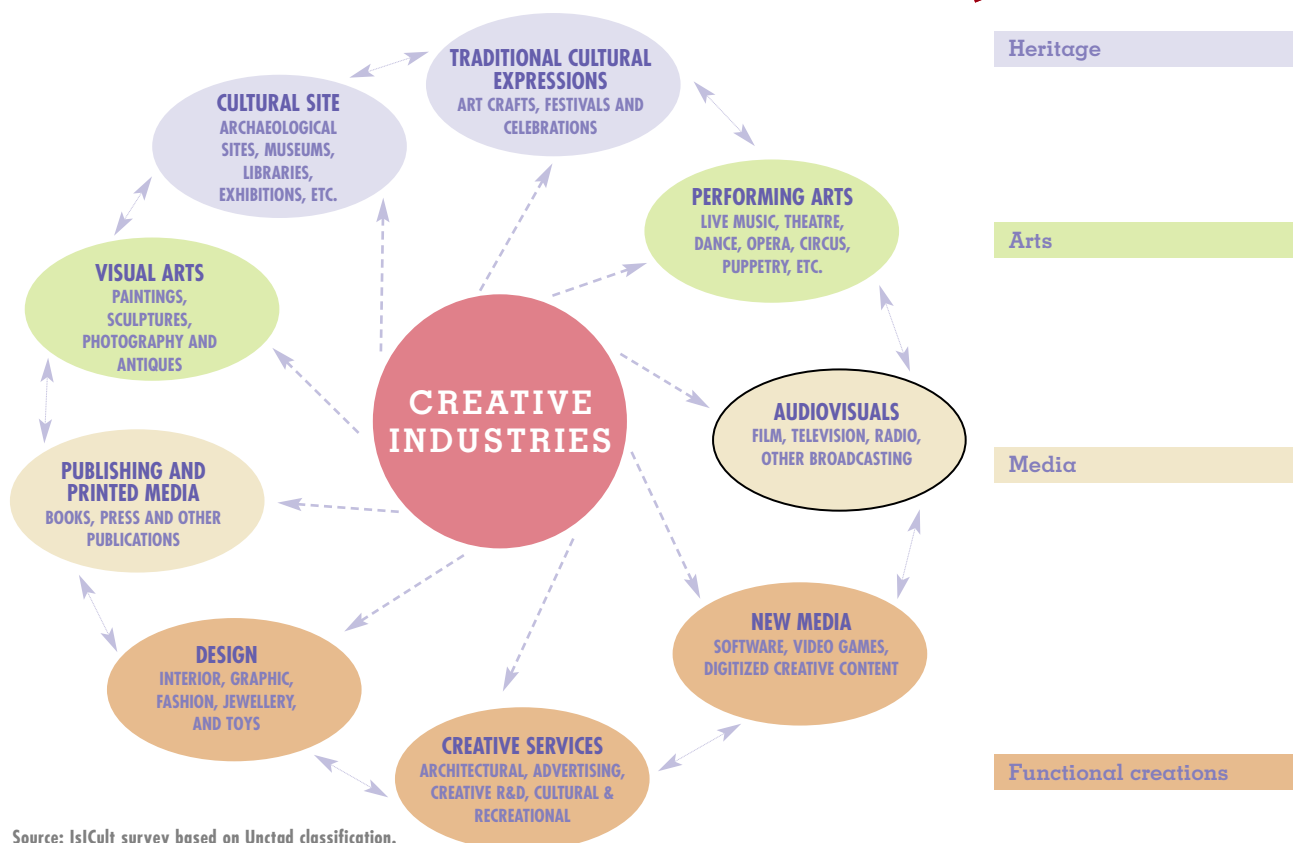
▶8. As of 2005 the Canadian Governor General highlighted that: "How important creative expression is to the health of a democratic society" (Michelle Jean, "Speech from the Throne", speech delivered on the inaugural session of the 39th Canadian legislature, 4 April 2006).

▶9. The concept of "creative industries" has been explored in some depth by the British Department for Culture Media and Sport (Dcms), in such a reference texts as "Mapping Document" (1998) and "Creative Industries Economic Estimates Statistical Bulletin" (2006).

▶10. It should be stressed that every parameter is inevitably based upon conventional classifications. For example, in the "Green Paper" of the European Commission approved in 2010, a different definition is provided with respect to the one adopted here:

- "cultural industries":

are those industries producing and distributing goods or services which at



terms. The visual arts are no less important than entertainment, and the cinema has an aesthetic and media dignity that is not inferior to that of television.

Every creative industry has its own aesthetic and economic characteristics.

However, it is possible to theorise a kind of quantitative "hierarchy", in other words to make an evaluation of the various creative industries in terms of their respective audiences, i.e. their capacity to reach the public, understood as a community of consumers/citizens. This is a very real and not just virtual capability as shown when a leading Tv broadcaster - as

measured by its audience - broadcasts an opera live (alas, a somewhat rare occurrence) brings a niche creative industry (namely the production of lyrical operas) "into contact" with a "mass" public (namely the Tv viewing public).

If we analyse the scale of cultural consumption, television emerges as the planet's dominant medium. This research has dedicated special attention to the more immediately tangible, and hence, to some degree quantifiable aspects, especially in economic terms, of the cultural system. However, we are aware that an overall assessment of the importance of the audiovisual industry in the social and economic life of a nation must not emphasis economic indicators and stress a multi-dimensional approach, which deems cultural wellbeing as having equal importance to economic prosperity.

the time they are developed are considered to have a specific attribute, use or purpose which embodies or conveys cultural expressions, irrespective of the commercial value they may have. Besides the traditional arts sectors (entertainment, visual arts, cultural heritage – including the public sector), they include film, DVD and video, television and radio, video games, new media, music, books and press.

- "creative industries":

are those industries which use culture as an input and have a cultural dimension, although their outputs are mainly functional. They include

architecture and design, which integrate creative elements into wider processes, as well as subsectors such as graphic design, fashion design or advertising. See European Commission, "Green Paper. The cultural and creative industries, a potential to be exploited", Com(2010) 183 def., Brussels, 27 April 2010. Instead, in this research report we have chosen to adopt the concept of "creative industry" as a superset that embraces all sectors.

TELEVISION REMAINS THE "SUPER MEDIUM"

If we analyse every medium's real, effective and consolidated capacity vis à vis its own environment, i.e. its own potential audience, it emerges – from worldwide cultural statistics – that the medium of television still occupies an absolutely hegemonic position in the population's "media diets".

First and foremost, we must remember that, in planetary terms, television has a potential audience of 3 billion persons and that average viewing time in 2010 was three hours and 10 minutes, i.e. 190 minutes a day, representing a 6 minute increase over the last 5 years [► 11].

The "screens" that bring television broadcasts to viewers have increased along with the consumption of television content, above all among younger television viewers. At the planetary level it can be observed that young adults (i.e. 15-24 year olds) make continually greater use of "alternative screens" while their television-time budget continues to increase. In 2010, a 14 minute year-on-year increase in television consumption was recorded in the United Kingdom, and a 5 minute increase in the United States.

Two summary sets of data illustrate this trend (and the variation with respect to 2009):

- North America:

average daily TV consumption in 2010:
4 hours and 39 minutes (+ 4 minutes);

- Europe:

average daily TV consumption in 2010:
3 hours and 48 minutes (+ 6 minutes).

Confirmation of this "penetrative" capacity – to use a slang term borrowed from marketing – is given by the central position continually occupied by television and the "advertising media".

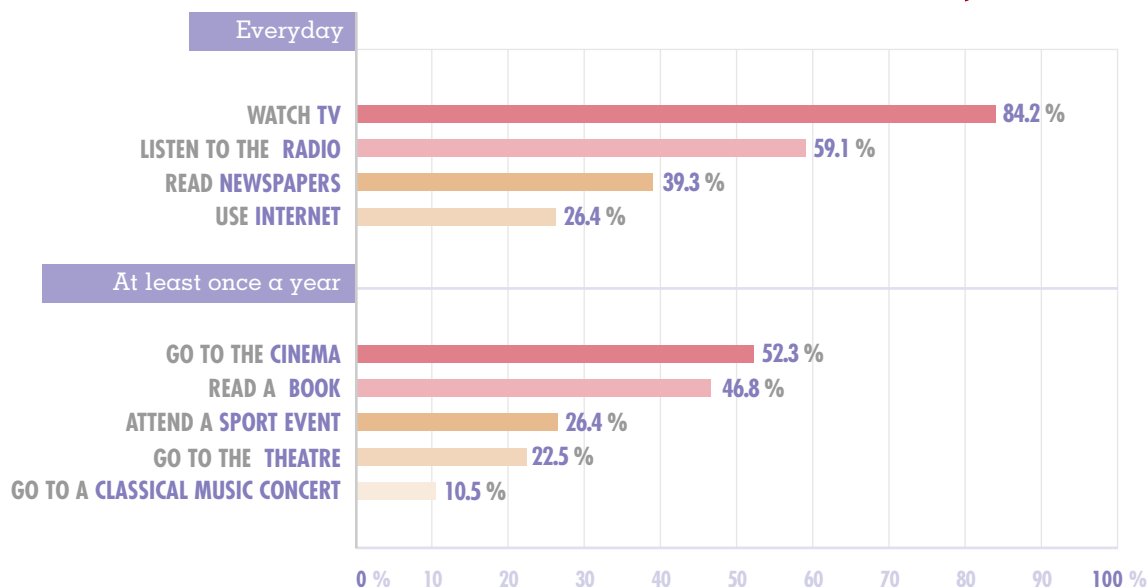
As concerns Italy, we shall limit ourselves to reporting that television:

- was viewed, in 2010, on a daily basis by 84 % of the entire population against 59 % who listen to the radio or 39 % who read a newspaper every day; only 26 % of the Italian population use Internet every day (see **Chart 1** ■ below);

- in 2010, in every minute of the day, the Italian viewing public, on average, comprised 9.8 million viewers, which is a major increase with respect to the 8.8 million recorded in 2000 (an increase of about 1

ITALY. MEDIA AND CULTURE USAGE BY THE POPULATION (2010)

CHART 1



Source: IsCult survey of Istat "Indagine multiscopo. Aspetti della vita quotidiana", 2010.

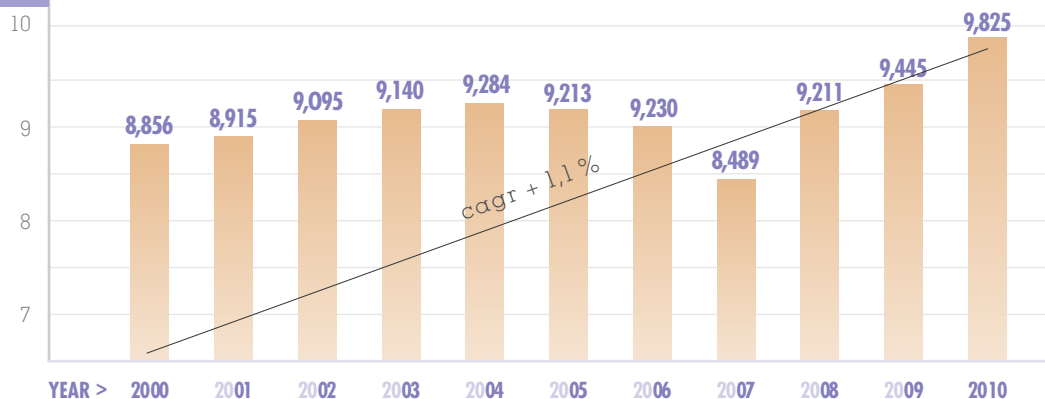
► 11. The data are taken from the annual Mediametrie-Eurodata research, "One Television Year in the World 2011", Levallois, 2011. The study is based upon the audiometric data of 89 countries around the world.

► 12. An interesting suggestion as to the concomitant causes of this growth was made by Angelo Amoroso, "Da cosa dipende l'aumento del consumo televisivo?" (The reason for the increase in television consumption), in "Nielsen Featured Insights", Milan, March 2011. The author is the Managing Director of Nielsen Tv Audience Measurement srl. It should be

remembered that the so-called "average minute rating" ("amr") is a product of two factors: the television's reach "rch", and the number of different persons who in the course of one day watch the television for at least 1 minute and the average time, in minutes, of daily viewing of those who, in the course of the day, watched TV for at least one minute ("ats"): the formula is: $amr = rch \times ats / duration$ (for the year 2010, in concrete terms: $amr 9.825 \text{ million} = rch 46.854 \text{ million} \times 301.2 \text{ minutes} / 1,440 \text{ minutes}$, the total of the minutes in a 24 hour period).

Million viewers in the average minute

▲ 2010 VS 2001:
+ 978,000 VIEWERS
+ 11 %



Source: IsiCult survey based on Auditel data.

Notes: viewers in the average minute, during all the day (02:00 am – 02:00 am). Total viewers 4+; "cagr" means "compound annual growth rate" (2000-2010).

million viewers!). These findings should silence those who periodically toll the death knell for television (see **Chart 2** ■);

A set of diachronic data based upon Nielsen research using Auditel sources and standard indicators provides further proof of the enduring force of the television medium, and also in terms of the population's time budget:

The reasons for the increase in television consumption in Italy obviously depend upon a series of concomitant causes [▶ 12], such as the simultaneous growth and ageing of the population, or a greater interest shown in television.

It is worthwhile reflecting upon one of the foregoing datasets: 84 % of Italians watch television every day compared to 26 % who use the Internet [▶ 13]: a clear ratio of 3 to 1 in favour of television.

There can be no doubt that the utilisation of the Internet is increasing year by year. However, what we would like to define as the trade-off between the two media still remains an open question, although in the meantime television remains the predominant medium; and likely to remain so for many years to come.

It is no less important to note that up to 94 % of the Italian population keep abreast of political news through the television. 50 % also read the newspapers and 31 % also listen to the radio for this purpose, while 11 % keep themselves informed through periodicals. Other sources of information on politics are friends, at 25 %, and relatives at 19 % (see **Chart 3** ■)... Internet does not figure in these Italian statistics; a fact that should stimulate reflections on the continuing and absolutely central role played by television as an instrument of information.

Television consumption in Italy (2000 / 2010, % variation 2010 vs 2000)			
INDICATORS	2000	2010	% var.
DAILY AVERAGE VIEWING			
(million viewers in an average minute)	8.856	9.825	+ 10.9 %
DAILY CONTACTS *			
(million persons)	46.532	46,854	+ 0.7 %
AVERAGE DAILY VIEWING TIME (minutes)			
	274	302	+ 10.2 %

Source: IsiCult survey based on Nielsen / Auditel data.

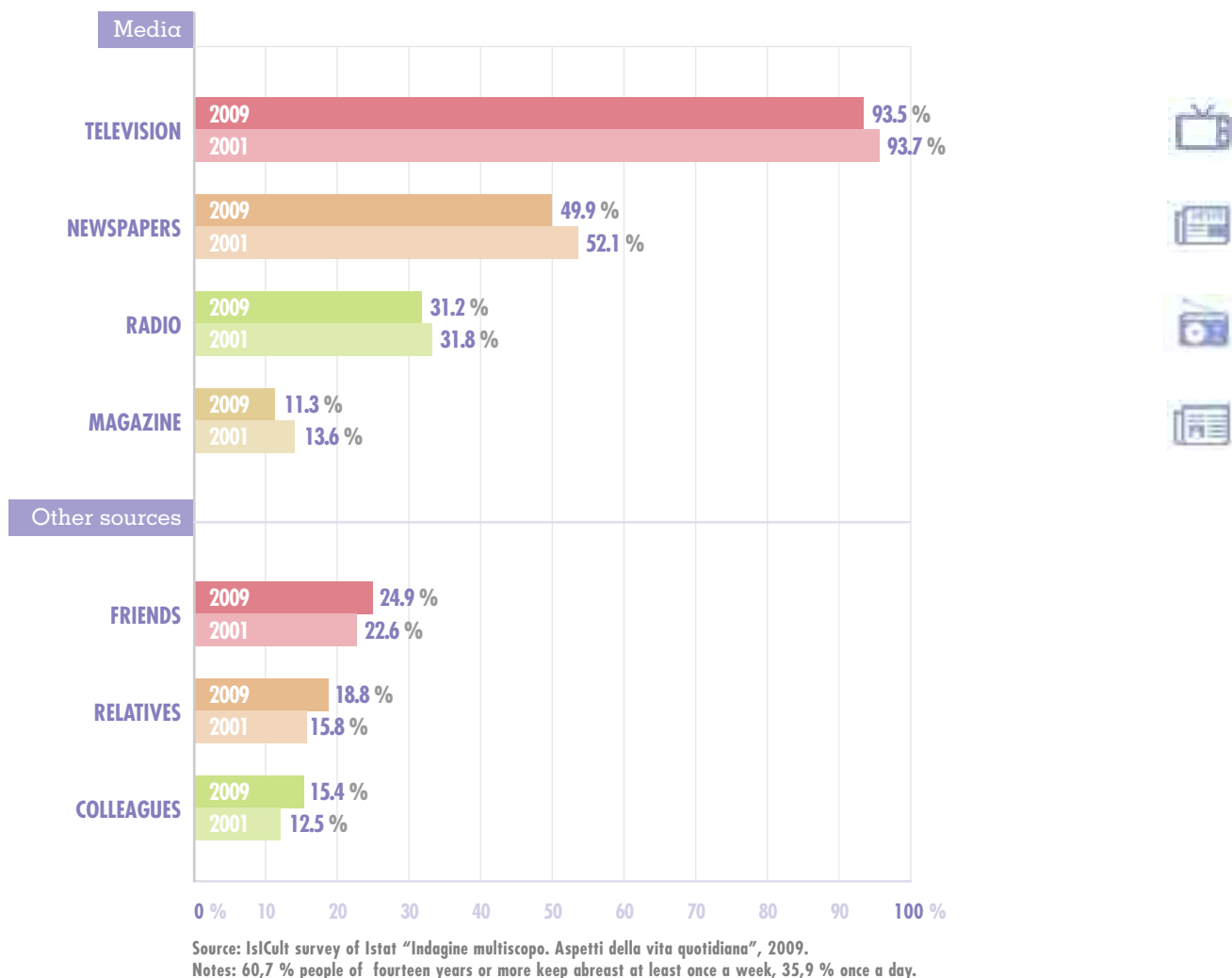
Notes: total "universe", full day; (*) million persons who have watched television for at least 1 minute.

▶ 13. This is not the place to go into the merits and reliability of statistics on cultural consumption. We accept Istat statistics as reliable on account of the authoritativeness of the source and the size of the sample. However for a matter of methodological scruple we should also illustrate AudioWeb's data (based upon basic Doxa surveys), released in February 2011, according to which Internet access in 2010 would have been available to 33.4 million Italians between the ages of 11 and 74, equivalent to 70 % of the total

population. Moreover, according to Audiweb the "active users on an average day" in December 2010, would have been 12 million, with an average per capita consumption of one hour and 30 minutes (even if the term "active user" refers to an Internet "user active for at least one second", see below for further details on these data)... According to Audiweb, in December 2010 64 % of Italian families owned a domestic PC.

ITALY. THE MEDIA USED TO KEEP INFORMED OF POLITICS (a comparison between the years 2009 / 2001)

CHART 3



It should also be noted that a significant part of the Italian population has no Internet access having never made use of a PC. This population percentage – less than 43 % of all Italians, according to Eurostat – could be defined as the "Internet disenfranchised".

Although it is a documented fact that Italy is dragging its feet on access to Internet navigation – among Europe's "big five", Italy and Spain have the lowest network

penetration (see **Chart 4** ■) – we should also note that in the country at the forefront of multimedia-multiplatform use, namely the USA, almost 60 % of the population, in 2010, still relied upon the television for its news, against 30 % who use the Internet. [►14]... According to a public opinion poll taken in 2010, television remains the "dominant" source of information during an electoral campaign [►15]... in the United Kingdom too: almost

►14. Pew ResearchCenter for the People & the Press, "American Spending More Time Following the News", Pew, Washington, 2010. According to the survey, in response to the question "Where People Got News Yesterday?", in 2010 no less than 58 % replied that they "watched news on tv" (in 2004 this figure was 60 %), against 34 % who replied that they "got news online" (this figure was 24 % in 2004). However it should also be noted that this percentage rose to 44 % if we also take account of all those who "got news" from "any Web or mobile". We can observe that those who used television as a medium declared an average usage of 55 minutes a day, against the 38 minutes of those who use the Internet "to get news".

►15. Source: YouGov survey for Deloitte, London, July 2010, a 2.000 adult sample (cited in Deloitte, "On Tv: perspectives on television in words and numbers", London, 2010).



80 % of the British citizens declared that they obtained electoral information from the TV, against slightly more than 50 % from the newspapers. Less than 40 % used the Internet on various platforms but it should be noted that one half (about 20 % of the interviewees) of this percentage used the Web sites of TV broadcasters. Only 2 % made use of YouTube.

Italy is the only country, among the European big 5, in which the "decline" of "classic" television - referring to most of the analogue channels (Rai, Mediaset, La7) – is proceeding at a much slower pace than elsewhere, thus confirming that its television content is still evidently appetising to the viewer: if 10 years ago the major Italian television channels accounted for 91 % of the entire national audience, by 2010 they had fallen to 76 %, which is, nevertheless, a very high audience share (see **Chart 5 ■**).

These data, which demonstrate the enduring dominance of traditional television content, are even more interesting when we consider how this content is distributed, bearing in mind that:

- digital terrestrial television, at the end of 2010, reached 79 % of the Italian population;
- terrestrial digital content has increased: + 39 single channels;
- the content broadcast by satellite has also grown: + 24 single channels;

- the content offered by "connected TV" (Cubovision by Telecom Italia, Apple TV, Premium Net TV, Hybrid BlobBox...) is also growing.

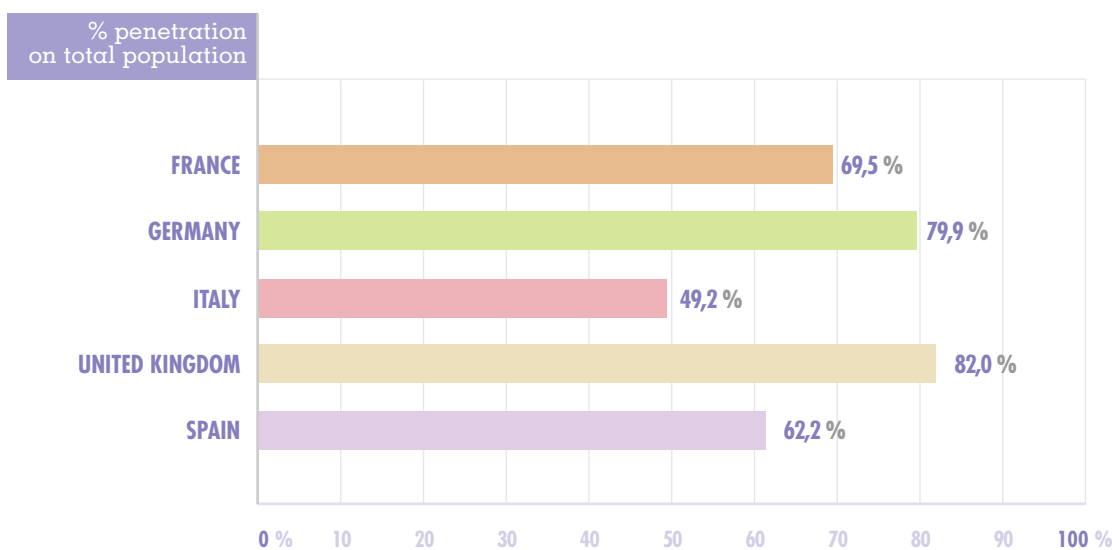
With respect to the wealth of content offered, it is sufficient to note that - in the Spring of 2011 - the average Italian view now has over 70 channels at his disposal through terrestrial digital, of which two thirds are free, 51 free and 21 pay channels (see **Figure 2 ■**).

The shrinkage in the 7 generalist TV channels' audience (i.e. Rai 1, Rai 2, Rai 3, Rete 4, Canale 5, Italia 1 and La7) was extremely limited up until 2008 (only 7 percentage points with respect to 2000), but after the switch-off in 2009 and 2010, when 25 % and 38 % of the population, respectively, passed to terrestrial digital, this trend accelerated. Overall, the 7 "historical" channels in 2010 accounted for an accumulated percentage of 76.4 % of viewers, which signifies a 7.6 percentage drop with respect to 2008. The digital channels, above all those broadcast over the digital terrestrial platform, have benefitted from this reduction.

However, some of these channels also belong to the Rai and Mediaset groups: in 2010, the new channels of these two groups accounted, for 5.4 % of the entire television share. In point of fact, it is very interesting to note that RAI's and Mediaset's share in 2010 was

EUROPE (BIG 5). THE SPREAD OF THE INTERNET (2011, in alphabetical order by Country)

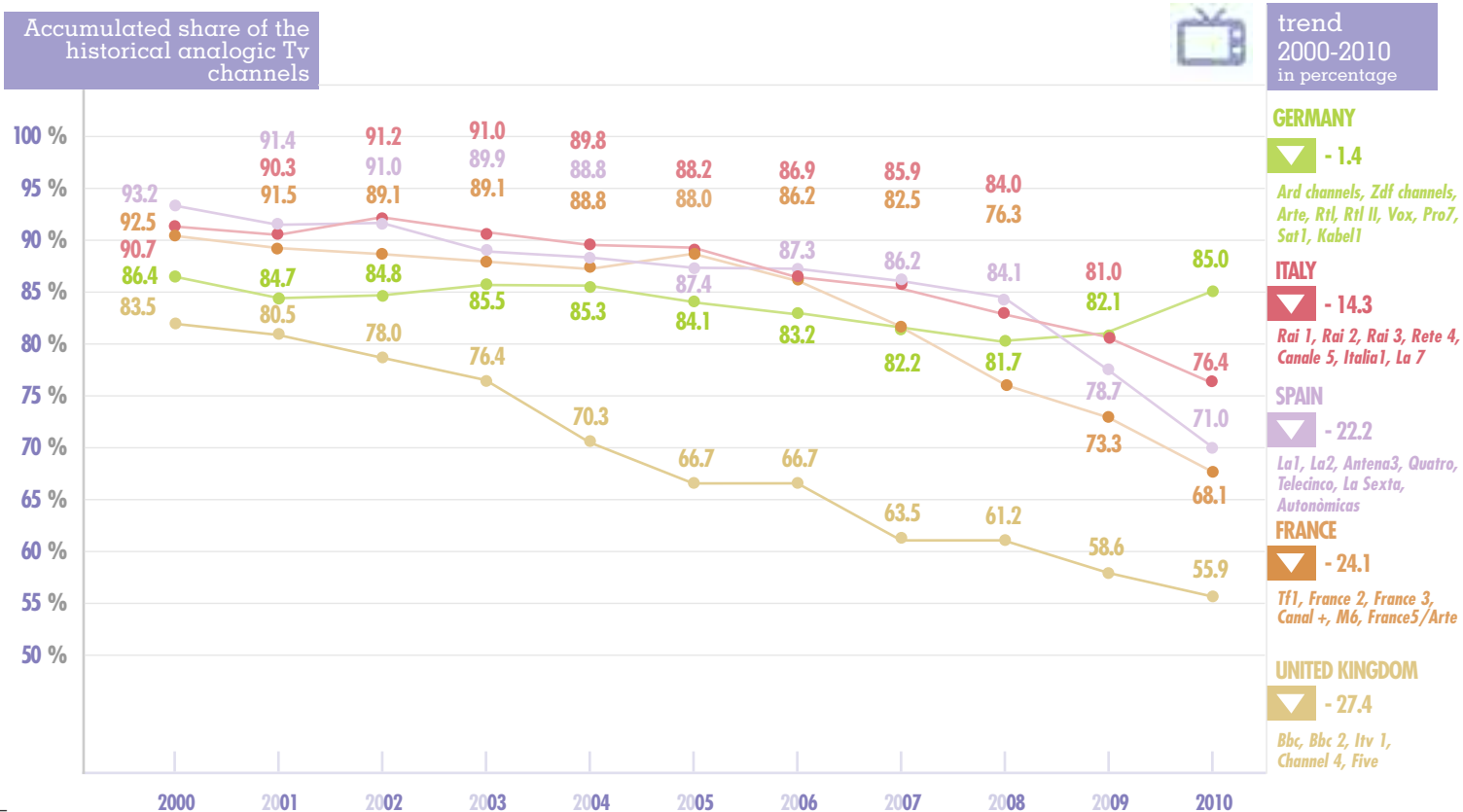
CHART 4



Source: Internet World Stats.
Notes: situation recorded on the 30 June 2011.

EUROPE (BIG 5). IN ITALY, THE "HISTORICAL" ANALOGUE TV RESISTS CHART 5

(time series 2000-2010, accumulated share of the leading public and private channels)



Source: IsCult survey based on national audiometric institutes data.

Notes: the accumulated share was considered in the full year, full day; the data does not include "digital" or "thematic" channels of the respective groups.

complemented by a number of specialized channels, for which we can use the more common definition of "thematic" channels.

Rai & Mediaset Share 2010

GROUP	RAI	MEDIASET
GROUP HISTORIC CHANNELS' SHARE	38.31 %	35.22 %
THEMATIC CHANNELS' SHARE	3.02 %	2.39 %
TOTAL SHARE	41.33 %	37.64 %

Source: IsCult survey based on Nielsen / Auditel data. Notes: total "universe", full day.

The "other" Rai channels, with respect to the traditional channels, by now, account for 7.3 % of total audience of the Rai Group (3.02 % out of 41.33 %). The "other" Mediaset channels represent 6.3 % of the total audience of the Mediaset Group (2.39 % out of 37.64 %).

If the share of the traditional Rai + Mediaset channels amounted to 73.5 % in 2010, with the inclusion of the theme channels (5.4 %) their share reaches 79.0 %... Therefore, the health of the "family of channels" for the two groups is, to say the least, excellent, including the multi-channel and multi-platform environment.

The data being proposed here on the enduring nature of television's central role in Italy are confirmed by other international statistics. Nevertheless, apocalyptic theories of the TV's coming demise with respect to the new media periodically re-emerge despite being refuted by such facts. As early as October 2008 Wired announced: "TiVo Ceo Declares TV Almost-Dead" [▶ 16].

A few years earlier "Newsweek" proclaimed: "The End of Television" [▶ 17]. Similar forecasts, made by improvised prophets (or interested parties) sound equally false, like the famous theory propounded in 1946 by Darryl F.

▶ 16. Betsy Schiffman, "TiVo Ceo Declares Tv Almost-Dead", in "Wired", 20 October 2008. Tom Rogers, CEO of the pioneering company, and leader in the digital video recording business, announced: "in the next two or three years, the television industry will be facing a situation worse than the world financial crisis. According to Rogers, the television viewers would be making increasing use of digital recording services, especially for bypassing

commercials. Market developments are not bearing out his forecast: TiVo's turnover has fallen from 273 million dollars in 2007, to 220 million in 2010, subscribers dropped from 3.3 million in 2008, to 2 million in 2010...

▶ 17. Rob Long, "The End of Television", in "Newsweek", New York, 6 June 2005.

ITALY: A CREATIVE MEDIA NATION 2017

The important contribution of creative industries to society and the Italian economy

Zanuck (President of 20th Century Fox): "Television won't be able to hold on to any market it captures after the first six months. People will soon get tired of staring at a plywood box every night."

Aside from such periodic prophets of doom, the TV, all considered, enjoys excellent health.

A few data to summarise the international media trends: in terms of *consumption*

- In the course of 2011, the world's television population will grow by a further 40 million viewers, reaching a total of 3.7 billion men and women (almost double the number accessing the Internet). Average world consumption will reach 3 hours and 12 minutes a day, which is far higher than the average of 15 minutes a day spent on social network sites or the 33 minutes a day that the average USA citizen dedicates to the Internet [▶18]; It is estimated that in 2011, total accumulated television usage time will reach the incredible figure of 4.49 trillion hours [▶19]... In the coming years we shall witness an increasing "restructuring" of media time but television will always hold the centre of the stage.

in terms of the *economy*

- television's share of the world advertising market rose from 38 % in 2008 to 41 % in 2010 (+ 3 percentage points), according to ZenithOptimedia's estimate [▶20]; in 2012, television will absorb more than US \$200 million in worldwide investments and achieve a share close to 42 % of the total of \$ 487 billion. In this year, advertising on the Internet will be around \$ 81 billion, representing a 17 % share (less than one half television's share)...
- according to Idate, on the other hand, the earnings from "television services" would have been € 289 billion in 2010, representing a 7 % year on year increase. The macro geographical areas are as follows: USA with 37 %; Europe with 29 %; Asia-Pacific with 22 %; Latin America with 8 %; the Middle East and Africa with 4 % [▶21]; 43 % of total earnings are generated by advertising, against 48 % from pay-TV and the remaining 9 % from public financing (licence fees and other)...

▶18. Source: Nielsen. More precisely: the estimate made on the social networks is a calculation based on Nielsen data with respect to the time passed on Facebook in the USA, the United Kingdom, Australia, and Brazil, in June 2010. In the four countries considered, the "average daily time" dedicated to Facebook rose from 7.5 minutes in June 2009 to 10.3 minutes in June 2010. The general estimate rises to 14 minutes for 2011 (see BBC News, "The ups and down of social network", 22 July 2010). The data on the overall time spent on the Internet was provided by Nielsen, "Nielsen Three Screen Report", vol. 8, I quarter 2010.

▶19. The unit of measurement, trillion, in American English, is equivalent to 1,000 billion.

▶20. ZenithOptimedia, "Steady recovery in global ad expenditure to continue at least three years", London, 6 December 2010.

▶21. Idate, "World Tv Market 2010", Paris, 2011; see also Idate, "Tv 2010. Market & Trends. Fact & Figures", 2010.

▶22. That television shows represent "the most common conversation topic

in terms of *predominance*

- television continues to exercise a cultural-media predominance, notwithstanding the creation of content by other media. It has shown itself to have an essential function in the promotion of book publishing as well as in the musical industry. We can also observe a growing trend in the sale of periodicals correlated in some manner to television programmes. It plays an essential role in toy marketing... And what can we say about the role of audiovisual products (cinema and drama) as promotional vehicles of fashion, design, gastronomy and tourism? But even more interesting are the data according to which television shows constitute the most widespread subjects of telematic conversation across the world, stimulating over one billion tweets a year [▶22]. Furthermore, a British survey revealed that a significant part of Internet navigation takes place simultaneously with television usage. 79 % of the British population between 18 and 24 years of age make use of social network sites while watching television, and no less than 42 % of these "internet viewers" use the net to circulate live comments on television programmes with friends [▶23]...

This amounts to further confirmation of television's predominance as the "super media": thus if somebody were to throw it out of the window, television would only re-enter through the door. An interesting metaphor has been coined on this ongoing process, whereby TV is increasingly looking towards the Web while the Web features more and more television content (which in this way becomes "audiovisual media services", with new forms of advertising: it is the "end" forecast for the TV, shaken off its throne by a most far-ranging medium and from which it will develop into an expressive form): it is about the "meeting of two forms of broadcast schedules" [▶24].

around the world" was asserted by Deloitte, which drew up an estimate of one billion tweets every year on television, premising that 5 million tweets a day (out of a daily total of 90 million tweets) address this subject. See Deloitte, "Technology, Media & Telecommunications Predictions 2011", London, 2010. The Deloitte report also states: "Television is – and will likely remain – more than just a piece of technology or a portal for a library of content. For many households, it is a focal point for family gatherings. For many individuals, it is the principal topic of water cooler conversations with friends and colleagues. In 2011, mountains of newsprint and terabytes of online chatter will likely continue to focus on TV shows, pushing and cajoling people into what to watch. And the best search algorithm in the world is not going to change that behavior. At least not in 2011".

▶23. Source: YouGov survey, op. cit., 2010.

▶24. In the meeting between two "broadcast schedules" the "personal broadcast schedule" turns out to be the winner, in other words the

Increasing use of television content on the Web

It is interesting to see how the television medium is also capable of permeating the Internet. If, besides analysing data on total video usage over the Web (obviously driven by the user generated content carried, first and foremost, by YouTube), we also examine how quality video is being used ("quality" in the conventional meaning of broadcast professional programmes with originally scripted TV content rather than unscripted or once-only programmes), we shall find that a player such as the Hulu platform (see below) can dominate the scene, and that television broadcasters' websites are beginning to play an important role.

In the last quarter of 2010, Hulu, in the United States, reported 323 million hours of television content usage, amounting to at least a 70 % year-on-year increase. The websites of the five major networks (Abc, Cbs, Nbc, Fox, Cw) totalised 162 million hours, half the hours reported by Hulu, although they also recorded a 82 % year on year increase. We would like to remember that Abc, Fox and Nbc are Hulu's shareholders and, at least, the great part of their contents is available as on their own website as in the Hulu itself.

Altogether, summing the data of the Hulu and the five major USA network websites, the quantity of time dedicated to online TV usage grew 33 % [▶ 25].

According to the Canadian Convergence Consulting Group, in 2010, 18 % of US citizens used Internet to view entire TV serials (see the report "The Battle for the American Couch Potato"). Also see "Towards Social Television" below (pages 44-46).

THE TURNOVER OF THE CULTURAL INDUSTRY IN ITALY

The importance of the cultural industry in the social and economic life of a nation should be evaluated with a multi-dimensional approach based upon a set of distinct indicators. Moreover, apart from its intrinsic difficulty, "quantifying" the dimensions of the audiovisual industry is methodologically complex, as also, for that matter, is the quantification of the creative and cultural economy in general. The USA has, historically, been at the forefront of such research - from the academic studies of Vogel and the scenario analysis of Veronis, Suhler, Stevenson [▶ 26] – but its European counterparts, especially Italian researchers, are not noteworthy for their methodological accuracy. Furthermore, it should also be remembered that the economics and politics of culture are areas of study that have only recently received recognition in scientific and academic circles, at least as concerns Italy.

Apart from the economic estimates on the size of the business, and as an example of the difficulties to obtain reliable estimates, we would also like to mention the differences found in the estimates of such an apparently straightforward matter as fixed network broadband penetration in Italy. According to the Italian Communication Regulatory Authority, at the end of 2009 43 % of Italian families had access to broadband, but for Istat this figure was only 35 %, while for the consultancy company Between it was 39 %.

This should be sufficient to help us understand the relativism involved, and, in any case, the prudence with which figures and estimates must be approached if we are to attempt "quantifying" the cultural and media system!

Although it is generally accepted that culture and the media have acquired a significant economic importance, discordant, partial and inaccurate information are still propounded, frequently caused by a multiplicity of sources and the different methodologies adopted. The final result is enormous confusion, including "numerical" uncertainty, and a growing need for certified information. Such "certification" calls for different approaches and

"acquisition, production, remix, redistribution and use by each actor of information, experiences and products through new devices but also through new uses for old devices (TV seen on YouTube), with different and interrelated modes of usage over the specific temporal continuum of the single user/author (...). The logic of the "personal broadcast schedule" proceeds in two directions: a television production based upon the indications provided by active users and a television population whose user-choices embrace various channels and various simultaneous or multi-temporal modes (...)" (In Gpf, "Anteprima. La comunicazione nella me-society. Traiettorie di accesso al palinsesto personale", Milan, 2010).

▶ 25. comScore, "U.S. Digital Year in Review. A Recap of the Year in Digital Media", New York, 2011.

▶ 26. Harold L. Vogel, "Entertainment Industry Economics: A Guide for

Financial Analysis", Cambridge University Press, Cambridge, 2010 (the eighth edition of almost 700 pages, was published at the end of 2010). The "Communications Industry Forecast", instead, reached its XXIV edition in 2010 - an excellent dataset on the USA communications industry by Veronis Suhler Stevenson, a USA investment fund specialised in the information and media industries.

serious coordination and standardisation, especially in terms of definitions and methodologies. In Italy, the efforts hitherto made to harmonise the methodologies for surveys and statistical-based estimates have been absolutely insufficient, if our final objective is to enhance accuracy, reliability, credibility and comparability. Even if notable experiments have been conducted in the field of tourism, the objective of a "satellite account" of culture in Italy is still far from being achieved (satellite accounts refer to a statistical tool that – once having chosen the subject for study – examines all its various aspects of the subject in detail, including all the various operators involved). Our research, therefore, sets itself the objective of providing its own (modest) contribution towards the knowledge (and thus the awareness) of the sector.

Therefore, we would counsel prudence in accepting the estimates set forth below. Unfortunately, there are no methodologically validated estimates on the economic size of the cultural and media industry in Italy, and even institutional certification has been criticised for its partiality as also for its being out of touch with the new media scenario [▶ 27]:

- according to the most reliable institutional data, released by the Italian Communication Regulatory Authority [▶ 28], the total earnings of the so-called "Integrated Communications System" (known by its acronym "Sic") amounted to € 23 billion in 2009, representing a 5 % decrease with respect to the figure of € 24.3 billion posted in the preceding year. The so-called "radio and audiovisual media services", at over 40 %, constituted the highest market share. Furthermore, television accounted for € 8.6 billion, of which € 5.4 billion referring to free television and € 3.2 billion to pay-TV; and consequently represented 37 % of the total system. At this point, it should, moreover, be mentioned that although Sic's composition, in the view of some experts, is still

▶27. 6 April 2011, the Italian Communication Regulatory Authority was the scene of an internal dispute (a methodological dispute but also one with political overtones because by enlarging the size of the "cake", the size of the "slices" is correspondingly diminished and consequently also the market share of the major players, thereby foiling potential anti-trust action), with respect to the proposal to extend the "boundary" of a survey in progress on the advertising market in Italy (as per resolution n° 402 of 22 July 2010). According to the majority of the commissioners, this should be extended to cover not only the so-called over the top operators (first and foremost Google) and social networks (first and foremost, Facebook), but also the below the line operators who do not make use of the so-called "classical media", and therefore the boundary would include sponsorships, public relations, and promotions (see Andrea Secchi, "Pubblicità, si allarga l'indagine", in "Italia Oggi", 7 April 2011). The President of Agcom, the Italian Communication Regulatory Authority, Mr Corrado Calabrò, on the occasion of the annual report by the Authority on 6 July 2010, had in any case announced the need to "redefine the boundary of the Integrated Communications System by statute law" in the light of the growing role played by the Web.

▶28. Agcom, in March 2011, "The Integrated Communications System: the evaluation findings on the economic dimensions for the year 2009", Annex A of resolution n° 126/11/Cons. of 23 March 2011.

▶29. The breakdown of this macro aggregate of € 62,505 million in expenditure in 2009 is as follows: € 25,634 million on "cultural and

functional for highlighting data useful for specific analyses, and regulatory requests that characterised the transition to terrestrial digital, it is not very indicative of the relations between the Internet and traditional broadcasting.

– according to Istat, total Italian spending on "culture" including entertainment [▶ 29], would have been € 62.5 billion in 2009, corresponding to 6.9 % of the total of € 905.5 billion spent by Italian families. Instead, the total earnings of the companies in the sector, which Istat denominated "sports and cultural recreational activities" (thereby referring to the Ateco code 92.0 classification), would have amounted to € 26.2 billion in 2008.

- according to Confindustria Cultura, the over 17,000 member companies of the Italian Federation of the Culture Industry, employed 42,000 workers, accounted for 30,000 jobs (as between artists, technicians, and other personnel) and generated an added value of about € 16 billion. According to Confindustria Servizi Innovativi, in 2009 the Italian digital "content market" would have recorded a value of € 5.8 billion made up as follows: € 4.7 billion from "pay-content" and € 1.1 billion from advertising. In more detail and by sector: € 2.955 billion from video (mainly referring to access to pay-tv), € 770 million from "online gaming and entertainment", € 763 million from "mobile services and content", € 55 million from news and € 44 million from music.

- according to PoliMi (the Polytechnic of Milan) the "media market", limited to actors that offer "not exclusively advertising contents on an ongoing basis" (press, radio, "sofa-TV") could be valued at € 16.5 billion in 2009.

- according to PwC – PriceWaterhouseCoopers - the total earnings of the "entertainment & media" industry in Italy would, instead, have been € 34.0 billion in

recreational services", € 12,203 million on "newspapers, books and articles of stationary", 10,707 million on "other recreational articles, flowers, plants and animals", € 8,903 million on "holiday packages", and € 8,050 million on "audiovisual and photographic devices, computers and accessories". This is not the place to discuss the merits or otherwise of the logic behind Istat's classifications. However, the international comparison, based upon Eurostat data (see Chart 19) shows that the percentage of expenditure by Italian families on cultural consumption (6.9 %) is decidedly below the average of the EU27 countries (9.4 %): the lowest ranking countries in the European classification, with values near to or below 6 % are Bulgaria and Romania, followed by Portugal with 6.8 % and Italy, the third lowest ranking country. At the other end of the classification, comprising a large number of countries including the Scandinavian countries and the United Kingdom, spending earmarked for cultural consumption, in 2007, exceeded 11 %. Therefore, in the ranking of the five major European countries, Italy comes last.

▶30. According to PriceWaterhouseCoopers (PwC), the "Italian television market", in 2009, would have posted an overall turnover of € 8.8 billion, against an overall size of the "entertainment and media" industry estimated at € 36.0 billion, which breaks down as follows: television € 8,786 million, betting € 6,732 million, the Internet € 6,738 million, book publishing € 3,449 million, magazine publishing € 3,222 million, business to business € 2,169 million, newspaper publishing € 2,076 million, filmed entertainment € 1,444 million, videogames € 927 million, radio € 440 million, recorded

2010 [▶ 30];

- according to Iem - Istituto di Economia dei Media, Fondazione Rosselli - total earnings by media with "publishing content" would have been € 21.4 billion in 2009 [▶ 31];

- instead, on the basis of our own calculations, deploying a hitherto unused, and experimental boundary, the total earnings of the media, cultural and entertainment industries, in 2009, amounted to € 24.6 billion against a total of € 230.7 billion generated by the "creative and correlated industries", which also include the tourist sector, for €64.5 billion, gaming [▶ 32] for € 61.5 billion, and fashion, for € 56 billion (see **Table 1** ■, **Chart 6** ■ and **Chart 7** ■).

Note

We should recall that the revenue flows accruing to authors pass through the various sectors of the Italian cultural industry. According to the data of the Italian Authors and Publishers Association (SIAE), in the 2009 financial year, copyright earnings, at € 570 million, registered a 6 % decline with respect to the figure of € 609 million recorded in 2008 [▶ 33]. It should also be remembered that SIAE, an association established by statute law, protects the copyrights of 100,000 members (with its 1,400 employees).

music €245 million and external advertising €237 million. Pwc deploys an evaluation model based upon American experience that was developed by Veronis, Suhler & Stevenson (Vss) and Wilkofsky Gruen Associates (W&a).

▶31. According to data presented by the Fondazione Rosselli at the end of January 2011, "publishing-content media" would have posted total earnings in 2009 of €21.4 million against €1.8 billion in the ICT sector and €20.3 billion in the advertising sector (which would fall to €12.4 billion if publishing media are excluded). The following is a breakdown of earnings referring to media with "publishing content": television € 8,496 million, book publishing € 3,407 million, magazine publishing € 3,360 million, newspaper publishing € 3,047 million, videogames € 1,139 million, home video €680 million, cinema €664 million, radio €436 million, and recorded music €226 million (see Fondazione Rosselli, Istituto di Economia dei Media, "L'industria della comunicazione in Italia. XIII Rapporto", sip, Turin, 2011. Also see the executive summary, "Gli investimenti pubblici nell'industria culturale e delle telecomunicazioni").

▶32. We realise that purists (moralists?) will raise their eyebrows at the inclusion of gaming within the "creative economies". However, we are dealing with recreational activities and a sector that, without doubt, is part of the wider sector of entertainment. Furthermore, it is reassuring to note that authoritative academics (such as the above-mentioned Vogel) as well as multinational consulting companies that have carried out such quantifications (such as PriceWaterhouseCoopers) include "gaming" (and not just videogames) within the boundaries of a cultural and media system in the broadest sense of the term.

▶33. Società Italiana Autori e Editori, "Rapporto annuale sulla gestione. Esercizio 2009", Siae, Rome, 2010.

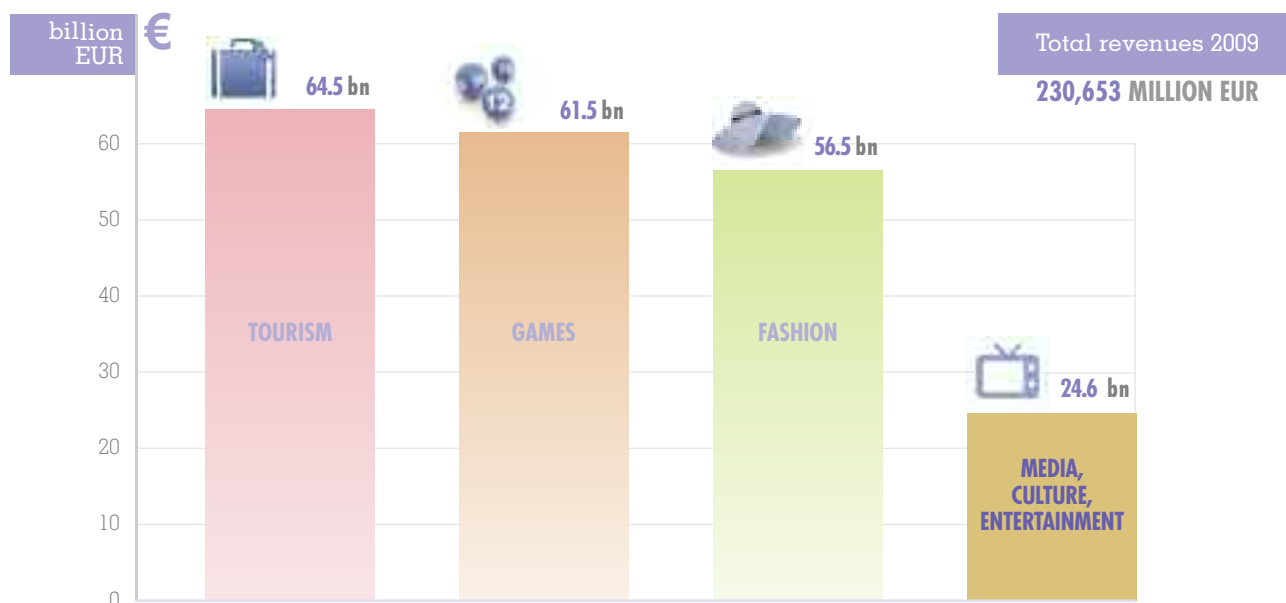
Industry / activity		Million EUR	Share %
MEDIA / CULTURE / ENTERTAINMENT			
1	TELEVISION	8,590	35.0
2	BOOKS	3,408	13.9
3	MAGAZINES	3,292	13.4
4	NEWSPAPERS	3,047	12.4
5	CINEMA	751	3.0
6	RADIO	697	2.9
7	ELECTRONIC PUBLISHING *	687	2.8
8	HOME VIDEO	680	2.8
9	YEARBOOKS AND DIRECTORIES	655	2.7
10	VIDEOGAMES	625	2.5
11	LIVE MUSIC	509	2.1
12	THEATRE	449	1.8
13	DISCOTHEQUES AND DANCE HALLS	320	1.3
14	RECORDED MUSIC	230	0.9
15	PRESS AGENCIES	220	0.9
16	MUSEUMS, EXHIBITIONS, EXPOSITIONS	198	0.8
17	FUND AND THEME PARKS	194	0.8
SUB-TOTAL MEDIA CULTURE ENTERTAINMENT		24,552	100 %
INDUSTRIES AND CORRELATED WITH ACTIVITIES			
1	TOURISM **	64,500	31.3
2	GAMING ***	61,453	29.8
3	FASHION	56,524	27.4
4	OTHER ADVERTISING ****	10,445	5.1
5	PUBLIC INTERVENTION IN CULTURE *****	5,483	2.7
6	TOYS	3,710	1.8
7	SPORT *****	2,369	1.1
8	ART (ART DEALINGS)	1,000	0.5
9	CONTRIBUTIONS TO CULTURE BY BANKS	408	0.2
10	CULTURAL SPONSORSHIP	180	0.1
11	DONATIONS TO CULTURE	29	0
SUB-TOTAL INDUSTRIES AND CORRELATED WITH ACTIVITIES		206,101	100 %
MACRO SECTORS			
SUB-TOTAL MEDIA CULTURE ENTERTAINMENT		24,552	10.6
SUB-TOTAL INDUSTRIES AND CORRELATED WITH ACTIVITIES		206,101	89.4
TOTAL "CREATIVE AND CORRELATED INDUSTRIES"		230.653	100 %

Source: ongoing (and not exhaustive) data compilations by the IsICult Observatory using various institutional and trade sources.

