

SECTION II

◆ PENAL REMEDIES AND PENALTIES



171. Without prejudice to the provisions of Article 171bis and Article 171ter, any person who, without having the right thereto, and for any purpose and in any form:

(a)
reproduces, transcribes, recites in public, disseminates, sells or offers for sale, or otherwise commercially distributes the work of another person, or reveals the contents of such work before it is made public, or introduces or circulates within the territory of the State copies produced abroad contrary to Italian law;

(b)
performs or recites in public or disseminates, with or without variations or additions, the work of another person intended for public performance, or a musical composition. Performance includes the public showing of a cinematographic work, the performance in public of musical compositions included in cinematographic works, and broadcasting by means of a loudspeaker operated in public;

(c)
commits the acts referred to in the preceding subparagraphs by means of any form of transformation referred to in this Law;

(d)
reproduces copies or gives performances in excess of the number which he has the right to reproduce or perform;

(e) [repealed]

(f)
in violation of Article 79, retransmits by wire or by radio, or records on phonograph records or other like devices radiophonic transmissions or retransmissions, or sells the unlawfully recorded phonograph records or other devices;

shall be liable to a fine of between 100,000 lire and 4,000,000 lire.

The penalty shall be imprisonment of up to one year or a fine of not less than 1,000,000 lire if the acts referred to above are committed in relation to a work of another person which is not intended for public disclosure or by usurpation of the authorship of the work or with deformation, mutilation or other modification of the work and such acts constitute an offense against the honor or reputation of the author.

Violation of the provisions of the third and fourth paragraphs of Article 68 shall cause the photocopying or xerocopying activity or comparable system of reproduction to be suspended for a period of six months to one year, and a fine of between 2,000,000 and 10,000,000 lire to be imposed.

171 bis.—(1) Any person who unlawfully duplicates computer programs for profitmaking purposes or who imports, distributes, sells, holds for commercial or business purposes or rents programs embodied in media not bearing the mark of the SIAE shall be liable to a prison term of between six months and three years and to a fine of between 5,000,000 and 30,000,000 lire. The same penalty shall apply if the act involves any means intended solely to permit or facilitate the unauthorized removal or circumvention of any technical device applied to protect a computer program. For a serious offense, the penalty shall be a prison term of not less than two years and a fine of 30,000,000 lire.

(2)

Any person who, for profitmaking purposes, using media not bearing the mark of the SIAE, reproduces, transfers to another medium, distributes, communicates, presents or demonstrates in public the contents of a data bank in breach of the provisions of Articles 64quinquies and 64sexies, or extracts or reuses material from a data bank in breach of the provisions of Articles 102bis and 102ter, or who distributes, sells or rents a data bank, shall be liable to a prison term of between six months and three years and to a fine of between 5,000,000 and 30,000,000 lire. The penalty shall be a prison term of not less than two years and a fine of 30,000,000 lire if the offense is serious.

171 ter.—(1) A prison term of six months to three years and a fine of 5,000,000 to 30,000,000 lire shall be imposed, if the act is committed for other than personal use, on any person who, with gainful intent:

(a) unlawfully duplicates, reproduces, transmits or broadcasts in public by whatever means, in whole or in part, an intellectual work intended for television or cinema use, through sale or hire, or discs, tapes or similar media or any other media containing phonograms or videograms of comparable musical, cinematographic or audiovisual works or sequences of moving images;

(b)
unlawfully reproduces, transmits or broadcasts in public, by whatever means, works or parts of works of literary, dramatic, scientific or educational, musical or dramaticomusical character, as well as multimedia works, even when included in collective or composite works or data banks;

(c)
without having participated in the duplication or reproduction, brings into the territory of the State, holds for sale or distribution, distributes, places on sale, rents or releases for any reason, shows in public or broadcasts on television by whatever means, transmits by radio, or causes to be heard in public, the unlawful duplications or reproductions referred to in subparagraphs (a) and (b);

(d)
holds for sale or distribution, places on sale, sells, rents, releases for any reason, shows in public or broadcasts by television or radio by whatever means videocassettes, music cassettes, any medium containing phonograms or videograms of musical, cinematographic or audiovisual works or sequences of moving images, or any other medium to which, in accordance with this Law, the SIAE is required to affix its mark, either without such a mark or with a counterfeit or altered mark, or produces, uses, imports, places on sale, rents or releases for any reason equipment capable of circumventing, decoding or removing measures designed to protect copyright or related rights;

(e)
in the absence of an agreement with the lawful distributor, transmits or broadcasts, by any means, an encrypted service received by apparatus or parts of apparatus capable of decoding transmissions subject to restricted access;

(f)
brings into the territory of the State, holds for sale or distribution, distributes, sells, rents, releases for any reason, advertises for commercial purposes or installs special decoding devices or components that afford access to an encrypted service without payment of the necessary fee.

