

GLOBAL INFORMATION SOCIETY WATCH 2015

Sexual rights and the internet



ASSOCIATION FOR PROGRESSIVE COMMUNICATIONS (APC)
AND HUMANIST INSTITUTE FOR COOPERATION WITH DEVELOPING COUNTRIES (Hivos)

Global Information Society Watch 2015

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Eurovisioni

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Introduction

It was almost 40 years ago – 1976 – when the Supreme Court of Italy ordered the producer of Bernardo Bertolucci’s movie *Last Tango in Paris* to burn the negative of the film because it was considered pornographic and scandalous. Those times are over, and now legislation in Italy concerning sexually explicit material is in line with other progressive European countries, with only child pornography remaining a crime.

Despite this, Italy is lagging behind most other western European Union (EU) countries in the recognition of lesbian, gay, bisexual and transgender (LGBT) rights. While the crime of homosexuality was abolished in 1887,¹ the country lacks laws on same-sex marriages (or civil unions) and on homophobia (and transphobia). However, issues such as the recognition of same sex-marriage, which until a few years ago were marginal in mainstream public discourse, have recently and exponentially entered into public conversation, both online and offline.

This report considers two issues: the status of regulating online pornography, where it concludes that sufficient provisions exist to balance the need for free expression and the protection of minors from abuse; and the more troubling arena of hate speech online, targeted specifically at the country’s sexual minorities, where still no acceptable solutions have been found.

Sexual rights campaigns on the internet

The internet has become an important platform where public debate on controversial topics, such as same-sex marriage, takes place. LGBT activists use it regularly to tackle prejudices, to fight homophobia and to run campaigns in favour of their rights. Very often LGBT campaigns are conduct-

ed with the support of the women’s movement, especially when fighting against sexual violence.

In October 2014 the mayors of Milan and Rome decided to “stretch” administrative regulations by registering same-sex unions contracted abroad. This decision triggered a heated national debate, mainly led by cyber activists, on social networks and other online forums.

This momentum has continued over the last two years, foregrounding public debate on LGBT rights, to the point that the issue of same-sex marriage was debated in parliament – even though it has so far been ineffective in terms of a new law on civil union being passed. (Pro-gay rights legislation in the Italian parliament is often thwarted by the Catholic Church and political parties under its influence).

This shows the viral effect of online campaigns. In February 2013, ahead of a discussion in parliament on a draft law to recognise civil union, momentum supporting the draft was built through social media discussion and through an online petition on the Avaaz.org² platform. In a few days the petition gathered more than 10,000 signatures in favour of the new law.³

Among the most important activist websites dealing with LGBT issues are www.arcigay.it (the voice of the oldest gay activist movement in the country, called Arci Gay) and www.zeroviolenza.it (the website for the movement fighting to stop violence against women and LGBT people). A broader network has formed around these two websites. Each year it organises a number of initiatives in support of LGBT rights.

Since the first Gay Pride event organised by Circolo Mario Mieli⁴ in Rome on 1-9 July 2000 (in the middle of the Catholic Jubilee year), the rights of LGBT people have gained legitimacy, recognition and a political voice. The national Pride event has

1 https://it.wikipedia.org/wiki/Diritti_LGBT_in_Italia

2 https://secure.avaaz.org/it/petition/Matrimoni_omosessuali_in_Italia/?pv=20

3 During this campaign, popular videoblogger Carlo Gabardini published a video titled *Marmellata o Nutella – ci si innamora di chi ci s’innamora* (Jam or Nutella – We fall in love with who we fall in love with), which was viewed by more than 200,000 people on YouTube and was re-posted by several other popular web platforms. www.youtube.com/watch?v=axdRn-ai758

4 The oldest Italian gay association, founded in 1983. www.mariomieli.com

now been replaced by myriad local Prides (marches, camps, sit-ins, be-ins, etc.), events that take place in all major towns and cities of the country.⁵

Many other websites contribute to the LGBT cause, each one focusing on a specific challenge when it comes to sexuality and identity. These include: www.famigliarcobaleno.org, which is dedicated to help parents and children discuss homosexuality; www.agedonazionale.org, which offers positive examples of families where the coming out of a family member has been accepted; and websites focusing on assisting teachers and students deal with LGBT prejudices in schools (such as www.minorimedia.it, www.retedelledonne.it and www.tempi.it/gender-in-classe-ecco-i-libri).

Finally, two websites dedicate themselves to helping people facing sexual problems or questioning their sexual identity: www.sostegnogay.it and www.altereva.it.