Notes: data referring to hardware, i.e. equipment (from computer to televisions and musical instruments) have been excluded and only activities that propose content, in the widest sense of the term, included. The data refer to every sector/ activity comprising both end user spending and any public subsidies. The sources stated below only refer to the clearly debateable cases: (*) Agcom estimate, which should be compared with the lab estimate, evaluating the advertising carried over the Internet at €849 million; (**) "domestic product" of the travel and tourism sector (source Wttc); (***) "gaming" refers to the market for all forms of public gaming: lotteries, betting-machines, sports-based gaming (source Aams) (****) we defined "other advertising" the advertising not carried by the traditional media ("classic advertising"): it refers to the so-called "below-the-line" advertising (promotions, sponsorships - other than that carried by the media, and which are included in media earnings - public relations, direct response) and is independent of the "editorial content" (source Nielsen); (***** these are the latest data made available in the specialised literature, referring to 2007, net of subsidies earmarked for entertainment (source: Federculture); (***** spending on "sports activities": spending by the general public, sponsorships, broadcasting rights, etc.) (source Siae).

ITALY. THE ECONOMIC DIMENSIONS OF THE CREATIVE AND CORRELATED INDUSTRIES (2009, main sectors, billion EUR)

CHART 6

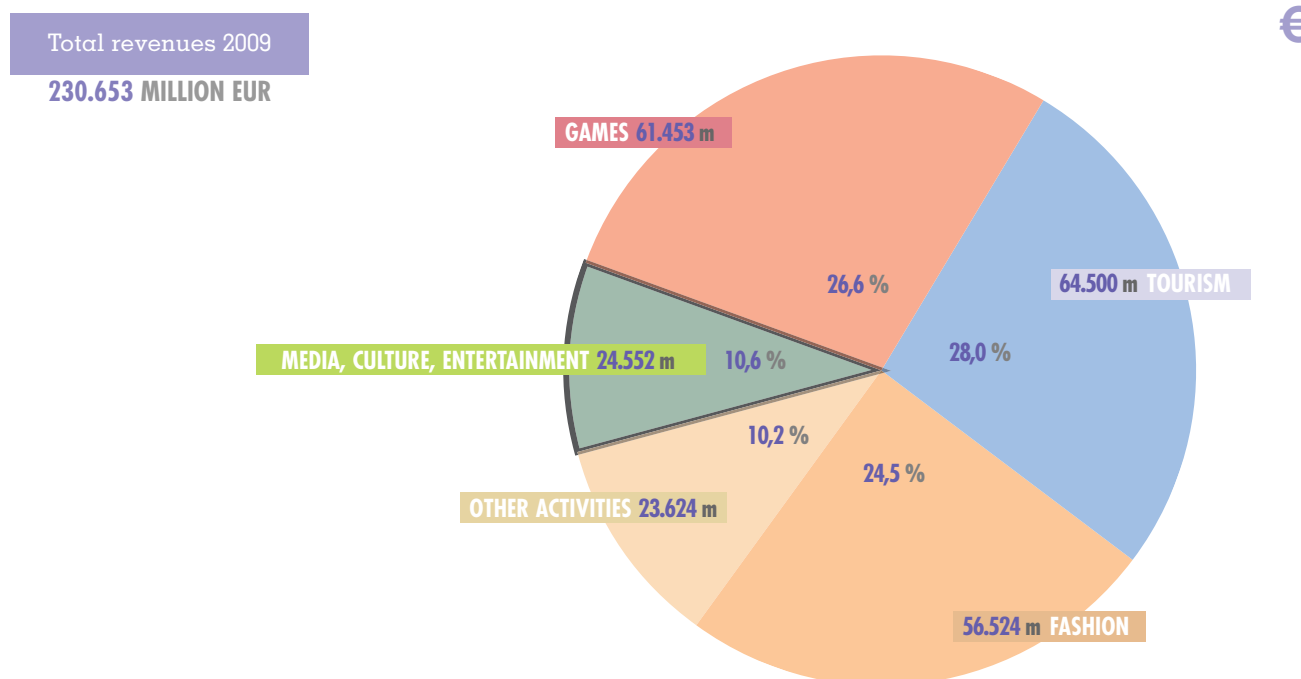


Fonte: data compilations by the IsCult Observatory using various sources. (see Tab. 1, page previous).

Notes: total macro-sector listed in the chart is 207,1 billion euros, to whom additional 23,6 billion of other activities must be added (see chart below).

ITALY. THE CREATIVE INDUSTRY'S "BIG CAKE" (2009, million EUR)

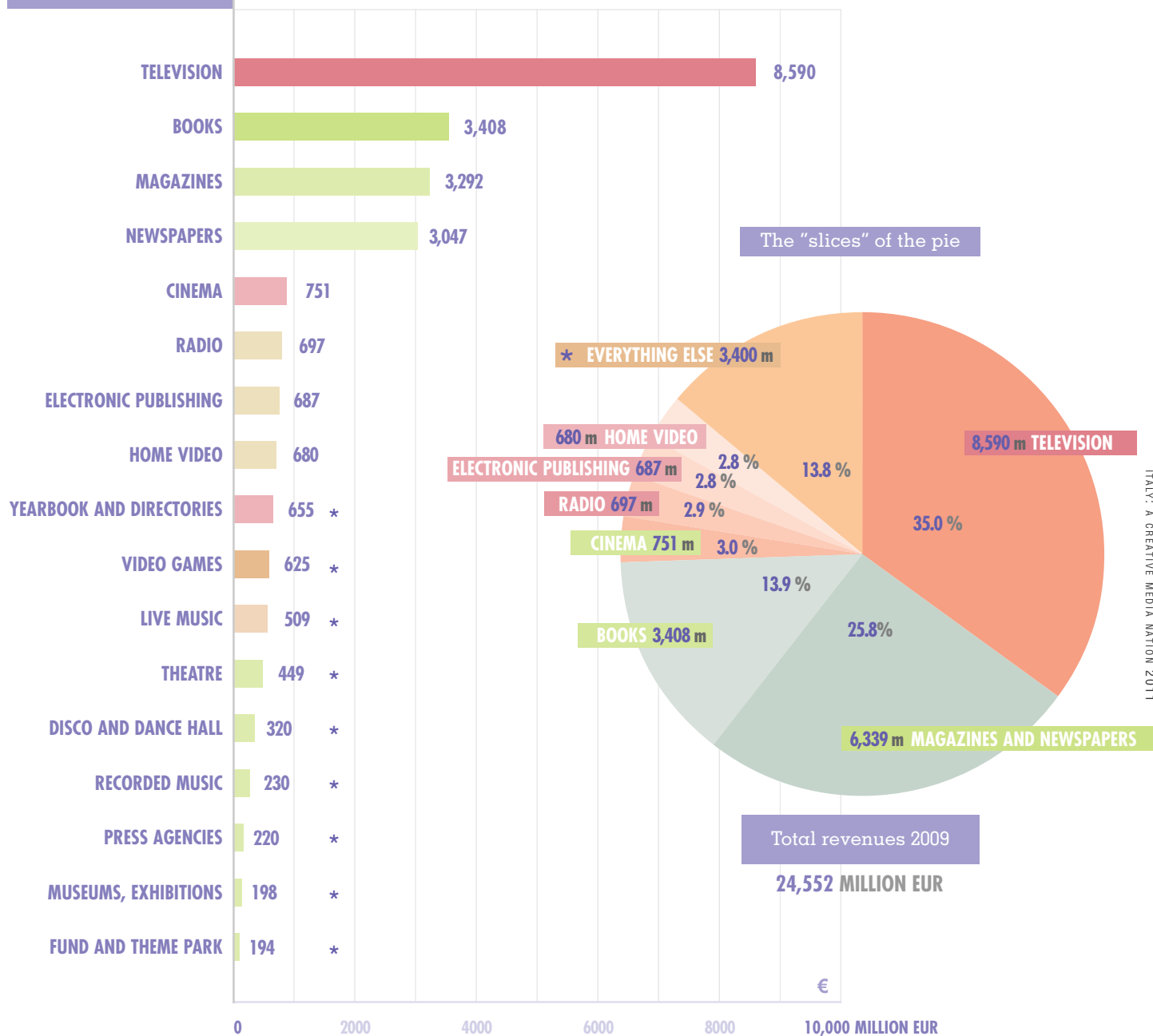
CHART 7



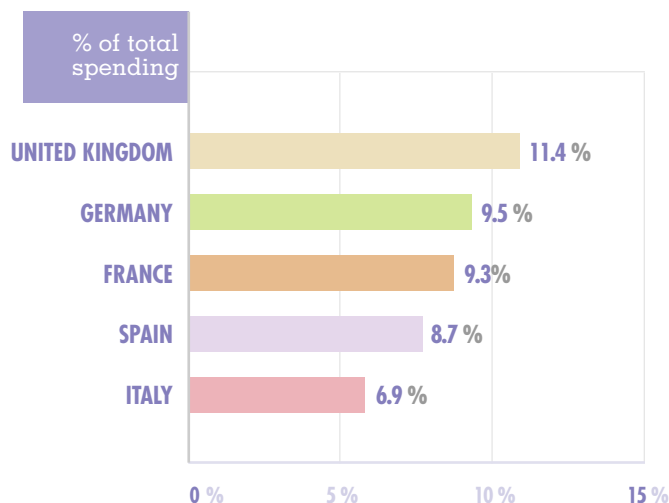
Source: data compilations by the IsCult Observatory using various institutional and trade sources. (see Tab. 1, page previous).

Notes: "other activities" includes: advertising "below the line" (10,445 million), public intervention in culture (5,483 million), toys (3,710 million), sport (2,369 million), artworks sale (1,000 million), bank foundation's contribution to culture (408 million), cultural sponsorship (180 million), donations to culture (29 million).

Sectors Media, Culture,
Entertainment



Fonte: Source: data compilations by the IsCult Observatory using various institutional and trade sources (see Tab. 1, page previous).



Source: IsCult survey based on Eurostat data 2011.

Notes: the data refers to "culture" and "entertainment" spending.

AVERAGE UE 27: 9.4 %

Top 5:

FINLAND	12.2 %
SWEDEN	11.7 %
AUSTRIA	11.6 %
MALTA	11.6 %
UNITED KINGDOM	11.4 %

THE TURNOVER OF THE ITALIAN AUDIOVISUAL INDUSTRY

Total earnings of the Italian audiovisual industry – "in its strict sense" – in 2009 are estimated at about € 10 billion [▶ 34], which break down as follows:

- television: 8,590 million (+ 85.7 %)
- cinema (box office): 751 million (+ 7.5 %)
- home video: 680 million (+ 6.8 %)

The total of these three sectors is € 10,021 million (100 %). Clearly, the total data include the earnings of the various phases of the production chain, and, therefore, are most representative indicator of the sector's size [▶ 35].

If we wished to adopt a criterion less focused upon the "video" component of the "audiovisual" product, we could also consider admitting three other segments within the

"perimeter" of the audiovisual industry understood in the widest sense of the term:

- videogames 625 million
- recorded music 230 million
- radio 697 million

These other three sectors of activity generate another 1,552 million, which, together with the preceding amounts, produce a total of € 11,573 million, i.e. € 12 billion [▶ 36]...

We believe that the foregoing figures provide a reliable overall quantification of the sector's dimension: € 10 billion for the tighter perimeter, € 12 billion for the larger.

If we compare these data with the overall data on the cultural industry (see **Table 1** ■ page 17) we can immediately observe the following phenomena:

- the audiovisual industry, in the narrow sense, alone (and therefore without considering video games,

▶ 34. As regards the television sector we have used the estimates of the most authoritative institutional subject, namely the Italian Communication Regulatory Authority, but with all due reservations, and limiting ourselves to notifying, albeit only as concerns the quantification of the advertising spend, that there are important differences as between sources such as Nielsen and Assocomunicazione. Unfortunately, Italy still lacks a definitive source for data on the cultural economy.

▶ 35. Up until 2008, for example, in its traditional annual report on the cinema market in Italy, Anica highlighted the earnings of one of the stages of the production chain, the so-called "technical industries". This is an extract from the report: the € 574 million in sales posted by the technical industries broke down as follows: € 189 million "video duplication development and printing facilities" + 165 million, "studios - television studios - shooting" + 140 million, "video footage for cinema and television" + 55 million, "audio and video post-production" + 25 million, "hires and managers of technical and transport means". It is clear that these 574

million are "included" within the perimeter of the € 10 billion of total earnings of the television sector, and, as such, constitute (from another standpoint) part of the costs necessary for television, cinema and home-video production.

▶ 36. However, it should be specified that the internal breakdown of the total earnings flow does lend itself to alternative interpretations and therefore the calculation would lead to different results according to the methodological criteria used: IsCult's estimate, for example, attributes – in line with the traditional approach – only box office takings and public subsidies to the cinema, despite the fact that cinematographic companies' earnings also derive from televised films and home video, and therefore they, to some degree, already figure among the total earnings from television broadcasters and home video companies (for which clearly they represent a cost centre). Thus by changing the criterion, we change the values, but not – it must be emphasised – the final result. Wanting to dot all our i's and cross our t's, we can recall that:

music and radio) accounts for a quantity of resources slightly higher than those of the publishing industry in toto (books, magazines, newspapers): € 10 billion for audiovisuals against € 9.8 billion for publishing;

- the audiovisual industry accounts for resources equal to about one sixth of the resources of two of the most important Italian industrial sectors, tourism and fashion: € 10 billion against € 64.5 billion for tourism and € 61.5 billion for fashion.

By analysing the turnovers for the various sectors, the data on Italian spending on gaming clearly emerges (€ 61.5 billion per year) higher than the turnover of fashion (€ 56.5 billion) and close to the turnover of "tourism" (€ 64.5 billion): in effect, per capita spending on gaming in our country, at over € 1000 per capita per year [▶ 37], is the highest in the world.

Therefore, in 2009 the total of television system earnings was € 8,590 million, or 35 % of the total earnings of the "culture media and entertainment" sector, which amounted to € 24,552 million, and formed part of the "creative and correlated industries" macro sector with overall earnings of € 230,653 million.

If we widen the audiovisual sector perimeter (to include cinema, home video, videogames, recorded music and radio), we obtain total earnings for € 11,573 million.

And if we consider that in 2009 the Italian GNP was € 1,519,761 million euros [▶ 38]... it can be estimated that:

- 15.2 % of GDP is accounted for by "creative and correlated industries", including tourism and fashion;
- 1.6 % of GDP is accounted for by "culture media and entertainment";
- 0.8 % of GDP is accounted for by "audiovisuals".

As regards the number of companies, we shall only

observe that these can be estimated at [▶ 39]... about 12,000 active companies (i.e. companies registered with the Chamber of Commerce and declaring themselves operational) covering the entire Italian audiovisual production chain, made up of:

- about 800 companies producing audiovisuals – TV series other genres;
- about 500 companies engaged on cinematographic production;
- about 500 companies undertaking television broadcasting activities.

Nevertheless, the Italian market exhibits a still unexpressed potentiality. A comparison between the big 5 European countries in terms of the family's spending on culture, allows us to observe (see **Chart 9 ■**) that Italy, alas, ranks last in this classification. In our country, the family's spending on culture in 2007 (the latest data prepared by Eurostat and available as from 2010) barely reached 6.9% of total spending, compared to spending in France and Germany that was well in excess of 9%, and that of the United Kingdom which reached a figure of no less than 11.4%. Moreover, it necessary to consider that if we take the EU27, the countries that ranked first, in 2007, were Finland (where cultural spending peaked at 12.2%), followed by Sweden, Austria and Malta, where spending was around 11.5%. The EU27 average was 9.4%, compared to Italy's 6.9%.

- in 2010 a Feds survey calculated that the turnover of Italian "cinematographic" companies – meaning by this the concept of cinema in the broadest sense possible, therefore considerably extending the perimeter – would have been around €4.3 billion in 2009, and would have comprised a universe of 9958 companies (see Fondazione Ente dello Spettacolo, "Il Mercato e l'Industria del Cinema in Italia. Rapporto 2009", Feds, Rome, 2010). The 2010 edition of the report, presented in May 2011, did not provide data on 2010 but the data provided in the preceding study for 2009 (9,958 companies with a sector turnover of €4.3 billion) were confirmed.

- an Iem survey presented in 2009 calculated that the turnover of Italian "audiovisual" companies – which here, to be precise, comprised the producers of drama and other television content – would have been in the order of €1.5 billion in 2008 and included a universe of 860 companies. The foregoing universe comprised 148 companies that were entirely dedicated to cinematographic production and whose aggregate turnover would have been €300 million, net – and this must be specified – of the "major producers/distributors", namely Medusa Film, RaiCinema, FilmAuro and

Eagle Pictures (see Iem, "La creazione di contenuti nel mercato italiano dei media", Rome, 2009)...

▶37. Among the "anomalous" spending of Italian with respect to other European countries, we can mention spending on SMSs and MMSs, which, overall, exceed €4 billion, representing more than 5 times the total takings of cinema box offices: and also in this case, Italy (already ranking first in the international classification in terms of per capita cellphones) has set a record.

▶38. Data referring to the "gross national product at market prices" for 2009 (data classified by Istat, in March 2011, as "semi-definitive").

▶39. No accurate census exists of the companies in the Italian audiovisual companies, even on account of Ateco's uncertain and obsolete classification (for example, Feds considers that the companies of the "cinematographic" sector are just less than 10,000, but it can be reasonably argued that a significant part of these really belong to the broader audiovisual perimeter), and the data reported here are the product of an IISult estimate based on various sources.

ADVERTISING'S ROLE IN THE AUDIOVISUAL INDUSTRY

Advertising fuels the entire media system. It performs a fundamental function not only in terms of funding but also for its systemic and structural contribution. It represents an asset around which the other systems rotate: production, distribution, sales and even – indirectly – the creative system. It is a well-known fact that a large part of the media does not, generally, produce content for sale to personal viewers but rather produces content for the purpose of retaining audiences which are sold to advertising investors, i.e. companies interested in communicating to those viewers because they are deemed potential purchasers of certain products.

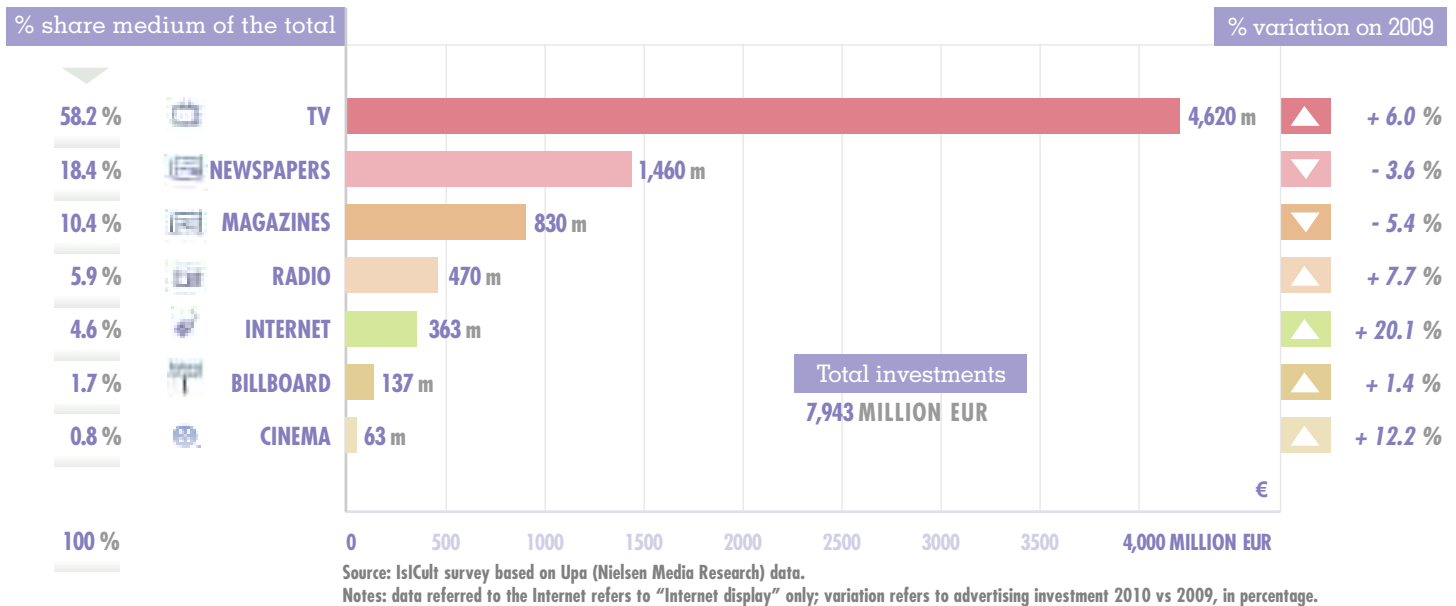
Moving from theory to practice, the role played by advertising in the Italian audiovisual industry, and specifically in the television industry, is fundamental for at least three reasons:

1. It enables television broadcasters to finance the production of original content, within a programming budget that accounts for about 67 % of the total system's earnings: over € 4.5 billion in 2008. It is estimated that at least € 800 million are assigned to the production of original television drama (€ 520 million per year), entertainment (€ 260 million), animated cartoons (€ 20 million) and documentaries (€ 10 million). Another € 160 million are earmarked for the co-production of films designed for primary cinematographic marketing. The overall earnings, therefore, are about € 1000 million per year.

2. It enables the general public to access a growing supply of free entertainment or information programmes. Moreover, the size of the general public is growing, assuming it to be true (as already noted) that the number of viewers – in any average minute of the day – rose from 8.8 million in 2000, to 9.8 million in 2010; an increase of no less than 1 million viewers in the space of one decade. No less than 84 % of the Italian population (comprising 60.4 million

ITALY. ADVERTISING INVESTMENTS
(2010, million EUR, % share of the total, variation on 2009)

CHART 10



►40. The financial statements of Telecom Italia Media also report that 185 new customers accounted for an advertising spend of € 21 million. It is interesting to note that this sum represents about one quarter of the amount that Mediaset acquired in the same year, from new advertisers. Mediaset's financial statements for 2010 reports that Publitalia had a customer portfolio of over 1000 customers, of which 274 new customers, who altogether placed orders for about €100 million, amounting to 4 % of all earnings. Obviously, the big spenders maintain a dominant position. The first 10 customers accounted for approximately 28 % of turnover, while the first 100 accounted for 73 %. By virtue of the results obtained in 2010, as

estimated by Nielsen, Publitalia holds a 36.3 % share, higher than the 35.7 % obtained last year. According to Mediaset's official data, in 2010 its active customers amounted to 1034, of whom 341 new customers, and the latter produced earnings for €81 million.

►41. It should be noted that a critical analysis of the sources revealed that the statistics on the number of Internet users, in Italy as in the rest of the world, are often imprecise, unreliable and generally exaggerated.

►42. The combination of the "foodstuffs" (21 %), "alcoholic and non-alcoholic beverages" (7 %), "toiletries" (7 %), "household cleaning" (5 %),

persons) watches television every day, according to Istat, while Auditel informs us that in 2010 46.9 million Italians watched television for at least 1 minute on an average day (81 % of the individuals in the Auditel sample). It is true, as we have already noted, that the public is increasingly fragmenting into a number of separate publics and that the targets are breaking down, but the central role played by television remains unaltered.

3. Despite the criticism directed at the oligopolistic structure of the Italian television system, (feature, however, typical of all the national markets around the world) it should be noted that the monopolist in the pay TV business, Sky Italia, posted for the financial year ending June 2010, € 272 million in advertising revenues (against € 2,793 million of total revenues, i.e. about 10 % of the total). The advertising market shows itself to be "reasonably" open towards new advertising vehicles. The financial statements for the financial year 2010 of Telecom Italia Media (which controls both La7 and Mtv Italia), even if in co-ownership with Viacom, report that 461 companies (compared to 1,000 companies for Mediaset) advertise on the group's TV channels, of which 195 are new entries (companies not found in 2009). The average investment per customer amounts to only € 286,000 [▶ 40].

The present system of monitoring, carried out by Auditel, Nielsen and other specialised companies, provides advertisers with an accurate analysis of their advertising budget's effectiveness and stimulates access to the use of the medium by new customers. Although Auditel is certainly not above methodological criticism, its monitoring is conducted on the basis of a wide and representative sample of over 100 television channels and uses a variety of segments. Moreover, the quality of an Auditel sample should not be confused with an Audiweb sample [▶ 41], as the latter is merely a pallid emulation of the original. We should, furthermore, remember the ongoing criticism on the limited reliability of the surveys on the "reader-base" of newspapers, to which Audiweb has been subjected in last two years.

It would be appropriate to point out some characteristics of the Italian advertising market that are not found in other European countries:

- the low incidence of the advertising spend with respect to the gross national product;
- a very high concentration of the advertising spend on the television market with respect to other media channels. The percentage earmarked for the

television is the highest among the five major European countries: 58 % in Italy, according to Upa estimates (see Chart 10), or 53 % according to the estimates of GroupM-Wpp (see Chart 11). According to this latter source, Spanish TV would account for 41 %, French 32 %, British 28 % and German 23 %;

- a significantly large proportion of the demand originated from "repeat-buying consumer products", and the consolidation in the market shares of the "convenience goods" sector [▶ 42].

There are also some considerations to make upon Web advertising, commencing from some of lab/Sd/Warc estimates:

- online advertising: it is estimated that in Italy the Web has attracted advertising investments for € 849 million in 2009, or 10.3 % of all national advertising spending. This is the lowest market share among the "big 5" (see **Chart 12** ■);
- "online television" advertising earnings are also among the lowest among the European big 5: only € 4.9 million in 2009 against € 20.2 million in the United Kingdom. However, estimates for 2010 raise this figure to € 48.4 million against € 96.2 million in the United Kingdom. In any case, this confirms that in Italy the traditional medium, television, continue as to play a dominant role (see **Chart 13** ■).

It should also be noted that the present system's framework reveals anomalies with respect to the "allocation" of the resources. Although Sky Italia has by now overtaken Mediaset in terms of earnings (€ 2711 million against € 2506 million), it can be asked how much the dominant subject in the pay-TV market earmarks to the production of original quality content (TV drama + cinema). According to some estimates this figure is around € 50 million, equivalent to one twentieth of the annual investments made by Rai and Mediaset (about € 1000 million comprising television fiction and cinematographic works), and a very small outlay with respect to the amount spent by Sky for the acquisition of television rights – around €600 million per year – and almost entirely devolved to the leading cinematographic companies [▶ 43].

It should be noted that advertising also plays an important role in cinematographic production and for two reasons:

- indirectly, because by financing television broadcasters it enables them to produce original content – upmarket TV drama and "soaps" – as well as films primarily designed for cinema use;

and "pharmaceutical/health products" (5 %) sectors represent almost half the total advertising spend on television (45 %).

▶ 43. On the basis of Sky Italia's financial statements, the spending on television rights for pay-TV and pay-per-view amounted to €578 million in

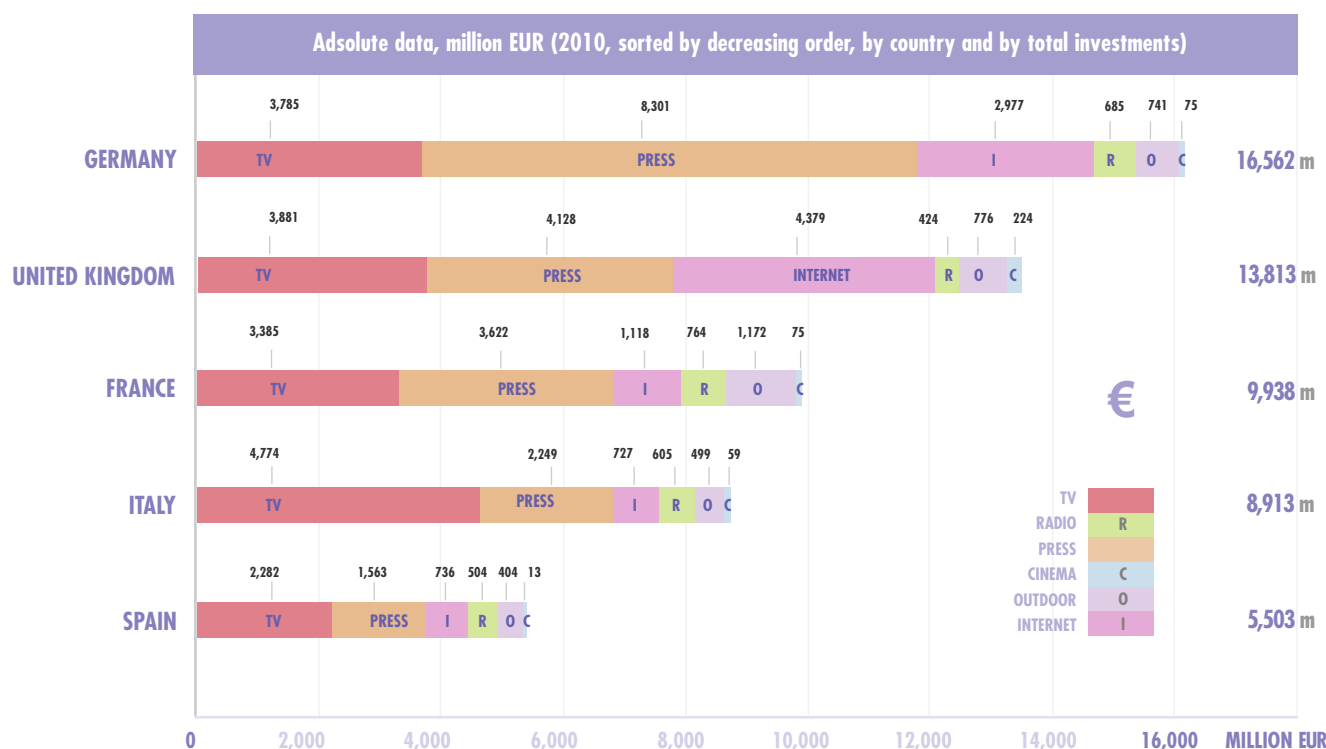
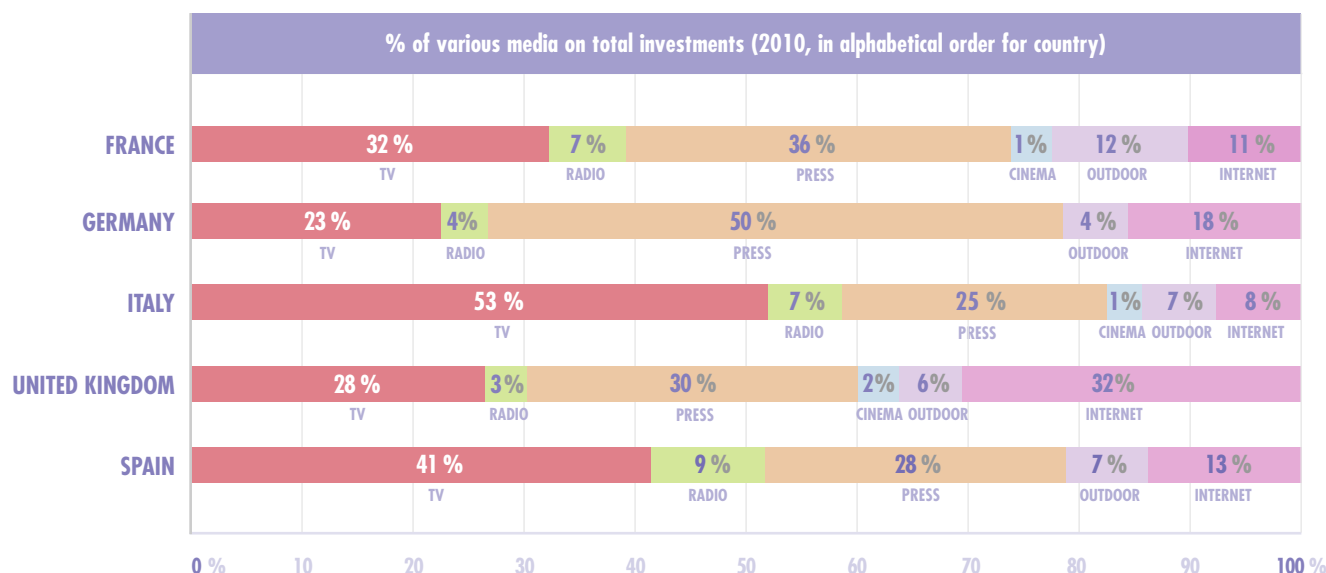
the financial year closing June 30th, 2010 and €647 million in the financial year closing June 30th, 2009 (an annual average of 613 million (+ 6.8); for the acquisition of sports rights, the outlay was respectively €782 million and €648 million in 2010 and 2009 (an annual average of 715 million (+ 6.8).

EUROPE (BIG 5). ADVERTISING INVESTMENTS

(2010. % share of the various media on all investments and absolute values million EUR)

CHART 11

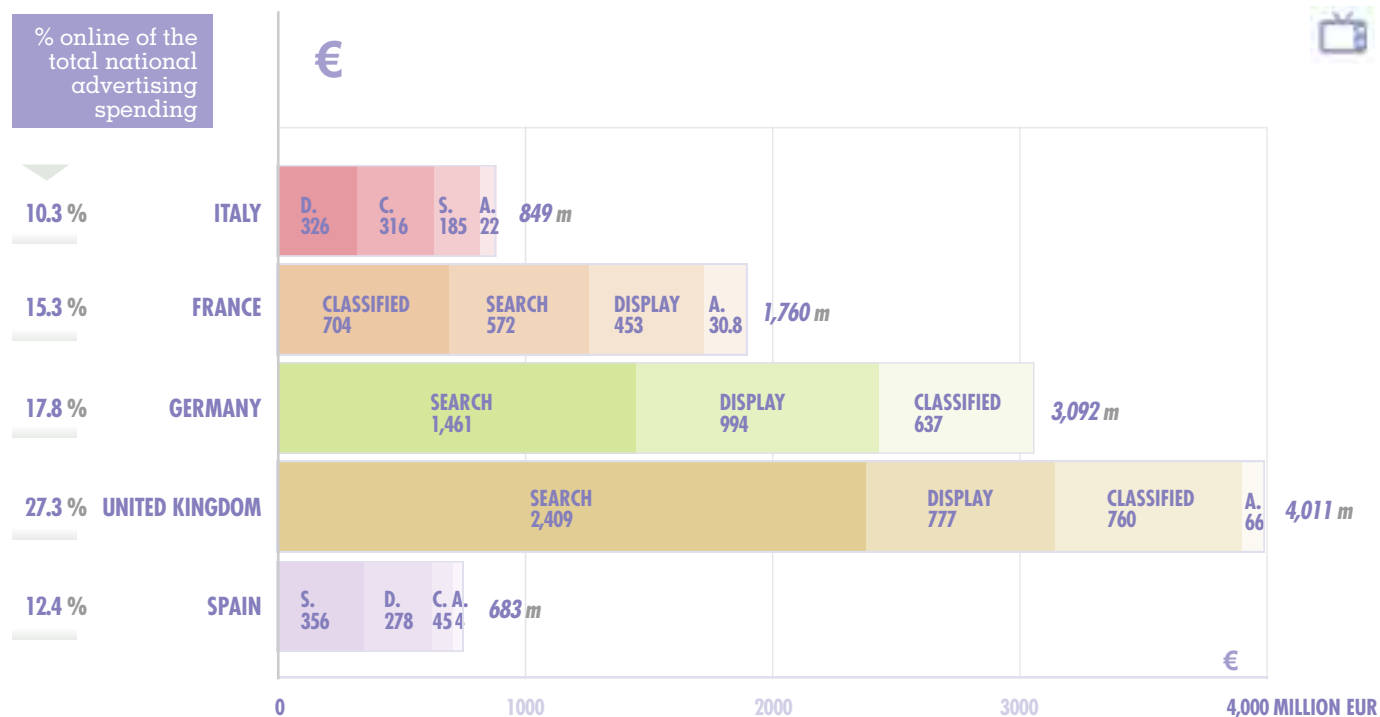
TV
RADIO
PRESS
CINEMA
OUTDOOR
INTERNET



Source: Group M (Wpp) "This Year, Next Year. Worldwide media and marketing forecast", and also: Irep-France Pub (France), Zaw (Germany), MediaKey/Nielsen/lab/GroupM (Italy), lab/Pwc (U.K), Duplo/Nielsen/InfoAdex/Pwc (Spain).
Notes: this is not the right place for a methodological discussion about advertising investments estimate criteria, especially if compared to international benchmarks, which are subject to continuous disputes (with respect to gross /net ratio, production costs, agency fees, list prices discounts...). It has therefore been decided simply to use one of the more recognized sources in the international community of advertising professionals: multinational WPP's GroupM. The proposed data in the chart are estimates for the 2010 final balance, held valid for an international comparison. It's GroupM estimates of "net value" (also net of agency fees, apart from Italy). The U.K. data (originally in British pound) has been converted in Euros at the official average exchange rate 2010, i.e. 1 Euro = 0.8578 pound.

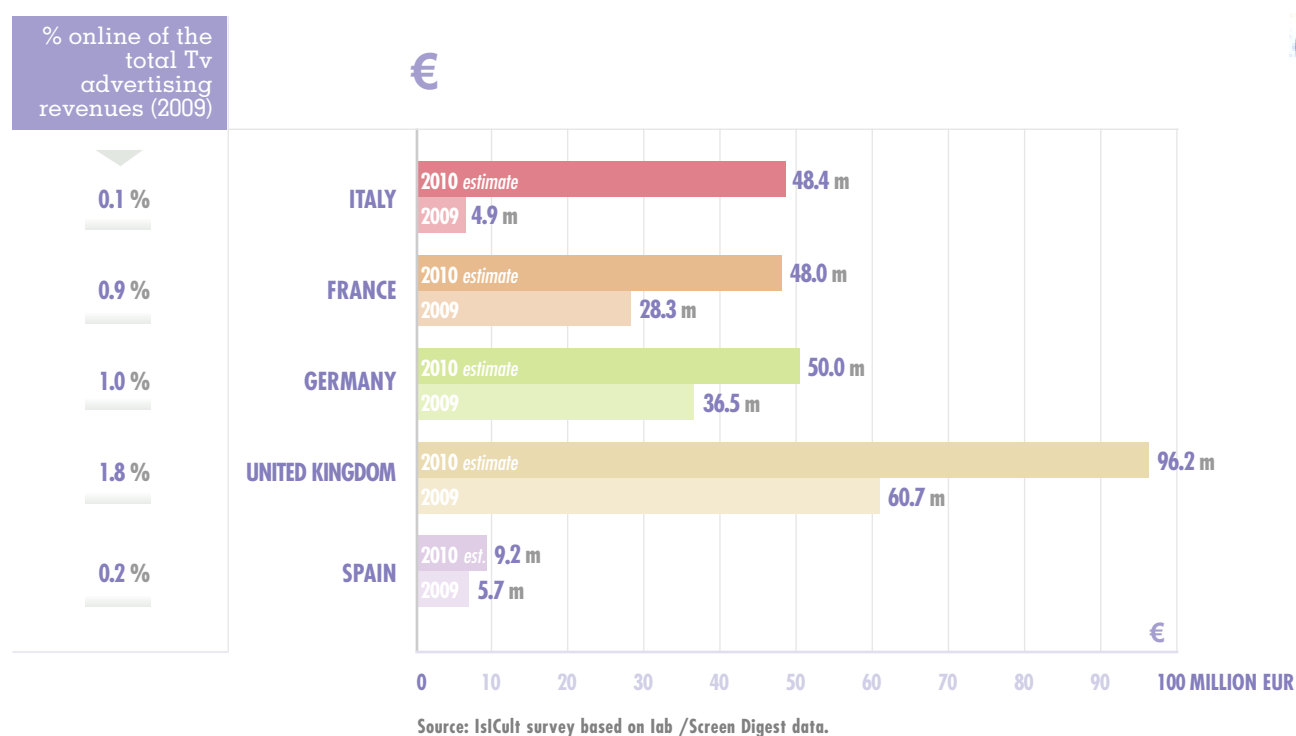
EUROPE (BIG 5). ADVERTISING SPENDING ON THE INTERNET (2009, million EUR)

CHART 12



EUROPE (BIG 5). ONLINE TELEVISION ADVERTISING REVENUES (comparison 2010 / 2009, million EUR)

CHART 13



- directly, thanks to product placement mechanisms that are now legal in Italy. Product placement was first authorised for films (in 2004 with the so-called "Urbani law") and successively extended to television programmes (as from 2010 with the implementation in Italian law of the European Directive "AVMS" 2010/13/EU). Television over the Internet, moreover, makes it possible to "modulate" product placement by inserting virtual products according to the tastes of the viewers - as indicated by their choice of the programme - who are then intercepted as soon as they view one of their chosen programmes ...

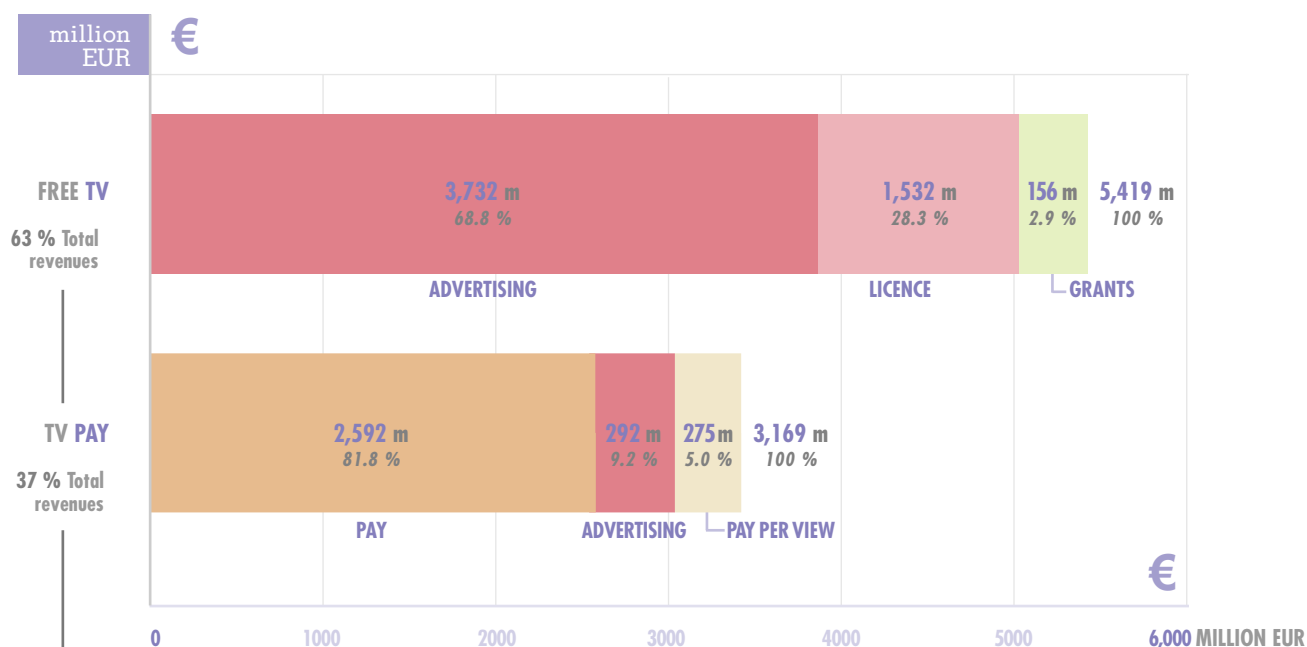
REVENUE/COST FLOWS IN THE ITALIAN TELEVISION INDUSTRY: PRODUCING "ORIGINAL CONTENT"

The total earnings of the Italian television system in 2009 (the latest date for which homogeneous data are available) were about €8.6 billion (see **Chart 14** ■ and **Chart 15** ■):

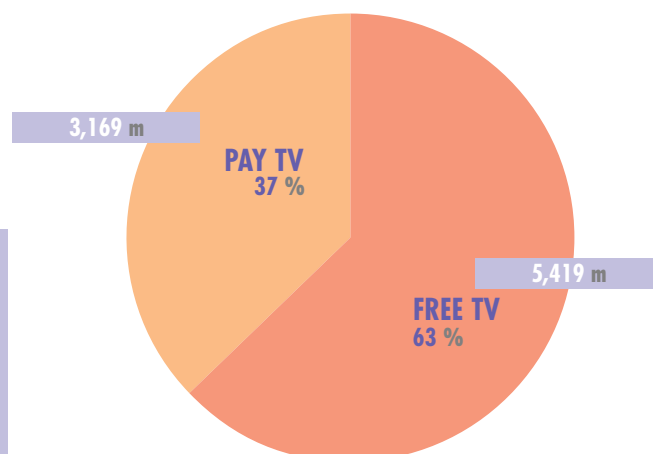
- free television accounted for almost two thirds, i.e. € 5419 million, or 63 %;
- pay-TV accounted for the remaining third, i.e. € 3169 million, or 37 %.

ITALY. TELEVISION REVENUES IN ITALY
(2009, million EUR)

CHART 14



Total revenues
8,588 MILLION EUR



In July 2011, Agcom (Italian Communication Regulatory Authority) published estimates concerning year 2010: 8,976 million Euros as a total. 5,663 million of free Tv and 3,313 million of pay Tv. Uniform growth both for free Tv and pay Tv: 4,5 % increase on 2009. Unchanged ratio between them: 63:37.

ITALY. THE BREAKDOWN OF TV RESOURCES BY "PLAYER"

(2009, million EUR)

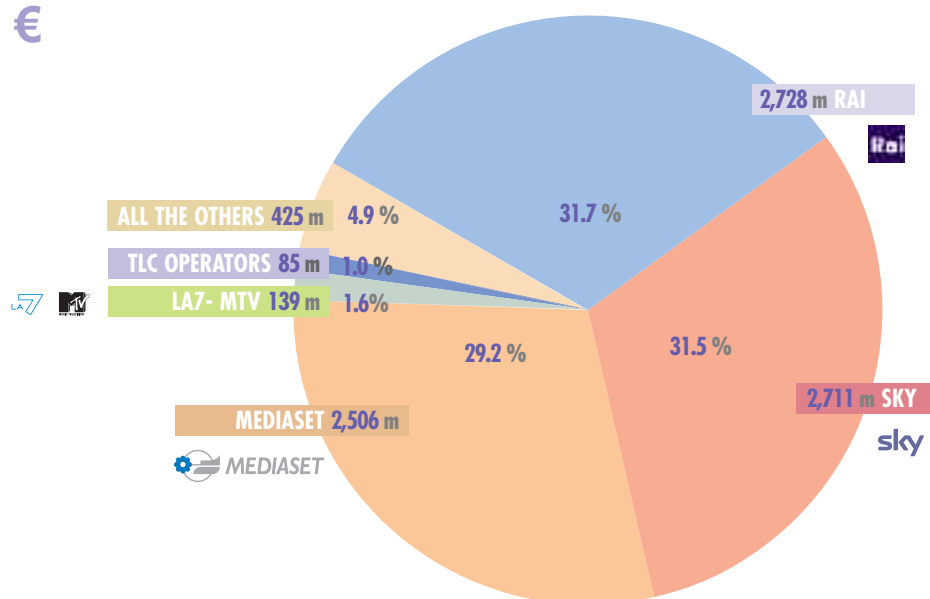
CHART 15

Total revenues 2009



8.6 BILLION EUR

(8,588 millions)



Source: IsiCult survey based on Agcom analysis.

Notes: "all the others" is referred to the national smaller operators and to the local tv stations.

While premising that the real costs of the broadcast schedule (deriving from both internal production and rights paid for content acquired abroad) are the most jealously guarded of television operators' secrets (and not only in Italy), an original study referring to 2008 [►44]... allows us to better understand how this quantity of money is spent. Out of a total of € 7.9 billion, no less than € 4.5 billion, or 57 %, are used for television's essential product – its broadcast schedule (see **Chart 16** ■).

The heart of broadcast scheduling may be considered – from the point of view of the national interest (the safeguarding and promotion of the country's cultural values) – the production of original broadcasting content. Altogether, it accounts for € 810 million, of which € 520 million for drama and € 216 million for entertainment, to which can be added much smaller budgets for animated cartoons and documentaries that total € 30 million.

By focusing our attention on what is deemed the most "sensitive" genre, from the point of view of cultural policies, namely television drama, diachronic and synthetic historical reading reveals some interesting results (see **Chart 17** ■ and **Chart 18** ■):

►44. Iem, "La creazione di contenuti nel mercato italiano dei media", VII Summit sull'Industria della Comunicazione in Italia, Rome, December 2009.

►45. The 164 hours of fiction break down into 62 hours of long serialised fiction and 102 hours of soap (the programmes are entitled "Vivere" and "100 Vettrine").

►46. In the 2009 financial year, the investments in cinematographic and television rights amounted to € 1250 million (source: Gruppo Mediaset, consolidated financial statements for the year ending 31 December 2010). As concerns its activities in Italy the following data referred to the 2010 financial year. Television and cinematographic rights amounted to €567.4

- in the period from 2000 to 2010, Italian television invested €4.5 billion in TV drama;
- an € 4.5 billion investment produced a total output of 7240 hours of original drama, with an annual average of 650 hours and average budget per hour of € 617,000.

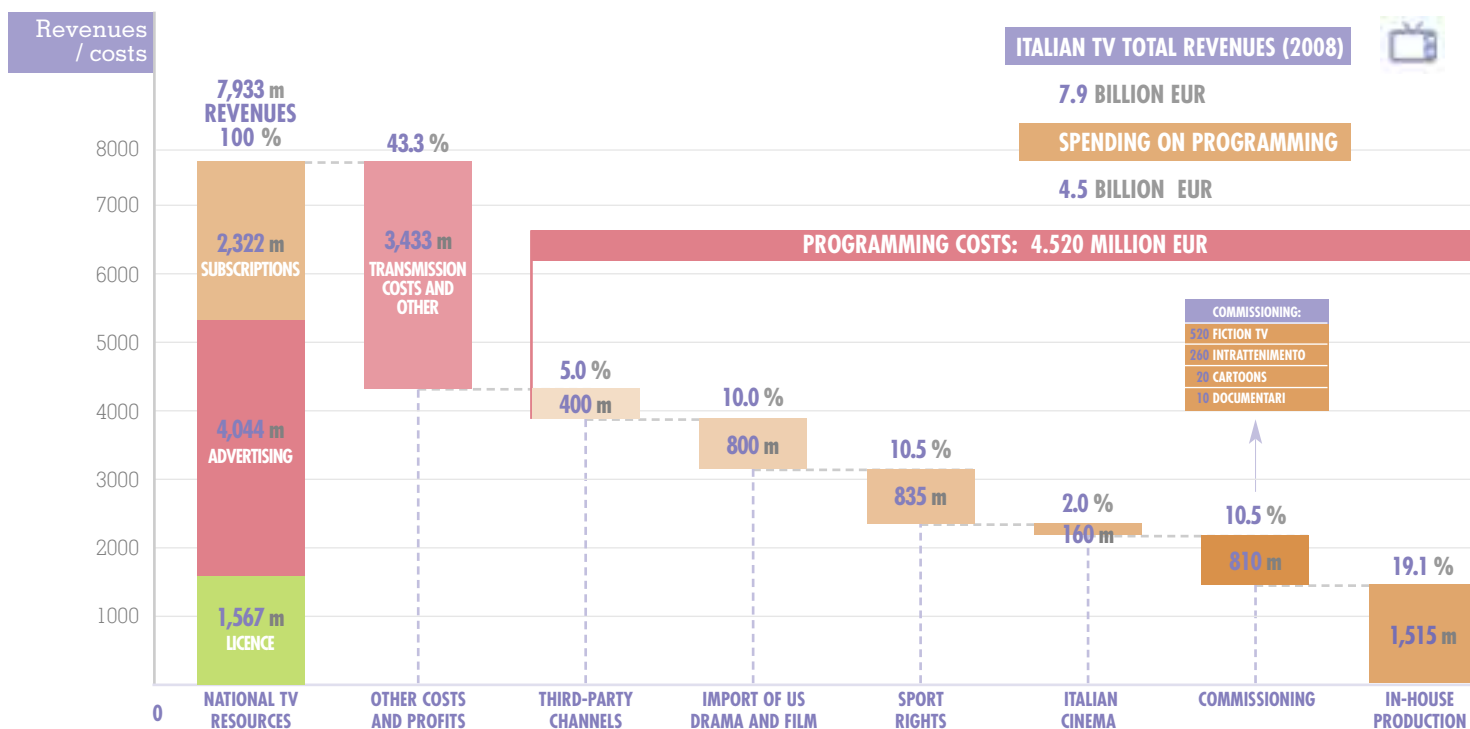
As concerns the specific situation of Italy's leading private operator, in 2010 Mediaset produced 41 % of all its broadcast programmes internally. The result is a total of 7,165 hours of "finished product, of which 164 hours of drama [►45], 1,020 hours of cultural and information programmes and no fewer than 1941 hours of newscasts. In the 2010 financial year, the Mediaset Group's investments in cinematographic and television rights amounted to € 175 million [►46].