(2) Any person who:

(a)
unlawfully reproduces, duplicates, transmits or broadcasts, sells or otherwise places on the market, releases for any reason or imports unlawfully more than 50 copies or originals of works protected by copyright or by related rights;

(b)
in the course of a business activity involving the reproduction, distribution, sale, marketing or importation of works protected by copyright or related rights, renders himself guilty of the offenses referred to in paragraph (1);

(c) promotes or organizes the unlawful activities referred to in paragraph (1);

shall be liable to a prison term of between one and four years and to a fine of between 5,000,000 and 30,000,000 lire.

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e penalty shall be reduced if the evidence of the offense is particularly tenuous.

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conviction for one of the offenses referred to in paragraph (1) shall include:

(a)
the application of the subsidiary penalties provided for in Articles 30 and 32bis of the Criminal Code;

(b)
publication of the sentence in one or more daily newspapers, including at least one in national circulation, and in one or more specialized reviews;

(c)
suspension for one year of the radio or television broadcasting license or authorization with respect to the exercise of the production or business activity.

(5)
Income deriving from the imposition of the fines provided for in the preceding paragraphs shall be paid to the National Provident and Assistance Agency for Painters and

Sculptors, Musicians, Writers and Playwrights

[Ente nazionale di previdenza ed assistenza per i pittori e scultori, musicisti, scrittori ed autoridrammatici].

171 quater. Any person who, without being authorized to do so and with gainful intent:

(a)
rents or in any manner permits the use, for whatever purpose, of original specimens or of copies or of media, obtained lawfully, of copyrighted works;

(b)
records the performances referred to in Article 80 on audio, video or audiovisual media;

shall be liable, except where the act amounts to a more serious offense, to imprisonment of up to one

year or a fine of between 1,000,000 and 10,000,000 lire.

171quinquies.—(1) For the purposes of the provisions of this Law, sale with a repurchase option or rescission clause shall be deemed equivalent to renting if provision is made for the seller, in the event of repurchase invocation of the clause, to repay a sum lower than that paid, or if the purchaser, at the time of delivery, makes provision for payment of a sum as a deposit or otherwise on account which is in any event lower than the sale price.

171sexies.—(1) If the seized material, owing to its size, is difficult to store, the judicial authority may order its destruction under the provisions of Article 83 of the implementing, coordinating and transitional provisions of the Code of Criminal Procedure, approved by Legislative Decree No. 271 of July 28, 1989.

(2)
Provision shall always be made for the confiscation of instruments and materials used or intended for committing the offenses referred to in Articles 171bis, 171ter and 171quater, and of videocassettes or other audiovisual, phonographic, data processing or multimedia material unlawfully duplicated, reproduced, released, traded, held or brought into the national territory, or which either do not bear the mark of the SIAE where required or bear an SIAE mark that is counterfeit, altered or intended for a different work. Confiscation shall also be ordered in the event of enforcement of a penalty on a request made by the parties under Article 444 of the Code of Criminal Procedure.

(3)
The provisions of the previous paragraphs shall also apply if the goods belong to a different legal person in whose interests one of the parties to the offense has acted.

171septies.—(1) The penalty referred to in Article 171ter(1) shall also apply:

(a)
to producers or importers of media not subject to marking under Article 181bis who fail to provide the SIAE with data permitting unambiguous identification of the said media within 30 days of the date of their becoming available for sale on the national territory or being imported;

(b)
to any person who falsely declares fulfillment of his obligations under Article 181bis(2) of this Law, except where the act does not constitute a more serious offense.

171octies.—(1) If the act does not constitute a more serious offense, any person who with fraudulent

intent produces, offers for sale, imports, advertises, installs or modifies, or makes public or private use of, devices or parts of devices capable of decoding audiovisual transmissions subject to special conditions of access and effected on the air, by satellite or by cable, in analog or digital form, shall be liable to a prison term of between six months and three years and a fine of between 5,000,000 and 50,000,000 lire. Such special conditions of access shall be understood to be those whereby all audiovisual signals transmitted by Italian or foreign broadcasters are in a form that renders them perceivable only by closed groups of users selected by the broadcaster of the signals, whether or not a fee is payable for such a service to be enjoyed.

(2)

For a serious offense, the penalty shall not be less than a prison term of two years and a fine of 30,000,000 lire.