Cyber harassment of sexual minorities

Unfortunately, as much as the internet is used as a vehicle to promote the rights of sexual minorities, it is also used by others as a tool to oppress and persecute them. According to statistics provided by Arci Gay, most hate speech against LGBTs occurs on the internet, specifically on public chats.⁶ Media attention on the issue of hate speech online peaked in 2013 following two cases of gay people committing suicide, both motivated partly by cyber harassment. In the first case a 14-year-old boy committed suicide in Rome (on 12 August 2013)⁷ and in the second, a 21-year-old-man, Simone D., also killed himself in Rome (on 27 October 2013).⁸

The coincidence of the two cases occurring in a short span of time provoked a wave of attention from public authorities and in parliament. The result was that the deputy minister of communication at the time published a first draft of a new law called the Code of Self-Regulation to Prevent and Fight Cyber Bullying.⁹ A multistakeholder process was launched to develop this text. Those who participated were the related ministries (interior,

communication and education), the police, the authority on privacy,¹⁰ the communications regulator AGCOM,¹¹ internet service providers (ISPs), the media, telecommunications associations, companies like Google and Microsoft, and associations of internet users. The draft code was published on 8 January 2014 for public consultation, but the final version has never been adopted because – in the meantime – the government changed and the new minister did not consider the bill a priority.¹²

Online pornography and the law

The second part of this report deals with online pornography. There is no specific prohibition on the publication of pornographic material (produced by consenting adults) over the internet, but existing legislation regulates the publication of pornographic content in other media, such as the press, in cinemas, on DVD or TV. The legislation authorises the distribution of pornographic material on the condition that it is not made accessible to minors. The problem of how to prevent minors from accessing this material over the internet – the problem of age verification – is not dealt with by the law.

Legislation on child pornography

The only prohibition that is prescribed by law in Italy concerns child pornography.

Most of the legislation in this field derives from the adoption and adaptation of international treaties and conventions formulated by the United Nations (UN), the Council of Europe and the EU. Specifically, the main sources for Italian legislation in this field are the UN Convention on the Rights of the Child,¹³ the so-called Budapest Convention on Cybercrime,¹⁴ the so-called Lanzarote Convention of the Council of Europe against the exploitation and sexual abuse of minors,¹⁵ and the EU Directive on the fight against child abuse and sexual exploitation of minors.¹⁶

5 progettogayforum.altervista.org/chat

6 whenintime.com/HTimeline.aspx?ses=qttmum4v0321wz czjvyeu3vy&tlurl=/tl/vincenzo77/report_omotransfobia_maggio_2013_2fmaggio_2014; www.arcigay.it/wp-content/uploads/ARCIGAY_BullismoOmofobico_Report.pdf; www.risorselgbti.eu/blog/wp-content/uploads/2012/12/report_hate_crimes_ITA.pdf

7 ANSA. (2013, 12 August). Suicide of homosexual boy triggers concern. www.ansa.it/web/notizie/rubriche/english/2013/08/12/Suicide-homosexual-boy-triggers-concern_9149897.html

8 terkinn.wordpress.com/tag/ethics/page/7

9 www.sviluppoeconomico.gov.it/images/stories/documenti/codice_cyberbullismo_8%20gennaio_2013.pdf

10 www.garanteprivacy.it

11 www.agcom.it

12 It is worthwhile to note a source of conflict that emerged during the debate to draft the code among ISPs, internet companies and telecoms providers: internet companies such as Google, Twitter and Facebook are accused by local service providers of abiding by their own corporate guidelines at the expense of national regulations.

13 https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

14 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090001680080f0b>

15 www.coe.int/t/dghl/standardsetting/children/default_en.asp

16 Directive 2011/92/UE, based on the 2004/68 framework decision. eur-lex.europa.eu/legal-content/IT/TXT/PDF/?uri=CELEX:32011L0093&from=EN

One of the laws adopted – No. 38 of 6 February 2006, called Gentiloni’s Law after the minister of communications of that time¹⁷ – is the main legislative tool used to regulate the internet, and to fight child pornography. It includes a section called “Norms against child pornography on the internet”, which establishes the creation of a National Centre to Combat Child Pornography Online (CNCPO)¹⁸ and a National Observatory on Paedophilia.¹⁹ The CNCPO falls under the Ministry of the Interior (because of the police), and the National Observatory on Paedophilia under the Prime Minister’s Office (which is in charge of analysing social trends).

The same piece of legislation served to modify the Italian penal code by introducing new crimes under several articles. These were Article 600 bis, concerning the sexual abuse of minors; Article 600 ter, dealing with the possession, exchange and acquisition of child pornographic material, including animations and cartoons; Article 19, which introduced the obligation for all ISPs to alert the CNCPO of any website containing child pornography or the sexual abuse of minors. A further article was introduced into the penal code in 2012: Article 414 bis, which makes it a crime to encourage or justify (in Italian law the word “instigate” is used to refer to this) paedophilia and child pornography, a change that came as a consequence of the ratification of the Lanzarote Convention. The introduction of this new crime – which can be punished by 18 months to five years in jail – specifies that this “instigation” can happen over any medium, including the internet, social media, smart phones and any future devices or media.

The last modification of the current corpus of legislation dealing with child pornography and the internet happened in March 2015 with DL28/2015. This changed the punishment of some crimes from jail sentences to fines. This possibility applies to all crimes punished through a maximum of five years jail term, including crimes linked to child pornography on the internet.²⁰

Filtering child pornography

Filtering of internet content in Italy is allowed when it concerns child pornography. Law 38/2006, already mentioned, obliges all Italian ISPs to filter

all websites included in a special list produced and regularly updated by the CNCPO. All websites included in this list have to be made inaccessible to internet users by their ISP. ISPs are also obliged to immediately inform the CNCPO of any websites they suspect may contain child pornography. A special form is published on the homepage of each ISP to allow users to alert the ISP of any suspected case of child pornography.