It should be noted that in Italy, at present, drama production is almost exclusively the work of two major groups, RAI and Mediaset, and destined for the two networks with the largest and broadest public (Rai 1 and Canale 5). All the other players in the system, from the small La7 to the large Sky Italia group, invest practically

million (€530.9 million in the preceding year), while the rights acquired for pay-TV amounted to € 69.3 million (€ 491.3 million in 2009). To these investments should be added investments in digital terrestrial television, which amounted to € 72.7 million (€ 47.8 million in 2009) and other technical and intangible investments for €68.4 million (€75.1 million in the preceding year). Altogether, its investments amounted to €717.8 million (against € 1145.1 million in 2009). The item "television and cinematographic rights" includes €97.5 million in investments made by Medusa (€103.5 million in 2009). These data were contained in the address given by Marco Giordani, CFO, on the occasion of the "Full Year Results Presentation" and 23 March 2011.

ITALY. WHERE TV MONEY FINISHES UP (2008 estimate, million EUR)

CHART 16

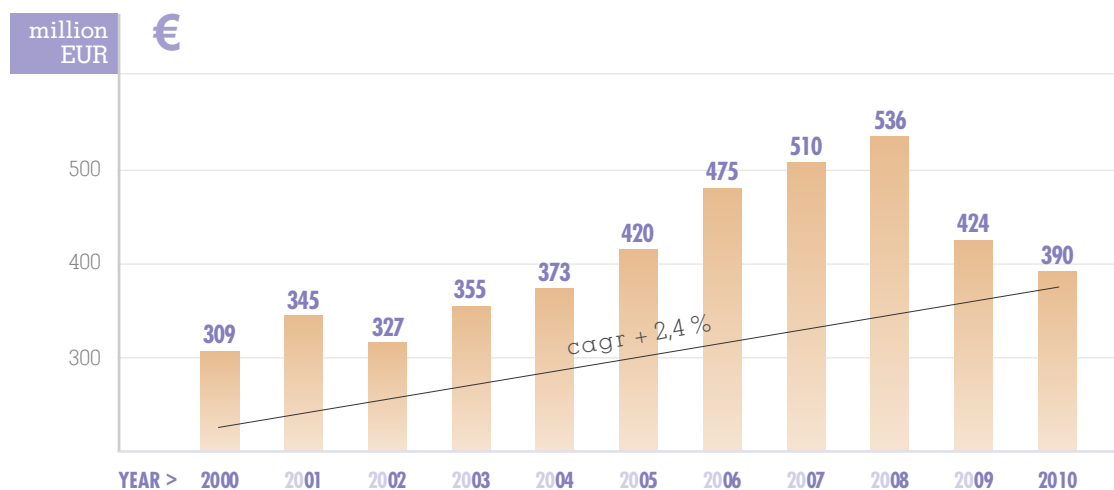


Source: IslCult survey based on Iem estimate.

Notes: % is calculated on the total revenues; "third party channels" means that one from Mediset Premium and Sky to thirty channels.

ITALY. INVESTMENTS IN TV DRAMA (time series 2000/2010, million EUR)

CHART 17



TOTAL INVESTMENT 2000 - 2010

4,464 MILLION EUR

AVERAGE ANNUAL INVESTMENT

406 MILLION EUR

HOURS PRODUCED 2000-2010

7,240 HOURS

AVERAGE HOUR INVESTMENT

617,000 EURO / HOUR

AVERAGE ANNUAL OUTPUT

658 HOURS

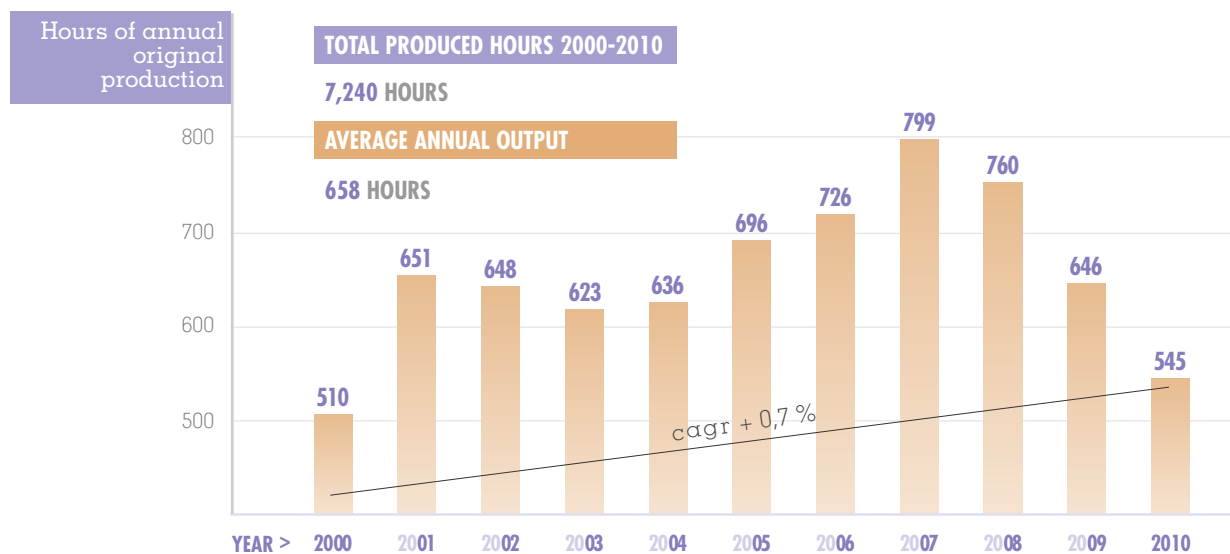
Source: IslCult survey using institutional sources.

Notes: "cagr" means "compound annual growth rate" (2000-2010).

ITALY. TV DRAMA PRODUCTION

(time series 2000/2010, hours produced per year)

CHART 18



Source: IsiCult survey based on Ofi data.

Notes: the data is not referred to the solar year, but the television season (ex. "year 2000" means "season 1999/2000"); "cagr" means "the compound annual growth rate" (2000-2010).

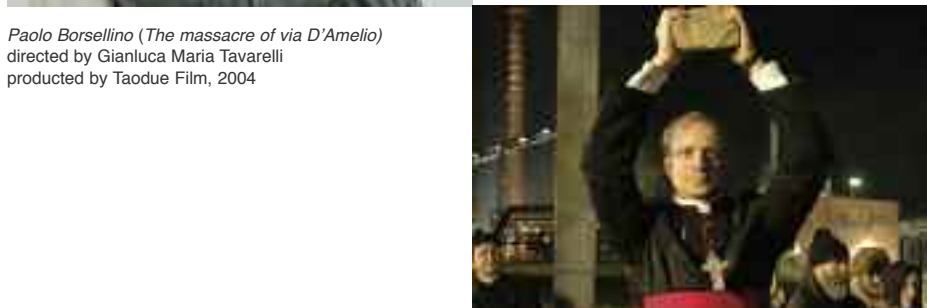


Paolo Borsellino (The massacre of via D'Amelio)
directed by Gianluca Maria Tavarelli
produced by Taodue Film, 2004

Karol
directed by Giacomo Battiato
produced by Taodue Film, 2006



Padre Pio Miracle Man
directed by Carlo Carlei
produced by Videotrade Audiovisivi and Mediatrade, 2000



Maria Montessori - A Life for Children
directed by Gianluca Maria Tavarelli
produced by Taodue Film, 2007



The Holy Family
directed by Raffaele Mertes
produced by Fidia Film, Rti, 2006

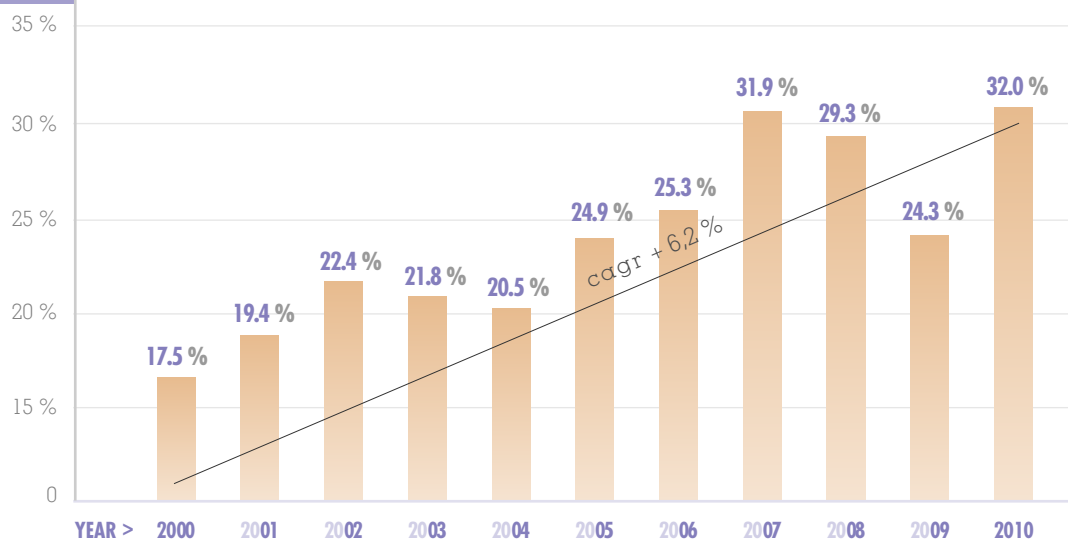


Callas e Onassis
directed by Giorgio Capitani
produced by Lux Vide, Rti, 2005

ITALY. MARKET SHARE OF ITALIAN FILMS AT THE CINEMA (time series 2000/2010)

CHART 19

% Italian film
revenue on total
box office



Source: IsiCult survey based on Anica Ufficio Studi data.

Notes: coproductions are included; "cagr" means "the compound annual growth rate" (2000-2010).

ITALY: A CREATIVE MEDIA NATION 2011



La prima cosa bella (The First Beautiful Thing)

directed by Paolo Virzì

produced by Medusa Film, Motorino Amaranto, Indiana Production, 2010



La solitudine dei numeri primi (The Solitude of Prime Numbers)

directed by Saverio Costanzo

produced by Le Films de Tournelles, Offside
with the partnership of Medusa Film and Torino Piemonte Film Commission, 2010

nothing in the production of creative content. This anomaly is the most serious pathology of the Italian television system as concerns “content” production.

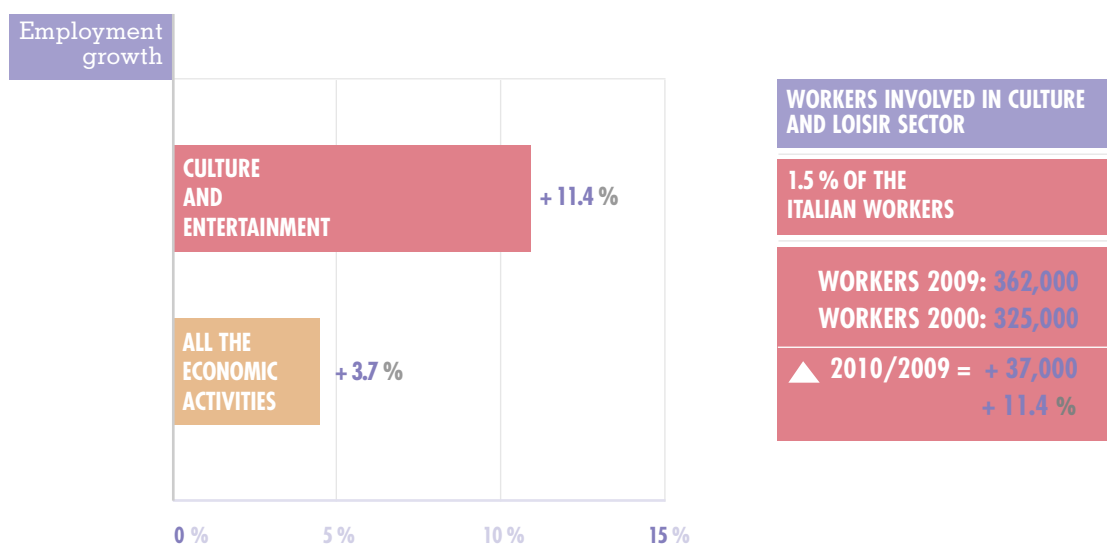
We should also take note of the central role played by television broadcasters in the production of Italian and European cinematographic films. In the last three years, national investment in cinematographic production was in the order of € 313 million per year, of which about two thirds (about € 200 million) estimated as having been put up by television broadcaster [▶ 47]. On average, in the three-year period 2009-2011, 111 films were produced per year.

Without the support of the television broadcasters (Rai and Mediaset, but excluding Sky, as its investments are only marginal), we would not have witnessed the resurgence of Italian cinema: in recent years, Italian films' box-office share has gradually increased,

apparently indicating a certain growth in the industry's structural capacity. In 2000, Italian films' domestic box-office share stood at only 17.5 %, but in following years this began to grow, touching 31.7 % in 2007. If we consider that box-office takings inevitably fluctuate from one year to another, and consider the larger picture, we can actually find a growth rate in the order of 6 % (see **Chart 19** ■) as indicated by the 32 % peak recorded in 2010..

ITALY. EMPLOYMENT IN THE CULTURAL SECTOR GROWS FASTER THAN IN THE ECONOMY AS A WHOLE (variation, 2009 against 2000)

CHART 20



Source: IsCult survey on Eurostat data.

Notes: the data is referred to “loisir and culture”, in which Istat include cinema, radio, television, show, press agency, library, museums, sport and other activity, except for publishing, that is not included.

▶ 47. On the basis of Anica data, we calculated that in the three-year period 2008-2010 total investment in the Italian cinema (to be exact “Investments in films produced”, meaning with the term “films produced”, those films that receive a so-called “rating” in the reference year) amounted to €313 million per year, of which €48 million in the form of state subsidies (15.4 %) and € 265 million put up by private investors (84.6 % of the total): see Anica, “Il cinema italiano in numeri. Anno solare 2011”, Anica – Ufficio Studi, Rome, 2011. There are no official estimates of the share contributed by Rai and Mediaset to the total of “private investment”, but there are good grounds for

believing that it is above 70 %, given the chronic undercapitalisation and Italian production companies' limited self-financing capacity (the producers maintain that this is the result of the dominant role played by broadcasters in the system's economy, and the substantial absence of other financiers but whatever the cause this does not affect the accuracy of the description of the present scenario and the determinant, or better indispensable, role of today's broadcasters).

RICCARDO TOZZI (PRESIDENT OF ITALIAN CINEMATOGRAPHIC PRODUCERS): "ITALY'S STRONG CULTURAL INDUSTRY"



An interesting and optimistic description of state of health of the Italian audiovisual industry was recently given by Riccardo Tozzi, President of the Producers of the sector's largest entrepreneurial association, Anica, and Francesca Medolago Albani, Head of Research and Statistics.

Below an abstract of the article:

"(...) Beyond any shadow of doubt, a phenomenon of major significance has emerged. Our country's cultural production industry is in full blossom. Such a large number of Italian novels have never been published before, national TV drama has almost eliminated American drama from the screens of generalist television and Italian music is acclaimed at home and abroad. And, last but not least, Italian cinema is asserting itself as the strongest force in Western cinema. It is overtaking French cinema and will soon have the highest share of the domestic market. The first years of the new millennium seem to be characterised by a major growth in the production and consumption of national cultural products.

Although these trends have been clear for some time, they have not become the subject matter of social communication. The most glaring example is the cinema. In the last four years Italian films have achieved a domestic market share of about 30% (France's domestic market share is 35 %, while that of Germany, Spain and Great Britain is each around 10 %). In the New Year this share is expected to reach 40 %. The international trade journals have been speaking about the "renaissance of Italian cinema" for at least three years but the Italian press and television persist in speaking about its crisis. Representatives of the professions involved in the phenomenon have participated in conferences to illustrate these trends but when they are not derided they are simply ignored. There is a preeminent school of thought whose basic axiom is that a televised and Berlusconi's Italy must, à priori, be culturally corrupt and akin to a kind of "peninsula of the famous", a TV screen appendage. Instead the facts unequivocally give the lie to this thesis – and we should understand that this criticism for what it is - a merely rhetorical construction. The time has come to unmask this interpretation and to do so with conviction. If the country can give expression to a vital cultural industry and find a public interested in its products, this cannot be the disaster propounded by our detractors (...)"

Riccardo Tozzi e Francesca Medolago Albani, "L'industria di produzione culturale italiana è forte", in "Italianieuropei", n. 2, Fondazione Italianieuropei, Rome, 2011 [▶ 48].



Romanzo criminale (Crime Novel) The Tv series
directed by Stefano Sollima
produced by Cattleya, 2008

▶48. "Italianieuropei" is the monthly magazine of the eponymous foundation, whose chairman is Massimo D'Alema (Giuliano Amato is the President of the Advisory Board); Anica is the National Association of Cinematographic, Audiovisual and Multimedia Industries (presided over by Paolo Ferrari up until May 2011 and then by Tozzi himself) and a member of Confindustria Culture. Riccardo Tozzi is also the President of Cattleya, one of the leading cinema-television production companies (its shareholders include the De Agostini publishing group, the investment fund San Paolo Imi Private Equity, as well as Universal Pictures International – the first American cinematographic investee in an Italian national production company). A less optimistic assessment of the situation of Italian cinema is provided in "Almanacco del cinema", various authors, in

"MicroMega" n° 6, Rome, 2010. We can cite the opening article: "There is no policy, no economy, and no will to construct strategies for renovation. The Italian cinema, under attack from the Right, is in the throes of a strong crisis. However, it remains the only untamed form of expression"(Gianni Canova "Il Cinema italiano nell'era del cavaliere" [Italian cinema in the era of Berlusconi].

ITALY. WORKERS IN THE ENTERTAINMENT SECTOR BY PROFESSIONAL ACTIVITY (2008)

TAB. 2

Artists and Technicians by professional category	Total entertainment sector	Cinema-television sector	Cinema-TV percentage share of the total
ARTISTIC AREA			
ACTORS AND EXTRAS	58,566	38,991	66.5
DIRECTORS, FIRST-ASSISTANTS AND WRITERS	5,784	4,891	84.6
SET DESIGNER, PRODUCTION DESIGNER AND COSTUME DESIGNER	2,924	1,891	64.6
COMPÈRES AND ANIMATION ARTISTS	17,174	1,801	10.5
MAKE-UP ARTISTS AND HAIRDRESSERS	991	893	90.1
CONCERT MUSICIANS AND ORCHESTRALISTS	42,569	510	1.2
DANCER MASTERS, DANCERS AND MODELS	22,653	468	2.1
OPERA ARTISTS AND SINGERS	9,904	301	3.0
STAGE AND DUBBING DIRECTORS	506	244	48.2
ORCHESTRAL CONDUCTORS AND MAESTROS	885	49	5.5
SUBTOTAL ARTISTIC AREA	161,956	50,039	30.9
TECHNICAL-MANAGEMENT AREA			
OFFICE STAFF AND OTHER QUALIFICATIONS	30,240	24,227	80.1
OPERATORS AND STAFF	21,146	12,219	57.8
ORGANISERS, DIRECTORS, INSPECTORS AND SECRETARIES	5,591	4,912	87.8
TECHNICIANS (PRODUCTION AND IMPLEMENTATION)	8,962	3,694	41.2
ADMINISTRATIVE EXECUTIVES	872	85	9.7
FREELANCE MUSICAL ARTISTS	991	5	0.5
SUBTOTAL TECHNICAL-MANAGEMENT AREA	67,802	45,142	66.6
ARTISTIC PROPS WORKERS	22,148	-	-
SPORTS FACILITY WORKERS	20,429	-	-
TOTAL ENTERTAINMENT WORKERS	272,335	95,181	34.9 %

Source: IsiCult survey based on Enpal data.

Notes: The data referred to 2008, the latest year available for these classifications.

THE CULTURAL INDUSTRY WORKFORCE

While not forgetting that the perimeter of the cultural sector in terms of cultural workers is neither clear nor unequivocal, and consequently statistical studies inevitably present methodological margins of uncertainty, and, moreover, that the press and the media tend to publish exaggerated and partisan estimates of the workforce according to the needs of this or that lobby [▶ 49], we herewith provide Istat's statistical findings for 2009, which report that the "work units", i.e. persons, participating in the "production of goods and services with a cultural, recreational and sports character", were 262,000 out of a national working population of 23.025 million. According to this source, the cultural sector would employ 1.6 % of the working population.

▶ 49. We are unaware if this is also the case for a survey - not released to the public - commissioned by Sky Italia from Iem, according to which the workforce of the group would be 22,500 persons (almost double that of the RAI!), of which 7609 "employees or freelance workers" (sic) of the group. Apart from the estimate of the workforce that either directly or indirectly Sky would have at its disposal, on the basis of the estimates of Sky's "investments in content and technology" in the seven year period from 2004 to 2010 would have been €7.7 billion, with the direct and indirect

Overall, the sector registered the creation of 37 thousand new jobs with respect to the year 2000, representing a 11.4 % increase. This increase reveals a significantly higher rate of growth than the national average, if we consider that, overall, since 2000, the total number of new jobs in the economic activities of the country only grew by 3.7 % (see **Chart 20** ■).

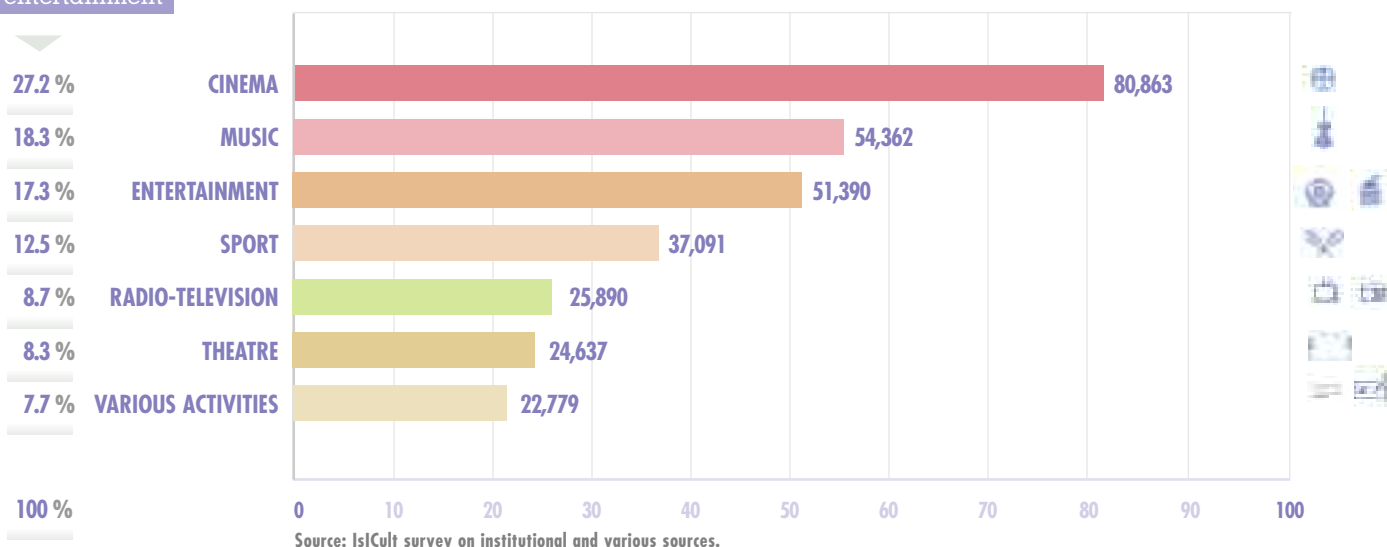
Therefore, employment in the "cultural sector" over the last 10 years (2000-2009) grew at a rate three times higher than that of the national economy.

According to Enpals data [▶ 50], at the end of 2009 there were 297,012 workers in the "performing arts/entertainment" sector compared to 272,335 in 2008 (see **Table 2** ■). Obviously, these figures refer to "contributory workers", i.e. the workers making payments to a statutory welfare fund. Of these 297,012 workers, no

impact on the production chain in the form of €9.8 billion for procurement: in other words an overall investment of €15.9 billion (see Anonimo, "Il peso di Murdoch sul Pil", in "l'Espresso", 25 March 2011). Here we shall just point out that, on the basis of the latest financial statements of Sky Italia (2010), the total number of the group's employees is recorded as being 2439...

▶ 50. IsiCult estimates, based on Enpals data divulged in 2010: "Report direzionale 2009", which supplements and updates the dataset of the

% Sectors on the
total entertainment



ENTERTAINMENT SECTOR
TOTAL WORKERS

2009: 297,012
2001: 224,125

▲ 2010/2001 = + 72,887
+ 32.5 %

fewer than 25,890 were registered as contributory workers in the "radio-television" sector in 2009, representing 9 % of the total (see **Chart 21** ■).

In the ten-year period 2001-2009, the quantity of workers grew considerably, according to Enpals surveys based upon its own database. Contributory workers were 224,125 in 2001 but grew to 297,012 in 2009, representing a 33 % increase, i.e. 72,887 new jobs.

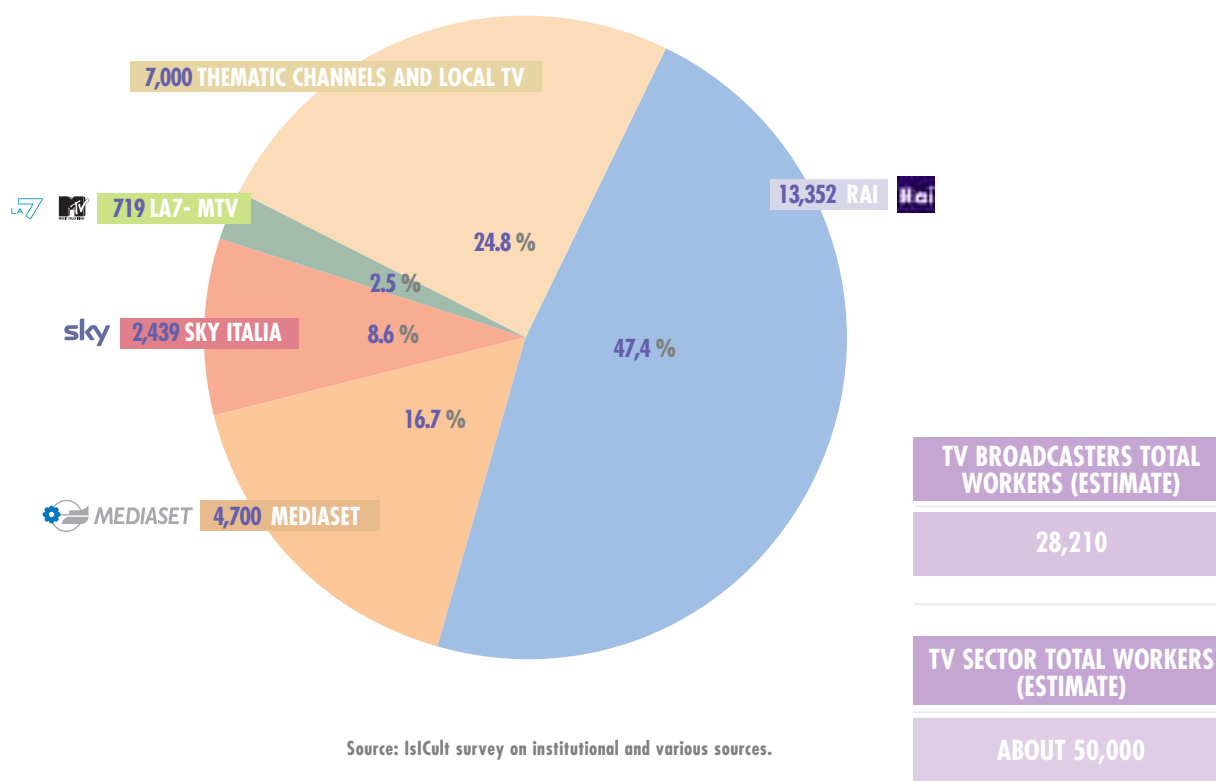
We can also note that Società Italiana Autori e Editori (the National Association of authors and publishers) has 85,000 members.

According to a Eurostat survey published in 2011 [▶ 51], European-wide employment in the "cultural" macro sector (comprising five sectors: publishing, cinema and video and musical and audiovisual production, radio television broadcasting, creative arts and entertainment activities, libraries, museums and other cultural activities) comprised 3.6 million persons in 2009, or 1.7 % of the employed workforce in the EU-27. Iceland ranks first in the classification with 3.2 % while

Turkey comes in last with 0.4 %. According to this source, Italy is placed third from the bottom, with a percentage of only 1.1 %. The number of workers would be 247,000 out of a total working population of 23,000,000. The breakdown, among the five main sectors identified would be as follows: publishing 89,400 workers (36.2 % of the cultural macro sector), cinema, video, musical and audiovisual production 27,900 (11.3 % of total), radio-television broadcasting 12,300 (5 %), creative arts and entertainment activities 79,200 (32.1 %), libraries, museums and other cultural activities 37,900 (15.4 %). However, as the Eurostat survey's findings in respect of Italy records 10,000 units less than Istat's data, we shall consider the data provided by the Italian Institute, which reports 362 thousand workers, representing 1.6 % of the working population, more reliable.

report "Statistiche sull'occupazione e retribuzioni dei lavoratori dello spettacolo e dello sport". It should be remembered that Enpals' statistics do not include the latest categories of employment contract, such as occasional employment and services subject to PSWT for assignment of copyright. It should also be mentioned that the "boundary" between the various employment sectors is often extremely erratic especially as concerns innovative and technological services with a communications and multimedia character, which are generally subject to Inps management as

concerns their social security and pension contributions. Consequently, the specific labour market is very difficult to map it in a homogeneous manner and its personnel cannot be exclusively included within the environment generally referred to as "entertainment". During the decade 2001-2009, the number of workers, as measured Enpals on its database, has grown : the contributors were 224,125 in 2001, grown up to 297,012 in 2009. The variation was +33 %, corresponding to 72,887 workers. It should be remembered that the SIAE has 100,000 members..



Source: IsiCult survey on institutional and various sources.

As regards the television sector – according to the IsiCult calculations – at the end of 2009 the RAI Group had 13,352 employees against the Mediaset Group's 4,700 (with reference to Italy alone), Sky Italia's 2,439 and La7 / Mtv's 719, while the employees of independent theme channels and local televisions can be estimated at about 7000. The resulting overall total is 28,210 workers [► 52]. This is a workforce exclusively engaged on broadcasting activities. It does not take into account – inter-alia – television production companies, technical industries and the service industries of various kinds... (see **Chart 22** ■).

Alongside this nucleus of employees, we can also make the reasonable and prudent estimate that there are at

least 20,000 additional workers comprising, first, employees of companies other than broadcaster but correlated to them in this stage of the supply chain, and, second, a non-salaries workforce made up of various types of freelance workers. It should be remembered that Enpals contributory workers in the radio-television sector were 26,000 in 2009. And last, but not least, it can also be mentioned that, between 2009-2010 Sky Italia spent approximately EUR 90 million per year on call-center service contracts...

The **Table 3** ■ reveals an interesting "index" of professional comprising the "cultural world", to which the entertainment and performing arts sector belongs.

According to an Eurostat survey, published in 2011, at a European level, the employment in the "cultural" macro-sector (consisting in 5 areas: publishing, cinema and video and musical and audiovisual production, radio and Tv broadcasting, creative arts and entertainment, libraries, museums and other cultural activities) would have been 3.6 million people in 2009, i.e. 1.7 % of the total work-force employed in the Eu27. Iceland is the first with 3.2 %; Turkey the last with 0.4 %. According to these source Italy is not well positioned, occupying the third to last place with a rate of 1.1 %: the employed in the cultural sector are 247,000 on a job total of 23 workers. The breakdown in the five main areas identified, would be as follows: publishing 89,400 workers (36.2% of the macro-cultural sector),

film and video and music production and audiovisual 27,900 (11.3% of total), radio Tv "broadcast" 12 300 (5%), creative arts and entertainment activities 79,200.

► 51. Eurostat, "Culture Statistics. 2011 edition", Brussels, 2011.

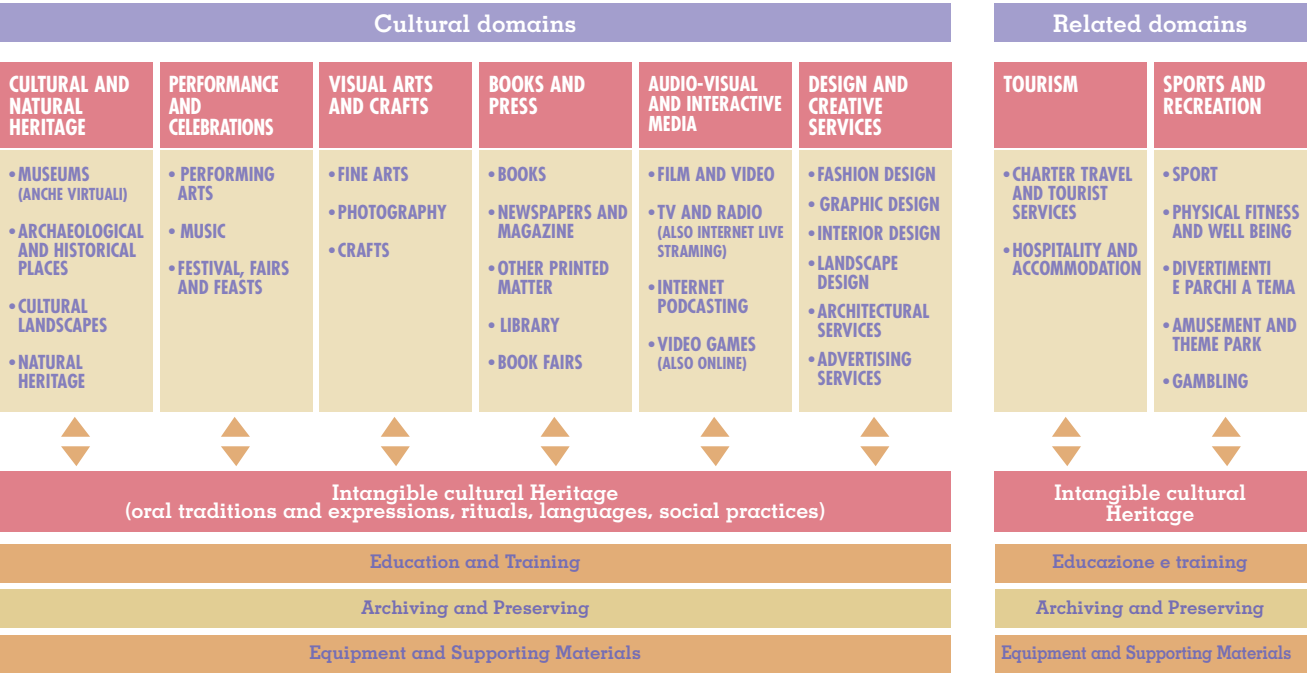
► 52. These data were obtained from the 2009 financial statements of the various groups, with the sole exception of Sky Italia (for which the data reported correspond to the arithmetic average of the data reported at the end of June 2009 and the end of June 2010, given that the group closes its financial year in June) and the thematic and local broadcasters (on the basis of estimates provided by Frt, AerAntiCorallo and others).

ITALY. THE GLOSSY WORLD OF ENTERTAINMENT: A PROFESSIONAL INDEX *(in alphabetical order)*

TAB. 3

- acrobats, stuntmen, contortionists	- lyrical artists
- administrative and technical employees	- maestro prompters (freelance maestros)
- animators working in hotels/tourist facilities	- make-up artists
- architects, designers	- manager for the release of cinematographic and television production
- artistic training administrators	- musical consultant assistants
- assistant cinematographic and audiovisual cameraman	- operetta actors
- assistant theatrical cinematographic and audiovisual director	- orchestra director
- audiovisual company workers	- orchestra professors
- audiovisual company workers	- orchestral musicians, including light music
- audiovisual documentarists	- photo novel actors
- audiovisual lighting and scene technicians and other technicians	- photographic models
- bandsmen	- podium dancers
- casting director	- production cashier
- choir master, assistants, helpers (chorus prompters)	- production director
- choreographers and assistant choreographers	- production inspectors
- chorists and vocalists	- production secretaries
- cinematographic and audiovisual actors	- prop handlers
- cinematographic and audiovisual cameramen	- prose actors and trainee actors (mimers)
- cinematographic company workers	- puppeteers, marionettists
- cinematographic or audiovisual production administrators	- scene and dubbing assistants
- cinematographic projection room operators	- scene director
- cinematographic workers	- scene extras
- circus artists (acrobat, clowns, trainers, variety artists)	- scene photographers
- compères	- script writers
- composers	- self-employed persons employed as betting staff at horse-racing courses and similar
- concert musicians and soloists	- set designers
- dancers and dance masters	- singers
- development and printing, lighting and scenes and other technicians for cinematographic prod	- sketch writers
- development and printing, lighting and scenes and other technicians for photo novels	- story board artist
- dialogue writers and adapters	- strip-tease artists
- director of photography, lighting designer	- supporting singers
- disc-jockey	- technical personnel for audiovisual editing and sound engineering
- drivers employed by entertainment companies	- technical staff for fashion shows
- dubbing director	- technical staff for photo novel editing
- editing secretaries	- theatrical lighting and scene technicians and other technicians
- editing technical personnel and sound engineers	- theatrical company administrators and secretaries
- editing technical personnel and sound engineers for cinematographic production	- theatrical company workers
- employees working as betting staff at race courses and similar	- theatrical organisers
- employees working for film hire and distribution	- theatrical workers
- employees working for itinerant shows	- theatrical, cinematographic and audiovisual directors
- employees working in betting shops	- theatrical, cinematographic and audiovisual writers
- employees working in casinos	- theatrical, cinematographic and audiovisual writers
- fashion model	- ushers, custodians, wardrobe attendants, cleaning and portage personnel
- fencing master	- variety the music hall artists (comedians, variety artists, soubrettes)
- freelance musician	- video assistants
- general and special extras	- voice artists
- general organisers, location manager	- wardrobe directors, costume designers, milliners
- hairdressers	- wind band conductors
- horse trainers	- workers employed in betting shops
- imitators, hypnotists, conjurers and illusionists	- workers of companies in the entertainment sector

Source: IsICult survey based on Enpals data.



Source: IsiCult survey based on Unesco classification.



Baaria
directed by Giuseppe Tornatore
produced by Medusa Film, 2009



Our report primarily addresses creative industries and, first and foremost, content. Therefore, neither data have been considered nor analyses developed on questions of hardware. However, as hardware performs an important function as regards the use of audiovisual content, we believe it would be instructive to provide some essential data.

The "indirect" contribution that the audiovisual industry - and in particular television - makes in terms of its hardware is important for two reasons:

- economic

The Italian electronics consumer market in 2010 was valued at € 4.3 billion and recorded a 5.4 % year-on-year growth: according to sector operators such as Andec [▶ 53] and analysts such as Findomestic [▶ 54], the sector's growth, albeit modest, is principally explained by the switchover to terrestrial digital. Sales of flat screen televisions alone in 2010 were € 3.1 billion against € 2.7 billion in 2009. Terrestrial digital decoder sales amounted to € 302 million in 2010 compared to € 266 million in 2009. The quantity of devices sold has also increased (both for flat screen televisions and decoders), but the average price has declined (from € 461 to € 426 for televisions and € 42 to € 36 for decoders).



- technological

According to other data released by Aires [▶ 55], more televisions were sold in Italy in 2010 than in any other year since 1954, the year in which television broadcasting began. Altogether about 6.8 million televisions were sold, 80 % more than the number sold in 1977, when colour television was first introduced in Italy. The same source also indicates that at the end of 2010, 95 % of Italian households possessed a decoder incorporated in a television. "This is not only a great commercial success", declared Albino Sonato, the President of Aires, "but also a very important step forward in terms of technology and culture. It is misleading to think that the digitalisation of households can or must be limited to the mere increase in the number of television channels offered. In actual fact, a new and potent communications instrument has entered into the Italian household. All the actors in the supply chain, from the institutions to retailers, are now required to play their part if this instrument is to be used in the most profitable manner". Davide Rossi, General Manager Aires, declared: "From the post-war period right up until today, the adoption of every kind of new shared technology has had a positive economic impact upon the entire Italian economy. The new technological platform is already registering positive effects in terms of greater accessibility, the recovery of the advertising market, the production of content and the pluralism of information".

▶ 53. The data are based on Gfk estimates. According to the President of the National Association of Civil Electronics Importers and Producers (Andec) Maurizio Iorio, "the completion of the switch-over to terrestrial digital and the progressive transition from decoders to integrated TVs should guarantee a good overall market trend. In general, the market is curious about new technologies whereas for other products we expect stability" (press release Andec, 14 February 2011).

▶ 54. "The sector (the so-called "brown goods"- our note) is driven by video devices (especially TVs and decoders), that account for about 80 % of consumer electronic sales. The purchases of these products are benefitting from the important stimulus represented by the progressive switch-off of analogue television in the Italian regions, and its

replacement by digital transmission. This stimulus, along with the technological innovation introduced in the sector and favourable price dynamics are buoying up sales despite a difficult economic climate that tends to penalise unnecessary items of expenditure:- these were the conclusions of Findomestic Banca spa, "L'Osservatorio Annuale 2011. I mercati dei beni durevoli e le nuove tendenze di consumo", Findomestic-Gruppo Bnp Paribas, Milan, 2011. On the other hand, as also reported by Findomestic, a negative effect is also at work: "The excellent performance of the video sector is cannibalising other consumer electronic products. This explains the strong decline in portable audio, video cameras, DVD players, and car and the domestic audio."



Further interesting data and analyses can be found in the research by E-res [▶ 56], which studied the impact of what the Digital Terrestrial Television Association Dgtvi defined as being no less than an "epoch-making revolution":

- the "full analogic" families in Italy, i.e. those without any digital TV receiver, are, by now, a minority: 4.1 million (16.6 % of all families), 1 out of 6;

- terrestrial digital is by now the most widespread platform. 70.9 million families have at least one "DTT" receiver, equivalent to 73% of all families and 90% of digitalised families (October 2010) and 3.5 million – of those digitalised with other platforms – stated they wanted to acquire a "DTT" receiver in the upcoming six months;

- there are many "TV platform overlaps" in Italian homes. Of the 4.1 million families with a "free" satellite platform, 80% also possess a "DTT" receiver,

which, moreover, they tend to prefer for receiving a signal. Similar percentages are found among pay-satellite families (Sky), with overlapping found in 3.6 million (77 % of the "sat pay" total), but with a preference for receiving the signal via satellite. There also exists a limited phenomenon of overlapping between "sat free" and "sat pay" (900,000 families", while "iptv" remains stable – according to the interviewees – at about 410,000 families;

- "DTT" is confirmed to be the platform of choice in terms of actual usage. There was a 58 % increase in the "total hours" (average individual hours) given over to the viewing of additional "DTT" channels last year (according to statements by "DTT" viewers).

- the data on new ways of using the TV are also interesting: flat screen, high-definition, 3-D, connectable televisions. These phenomena are still at a "fledgling stage" or in different phases of development but they all represent a movement away from the traditional application. Viewing TV through the old cathode tube is a rapidly dwindling phenomenon. The number of flat screen televisions (LCD/plasma) found in the Italian households has been estimated at about 20 million (40 % of the total), of which more than one half – 10.9 million – were purchased in the last 12 months. This means a 16:9 format and often high-definition sets. About 11.9 million HD ready/full HD televisions are already found in Italian households, equivalent to about 24% of the total (including also secondary televisions), and about 1.7 million HD/Blu-ray DVD players. HD display, already a consolidated phenomenon on the satellite platform, is also growing with "DTT". The number of HD programs and terminals designed to receive HD (there are no fewer than 590 Hd Ready/Full Hd latest generation receivers with gold and silver certification, determined according to Dgtvi standards) is also increasing. Connectable television is already with us. Of the 2.7 million families aware of the fact that they possess an Internet connectable television, 1.8 million possess a broadband connection, and 10 % (about 180,000) actually use the television in a connected mode. About 1.5 million broadband households declare themselves interested in acquiring connectable televisions. In addition to preset televisions, the utilisation of content and services in a connected mode can also take place with the principle videogame consoles. With respect to the 6,000,000 Italian households that possess consoles, about 2.5 million (44.3 %) describe them as connectable. In conclusion, the future of domestic entertainment could well be 3D. 140,000 households declare that they are already equipped for domestic 3D, 6.9 million are interested and 2 million declare that they will probably purchase a 3D ready receiver.

▶ 55. The Italian Retailers Association of Specialist Household Appliances - Aires which includes the principal companies and distributors of household appliances and consumer electronics (Eldo, Elite, Euronic, Expert, Gre, Mediamarket, Unieuro), has an accumulated market share of 60 % of the sector, together with 1700 sales points and a sales staff of about 20,000. Its turnover is about €10.6 billion (2009).

▶ 56. E-res, "III Digital Monitor; 2010", Milan, 2010. The survey, commissioned by Dgtvi, was based upon 3,000 interviews conducted with CATI procedures, over the entire national territory in the first phase of the autumn switch-off.

2.

The development of media usage in the new digital habitat

TELEVISION CONTINUES TO OCCUPY THE CENTRE STAGE

TV BEATS INTERNET: 13 TO 1

AUDITEL 2.0

MEDIASET: RESEARCH AND INNOVATION





The development of media usage in the new digital habitat

CHAP. 2

TELEVISION CONTINUES TO OCCUPY THE CENTRE STAGE

In Italy too, television remains an absolutely central medium in the average citizen's time budget [▶ 57].

As we have already seen (see **Chart 2** ■), in any average minute of an average day, 9.8 million viewers are watching television, but audience levels are even more impressive in prime time - the period from 8.30 p.m. to 10.30 p.m. In this time slot the audience is ... huge, no fewer than 25.1 million persons (average data for the entire year of 2010).

The staying power of traditional mainstream media (first and foremost linear television) is illustrated by the "media menu", as measured by users' time budgets.

Average Italian viewing time has been growing in the last four years, and in 2010 registered a new peak: 250 minutes a day (target + 15), equivalent to 4 hours and 10 minutes; an enormous time budget with respect to the handful of minutes dedicated to the Internet each day, and significantly higher than the figure of 238 minutes' consumption recorded in the year 2000 (see **Chart 23** ■).

There is no doubt that the "terrestrial digital revolution" is in full spate: the final data for 2010 indicated that 4 Italian households out of 5 possessed a terrestrial digital decoder [▶ 58].

In December 2010, 3 million receivers had been sold, an historical record. The accumulated total of decoders sold since 2004 amounts to about 47 million.

Over 60 % of television consumption by now takes place over a digital terrestrial platform.

The remaining "only" analogue viewers now account for less than 20 % of the entire population (16.6 %).

It is also been noted that the time allocated to watching television is growing in all digitalised regions - the probable result of the new digital channels offered. If we compare the data for February 2010 with those of February 2011, an interesting increase can be noted: from 317 to 329 minutes per day - a variation of around 4 % [▶ 59].

It should also be noted that by now there is a new "television audience": an audience comprising Internet television viewers, the users of "iptv" services. It should be remembered that "iptv tv" is that one that needs a dedicated line (Telecom/Fastweb). If it is used through a normal Adsl Access, it is "web tv" (the web tv is much more widespread: let's use YouTube).

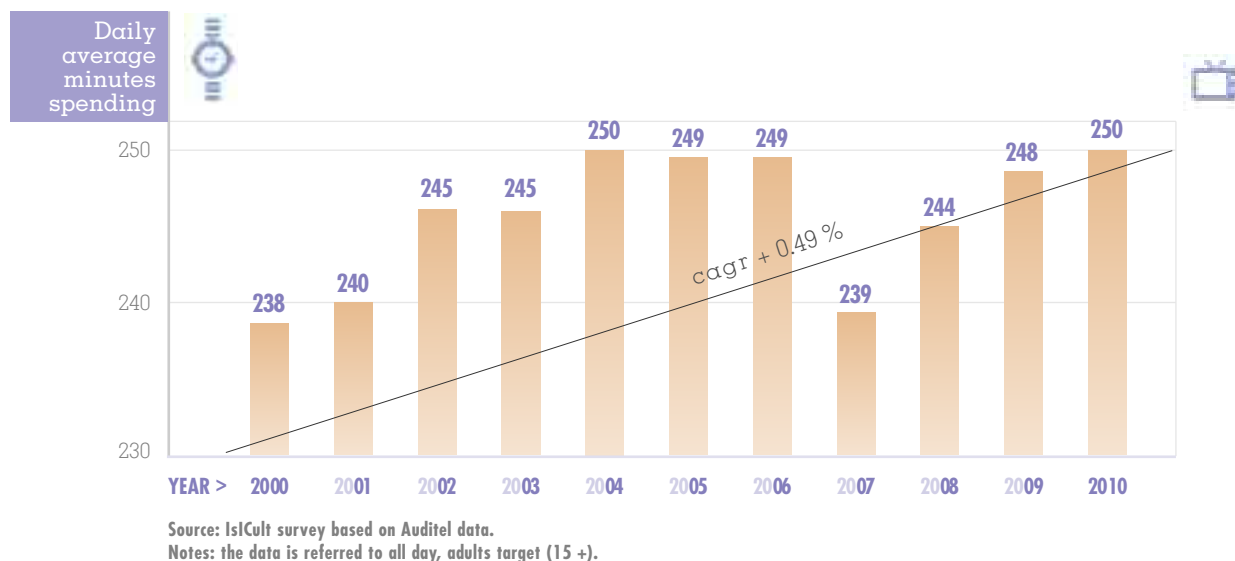
According to some unpublished Auditel data, this is a still very small percentage share, less than 1.3 million individuals out of the "total for Italy" estimated by Auditel at 57.8 million persons; just 2 % of the total. According to Auditel, about 541 thousand Italian families make use of "iptv" out of a total of 24.6 million Italian families. The association of lptv operators in Italy claims that the number of Internet connectable televisions and Blu-ray players in Italian homes at the end of 2010 can be reasonably estimated at approximately 1 million devices. And if we also consider the 5 million connectable game consoles at present installed, it can be concluded that about 25 % of Italian families is, to some degree,

▶ 57. This is not the place to discuss if this enduring and significant level of time consumption leads to well-being or malaise. However, we can briefly recall that some "prophets of doom" retain that watching too much television would be a source of infelicity: see Bruno Frey, Christine Benesch, Alois Stutzer, "Does Watching Tv Make Us Happy?", in the "Journal of Economic Psychology", n. A 28 (3), Elsevier, Amsterdam, 2007... Others recall that a person born in 1960 has by now watched something approaching 50,000 hours of television and probably will watch another 30,000 before dying, and furthermore, that the average American will watch television for seven full years, of the about 47 waking years lived by humans reaching 70 years of age... On the basis of this scenario, there are persons who theorise a better allocation of our time and budgets: see Clay Shirky, "Cognitive Surplus: Creativity and Generosity in a Connected Age", Penguin Books, London, 2010... As regards culturological-medialogical

criticism, we should mention the position of Pasolini, who theorized "television's criminal stupidity" (see the writings edited by Angela Felice "Pasolini e la televisione"). On the question of advertising see the book by Adriano Zanacchi, "Il libro nero della pubblicità. Potere e prepotenze della pubblicità, sul mercato, sui media, sulla cultura", Iacobelli, Pavona di Albano Laziale, 2010.

▶ 58. At the end of December 2010, the families possessing terrestrial digital television (meaning those with at least one decoder in the principal residence) numbered 19.5 million, a 1 million growth with respect to November and approximately 3.8 million higher than the start of 2010. Therefore, by the end of November penetration had risen to 79.1 % of all families (source E-res).

▶ 59. A Studio Frasi study based upon Auditel - Nielsen Tv data.



TV BEATS INTERNET: 13 TO 1

International statistics demonstrate that the consumption of video contents over the Web has only a marginal effect upon the consumption levels of "traditional" television (the growth in "multitasking" usage - simultaneously use of TV + Web - is ubiquitous). Italy perhaps more than elsewhere, offers the proof that viewers cling steadfastly to the television.

According to most analysts, tomorrow's scenario will witness a gradual integration between linear broadcast-schedule viewing and instantly-available offers organised into catalogues and available upon request [▶ 61].

The multiplication of platforms determines the development of new forms of usage that will complement traditional television usage in its social and family dimension.

The Internet will continue to inject new lymph into the audiovisual industry but television will remain at the centre of the system's economy. In the same way, the digitalisation of the cinema will not have much material impact upon the enjoyment of cinema in traditional "movie theatre". In point of fact, we believe quite the contrary: the traditional cinema will benefit from this new technology.

device (including Phone, iPad, iPod, Apple Tv, Google Tv, Xbox 360 di Microsoft, PS3 di Sony and Wii di Nintendo). Netflix's turnover in 2010 was 2,163 million dollars (a 30 % year-on-year increase), with net posted profits of 161 million dollars.

▶ 62. The basis for IsiCult's calculations:

- Auditel informs us that in any minute of a 24-hour day (final data 2010) 9.825 million persons are watching television in Italy (these are the so-called "amr" data). Auditel also informs us that 46.854 million watched TV for at least 1 minute during the day (this number corresponds to the "reach"), and that their average viewing time was 301.9 minutes ("ATS");
- Audiweb informs us that 25.0 million persons connect up to the Web



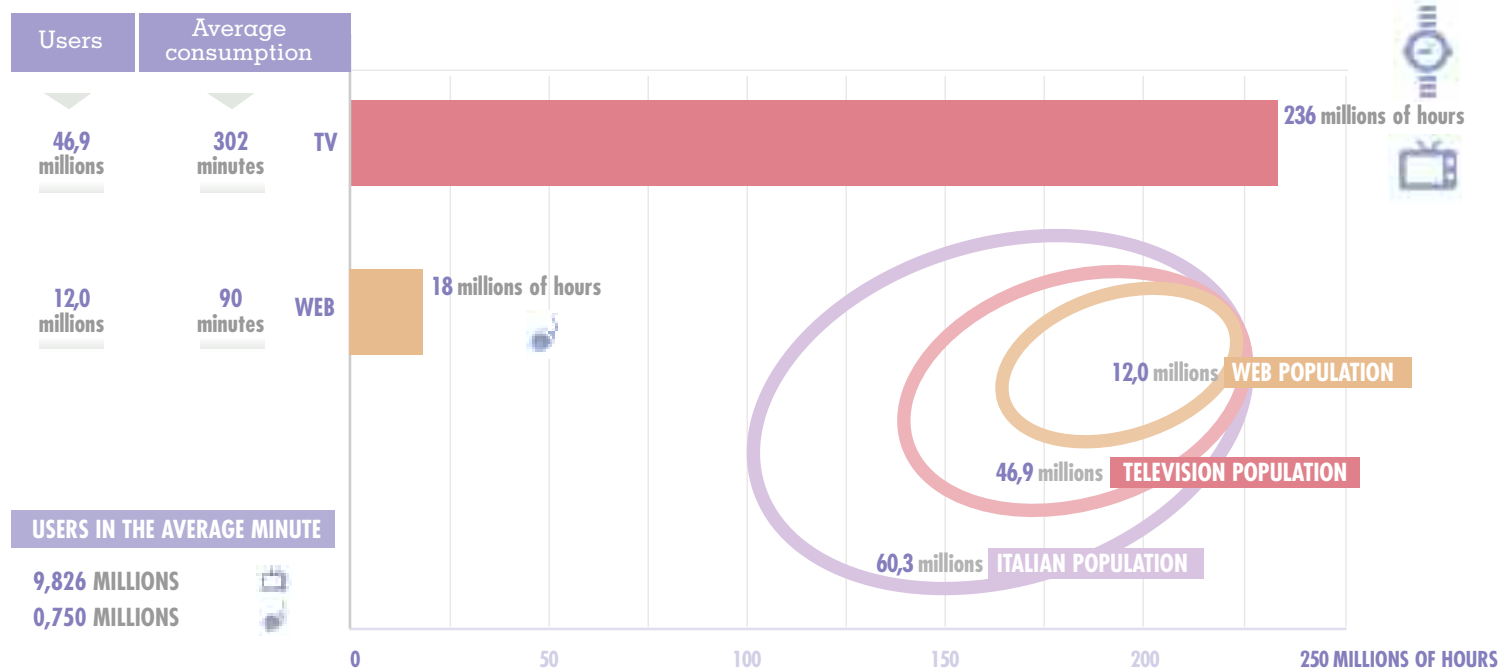
equipped to receive content and services transmitted through IP-based over the top device platforms placed on household televisions [▶ 60]. In United States, 35 % of users in possession of broadband already access video content over the Internet.

▶ 60. Iptv Association, "Dall'Iptv alla Smart Tv. Nuove tecnologie e contenuti per il Video On Demand", Rome, January 2011. The research was carried out by On Cubed.

▶ 61. From this point of view, Netflix appears to play a really pioneering role with its "video rental online" platform, which in the United States has - in a single year - recorded an increase of no less than 6% in its customer base: shooting up from 10.6 to 16.9 million subscribers. In its two markets, the USA and Canada, it has exceeded the threshold of 20 million subscribers, and is now about to enter the European market. A vast library of films and programmes can be accessed at a cost of \$ 7.99 a month in streaming from the Internet, and through no fewer than 200 types of

ITALY. TV AND WEB USAGE (2010, total hours in an average day)

CHART 24



Source: Iscult survey based on Auditel and Audiweb data.

Notes: this is an experimental calculation having indicative purposes, based on the assumption that the two surveys are based on similar methodological criteria (which is not, as – among other things – the Auditel universe is “4+” while Audiweb “2+”); “television population” refers to the total subjects that saw Tv for at least one minute in the average day; “Internet population” refers to subjects that have used the Internet at least for one second.

In any case, a comparison between the following sets of data will suffice for an understanding of the continuous and central role played by television with respect to the Web:

- in 2010, “at any time of the day”, an average of 9.8 million persons are continually tuned into the television (source Auditel). Therefore, the total hours of usage amount to 236 million hours a day;

- in 2010, “in the course of any one day” 12 million are using the Web (source Audiweb); average usage per internet user is 1 hour and 30 minutes, therefore total hourly consumption amounts to 18 million hours a day.

In practice, according to these experimental calculations by Iscult [▶ 62], television in Italy presently takes up 13 times more time than that taken up by the Web (see **Chart 24** ■).

(December 2010) a month, and that the “online audience in an average day reached 12 million persons” (“reach”, even if Audiweb considers a user to be anyone who accesses the Web for at least 1 second), with 90.0 minutes as the average time spent daily; given that:

A. our objective is to reach an estimate of the time Italians spend in front of the TV on an average day and how much time on the Web, assuming that the reference universes are the same (in actual fact, Auditel considers “+ 4”, while Audiweb “+ 2”), and clearly without entering into the structural characteristics of the two very different survey methods (the first, by meter; the second by census+panel; etc.): the intention is to obtain an indicative estimate of the total number of hours per day dedicated to each of the two media;

B. the calculations procedures were as follows:

TV				
Auditel:	46.854 million (reach)	x 302 (ATS) / 60 minutes (minutes in 24h)	=	235.8 million hours
	In other words also,			
	9.825 million (amr)	x 24 hours	=	235.8 million hours
Web				
Audiweb:	12.0 million (reach)	x 90 (ATS) / 60 minutes (minutes in 24h)	=	18.0 million hours
	In other words, also			
	0.750 million	(amr) x 24 hours	=	18.0 million hours

The calculation of 12 million individuals on an average day x 90 minutes of viewing time / 1,440 minutes of a 24 hour day yields a result of 750,000 individuals, which can be compared to 9.825 million TV viewers at any one minute of the day (Audiweb’s “amr”-equivalent data of 750 thousand individuals, is an Iscult hypothesis). The ratio of total TV hours in an average day to total Web hours is: 13.1 to 1. We would underline the purely indicative purpose of the calculation: beyond the methodological differences, it should be remembered that television is susceptible to a passive often distracted form of use, whereas, in principle, Internet usage is proactive and interactive. Thus, a more effective and appropriate comparison would entail measuring the “quality” of the time dedicated to the two different media and the levels of “engagement”. We would like to thank the following persons for their cooperation in drawing up this experimental estimate: Layla Pavone, Paolo Sabbatucci and Giovanni Gangemi, and would emphasise that Iscult is exclusively responsible for the conclusions reached.

Confirmation of the 13 to 1 ratio, in favour of the TV, indirectly emerges from a GfK survey according to which on an “average day in 2009, 91% of the Italian population over 14 would have been “exposed” (for at least for 1 minute) to “generalist TV” (understood as Rai, Mediaset, La7), while only 24 % would have been “exposed” to the Internet: the minutes of “weighted exposure” would have been, respectively, 199 minutes for the television and 24 for the Web, with a ratio, therefore, of 10 to 1 (see “Copertura e tempo di esposizione dei vari mezzi (almeno 1 minuto)”, in GfK Eurisko, “La multimedialità in Italia. Risultati indagine Eurisko Media Monitor 2009”, Milan, 2010).



Nielsen, the leading multinational socio-economic research agency, was quick to identify a new trend: the interactions between television and the social networks can produce reciprocal synergies. An emblematic case took place in February 2009, when a large quantity of tweets was posted during the night of the Oscars [▶ 63]. At the end of October 2008, Nielsen had published a study according to which about one third of domestic Internet use (31 %) was accompanied by background TV: or vice-versa, television usage had the background accompaniment of Internet navigation?! According to this research, over 80 % of Americans simultaneously watch television and use the Internet, with a higher concentration among teenagers... These are individual or social phenomena of shared television usage, which appears to register interesting rates of development, and which, in certain respects, confirm the forecasts of the "Cluetrain Manifesto", namely that thanks to the Internet "markets are becoming conversations" [▶ 64].



The prestigious "Technology Review" (published by the Massachusetts Institute of Technology-Mit) has included "social tv" [▶ 65] among the 10 "emergent technologies" of 2010.

Some publishers and broadcasters were quick to introduce Twitterized "versions" of their products and the results are noteworthy: the "followers" of "Cnn Breaking News" ("username": cnnbrk) shot up from 326 thousand in February 2009 to 4.2 million in March 2011; while the "followers" of BBC's Click, a top programme on IT technology by the British public broadcaster (Bbcclick), rose from 141 thousand in 2009 to 21.8 million in 2011...

In New Zealand, the Tvnz U network launched a channel for young people in 2011 around the "U live" show, which includes chat and comments via Facebook

as an integral part of the programme - users see an image of their own profile on television and participate in real-time surveys.

In Italy, this phenomenon has yet to develop its own head of steam, although in October 2010 the first episode of the talk-show "Le Invasioni Barbariche", an Endemol production for La7, organised a live transmission on Facebook.

In the United States a project termed Trendrr (produced by the Wiredset Company) has been initiated whose purpose is to measure the audience of television shows on a weekly basis by accesses made by various social networks to such shows [▶ 66].

Another noteworthy recent phenomenon is the so-called "social TV" network, based upon a substantially similar mechanism. While watching a TV programme, the viewer connects up to one of the platforms – by Web or by cell phone – and performs something similar to a login, thereby indicating to the broadcaster that he or she is currently using the programme, and in return he or she receives physical or virtual prizes in the form of participating in games and events.

In the two following pages, we propose a short statement on the principal players of this new business, an activity that unites the individual, but interactive and social usages of the TV, to the need to make use of "navigator-critics" and to navigate in the increasingly larger ocean of audiovisual content offerings:

▶ 63. Nielsen, "Global Faces and Networked Places. A Nielsen report on Social Networkings's New Global Footprint", New York, 2009.

▶ 64. Rick Levine et al., "The Cluetrain manifesto", Basic Books, New York, 1999.

▶ 65. Chloe Sladden, Twitter's Partnership Media Director declared in an interview: "The function of television is to aggregate communities; what we do is add the possibility that these communities interact between themselves" (quoted in Ernesto Assante, "La seconda vita della televisione. Tutti produttori col digitale", in "la Repubblica – Affari & Finanza", 19 April 2010).

▶ 66. It is interesting to note how Wiredset (a company founded in 2004 by an ex-Sony manager) defines its products: "Wiredset's flagship product,

Trendrr, is a premium business intelligence service that offers highly customized, proprietary tools for analyzing digital and social media activities. Trendrr's premium curation platform uses sophisticated classification algorithms to identify and analyze conversations in real-time. The Trendrr business intelligence platform allows marketing, publishing, and media companies to monitor, measure, and respond to conversations about brands, services, and products. The platform is used by media outlets for creative content, consumer engagement, and predictive indexes". Qualitative and quantitative data of this kind can turn out to be extremely valuable for producers and broadcasters. In actual fact, the manner in which a conversation on a television programme develops lends itself to the construction of a detailed map of its trend and helps sector professionals identify the strong and weak points of a transmission in a manner that goes



Getglue. This is a social network leader (and in which Time Warner is also an investee). Created in 2010, in the USA by Adaptive Blue, it enables users to identify their favourite films, television programmes books, musical albums and similar. Getglue selects content on the basis of personal tastes (or on the basis of what each user has indicated by stating "like" or "dislike") – in respect of what he or she likes among selected contacts or what is simply the most popular on Getglue. The platform can be used via Web or through cell phone applications. Fox has used Getglue to launch the television series "Bob's Burger": the viewers who checked-in on a social network received a token to buy a hamburger... In February 2011, during the Oscar ceremonies, Getglue registered 31 thousand logins.



Miso. This is a social network (in which Google Venture and Hearst Interactive Media have made investments) dedicated to television serial aficionados. "It records" the telefilms and films that users are watching and encourages them to share the programmes among friends. The application manages to "geolocalise" viewers of films or television programmes. Through this technology it is possible to create a list of one's preferred serials and communicate by messaging friends about the episode being watched and inviting them to comment upon it or offer suggestions. This is its "pay-off": "Watch Tv. Follow Shows. Earn Points and Badges". The company's mission is very ambitious. "We're changing the way people watch tv". Miso can also be used through Facebook or Twitter, and on the iPhone, iPad and Android, etc.



Tunerfish. This is a social network that is specifically dedicated to American television serial fans. It was created by Comcast the leading cable TV operator in the USA. Regular registration is not needed. People can simply join the project if they are already registered on Facebook or Twitter. It allows the aficionados of TV serials to contact one another, and benefit from a discussion forum to comment upon and highlight episodes while watching them. The platform's "pay-off" is emblematic (and essentially characterises all these services): "what are you watching?".



Moki.tv. This is a portal dedicated to film and television serial enthusiasts. Its "pay-off" is clear: "There are thousands of options. We help you find the best. Moki.tv brings together all your favorite sources in one place". It explains its mission as follows: "the manner in which people access and discover content is changing quickly and radically. With platforms such as Netflix, Hulu, Amazon, iTunes, Xfinity.tv and others, an abundant collection of films and television programmes is available for immediate online utilisation..." Moki has stored over 40,000 films and over 60,000 episodes of television serials, which the user can decide to comment upon, review or recommend to his/her contacts. Moki is at the same time a "navigator" and an "adviser": for example, the platform also enables users to discover that the "Da Vinci Code" can be bought for \$10 from Amazon and iTunes, but can be seen free of charge on Crackle [►67] a streaming website of Sony Pictures. Moki.tv records users' preferences and helps them choose its own preferred audiovisual products. Accessible through Facebook.

well beyond traditional audiometric instruments such as Auditel. The principal competitors of the Trendrr service are Radian6, Sysomos, HootSuite, and Tweetbeat... The latter makes it possible to carry out a detailed tracking of social media contents using semantic analysis, "reputation" analysis and the so-called "sentiment ranking"...

►67. Crackle is a multiform digital platform (previously termed Grouper) offering "commercial-supported" audiovisual contents (film, TV programmes, original products for the Web) in streaming. The website was acquired by Sony Pictures Entertainment in 2006 for 65 million dollars and has become one of tools for the hardware/software integration projects developed by the Sony group in order to stimulate the usage of content directly distributed to users of Sony Bravia televisions, PlayStations and Vaio

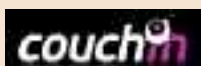
computers. The offer of products from the Sony "library" began in July 2007. In October 2008 the company's head office was transferred to Sony America's mother company in Culver City (also see the "box" dedicated to YouTube).



Qlipso. This is an Israeli-American digital "media company", set up in 2007. It creates "virtual environments" so that friends can share "Flash-based media" such as videos, games, music and photographs. Friends can also participate through WebCam chats. These virtual environments are supplemented by Facebook and Twitter to enable users to invite their contacts to participate. In April 2010, Qlipso, with an integration strategy centred upon "social television", acquired the Californian video portal Veoh, which became famous in 2006 when Disney's former President, Michael Eisner, joined the board, but despite his efforts as co-investors, on account of the scale of its current legal litigation the company is close to insolvency. Qlipso "pay-off" is "mix yourself in". The company is looking for "a social dimension for any media".



Clicker. This too is a "social search engine" dedicated to television contents available over the Web. However, it is important to emphasise that this company only intercepts legal videos and includes them in its index. The general objective was to become the "TV Guide for the Web" or "The Internet Television Guide". This database includes more than 750,000 episodes made up of 12,000 television programmes (broadcast by 2500 broadcasters), 30,000 cinematographic films, and 90,000 of music videoclips (of more than 20,000 artists). Clicker, which defines itself as the "internet video directory and search company", was bought in 2011 by Cbs Interactive.



Couchin. This platform (controlled by the company Doochoo, an Italian start-up that began life in San Francisco, founded by Armando Biondi, Paolo Privitera, and Lorenzo Barbantini) is characterised by an application dedicated to real-time comments and votes upon the television broadcast schedule: the platform's slogan is: "Show your friends what you're watching now". The declared objective is "to create a completely renovated Auditel 2.0 through the use of the social network", based upon a "semantic Wikipedia of opinions", or, in other words, a "semantic opinion aggregator".

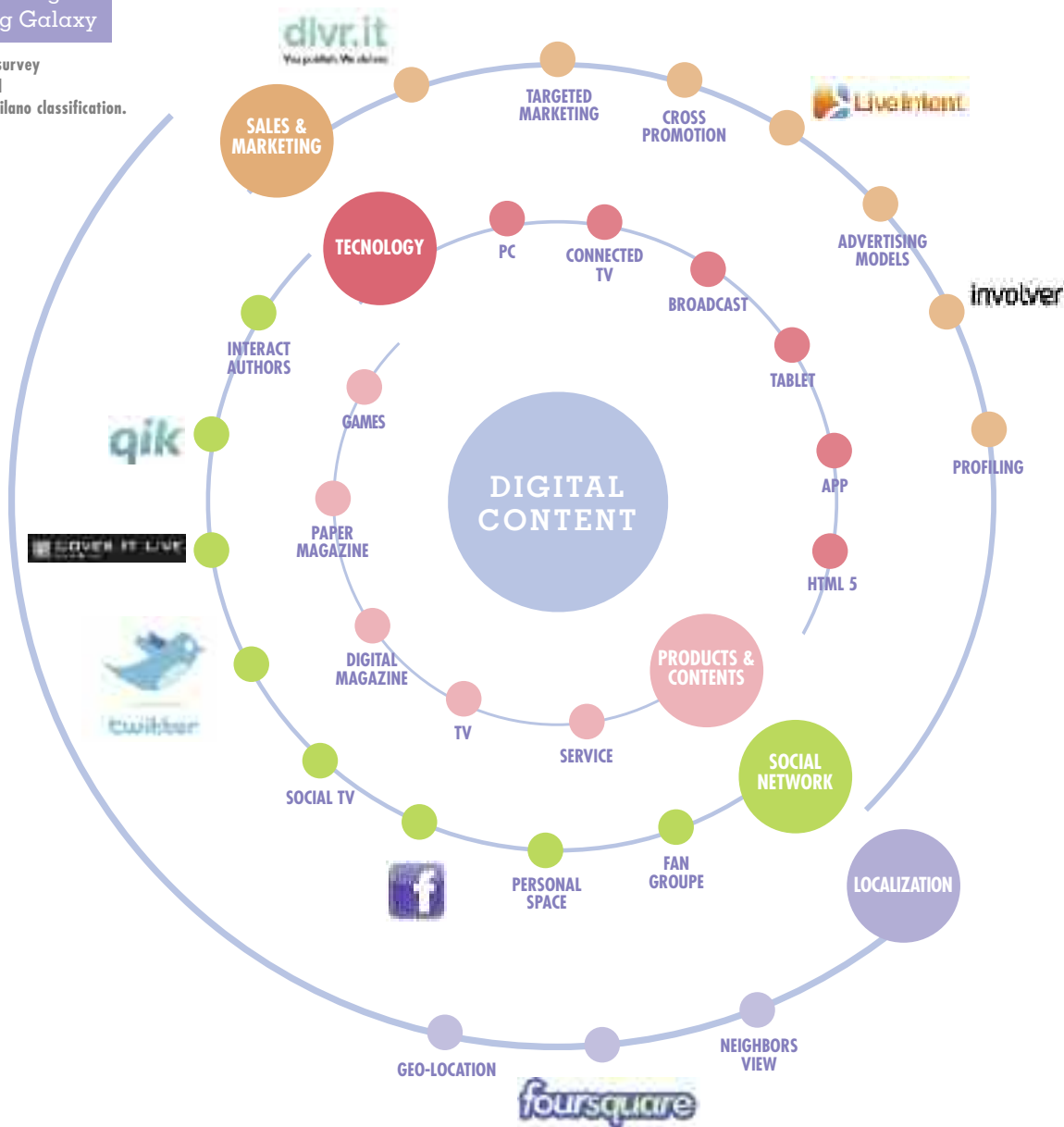


(...)

The new theories, techniques and metrics and measuring Internet usage will be adopted and refined in order to measure new individual and social television consumption.

The Digital Publishing Galaxy

Source: IslCult survey
based on Cefriel
Politecnico di Milano classification.



According to some analysts, the multimedia and multiplatform system can be construed and metaphorically represented as a “galaxy” – and not least for its intrinsic characteristic of continuous expansion – with “content” remaining at its fixed centre.

The varied modes of “digital publishing, understood in its fullest sense, orbit – in various ways – around this content (see **Figure 4** ■). A more prosaic metaphor would be the artichoke, with content corresponding to the heart.



The 2010 financial statements of the Mediaset Group informed us that: "As concerns the generalist commercial television sector, the convergence between distribution platforms is creating development opportunities (multichannel offerings and pay-TV), but also generating potential dangers, such as audience fragmentation and the increase in the overall number of platforms for television content usage (satellite, Web, mobile and other platforms). The outcome is a much more complex competitive

scenario. The multiplication of distribution platforms increases the value of publishing content by reinforcing the "competitive advantage of traditional operators", who have the know-how to conceive, implement and package the contents as also the expertise to construct a broadcast schedule".

The grand convergence

How is the Group reacting to these dangers/opportunities emerging from the "grand convergence"?

The annual report accompanying the financial statements sets the Group's strategy for handling these dynamics: "Mediaset's strategic approach to the main risk generated by these competitive forces is to focus on a business model that leverages a high level of vertical integration (content, packaging and distribution), as well as the opportunities offered by multi-channel television, facilitated by the development of digital terrestrial technology. This allows it to maintain, through the highly rated, free-to-air generalist and theme-based channels, closer monitoring of the audience and, through a model mainly based on pay TV offerings, closer monitoring of the highly fragmented audience. In this context, Mediaset was the first generalist broadcaster to penetrate the pay TV market and explore the sectors of new platforms (DTT, DVB-H) and business models (PPV)".

This is not the place to dwell upon the role that Mediaset has played in promoting DTT in Italy, given that the subject is discussed in other parts of this research (in December 2010, 3 million receivers were sold, an historical record: the total number of decoders sold since 2004 is about 47 million). At this point, we shall simply limit ourselves to noting that Mediaset is an established presence in this environment, with 13 free channels, or, net of "time-shifting", 10 channels [▶ 68].

As Mediaset's "pay" services developed, so too have the number of "active users". By March 2011 the number was three times the figure of 1.560 million recorded in 2006: 4.2 million "active users".

Interactivity

One of the activities to which Mediaset has attributed special attention and resources is interactivity, whose objective is to enrich broadcast programming: all DTT content (both "free-to-air" and "pay") exploits interactivity as a tool for providing innovative services for viewers whose purpose is to make users' perception of the television programming more attractive. The Canale 5, Italia 1 Plus and Rete 4 Plus portals, transmitted on 3 DTT generalist networks, since 2003 have been containers of interactive services offered to viewers.

▶ 68. Mediaset's multichannel offer, as regards free channels, breaks down as follows:

- 3 historic channels, which are flanked by "+ 1", and the HD versions of Canale 5 and Italia 1;
- Boing, launched on 20 November 2007, is the first free theme channel for children, and expressly designed for DTT. The transmission is the result of a joint-venture between RTI (which has 51 % of the shares of Boing) and Turner Broadcasting System Europe (the Time Warner Group), which detains the rights for some of the most well known cartoons in the world. Boing represents a totally new proposal in the panorama of Italian television. RTI and Turner have together creating the first, free, 24/7 children's channel. The excellent audience levels achieved, also on account

of the target segments identified, made it the eighth most viewed Italian channel in 2010.

- Iris, instead, is a thematic channel dedicated to culture and leading films d'essai. The scheduling, besides offering the greatest films of all time, also features documentaries, theatre, lyrical opera and literature.
- La 5, launched in May 2010, targeted to a mostly female audience (15-44).
- Mediaset Extra is a thematic channel, launched in November 2010, that rebroadcasts a selection of current and past entertainment programmes previously broadcast on one of the Mediaset networks. It also includes sitcoms and TV series that marked milestones in the history of commercial television, as well as choice of the best titles of the 70s, 80s and 90s.
- Media-Shopping is given over to the company's teleshopping of a 100-

They enrich the most important television programmes and offer "always on" services of information (the latest news, sports news, the weather...).

During 2010 a new and more potent "electric programme guide" was introduced to help viewers make the best use of broadcast scheduling. In the 2010 finance year, the overall number of content and interactive services exceeded 75 accessible interactive applications whilst the reference TV programme is on the air, or via the network portals of Channel 5 Plus, Italia 1 Plus and Rete 4 Plus. RTI can be considered the first commercial broadcaster in Europe in terms of the quality and quantity of its interactive television.

Also in terms of advertising, and especially as concerns interactive advertising, RTI has shown itself to be at the forefront for the quantity and quality of advertising investors, and of whom many have expressed interest in this new form of interactive contact. 15% of the broadcast applications refer to interactive advertising, mainly in the form of a Tvsite, namely spaces where viewers can navigate in an interactive manner and which are dedicated exclusively to investors: information and programme details, images and supplementary videos, "advergame" and quizzes, promotions and "t-commerce". These tools extend communication content to favour a brand experience, in other words to offer a full range of information on brands or branded products, as well as providing entertainment and constructing an immediate relationship with the viewer in favour of direct communications and commercial contacts. For 2011, RTI has set itself the objective of continuing to enrich the interactive publishing service, making it even more compelling and not least for the purpose of offering advertisers new and potent forms of contact with their potential customers. In particular, the interactive experience will be reinforced with new hybrid services: thanks to new reception devices (tv-set and set-top-box) that bear the Dgtvi mark, "gold bollino", and come equipped with an Ethernet port, interactivity within broadcasting flows can be integrated with a broadband IP return channel. This will provide viewers with a transparent "broadcast + broadband" experience. Integration will provide an increasingly larger content volume, including "over-the-top tv" content, offer incentives for the "social" and shared experience of television usage and multiply entertainment opportunities (e.g. the generalist networks already offer new and innovative interactive games available through the DTT decoder + the Internet network).

As regards the new platforms, the Mediaset Group or its fully owned subsidiary - R.T.I. - works within the framework of multimedia activities through Interactive Media Management - by promoting "content extension" initiatives, "core business" services and content can be transmitted over different platforms (Internet, mobile-Web, mobile and teletext).

Web TV

RTI's Web presence is found in two main thematic areas (entertainment and information):

- entertainment, the Mediaset site (www.mediaset.it), is the principal gateway to Mediaset's entire area. Particular importance - especially in strategic and commercial terms - attaches to the VideoMediaset site (www.video.mediaset.it), where users can watch entire episodes again, in full screen mode, of most of Mediaset's broadcast schedule, including original transmissions of every edition of Mediaset network newscasts. In addition to pure entertainment (first and foremost "Grande Fratello" and "Amici"), there are the soap operas, journalistic investigations and sports programmes. The contents on the video-portal are all shared with the main social networks. TV content is also provided in the "snack-TV" format (short extracts of the high points of the broadcast schedule);



thousand plus catalogue of quality products from all over the world, and which are also available online (on 1 March 2011, Me, a new semi-generalist channels was launched, an offspring of Mediashopping, which since June 2011 has changed its name to For You).

During the revision of this research the semi-generalist channel, Italia2, with a mainly male target, was launched on 4 July 2011. Similarly another such channel, Cartoonito, edited by Boing (a joint venture between Rti Mediaset and Turner Time Warner), came onto air on 22 August.



- information, with the TgCom site (www.tgcom.it). In particular, the TgCom editorial board provides journalistic content over various technological platforms: the Internet, teletext, radio, analogic and digital TV. Sports information, instead, is delivered over SportMediaset (www.sportmediaset.it), by the sports editorial department. Mediaset's sports site has recorded very encouraging levels of traffic, and its recent restyling (with the addition of two new sections, Rugby and Poker) has improved navigation and layout.

The tie up between web and television has enabled Mediaset to achieve excellent results in terms of traffic while also allowing the advertising licensee to introduce new advertising formats, such as the "billboard" with "clickable" videos.

A new RTI Interactive Media initiative refers to web mobile, whereby mediaset content can be accessed by mobile, smartphones and tablets.

RTI Interactive Media has undertaken two main activities in this context:

- website optimisation: websites can be navigated by the latest mobile terminals and by tablets;
- creation of apps dedicated to Mediaset site navigation for the major "AppStore" on the market (Apple, Samsung and Nokia);

The sites at present available for mobile navigation are TgCom, SportMediaset and, since October 2010, the video-portal VideoMediaset.

RTI Interactive Media operate in the field of mobile telephony in order to transport content and innovative services onto mobile through:

- "brand extension", designed to leverage brands/formats already well known to the television public. This category also includes the multimedia game "Chi vuol essere Milionario" (Who wants to be a millionaire) available via sms and the Web, as well as the infonews services of "Tg5 sms" and "Tg5 mms". This year's novelties, which are recording a good success, are smartphone apps (mainly iPhone and iPad);
- Interactivity, designed to promote interactive occasions between the user and television programmes (e.g. "voting"). RTI Interactive Media manages the "televoting" of 2 of the more famous "reality"/"talent shows" of Italian television ("Grande Fratello" and "Amici"), in terms of both TV audience share and the volumes of SMSs received.

Some Statistics

While not forgetting the caveat that Web usage statistics are based upon uncertain data, the following table sets out some statistics on the trend in Mediaset's performance with respect to that of its principal competitors".

"Unique users" on an average day (source Audiweb Aw Database, Nielsen Online)

Brand	February 2010	February 2011	variation % 2011/10
Mediaset [▶69]	956.584	1.715.564	+ 79 %
Rai	399.938	501.884	+ 26 %

▶69. In February 2010, the "brand" surveyed by Audiweb was only Mediaset; in February 2011 it was flanked by 3 other brands (in the meantime Mediaset recorded a decline from 956,584 to 363,873 users, a 62 % reduction with respect to 2010): TgCom with 710,617 users, SportMediaset with 339,026 users and, in conclusion, VideoMediaset with 302,043 users. The data are the results of an analysis of the data carried out by Audiweb Aw Database, Nielsen OnLine, and refer to accesses from the home, the office and other locations.

Below we provide another dataset on "unique visitors", in the month of January 2011, that compares the 2 months of January 2010 and 2011, and taking into consideration the principal competitors in the three most significant arenas: news, sport and video [▶ 70]:

News.

"Unique visitors" in the month (source Audiweb View)

Player	January 2010	January 2011	variation % 2011/10
La Repubblica	6.861.111	8.292.000	+ 21 %
Il Corriere della Sera	7.018.041	7.781.000	+ 11 %
TgCom	2.877.670	5.924.000	+ 84 %
Libero News	4.215.329	4.370.000	+ 4 %

Sport.

"Unique visitors" in the month (source Audiweb View)

Player	January 2010	January 2011	variation % 2011/10
La Gazzetta dello Sport	3.369.872	3.808.000	+ 13 %
Yahoo! Sport	1.714.864	2.204.000	+ 29 %
La Repubblica Sport	1.579.173	2.134.000	+ 35 %
Corriere dello Sport	1.470.604	1.680.000	+ 14 %
SportMediaset	1.291.439	1.477.000	+ 14 %
Corriere Sport	1.141.230	1.435.000	+ 26 %

Video.

"Unique visitors" in the month (source Audiweb View)

Player	January 2010	January 2011	variation % 2011/10
YouTube [▶ 71]	13.554.204	16.151.000	+ 19 %
Google Video	3.234.427	3.503.000	+ 8 %
VideoMediaset	2.143.856	2.759.000	+ 29 %
Rai Video [▶ 72]	1.611.373	2.371.000	+ 47 %

We can also report other data, from another source, Nielsen Site Census, according to which, and by concentrating only upon Mediaset sites, the following results emerge:

"Unique visitors" in the month (source Nielsen SiteCensus)

Player	February 2010	February 2011	variation % 2011/10
TgCom	6.822.066	13.260.138	+ 94 %
SportMediaset	4.132.674	5.282.064	+ 28 %
VideoMediaset	4.231.730	6.291.494	+ 49 %

According to this source, the video requests reaching VideoMediaset would have been in the order of 54.8 million in February against 27.7 million in January 2010, representing a 98% increase.

▶ 70. Source: calculations based on Audiweb View data.

▶ 71. We deemed it appropriate to include YouTube data, even if they cannot, obviously, be considered "competitor" of VideoMediaset.

▶ 72. This is not the place to analyse partisan readings that can be inferred from the "same" data (it is sufficient to consider the annualised TV share, calculated on the entire universe or on specific commercial or age-group targets, which evidently produce wholly different results), however, we

would like to cite the data on the Rai.tv site, in the words of the company: in 2010, there were 22 million video streams (a 72% year-on-year increase), and unique users were 3.1 million a month (2010 average). Piero Gaffuri, "La video esperienza è transmediale. Rai da broadcaster a editore multiplatforma", lab Forum 2010, Milan. Gaffuri was Managing Director of RaiNet (in July 2010, the board of Rai, the parent company, decided to internalize the company) and Director of Rai Nuovi Media.



Premium Net tv

In conclusion, and again on the question of research and innovation, in February 2011 Mediaset's response to the virtually simultaneous presentation (in December 2010) of Telecom's CuboVision (second version) and AppleTv, was the avant-garde Premium Net Tv, a "video-on-demand" service that provides - as an integral part of the Mediaset Premium offer- innovative "over-the-top" services for Tv, PC and other devices.

Net Tv presents itself as an avant-garde service that intends to bring Mediaset Premium to the same innovative level of the most advanced pay-TV operators in the world, making its service available to its customers regardless of proprietary network infrastructure and access devices. With this investment Mediaset Premium is laying the bases for a multiplicity of technological access platforms and opening itself up to new potential audience catchment areas.

The solution - developed in partnership with Accenture - will offer all Mediaset customers seamless access to linear content and nonlinear services - such as "catch-up tv", "video-on-demand" and "virtual linear channel". In addition, Mediaset Premium customers will be able to access contents on other platforms including PCs, iPads, cell phones, game consoles and connected televisions.



The service is limited to DTT customers of Mediaset Premium, whose active subscribers in March exceeded 4.150 million. At present access to Net Tv is limited to subscribers (who enjoy free use) and, on an experimental basis, to whoever possesses a rechargeable card.

These users can connect to the service by purchasing a compatible decoder (such as Telesystem Ts 7900 Hd, € 150), or by connecting to the Web with a computer and entering their subscription number: "After three weeks, we recorded 50 thousand unique users a day - declared Franco Ricci, Pay Business Director of Mediaset - and on these 45 thousand were linked via computer and 5 thousand by a decoder. Altogether 157,000 users have subscribed to the service. These are very satisfying figures. The future? We are considering a multiplatform pay-per-view service open to nonsubscribers" [▶ 73].

Premium Net Tv offers a catalogue of about 1000 titles referring to films, TV serials, animated cartoons and football. The feature films number about 200, of which many are in high-definition. Moreover, the catalogue is not static and in the coming months will be supplemented by new arrivals.

Premium Net Tv, visible thanks to an "independent" network system - completely open and viewable with enabled digital terrestrial decoder and any telephone ADSL connection - is included in the ordinary Mediaset Premium subscription as a standard feature. The contents available will depend upon the type of package subscription: "Gallery" subscribers can access films and TV serials, "football" subscribers, football, and "fantasy" subscribers, children's programmes.

▶ 73. Marco Gasperetti, "Web. Si accende la tivù in scatola. Dopo Apple e Telecom, anche Mediaset e FastWeb lanciano la "Box televisione". Chi offre cosa", in "Corriere della Sera", Milan, 21 March 2011.

A section entitled "Cinema Première" features films online rental within the same windows of DVD release. In this case, the cost will be € 2.99, which will be charged in the successive bill. Once the acquisition is made the user is allowed 40 hours to see the film. The acquisition of the film is independent of the subscription taken out (even someone with a only "football" subscription can acquire films). In addition to these "premium" contents there are also Mediaset's free generalist channels, whose programme library comprises the preceding seven days broadcast scheduling as well as some "memorable programmes" from its historical archives. In the middle of March 2011, the service was enriched by documentaries, following the launch of the BBC Knowledge and Discovery World channels (these documentaries are also available to subscribers to the "Gallery" package).



The creative industries' response to the challenge of digitisation and the web

THE UNCERTAIN TIMES OF "MEDIAMORPHOSIS"

UNCERTAIN BUSINESS MODELS IN DYNAMIC SCENARIOS

SHIFTS IN THE CENTRE OF GRAVITY AND THE RISKS OF PARASITIC EARNINGS

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THE FABULOUS WORLD WIDE WEB





The creative industries' response to the challenge of digitisation and the web

CHAP. 3

THE UNCERTAIN TIMES OF "MEDIAMORPHOSIS"

Digitalisation and the Internet are changing the traditional paradigms of the creative industries. The musical industry was the first to be undermined by the net, and at present the audiovisual industry finds itself face to face with this great challenge and the question it implies: is this a radical metamorphosis or simply a new round of Fiddler-type "mediamorphosis"? [►74].

"An Uncertain Time for Big Media" was the stark title of a recent report by Credit Suisse [►75].

Two "ideologies" are locked in battle: one refers to the traditional or "walled garden" approach - a platform carefully controlled by the publisher (in the widest sense of the term) - and the other to the "open sea" approach (distribution platforms considerably less controllable by publishers).

A new and strange kind of "single market" for audiovisual content – the content that the 2007 European Directive defined as "audiovisual media services" – is emerging [►76]: the result of a complex and polycentric integration of all the audiovisual markets: traditional television (whether free to air or pay for view), the pre-recorded audiovisual (the so-called "home video"), the web content market and even the mobile platform content market.

However, the integration process is neither linear nor pacific because the web content market tends to cannibalise pre-existing markets.

This cannibalisation process has already taken place and is still taking place as concerns the recorded music and video industry, where "physical recording mediums" are increasingly replaced by downloading, usually stimulated by the possibility of acquiring, albeit illegally, quality content free of charge.

The many times theorised "multiplatform integration" – a natural evolution of the great "multimedia convergence" [►77] - therefore, appears as a non-linear, erratic and problematic process that obliges the principal players to carry out strategic repositioning: for example, broadcasters are reacting by increasing their presence on the web.

The development of the "catch-up TV" service, in other words the retransmission by broadcasters over the Web or on mobile telephony of television programmes broadcast a day or week earlier [►78], is a concrete example of this integration process. Another defensive strategy is constituted by the so-called "over the top" television systems (which gives rise to the acronym "ott TV"). This entails the construction of Web usage environments controlled by a broadcaster, in the same way, to some degree, as happens in the traditional television environment (the most avant-garde model is the British system YouView, ex Canvas).

►74. For further explanations see Federico Di Chio, "Link. Idee per la Televisione. Focus Mediamorfosi", Link, Rti-Mediaset, Milan, 2006.

►75. Credit Suisse, "An Uncertain Time for Big Media: Downgrade to Underweight", Geneva, October 2010.

►76. We refer to the Directive 2010/13/EU, the so-called "Audiovisual Media Services" ("AVMSD"), which overhauls and replaces the farseeing but by now inadequate Directive "Television Without Frontiers (Directive 89/552/EEC), which regulates audiovisual services "irrespective" of the medium used, in contrast to preceding practice, and introduced the figure of the so-called "audiovisual media service provider". On 1 March 2010, the Italian Parliament passed the Legislative Decree implementing the foregoing Directive (Legislative Decree 44/2010, now referred to as the "Romani Decree").

►77. This concept was introduced in Italy by the mediaologist Sartori, whose most recent work is an excellent instrument for understanding the present media scenario in the context of its historical evolution: Carlo Sartori, "La grande sorella 2. La vendetta della tv", Mondadori, Milan, 2010 (an updated edition of an essay published in 1989). On this question also see Francesco Casetti, "I media dopo l'ultimo big bang", in "Link", n. 8, RTI Mediaset, Milan, 2009; Aldo Grasso e Massimo Scaglioni (editors), "Televisione convergente. La tv oltre il piccolo schermo", Link Ricerca, Rti Mediaset, Milano, 2010; Michael Kackman et al. (editors), "Flow Tv. Television in the Age of Media Convergence", Routledge, London, 2010.

►78. It should be remembered that the "catch-up TV" is special forms of "Web tv" which differs from other types of WebTV on account of the publisher involved (broadcast) and of the type of "on demand" service (TV broadcast schedules made available for specific temporal periods, after being broadcast on television).

The "final battle" will most likely be fought in the arena of accurate user-base "profiling" [▶79]. This is the arena in which Google looms up as a potential dominant subject, with parasitic incursions into various sectors of the cultural industry. The initiative taken by the Italian association of newspaper and magazine publishers is an example of a coordinated response to this threat. The federation petitioned the Italian Antitrust Authority to take action and defend their interests, and, in December 2010, the Authority accepted most of Fieg's arguments, obliging Google to adopt a new approach [▶80].

The television market is transforming itself from a "two-sided" to a "multi-sided market". If, historically, resources were drawn from two sources (advertising resources from advertising users interested in capturing viewers' attention in free to air broadcasts, and successively, direct spending by consumers for pay-per-view television), now both the net and interactivity seem to have provided the basis for a "new market" in which the traditional television paradigm is absent.

In many respects, this is still a "theoretical" or virtual market and by way of warning, we should remember the "bubble" that was soon to accompany the great illusions constructed around Second Life, which promised miracles in both social and economic terms.

New players appear every day in this new virtual market. Bold "media entrepreneurs", anomalous publishers, curious aggregators, tlc operators (and would-be publishers), self-publishing portals, and social TV sites that present themselves as critical "navigators", in a sea of Web content to overcome the information-overload risk, matchmakers of various types, original "meta-publishing" subjects....

UNCERTAIN BUSINESS MODELS IN DYNAMIC SCENARIOS

We are witnessing a dynamic scenario characterised by enormous confusion and the continual re-propositioning of business models. The dynamism is such that some analysts maintain that 2010 will be remembered, also in Italy, as a watershed year on account of four phenomena: "the launch of the iPad (and other tablets) with which a new family of terminals was "invented" for the precise purpose of using multimedia content taken from the Web; the blossoming of mobile applications for smartphones (over 700 thousand apps are said to exist); the introduction into the PC World of the revolutionary concept of the Application Store; the spread of Connected TV which makes access to Web contents natural and easy thanks to incorporated circuit boards and specific "widgets" [▶81]. The combination of these phenomena would "lead, no less, to a paradigmatic change in our concept of the Internet itself. Our original idea – typically based on PCs and browsers – is no longer pertinent as the Internet now embraces new terminals (smart phones, tablets and televisions) and new forms of architecture (based upon Apps)".

Traditional business models are partially in crisis, but the new models do not seem to be effective, at least as regards their application to the creative industries.

The "Google model" most certainly stimulates the economy. It produces new business opportunities, and opens up potentially infinite markets for SMEs but there is reason to believe that this is not going to be a winning or a sound model, at least as regards the specific question of producing quality content.

▶79. "The indistinct and "unknown" audience of free television will undergo a gradual transformation into a profiled audience, run in a manner akin to a "customer base", as happens for pay-TV users (see Dia Piper e E-Media Institute, "Il nuovo mercato degli audiovisivi di rete: aspetti economici e normativi", Rome, 2010).

▶80. According to the measure that initiated the formal investigations (August 2009), there was lack of transparency in the aggregation of the publishers' editorial contents and in the positioning of the articles thus "unilaterally giving visibility to the announcements and a preeminence of a few with respect to others", thereby allowing Google to exploit the valuable content produced by the publishers at very high costs, for advertising purposes. By 22 December 2010, preliminary investigations were completed for the abuse of dominant position that Agcm (the Anti-trust Authority) had initiated against Google at the request of the Italian Federation of Newspaper Publishers. The commitments entered into by Google will allow editors to remove or select the contents broadcast on Google News Italia and inform the publishers about the earnings pattern that determines the remuneration of advertising space and also remove the prohibition on the disclosure of clicks by companies that place advertising on its platform. Agcm, consequently, invited government and Parliament to

implement Copyright protection in all sectors. In the course of its investigations Agcm complained of the "lack of transparency" on Google's part. See Agcm, A420 – Fieg – Federazione Italiana Editori Giornali / Google, decision n° 21959, in Agcm, "Bollettino", anno XX, n. 51, 17 January 2011. Some experts theorise that Google's "monopolistic" vocation emerges in areas of activity that are certainly less significant (today) in the group's economy. "Monopoly is regarded as an insult in Google. Thus, in order not to offend them we can speak, instead, of a hegemonic company, financially peerless, technically insuperable and juridically unassailable able to crush the competition. However, to call a spade a spade, Google Book Search is a monopoly" (Robert Darnton, "The case for books: past, present and future", Public Affairs, New York, 2009). Google Book Search is a project that envisages the digitalisation of millions of books in order to construct a virtual mega-library of unimaginable size. It should also be noted that the profits to be realised by Google Book Search will be divided 37 % to Google and 63 % to authors and publishers.

▶81. Osservatorio New Media & Tv, "New Media: tante novità, ma quali strategie?", PoliMi, Politecnico di Milan-School of Management, Milan, 2011.

Thus the phenomena that we are observing seem to be the manifestation, within the creative industry, of a concept referred to in systems theory as "emergent properties" - situations in which a system demonstrates inexplicable properties on the basis of the laws that govern its components (this type of conception contradicts the Cartesian paradigm according to which the behaviour of the whole system can be fully understood by studying the properties of each of its individual parts).

The Web makes possible "disintermediation" processes, thanks to which the consumer can have direct access to a product or enter into direct contact with the content producer or with content aggregators. In actual fact, the Internet only partially "disintermediates": in practice, it reorganizes the network of intermediaries by reconstructing relations (re-intermediation) with traditional mediators and introducing new ones. Thus, new intermediation relations are created.

All operators "feel" that a radical change is afoot, but the prospects remain uncertain and successful business models are few and far between.

In very many new activities the critical mass necessary to make service offers profitable has not yet been reached. In the meantime, technology is constantly generating new devices and the risk of a "bubble" is always looming in the background. Innovations first seduce investors and then disappoint them when they fail to pass market tests. Regarding such illusions, we can, for example, recall the hopes and illusions dashed a few years ago that had been constructed (by many) around the above-mentioned

Second Life's metaverse. This particular bubble did not exactly explode, but something very similar occurred.

In this framework, some analysts continue to theorise the radical transformation of the market in the conviction that multiplatform convergence proves the "long tail", the paradigm described by Anderson [►82]: The Web would supply sustainability (and thus critical mass) to market segment and, above all, to niches, thanks to "disintermediation" services. There are also those who – ideologically – view these phenomena in an anticapitalist key... (see below, in our discussions on "no copyright" activists).

It is no coincidence that the main sponsor of this "new market" is also the theorist of the "long tail". Chris Anderson coined the term "freeconomics" in 2009 to indicate a business model whose platform can be summarised with the slogan "gift something to arouse demand for something else". Anderson gives some interesting examples of companies that have had success with this unorthodox strategy, but we consider that these are only isolated cases that cannot apply to the market as a whole. The title of the work is also symptomatic: "Free. The Past and the Future of a Radical Price", published in US in 2010).

This digital Eden, this "consumer paradise" has hitherto shown itself to be merely wishful thinking: the "user generated content" market is and shall remain a parallel market with respect to the traditional television market. The new forms of audiovisual content on offer may well appear to be stimulating for the end consumer (who hopes – obviously – to be able to enjoy ever greater quality



images from the cd's booklet
"The Collection", Talking Heads,
Emi Records, 2007

►82. YouTube can be said to be an emblematic case of the exploitation of the "three forces" identified by Anderson (who initially concentrated his attention upon "Amazon"): the first force is technological evolution, which has enabled thousands of people to act as amateur directors; the second force is the enormous growth in Internet connections thanks to which Google has managed to reach a worldwide audience; the third force, instead, is represented by increasingly sophisticated interactive instruments and refined algorithms based upon consumption models that can guide the

user through the very "long tail" of the niches to be found on a portal. According to Anderson's theory, the rediscovery by the public of such "niches" is a matter of great economic importance for media companies, who can thereby obtain an economic return from the sale of multiple products each of which is addressed to be relatively limited number of persons, rather than attempting to sell a single product to a vast number of persons.

contents at ever lower costs and with ever greater ease-of-use; which we define as the "manna myth": see **Chapter 5**) but, in fact, they pose very serious problems for the healthy economy of the cultural system because they do not reinforce the latter's productive structure.

It should be emphasised that the prevailing trend, also as regards Web consumption, favours contents produced by the television and cinematographic industry.

Indicators regarding the production of quality content financed by the Web make for very depressing reading: as a matter of fact it has to be clearly stressed that no "web-native" quality content really exist. [▶83].

SHIFTS IN THE CENTRE OF GRAVITY AND THE RISKS OF PARASITIC EARNINGS

There is a real danger that new forms of dominance will emerge during the multiplatform convergence process by whoever controls the Web "search" market. If this activity becomes increasingly more important and compelling, advertising users will concentrate their attention upon it and thereby de-structure the production line.

The production of quality content will not necessarily benefit web content disintermediation and re-intermediation processes.

It is quite likely that there will be a shift in the revenue flow pattern. Moreover, this shift will operate to the exclusive disadvantage of producers and publishers because it can only enrich the "aggregators", i.e. the operators who have no vocation (either historical or intrinsic) to invest in quality content production. Furthermore, such operators evade regulatory frameworks, given that – as often happens – technology can bypass existing laws.

Consequently, there is the significant risk that players such as YouTube can consolidate a hegemonic position whereby they systematically and parasitically live off non-proprietary content for a prolonged period of time, and this risk continues to be a real issue.

It is interesting to remember how the "Corriere della Sera" entitled a long interview with one of the vice presidents of the Google Group, Carlo D'Asaro Biondo: "Is Google a new rapacious monopolist? No, as we grow, we learn how to cooperate" [▶84]. Indeed the voracious propensity of Google to buy up every competitor it meets on its path would seem to demonstrate a certain penchant for rapacity.

There is a concrete risk that revenue flows will go to the exclusive benefit of Google & co., and that they will enrich

themselves even more, although maybe proffering a few crumbs from their banquet to content producers. In the present business model of the television investments are concentrated in content production. On the contrary, the television industry busines original production.

As stated earlier, about 13 % of the Italian television system's total revenues are earmarked for investments in original content production. In the period from 2000 to 2010 the two leading national television groups (RAI and Mediaset) invested € 4.5 billion overall in national (and European) drama production and produced over 7000 hours of audiovisual content, for an average of € 406 million per year and an average annual output of 658 hours (see **Chart 17** and **Chart 18** ■). Moreover, these sums do not take into account "in-house" production among the various kinds of television broadcast programming.

It is illuminating to hazard a comparison between two broadcasters based in a European Union Member State (i.e. Italy) and the multinational Google Inc.: RAI and Mediaset invest more than € 400 million per year in original television drama while, in the spring of 2011, Google Inc. would have decided – according to journalistic sources – to invest US \$ 100 million so as to endow YouTube with "channels" characterised by an original broadcast programming of professional content. Moreover, these investments should also be seen in the framework of the US \$ 29.3 billion earned by Google Inc in 2011 and its US \$ 8.5 billion in profits... Google Inc's profits alone exceed the total revenues posted by the Italian television system.

In brief, Google's earnings derive from "quality content" devised and produced by others as it invests nothing or almost nothing in new quality "content". Does it really live up to its famous slogan "don't be evil"?!

As Mucchetti forcefully pointed out in the "Corriere della Sera", "Google, is the great nonexistent publisher" [▶85].



production often finds an initial outlet on the Web before being broadcast also by television.

▶84. Massimo Gaggi, "Google il nuovo monopolista rapace? No, crescendo impariamo a cooperare", in "Corriere della Sera", Milan, 23 June 2010. It should be pointed out that, in this interview, D'Asaro Biondo contended that "of the €22 billion in sales in 2008, €5.5 billion belongs first to our content producer partners". However, there is no trace of this in Google's financial statements and it will be interesting to understand who these

Note. "The latest news": Google's voracity...

During the revision of this research, Google's appetites were shown to be Napoleonic in their proportions. The acquisition of Motorola, announced in August 2011, for \$12.5 billion (€8.7 billion) will allow the Mountain View group to control a player in the hardware/software business. Motorola is one of the leading suppliers of cable TV receivers in the USA. Control of Motorola will allow Google to produce its own cell phones, thus putting it on the same level as Apple, which also produces its own iPhones. This is the most important acquisition in the history of Google, which paid a price of \$40 per share, a 63% share premium with respect to the Wall Street closing price prior to the agreement between the two companies.