Websites that have been included in this list erroneously can appeal to the courts. If the website was wrongly included, it can be removed from the list by the courts. There is however no possibility of claiming damages for the cost of this court action.

Self-regulation

All ISPs and most fixed and mobile telecom operators offer their clients the possibility of activating parental control filters for devices used by minors to access the internet. When these filters are activated, a password is needed to access certain websites or telecom services (such as sex hotlines). Telecom operators produce their own blacklist of websites and services or adapt existing ones developed in other countries. Television and radio stations fall under the Media and Minors Committee,²¹ a self-regulatory body created by the Ministry of Communications and AGCOM²² with the mandate to protect children and to prevent their access to pornographic material.

Conclusions

The situation in Italy regarding the legislation of sexual behaviour and expression online is not particularly worrying given that no specific provisions exist, except for fighting child pornography. Up until now this legislation has been applied in a very strict and limited way, and has not created problems for freedom of expression. Civil society concerns are, however, focused on the newly introduced crime of instigation of child pornography, which potentially could be used to restrict freedom of expression.

17 www.camera.it/parlam/leggi/06038l.htm

18 Centro nazionale per il contrasto alla pedopornografia sulla rete. www.poliziadistato.it/articolo/23399

19 www.osservatoriodopedofilia.gov.it

20 The purpose was to reduce the number of inmates in the country’s overcrowded prisons.

21 Comitato Media e Minori. www.sviluppoeconomico.gov.it/index.php/it/ministero/organismi/area-tutela-minori

22 Activities of AGCOM on child protection can be found at this link: www.agcom.it/tutela-dei-minori. In 2014 a specific report on media and minors was published: www.agcom.it/documents/10179/0/Documento/574a3303-87d6-40b4-86d4-3c87a02aa6cb and the full text is available at: www.agcom.it/documents/10179/540191/Studio-Ricerca+24-01-2014/59c10eed-74b8-42e8-9701-b17d72cf0996?version=1.0

The use of the internet for activism is expected to experience a renewed peak in activity because the government has announced that it will submit a new proposal on same-sex unions to parliament before the end of the year. This will increase the debate on sexual rights issues.

On the issue of online hate speech in Italy, it is worth recalling what was argued once by one of the most prominent pro-LGBT activists and a former member of parliament, Anna Paola Concia, herself subject to intense homophobic cyber bullying on her popular Twitter profile. “That ridiculous idea of a nasty web in an otherwise ‘good world’,” she said, referring to the fact that Italy, because of its conservative and bloody historical and religious heritage, cannot simply be a better and more liberal country online.²³

Action steps

Civil society and public opinion are carefully following the debate on cyber harassment, currently monitoring if a new law on cyber bullying proposed in the parliament will be adopted or not. On 13 April 2015, the new minister of education, Stefania Giannini, announced her draft bill called Guidelines for Actions to Prevent and Fight Bullying and Cyber Bullying.²⁴ This is in line with the text produced in 2014 by the Ministry of Communication. Whatever final form the bill takes, a delicate balance will have to be reached between the interests of local communications service providers (telcoms operators and ISPs) and global companies such as Twitter or Facebook, who up until now tend to show resistance to local regulations and prefer to stick to their own global policies.

²³ www.donneuropa.it/opinioni/2014/02/11/ridicola-idea-del-web-cattivo-del-mondo-buono; follow the debate also on: www.osservatoriolgbt.eu

²⁴ Linee di orientamento per azioni di prevenzione e contrasto al bullismo e al cyberbullismo. www.istruzione.it/allegati/2015/2015_04_13_16_39_29.pdf

Sexual rights and the internet

The theme for this edition of Global Information Society Watch (GISWatch) is sexual rights and the online world. The eight thematic reports introduce the theme from different perspectives, including the global policy landscape for sexual rights and the internet, the privatisation of spaces for free expression and engagement, the need to create a feminist internet, how to think about children and their vulnerabilities online, and consent and pornography online.

These thematic reports frame the 57 country reports that follow. The topics of the country reports are diverse, ranging from the challenges and possibilities that the internet offers lesbian, gay, bisexual, transgender and queer (LGBTQ) communities, to the active role of religious, cultural and patriarchal establishments in suppressing sexual rights, such as same-sex marriage and the right to legal abortion, to the rights of sex workers, violence against women online, and sex education in schools. Each country report includes a list of action steps for future advocacy.

The timing of this publication is critical: many across the globe are denied their sexual rights, some facing direct persecution for their sexuality (in several countries, homosexuality is a crime). While these reports seem to indicate that the internet does help in the expression and defence of sexual rights, they also show that in some contexts this potential is under threat – whether through the active use of the internet by conservative and reactionary groups, or through threats of harassment and violence.

The reports suggest that a radical revisiting of policy, legislation and practice is needed in many contexts to protect and promote the possibilities of the internet for ensuring that sexual rights are realised all over the world.

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