Rumours were circulating in the world of journalism and finance in September 2011 that negotiations were also underway for the acquisition of Hulu by Google for an investment mooted at between \$1.5 and \$2 billion (Amazon, Yahoo!, and Dish Network would also have been involved in the bidding). Hulu is a joint venture between Nbc Universal (Comcast), Fox Entertainment Group (News Corp) and Abc (Disney), a platform used by a number of broadcasters and majors to promote their products, characterized by a business model based on traditional advertising. Hulu has by now become the medium of choice by top level advertisers (first and foremost McDonald's) but it has also produced phenomena of "cannibalization" within the proprietor media groups (pressured by cable and satellite operators who object to paying for content that is broadcast free of charge by the video-streaming platform). If the purchase were to go ahead, it would, aside from Google's voracity, confirm the "strategic design" for Google's repositioning, a design based upon content, as emerges from this research.

How deep is the sea...

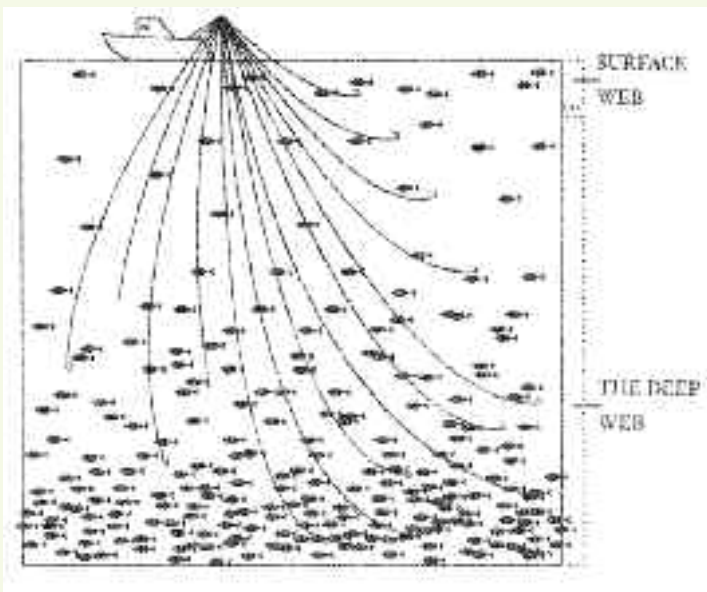


image taken from:
"The Deep Web: Surfacing Hidden Value" di Michael K. Bergman

One of the least known features of the Internet is the so-called "deep web". The American company Bright Planet was one of the first to specialise in sounding out this impressive mass of submerged data (or, depending on your point of view, hidden data). The term refers to all sites that can only be accessed by advanced search engines and consequently are overlooked by traditional engines. At the start of the millennium the ratio between "Surface Web" and "Deep Web" information was estimated at 1 to 500 but according to Bright Planet the ratio now ranges from 1 to 1,000 or from 1 to 50,000. This mountain of data and documents would be held in the hundreds of thousands of sites that offer dynamic access to the data structure in their archives but are not visible to search engines that only read the single static pages of sites (the Surface Web). Thus the so-called dark net (the dark side of the Internet) i.e. hidden net remains untapped. In practice, Google and the other leading search engines only trawl the tip of the iceberg, thus ignoring what has been termed the "invisible Internet", which can only be accessed through ad hoc software (such as the forerunner LexiBot). However, this and other may come to the light with avant-garde Internet search. In this respect, we should remember that methodologies are currently being developed by various bodies to construct a semantic type web able to give meaning to phrases in terms of data crawling.

1.024 Bytes	= 1 Kilobyte	(Kb)	10 ³
1.000 Kb	= 1 Megabyte	(Mb)	10 ⁶
1.000 Mb	= 1 Gigabyte	(Gb)	10 ⁹
1.000 Gb	= 1 Terabyte	(Tb)	10 ¹²
1.000 Tb	= 1 Petabyte	(Pb)	10 ¹⁵
1.000 Pt	= 1 Esabyte	(Eb)	10 ¹⁸
1.000 Eb	= 1 Zettabyte	(Zb)	10 ²¹
1.000 Zb	= 1 Yottabyte	(Yb)	10 ²⁴

fortunate beneficiaries are ("content producer partners"?), and what is this "content" he speaks about???)

►85. Massimo Mucchetti, "Google, il grande editore che non c'è. Fattura in Italia come uno dei gruppi maggiori e sfugge alla legge Gasparri. Ma l'Agcom gli farà i conti in tasca" [Google the great in-existent publisher. Its sales in Italy on a par with the major groups but it evades the Gasparri law. Nevertheless, Agcom will establish its actual sales and earnings], "Corriere

della Sera", Milano, 28 January 2010. The article draws attention to some critical aspects of Google's Italian management, which has also been the subject of investigations by the Italian Fiscal Police since 2007, which was interested in the revenue flow between Italy and Ireland where the group's principal European office is situated (employing more than 1500 persons). Mucchetti estimated that Google would earn between € 500 and € 600 million per year from the Italian market.

THE MYSTERY OF YOUTUBE'S EARNINGS: OVER \$ 1 BILLION IN 2011... AND GOOGLE IS SHIFTING ITS OWN CENTRE OF GRAVITY TOWARDS TELEVISION: GOOGLE TV



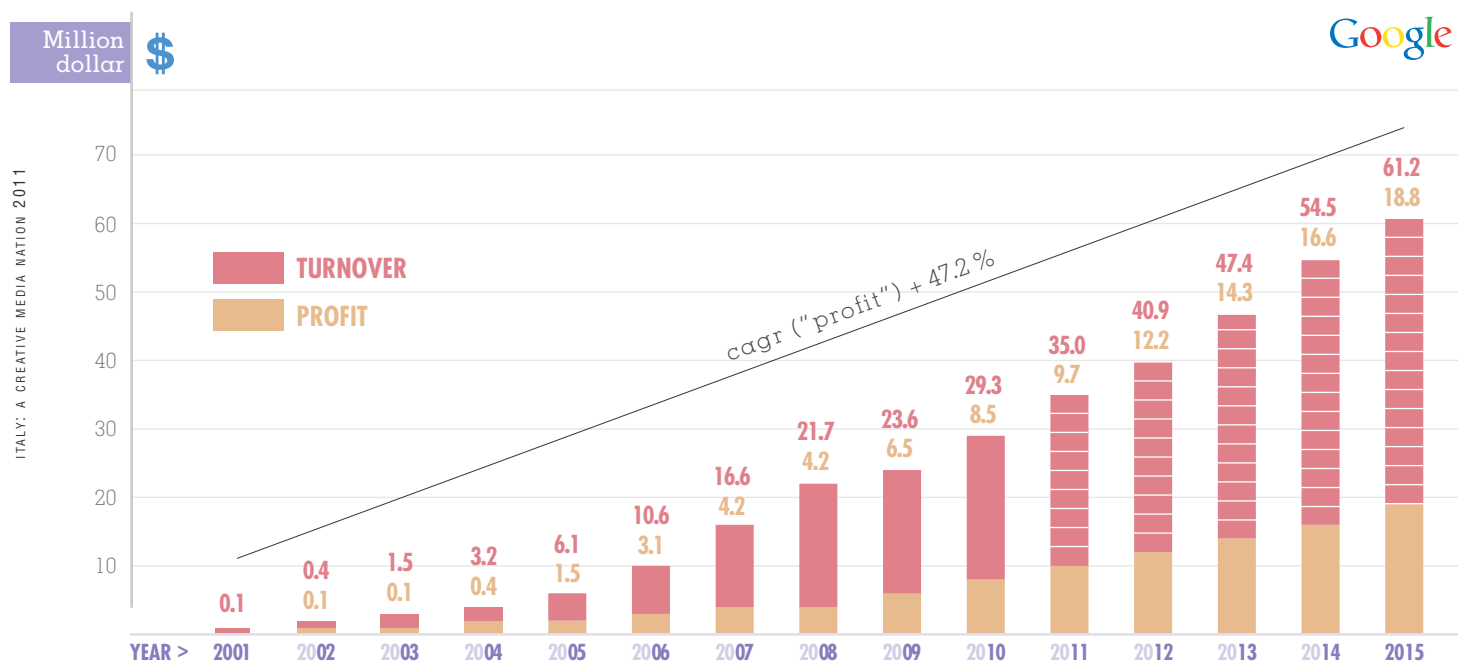
The mystery

The trend in Google Inc's turnover is very impressive. Compared to €1.5 billion in 2003 the forecasts for 2013 speak of €47.4 billion (a progression, more or less, of 1:11:32). Furthermore, the estimated cagr for the period 2001 to 2015 is an awesome 47.2%. (see **Chart 25** ■).

Google, founded in 1998, bought YouTube in 2006 for US\$1.65 billion. To many observers this amount seemed excessive at that time. However, we must put this figure in perspective: in that same year, Google's turnover exceeded a threshold of \$10 billion and, thus, in a mere ten-year period this new entry had reached an absolutely exceptional size and level of profitability. In the light of this we believe that the development of YouTube is likely to contradict whoever considered the investment inopportune. According to some forecasts, in 2012 alone YouTube will generate a volume of revenue for Google higher than its original purchase price. And this, above all, is the result of a recent tendency to move away from the "user generated" model in favour of a professional content distribution model ...

GOOGLE INC.'S TURNOVER
(time series 2001-2015, estimate in billions of US dollars)

CHART 25



Source: IslCult survey on various sources: 2001-2010, Google Yearbook; 2011-2015, Credit Suisse previsions.

Notes: "Turnover" means "gross revenues"; "profit" means "net income after extraordinary items"; "cagr" means "compound annual growth rate" (2002-2015).



Actually, YouTube could occupy an increasingly central position in Google's economy, even though at present 90% of the group's revenues is generated by advertising connected to the traditional "search" function used by the average user.

Not many remember that the idea of Google Tv was first mooted in 2006, when Eric Schmidt (CEO from 2001 to 2011) compared the Electronic Program Guide (Epg) of digital television to the "core business" of Google, forecasting that access to the growing mass of TV channels could become increasingly easier.

In October 2010 Google officially declared that it was "monetising" 2 billion "views" [►86] per week, corresponding to 14 % of all videos viewed in one week on Google proprietary sites. And this estimate of about 2 billion videos viewed every day on YouTube can be considered reliable. YouTube is the fourth most visited site, in absolute terms, on the Web.

The YouTube economy, like that of Google's, is not transparent. The Group's Annual Report is very short on data and nor can the accounts of the head company based in the Californian town of Mountain View, be said to be crystal-clear; a fact borne out by some investigations into tax evasion in various European countries.

Furthermore the Group has explicitly declared that the operating costs and financial results of YouTube are not "public information".

Google Inc, while not revealing the fundamentals of YouTube's economy, nevertheless has declared that YouTube's revenues have more than doubled, year after year, over the last three years. The group has also declared that YouTube has reached a breakeven point, although according to some observers profits had already been made in preceding years.

According to some analysts, YouTube's total revenues would be in the order of \$450 million in 2010 [►87], but a more recent report prepared by Citicorp presents some very different figures: in 2010 gross earnings would have amounted to \$ 825 million (€ 544 million net), and are destined to double in 2012 (see **Chart 26** ■).

Gross earnings are forecast to rise from \$ 825 million in 2010, to \$ 1,328 million in 2011, and to \$ 1,695 million in 2012; year-on-year increases of respectively 61 % and 28 % [►88].

If the US \$ 825 million estimate is correct, at present YouTube would be producing only 3 % of Google Inc's overall revenues. In 2010, Google Inc posted gross revenues of \$ 29,321 million, a 19 % increase on the \$ 23,651 million posted in the 2009 financial year.



►86. The term "view", refers to every single view of every single clip hosted on a Web platform offering audiovisual content. In actual fact, every "view" corresponds to at least one "spectator". If we observe a criterion similar to that typical of the relationship between television broadcaster and advertising, the price of streaming advertising will be calculated on the basis of "cost-per-thousand" ("cpm") views. For example: if the commercials within a YouTube channel are sold at five dollars cpm, a video of that channel generating 1 million views would cost the advertising user \$ 5000 for his "netcasted" commercial.

►87. Claire Cain Miller, "YouTube Ads Turn Videos Into Revenues", in "The New York Times", New York, 2 September 2010.

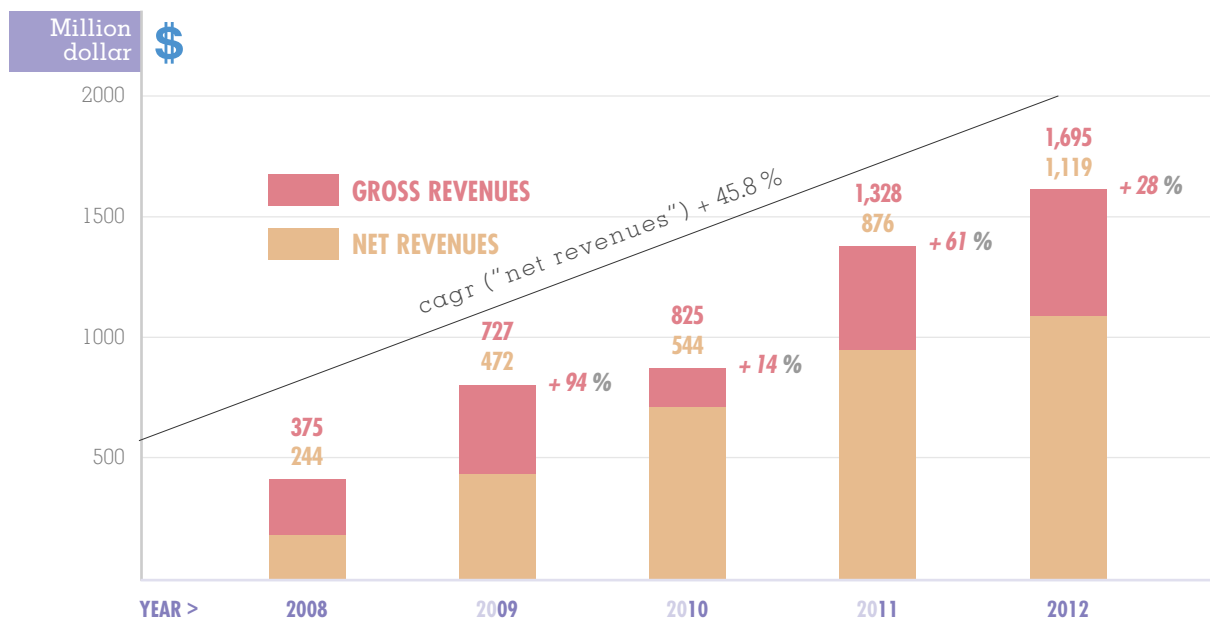
►88. On the 21 March 2011, some leaks appeared in the press regarding a confidential report prepared by Citicorp analyst, Mark Mahaney, whose estimates were not commented upon by Google Inc. To better understand the range of oscillation (and therefore the intrinsic reliability of each estimate, regardless of the authority of such subjects) of these analyses, we can observe that Mahaney himself, in January 2011, had prepared an estimate for YouTube's final 2010 results amounting to \$ 614 million (against a successive estimate of \$ 825 million).



YOUTUBE'S TURNOVER

(time series 2008-2012, estimate in million US dollars)

CHART 26



Source: IsICult survey on Citicorp City Investment Research and Analysis.

Notes: % is considered on gross revenues, on the previous year; "cagr" means "compound annual growth rate".

ITALY: A CREATIVE MEDIA NATION 2011

According to some analysts, in such a situation, 1 dollar's worth of additional sales would go directly towards profits: in financial jargon a business of such characteristics is regarded as "highly scalable", in other words expandable without limits...

We should remember that 48 % of Google's 2010 earnings are generated by US businesses (\$ 14.1 billion), 11 % by UK businesses (\$ 3.3 billion) and 41 % by the rest of the world (\$ 11.9 billion).

It should, however, also be noted that the "rest of the world's" share rose sharply from 37 % in 2009 to 41 % in 2010, while the US's and the UK's contributions declined proportionately (from 49 % to 48 % in the USA and from 14 % to 11 % in the UK).

There are no unequivocal estimates but by cross-referencing various sources (reference year 2009), it can be argued that Google, worldwide, accounts for over two-thirds of the world's Internet search activities: 68 %, against Yahoo's 8 %, Badu's 7 %, Microsoft's 3 %, and 16 % of all the other search engines.

At the end of 2010, the Group's full-time employees around the world numbered 24,400: 9,500 on R&D, 8,800 sales and marketing force, 3,350 general and administrative services and 2,800 on operations. At the end of 2009, the total number of employees was 19,835. Consequently in the course of the year the labour force grew 23 % (against an increase in earnings of 19 %). It should also be reported that in January 2011 the basic salaries of non-executive employees increased 10 %.

In Italy, sales of Google Italy srl appear extremely modest: revenues rose from € 18.9 million in the 2008 financial year to € 21.8 million in 2009 - a 16 % increase, or € 2.9 million. Google Italy's employees number 80... and if we note that 94 % of earnings come from Ireland (Google Ireland Ltd.), this may allow us to understand something of the intricate network of the group's pan-European and worldwide management.



The financial statements of the Italian company, with its single shareholder owner (Google International Llc with registered office in the USA) state as follows: "the company belongs to the Google Group, which exercises control and coordination through Google Inc. (USA), which also draws up the consolidated financial statements". In fact, the Italian branch of the Group essentially acts as marketing and sales agency for Google Ireland Ltd. It is very difficult for the analyst (both mediological and financial) to get round these information screens and understand the real dimensions of the business that the Italian market generates in the economy of this multinational. According to non-certified estimates, Italy would represent 4 % of the total sales of Google: if this figure were correct, Google would generate about € 950 million from its Italian business.

With reference to some critical aspects of Google's financial and tax management, it can be recalled that the "Sunday Times" ran the following explicit headline "Google beats £ 3 bn tax", denouncing the fact that Google invoices all its European activities in Ireland, where the taxes are the lowest in Europe. According to the newspaper, Google would have evaded taxes in the UK and in other countries over the past five years by minimising its tax liability through a complex network of companies that exploit various legal systems, including those of the UK, Ireland and Belgium in order to send its earning to the Bermudas. Google was quick to reply, "We are obliged by our shareholders to develop an efficient structure in terms of taxation, and our present structure operates in compliance with the single legal systems of the countries in which we operate". Similar accusations were made against Google in Italy. A report by the Fiscal Police summarised the analyses conducted on the company's financial statements up until 2007 and concluded that the revenue not declared to the Italian tax authorities amounted to € 257 million and unpaid taxes to € 51 million.

Google offers services in 100 different languages and operates in 50 countries (in 25 nations with "localised" versions), and declares that it can reach a planetary mass of 500 million "unique users a month" (of whom about one half regularly uses the site at least once a week). However, although significant, these data are still light years away from the dimensions of world television usage.

35 hours of video uploaded very minute

In March 2011, according to official group statistics, about 35 hours of video were uploaded onto YouTube every minute [▶ 89]: this flow translates into 50,400 hours and 18.4 million hours a year. Google's goal is to reach 48 hours by the end of 2011. In 2007, the average was 10 hours a minute.

The material in question is huge in volume and its optimal management, in the form of a catalogue corresponding to the size on this submerged treasure, would, to say the least, be very difficult. Towards the end of 2010 the YouTube Trends service was introduced, whose function is to highlight the most fashionable clips. However, this tool is certainly insufficient for effective and critical navigation. Morgan Stanley has drawn up a helpful equation: "Video = Consumers Want To Find + Select + Watch Video", specifying "via Wired + Wireless Internet" [▶ 90].

Google does not disclose information on the types of YouTube consumption. We do not know the percentage of consumption generated by "user-generated-content" or by "professional content", i.e. musical videoclips, animated cartoons, trailers, extracts and pieces from films and TV drama and other programmes. A research carried out by the University of Southern California estimates that as early as 2007, about 14 % of video content was commercial in origin.

We can also recall that on the basis of the contractual relations laid down by Google, whoever publishes a video on YouTube maintains its "ownership" but transfers all "proprietary rights" [▶ 91].

In response to the risk that this growing quantity of video, together with the growing numbers of users (who without doubt produce positive externalities from which all users can benefit) may lead to the congestion of the net. In May 2010 Google announced the construction of a worldwide optical fibre network (by the acquisition of the so-called "dark fibre", i.e. unlit fibre).

▶ 89. On the matter of Agcom's consultation on online copyright, Google Italia, in an official document released in 2011, asserted, to the contrary, that "24 hours of video are uploaded onto the YouTube platform every minute. Moreover, Google maintains that "every day 2 billion people click on a video file uploaded on YouTube". And it should be remembered that up until August of 2010, the maximum duration of videos uploadable onto YouTube was 10 minutes. Since then the limit has been raised to 15 minutes. If 35 hours of

video are uploaded every minute, this means that the users who transmit to Google from all over the world, the equivalent of 140 videos a minute, or 201,600 videos a day (assuming that everybody makes full use of the time duration available).

▶ 90. Morgan Stanley, "Internet Trends", New York, 2010.

▶ 91. To be more exact, the user "concedes to YouTube and other website



At the end of 2010, no fewer than 81 % of the "top hundred" YouTube videos included advertising against 60 % in the preceding year [▶92].

What we have defined as Google's tendency to "shift the centre of gravity" towards television is, therefore, pursuing a convergence strategy that involves the exploration of new business models:

- the utilisation of YouTube as an advertising instrument by tying the video offer to advertising within it;
- the partial modification of the YouTube offer, through theme channels offering free professional creative content financed by advertising;
- the penetration of the YouTube / YouTube TV offer through new platforms as such Sony's Qriocity.

Yet further proof of Google's interest in this sphere for the future development of YouTube is the commercial launch of a new standard for viewing video content on the Web in 2011. The standard is termed WebM, and will compete with H.264, at present is the most widely used standard [▶93].

In the spring of 2011, "The Wall Street Journal" announced the new Google strategy whereby over \$ 100 million would have been invested to launch new theme channels on YouTube and produce original broadcast schedules [▶94]. The video-sharing platform would propose between 5 to 10 television programmes by category, per week to internauts. The services would be free, and advertising funded. Therefore, the principal page of YouTube would be broken up into "thematic channels": 20 "premium" channels would be dedicated to cinema, television serials, sport. However, Google has refused to comment upon this journalistic scoop. These "channels" would be entirely made up of professional content rather than videos uploaded by users.

I saw it on YouTube

According to some analysts, Google' ambitious objective is to attain a usage format that would cause us to change the present expression "I saw it on TV" (TV seen as a medium for validating news and therefore reality) to... "I saw it on YouTube" (a source validating the natural chaos on the Web?!). It must be admitted that this is a much more radical development with respect to YouTube's original claim of "broadcast yourself".

In April 2011, YouTube inaugurated the YouTube Live section, which initially comprised a selection of partner channels entirely financed by Google's advertising revenues. Faced with the unwillingness of the American networks to allow their broadcast schedules to converge within Google's TV "bouquet", the group is therefore setting out to offer a broadcast schedule that will, to some degree, be original by supplementing it with social media type services in order to help users navigate the enormous ocean of network content on offer. One of the principal problems of live streaming is, in fact, the enormity of the content on offer, which makes it very difficult for users to identify and remember an appointment (once again it is the TV which is the Queen of "agenda setting" even in such a dynamic scenario). YouTube is attempting to overcome this problem by offering its users a simple and functional interface that minimises this kind of risk (the "Landing Page" of YouTube live lets us discover what is being broadcast and what is billed on the broadcast schedule). However, exploiting the Internet "library" to the full is a very difficult task.

We should also mention the launch of the Google TV platform, announced in May 2010 in the US and presented in Europe in September 2010 (at Ifa in Berlin). It is defined as "the platform that gives consumers the power to live the experience of television and the Internet on a single screen, with the added possibility of being able to search and find the content they wish to see".



users unlimited licensing rights". Moreover, the licensing question is a "worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Content in connection with the Service and YouTube's business".

▶92. The Annual Report 2010 of Google Inc., published on 20 January 2011 states as follows: "In addition, YouTube provides a range of video, interactive, and other ad formats for advertisers to reach their intended audience. YouTube's video advertising solutions give advertisers a way to promote their content to the YouTube community, as well as to associate with content being watched by their target audience. YouTube also offers

analytic tools to help advertisers understand their audience and derive general business intelligence. In the past year, YouTube has experienced strong growth in mobile viewers and has established key partnerships with content companies to help monetize mobile video" (Google Inc., "Form 10-K for the Fiscal Year Ended December 31, 2010", New York, page 4).

▶93. WebM is a web-based streaming standard based upon "codec" (the digital compression standard) an "open-source" videoVP8 and Vorbis audio. The WebM Project is a Google-sponsored project whose aim is to create a "royalty-free", free video format combining high-quality with video compression for use with Html5. In more precise technical terms, Google has decided to abandon its support for the rival video codec H.264 (also termed



USA. WEBSITES OFFERING ONLINE VIDEOS

(2011, unique users and stream: ugc, film, tv programmes, videoclip...)

TAB. 4

Web property / Video brand	Source: comScore	Source: Nielsen	
	Millions of UNIQUE USERS per month	Millions of UNIQUE USERS per month	Millions of STREAMS per month
GOOGLE / YOUTUBE *	144.1	112.8	8,840
VEVO **	51.0	32.2	343
YAHOO!	48.7	25.1	187
VIACOM DIGITAL	48.1	-	134
AOL	44.5	9.2	-
FACEBOOK	42.1	32.3	159
MICROSOFT ***	38.1	17.3	247
TURNER DIGITAL	28.2	-	-
FOX INTERACTIVE	25.4	7.6	-
HULU	25.0	11.9	813
THE COLLEGEHUMORNETWORK	-	10.0	-
NETFLIX **	-	7.4	-

Source: IsICult survey based upon comScore VideoMetrix and Nielsen Company data.

Notes: - The data refer to the quantity of "unique users" who consumed "video", regardless of type ("ugc", film, TV programmes videoclip...). The two sources also propose their "top 10" lists, but only eight subjects appear in both lists (The College HumorNetwork and Netflix are not listed in comScore's classification, while Viacom and Turner are not mentioned in Nielsen's). In Nielsen's statistics, however, Viacom does make an appearance among the "top 10" by stream in the form of Mtv Networks Music (controlled by Viacom); we have left the order as set forth in comScore's classification;

-Source comScore: the data referred to "Total Unique Viewer of Content Video"; (*) The source also reports Google, but estimates that 99% of the "video views" of the Google group are generated by YouTube;

- source Nielsen: the data referred to the "Top OnLine Video Brands by Unique Viewers"; this source refers explicitly to YouTube; (***) It also should be mentioned that what comScore defines as Microsoft "Web property" corresponds to the "video programme" whereas the Nielsen explicitly cites Msn / WindowsLive / Bing;

(**) Vevo ** and Netflix ** are classified by Nielsen as "video rental sites".

Legend: In January 2011, the 112.8 million unique users who visited YouTube (according to Nielsen) accounted for 8.8 billion videos in streaming.

The Google Platform is based upon the operating system Android and uses Google's Chrome browser. In order to understand the reactions of the "traditional" media to this new challenge, we can report that from October 2010 the three major American television networks (ABC, NBC and CBS) have prevented Google TV users from making direct use of their own broadcast scheduling (by introducing a "streaming" block from their Websites)... Google TV's principal partner is Sony, which since spring 2011, has been advertising – also in Italy – its Hdtv television with incorporated Internet and an ad hoc platform proposing an "on demand" service: Qriocity [>95].

Adobe and Logitech are the other partners involved in the construction of multimedia keypads to simplify access to "online" and "offline" content. Without any doubt, Sony is an avant-garde player in the business of "connected devices" through its Bravia televisions, Blu-ray players and the PlayStation console. The multimedia giant has obviously much to offer in the arena of the search for hardware/software synergies. Suffice to remember that it controls content producers such as Sony Pictures Columbia and Sony Music.

Mpeg-4 Part 10 or Mpeg-4 Avc), hitherto the dominant standard for Web streaming (initially proposed by Apple in 2007 inside QuickTime) in its Html5 video tag, in the name of open standards: given that H.264 is at present one of the (if not the) most widely used Web-supported formats, Google's decision has been criticised by the technically expert observers. Google claims that H.264 has a licensing cost and that Firefox and Opera do not support it. It should be remembered that the H.264 standard has played a fundamental role in improving the efficiency of network compression with respect to the preceding Mpeg-2 codec.

►94. Jessica E. Vascellaro, Amir Efrati, Ethan Smith, "YouTube Recasts for

New Viewers. Google Plans to Organize Site Around Channels, Fund Original Content as Tv and Web Converge", in "The Wall Street Journal", 7 April 2011.

►95. Sony defines Qriocity as a "Sony's new entertainment service platform that enables users to access high quality content through a range of devices. All the latest films available in streaming on Sony compatible devices from the comfort of your own house whenever you want them". This is obviously a video on demand service, or rather a "pay-per-view movie streaming service". The service was launched by Sony Europe at the end of November 2010 in France, Germany, Italy, the United Kingdom and



Sony has promised agreements with the principle IP service suppliers in order to develop its own "video on demand" multiplatform service, Qriocity.

It has incorporated a selection of instruments or widgets [▶96] in its own "connected device". In Italy, Sony has a partnership with YouTube, Flickr, Dailymotion and Eurosport.

However, side-by-side with this closed approach – based upon a navigation guided by the widgets – it is allied with Google TV, which has been integrated into some television and Blu-ray readers.

Google TV is exploring the so-called "connected TV" business, which although still fraught with uncertainties, has also attracted players of the stature of Apple and Samsung, but the business model of the "next generation TV" still remains undefined.

It should be mentioned that Google TV has adopted the opposite strategy to that pursued by the "closed model" of the "TV App Store" which, hitherto, has been adopted by most hardware producers, first and foremost Samsung [▶97]: as Google TV intends to provide the experience of free and open navigation, along the lines of personal computer navigation.

Nevertheless, we should remember that although YouTube plays a dominant market role among video-sharing Websites, it is not the only player. We can cite the other social networks (in alphabetical order) as follows: AOL Uncut, blip.tv, Dailymotion, Flixya, Guba, Jumpcut, Metacafe, Ourmedia, Revver, Sharkle, Veoh, Vimeo, vSocial, Yahoo! Video, YouAreTV, ZippyVideos...

And it is also worth noting that in February 2011 YouTube USA's "unique visitors" amounted to 111 million against Netflix's 24 million and Hulu's 20 million, which can both be defined as offering online video rental services, the first specialised in DVD and video games, and the second promoted by NBC, Fox and ABC [▶98]. On the other hand, the approximately 15 minutes of daily YouTube exposure by the average user only totals 2 hours and 40 minutes per month, against the 5 hours and 3 minutes of Hulu and the 9 hours and 16 minutes of Netflix (source: the Nielsen Company comScore)...

However, the consumption levels (2 hours and 15 minutes per month for YouTube; 5 hours and 3 minutes for Hulu; 9 hours and 16 minutes for Netflix) are still light years away from the 4 hours and 39 minutes daily consumption by the average television user in North America in 2010: notice - 4 hours and 39 minutes for day, not for month.

We should also be aware that the comScore's and Nielsen's estimates of video usage over the Web do not tally with one another (see supra, **Table 4** ■).

It is also interesting to note some Nielsen's findings as concerns "stream" quantities: in January 2011, 8.8 billion streams would have been carried out on YouTube against 813 million on Hulu.

According to calculations made by comScore, using Nielsen data, online video viewing in 2010, in the USA, corresponded to 4 % of the average individual's time budget dedicated to television usage: 1.4 hours per week against 36 hours per week dedicated to television. ComScore reached the following conclusions:

- there has been no decline in the amount of time that Americans dedicate to the television and no decline in the advertising investment trend in television;
- in the last 10 years there has been no decline in the effectiveness of television programmes as advertising instruments [▶99].

As concerns Italy, the average time spent by an individual user on YouTube has been estimated at around 55 minutes a month, less than 2 minutes a day [▶100].

According to official statistics prepared by Google Inc. (the so-called "Transparency Report", based on data as at September 2010), Italy would represent the country with the highest percentage of user-uploaded videos whose removal are requested from the YouTube platform. The videos removed in Italy would represent 70% of all such removals. The author of the blog who first published these data, Tedeschini Lalli, argues that these data refer to the fact that television channels request and obtain the removal of videoclips taken from their programmes. The author (editor in chief of the "l'Espresso" Group, Direzione Innovazione e Sviluppo) entitles this world record – in a mystifying manner – "Italy leads YouTube censorship".

Spain. In the Italian advertising campaign, along with Qriocity's offer, there is a selection taken from Rai.it, together with the possibility of accessing YouTube, Facebook and Skype. The campaign's headline is: "Sony Internet Tv. The reinvented TV".

▶96. Meaning the typical instruments of a proprietary interface that provides access to applications and services specially developed for use over a television set. In more technical terms, they can be defined as a graphic component of an IT program user interface.

▶97. It can be remembered that the "Application Store" concept was quickly extended from the world of Smart phones to that of the personal computers.

▶98. Hulu and Netflix broadcast in streaming a wide catalogue of long-lasting premium audiovisual works, mainly TV drama: Hulu for free in its basic package and ppv in the Plus offer; Netflix is available only in the US and on a subscription basis, starting from \$8 a month. Netflix's original



The fabulous World Wide Web

The journalistic debate “about” the Web is often characterised by extremely optimistic vision and unreliable figures bandied about to demonstrate the possibilities of infinite economic growth and unlimited freedom. Sometimes it actually seems that the Internet, or its major component the Web, has become a magical instrument for a planetary catharsis that will transform ugliness into beauty and poverty into wealth. The great “master” of science fiction Arthur C. Clarke claimed: “Any sufficiently advanced technology is indistinguishable from magic...”

According to this phantasmagorical ideology, any small company, thanks to Internet's magic wand would stand a chance of becoming a planetary multinational producing limitless and unending richness and wealth.

We, on the other hand, believe that the “Internet = multiplier of wealth” equation carries with it a whole series of unknowns. In our opinion, it is: first, appropriate to de-structure the stereotypes that characterise the magic image of the Internet; second, necessary to give the lie to the palingenetic illusion of the medium; and, third, essential to explore the “dark-side” of the Web (and not only in the direction taken by Carr as regards security and privacy).

The virtuous circle of the digital economy still raises many question marks.

Internet's externalities

The negative externalities of Internet have still not been the subject of detailed investigation in either economic or social terms.



Chinese edition of a Bcg report that emphasizes the role of the internet in the Bric's countries (even though Google was expelled from China...).

The economist Carnevale Maffé stated his view on this matter in no uncertain terms: “the Internet must become a new institution, a social operating system, an institution along the lines of public and private law. In economic terms, the Internet can be defined as a platform for the multilateral exchange of information externalities, whether they be positive such as those referring to interoperable standards, or negative, such as those referring to traffic congestion and poor quality content. It has profoundly modified the factors of scarcity in the market for information goods, by shifting the factors of scarcity from content production and distribution to human attention, a scarce structural factor. Thanks to the (free) subsidy for services, an excessive demand for them has been created, and one that cannot re-equilibrate itself through the price mechanism, which is the fundamental educational factor for demand itself” [▶101].

Internet as a panacea: this is not the place to analyse whether or not we are dealing with natural communication phenomena or phenomena that are to some degree influenced if not actually manipulated by a well structured lobby that wishes to construct an attractive image of the magnificent Internet universe, in order to mask commercial or speculative ends by attempting to construct a fantasy realm halfway between the fabulous and the magical (with regard to lobbying, in September 2011 the “Wall Street Journal” revealed that Google, in the first six-months of 2011, spent over 3.5 million simply to “heighten parliamentarians’ awareness” in order to avoid the risks of antitrust procedures).

offer was physical rental service which moved to the online market (in 2006 a video streaming service “watch instantly” was launched) duplicating the market position of Blockbuster in the homevideo sector. Hulu is a joint-venture between Nbc Universal (Comcast), Fox Entertainment Group (News Corp) and Abc (Disney), which brings together a large selection of video chosen from current prime-time TV hits and whose business is based on a traditional advertising funded model.

▶99. Gian Fulgoni, “The Intersection of Online Video and Tv Viewing and its Implications for the Advertising Industry”, Reston, 2011 (Fulgoni is Co-Founder and Exec Chairman di comScore).

▶100. Source Nielsen Netratings (March 2010).

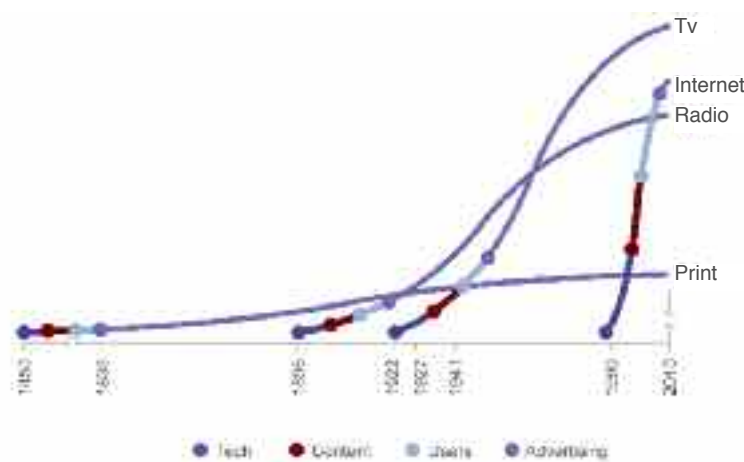
▶101. Carlo Alberto Carnevale Maffé, “Il modello economico delle attività sulla rete”, address delivered at “La libertà su internet. Modelli e Regole”, Fondazione Piero Calamandrei, Rome, October 2010.



A good example of the construction of this positive "imaginative world" is represented by a research project promoted by Google Inc, in 2010 and entrusted to a multinational consultancy company, the Boston Consulting Group (Bcg): a curious research format prepared in the United States and later adapted to each of the leading European nations (a typical case of "localisation") that set out to demonstrate the degree to which the Internet is central to and essential for the economic and social development of nations, also in virtue of its potential for technological innovation. In our view, rather than an accurate research, this was a brilliant marketing operation promoted by Google as part of its strategy for attacking traditional and new markets [► 102].

GOOGLE'S (ADVERTISING) VIEWING

CHART 27



Source: Jerome Grateau, "Display Sexy and Smart. The right ad to the right audience", Google, 2010.
Notes: the chart comes from the presentation of Head of Media Platforms, Southern & Eastern Europe, Middle East and Africa, Google Inc. It emphasizes the historical origin of the advertising function of various media.

No observer who carefully follows economic and social developments can seriously challenge the valuable function performed by the Internet in individual and collective development. However, we do consider that prudence should be observed and that no purpose is served by trying to overlook the Internet's serious failure to honour its miraculous promises. It is interesting to compare the British "version" (October 2010) with the Italian "version" (April 2011) of the Bcg research. A clear communication strategy emerges in which statistical data and economic information are imaginatively used (manipulated?) in order to stimulate a consensus based upon dynamics, which if subjected to serious investigation, would show themselves to be more emotional than scientific [► 103].

In the British report (entitled "The Connected Kingdom. How the Internet is transforming the UK Economy"), the report's hype is in part moderated by a paragraph that honestly reveals how the Internet is still not an essentially universal instrument: "therefore, there exists a problem of exclusion, given that no fewer than 8 million Britons (corresponding to one fifth of the adult population) has never gone online". In the Italian version of the study (entitled "The Internet factor. How the Internet is transforming the Italian economy"), this question is not even touched upon, although it is quite evident to everybody that Italy is one of the most "unconnected" countries in Europe. Bcg even manages to enthuse over depressing data (source Nielsen, February 2011) because it emphasises that "there are 28 million Italians who navigate at least once a month on the Internet". Take note: "At least once a month". And what, therefore, could we say about a medium such as the television which in every minute of the day is viewed by almost 10 million Italians? That the television is a totalising, universal, ecumenical medium?!

►102. It is interesting to observe how, a few weeks before the presentation of the report on the Internet's fantastic potentialities in the United Kingdom and in Italy, a similar survey was presented (September 2010): Bcg, "The Internet's New Billion. Digital Consumers in Brazil, Russia, India, China, Indonesia", Boston, 2010. This was a study addressed to the Bric markets and which seems to have been produced by Bcg alone, as Google appears not to have commissioned it (perhaps due to the well-known problems of Google in China...). A localised version of the "multinational" survey was presented in the following countries: (situation updated at July 2011, in alphabetical order), Belgium, Denmark, the Czech Republic, Italy, the United Kingdom, Russia and Sweden..

►103. The summaries of the reports are as follows, as set forth in the

homepages of respective websites of the localised versions of the project:

- United Kingdom: "The Internet is a fundamental part of everyday life in the UK. 73 % of households have broadband. Our research has revealed that the UK Internet economy is worth £ 100 billion a year, is growing at 10 % a year and directly employs 250,000 people";

- Italy: "Internet is fundamental for the Italian economy. In 2010 the Internet contributed € 31.5 billion to Italy's GNP, equivalent to 2 %. This figure is destined to double by 2015. A prudent estimate suggests that the Internet economy will represent € 59 per billion, equivalent to 4.4 % of Italy's GNP, with an yearly growth rate of 18 %.

The localised version of the report for Italy omits to make any mention of employment in the "Internet economy", perhaps preferring to gloss over a



In order not to be accused of bias in favour of the TV with respect to the Internet, we can provide some data from the President of the Italian Communications Authority in its annual report released in July 2010:

- Italy ranks 22nd in Europe in terms of the number of families connected to the Internet: 53 % with respect to the EU27 average (NB: EU understood as 27 nations) of 65 %;
- Italy ranks 17th in Europe for broadband reach: 21 % of the population against a EU27 average of 25 %.

Source: European Commission, "Digital Agenda for European, 2010-2020": Will that suffice?!

On the occasion of the presentation of the report in July 2011, Calabrò complained that Italy was still at the bottom of world rankings for Internet access but among the first, again at a world level, for piracy, theorising that there was a link between the two phenomena.

Italy's backwardness in broadband distribution is mainly the result of two constraining factors: the government has not fielded a convincing strategy to permit Italy to become a "Fibre Nation" (also for fear of being censored by the European Commission for undue interventionism), and the principal operator, Telecom, considers that there is no need to accelerate its broadband investment plan as this would not be justified by foreseeable future demand. In view of such objective (and we consider very serious) backwardness, what can we say about the anthology of "cases" that Bcg identified in the United Kingdom and Italy of companies paying tribute to the Internet for their success?! In order to emphasise the democratic character of the Web, even a farm belonging to a Sardinian shepherd, Emilio Concas, was cited because Web visitors could sponsor (sic) the sheep on his farm and become "virtual" shepherds. We fear that the shepherd Concas, after his fifteen minutes of Warholian notoriety, has had to take stock (in the real sense of the word) of the difficulties of his difficult sheep-farming economy, but, in any case, he will have been admitted into Google's hall of fame.

And Google also succeeds in other targeted communication operations, such as those promoted in Italy with the benediction of the Ministry for Cultural Heritage and Activities, that encourage us to accept a quintessentially cultural image of the Mountain View Company [► 104]. Therefore Google appears not as a commercial operator but as a benefactor and patron of the arts.

In the context of the Agcom (Italian Communication Regulatory Authority) consultation on online copyright, Google Italia presumptuously wrote: "Google is not only the most used research engine in the world but also an online platform that promotes creativity by allowing millions of artists to find their own public, while at the same time creating value for the entire industry" (sic). In its contribution to the consultation, Google stressed the growth in the musical industry's earnings deriving from the online market, but omitting to mention that this growth does not compensate – or only for a minor part – for the massive decline in the physical market's revenue.

Nevertheless, Google's "vision" is naturally centred upon the "advertising" function of the media, as illustrated by the stark representation presented by one of its top managers (see **Chart 27** ■): "Centuries passed before the press became an advertising vehicle, a couple of decades for the television (at least in Europe), and a few years for the Internet... And Google is reaping the first fruits of the seeds sown."

Apart from these publicity stunts, the path towards the heralded "magnificent and progressive ends" (to use the words of Leopardi) of the magic World Wide Web still seems long and arduous.

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Real business or just folklore?!

sensitive issue. Moreover, a positive spin is given upon other depressing data. In the classification drawn up in the form of an original summary performance index, representing the development of the country with respect to the phenomenon of Internet, Italy ranked 28th, but this position was reinterpreted with an optimistic judgment "ample margins exist for Italy's improvement in the e-Intensity Index". For a critical assessment of the Italian situation, especially as concerns the nodal question of broadband (an infrastructural element indispensable for net development) see Sandro Frova, "La banda larga in Italia. Storia probabile di un'altra occasione

perduta", in "Mercato, concorrenza, regole", n. 3, il Mulino, Bologna, 2010.

► 104. The press reported of "a historical deal between Google and Mibac in March 2010, which entailed the digitalization and online distribution of one million volumes ("in the public domain"); enthusiastic acclaim was registered on the occasion of the "Art Project" in February 2011, in cooperation with 17 prestigious art museums all over the world (among which Galleria degli Uffizi), which enables the possibility to discover and view online more than a thousand works of art.

Toleration of piracy and the myth of the free lunch: a cancer afflicting creative industries

THE REFERENCE SCENARIO

PIRACY IN ITALY

LETTER TO THE "IL SOLE 24 ORE": VIDEO BLACKED OUT, RTI'S REASONS

THE EUROPEAN UNION AND THE FIGHT AGAINST PIRACY





Toleration of piracy and the myth of the free lunch: a cancer afflicting creative industries

CHAP. 4

THE REFERENCE SCENARIO

We open this chapter of our research with an apodictic title: piracy as a "cancer" of the creative industry, and the observation that you cannot get "ought for nought". We understand that the metaphor is very strong and harsh, though no less so than the other colourful images – employed by lobbies of various kinds – that describe piracy as an "international plague" or "a nirvana for crime"...

The reason for this theoretical or, if you prefer ideological approach, is the result of the real conviction that many theories based on a pseudo-revolutionary idea of "free culture" (i.e. gratuitous culture) turn upon an economically and logically erroneous premise.

However, having said this, we certainly do not intend to contest the theses of Jenkins or Lévy, or at least not here, as regards the prospects for an increasingly open, free democratic, participative market, based upon the proactive function of a user who can thereby become a "prosumer" (a hybrid of "producer" or "professional" and consumer) or "spectauthor" or even a "pro-am" (a cross between "professional" and "amateur") – or upon the potentiality of free software and the creative potentialities of the "remix" culture (which has had and has enormous success in music production and video sharing practices on YouTube), or even on the possibilities of the emergence of a "swarm intelligence" and even an out-and-out "collective intelligence" of the network [▶ 105] ...

Nor is it our intention to criticise the visionary, dreamy, utopian and mystic (a book promoted by the magazine

"Wired" – as part of the campaign designed to assign the Nobel Peace Prize to the Web – is actually entitled "Internet is a gift of God"!)) tones of some avant-garde bloggers, but we must question the sense and meaning of the "eulogy of piracy" or its "good use" [▶ 106], because it is bereft of any logical and economic foundation.

Similarly, we shall not adopt the alarmist stance of one of Italy's leading bloggers, De Biase: "la prassi della blogosfera ha il difetto di lasciare spazio a ogni genere di fondamentalismo, fanatismo e superficialità" (the blogosphere's defect is that it harbours every kind of fundamentalism, fanaticism and superficiality) [▶ 107].

Even if we fail to grasp the beauty and the fascination of digital humanism, as theorised by some, we will not for that attempt to confute the Internet version of "the manna myth", by highlighting the self-evident quantity of drivel (the so-called "digital pollution", the "digital grime", the "semiotic waste"...) that animates so much of the Web, and the cacophonic background noise that characterises it, although not forgetting those, unfortunately rare, cases of "creativity from below".

In the same way, we would not want to overemphasise the thesis of Haque, the Havas Media Lab director, who criticises the rhetoric of the socialisation mediated by the Internet. Haque's view is that, despite the enthusiasm for the new communication means and social conversation, the actual degree to which the Web makes "connections" is far less than might be expected. What Haque defines as "thin relationships" (this seems to be an adaptation of Bauman's "liquidity") and "the inflation of relationships", constitute sociality

▶ 105. We refer to such fundamental books as: Henry Jenkins, "Convergence culture: where old media collide", New York University Press, New York, 2006, and by the same author, "Fans, bloggers and gamers: exploring participatory culture", New York University Press, New York, 2006; Pierre Lévy, "Collective intelligence: mankind's emerging world cyberspace", Perseus Books, New York, 1999.

▶ 106. The expression is taken from the title of an essay by Carlo Gubitoso, "Elogio della pirateria", Terre di Mezzo, Milan, 2005. The subtitle was even more revealing: "Manifesto di ribellione creativa" [The manifesto of creative rebellion]. Also Florent Latrive, *Du bon usage de la piraterie:*

culture libre, science ouvertes, La Découverte, Paris, 2007 [On the good use of piracy. Intellectual property and the free access in the knowledge ecosystem]; and also Matt Mason, "The pirate's dilemma. How youth culture is reinventing capitalism", Simon and Schuster, New York, 2008.

▶ 107. Luca De Biase, "Economia della felicità. Dalla blogosfera al valore del dono e oltre", Feltrinelli, Milan, 2007, pages 118. We read on the back cover: "Even the sad science, economics, is beginning to recognise that a new paradigm that places the good things of life as perceived by the people at centre stage, instead of the indiscriminate accumulation of the GNP". In other words, the Web as a promise of palingenesis. However, after

in the Internet era. We have many more "relations", and many more "friends", but how many of these are true and lasting relationships and how many are really significant?! "Thin relationships are illusory, not real relationships. Real relationships are reciprocal investment schemes" [▶ 108] ...

And even if we agree with another of Haque's theses, namely the need to completely overhaul the global economy of creative production, we would also add that

no theorist (economist or mediaologist) so far has been able to identify a feasible alternative to the existing business models.

We fear the spread of an ideology based upon the facile, convenient, demagogic and mystifying premise as expressed by the euphoric proposition of "free is best" [▶ 109], and upon the consequent behavioural models. Some of these models even advocate piracy is a tool for entering the presumed consumer paradise (file-sharing likened to an act of civil disobedience), and often depict it as an instrument in a paleo-capitalistic (or an anarchic-libertarian, if you prefer) struggle against the concentration of media property and the multinationals of the creative mind (by associating these dynamics to the battles against the private property of water or against "big Pharma"), etc.

We do not consider ourselves to be "enemies of the net" [▶ 110], and nor are we, to paraphrase Lessig, "extremists of intellectual property" [▶ 111]. Instead, we are earnest analysts and observers who, as such, must proceed with extreme prudence with respect to the various proposals to de-structure "copyright".

We cannot, certainly, share extremist views, such as those of the above-mentioned Latrive, who goes so far as to say that "modern capitalism has reached a new low: the conquest of intangibility, the appropriation of the impalpable". In this context, "from mechanisms for the protection of authors and inventors, intellectual property has become a tool for extracting ever-greater incorporeal surplus value".

We are not theorising a "closed model" of intellectual property (or more in general of knowledge management) in contraposition to an "open model": the "cathedral" vs. the "bazaar", to use a moot metaphor coined by the hacker Raymond.

We are not contesting the view according to which anybody can become an author and editor of himself.



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a period of some years, we seem to perceive a more moderate enthusiasm in a recent essay by the same author: id., "Cambiare pagina. Per sopravvivere ai media della solitudine", Rcs, Milan, 2011. De Biase writes in his last work: "The mediasphere can become an equilibrated eco-system characterised by diversity or turn into a polluted marshland".

▶ 108. Umair Haque, "The New Capitalist Manifesto. Building a Disruptively Better Business", Harvard Business Press, Cambridge, (Ma) 2011.

▶ 109. The risk is that this gratuity will be transformed into theft, as pungently stated by Denis Olivennes, "La gratuité, c'est le vol. Quand le piratage tue la culture", B. Grasset, Paris, 2007. This book is the outcome of the "Olivennes report", commissioned by the Sarkozy government. According to the author, the battle for the free consumption of online content is sustained by an unprecedented "Holy Alliance", in which the critics of capitalism go hand-in-hand with free-market fundamentalists. The latter, "insofar as the advocates of the absolute power of the consumer, see in the potential rise of telecommunications companies and the concomitant collapse of the privileged positions of traditional industry, a healthy and natural development of the economy." The result is a "paradoxical alliance between the anti-moderns and the ultra-liberals".

"Free" instead is – as indicated above – the title of the latest work of the theorist of the "long tail" and the recent "freeconomics": Chris Anderson, "Free. How today's Smartest Businesses profit by living something for nothing", Hyperion, New York, 2010. This strategy – which can be summarised by the slogan: "gift something in order to create a demand for something else" – has, according to the author, been implemented by Google, and Anderson reports the words of Erich Schmidt, CEO (from 2001 to 2011): "The first analyses of Google News showed that its users were twice as likely to click upon ads during a successive search. (...) the real product is not Google News but Google".

▶ 110. A pamphlet that criticises our country's poor performance in developing a free and democratic way is aptly entitled "The enemies of the net": Arturo Di Corinto e Alessandro Gilioli, "I nemici della rete", Rizzoli, Milan, 2010.

▶ 111. Lawrence Lessig, "Free culture. How big media uses technology and the law to lock down culture...", Penguin Books, London, 2004. By the same author see "Remix: making art and commerce thrive in the hybrid economy", Penguin Books, London, 2009.

The barriers blocking entry into the "publishing market" have (apparently?) come down now that it is possible to publish anything in a digital format. Similarly, we do not contest phenomena such as the "citizen journalism", and that the development of partially "disintermediated" information and culture can certainly lead to a more vigilant and aware social system, although there still remains the unresolved issue of validation (the need for some kind of quality certification), with respect to the enormous flow of information produced by the Web and especially in view of its incapacity to contrast the "principle of the SiSo" [▶112], if not through hypothetical algorithms, whose secrets are in the custody of today's new wizards.

Without making catastrophic forecasts and without prejudices, we simply believe that dismantling or even weakening copyright can produce serious risks for the structure of the creative industries, by undermining a business model that hitherto has allowed resources to be allocated in favour of the production of original quality content. The neo-crusaders of the "free" systematically avoid discussing their alternative and hypothetical "economic model", despite frequently and generically invoking it.

Nor, in this respect, does it seem that the project for the "creative commons" [▶113] has succeeded in establishing itself as a more advanced model of copyright.

We fear that:

- the "citizen journalism" can degenerate into an expedient whereby new and even traditional publishers can reduce costs by using an amateur workforce, which can be exploited with low or non-existent wages; and that very little is demonstrated by

experiments such as Current TV for purposes of developing a healthy economy for the system [▶114];

- "user generated content" can end up by producing a continual reduction in quality, a levelling down in the media quality (in both technical and content terms) of audiovisual products; one of the "obscure angles" of the Web is represented by the risk of the ever-increasing "mass mediocrity" of its contents; furthermore, the remix of mainstream content may certainly be creative, but it can rarely compete with original creativity.

- the development of tools, while valid and stimulating such as Wikipedia, can cause a paradoxical cultural standardisation and, at the same time, lead to the impoverishment of excellent sources such as – by way of example – the Encyclopaedia Britannica, which has in part also become accessible, free of charge, online;

- the new "aggregators" can set in motion a gradual shift in the economic centre of creative industries from authors/producers/publishers to new intermediaries, whose applications are essentially commercial/mercantile, and who lack any propensity to make investments in quality content production...

However, we are certainly not the first to have identified the risk of a new bubble, and the enormous deception inherent in the rhetoric of the Internet's magnificent resources [▶115]. A "critical theory" of Internet has been developed thanks to the contribution of scholars such as Carr and Lovink, but it increasingly appears to be merely a voice in the desert, when compared to the rhetorical and mystifying inputs that characterise the "great Internet myth", the dispenser of exclusively freedom and wealth.

▶112. An acronym of the prosaic but effective expression "shit-in = shit-out". A more elegant expression is used in IT slang: Gigo: "garbage in, garbage out".

▶113. Very briefly the "Creative commons" project can be defined as an attempt to define a form of proprietorship that is in line with the new digital scenario. The principal characteristic of the project is to be found in the extreme flexibility that these new licenses offer in mediating the relationship between the individual and his propriety item. It comprises a set of six separate licenses, from which the author may choose the one that suits his requests. Thus the author is placed at the centre of an imaginary set of choices that range from "copyleft" (the author loses every control over the item produced) to "copyright" (the author maintains the control over the item and authorises its single uses). Creative Commons sets out to be an "open system" that enables an author to maintain his paternity over his works while at the same time opening up new possibilities for the usage of its content by users. The concept of commons may be translated in Italian by "patrimonio digitale comune". The above-mentioned Lessig can be considered the principal founder of the "Creative commons" project. On these questions we would refer the reader to Luciano Paccagnella, "Open access. Conoscenza aperta e società dell'informazione", il Mulino, Bologna, 2010. As regards the introduction of this concept into Italy see Simone Aliprandi, "Copyleft & Opencontent. L'altra faccia del copyright", Primaora, Lodi, 2005 (Aliprandi is still a leading representative of the Copyleft movement, which is promoting Creative Commons in Italy. In the spring of 2011 Aliprandi carried out a survey through an online questionnaire designed to obtain further sociological and psychosocial data on copyright, as part of research entitled "Il diritto d'autore nell'era digitale: comportamenti, percezione sociale e livelli di consapevolezza" for the Bicocca University in Milan).

▶114. The case of Current Tv is symptomatic: this initiative has certainly enhanced the information reach of traditional television (and therefore appears valid from a democratic point of view), but it certainly does not allow its "journalist" and "videomakers" to benefit from an income flow of any significance (and it certainly cannot claim to have created jobs). See Angelo Zaccone Teodosi, "La Tv ai tempi del Web: Current Tv di Al Gore sbarca in Italia", in "Key4biz", Rome, 26 March 2008. The strange fortunes that have characterised the adventure of the Italian version of the American channel, launched in May 2008 are worth summarising: in May 2011 Sky Italia announced its decision to cancel the channel from its bouquet notwithstanding – according to Current TV – the fact that the broadcaster's share had grown significantly. In an interview with The Guardian, its founder Al Gore believed that Sky Italia's decision was a reaction to the hiring of Keith Olbermann, a left-wing journalist, for Current Usa, who has never been sparing in his criticisms of Murdoch. According to Gore, therefore, the decision to close down Current TV in Italy would derive from the News Corporation's ideologically-biased business management (see Dan Sabbagh, "News Corp. Former US vice-president says media giant is forcing his liberal Current Tv Service off air in Italy for hiring Keith Olbermann", in "The Guardian", London, 19 May 2011). The reply by the CEO of Sky Italia, Tom Mockridge, is interesting: "Sky Italia has a high esteem for both Current TV and Al Gore. For this reason we offered his partner, Joel Hyatt, on 13 May, the chance of continuing on Sky Italia for another three years. It is absolutely untrue that Sky unilaterally decided to cancel the channel. Unfortunately, Joel decided not to accept our offer and, instead, requested a figure that came close to \$10 million, double the amount at present received by Current. This request is far too high, especially when the recent performance of the

It can be noted that those who argue for the great, enormous and infinite availability of the "historical memory" on the Internet end up - paradoxically - as being a deterrent for the new creativity, by stimulating a "retromania", i.e. a kind of obsession with the past (thus believes Simon Reynolds, a "remix" critic and theorist of the "creativity trap" brought about the web).

Given the foregoing, we shall concentrate our attention upon the phenomenon of "piracy" in the Italian cultural industry. Piracy represents an absolutely widespread phenomenon in Italy with respect to other European countries.

The spread of broadband and peer-to-peer software has further contributed to its development by increasing ways of access and making the diffusion of pirated material easier.

The battle that the creative industries are conducting against digital piracy is not a moral crusade but an economic necessity: piracy is undermining the foundations of the cultural industry.

Illegal file sharing and other forms of online copyright violation constitute a form of unfair competition with the entrepreneurial activities of cultural industries, and at the same time represent a growing threat to investments earmarked for the production of quality content. For example, investments in research, experimentation or the production of income for authors and artists... As

Brian Adams observed: "Every time somebody takes out an Internet subscription, the Internet service provider benefits from the fact that people can download music free of charge. As things stand it is really difficult for young artists and struggling authors to even think about paying their rent" [▶ 116].

PIRACY IN ITALY

The first Italian research projects to analyse this phenomenon with a minimum of methodological seriousness were carried out in 2006-2007. One was promoted by Anica and the other by Fondazione Einaudi [▶ 117]. Both studies reached some paradoxical results. The practice of file sharing would inhibit cultural consumption (understood as the acquisition of goods and products of the cultural industry) by persons whose cultural consumption was already very limited or zero, while, on the other hand, it would tend to increase the consumption of those who already spent money on films and music...

The chapter dedicated to Italy in the annual report by PriceWaterhouseCooper on the worldwide industry of the media and entertainment [▶ 118] estimated the damage procured to the Italian national industry by piracy at about € 500 million per year (but without indicating either the source or the methodology involved). Moreover, the study propounded the theses of

cover image from the Social Science Research Council's report "Media Piracy in Emerging Economies", 2011



channel is considered. Al Gore has issued some absolutely false data on the channel's audience, asserting that 1 Sky subscriber out of 2 watches Current once a week. In fact the situation is, unfortunately, very different. Auditel data inform us that only 1 subscriber out of 25 watched Current for at least 10 minutes a week in 2011. The channel's share is 0.03% of the daily average and 0.02% in prime time, with a daily average of 2,959 viewers, as shown by Auditel in 2011. Thus the figures show a 20% decline on the daily average and as much as 40% in prime time, when compared to 2010. If the channel had reached the objective of 4,500 average daily viewers, as agreed to in the contract, our partnership would have been automatically renewed for another two years". Last year Sky Italia paid little less than €3 million to broadcast Current TV and according to the channel the offer for the following year would have been reduced to €1 million a year on account of Sky Italia's budgetary constraints. Beyond the recital of roles by the two parts, and the confusion between political and/or economic explanations, the Current TV/ Sky Italia dispute is a further example of our theses on the risk of impoverishing the resources destined to quality

programming (see below: "the manna myth").

▶ 115. Fabio Metitieri, "Il grande inganno del Web 2.0", Laterza, Bari-Rome, 2009.

▶ 116. Cited in International Federation of the Phonographic Industry, "Ifpi Digital Music Report 2011. La musica con un click", Italian version, Ifpi, London, 2011.

▶ 117. Anica-Doxa, "Nuovo identikit dello spettatore. Fruizione cinematografica in sala e downloading da Internet", Anica, Rome, 2006; Fondazione Einaudi, "I comportamenti di consumo di contenuti digitali in Italia. Il caso del file-sharing", Rome, 2007.

▶ 118. PriceWaterhouse Cooper, "Entertainment & Media Outlook in Italy 2009-2013", London, 2009. The successive edition, "Entertainment & Media Outlook in Italy 2010-2014", was presented in Milan in November 2010.

▶ 119. Tera Consultants, "Building a digital economy: The importance of safeguarding employment in the EU's creative industries", Paris, 2010. The study was commissioned by the International Chamber of Commerce, as

the Entertainment Software Association (Esa is the leading association in the American videogames industry) according to which Italy would have the highest rate of videogame illegal downloads in Europe. The Pwc report in the following year indicated that piracy continued to be a serious problem, "accounting for more than € 500 million in annual lost sales".

In 2010, the findings of a pan-European survey by the French consulting firm Tera Consultants [► 119], promoted by the International Chamber of Commerce - Icc, were released, according to which the Italian audiovisual industry (including the audio or musical industry) would have lost € 791 million in 2008: € 388 million from the unlawful exploitation of cinematographic films, € 298 million from recorded music piracy and € 105 million from the pirating of television serials. The study also estimated that the jobs lost on account of piracy in the Italian market amounted to 22,400. However, the methodological criterion used for reaching these estimates was not indicated. Icc also commissioned a British consulting company, Frontier Economics, to conduct a subsequent study, which was published in 2011. This study revised the estimate of the worldwide effects of piracy [► 120]: between US \$ 10 and US \$ 16 billion due to the "digital piracy of recorded movies", and between US \$ 17 and US \$ 40 billion due to lost sales of recorded music... The range of oscillation of the figures is symptomatic of the difficulties encountered in estimating the size of the phenomenon.

We can also indicate an unorthodox initiative promoted by the Social Science Research Council - Ssrc, an independent research body (financed, inter-alia, by the Ford Foundation and some US government agencies) which completed a first, and still little-known study on the impact of piracy in the so-called emerging countries, with particular attention to Brazil, India, Russia, South Africa, Mexico and Bolivia [► 121]. This is worth mentioning because, according to "substitution effect" theory, it

confirmed the central role played by price on cultural products (indicating that the price variable is a concause of piracy), and, subsequently, went on to propose an unorthodox interpretation of the phenomena of piracy, which came down to two critical questions:

- the questionable reliability of recent research that often make very approximate estimates on the dimensions of piracy, and hides its methodological criteria (see above!). In this regard we can remember that on account of excessive research costs Mpaa has not updated the only worldwide and in-depth research (22 countries) completed in 2005;
- challenging the concept of social and economic loss determined by piracy, in other words the proposition whereby money subtracted from the creative industries is automatically detrimental to society as a whole. In actual fact this illegally "saved" money would be spent on other items [► 122] ...

The latest Italian research (which unfortunately does not deal with the delicate and critical question identified in the preceding Doxa and Fondazione Einaudi surveys) demonstrates that more than one third of Italians (37 %) practise some form of piracy against slightly less than two thirds (63 %) who can be classified as "non-pirates" [► 123].

We would recall that the following types/modes of piracy have been identified:

"Direct", in other words "primary":

- "physical": the purchase of DVDs either pirated or copied at home by friends or acquaintances;
- "digital" [► 124]: "download" from irregular sources.

"Indirect", in other words "secondary":

- the loan or the viewing of an illegal copy.

According to this survey there is an area where these three sets overlap, i.e. consumers who use all three

part of the Bascap (acronym for Business Action to Stop Counterfeiting and Piracy) project.

► 120. Frontier Economics, "Estimating the global economic and social impacts of counterfeiting and piracy", London, 2011.

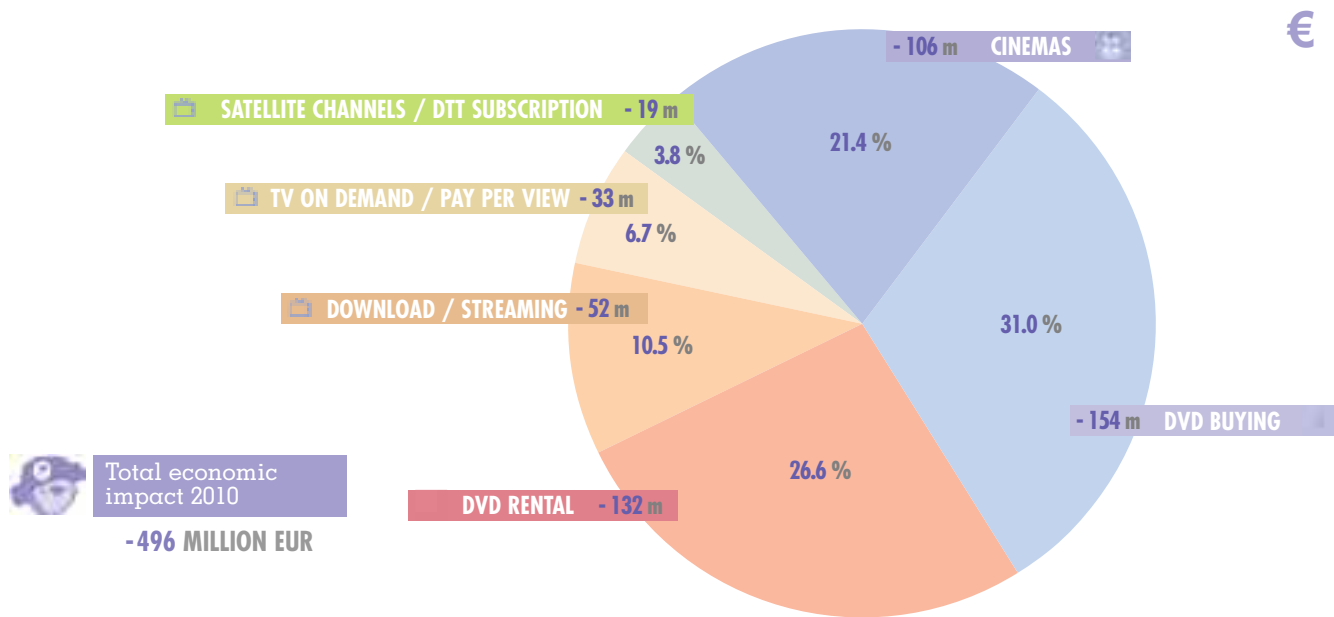
► 121. Joe Karaganis (editor), "Media Piracy in Emerging Economies", Social Science Research Council - Ssrc, New York, 2010.

► 122. On the question of software piracy, the authors maintain that a pirated copy of the professional graphic program (such as Adobe) certainly subtracts wealth from the company that conceived and produced the software, but at the same time it generates revenue insofar as it allows the utilizer (albeit a "pirate") to work and produce revenue. Consequently, the final result for society as a whole is beneficial. On the other hand, the case of a product such as a film is quite different. The pirated product in this case only produces emotional well-being by the pirate consumer and objectively damages the creative economy.

► 123. Ipsos, "La pirateria audiovisiva in Italia", Rome, 2010. This is the second "fact-finding" survey carried out by the Federazione Anti-Pirateria Audiovisiva (Fapav), after the first survey made in 2009.

► 124. Four different digital piracy procedures have been identified:

- "downloads": films or programs downloaded from the web without the use of peer-to-peer software (direct download, not reviewed in real-time); downloads using websites (such as italianshare.net, dyurnoevolution.org), or "cyberlocker" (File Host, come Rapidshare.com, Megaupload.com), or through web "discussion groups" (such as Newsgroup/Usenet /Mirc);
- streaming: films and programs seen in real time over the Internet without the need to store files on a PC from a web site (such as cineblog01.com), or from the website that directly supplies content (such as megavideo.com and veoh.com);
- "peer to peer": films and programs downloaded from the Internet through the use of peer-to-peer software from websites (such as BitTorrent, p-2-p such as btjunkie.org), or through "file-sharing" software (such as Emule);
- "digital copies": films and programmes in digital format received on a memory card/USB pen drive, portable hard disk...



Source: IsiCult survey based on Fapav- Ipsos data.

types of procedures.

In estimating the overall number of "acts of piracy" in the last 12 months, the increase discovered in this phenomenon amounted to almost 30 million with respect to the preceding survey, resulting in an updated, overall total of 384 million.

The most significant contribution is made by digital piracy (42 % of piracy acts), especially simple downloading or peer-to-peer supported downloading. Next comes the so-called "indirect piracy" (34 %) referring to loans or viewings among private persons. The acquisition of pirated copies on the "open market", in other words physical piracy, accounts for 24 % and principally refers to the purchase of pirated DVDs.

The pirating of television programmes should also be borne in mind. According to the survey, 13 % of viewers have access to pirated copies of television serials, and 30 % to copies of sports events.

The research also quantifies the economic consequences of piracy, and estimates at about €500 million the loss incurred by legal channels ("financial impact" understood as loss of earnings by the companies) without however specifying the methodological criteria in an accurate manner [▶ 125]. As concerns the legal channels, the greatest economic damage is sustained by DVD sales (154 million) and the hire (132 million) of optical storage media, while the estimate of lost value for the cinema is 106 million. Another 52 million is lost on account of download/streaming, 33 million is the loss determined by pirating "on demand" and "pay-per-view" television contents and, finally, 19 million is lost by satellite channels or DTT subscriptions (see **Chart 28** ■).

However, this is not the place to analyse what remedies can be put in place in the battle against piracy: for example, whether to act upon the price variable or promote educational and cultural awareness campaigns...

▶125. The estimate of "acts of piracy" was carried out on the basis of domestic interviews on Italians aged over 15 years, who were obviously statistically "representative" of the Italian population. It has been estimated that out of a total of 384.2 million acts of piracy (100%), 163.8 million refer to digital piracy (42%), 128.42 indirect piracy (34%) and 92.0 million to physical piracy (24 %). Ipsos calculates that 92 million "acts of physical piracy" (corresponding to 63.8 million pirated DVDs and 28.2 million DVDs bought from friends) generate an "illegal turnover" of €375 million (hypothesising an average price of €4.43 for each pirated DVD and €3.28 for those bought from friends). However, there is no indication as to how Ipsos estimated a total financial impact of €496 million.

▶126. In 2007, France implemented a law which offers a graduated solution to this problem and which has since become fully operational. The "Creation and Internet" law ("Décret n° 2009-1773 du 29 décembre 2009 relatif à l'organisation de la Haute Autorité pour la diffusion des œuvres et la protection des droits sur internet", and hence the acronym "Hadopi") instituted a new and independent administrative authority (Hadopi), which was given the task of warning copyright infringers that they are committing illegal acts. After two warnings, Hadopi can refer recidivist transgressors to a court of law. Sanctions include fines and the temporary suspension from web access for up to 12 months. The

As regards piracy over the Internet, we would simply point out the following:

- serious and concrete legislative measures can certainly impede the phenomenon of piracy: although condemned as “liberticidal” by web extremists (although also President ad Agcom stigmatised it as “invasive” and “intrusive”), the French law referred to as “Hadopi” can be deemed a valid reference model for the whole of Europe [▶ 126] as also the “Digital Economy Act” introduced into the United Kingdom in 2010 (the former is a system based upon state powers while the latter promotes out of court solutions between entrepreneurial forces with institutional support);
- the “flight from content” can be checked also by implementing mechanisms of disaggregated access to multimedia libraries, which would act as a disincentive for the single “pay-per-view” and encourage an economic access to a variety of available contents, thus stimulating greater numbers of persons to take out subscriptions (at low prices) for packets of works, and therefore prevent them from “falling into temptation” [▶ 127].

It will be recalled that in February 2010, the Italian ISPs were ordered to stop giving access to the most well known of the BitTorrent sites, the Swedish Pirate Bay, following a ruling by the Court of Cassation [▶ 128]: According to some surveys, from February to October 2010, access to the platform by Italian users fell by 54 %, while in countries such as Germany, Austria, United States and Brazil – where no court injunction operated – the use of the service grew considerably. In the month in which inhibition to accessing The Pirate Bay was ordered, Italy recorded a decrease in all accesses to pirate services, and nine months later the traffic involving illegal sites remains at much lower levels than before. However, it is also true that these attempts to check the phenomenon are often circumvented by new technological advances.

In conclusion, in order to understand the dimensions and, above all, the origins of the phenomenon of piracy in Italy, we can recall a declaration made by Franco Bernabé, the former CEO and present Chairman of Telecom Italia during the hearing of 7 April 2011 before the VIII Commission of the Senate of the Republic: “the

exponential growth in traffic originating from providers of ‘over the top applications and services’ is jeopardising the economic sustainability of the Internet for network operators.” If the infrastructure of Italian connectivity has reached the point of collapse, according to Bernabé, responsibility must certainly be attributed to “the enormous growth in illegally downloaded video traffic, especially at the hands of the younger generations, which is mostly peer-to-peer traffic (...). In order to give you some numerical references, about 70 % of the traffic on our network is video, and of this 50 % is peer-to-peer, and this is the result of two applications eMule and BitTorrent, which are exclusively used for the illegal downloading of films from the Web. Another component is represented by YouTube, while another, which I would prefer not to cite, refers to pornographic videos. And, in conclusion, there are other types of video file that occupy a significant portion of the network. The services important for the citizen, those referring to the public administration normally used by ordinary citizens, account for an insignificant amount of network resources. You should consider, as stated earlier, that 70% of the traffic is video. Those services we consider essential, which must be developed and whose quality must be guaranteed, form part of the remaining 30%, and only account for an absolute minimum of network resources (2-3 %).” Bernabé declared that Telecom Italia is ready to sustain the development of “catch-up tv” in Italy, by making its broadband platforms available to the television broadcasters “for the purpose of promoting an efficient development of the audiovisual market, thus creating new value for all the subjects of the Internet production chain”. According to this thesis, television could become a killer application for purposes of broadband’s takeoff...

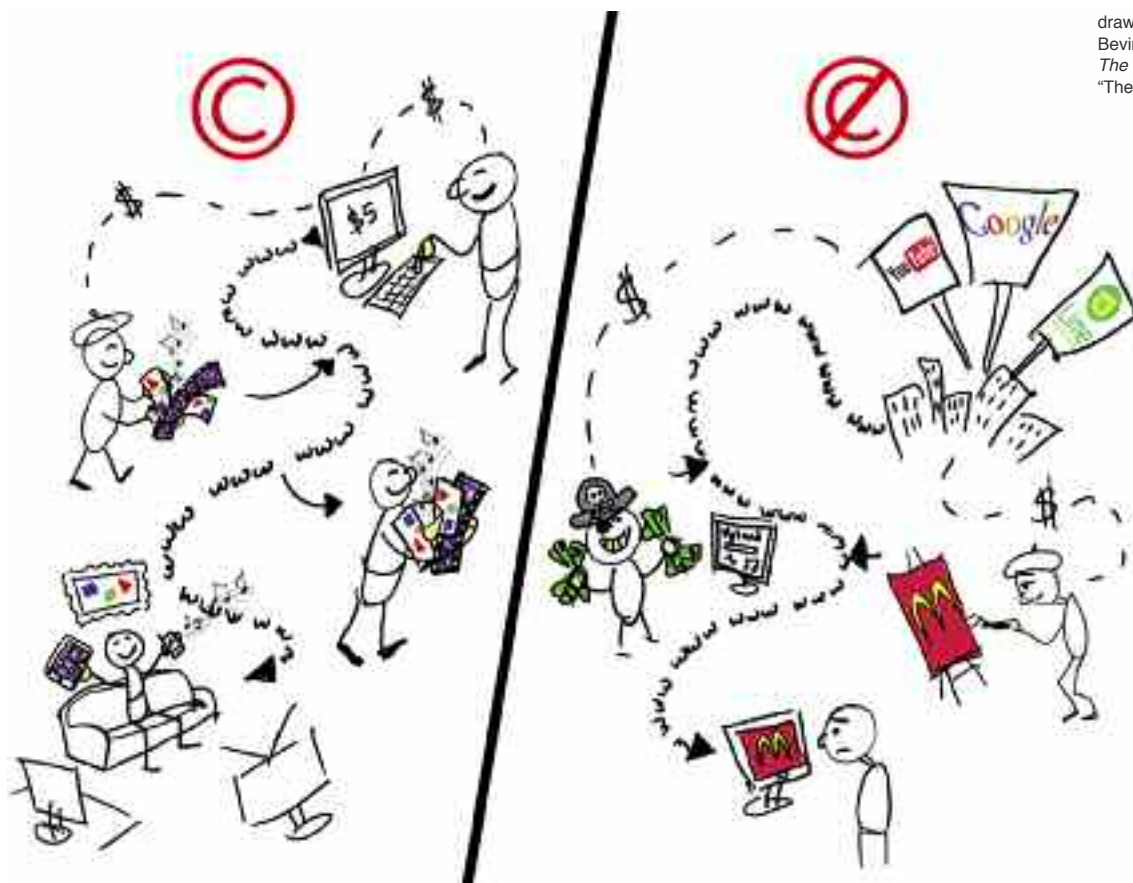
In May 2011, some newspapers claimed that Italy had, for the first time, been placed on the “black list” of the Office of the United States Representative, namely the list of countries most exposed to the danger of online counterfeiting. In actual fact, as pointed out by the President of Fimi (Italian Music Industry Federation), Enzo Mazza, Italy, unfortunately, has been on the black list since 2001 ...

procedure envisages supervision by the judiciary authorities and complies with the provisions of the European Union. The new law began to be applied in September 2010, which coincided with the dispatch of the first warnings. It is far too early to draw any conclusions, but it should be mentioned that when the Bva research company undertook a survey in October 2010 it revealed that after the approval of the law in May 2009, 53 % of illegal downloaders interrupted or reduced their activities (29 % interrupted their activities and 24 % reduced them).

▶ 127. From this point of view, the experiment “Carte Musique”, promoted by the French government is exemplary. It offers citizens aged

between 12 and 25 years the chance to purchase a card worth €50 that the price of only €25 with which songs can be downloaded from a variety of musical platforms. The government and industry have promoted the project through a nationwide, high-profile publicity campaign.

▶ 128. Court of Cassation, judgement dated 29 September 2009, n° 49437 (see below for more details on the case).



drawing taken from:
Bevin Carnes
The high cost of free culture
"The Huffington Post", 24 August 2010

Video blacked out, Rti's reasons

by Gina Nieri, Rti Mediaset Vice President
published on the financial daily "Il Sole 24 Ore" (8 July 2011)

Dear Editor,

With this letter I would like to respond to the letter that Massimiliano Dona, General Secretary of the Unione Nazionale dei Consumatori, published yesterday entitled "Those video darkened after the Rti request".

Mr Dona omits to refer to the exchange of letters between Rti and his Association in which everything was clarified.

We're going to repeat some of the key items for the reading public of the "Sole 24 Ore".

As is well known, the Mediaset Tv programmes belongs only to Mediaset and are protected by copyright law.

In other words, it's not possible to use them without Mediaset's authorization and it is also possible to inhibit their publications, as was decided re YouTube by the Tribunal of Rome, and as was also confirmed by the Tribunal of Milano during the process against Iol – Italia On Line.

Mediaset's programmes, loaded on YouTube by the Unione Nazionale dei Consumatori, are involved in the legal department still open between Rti and YouTube.

For these reasons, YouTube (and not Rti) decided to remove the contents published illegally.

The cancellation of the Unione dei Consumatori's channel depends on the automatic removal system used by YouTube. Currently, the website, for its own policy, automatically closes viewers channels after the third copyright violation.

Concerning the fear exposed by the Unione Nazionale dei Consumatori about the lack of accessibility of these contents on the web, we can absolutely assure that these are unfounded warnings.

Those programmes are enjoyable, at every moment, freely and legally, on Mediaset's websites.

The freedom on the web is not a point of discussion and, honestly is not implied in the case raised by the Unione Nazionale dei Consumatori.

The real problem, which Mr Dona seems to ignore, is the audiovisual piracy fight promoted by broadcasters against this parasitic matter that produces, in the audiovisual sector, damage in the range of about 500 million euros each year.

Owr fight is certainly not against bloggers, or even against those who produce their own content on the web.

What we are really fighting against is the practice by important economic Groups who sell through advertising the contacts obtained by viewing contents produced by broadcasters, who had invested in these projects and assist to the exploitation of their investment by a third party.

This is even more serious if we consider that this means intensive exploitation of TV contents which, instead, are freely enjoyable on Mediaset's websites, and in the growing profits that the 'Google' at hand obtain and certainly do not reinvest in the production of new high quality content production.

Defending contents means defending the possibility to continue producing new and original quality contents like fiction, shows and Tv programmes and, obviously, the possibility for viewers to enjoy them.



Note. The European Union is working on measures to fight piracy

The European Union is working on measures to fight piracy. On 22 September 2010, the European Parliament adopted the "Gallo Report" (after the name of its rapporteur, the Sarkozyian Marielle Gallo), which stressed that intellectual property requires additional protection on the Web.

The report requested that the European Commission reconsider the so-called "Enforcement" Directive, referring to European Directive 2004/48/EC in order to reinforce community law on the subject matter and make it easier to take penal action against whoever violates intellectual property rights.

Obviously, the theorists of "free culture" (i.e. gratuitous culture) were up in arms against the victory of copyright fundamentalists, sustaining that a revised Directive would make file sharing performed for non pecuniary ends, liable to penal action as well as setting up a private copyright police.

Some observers actually referred to the "Gallo report" as the "Internet killer" (!). The resolution was passed in the plenary session of the European Parliament with 328 favourable votes against 245 contrary votes. It was drawn up following a Parliamentary "initiative", and thus it is not a legislative text or thus not legally enforceable but it does possess the symbolic importance of being a political address.

On 22 December 2010, the European Commission published a report on the application within Member States of the Union of Directive 2004/48/EC.

The report underlines the need to introduce legislation to deal the problems created by online piracy and solicited a more thoroughgoing involvement by "Internet Services Providers", who can play an important role in curbing Internet infringements. The report indicates that: "The multi-purpose nature of the Internet makes it easy to commit a wide variety of infringements of intellectual property rights. Goods infringing intellectual property rights are offered for sale on the Internet. Search engines often enable fraudsters to attract Internet users to their unlawful offers available for sale or download. File-sharing of copyright-protected content has become ubiquitous, partly because the development of legal offers of digital content has not been able to keep up with demand, especially on a cross-border basis, and has led many law-abiding citizens to commit massive infringements of copyright and related rights in the form of illegal up-loading and disseminating protected content. Many online sites are either hosting or facilitating the online distribution of protected works without the consent of the right holders".

On 13 January 2011, with the intention of initiating reflections on additional forms of protection for intellectual rights, the Commission launched a public consultation that was closed on 31 March 2011, and whose results were released in July 2011 in the form of a summary report. The report summarises main observation, emphasising the need to the mediate the different approaches in order to overhaul the enforcement mechanisms that can take account not only of market stakeholders and new entrants but also of the ever greater demand from users for clarity in terms of the law and the penalties for the illegal distribution of creative works online [▶ 129].

▶ 129. Reference material:

- Directive 2004/48/EC of the European Parliament and Council of 29 April 2004 "on the observance of intellectual property rights", published in the Official Journal of 30 April 2004;
- "Resolution on enforcement of intellectual property rights in the internal market (INI/2009/2178)", Rapporteur Marielle Gallo, 22 September 2010;
- Report of the Commission to the European Parliament, Council, European Economic and Social Committee and the Committee of the Regions "The Application of directive 2004/48/CE of the European Parliament and Council of 29 April 2004 on the observance of intellectual property rights", COM(2010) 779 final, of 22 December 2010. The report was accompanied by the "Commission Staff Working Document. Analysis of the application of

- Directive 2004/48/EC of the European Parliament and the Council of 29 April 2004 on the enforcement of intellectual property rights in the Member States", SEC(2010) 1589 final, of 22 December 2010;
- European Commission, Directorate General Internal Market and Services, Intellectual Property, Fight against counterfeiting and piracy, "Synthesis of the comments on the Commission Report on the application of Directive 2004/48/EC on the enforcement of intellectual property rights"(COM(2010)779 final, July 2011.

Towards an ecology of the cultural system: an apology for copyright?

INTRODUCTION

COPYRIGHT INTERMEDIATION

**CREATIVITY, NEW WORKS AND "USER GENERATED CONTENT":
POINTERS FOR A THEORETICAL FRAMEWORK**

DIGITAL MEDIA:

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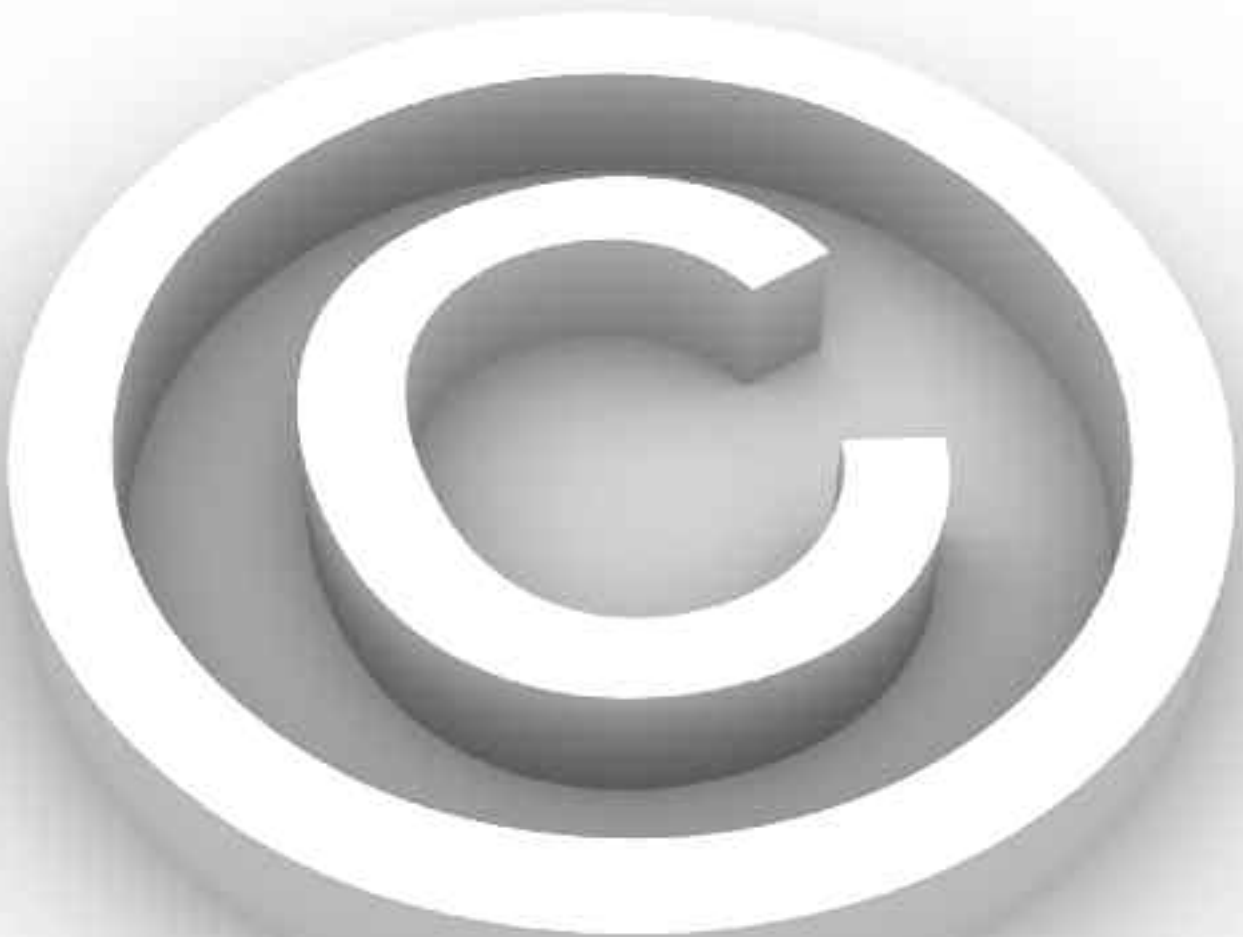
THE CHARACTERISTICS OF NEW BUSINESS MODELS AND THEIR ECONOMIC VARIANTS

COPYRIGHT, PRIVATE COPY, SECURITY MEASURES AND "FAIR USE"

"ROMANI DECREE", AGCOM RESOLUTIONS AND CONSULTATIONS

CASUS BELLI...

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Towards an ecology of the cultural system: an apology for copyright?

CHAP. 5

INTRODUCTION

The potential bonanza prognosticated for the great multimedia and multiplatform convergence is currently being held in check by legal, economic and financial constraints. Technological innovation's roadmap to the "consumer paradise" is impeded by material reality, regulatory systems and, not least, the market economy. Questions such as the legal provision of services and piracy, the management of online rights, and business models interact one with another in complex ways and also impact upon such important matters as the protection of minority groups (minors and cultural diversity) in the new multimedia scenario. In this chapter our research proposes a framework for these all attendant problems in terms of the law and business scenarios.

COPYRIGHT INTERMEDIATION

The term copyright is used to refer to the set of moral and property rights recognised by law in order to protect creative intellectual work. We must, of course, specify that "copyright" and "authors' rights" are not exactly the same thing, but for purposes of this research we have chosen to use copyright to cover both concepts [▶130].

▶130. As an extremely summary description we can say that "authors' right" is the result of a European "codified law" culture (above all French, with its civil law approach) in which the author's role is central to the concept. Copyright, instead, is a concept deriving from common law, which while assigning a central role to the author, sets out – right from its origins – to protect the role of the publisher and the producer, insofar as these are the figures that invest in the author's work so as to make it accessible to the public. The term copyright is completely different from the term "author's right", whose semantic meaning is implicitly oriented towards the protection of the numerous rights that the author holds in respect of his work (first and foremost, that of being recognised as the "moral" author of a work and prevent its indiscriminate divulgence or alteration) against the "sole" right of the user to make copies of the work of a given author. In other words, the system of authors' rights in continental law is more oriented towards the protection of the right of the person-author, while the copyright system, although safeguarding the author at an economic level, does not recognise his or her moral rights, except to a very minor degree, because the right of users prevails, insofar as they may benefit from the circulation of information by paying the right price for a full "set of rights". We can theorise a kind of

The law of all European countries on "copyright" [▶131] is based upon an established principle: authors' rights/copyright are/is recognised and safeguarded for the mere fact that the author produced an "original work". And this right is constituted naturally without prior need for an administrative act to render it enforceable. Successively, the author, the moral custodian of his creation (whether it be literary, musical, cinematographic or artistic) can obviously choose to safeguard all the neighbouring rights of the work, including those of economic exploitation. It should be stressed that such "neighbouring" rights may, however, be assigned to third parties without thereby changing the nature of the work or depriving its creator of his authorial title.

Article 3, subsection 2 of the European Directive 2001/29/EC [▶132] lays down that Member States must recognise authors, artists, audiovisual producers, as also radio and television, the exclusive right to authorise or forbid any communication or broadcast to the public of their works or creations in a manner that permits each member of the public to access it where, and at the time, he or she may choose.

Italian legislation, namely Law n° 633/41, protects "original works with a creative character that constitute literature, music, the graphic arts, architecture, theatre or the cinema, whatever their manner or form of expression".

contraposition between rights "on" information specific to a continental European system of authorial right against the rights "to" information in the copyright system. On these questions see Umberto Izzo, "Alle origini del copyright e del diritto d'autore. Tecnologia, interessi e cambiamento giuridico", Carocci, Rome, 2010. For purposes of this research the reader is specifically referred to Eugenio Prosperetti, "Opera digitale", in "Enciclopedia Giuridica Treccani", Rome, 2010.

▶131. On the question of copyright we would also like to mention two reference texts, which, respectively, propose an historical and a methodological interpretation: Adrian Johns, "Piracy. The intellectual property wars from Gutenberg to Gates", University of Chicago Press, Chicago, 2010; Daniele Doglio, "Media & Copyright. Guida al mercato dei diritti", Cooper, Rome, 2007. For a general introduction to these questions with a prevalent but not exclusive juridical approach the reader can refer to Elio De Tullio (edited by), "La ricchezza intangibile. Proprietà intellettuale e competitività del settore audiovisivo", Rai Eri, Zone, Rome, 2011.

▶132. Directive 2001/29/EC of the European Parliament and Council, dated 22 May 2001, "On the harmonisation of some aspects of Copyright and neighbouring rights in the information society", implemented in Italy with Legislative Decree 9 April 2003 n° 68.

Protection, as indicated, is not subordinate to any prior or subsequent performance. The grounds sanctioning the acquisition of an authorial right are represented by the creation of a work, insofar as an act of intellectual creation. The element that varies from country to country is the model with which intermediation services for the safeguarding and management of authors' rights are provided. Such services include the issue of licences and authorisations for the economic exploitation of works on behalf, and in the interest, of entitled persons, the collection and distribution of the proceeds deriving from such licences and concessions as well as supervisory activities and the ascertainment of copyright infringement. Intermediation is generally useful, if not necessary, to overcome negotiating difficulties that, otherwise, could arise between the single holder of copyright and each user of the work subject to protection.

The Internet revolution, from digitalisation to new platforms and creative remix, has made the entire scenario increasingly complex and complicates – and in some respects undermines – the activities of the organisation to which the Italian state has conceded a form of legal public monopoly for intermediation services (SIAE) [►133].

CREATIVITY, NETWORKS AND USER GENERATED CONTENT": NOTES FOR A THEORETICAL FRAMEWORK

The question of the relationship between creativity and new forms of multimedia usage, brought into being by the great convergence taking place, is certainly complex, especially in legal and juridical terms.

It is very important to recognise this fact and we shall attempt to identify the characteristics and critical areas of the system extant in Italy.

We shall commence from article 2576 of Civil Code: the work of an author is to be recognised insofar as it is the "result of his work".

Copyright /authorial law (law n° 633 of 22 April 1941 and

successive – and numerous! – changes) refines this concept by defining its economic and moral implications in detail. Thus, it is not an idea that is protected per se, and in se, but rather a work that meets all the legal requisites of an "original work characterised by creativity".

The so-called "original work" must be, if it is to be recognised by law, creative, original, produced in a given form and only in that form chosen by the author to express it.

The so-called "creative interpretation or modification", namely, a work that although exhibiting features of novelty and originality, is premised upon an original work recognizable as such by the spectator, and of which it represents a development (for example, the sequel of a film or a novel).

A collective work, i.e. a work constituted by a set of distinct contributions, referenced to various authors (for example, a literary anthology, a collection of musical or video excerpts, etc) is also safeguarded.

In all these cases it is necessary to obtain the consent of the author of the original work, or his or her assignees, as well as the authors of the single anthological contributions. Clearly, it is not always easy to distinguish counterfeiting from a creative interpretation or modification or from a completely new [►134] and original work. And the difficulty increases when we deal with new expressive forms.

This difficulty can engender uncertainties. Given the inevitably fluid nature of copyright categories this uncertainty is necessary if copyright is to adapt itself to creative developments.

In any case, the question of identifying works of art to be protected differs from the question of the development of new business models. Whoever wishes to exploit a creative artistic work economically, in one way or another, including public dissemination over the Internet, must always obtain the author's prior consent. Such consent lies at the heart of intellectual property, understood as an exclusive right. In other words, as a way of remunerating and recognising his creativity, the

►133. For a severe and accurate criticism of the "obstinacy" with which the Italian legislator desires to perpetuate SIAE's legal monopoly see Diego Menegon, "L'intermediazione dei diritti d'autore. Perché il monopolio è costoso e inefficiente", in "Ibl Briefing Paper", n. 89, Fondazione Istituto Bruno Leoni, Milan, 2009.

►134. As things stand it is, in any case, useful to catalogue cases of works deriving from remixes or pre-existing content manipulation under three basic hypothetical types:

a) works obtained from the creation of an author's own unreleased works, which is the case that entails the least number of problems insofar as it really is a "false hypothesis". The only real problem facing an author in this case is to arrange suitable means to protect the new work (if it deserves protection) from unlawful appropriation or, obviously, from other persons' remixes/ manipulation; many authors opt for the Creative Commons system (see below) in order to avoid the intermediation of "collecting companies" for such types of work. However, this does not, however, deal with the

problem of remuneration but only with that of lawful circulation;

b) works obtained from manipulation/remixing other persons' content with the authors' consent: nor should there be special problems in this case, apart from the details of any agreements to divide profits or the possible assignment of the licence for the commercial exploitation of the new work or those new parts that make it;

c) works obtained from manipulation/remixing other persons' content without the authors' consent; this is, unfortunately, the most widespread and vexed problem and in which every controversy on the illegal use of authorial content will turn on the level of originality of the new work. record it on the hard disk of his (the viewer's) computer.

►135. As regards television usage, formula coined by Massimo Scaglioni and Anna Sfondini, in reference to its "multi-timing", "multi-placing" and "multi-tasking" aspects, is very apt: "Multi TV. L'esperienza televisiva nell'età della convergenza", Carocci, Rome, 2008.

►136. Or new actors and new activities capable of generating value:

author is tributed an area within which no third-party interference is tolerated; and simply the hallmark of all forms of property.

In terms of jurisprudence, experts and authors generally divide themselves between those who believe it necessary to maintain traditional copyright law and extend its scope to include the new digital forms; and those who, on the contrary, favour an accurate, specific and leaner regulation for the so-called new media.

Yet there is also a minority position referring to those experts who propose the abolition of copyright; a position with few advocates but not for this can we afford not to mention it.

DIGITAL MEDIA: REGULATION AND NEW BUSINESS MODELS IN CONVERGENCE MARKETS

The great transformation processes undergone and being experienced by various sectors of the creative industries have partly revolutionised their structure.

With the entry of new intermediaries, the traditional "value-chain" has been restructured.

The fundamental factors of the process transforming the value chain in the digital world come down to four:

1. the separation of content from means: "anytime, anywhere, on any device" [▶135];
2. the crisis of vertical integration models;
3. the consumer's increasingly active role (who can also become "author", as in the case, albeit controversial, of "user generated content");
4. new "players" on distribution market [▶136].

A further subdivision of this last factor, gives us the new players on the market, the so-called "aggregators".

Two kinds of stakeholders contend this role:

- the telecommunication operators (the "telco") who have adopted a "walled garden" model (discussed below) – but one increasingly less interesting for users – in order to recoup losses on "traditional media";

"players" who - it is aspicated - will be able not only to generate wealth for themselves but also to channel resources towards the production of quality contents.

▶137. Autorità per le Garanzie nelle Comunicazioni, "Indagine conoscitiva: il diritto d'autore sulle reti di comunicazione elettronica. Libro Bianco sui Contenuti", Rome, 2010.

▶138. This returns us to the foregoing thesis of Bernabé, Chairman of Telecom Italia (see above, page 77) who recently argued that the "killer application" for the development of broadband in Italy could be represented by new business models (such as "catch-up tv") for the distribution of quality content in order to reduce the exponential growth

- the pure and simple "aggregators" who in a benevolently parasitic manner (as they are not directly owners of distribution networks) collect and index web content in order to make it available to a much wider and undifferentiated audience.

The process taking place calls for major investments in order to produce a level of quality content proportionate to the user flow requesting access to a given set of data.

The multiplication of sources of "content access", as documented by the Italian Communication Regulatory Authority for in the "Libro Bianco dei Contenuti 2010" – "White Paper on Contents" [▶137], rather than leading to a new business model, has produced "an integrated" model for user channels – which the system tries to prevent by proposing hybrid solutions – that reactivates classical copyright law by applying it in a newly repackaged format to new cross-media content.

The problem of the close relationship between "new generation content" and "net infrastructure" also emerges: growing dematerialisation leads to an increase in users' "bandwidth appetite", and therefore the "best effort" model in the provision of net connections is no longer adequate to meet the constant increase in demand. A business model must be found that is not limited to "making do" with the infrastructure; namely, a model that can really sustain the infrastructure by generating sufficient revenue to keep it running, by strengthening it and by enhancing its diffusion [▶138]. This situation obviously must also be put into relationship with the ever-growing need to stimulate and sustain a coherent debate on "net neutrality" [▶139] and non-discrimination among users.

THE CHARACTERISTICS OF NEW BUSINESS MODELS AND THEIR ECONOMIC VARIANTS

The objective common to all new business models is to reach the maximum number of "contacts" possible.

There are various ways to transform contacts into profits but, in essence, they come down to two:

- direct payment to the supplier;

in traffic (mainly produced by piracy), that is jeopardising the sustainability of the Internet for network operators.

▶139. The principle of "net neutrality" lays down, in theory, that net-connectivity service providers must not make any discrimination between users but guarantee everybody a given level of service quality and efficiency. However, the principle will inevitably clash with pre-eminently entrepreneurial considerations such as cost reductions and rationalising network investments, by operating discriminations among data traffic and customers.

- remuneration through advertising.

We shall dwell more specifically upon the phenomenon of the so-called "video broadband" in its twin incarnation of "downloading" and "streaming" because their distribution arrangements can be quite varied:

- "promotional": no direct revenue, promotion through free distribution;
- "supported": also known as "free video-on-demand": revenues from commercials with "profiling", attracts revenue on the basis of basically free content, although entailing a percentage division of revenue among operators according to the so-called "revenue sharing" system, and according to the contributions);
- "pay-for-download": "dto" and "dtr" ("download-to-own/rent"), "v-o-d rent": revenues from the download of single items of content;
- "subscription": "subscription video-on-demand": the user, for a predetermined price, can access a content library so as to choose what to view).

In their turn, these models are susceptible to different methodologies (here we allow ourselves a conceptual simplification):

"Walled garden"

this represents a dedicated space around a registered user, rigorously limiting his freedom of choice to the content from a video catalogue especially through profiling techniques;

"Web tv on dedicated platforms"

this is the case of hybrid or satellite decoders and "gold" televisions. The beneficiary user acquires an additional device to connect to his television, or otherwise acquires a subscription card that allows him to view channels/content that otherwise he could not view.

"Over the Top Tv" ("ott-tv")

this is the model whereby audiovisual content is provided by a third party, other than a network operator - but through the latter's infrastructure. The third party in question makes content available over the existing structure without any remuneration going to the operator of the structure for data transport.

The main problem, in this case, is the so-called "free lunch" issue as regards whoever provides "over-the-top" services vis à vis the traditional content providers

on the market. Those providing "over-the-top tv", in point of fact, "provide television services without being a broadcaster", and thus produce and distribute content with costs and responsibilities considerably lower than those of traditional television market players [►140].

COPYRIGHT, PRIVATE COPY, SECURITY MEASURES AND "FAIR USE"

Lawrence Lessig:

"Copyright's real enemies are technically-speaking just children,...teaching them to accept a fair consideration would mean saving the digital content market and recovering the experience of enjoying an artistic work, which is often compromised by the net".

Art. 71-sexies Italian copyright law (Law n. 633/1941):

"the private copying of photographs or videograms on any storage means, by a physical person for his or her exclusive personal use, if not used for gainful purposes and without any direct or indirect commercial ends, and in observance of the technological means as per article 102-quater, is permitted".

The wording of the foregoing subsection of the Italian law lays down the fundamental requisites that authorise us to speak about a "private copy". Such requisites are: "any storage device", the copying to be performed exclusively by "a physical person", for "personal use and not for commercial purposes", and in compliance with the so-called "technological measures of protection" during copying, which is the subject matter of a specific statutory law provision. Subsections 2 and 3 of the article in question introduce further limitations by laying down the inapplicability of the provision to third parties who offer services for the copying of videograms and phonograms, and for which there exists specific regulations in Italian copyright law as well as to works protected by technological security measures (article 102-quater of the law) or specific contractual clauses.

The term technological security measures refers to technical means that the author (or whoever holds economic exploitation rights or distributes the original work on the author's behalf) applies to protect a work offered to the public so as to prevent its non-authorised

►140. It can be recalled that the European legislator with Directive 2010/13/EU, the so-called "Audiovisual Media Services" Directive (also known with the acronym "AVMS") has introduced the figure of the "audiovisual media service provider": this means "the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and who also determines the manner in which it is organised", and thus is subject to all the provisions binding upon traditional television broadcasters in terms of responsibility for content, authorisation for the transmission, advertising, protection of minors, etc. However, the introduction of this figure if, on the one hand

expanding the definition of such subjects and thus encompassing Web-TV and video-on-demand, on the other, fails to clarify all the doubts on the actual regulatory position of "ott-TV providers", which - for the most part - do not meet one or other of the fundamental requisites. Nor has this difficulty been resolved by the implementation in Italy of the Directive, which became law with Legislative Decree n° 44/2010, the so-called "Romani Decree".

reproduction and guarantee greater protection to his own exclusive right to the work.

However, if, on the one hand, the provision of such measures can be said to constitute a guarantee for the author's acknowledged "right to prevent others from copying his work", on the other hand, the provision is often rendered irrelevant by technological advancements, which can circumvent such guarantees and undermine its real dissuasive effectiveness within a short space of time.

Article 71-septies of Copyright Law lays down the need for authors to be compensated for the practice of making private copies by legitimate purchasers of the copyright works, and sets out to do so by increasing the price of virgin storage devices used to copy the works in question (this surcharge is accredited to authors). This levy is made upstream, upon the manufacturers of such storage devices and, in the majority of cases, the consumer is wholly unaware of its existence. With the latest reformulation of the amounts due – contained in Ministerial Decree 30 of December 2009 [▶141] - the Italian legislator considered opportune, in concert with other European countries who adopted the same approach, to extend this levy to cover all magnetic and optical storage devices and upon equipment that incorporates them (including multimedia decoders), in order to take account of the technical developments and the habits of persons who make private copies [▶142].

Distributing a work that incorporates the foregoing security measures, therefore, has many implications for the application of copyright, yet the non-implementation of such measures can also cause uncertainty and difficulties. The reason is that the absence of technological protection measures can easily be interpreted as an indication of an author's implicit consent to the work's reproduction, regardless of the wording of the licence with which the content in question is actually distributed.

It could be possible to overcome such uncertainties by endowing multimedia content with appropriate "meta tags", in a manner not dissimilar to the procedures used to catalogue WebPages on the net. The meta-tags (a term referring to items of code included in the body of a

web page to render it more visible to search engines and facilitate its cataloguing in the hypertropic digital sea) can represent an interesting and legal tool to monitor the observance of copyright in respect of a digital work, and without disturbing or alarming whoever legitimately acquires it for use. This hypothesis would be compatible with existing Italian law, to the extent that article 102-quinquies of copyright law gives the author of a digital work the chance to include appropriate "digital information on rights management" for the user in an easily consultable format [▶143].

In order to understand the system that balances intellectual property rights against the need to access original works of art, it is necessary to bear in mind the law on the free use of works of art, as per articles 70 and seqq. Article 70, in particular, allows anybody to make use of extracts or quotes from original works in order to furnish a comment, critique or discussion of the works in question, but within the limits of whatever is necessary for this purpose and without such borrowings reaching a point where they constitute the economic exploitation of the copyrighted works. Furthermore, there is a special provision dedicated to the use of original works on the Internet for didactic purposes.

The law ensures that intellectual property will not become an obstacle for cultural debate, although specifying that this must not become a pretext for misrepresent an out-and-out infringement of the economic exploitation rights of the original work as a cultural initiative; or in other words, a counterfeit.

In order to overcome the problems inherent in technological protection measures, American law long ago developed an interesting interpretation based on the so-called "fair use" of an original digital work. Section 107 of title 17 of the Copyright Act (the basic USA law on the subject matter, passed in 1976 and regularly updated by Congress) and section 1201 of the Digital Millennium Copyright Act (otherwise known as "Dmca", the law on digital copyright introduced in 1998), enables an original work to be used – in express cases – without the authorisation of the copyright holder, and even if the work in question is subject to technological protection measures. This law is based upon the "Fair Use

▶141. Ministerial Decree 30 December 2009 was introduced in order to implement Legislative Decree 9 April 2003, n° 68. The Decree was published on the website of the Ministry for Cultural Heritage and Activities on 14 January 2010.

▶142. As regards this question see the "Padawan" case (European Court of Justice, C-467/08 Padawan vs. Sgae), according to which it was held that "fair consideration" must be considered as the indemnity for the detriment sustained by the author for a non-authorised reproduction of his protected work. Therefore, this detriment represents the basic criterion for purposes of determining its amount. In addition, the Court of Justice pointed out that the EC Directive on copyright required the maintenance of a "fair equilibrium" between holders of copyright and the users of protected material. Therefore, in principle it is incumbent upon the subject who makes a copy for private use to make provision to indemnify the damage sustained by financing an indemnity that will be paid to the copyright

holder. The results of the Padawan case law has been that storage devices that do not envisage, not even potentially, the possibility of making private copies (for example there is used to store accounting data) are not subject to fair compensation; in addition, wherever the possibility is excluded of making private copies by technological means, no fair compensation is due.

▶143. However, it would be appropriate to mention, in addition to the foregoing critical areas referring to technological protection measures, an additional issue that raises serious questions about the possibility of introducing "meta tags" in digital works: this is the issue of the fair equilibrium between copyright and the rights of the single users. The security measures introduced for a digital work, therefore, have a little efficacy when referenced to the ruling made on many occasions by the Court of Community Justice, regarding their insertion insofar as they exclude interoperability between systems or seriously limit the rights of the consumer, in infringement of the law on market competition.

Doctrine", a system that authorises use, even without an author's prior consent, on the basis of valuations referring to: the purposes for which the use is proposed, the nature of the protected work, the entity and the importance of the part of the protected work intended to be used in relation to the entire work, and the consequences of the use in relation to the potential market or the actual value of the protected work. In the case of digital works, the foregoing evaluations are supplemented by considerations that apply to specific cases and invoked when an application is made to a special standing committee of the Copyright Office at the USA Library of Congress called upon to decide whether or not to authorise the exception. The nature of the agreed exemptions will have a limited duration and can in any case be subject to revision whenever this may prove to be necessary or a reasonable request is submitted. However, it must be pointed out that the American "Fair Use" system differs from the rules governing free use in Europe. The latter address the aims and scope of free use (rather than vague, or general non-profit purposes). In addition, free use is limited to extracts, summaries and quotes and cannot go beyond whatever is deemed necessary for guaranteed activities (comment, critique, discussion, and didactics). Therefore, questions such as the scope and frequency of use, the nature of the work or the importance of the parts used etc, are deemed irrelevant.

The basis idea is that another person's work of art can become the subject matter of free cultural debate but it can never figure as a factor of production in an activity in competition with the author's and without his consent.

ROMANI DECREE", AGCOM RESOLUTIONS AND CONSULTATIONS ...

It is also useful, as a concluding note to this examination of European and Italian law on the subject, to discuss one of the most recent legislative innovations on the matter of copyright: the principles of copyright in the field of audiovisual media service providers, contained in article 6 of Legislative Decree n° 44/2010.

The "Romani Decree", drawn up as part of the implementation of the above-mentioned Audiovisual Media Services Directive (the so-called "AVMS"), included within the new "Testo Unico" ("Consolidated Law on Audiovisual Media Services", the evolution of the preceding "Consolidated RadioTelevision Law"), makes express provision for the need to observe copyright law in the field of the new media, whereby the observance of third-party intellectual property represents the fundamental principle of the system of audiovisual media services, whatever the platform used or the business model chosen by individual operators.

In keeping with the Directive, the legislative choice underlines the principle of the level playing field among all the providers of audiovisual media, and defined in the directive as follows: subjects whose publishing operations compete against radio and television. The meaning of the new provision is that nobody, commencing from the already consolidated television platforms, in competition with other audiovisual media providers, can unlawfully exploit other persons' content in order to procure an unfair competitive advantage. Another provision of the Romani Decree, which attributes regulatory powers to Agcom (Italian Communication Regulatory Authority) so as to enforce the limits and prohibitions introduced to protect intellectual property, was most certainly spurred on by the wish to create an administrative barrier, alongside the civil and penal law safeguards, against the copyright infringement and piracy of original works taking place in the new means of electronic and radio-television broadcasting. The consequence was the setting up of a dual intervention channel.

We should recall that the law constituting the Italian Communication Authority (Law 249 of 31 July 1997), in conjunction with article 15 of Law 223/1990 (the so-called "Mammi Law") and with Law 248/2000, which amended the Copyright Law, had already attributed, powers of investigation and prevention to this independent authority in relation to copyright infringements, which were to be exercised jointly with SIAE, in the television sector. Therefore, the "Romani Decree" by completing the attribution of powers to the authority, lays down that it may adopt the regulatory tools



and sanctions that law 249/97 had originally postulated to be used by the authority to protect copyright, in the event of failure to abide by its regulations, so as to prepare administrative tools to protect intellectual property in the general interest of promoting safeguards and creativity, and for which it was deemed appropriate. It should also be remembered that, in exercising the two distinct regulatory powers (investigation and prevention) attributed to it by Legislative Decree 177/05, and recently modified following the entry into force of the Romani Decree, Agcom presented two draft regulations, one on "Web TV" activities (resolution n° 606/10/Cons) and the other on "providers of video on demand services (resolution n° 607/10/Cons) to the public for consultation prior to their approval.

These regulatory instruments constitute a substantial contribution towards the creation of a more certain "environment" for the legal distribution of new generation audiovisual contents. In particular, the twin resolutions introduce economic and legal requisites into the system for the professional operation of web TV and "vod" i.e. service provider activities. Such requisites refer to the issue of specific authorisations and the subsequent obligation to observe general principles on matters of copyright, the protection of minors, the keeping of a programme register, etc, based upon the requisites with which audiovisual media service providers must comply.

In conclusion, we should recall the contents of another recent public consultation carried out by the Italian Communications Authority (resolution n° 668/10/Cons). In this case the Authority submitted – for public consultation by all interested parties – some proposed guidelines on the manner of using the regulatory powers attributed by the Romani Decree to safeguard intellectual property.

The Italian Communication Regulatory Authority Agcom proposed an administrative procedure for the removal of non-authorised content and made some important considerations on the distribution chain.

In the foregoing resolution, the Agcom included ideas, suggestions and proposals for enhancing the legal offer on the web and repressing digital piracy.

According to the considerations of the Authority, it is, first and foremost, essential:

- to promote initiatives for the distribution of "premium" content;
- to find a way to enlarge the distribution "window" by reducing delivery time: for example, by introducing a double-channel distribution of content: immediately, in low definition and at low price, using the traditional timeline for high definition; or by utilising the new type of hybrid multimedia content usage to create legal distribution channels faster and more economic than the traditional distribution network;
- actively educate users to legally access content.

The public consultation produced highly divergent reactions. While part of the web world denounced the proposals as a form of censorship, other important voices from television broadcasting and the content industry were raised to stress that the authority's approach ran the risk of being unable to field effective instruments to stamp out piracy. The "notice and take-down" procedure was inadequate for tackling the serious phenomena of the unlawful exploitation of large volumes of content, including the illegal streaming of live broadcasts. Furthermore, any kind of regulation of the content chain was held to be outside the remit of the authority's powers, which, instead, are aimed at suppressing piracy and, possibly, performing a proactive function of safeguarding the entrepreneurial and competitive autonomy of every subject. In conclusion, these commentators noted that it was essential to avoid any risk of devaluing contents with measures that limit the market's capacity to perform its own efficient valuations.

Please refer to the "inset" for further information on Agcom's timing for adoption of copyright resolution (see below).



image from the Access Copyright
"The Canadian Copyright Licencing Agency" - web site



On 17 December 2010, with resolution 668/10/Cons, the Italian Communication Regulatory Authority (Agcom) launched a public consultation concerning new methodologies for online copyright protection.

This immediately gave rise to a heated debate, promoted by various associations and amplified by press articles as well as instigating various popular petitions. In the first months of 2011, many people expressed their growing sense of unease for a measure which "with the pretext of copyright protection could turn into a form of web censorship".

The protest, whose principal form of expression coincided with an initiative denominated "sitononraggiungibile.it", was directed at the purported power that would have been devolved upon Agcom with a resolution (at the conclusion of the consultation) to close down an Italian or foreign Internet site (including blogs) on the pretext that its content publications infringed copyright.

In actual fact, the analysis on the legal merits of the measure (in this regard see the contribution to the consultation and the papers given at the Isimm seminar of 24 February 2011), albeit strongly critical of the approach adopted by Agcom, by and large excluded that any ample (and intentional) censorial power and objective were at stake. In actual fact the Authority's activities are aimed at safeguarding exclusive rights and certainly do not aim at censoring individual content.

Furthermore, that the measure has no censorial intention is demonstrated by its express reference to fundamental principles of cultural development and protection of fundamental liberties, such as:

- safeguarding intellectual property and, therefore, creativity;
- safeguarding freedom of expression;
- safeguarding equal pay;
- safeguarding privacy;
- safeguarding access to the Internet.



Generally speaking, the approach taken by the scheme outlined in December 2010 towards phenomena such as "peer-to-peer" was only to stamp them out only when they were proven to have been explicitly used to perpetrate illegal activities. However, there was also a proactive part aimed at promoting the legal provision of Internet content, which, according to Agcom, is impeded by some features of the content chain.

Thus, inter alia, Agcom proposed a system of extended "collective licenses" and measures in the area of distribution windows. It also proposed setting up a permanent observatory to monitor the effectiveness of the regulations and promptly intervene to update them. However these remedies failed to convince the market players (as amply demonstrated – inter alia – by the Mediaset's contribution to the consultation). Not only were they deemed extraneous to the Authority's remit and its exclusive objective of safeguarding intellectual property, which was held to be the cornerstone of the regulatory powers attributed to it, but they were also deemed to constitute a serious breach – as regards in particular the system of collective licences – of copyright holders' autonomy and to adversely affect the valuation of content (as this would be entrusted to third parties holding interests at odds with those of the copyright holders). Hence, in this manner the system would indirectly encourage illegality and heavily limit the liberty of deciding how copyright holders could exploit their works, which, given their exclusive character, is the essence of intellectual property rights, and thus produce a paradoxical and unwanted effect (suffice to mention that an identical objection was made by the "Internet service providers' " trade associations).

The draft version of the proposed scheme contained two remedies for copyright infringement:

- (i) in extreme cases the closing down of the website name, i.e. the IP address (after consultations had failed for the purpose of removing all unlawful content);
- (ii) a procedure improperly denominated "notice and take down", comprising the following arrangements:
 1. A notice by the rightholder to the site operator or to the audiovisual media service provider: the first, fundamental phase consisted in an attempt to make direct contact with the copyright holder and the website operator or the provider of the audiovisual media service found to be distributing multimedia contents without a licence. Such subjects, according to the Italian Communications Authority would have been given 48 hours to come up with a tangible reply and, possibly, take the appropriate precautions/measures for the removal of the content, if and when necessary.



2. Referral to the Communications Authority: after the lapse of 48 hours from the foregoing notice without any positive results, the rightholder would have been able to take the matter to Agcom, with the request that proceedings be initiated to ascertain an infringement and the illegal content removed;
3. Ascertainment by the Communications Authority by joint assessment: within the following 5 days Agcom would have carried out a rapid assessment involving the copyright holder, the site operator and any subject who may have filed a counter notification in the course of phase 1. During this phase, not only the hosting service provider (if the site operator were untraceable) but also the Telecom or television operator (to which the infringement could be objectively attributed) would have been duly informed that proceedings had been initiated. At this phase, all the subjects notified would have been able to make autonomous provision to remove the contents constituting the violation, and in this event Agcom would have dismissed the case.
4. Executive action: if Agcom, at the conclusion of the foregoing investigation found the claim to be founded, it would have issued an immediately executive order to remove the content from the media on which it was lawfully broadcast.
5. Monitoring: after issuing the order, monitoring would have been carried out to ascertain compliance and sanctions levied pursuant to article 3 of law 249/1997 (pecuniary sanctions) but only in the case of "reiterated non-compliance".

In order to initiate the proposed procedure, the rightholder would, in the first place, have had to submit a notice to the site operator complaining of the infringement. However, in compliance with the rules applicable to technical intermediaries (hosting, indexing, mere conduit, caching etc. service providers) introduced after the implementation of the e-commerce Directive, the site operator would have had to determine, on his own responsibility, if the complaint was founded. Therefore, in the event that the files were not removed, the copyright holder would have to appeal to the Authority.

The foregoing procedure has been subject to criticism from two opposing parts. Part of the Internet users complained that such discretionary powers invested in web operators were excessive, and that the user who had uploaded the content was insufficiently safeguarded. On the other hand, the copyright holders found that the proposal had illegitimately extended the rules of responsibility envisaged for mere technical intermediaries, who should be indifferent as to the content in question, to subjects, in competition with television, who offered public catalogues of audiovisuals, and exploited them to generate audience and attract advertising resources. In this case it would be wholly incongruous and unjustified to require copyright holders to pay charges for the very extensive and costly monitoring of hundreds or thousands of sites, hosting millions of files. In the same manner, the prior notice was held to be useless. Submitting a request to an operator responsible for online publishing whose operations were premised upon the exploitation of content is hardly likely to guarantee the complainant an objective and fair investigation on copyright infringement.

Various subjects complained that the Agcom measures would have been adopted without judicial control. However, in actual fact, every measure by Agcom undergoes scrutiny to determine its legitimacy by an administrative judge who also normally scrutinizes the measures taken by Agcom and other authorities that regard fundamental rights (for example, pluralism and electoral fair dealing).

Further arguments on the impracticality of the first version of the Agcom procedure demonstrated that although Agcom has the material power to safeguard copyright as confirmed by Legislative Decree 48/2010 (on the subject of the implementation of the "Audiovisual Media Services" Directive), such power mainly addresses the issue of repeated television programme rather than other types of content. In addition, if the violation in question is perpetrated by foreign sites the "State of origin principle" must be considered if the site has the character of an authorized "audiovisual media service", whereby a Member State is not permitted to prevent media services supervised by another state, except for specific cases laid down in the Directive and in compliance with the consultation procedure laid down by the European Commission. Among such cases there is the circumstance that the suppression of a service provided by another Member State is necessary for fighting crime, which also includes audiovisual counterfeiting, subject to civil and penal sanctions. The e-Commerce Directive, designed to permit the circulation of information within the common market, has the same tenor: it also provides for the suppression of sites in the event of crimes, albeit its application requires a case by case evaluation. At least in the most serious and manifestly illegal cases, such as sites that systematically provide high volumes of unlawful content, the recourse to injunctions referring to an entire site rather than single files, is the only tool that can make the intervention of the authority effective. Otherwise, copyright holders and the Authority itself would be burdened down by an enormous quantity of work that would be simply limited to the selective removal of files and as such easily circumvented and hence useless for purposes of tackling the phenomena of endemic piracy.

On 6 July 2011, Agcom submitted a new draft resolution for public consultation (annex A, to resolution 398/11/Cons), which incorporated some of the arguments proposed during the intense debate taking place during the first six months of this year.



And although the consultation is still taking place it can be expected that the contributions will once again be extremely heterogeneous.

The latest scheme is a major advance on the preceding version. With respect to the previous version, the new arrangement no longer has a discursive or interlocutory character as the scheme is now well-defined with a distinct regulatory procedure. That the outline seems to be much closer to a definitive measure than the earlier version of December 2010 is also a testimony to the degree to which the points of view and arguments made during the first consultation have been accepted and incorporated.

First and foremost, the setting up of a permanent "technical table" has been confirmed, as also the periodic revision of the measures, in which all the trade associations concerned and the consumer associations and users have been invited to participate.

In line with this co-operative approach, involving all the stakeholders concerned, all references to possible blacklisting systems designed to strike down sites carrying non-authorised material have been eliminated. The Authority has also chosen to defer the question of collective licences to the permanent technical table, thus removing the proposal from the text submitted for public consultation. However, on the matter of blacklisting systems aimed at websites broadcasting non-authorised content, it should be mentioned that both technical experts and jurists regarded such measures to be ineffective. In actual fact and expert Internet user would only have to modify the domain name server (DNS) parameter to obtain access.

Thus, in order to circumvent blacklisting measures put in place by the Authority it would, in theory, be possible to make use of a foreign DNS (for example an open DNS or a Google DNS). However, this tactic could have been construed as a violation of the Authority's order, with the attendant sanction, and triggered a procedure to inhibit the circulation of the service among member nations, as provided for by the Audiovisual Media Service Directive. In contrast, the regulatory scheme, as it stands now, only gives the Authority the power to issue selective removal orders on files, whose deterrent value is significantly inferior to that of blacklisting, or at least to an injunction denying the Italian public access to pirate sites (a measure that has already been adopted, for example, to safeguard the state's monopoly on gaming and betting). In the same way, Agcom in confirming the outline of the foregoing scheme modified the timescales in order to provide further time for joint consultation between the parties. This may be able to take account of some objections raised by the web world but, on the other hand, it is also clearly a further burden upon an already cumbersome procedure for copyright holders. In addition, the uploader (the subject who uploads content and a third party with respect to the site operator) may oppose removal by initiating proceedings prior to the proposed action by the Authority. And in this case too, the Authority has implemented the suggestions received from the web world but in so doing has incurred the criticism of copyright holders who deem it unnecessary to involve the uploader in proceedings against subjects who are not simple technical intermediaries – i.e. those persons upon whose service the upload relies for publishing the content in question – but rather web publishers who offer content catalogues to the general public without possessing the rights to them.

Furthermore, a provision has also been introduced whereby the notifier, or counter-notifier, is required to provide every appropriate contractual and registration detail in support of his requests, and for which appropriate reporting formats have been proposed. If the prior consultation phase is unsuccessful, the notifier/counter notifier may refer the case to Agcom which, after an open phase of joint consultation with a maximum duration of 10 days, can in the following 20 days (extendable for another 15 days) impart a selective removal order of contents, or order their reintroduction.

The Authority has taken care to provide specific exceptions to the foregoing procedure, in part by making explicit reference to the United States' "Fair Use" doctrine (the absence of profit making activities, a didactic and scientific use, right to information, etc) and in part by expressly excluding peer-to-peer applications and- by referring to a definition contained in the consolidated law on audiovisual media services - websites that principally perform non-economic activities, such as for example private blogs.

We cannot fail to observe on the matter in hand that the limits to free utilisation are defined by statute law and that the regulatory basis of such measures cannot obviously derogate from law. The Authority's task is to increase the level of copyright protection and not to introduce new proposals for free utilisation, or water down the legal requisites governing free utilisation. Otherwise, we run the risk that regulations designed to protect intellectual property may make such property even easier prey for subjects pursuing purposes that are in outright contrast with the interest of copyright holders, and extraneous to any purposes that could legitimate the free utilisation of such content.

As concerns the specific question of foreign sites, further to the findings of an Agcom investigation, if the latter were to request the removal of content designed for an Italian public that infringed copyright law, and the site in question refused to comply, the Authority would automatically refer the case to the judiciary for appropriate action. On this question, we can mention the recent ruling by the Court of Cagliari (this is the "Btjunkte case", court order 19 April 2011 by the Public Prosecutor's Office of the Court of Cagliari), which demonstrates that the ordinary judiciary – at least in outstanding cases – possesses the powers and determination to act with particular effectiveness, and without need for any legislative changes.

To be more precise, the Public Prosecution, on 19 April 2011, blocked access to the site BtJunkie, one of the search engines for Torrent files most used by P2P users. The site allowed users to download pirated content as well as (in an indirect manner) giving free access to football matches broadcast by the DTT channel Dahlia. The public prosecution soon realised that in order to get round the prohibition on access it was sufficient for users to have recourse to the services of proxyitalia. Thus, on 15 July 2011 the Fiscal Police closed down the site proxyitalia.com, which in practice made it possible to circumvent access to the pirate search engine BtJunkie. Fastweb and Ngi are under investigation by the public prosecution's office of Cagliari for failing to inhibit access to BtJunkie: the charges are favouring piracy because as from 21 April 2011, the site in question had been subject to court order. The unlawful content offered by pirate websites outside Italy is a thorn in the side of legal music and audiovisual platforms.

The latest orientation of the two Italian authorities (Agcom and Agcm)

In June 2011, the annual reports of the Italian Communications and Antitrust Authorities were presented. Both documents contained interesting considerations from our point of view and some passages (taken from, respectively, the report by the President Calabrò for Agcom and the report of Agcm) are set forth below:

From the presentation by the President - Agcom Annual Report 2011

photos from tecnocity.it

(...) "The right to the free expression of ideas in the new technological forms is without doubt a fundamental principle in today's society but it cannot and must not strangle property and intellectual rights. The two rights must find a "modus (con)vivendi". The great inventiveness in the utilisation of the new tools undermines the right of creators to their own original works and, more generally, the providers of content, including the newspapers. The comprehensive overhaul of copyright law is universally requested in order to bring the law into harmony with the new frontiers of this technology (...). Network development is, therefore, an indispensable framework within which to handle all the pieces of the puzzle and promote the sustainability of the digital ecosystem. However, the question is further complicated by the fact that "over the top" search engines are not obliged to make infrastructural investments. The new subjects develop high-margin services and do not pay telecom operators a price proportionate to the value they extract from the net, and precisely at a time when the operators need ever greater resources for investments in new generation networks" (...). In the current debate on "net neutrality" it is essential to find a solution that will safeguard the interest in making investments in the net, without shifting the centre of gravity too much towards the "Over the Top" operators (...). Italy has waited seventy years for a reform of copyright law. However, even one law - a single, well calibrated law - would be sufficient to consecrate, at the primary legislative level, balanced, practical and shared guiding principles, while also attributing more specific powers of intervention to this authority. Italy has two negative records: it ranks last among the European countries in terms of access to the Internet and first in the world for piracy. Such data should give us food for thought, because in countries where broadband is more developed, such as the Netherlands, Germany and the United Kingdom we - surprisingly - witness a decline in online piracy. Thus a greater penetration of broadband reduces the impact of piracy - not the opposite - and makes a legal and competitive offer but convenient and possible. This is our priority (...). A few hours after the President of Agcom delivered his report, the President of Confindustria Culture, Paolo Ferrari, issued a press release full of comments and praise, in which he asserted that: "Calabrò's reference to the fact that access to the net does not take place in a normal manner but through search engines and content aggregators that avoid having to make payments of any kind is important because such developments only grab resources that could be reinvested in the production of additional content, thus depriving the authors of the remuneration due to them and discouraging necessary network investments". These are wise words. However, from a careful reading of Calabrò's report it emerges that the President of Agcom concentrated his attention on the relations between "over-the-top" operators and telecom operators, rather than between the former (and even the second) and content producers... When he presented the 2010 report Calabrò showed greater concern for content: "(...) copyright reform must be dealt with, in order to balance, as indicated by the Authority in its latest



ITALY: A CREATIVE MEDIA NATION 2011
Conrado Calabrò



survey, the rights of authors and those of users who navigate the Web. We must give substance to the regulatory role with which we have been entrusted by the legislator, however, we cannot ignore the fact that IT piracy has become an enormous problem. Authors are deprived of the remuneration due to them and network investments are discouraged whenever access does network take place in the normal ways but through research engines and content aggregators that subtract all payments from both the authors and the owners of the net".

From the 2011 Agcm (Antitrust Authority) Report



"Recourse to formal undertakings was used to great effect in the latest investigation that concluded in 2010, Fieg-Google, which was initiated to ascertain any possible market abuses by the American company. In particular, with these proceedings – with which the Italian Authority pioneered investigations into very complex questions that are now also under scrutiny by the European Commission - we set out to ascertain if, by virtue of the existing connection

between Google News Italia and Google Web Search, Google, the leader in Italy in the supply of "online" research and advertising revenue through the Internet, had, in practice deprived publishers of their power to control which of its content Google News Italia could reproduce, or otherwise to completely remove their sites from the portal in question, subordinating this possibility to an extremely penalising condition, namely the exclusion of a publisher's pages from the results of its search engine. The investigation was also aimed at ascertaining any lack of transparency and the verifiability of the remuneration due to publishers affiliated to the program AdSense by Google. In the course of the proceedings, Google undertook to adopt a series of pro-competitive measures so as to allow the publishers to remove or choose the content found on Google News Italia, without, thereby, being excluded from the general visibility of the search engine; to make known to the publishers the quota due to them of the earnings obtained from advertising revenue; and to remove the prohibition on click audits by companies that advertise on its platform. Aware of the innovative nature and the great importance of the problems dealt with, the Authority has, at the same time, transmitted a report to Parliament and the Government, requesting a revision of copyright law and bringing it into line with the technological and economic innovations of the web. In particular, the Authority has emphasised that an antitrust investigation cannot be the venue for resolving the question of the adequate remuneration of corporate activities that produce online publishing content for the economic exploitation of its own original works by other subjects. From this point of view, a reform is deemed necessary that defines a system of intellectual property rights able to encourage forms of virtuous cooperation over the Internet among exclusive copyright holders of publishing content and the providers of innovative services that reproduce and handle the content protected by such rights. And there is a similar need to correct the objective imbalance between the value that publishing content produces for the overall Internet system and the earnings that online publishers obtain from their activities". This attempt must - without doubt - be submitted to the scrutiny of the antitrust authority as regards the principles in play. The problem of the level of remuneration - to which the Agcm report refers - however depends upon the solution of the foregoing question...



Antonio Carlucci

Latest News (from Brussels): the Green Paper of the Internal Market Commissioner

On 13 July 2011, for the purpose of gathering views on how Europe can seize these opportunities and move towards a digital single market, the European Commission published a Green Paper on the initiative of Internal Market Commissioner Michel Barnier, in agreement with Vice-President for the Digital Agenda Neelie Kroes and Androulla Vassiliou, Commissioner for Education, Culture, Multilingualism and Youth. The Green Paper serves as the basis for a debate on whether and how the regulatory framework needs to be adapted to allow European industry to develop new business models, creators to find new distribution channels and European consumers to have better access to content throughout Europe. The views of all interested parties are sought on various aspects of online distribution of audiovisual works such as films, documentaries, TV dramas, cartoons etc. Replies can be submitted up until 18 November 2011.



The official press release of the Commission states as follows: "Digital technology and the Internet are rapidly changing the way in which audiovisual works are produced, marketed, and distributed. Consumers increasingly expect to be able to watch anything, anywhere, any time and via any one of a number of devices (TV, personal computer, games console, mobile media device). Business models have to evolve rapidly to keep pace with the ever faster pace of technological change which offers new opportunities for creators and distributors and also new consumer expectations and ultimately more growth and jobs (...)". Commissioner Barnier stated as follows: "I want to ensure that Europeans can seize the opportunities offered by the Internet. It is important for me to hear the views of all stakeholders concerned – creators, performers, producers, distributors and consumers. The results of this consultation will provide a significant contribution to the initiatives I am preparing, including a legislative proposal on collective copyright licensing, an examination of the framework set by the 2001 Information Society Directive, and a review of the Intellectual Property Enforcement Directive". The consultation seems to be an invaluable occasion for reflecting on the question of the close relationship between "over the top" operators and "aggregators" (Apple, Google Android Market, Sony, Samsung...), which is modifying the "production chain" in the absence of any reform of the copyright law whose latest amendment - it should be remembered - goes back to 2001, as concerns the definition of the works and the distributive arrangements, and in substantial disinterest on the part of bodies with the remit of safeguarding the market. Content obeys distribution patterns and pathways that differ from those referred to in the legislation in force and for which safeguards have been studied. The Green Paper, at first glance, seems to aim at encouraging approaches designed to identify new levels of protection and remuneration that will be able to stimulate - if enshrined in harmonised European law - legitimate business opportunities, which the present and excessively fragmented legislative framework has, so far failed to do, but, above all, approaches able to put in place the "level playing field" that at present is missing between the subjects in the various production chains. However, a detailed analysis of the effective success of the consultation promoted by Commissioner Barnier is obviously premature.

*The European Commission "Team" that is much more involved
in creative industries sector and copyright protection*



Neelie Kroes
Vicepresident
Digital Agenda



Viviane Reding
Vicepresident
Justice, rights and
citizenship



Antonio Tajani
Vicepresident
Industry and
Entrepreneurship



Androulla Vassiliou
Commissioner
Education, Culture,
Multilingualism, Sport,
Media and Youth



Michel Barnier
Commissioner
Internal market and
services



It is not easy to disentangle the complex judicial issues that characterise the Internet and its relationships with other media.

The matter is complex and challenging to thousands of legal practitioners throughout the planet as well as pitting established subjects against various new entrants: new distributors and new content aggregators.

When such dynamics are played out in courts of law, their consequences rarely find their way into newspapers and then only when outstanding cases are involved, yet their consequences can be far-reaching as regards the lawful and unlawful forms of content usage by net users.

Two proceedings have come to the attention of the general public:

- from the point of view of infringing "privacy", the most clamorous case regarded some young students in a school in Turin who in 2006 uploaded a video onto YouTube that showed them ill treating a boy affected by the Down syndrome. The Italian Police informed Google, which took steps to remove it (but the video was only removed two months after the upload). The youths who perpetrated the violence were ordered to perform 10 months of civil work in a community of persons affected by the Down syndrome. Three years later the Court of Milan condemned Google for not having respected the law on privacy. In the Court's view, Google would have failed to use sufficiently clear terms when it informed the young girl who uploaded the video of the need to comply with the law on privacy, in addition to not having put in place any appropriate mechanism for the immediate removal of the offending content once it had been reported [► 144]. Some net theorists and those in favour of its (infinite) freedom, expressed their outrage at this terrible repression, and stated that the judge, Oscar



Magi, only wanted to intimidate the Web. However, a careful reading of the judicial examination of the case shows that "Internet freedom" rather than being compromised was reinforced by the provision of appropriate measures for the protection of the individual's fundamental rights;

- from the point of view of risks for the media system's economy, a judgement passed down by the Court of Rome was equally clamorous. The Court ruled in favour of Mediaset in its lawsuit brought against Google in July 2008 on account of the unlawful utilisation of parts of the "Grande Fratello" on YouTube. The Mediaset Group defined the judgement passed on 17 December 2009 as "a court order of historical importance". The ninth civil section Division of the Court, which granted Mediaset's entire petition against Google, ordered the immediate removal of all unlawfully loaded content from Google's servers. Mediaset interpreted the ruling as follows: "The judgement passed by the Court of Rome provides clear indications on websites such as YouTube. We are not dealing here with a simple "web space provider" but with publishers in the full sense of the term, who must observe the rules in the same way as all other media are required to do. YouTube, therefore, is liable for the content it exploits for advertising purposes. Far from censoring the web, this judgement enlarges its boundaries. All publishers, first and foremost Mediaset, can now make investments in free web services and for the total benefit of navigators, with the certainty that they are operating in a framework of well-defined rules" [► 145].



► 144. On this matter, cf. Guido Camera and Oreste Pollicino, "La legge è uguale anche sul Web. Dietro le quinte del caso Google-Vivi Down", Egea, Milan, 2010.

► 145. Mediaset, "Publishers' copyright is also now recognised for the web: YouTube ordered to immediately remove all material referring to the "Grande Fratello", press release dated 17 November 2009.

On 12 February 2010, another judgement by the Court of Rome rejected YouTube's appeal. This is Mediaset's interpretation: "Today's judgement confirms that even websites such as YouTube must comply with ordinary commercial rules. Unlike previous practice, from today only those who invest in content have the right to exploit it commercially online through advertising or other sources of revenue. It follows, therefore, as expressly set forth by the judgement, that the technological costs to enforce this right cannot be charged to the copyright holder". A few months later, Mediaset attributed part of its online services' success to the court's ruling [►146]. Therefore we consider it useful and appropriate to propose a kind of "collection" of judicial cases on the illegitimate diffusion of online digital works, in and outside Italy.

From the analysis it appears that the questions dealt with are extremely controversial. It should be noticed that the "judicial solution", which – as stated – remains the only certain remedy in the panorama of the multiple interests and positions involved, continues to be out of sync, in



temporal terms, with current practice and often adopts contradictory approaches. An outstanding case of such a contradiction is the judgement of the Spanish Court which ruled on an identical lawsuit between Mediaset/YouTube with diametrically opposite outcome. In this regard we can recall the theory drawn up by Lessig (the creator of "Creative Commons"), according to whom the arrangements for "regulatory control" of what takes place in a social-technical system are subject to four levels of constraint [►147]:

1. the "technological" level: this is the level referring to hardware and software (which Lessig also defines as the "code"). It is technology, for example, that allows us to make a copy of a DVD legally bought in a store;
2. the "juridical" level: this is the level that determines what is legally prosecutable. This determines, for example, that it is forbidden to make a copy of a DVD, although this is technically possible (the foregoing level 1);
3. the "economic" level: this is the level (also called the "market level") that can set up more or less insuperable barriers to the access of some services. For example, making a copy of a DVD can be technically and legally possible (see the foregoing levels 1 and 2) but the operation can be discouraged by increasing the price of virgin DVDs;
4. the "regulatory" level: this is a level that "reflects" the value system, public morality and social reprobation. For example, making a copy of a DVD may be a technically, legally and economically feasible operation (see levels 1, 2, and 3) but it may also be seen as something shameful ...

In actual fact the "regulatory" level is likely to be the most effective in the battle against the phenomenon of audiovisual piracy.



►146. Claudio Plazzotta, "Mediaset, botto per i video online. Sono 14,5 milioni gli utenti al mese, nonostante YouTube" [Mediaset, online video explosion. There are 14.5 million users per month, notwithstanding YouTube], in "Italia Oggi", 17 June 2010. Yves Confalonieri, Director of RTI Interactive, underlined the success: 110 million videos viewed from January to May 2010, an average of 3.5 million unique users a month, an average of 14.5 million unique users and about 450 million pages visited per month...

►147. Lawrence Lessig, "Code and Other Laws of Cyberspace", Basic Books, New York, 1999.



The case "Metro-Goldwyn-Mayer Studios vs. Grokster"

Grokster Ltd. and StreamCast Networks Inc. Both cases referred to a lawsuit brought by Mgm Studios. The defendants distributed two different types of software, denominated, respectively, "Grokster" and "Morpheus", and operated on two different types of network ("FastTrack" and "Gnutella"), but their programs had identical functions: the indexing of content shared at a local level, the temporary transfer to the super node of an indexing network (in the case of Gnutella, the link takes place on a peer-to-peer basis), a search facility offered to other users and, in conclusion, the exchange between interconnected users of original digital works or digitalised traditional works which are almost always copyright protected.

Both types of software were deemed to have infringed American copyright law and induced users to infringe it as well. In particular, the prosecution's analysis showed that both software houses, in the wake of the famous "Napster" judgement ("A&M Records, Inc. v. Napster, Inc.", 239 F.3d 1004, Court of Appeal Usa, Ninth Circuit, 2001), went to great lengths to sponsor their own software as a replacement for Napster's defunct illegal digital works distribution network, as well as publicly stating that the purpose of their software was to "exchange copyright protected works", and that neither had any mechanisms to filter or repress activities that illegally exchanged copyright protected works. However, the district court, did not find against the two software houses despite there being the precedent represented by the case "Sony Corp. of America vs. Universal City Studios Inc." (Sony Corp. of America v. Universal City Studios Inc., 464 U.S. 417 – 1984 -, also known as the "Betamax Case") namely, that in order to sustain the legitimacy of peer-to-peer software it is necessary to evaluate if the software is effectively used for legitimate purposes.

The Court of Appeal upheld the controversial decision but Mgm Studios took the question to the Supreme Court in order to obtain a judgement against the defendants on the basis of the "second level" liability of the two software houses. The Supreme Court of the United States overturned the judgement of the Court of Appeal by arguing (1.) that both software programs feature clear indications so that users can deploy them to violate the copyright of original works and (2.) both software programs adopted a similar business model, whereby they received revenues from advertising banners integrated into the graphic interface, designed to secure unlawful earnings by inciting users to violate other persons' copyright.

The case of "Cyber Monday Crackdown""Super Bowl Crackdown"

On 29 November 2010, the Department of Justice of the United States in an operation unprecedented for America, obtained a federal order for the immediate closure of 82 online domain names, on which plainclothed agents of the American Department of Federal Police has ascertained the performance of unlawful sales, the distribution of counterfeit goods as well as the distribution of copyright protected works.

The operation began in June 2010, when the first order to close down nine online domains was given for the alleged online distribution of pirated feature films (and which were still being viewed in cinema halls) The nationwide extension of this first seizure order was made possible thanks to the institution of a national centre for the coordination of intellectual property rights (Ipr Center) incorporating the various state institutions and nine different legal offices.

The court orders shutting down the websites were issued under the provisions contained in sections 981 and 2323 of title 18 of the Civil Code of the United States which, as in this case, authorise the immediate seizure of certain types of property (in which domain names also figure) that appear to be used for the violation, within the territory of the United States, of precise categories of laws (including obviously copyright, section 506 of title 17).

On 1 February 2011, in the wake of these orders, and in concomitance with the "Super Bowl 2011" event, the Department of Justice of the United States, together with the Ipr Center obtained further orders for the seizure of a large number of Internet sites that were preparing to transmit the sports event in live streaming.

However, unlike the preceding operation some of the websites seized without prior notification, had neither registered offices nor servers physically located within the territory of the United States. The only link through which the Ipr Center managed to obtain immediate seizure was the fact that the site domains (.com, .net, .org) in question were under the control of United States "maintainers". Immediate implementation of the seizure order, along with the redirection to a Web page advising the users of the situation, was a clear example of an effective way of performing a preventive function with regard to the non-authorized transmission of visual works protected by copyright and reserved broadcasting licenses, although there is the possible risk that such acts will be detrimental to the sovereignty of other states. In fact, among the streaming portals censored figured "Rojadirecta", the proprietor of a number of

domain extensions, which had all been indiscriminately shut down. As previously, Rojadirecta had emerged victorious from a national litigation in the Spanish courts, which had declared that simply providing links for the streaming of international sports events was legitimate, it decided to test the legitimacy of the Spanish jurisdiction on its activities and illegitimate nature of the foregoing seizure.

It is often claimed that the extraterritoriality of the Internet is often and willingly used to prevent measures to safeguard rights, and in particular copyright. However, the two cases in question demonstrate that this position is mainly a case of European "hesitation" compared to a system such as that of the United States, which was not unduly troubled by the problem represented by the fact that the illegal act might have actually been perpetrated abroad. In particular, in the second case, the American court concentrated upon the weak indirect link (a domain in the name of an American company) on the grounds that American citizens who had not acquired the necessary rights to view the sports event could also make use of the event being streamed. It must however also be noted that when the domain is a national domain (.it, .es, .de, etc) the jurisdiction in question will be that of the corresponding nation.

The case "Productores de Musica de España (Promusicae) vs. Telefónica de España"

This lawsuit arose from a request made by the record manufacturers' association to the V Commercial Court of Madrid demanding that the national telephone operator provide the identity and physical address of those persons to whom it had provided access and Internet services together with the IP address dates and times of connection for matters of copyright infringement.

With an order dated 21 December 2005 the Spanish courts granted Promusicae's request on the basis of the provider's legal obligation to maintain the foregoing data, in accordance with statute law, and on "for the purposes of making the necessary ascertainment of the liability of the developers of a peer-to-peer software denominated KaZaA".

Telefónica lodged an immediate appeal against the order on the basis that it did not correspond to the letter of the law, which, instead, laid down that such data can only be issued for "penal proceedings". Promusicae replied by proposing an interpretation of Spanish law on the basis of articles 15, subsections 2 and 18 of the European Directive 2000/31, article 8, subsections 1 and 2 of Directive 2001/29, article 8 of Directive 2004/48, as well as upon articles 17, subsections 2, and 47 of the Charter of Fundamental Rights of the European Union,



which provided the grounds for using such data for the purposes requested. However, the Madrid Court deemed it necessary to suspend the proceedings and submit the question to the Community Court of Justice for a decision.

With its judgement n° 275/2008, the Court of Justice of the European Communities, in a joint sitting, pointed out that "directives 2000/31, 2001/29, 2004/48 and 2002/58 do not require member states in a situation such as that brought before the Spanish court, to make the communication of personal data obligatory in order to guarantee the enforcement of copyright in civil proceedings. Nevertheless, community law does request member states, when implementing these directives, to ensure that they are based upon an interpretation such as to guarantee the right equilibrium between the various fundamental rights protected by the community's legal system. In addition, the court confirmed that when community directives are implemented by member states, "the authorities and the judges of the member states must not only interpret their national law in a manner coherent with these directives but must also avoid interpreting such directives so that they come into conflict with fundamental rights or with other general principles of community law," which in the case in point is the "principle of proportionality". For these reasons, the Commercial Court of Madrid reformulated its preceding order and refused Promusicae access to the personal data of the users of Telefónica.

In this case (as in the Peppermint case, which we shall describe below) the problem lies not so much in the laws as in the desire of copyright holders to obtain direct protection. Copyright holders are entitled to submit data obtained from Internet analyses to the competent authorities in the form of a request to ascertain and sanction alleged unlawful behaviour but they are not entitled to request direct sanctions based upon the results of the analyses or, especially if an attempt is made to obtain direct indemnity from users (which constitutes a case of unlawful data handling).

The case "Sabam vs. Scarlet"

In 2004, the Belgium "collecting society" Sabam initiated judicial proceedings against the Internet service provider Scarlet (the Belgian branch of the Italian company Tiscali), alleging that the latter had repeatedly violated the copyright of authors represented by Sabam, by the indiscriminate use of "peer-to-peer" software on the Scarlet network.

The Court of First Instance of Brussels, deeming such violation sufficiently proven, required Scarlet to adopt technical solutions to prevent the use of its network for such unlawful purposes. In particular, Scarlett was obliged to apply selective "p-2-p" filters in order to

immediately prevent any legal downloads discovered on its network.

In the following months Scarlett submitted various requests for the suspension of the court order on the grounds of the material and technical impossibility of applying such "selective filtering". At the same time the Internet service provider ("ISP") lodged an appeal with the Court of Appeal of Brussels. The association of Belgium Internet providers (Ispa), as well as the principal Internet provider Belgacom, also participated in this stage of the legal proceedings. The following were some of the arguments put forward by Scarlet: (1.) The disproportion between the sanction imposed and the real entity of the infractions ascertained; (2.) The total ineffectiveness of filters on peer-to-peer traffic, given that the development of data encryption technologies for the incoming and outgoing data handled by the IPs stymied every such measure; (3.) The potential illegitimacy as regards the introduction of user surveillance mechanisms by ISPs.

On 25 January 2010, the Court of Appeal of Brussels referred the lawsuit to the European Court of Justice in order that the latter clarify two fundamental points:

- In the first place, may national courts, in conformity to community law, legitimately order ISPs to filter their customers' peer-to-peer traffic and, if violations are encountered, inhibit data transfers?;
- if the reply to the first question were affirmative, would it be necessary to apply – in ordering such measures – the principle of proportionality when evaluating the efficacy and the deterrent effect of the measure?

In the hearing of 13 January 2011, the judges of the European Court of Justice listened to the arguments of Scarlet (which were supported by some member states including Belgium, Poland and Italy) as regards the foregoing points as also the submissions by Sapam and the European Commission regarding the application of data filtering insofar as it was not in conflict with the principle of "mere conduit" as per the European "E-Commerce" Directive.

It is important to notice that in recent years a significant difference has emerged within Europe between the advocates of "IP filtering" as a measure to oppose the illegal spread of copyright material, and those who consider that such a measure has been made technically superfluous by innovations in data encryption. The much discussed technique of "deep packet inspection" as a specific tool to identify and sanction unlawful conduct perpetrated online seems to have been momentarily put on hold by the European Union for reasons of practicality and for the fear that it would slow down network performance. However, it is recognised that

measures of dissuasion must be put in place to prevent the less expert customers from violating copyright. Therefore, having ascertained that no technical measure applied to the Internet can prevent an expert user from accessing content, the case in question would suggest the use of systems that pose obstacles for the occasional utilizer, or one with limited experience of the technological means, cannot overcome. It is not altogether clear what the compromise between network efficiency (also with respect to legitimate uses made by digital content distributors) and the presence of such preventive measures should be.

The "Peppermint Jam Records" case

In 2006, la Peppermint Jam Records GmbH, a German copyright management company began to systematically track IP addresses using some software designed by the Swiss company Logistep Ag. The IP addresses in question referred to persons who connected up to the server of a peer-to-peer network, and from which a well-known program eMule, to name but one, could be accessed. Of these IP addresses the German company indexed those that carried out file uploading/downloading with a certain "hash" value. (the cryptographic function of the "hash", transforms arbitrarily long data – a message – into a physically fixed-length string called "hash value", or message digest) .Such files represented unauthorised digital copies of musical works belonging to Peppermint Jam.

On 26 June 2006, Peppermint petitioned the Civil Court of Rome to obtain a court order against one of the principal Italian ISPs, Wind, so that it would be required to inform Peppermint Jam of the names of users who, at the dates recorded by Logistep, had probably made use of the IP addresses documented as addresses for unlawfully downloading Peppermint's musical works. The provider lodged an objection explaining to the court that (1.) It was not certain, on the basis of the data provided by Logistep software and the documents submitted in the proceedings, that Peppermint was actually the holder of the rights to the works downloaded and that the users of each provider had actually performed unlawful downloads; (2.) the documents submitted by Peppermint were insufficient to countenance the disclosure of data protected by privacy law and far less constituted grounds for initiating a civil action (in point of fact no penal charge had been brought); and (3.) the request submitted by Peppermint only referred to obligations that were not actionable in a court of justice, as such data could only be obtained through operations performed by the technical staff of the individual provider.

Notwithstanding the numerous defensive arguments advanced by Wind, the judges of the summer-term section of the Civil Court of



Rome authorised the disclosure of data requested by Peppermint on 18 August 2006, on the basis of the obligation, inferred from the combined provisions of articles 23 and 132 of the Privacy Code, regarding the storage of Internet traffic data for 24 months "for purposes of ascertaining and repressing crimes (...) excluding the contents of the communications". As concerns the argument on the actual access to technical data, the judge rejected the ISPs arguments on the basis that it would be possible for any specialised expert to access the database, if Wind's experts refused to comply with the judge's order. The technical grounds for the measure were article 156-bis of Copyright Law, which had been introduced shortly before Legislative Decree 140/2006, which implemented the so-called "IP Enforcement" European Directive (2004/48/Ec). Wind appealed against the order issued by the trial judge but the order was substantially upheld.

Having obtained the data on Italian Wind-Infostrada users who were presumed infringers, Peppermint, through its own legal counsel, issued each with a letter succinctly setting out the violation ascertained, and requested a payment for damages. The letter also specified that if the user failed to make payment, the facts would be reported to the competent authorities for penal prosecution. Some users, who deemed the request inappropriate or at least very unusual, presented an appeal to the Italian Data Protection Authority through the leading consumer protection associations.

Meanwhile, Peppermint, buoyed up by the judgement passed in its favour, again petitioned the Civil Court of Rome, on the same grounds, for a similar order to be made against another Italian ISP, Telecom Italia. Given the large number of users registered with this ISP, the volume of data collected with the Logistep method was enormous. However, the judge decided that it was not the case to grant a urgent court order similar to the preceding order, insofar as (1.) the foregoing article 156-bis of Copyright Law could not be applied because it did not refer to the situation of an ISP, which was in actual fact "a third party" with respect to the user and the plaintiff, and therefore the purpose of the request would contravene the precise limits specified by European Directive 2004/48/Ec; (2.) In the light of the foregoing considerations, Peppermint would not have the legal capacity to sue, and would also have violated Italian privacy law, which lays down the need for the consent of the interested party prior to having his data handled. Therefore, when the court handed down judgement n° 57174/2006, Peppermint learned that the remedy requested had been refused. In February 2007, on the other hand, the Court of Appeal overturned the judgement of the trial judge and authorised Peppermint to

obtain the data requested. The judges of the Court of Appeal were of the opinion that European Directive 2004/48/Ec, and consequently article 156-bis of Copyright Law, could be construed as express amendments and limitations to the provisions of the Privacy law, not only because they were temporally successive to the Privacy Code but also for the reason of their content, designed to provide "direct tools for the prevention and repression of network violations", and for these reasons they were also applicable to conduit operators, such as the ISPs, for the perpetration of the infringements in question. Furthermore, the Court of Appeal also expressed its conviction that the ISPs, on the basis of the European Directive on Electronic Commerce, had the express duty to "cooperate in order to prevent the repeated violations of intellectual property rights".

Therefore, in this case too, Peppermint, with the law on its side, send the usual letters through its legal counsels requesting damages from about 7,600 Telecom Italia users in their capacity as "potential violators". Such a large number of letters, however, led to an even greater number of appeals to the Italian Data Protection Authority by the individual consumers and their associations.

In the meantime, Peppermint submitted yet another petition before the same judge of the Civil Court of Rome (and in this case together with the German software house Techland) for the same reasons of copyright infringement. However, this time, and also on account of the intervention of the Italian Data Protection Authority in the proceedings, the protection order was denied on the basis of their being "precise and insuperable limits, both in temporal and logical terms, for the handling of the data requested". In particular: (1.) The users' IP addresses, on the basis of the law then in force, could be recorded and stored by the ISPs for a maximum of six months, and (2.) In any case the use of the foregoing recordings for purposes not expressly provided for by the law (which in practice referred only to penal proceedings) could only be possible "with the express consent of the user", and which, obviously, neither Peppermint nor Logistep had obtained.

The Italian Data Protection Authority concluded its own investigations on 28 February 2008. According to the authority:

(a.) Logistep had violated the Strasbourg Convention, the European Directive 95/46/Ce and Italian law on the protection of personally identifiable information with specific regard to principles of "transparency, objectives, correctness and good faith in the arrangements for the handling of personal data";

(b.) both Logistep and its customer Peppermint had contravened the timescale prescribed for

purposes of protecting personally identifiable information as per article 5 of Directive 2002/58/Ec (article 122 of the Italian Privacy Code).

In the light of the arguments as illustrated above, the IP addresses as acquired in the manner indicated appear to enjoy the same status as "personally identifiable information procured without providing users with the prescribed information brief and, therefore, obtained illegitimately.

The foregoing measure, besides "expressly forbidding Peppermint and Logistep to conduct additional handling of the data in question", required their "cancellation by 31 March 2008".

It is also has worth mentioning that in September 2009 the "IP logging" activities of the company Logistep were declared illegitimate by the Supreme Court of Switzerland. Consequently the company transferred all of its activities to Germany.

However, the case should be analysed from at least three different points of view. Before the question was settled by the Italian Data Protection Authority, the legal proceedings and the defence briefs proceeded in the three separate directions:

- the traditional approach of a petition to the summer-term section of the Court of Rome:- it is an objective fact that during the summer the Court of Rome cannot deploy judges with special expertise in the section in question (Section IX). This probably persuaded the counsels acting for Peppermint Jam Records to submit a petition whose character of urgency would cause it to be handled during the summer session.

- the incorrect application of the preventive measures granted to Peppermint Jam Records: - the direct request to users to pay damages or submit to legal prosecution, although justified by the urgent legal measures granted, certainly did not produce the effects required. Instead, it attracted the attention of consumer associations and the Italian Data Protection Authority;

- "IP address" and "sensitive data": this was the turning point of the matter thanks to which the Italian Data Protection Authority deemed that the data handling performed by Logistep was illegitimate. This decision has certainly thrown new light on the legal implications of registering an IP address, and in practice has limited their use in a court of law (by whoever wishing to cite them as evidence) to circumstances rigidly governed by or inferable from the law in force.

The case "The Pirate Bay"

With an order signed by the investigating judge of Bergamo, on 1 August 2008, and in accordance with articles 14 and 15 of Legislative Decree 70/2003, the website



www.thepiratebay.com was temporarily shut down and all Italian ISPs were required to implement the "IP blocking (or DNS poisoning) of the celebrated Swedish portal and research engine designed to distribute files "peer-to-peer" using the BitTorrent protocol.

The proprietors of the "domain name" appealed the order, on the grounds of "want of jurisdiction, lack of evidence that a tort had been committed" and wrongful application of article 321 code of Civil Procedure and articles 14-15 of Legislative Decree 70/2003". On 24 September 2008, the Court of Bergamo ordered the annulment of the precautionary decree arguing that in the "numerus clausus" of circumstances authorising precautionary seizure the order to seize "third parties extraneous to the tort" (the provider) was not envisaged, and that, finally, although the requisites of *fumus* and *periculum* existed, the use of this instrument in an improper manner and on immaterial goods, undermined its functions and made it illegitimate.

The public prosecution of the Court of Bergamo placed an appeal before the Court of Cassation against this decision, explaining that (1.) in the first place, the instrument of precautionary seizure could be used and was suitable for such immaterial goods as Internet domains and (2.) that, moreover, without prejudice to the non-liability of the providers of Internet content by third parties, "there existed a general supervisory obligation on the provider's part with regard to data flows in transit on its systems". The Cassation upheld the legitimacy of the precautionary order that inhibited access to the website thus overturning the decision of the court of first instance and returning the proceedings to the Court of Bergamo on the grounds that:

- the penal liability of the proprietor of the domain name was proven insofar as the site did not just limit itself to making peer-to-peer software available through the BitTorrent protocol but also "continually collected and indexed the login credentials of peripheral users who possessed all or part of a (copyrighted) work", thereby achieving that "quid plus" that facilitated users to illegitimately propagate of original works protected by copyright (article 171-ter code of penal procedure, subsection 2, subparagraph a-bis), by telematic means, and rejected the argument of the defendant who emphasised the downloads' decentralised nature;

- apart from the actual position - outside Italy
- of the site's servers, for purposes of determining if a crime had been perpetrated or not in Italy, it was ascertained that unlawful downloading took place in Italy

("locus commisi delicti", pursuant to article 6 of the penal code), and therefore all the requisites were satisfied, material and jurisdictional, for issuing the interim order appealed against;

- given an earlier interpretation of the Court of Cassation on the possibility that "res immateriale" (intangible goods) could be subjected to precautionary seizure, it was quite legitimate to apply this instrument to the website www.thepiratebay.com.

In conclusion, the examining judge had correctly interpreted articles 14, subsection 3, 15, subsection 3 and 16, subsection 3 of Legislative Decree 70/2003, by coordinating them with article 321 of the code of criminal procedure to prevent access to a website by means of an interim order against the "ISPs".

The case was finally closed with a subsequent definition by the Cassation in its ruling dated 29 September 2009, n° 49437, whereby it was laid down that:

- the utilisation of "peer-to-peer" transmission technologies does not exclude the commission of the crime as per article 171, subsection 1, subparagraph A-bis), of Copyright Law (unlawfully making available works protected by copyright) by the proprietor of a website. And such a crime may also be committed, through the technology in question, even if the proprietor of the site never "detains" the work protected by copyright on its own databases. Thus, while being understood that the actions of users who make the files available to others is clearly illegal, the proprietor of the website is also liable for conspiring to commit the crime, insofar as he does not limit himself to making the peer-to-peer communication protocol available to users but pursues actions designed to index information received from users in order to facilitate the identification of the works through a search engine.

- a precautionary restraining order that is not limited to the seizure of an illegal website but also orders that the ISPs – albeit extraneous to the crime – prevent their users from accessing the site is a legitimate measure. However, the interim order, in this case, has a complex character: on the one hand, it is a typical precautionary measure, based upon the nature of the goods in question, and legitimate with regard to the website insofar as it is aimed at the acquisition of information that is not necessarily limited to material goods (there is an ongoing line of decisions of the courts on this question). However, on the other hand, it is also an out-and-out injunction, taking no heed of the real nature of the goods but not for this reason can the measure be held illegitimate so long as it respects the principles of legality and typicality (i.e. referring to well-determined

class of practices and/or events). Legislative Decree 9 April 2003, n° 70 (implementing European Directive 2000/31/Ec on information company services) attributes a special inhibitory power to the judicial authorities, in derogation from the principle of the free circulation of Internet access services, whereby they can order that ISPs prevent users from accessing the Web so as to avoid the perpetration of the crime as per article 171-c, subsection 2, subparagraph a-bis of Copyright law. This power, was again exercised, April 19, 2011, by the public attorney of Cagliari, to block the portal Btjunki (which performs file indexing "torrent" similar to those of The Pirate Bay) and the Proxyitalia website, that allows to overcome the blocking of access to DNS Btjunki, imposed by the attorney;

- in conclusion, and taking an unequivocal position vis-a-vis the penal liability of Internet players who operate outside the national territory, the Cassation threw out the objection of want of jurisdiction as this was based upon the mere localisation outside Italy of the site's hardware. Hitherto, the leading multinational operators in the field of the Internet and related operations remained extraneous to decisions of the courts of law (both civil and penal) by virtue of having localised their servers outside Italy. However, with the judgement in question, the Court of Cassation found that the proprietors of the site conspired with end-users in committing the crime in question, and applied article 6 of the penal code. Consequently, once having determined that the nature and circumstances of the crime of downloading in the Italian territory, the fact that the data transmission activities over the Internet took place outside the national territory is of no relevance because the penally relevant part of the action took place within the Italian territory.

The concluding question as regards transnational liability for having made works subject to copyright illegally available to the public, as mentioned in the foregoing operation in the USA "Super Bowl Crackdown", is also important insofar as it will be examined in detail by the trial judge who issued a interim order for the Rti-Google/YouTube case (see below).

The case "Coolstreaming"

With a decree dated 26 January 2006, the public prosecution of the court of Milan ordered the immediate seizure, pursuant to the above-mentioned article 321, subsection 3-bis, of the Code of Civil Procedure, of the Web portals www.coolstreaming.it, www.calcioilbero.com, together with the associated IPs that received the data transmitted from China, as they were guilty of having broadcast Italian serie A and B football matches in violation of the exclusive



broadcasting rights to these matches held by Sky Italia. As it was not possible to prove that these activities were pursued for gainful purposes, the public prosecution, in this case, deemed it was only possible to invoke a circumstance provided for under article 171 subsection 1 subparagraph. a-bis) of Copyright Law, namely the precautionary seizure and blockage of the reference IP addresses used to receive the data transmissions.

When this order was submitted to the investigating judge for execution, it was rejected on the following grounds:

- in first place, the website in question belongs to Chinese broadcasters that were "legitimate holders of transmission rights", although not within the Italian territory. On the basis of the documents produced, there was no evidence to show that the website in question had any specific obligation to transmit encrypted signals and, therefore, it could not be reasonably argued that their online broadcasting was illegitimate.

- in second place, the investigating judge did not consider that the law on copyright was applicable to sports events, insofar as it was impossible to "define them as original creative works";

- in addition, the investigating judge considered that in this specific case there was no actual "broadcasting of an original creative work over a system of telematic networks" in that it was considered that indicating links to pages from which the sports events can be viewed did not entail the requisites of "instantaneous consumption and a proscribed form of conduct", which are constitutive elements of the crime in question.

The public prosecution appealed against the decision of the investigating judge on the grounds that:

- the transmission rights outside Italy of the sports events in question "were not actually given for telematic broadcasting", as this was an exclusive right of Italian third parties;

- football matches, insofar as a combination of television control and direction together with specialist commentaries "can certainly be defined as original works of creation" and, therefore came under Italian Copyright law";

- the provision of links to Chinese Webpages, along with all the instructions for the correct reception and viewing of the sports events, represented "a causal action that was determinant for inputting the broadcasts into telematic networks", and that, in any case, the crime in question could take the form of

unspecified and not proscribed forms of conduct, which the investigating judge had previously and erroneously presumed.

The panel of judges called upon to decide whether or not to accept the petition, rejected it on the following grounds:

- "in primis", the foregoing arguments of the public prosecution in terms of the application of the concept of original works of creation to football matches were totally unacceptable;

- secondly, by applying a literal interpretation of the provision under article 171, subparagraph. L-bis) law 633/1941 it described the behaviour to be sanctioned as "the copying, digitalisation – meaning the introduction of the protected work onto a storage device such as a hard disk in the personal computer - and the successive sharing of the work over a telematic network to an unspecified public", but these activities therefore did not include the linking carried out by the websites in question;

- moreover, the panel emphasised in its judgement, that "if an unlawful act had taken place, this could only have been an input by the Chinese broadcasters of the content onto online networks, which could not therefore be a crime attributable to portals that publicise the links", above all taking due account of the fact that the pervasiveness of the technology involved makes it impossible to impose national barriers.

Consequently, the decision of the investigating judge was upheld on 9 March 2006 insofar as the presumption of a sufficient legal basis for the accusations was absent.

The case "Fapav /c Telecom"

With a petition dated 3 December 2009, the Audiovisual Anti-Piracy Federation – after monitoring some websites for a number of months that were unlawfully broadcasting original creative works, requested the Court of Rome to order Telecom Italia Spa, pursuant to articles 14,15 and 17 of Legislative Decree 70/2003 and article 156 of law 633/1944 to implement existing measures for the active monitoring and repression of such activities and also to put in place mechanisms to immediately notify individual users that they were in violation of copyright and, inform the competent judicial authorities of every illegal activity discovered during its activities as telematic provider. The same considerations were endorsed by Siae which made an appearance to urge the acceptance of the petition.

In its defence, Telecom Italia argued that, pursuant to the articles of the foregoing articles of Legislative Decree 70/2003, it had no duty to

perform activities of supervision on the activities of its subscribers in its capacity as "mere conduit" and that, Fapav by having come into possession of the monitoring results attached to the petition – even in the non-intrusive form of statistical investigation - had practically violated privacy law in the same manner as Peppermint, if "not worse".

On 14 April 2010, the court seized granted part of Fapav's request stating that on the basis of the provision under article 17, subsection 3 of Legislative Decree 70/2003, the only obligation attributable to Telecom, in its capacity as mere conduit, was to "immediately notify the competent authorities of infringements of copyright law on its network, whenever apprised of such facts". In this particular case, Telecom was ordered to submit to the public prosecution of the Court of Rome and the Ministry of Communications all the information reported to it by Fapav in the form of a refrain and desist notice on 23 May 2009.

The case "Rti vs. Google-YouTube"

With a petition filed during a lawsuit on 3 November 2009, the company Reti Televisive Italiane (RTI) proprietor of the broadcasting rights of "Grande Fratello 10", requested the Rome Court of First Instance, pursuant to articles 79, 154 and 163 of the Copyright Law, to order YouTube Llc, YouTube Inc. and Google Uk Ltd to "remove all accessible content "partially or wholly duplicating sequences of images fixed or in movement referring to the programme", with the associated order "that the foregoing parties cease (directly or through the subjects controlled by or associated with them) infringing the utilization and the economic exploitation rights of the programme in question" [▶148], and condemning the foregoing parties to the payment of a fine of €10,000 for each minute's unlawful broadcast.

Google/YouTube's defence based its opposition on (1.) the absolute lack of jurisdiction on the grounds that YouTube's content was hosted in the USA; (2.) no proof had been furnished by RTI that it had the exclusivity for the broadcasting of the content in question on telematic networks, and, in conclusion; (3.) the material impossibility for YouTube to perform supervisory activities on user –generated contents, carried by its own hosting services, and also on account of the lack of liability on the part of the host provider for the content carried.

However, the court ruled, as a preliminary measure, that (1.) the exclusivity of RTI for broadcasting the programme in question was sufficiently proven as regards broadcasting

▶148. It should be mentioned here that the third section of the Court of Cassation, with judgment n° 8236 of 4 July 1997, had already confirmed that counterfeiters of CDs, music-cassettes and floppy disks for Commodore systems were to be punished on the basis of the fact that "works destined for the cinematographic circuit and the television" can become the subject matter of the crime of illegitimate duplication (article 171-ter Copyright Law) "extending the crime to include the sale and hiring of videocassettes, music-cassettes or other devices containing phonograms or videograms of cinematographic or audiovisual works or sequences of images in movement not bearing Siae hallmarks".



over both traditional means and the Web, (2.) pursuant to article 79 of Copyright Law, which was a precise implementation of the Brussels Convention, the operation of the criterion of "locus commisi delicti" (the law where the tort was committed) applied for purposes of ascertaining the infringement in question, and therefore, the tort concerned Italian jurisdiction, and (3.) as the uncontrolled reiteration of act comprising the unlawful input of content protected by copyright onto YouTube had been proven, "the thesis of the presumed absolute non-liability of the provider, insofar as mere provider of Web space, was groundless and that the liability or otherwise of the hosting provider, and also in the light of the provisions as per Legislative Decree 70/2003, should be evaluated on a case-by-case basis, and, in this specific case, it was ascertained that there was a kind of "culpa in vigilando" (liability for failure to supervise).

For these reasons, RTI's petition for interim protection was accepted and YouTube, ahead of the trial proceedings, was ordered to put in place measures to remove content referring to the unlawful publication by its users and to implement a system to prevent such behaviour in the future.

A European parallel: "Telecinco vs. Google-YouTube".

A case similar to the foregoing dispute, although in a different European country, witnessed the application of a totally different solution with respect to that adopted by the Rome Court of First Instance.

With a judgment dated 25 September 2010, the Juzgado de lo Mercantil di Madrid (the Spanish Commercial Court) ordered the wholesale rejection of a petition for indemnity filed by Telecinco, the licensee of the RTI group in Spain against the unlawful publication on YouTube of some excerpts/entire episodes of broadcasts for which Telecinco held exclusivity rights.

Telecinco's request for indemnity was rejected on the grounds that YouTube offered copyright holders appropriate means to obtain the immediate removal of content published online that violated copyright. This, therefore, was the exact opposite of the conclusions reached by the Court of Rome, as the Spanish court deemed that the "responsibility of copyright holders" was proven – and therefore excluding YouTube's responsibility – "to identify and report to YouTube if and when copyright material was published online on its platform". Therefore, referring itself to European law, namely the European "E-Commerce" directive, the Spanish Court confirmed that YouTube's status was that of a mere conduit, and thus its only specific obligation – as host provider – was to immediately remove contentious content as soon as it was informed about its presence.

The conclusions of the Spanish court reflect the ruling made in Italy with the foregoing judgment on the lawsuit mentioned earlier "ViviDown vs. Google YouTube" in which the Court of Milan found against the Google directors responsible for administration and policy implementation, but not, as was erroneously reported in a number of newspapers, on the grounds of "their liability for supervisory negligence" but for their demonstrated delay in removing videos with the contested detrimental content and thereby determining detriment for a very sensitive social category. And it is certainly not by chance that immediately after the judgement in question, Google and ViviDown signed a protocol to reinforce and speed up the immediate removal matches of content detrimental to protected social categories found on YouTube, thereby establishing a "dedicated management procedure" for reports forwarded in this sense.

The case "Tf1 vs. DailyMotion and Google-YouTube"

In April 2008, TF1, a French television group, brought a lawsuit before the Court of Paris against DailyMotion and Google YouTube for damages amounting to about, respectively, €40 and €100 million on counts of counterfeiting, unfair competition and "economic parasitism" by these well-known, over-the-top, companies which had illegitimately made available to the public parts or entire episodes of the network's main information and entertainment programmes.

As concerns the position of YouTube, in May 2010, a settlement was reached in May 2010 with Tf1 (whose contents have not been disclosed) while DailyMotion, on the basis of current information, continues to assert its innocence before the Paris court.

The case "Viacom vs. Google-YouTube"

On 13 March 2007, after an initial request for the immediate removal of copyright material in February, to which YouTube had complied by removing most of the contested material, Viacom Inc brought a lawsuit against Google-YouTube before the Southern District Court of New York for massive copyright infringement.

In detail, Viacom challenged the unauthorized presence of about 160,000 videoclips on YouTube, viewed more than 1.5 billion times and cited internal emails from the head of the portal to demonstrate the express policy position of the co-founder of Google, Steve Chen, who had apparently encouraged the upload of unlawful material insofar as a primary source of traffic and notoriety for the portal. In addition, there was also the allegation that after the acquisition of YouTube by Google – despite the fact that this online

research giant had all the means to prevent such abuses – it had deliberately refrained from taking any technical measure to stop abuses (in this case making express reference to the preceding case "Grokster": see above).

Google's defence – in which it accused Viacom of having manipulated and "edited" Steve Chen's email in order to make it appear as a justification for the allegations made – referred to the following facts: that the activities of the YouTube portal were safeguarded by the Digital Millennium Copyright Act (Dmca), that Viacom itself had uploaded most of the contested material for exclusively advertising purposes, and that the company had also attempted to acquire YouTube without success, and therefore the entire question had the tenor of a commercial vendetta against Google.

In navigating its way among reciprocal accusations of having manipulated the evidence and various technical allegations, the district court of New York threw out all of Viacom's arguments and granted Google's request for a summary judgment that would protect it from Viacom's accusations on the matter of indirect and direct copyright infringement.

In particular, the district court held that:

- Viacom had initiated the lawsuit notwithstanding that its earlier refrain and desist notice had produced the immediate removal of most of the contested material;
- the policy and behavior of YouTube did not encourage, contrary to Viacom's assertion, the infringement of copyright (the question was totally different from the "Grokster model" despite Viacom's accusations);
- thanks to the complaint-removal procedure followed by YouTube, also in the wake of similar lawsuits, copyright enjoys reasonable methodologies of protection on the portal;
- in conclusion, given YouTube's mere conduit role, with respect to the behaviour of its single users, who actually carry out the download, the complaint-removal procedure put in place on the portal was more than sufficient, given the impossibility of its being held liable for the unlawful uploads carried out by persons extraneous to the company.

The case "Open Gate Italia - Pfa vs. Yahoo"

The lawsuit was brought by Open Gate Italia, a company set up to handle copyright litigation, on behalf of Pfa, a cinematographic production company that distributes the film "About Elly" in Italy (an Iranian film directed by Asghar Farhadi) against the search engine Yahoo, on the grounds that the selection algorithms for search results for the film consistently favoured websites (by giving them top-ranking positions) from which unlawful downloads the

film could be made.

With its ruling dated 23 March 2011, the IX section of the Civil Court of Rome (specialised in intellectual property protection) stated that although it was impossible for search engines to perform prior controls on the contents of source websites to which a link is established, Yahoo! did not, however, take prompt action to remove the results of the search after receiving the refrain and desist notice from Pfa, and consequently it was liable for the publication of websites that transmitted and offered parts or the totality of the film in question, thereby infringing the film's copyright.

In actual fact the judge did not assert that the search engine was liable for the direct distribution of the foregoing contents. Instead, it found that the search engine had an indirect liability insofar as it tolerated the permanence of these results notwithstanding the fact that they were infringing copyright and thereby enabling third parties to appropriate the contents. Yahoo! was therefore ordered to cease continuing and reiterating the infringement of the economic exploitation rights to the film "About Elly", through links provided by its search engine to sites – other than the official site of the film – that partly or entirely duplicated the film in question.

The decision referred to a concept already outlined (on the matter of privacy) in the preceding case "ViviDown vs. Google – YouTube" insofar as it once again reiterated the principal of "a posteriori" liability of the search engine, and not so much for not having prevented sites that violated the copyright of an original cinematographic work of art from being assigned top rankings, but rather for not having, after being notified of the fact, carried out appropriate measures to remove such search results, and thus benefit legitimate websites. However, this decision has also provoked contrasting reactions [▶ 149] ...

The case "Rti vs. lol" Italia On Line

The lawsuit brought by RTI against Italia On Line (lol), a company that manages, inter alia, the Libero Video portal, yet again sees Mediaset in litigation against a "online video sharing" service provider.

The illicit behaviour is more or less the same as that of which Google/YouTube stands accused (see above page 100-101). lol's

Internet portal allows users to download videos, to which pertinent interactive advertising banners are associated, by virtue of the keywords used to select them and from which lol obtains earnings. RTI claims that lol has failed to put in place a vetting mechanism on uploaded video content and that various excerpts of exclusive and successful transmissions of the Mediaset group are to be found on its servers. The situation is aggravated by the prior existence of a licensing agreement between the parties for such content that lapsed in 2008, without successive renewal. lol, in its defence against the action brought by RTI, asserted its right to chronicle and information, as well as the "mere conduit" principle pursuant to Legislative Decree 70/2003 as concerns the content downloaded by its users.

The Court of Milan, first and foremost, held that the mere conduit principle was inapplicable, insofar as the association of keywords to videos for advertising purposes constituted an activity different from that of a "hosting provider", especially as it generated profits from the illegal activities performed by single users. This role was defined by the Milan Court as "active hosting".

On the basis of this premise, the court held that it was impossible for an active hosting provider to put in place effective mechanisms to ascertain if content was legitimate before releasing it to the general public. However, the provider was still required to take immediate steps to remove content when an appropriate report is received (as applied to the case in question in the form of a desist and refrain notice by RTI). Given the failure to take immediate notice and for the reasons stated, the court, with an order dated 20 January 2011, filed on 7 June 2011, granted some of the requests of RTI by ordering lol to immediately remove the content owned by the plaintiff and illegally loaded onto the Libero Video portal (the court also prohibited further dissemination and fixed a penalty of €250 for every video and every day of unlawful broadcasting), deferring judgment on the value of the damages requested by RTI (€130 million) to additional evidentiary hearings.

Mediaset was clearly pleased with this additional endorsement of a principle that consolidates the case law precedent set by the Court of Rome on the dispute with

Google/YouTube. Thus, the direct liability of the provider was established in the event of the non-authorised broadcasting of copyrighted content. The official press communiqué of the group, released on 15 June, stated as follows: "Mediaset holds that this decision, by upholding a basic principle of law, contributes towards the reinforcement of the protection of all publishers who make investments in original content and in the authors that produce it".

Latest news: "RTI vs. Yahoo!"

Shortly before going to print, some important news was divulged. The following press release on this question was issued by Mediaset on 15 September 2011: "Yahoo! Italia" condemned for having infringed copyright, must remove Mediaset's television videos and pay damages. The Court of Rome granted the requests of the Mediaset Group and ruled that the broadcasting of non-authorised of Mediaset television transmissions by the company "Yahoo! Italia" represents an infringement of copyright. The court prohibited its continued broadcasting by the "Yahoo! Video" portal and laid down a penalty of €250 for every video not removed and for every day that such content was unlawfully present on the portal. The case will be resumed on 18 October 2011 to determine the value of the damages due to Mediaset. The decision, by endorsing a fundamental principle of law, represents a further important step towards the protection of all publishers who make investments in original content and in the authors that produce it. Once again the direct liability of providers who broadcast non-authorised copyrighted content has been asserted, and consequently, the case law precedent set by the Court of Rome in the dispute with "Google/You Tube" and by the Court of Milan in the dispute with "Italia Online" has been further consolidated.

▶149. According to many analysts, the judicial decision could lead to a chain reaction on all websites with a search engine. Tullio Camiglieri, Chairman of Open Gate Italia. "The Rome court has confirmed a fundamental principle for the protection of all cultural production: cinema, publishing, music and newspapers. Whoever invests in culture, information and entertainment has the right to see his work safeguarded". In actual fact, YouTube is systematically removing all pirate videos, whenever reported. At present, Google has limited itself to blocking words that refer to piracy on its system of "self-completion" (i.e. the phrase that appears automatically as a search-aid when we key in the words to search for). Now experts are asking if it will become more difficult to find links to pirate sites using search engines, and if these will be required to cooperate more fully with copyright holders. "The Court of Rome has followed a route different from that hitherto attempted in order to affirm the liability of a service provider for an information company" commented Andrea Monti, lawyer specialized in copyright in the new media and founder of Alcei (Associazione per la Libertà nella Comunicazione Elettronica Interattiva). "Yahoo! was found liable because by tolerating the presence of those results on its search engine it favoured copyright infringement, recalled Monti. So far this principle was only applied to hosting provider – the sites that directly contained the pirated content and published autonomously by their users, and links were removed when copyright holders reported them. Extending liability to search engines – the first interface between a user and the Web – is a major step. "This decision is questionable and perilous as it goes back to an old idea of the "hyper-link liability" which seemed to have been discarded ten years ago" continued Monti. If it is already questionable that someone can be held liable for link content on another resource, outside his control, it is doubly inadmissible to extend liability to a system that generates links automatically on the basis of an algorithm, and consequently automatically, without having any idea of the lawfulness or otherwise of the specific content" (Alessandro Longo, "Sentenza italiana contro Yahoo! Basta link ai siti di film pirata", in "La Repubblica", Rome, 23 March 2011).

THE MANNA MYTH

Ten years have elapsed since we first drew up the "manna theory", namely, the conviction that in the media economy the increase in distribution channels instead of mechanically enriching the whole content production chain usually impoverishes the entire system economically, at least as regards the production of valued content [►150].

In the course of years and based upon our experience as media-system observers this conviction has been reinforced.

In 2007, on the occasion of a workshop promoted in Rome by the Eurovisioni international cinema and television Festival we argued as follows [►151]:

The "manna myth"

- the media market undergoes structural changes at a much slower pace than some may theorise;
- the "user generated content" market is a parallel market that has limited interactions with the real market, and the latter will remain at the centre of the stage for at least another 10 years;
- the infinitely converging network has promoted a highly ideological approach whereby some regard the net as a "saviour" of pluralism and a source of new business: a new version of the manna myth;
- net and multimedia convergence will have significant consequences for some aspects of social relations but far less as regards changes to audiovisual consumption models;

The risk of a new "bubble"

- we are faced with an emerging market: the fruition of audiovisual content (cinematographic, television, "ugc") on non-television platforms;
- the business models are extremely uncertain, the strategies confused, the forecasts contradictory: there is no unequivocal answer to the question "how to remunerate the digital distribution of content?"
- what is certain is that we are dealing with a socially significant phenomenon, but one that is probably likely to remain "marginal" in the overall economy of the audiovisual production chain;

Poorer, not richer?

- it is natural for large broadcasters to proceed with caution: industry is facing the risk that another bubble will explode, and hence discover that this was just another "grand illusion";
- the major risk involved in the expansion of broadband is the enormous and surreptitious spread of piracy: rather than making new earnings, today's players (considered in their dual dimension as producers and authors) run a real risk of seeing their revenue flows diminished;
- the sources and libraries will increase for users but not necessarily the revenue flows for producers and authors: the overall economy of the audiovisual production chain will not be "automatically" enriched.



The following year, again within the framework of Eurovisioni, we proposed the following thesis [►152], wondering rhetorically: "more channels = fewer resources for quality content?". We argued this provocative thesis by analysing the case of France, a country that more than any other European country benefits from a robust and significant "public presence" in the audiovisual section, in the form of subsidies, contributions and mechanisms for economic and financial stimulation, unlike anywhere else in Europe. Against growing audiences, the "other French channels" still only play a marginal role, above all as regards original works and investments in television drama. The traditional generalist channels retain 89 % of the 1st run output and as much as 99% of investments! Out of the € 487 million invested in TV drama, the generalist channels account for € 480.7 million (96.6 %), the pay

Gian Battista Tiepolo, "La caduta della manna" (The fall of manna [godsends]), 1740, Cappella del Santissimo Sacramento (Holy Sacrament Chapel), Basilica Romana Minore, San Lorenzo Martire, Verolanuova (Brescia).

Notes: Moses, holding a rod, holds out his hands to the sky standing on a cliff; behind him the tent, the camp, the Jewish leaders and priests; from heaven, the angels pour the manna (godsends); in the foreground, the crowd gathers heavenly food.

►150. Angelo Zaccone Teodosi, "Il "mito della manna" nella televisione digitale: il "gap" canali/contenuti", in Edoardo Fleischner and Bruno Somalvico (editors), "La tv diventa digitale. Scenari per una difficile transizione", Franco Angeli, Milan, 2002.

►151. Giovanni Gangemi and Angelo Zaccone Teodosi, "Evitare il mito della manna...", an address given at the workshop dell'Atelier III di

Eurovisioni "Come remunerare la distribuzione digitale dei contenuti. Il punto di vista dei broadcaster e dei distributori", Rome, 2007.

►152. Idem (see previous note), "Più canali: meno risorse per contenuti di qualità", an address given at the workshop dell'Atelier I di Eurovisioni "Il ruolo delle tv nazionali nel mercato globale", Rome, 2008.



channels for € 4.1 million (0.8 %), the "DTT free" channels for € 0.4 million (0.1 %), and all the other channels for € 2.1 million (0.4 %). The latest surveys – that addressed the British, French and Italian markets – also confirm these trends.

Therefore, we can conclude by proposing the "10 theses", which we still deem valid and pertinent:

- (1.) The multiplication of television channels does not automatically determine an increase in "pluralism": "plurality" does not automatically translate into "pluralism";
- (2.) The growth in the economic revenues of the television systems, above all determined by "pay" consumption, does not determine the growth in resources earmarked for the production of new quality programming;
- (3.) In the most advanced multi-channel countries (the UK and France), a perverse effect has occurred: the enrichment of the economies of the audiovisual systems as a whole, is pauperising the resources earmarked for original and quality production;
- (4.) Still today traditional, generalist and "free-to-air" channels remain the principal financiers of quality production;
- (5.) The economic contribution of new channels towards quality production is still marginal and likely to remain so: the increase in audience and, partially, of advertising investments in digital and themed channels is insufficient to guarantee appropriate resources to produce quality programming;
- (6.) In the medium and long term (10 years), there is the risk of continual impoverishment in the structure of the European productive industry to the advantage of the usual American multinationals;
- (7.) The US model (increased investments in quality and independent programming) is not applicable in Europe: the Europeans risk paying the costs of what we have defined as the "manna myth" – the illusion that an increase in the number of channels corresponds mechanically/magically to an increase in the resources earmarked to original production;
- (8.) The role of the State is essential. It compensates for the shortcomings of broadcasters without economic resources, or producers with a limited self-

financing capacity. An important contribution can also be given by the public television broadcasters;

(9.) The contribution of new platforms (iptv, tv mobile,...) towards the economy of quality audiovisual production is still minimal, if not insignificant, and there is good reason to believe that this situation will remain for many years to come;

(10.) This sector of the cultural industry requires, in Europe, ongoing support from the "public sector", especially in the light of the reduction in investments from natural investors (the "free" generalist broadcasters).

We also fear that yet another illusion will be generated. The reduction in production and market access costs will mechanically (magically!) determine an increase in quality content and expressive liberties: the self-repeating historical cycles of the same illusion found in much mediological literature (and in many political interpretations of media phenomena), commencing from the distant times of the (presumed) VHS "revolution", the (presumed) revolutionary local television broadcasting season, and more recently the DTT and Internet TV [► 153]...

In actual fact, the theorists of technological revolutions should have the honesty to recognise that neither VHS, nor video-mobiles nor Internet remixes have shaken the planet's creativity scenario. New forms of expression and new techniques flank historical expressions and techniques but the content with greatest appeal – even in terms of the net – continues to be that characterised by consolidated professionalism, advanced technical skills and which are the result of an industrial system (based on classical business models).

In Italy, the case of "Sky Italia" is symptomatic and a confirmation of our theories as well as raising not a few questions:

- what is (and has been) the contribution of a company that by now is the richest player in the Italian television system (in 2009 Sky posted revenues of € 2711 million against € 2506 million of Mediaset) towards the production of quality content, in particular TV drama?!
- Sky Italia produces very few hours of high quality TV drama in a year against hundreds of millions of euros invested each year by RAI and Mediaset. Why should there be such a disproportion, and should not the state have the right to intervene in such a situation?!

historical perspective to have been the paradoxical trailblazer for the oligopolistic structure of the Italian television system, with total disregard for the democracy of the 1,000 flowers or rather 1,000 antennas. Moreover, what can we say about Google's tendency towards market monopoly or the other players of the new "intermediation"?! See Roberto Faenza, "Senza chiedere permesso. Come rivoluzionare l'informazione", Feltrinelli, Milan, 1973; Siliato Francesco, "L'antenna dei padroni. Radiotelevisione e sistema dell'informazione", Index-Archivio critico dell'informazione, Mazzotta, Milan, 1977.

►153. This is what we have defined as the "Italian local television paradigm": when this phenomenon appeared in Italy, many theorists spoke of the medium's infinite democratic potentialities. In actual fact, the lowering of audiovisual production costs (VHS) or distribution costs (the Internet) does not mechanically bring about a revolution in market structure as erroneously theorized by Faenza – among others – at the time when cable TV was under the spotlight. Instead, Siliato showed himself to be a wise prophet (of misfortune?) with his publication "L'Antenna dei Padroni": 34 years later this new media (local television) can be seen in an



- And, moreover, why is a player such as Google Italia, which parasitically lives off network content, not subject to any obligation to make investments in quality investment?! What could be the reason for such asymmetry?!

These are questions that address not only the economic also the cultural component of national development and which we would submit to the attention of policymakers.

If the theory of the "manna myth" (which we can summarise with the formula "+ channels \neq + quality content") is valid as regards the phenomenon of television "channel multiplication" (whether satellite or DTT or other) it is no less pertinent as regards the Internet's infinite network.

We would like to recap our position on this matter: it is an incontestable fact that the Web has determined and is still determining an increase in accessibility to content, and that this has increased the quantity of content available as well as the number of users of such content (and therefore also their "value" and consequent "profit" for the market), but the critical issue remains: what business model exists for the production of quality content?

No concrete alternative as yet exists (note we use the term concrete rather than theoretical) with respect to the historic and still applicable model.

Confirmation of our theses is provided by an analysis with a long-term perspective on the major changes that the musical industry is undergoing [►154]. And in this case too we find much rhetoric and widespread demagoguery on the miraculous potentiality of digital distribution (which doubtless represents a growing source of revenue for the record industry). However, in this case we must reflect upon the following data:

- from an economic point of view:
 - from 2004 to 2010 the recorded music industry worldwide, sustained an overall decline in revenues of 31% (the falloff in sales was not compensated for by the increase in digital music sales, although these rose 1000 % in the same period);
 - in 2010, the 50 major musical tours in the world recorded a 12 % decline in sales.
- from a cultural point of view:
 - between 1999 and 2009 the quantity of professional musicians fell by 70 % in the US;
 - between 2005 and 2010, in Mexico, the number of local artistic publications fell 45 %.

However, the Spanish case is exemplary and... disconcerting:

- between 2005 and 2010 the sales of musical storage devices in Spain fell by about 50 %, a rate of decrease much higher than the world average. In the last year alone, the market reduction was estimated at 22 %;
- almost half of the Spaniards (45 %) identified as active Web users made use of illegal music distribution services: this percentage is much higher than the average rate recorded in the five leading EU markets: 23 % (Nielsen data, October 2010);
- one of the most serious consequences: local artists and in particular new talents have been found to be the main victims of the crisis: in 2000 there were 10 debutant Spanish artists in the "Top 50"; 10 years later there were none.

We fear that what has taken place and is still taking place in the music industry can easily replicate itself in the audiovisual industry, although these two sectors of the creative industry are structurally different.

In actual fact, television's revenues largely flow from advertising, while the music industry depends more directly upon the end user. We believe that advertising's mediating function, which thanks to broadcasters, establishes contacts between platform "users" (i.e. "advertising consumers" and "television viewers"), can avoid a repetition of the dramatic crisis that the music industry is suffering; an economic crisis pauperising authors and artists. Television advertising can therefore continue to play a key role in the allocation of resources in favour of the production of quality content.

Nor should it be forgotten that the Internet is also radically changing the economy of another important cultural industry, the daily and periodical press, where a clash is developing between traditional newspapers and new players, and where search engines become active

►154. International Federation of the Phonographic Industry, "Ifpi Digital Music Report", London 2011. If Ifpi provides a set of concrete and impressive data, a heterodox author such as Lanier (considered the guru of "virtual reality") proposes theses that in practice reach the same conclusions. In a recently published book he emphasises the impoverishment of the creative middle class: "The persons who have been chiefly cheated by open culture are the culturally creative middle class. For example, the opportunities for session men have diminished. Another

example, not referring to music, is the freelance war correspondent. Both categories make an essential contribution to culture and democracy. Both have to undergo long years of apprenticeship before they learn their trade. They live thanks to the way in which wealth is traditionally distributed in society and, as all the middle class, they are valuable assets. They will not be able to earn a living in the new system (Jaron Lanier "You are not a gadget: a Manifesto", Alfred A. Knopf, New York, 2010).

in the market of the news on the web. One of the results is a fairly generalised and diffuse reduction in the quantity of newspaper readers (as also the average time spent reading newspapers), throughout the world, with a consequent reduction in advertising revenue (which in the USA, between 2001 and 2010 fell by no less than 45 %). If it is true that almost all publishers have developed web versions of their newspapers, there is still reason to fear that the publishing industry is suffering from a process of ongoing impoverishment in its resources, and at the cost of quality-content production. The development of news delivered over the Internet has been viewed as a kind of vertical sector unbundling: who distributes news needs not necessarily produce it.... but do those who parasitically live off such content actually make investments in the production of quality news?! We fear that the answer – both for music and publishing – is an identical and unqualified (with very few exceptions) no.

Yet in a healthy media eco-system, the companies that exploit news indexation and generally use third-party quality content – the creative works conceived of and produced by others – should pay something towards those who created the raw material for their business. Upholding the copyright system, from this point of view, is sacrosanct.

From this standpoint it is indispensable:

- to implement systems that protect authors' rights and copyright, making them more flexible in order to improve the multiplatform distribution of works, yet safeguarding the role that broadcasters have played and continue to play in the creative industry's economy [▶ 155] ;
- to avoid the risk of offering new players an opportunity to accrue parasitic income. Such players certainly have no innate or historical vocation to invest in quality content, but merely use the Web as a commercial network: the imbalances that characterize the current market structure must be corrected by imposing a standard set of rules for all operators, whenever quality content is being in some way transmitted.

We believe that extreme caution should be exercised before proposing the overhaul of such traditional principles as "territoriality" and the introduction of practices such as "collective licences" [▶ 156]. The technologies of digitalization and the diffusion of the

Internet are opening up new opportunities for the distribution of quality content on the Web, but the current statutory and territorial framework does not necessarily constitute a curb on innovation and creativity: on the contrary, it has been, and continues to be, a protection against the risk of the cultural industries impoverishment.

The creation of appealing content (and thus – almost always – professionally packaged products using adequate technical know-how, or, in other words, costly to produce) calls for major resources and a corresponding level of investments.

Invoking access to other persons' content in the name of rhetorical gratuitousness cannot be made by whoever also invokes – in an instrumental or mystifying manner – the user's freedom of choice and the need to develop new platforms in order to dissimulate his limited propensity to make investments and accept the correlated risks, in order to benefit from other persons' investments at low or zero cost.

An illuminating description of the risks run in the event of badly thought-out innovations in the copyright system was provided by the economist Michele Polo as part of a highly critical analysis of the structure of the Italian communications industry: "talent, although a natural gift, must be nurtured and developed with sacrifices and long-term commitments, and as such it will receive its subsequent reward with the implementation of copyright. In the absence of copyright, talent would only be a intrinsic motivation, which although important would not be sufficient to guarantee the commitment necessary for the production of quality content, especially when such content is not the result of an isolated genius but the result of a complex industrial culture. The risk that might be run is to pursue a fragmented and competitive market structure with the related prohibition of exclusive rights, but whose only outcome would be a dramatic impoverishment of precisely those contents which we would like to see in free circulation" [▶ 157].

In conclusion, the European Commission could not have summarized it better: "©copyright is the basis for creativity" [▶ 158].

As article 17, subsection 2 of the European Union's Charter of Fundamental Rights states: "intellectual property is protected".

This "protection" must be implemented and updated, rather than being completely uprooted.

▶ 155. We should, in particular, consider the complex question of the "de-territorialization" of the digital distribution of content, which, according to some analysts, would be excessively impeded by the practice of stipulating distribution licensing contracts for the territories of single states. On this question really is a reference to the publication by studio Kea, "Multi-Territory Licensing of Audiovisual Works in the European Union", the European Commission, Brussels, 2010.

▶ 156. We refer to some hypotheses drawn up for the European scenario that, in our view, represent a leap into the dark given the continuing lack of business models adequate to handle the great "single market" of digital

rights. It should be remembered that on 22 October 2009, the European Commission published some reflections on the challenge represented by a European digital single market for creative contents such as books, music, films and video games (see below).

▶ 157. Michele Polo, "Notizie S.p.A. - Pluralismo, perché il mercato non basta", Laterza, Bari-Rome, 2010, page 155.

▶ 158. European Commission, "Creative Content in a European Digital Single Market: Challenges for the Future. A Reflection Document of Dg Info and Dg Market", Brussels, 22 October 2009.

Conclusion

The survey sets out to provide a thorough dataset and analytical framework on some social and economic aspects of the cultural industries, insofar as these are industries that perform an important and delicate role in the progress of nations.

Television consumption remains absolutely central to the Italians' media diet. On average, an Italian watches television for 4 hours and 10 minutes every day. 94 % of citizens use television to inform themselves about politics, while in terms of the population's time budget, television beats the Internet 13 to 1.

The Italian television industry produces € 12 billion in revenues, which represents about 1 % of the gross national product. It employs about 50,000 workers and the companies comprising the production chain number approximately 12,000.

The Italian television broadcasters in the course of the past 10 years have invested about € 4.5 billion in national television drama, with a production of over 7000 hours of quality content.

Every year about € 800 million are invested in quality production, as between television drama and other audiovisual genres, to which can be added an additional €1,500 million for in-house production. About € 200 million are earmarked by television broadcasters for the production of films for the cinema circuit, and thanks to this investment Italian cinema's market share, in terms of box office takings, now exceeds 30 %. The audiovisual sector is central in the Italian culture and media industry, which moves about € 25 billion a year.

Audiovisuals remain at the centre of the Italian cultural and media industry and alone account for revenues of € 25 billion per year. If we also include fashion and tourism the total revenues earned by Italian creative industries amount to about € 230 billion per year – 15 % of the gross national product. In other words, almost 1 euro in 6 produced in Italy is generated by the creative industry.

The total number of jobs in the culture and entertainment sector is around 360,000. Employment in the sector has grown over the past 10 years by 11 %, three times higher than the growth in employment for the entire economy. There are approximately 300,000 workers paying in to the Ente Nazionale per la Previdenza e l'Assistenza dei Lavoratori dello Spettacolo (the national social security and pensions institute for workers in the entertainment and performing

arts sector), while the members of the Società Italiana Autori e Editori (the National Association of authors and publishers) number around 100,000.

Television is not only software; it is also a stimulus to technological invention and an economic driver. Last year, for example, the value of flat screen television sales amounted to € 3.1 billion. Moreover, 2010 was a record year for television sales, the highest ever since television began in 1954.

DTT is found in 80 % of Italian families, which, therefore, can benefit from an ever-increasing range of free programs offered by more than 50 channels.

These data alone illustrate the importance of the sector for the nation's social and economic development.

We have attempted to illustrate why the dismantling of the present business model of the creative industry can lead to a real risk of social and economic impoverishment for the country as a whole (obviously this risk also applies to other nations).

The practical risk – in the event that the current and very successful business model is dismantled – consists in an alteration to the industry's ecosystem, in other words a reduction in investments in the "beating heart" of the cultural system (we have made a symbolic representation of this idea on the cover of this publication, with due acknowledgement to Keith Hering). We must avoid duplicating the trend towards pauperisation in the field of creative content, in a manner similar to that which the recorded music and the publishing industries, to name but two, are currently experiencing.

The audiovisual industry has an important role to play for the economic and social system, as well as for cultural identity and democratic freedoms.

Internet, in its turn, is neither Paradise nor Hell. It is a "medium/market/conversation" characterised by multiple contradictions.

The web may well be a great dispenser of knowledge (as well, perhaps, as a producer of information overload) and a great stimulus to the economy (but also a technology that generates many illusions, with the consequent risk of "high-cost free culture"). A player such as Google is to be credited for having broken down the barriers to the global advertising market to the benefit of many small and medium companies. However, there is also a dark side to the web, which

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refers to how its resources and properties are commercialised. "Google shifts the source of economic revenue from the ownership of content to the control of human attention", to quote the persuasive words of Carnevale Maffé. However, we must ask ourselves: what benefits has this shift produced for the social and economic benefit of society as a whole? The risk of a "googlization" of the human condition has been recently studied by the copyright researcher Vaidhynathan. [▶159].

Shifting the source of economic revenue from content proprietorship to the control of human attention entails risks for both the individual and the social sphere.

We do not want to dwell on the impending risk of "the commercialisation" of the social networks, illustrated by the - arguably extreme but emblematic - case of the Australian company Social, specialised in advertising, marketing and promotion which proposed online sales of "friends" for, in particular, Facebook, MySpace, and Twitter [▶160].

As Giorello has penetratingly written, for every technological innovation (and we would also add media innovation) a conflict reappears between those who defend intellectual property and those who accuse it of impeding progress - a kind of eternal conflict between the "liberators of knowledge" and the "usurpers of rights" [▶161] ...

This time, however, an epoch-making battle is in process. Actions ought to be taken to stop the Internet's transformation from a hypothetical "manna" into a network pauperising whoever - authors, artists, technicians, entrepreneurs - works in the creative industries.

The creative industries - not the Internet - give meaning to the social community, and construct the basis for the plural, collective and shared cultural consciousness, which are all, at present, currently exposed to the consequences of increased Web entanglement: lost meaning, fragmented knowledge, social isolation, and digital pollution.

Otherwise we run the risk - no less serious - of a generalised cultural impoverishment.

The country's digital agenda is important, but not so important as to be allowed to run roughshod over the country's "cultural agenda."

We are convinced that it is important to work towards a "fibre nation" but we hold that a "creative nation" is more important: a creative media-nation, as the title of our project proclaims.

The risk of subjects who do little or nothing for cultural creativity and live parasitically off positions of Internet dominance appears to be very real. These are hegemonic and rapacious merchants that simply prey on quality goods conceived of and produced by others.

It is necessary to heighten the policy-makers' awareness of this risk as well keeping the general public informed.

We would like to conclude this survey, which makes no claims to being a comprehensive survey as it is an ongoing study - in the light of the parallel research studies undertaken on some other important European markets (in primis, the study by Foster and Broughton "Creative UK" for Channel 4, ITV, Pact and Sky) - recalling how the question of the risk of losing quality in the production of content was also studied in depth and analysed, and with striking foresight, two and a half centuries ago.

"Nihil novi sub sole"?!

«In truth, skilful printers barely have the time to publish the works to which they dedicated their time and resources (...), but that same work is reprinted by dolts, who have none of their skills (...), or invested anything, and yet for that reason they can sell at a lower price (...), without incurring any risk. »

Denis Diderot

("Lettre adressée à un magistrat sur le commerce de la librairie", 1764)

Roma, October 2011

▶159. Carlo Alberto Carnevale Maffé, "Google, l'impresa-nazione", introduction to the Italian edition of David Vise, Mark Malseed, "Google Story", Egea, Milan, 2010, page XXI; Siva Vaidhynathan, "The Googlization of Everything (And Why We Should Worry)", University of California Press, Berkeley-Los Angeles, 2011.

▶160. See Mark Milian, "USocial CEO: We're gaming Digg", in "The New York Times", 5 March 2009. The Company allows the "purchase" (sic) of 1,000 friends on Facebook for an indicative price of 200 dollars, i.e. cents a "friend"... The sale of profiles (the so-called "pay-for-fan model") was

criticised by Mark Zuckerberg, and Facebook threatened not only to take legal action against the company but also to eliminate members from Facebook who buy friends and fans. In November 2009, the Australian company appeared to stop offering the service or at least reformulated the service but there are many companies on the Web that propose - probably falsely - similar services.

▶161. Giulio Giorello, "I neopirati informatici. Liberatori del sapere o usurpatori di diritti", in "Corriere della Sera", Milan, 6 March 2011.



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Notes:

- with only a few exceptions books published before 2000 have been omitted;
- in the case of several works by the same author, they are listed in descending chronological order;
- as regards hemerography, webliography and subsequent bibliographic updates, please refer to www.italymediacreativenation.org



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Free culture = poor culture

The utopia of the "no copyright" business model

Weakening copyright = killing off the creative industries

The manna illusion: fewer resources for quality content

The rhetoric of the "long tail": the risk of a bubble

Imbalances, inequalities and parasitic income earned by the new internet players











The grand illusion: internet liberates use but impoverishes content

Free use is a theft (as well as a chimera)

No copyright? Freer (perhaps) but (certainly) poorer

Some results extrapolated from the IsICult research dataset for Mediaset



-  The research provides a set of data and analyses that demonstrate the central social and cultural role played by the television industry in terms of national development.
-  Television consumption is absolutely central to the Italians' media diet: the average Italian watches TV 4 hours 10 minutes a day; and 94% of citizens use television to keep abreast of political affairs.
-  The Italian audiovisual industry's posts revenues for €12 billion, which represents about 1% of the GDP - gross domestic product. The 12,000 companies comprising all segments of the sector employ about 50,000 people.
-  Italian television networks, over the last decade, have invested around €4.5 billion in national TV-drama, producing over 7,000 hours of quality content.
-  Every year, around €800 million is invested in drama and other audiovisual genres, with an additional €1,500 million earmarked for in-house production. Television networks assign about 200 million euros a year for the production of films for the cinema. Thanks to this investment Italian films are responsible for more than 30 % of box-office receipts.
-  The audiovisual sector lies at the core of the media and culture industry in Italy, and is capable of turning over about €25 billion a year. Taking into account fashion and tourism, the entire spectrum of Italy's "creative industries" generates around €230 billion, or 15% of GDP.
-  The total workforce in the culture and entertainment sector is about 360,000 employees. Employment in the sector rose 11% in the space of a decade, three times the rate of growth of the workforce in the entire economy. The workers paying into Enpals (the Italian national social security for employees in the entertainment sector) number around 300,000, while Siae (the collecting society for authors, publishers and other rights holders in entertainment) has around 100,000 members.
-  Television not only generates revenue through its "software" (content, broadcast scheduling), but also stimulates technological innovation and acts as an economic driving force: in 2010 sales of flat screen televisions exceeded €3.1 billion. Sales of television sets (close to 7 million) were the highest since television broadcasting first began in 1954.
-  Digital terrestrial television is currently viewed in 80% of Italian households, enabling them to benefit from an increasingly wide choice of free content that now comprises over 50-channels.
-  In its relations with the Internet, television still enjoys an excellent position (the television beats the Internet 13 to 1, in the time spent by Italians): increasingly larger numbers of internet users watch TV through the net, and develop "social television". This is a trend that, given appropriate safeguards for intellectual property, can produce a win-win situation not only for content suppliers but also for multiplatform operators, offering consumers, first and foremost, an ever greater qualitative and quantitative offer and ever greater freedom to use it.