

Italy

	2014	2015		
Internet Freedom Status	Free	Free	Population:	61.3 million
Obstacles to Access (0-25)	4	4	Internet Penetration 2014:	62 percent
Limits on Content (0-35)	6	6	Social Media/ICT Apps Blocked:	No
Violations of User Rights (0-40)	12	13	Political/Social Content Blocked:	No
TOTAL* (0-100)	22	23	Bloggers/ICT Users Arrested:	No
			Press Freedom 2015 Status:	Partly Free

* 0=most free, 100=least free

Key Developments: June 2014 – May 2015

- In the wake of terrorist attacks in Paris, Italy passed an antiterrorism law in April 2015 that criminalized online terrorist recruitment and the endorsement or incitement of terrorism online (see **Legal Environment**).
- The antiterrorism law also entrusts the public prosecutor with drawing up a blacklist of terrorist websites to be blocked or taken down by service providers, without including provisions for judicial oversight (see **Blocking and Filtering** and **Content Removal**).
- Service providers must also retain user metadata for a period of 24 months, up from 12, despite a European court ruling that such measures restricted the fundamental right to privacy one year earlier (see **Surveillance, Privacy, and Anonymity**).
- An interparliamentary committee, appointed in July 2014, released a nonbinding “Declaration of Internet Rights” in a bid to increase awareness of digital rights and to inspire legislative actions (see **Legal Environment**).

Introduction

For a country with an advanced economy, Italy's internet penetration rate lags behind that of many other European countries at around 62 percent of the population. Italian authorities do not generally engage in political censorship of online speech, and, as in previous years, no bloggers or social media users were imprisoned as of mid-2015. One of the most significant developments during the coverage period was the passage of a new antiterrorism law in April 2015. The law broadened language in the criminal code on terrorist recruitment as well as the endorsement or incitement of terrorism to include online offenses. The law also provides for the blocking and removal of terrorist websites by order of the public prosecutor, who may request ISPs prevent access to a blacklist drawn up by the Interior Ministry. Regarding surveillance, the law extends the period that internet providers must retain user data to 24 months, despite the Court of Justice of the European Union striking down the European Data Directive in April 2014.¹ On a positive note, an article authorizing the police to remotely access targets' computers was withdrawn from the antiterrorism law.

Several other legal developments took place over the past year. A proposed tax on e-commerce, commonly dubbed as a "Digital Tax" or "Google Tax," may be revived after Prime Minister Matteo Renzi's recent comments in favor of the shelved bill. The proposal would impose a 25 percent tax levy on multinational companies selling digital services and operating longer than six months in Italy with revenues of over 5 million euros.² Italy's Transportation Authority has introduced a proposal to change the regulation of public transportation in a bid to accommodate ride-sharing services such as Uber, a popular mobile app which had been plagued by legal obstacles.³ Finally, Italy became the first European country to publish a "Declaration of Internet Rights" after an interparliamentary committee released the document for further public consultation. The declaration is not legally binding, but experts and activists hope it will be taken up by legislations when amending the country's current set of laws.

Italy's first computer network emerged in 1980, when a group of nuclear physicists connected all of the country's nuclear research institutes. At the beginning, the internet was just one of several packet-switching networks that coexisted in Italy. The dominant telecommunications firm at the time, Telecom Italia, tried to impose its privately owned system, while various center-left governments, aware of the importance of interconnectivity, supported integration among the networks. Ultimately, the adaptability and simplicity of the internet prevailed. Access to the internet was available to private users after 1995, and the number of internet service providers (ISPs) soared within a short period of time. Among the remaining obstacles to greater internet penetration include a lack of familiarity with computers and with the English language, as well as the dominance of commercial television, and the diversion of consumers' telecommunications spending to mobile telephony. Since the February 2013 elections, the use of social media and the web has proved to be a central element of political communication.

1 Aldo Sghirinzetti, "Italy: Anti-terrorism decree to strengthen government surveillance," European Digital Rights (EDRI), April 22, 2015, <http://bit.ly/1RCROKR>.

2 Federico Guerrini, Italy's prime minister floats the idea of a 'digital tax' to get web giants to pay up," ZDNet, September 17, 2015, <http://www.zdnet.com/article/italys-prime-minister-floats-the-idea-of-a-digital-tax-to-get-web-giants-to-pay-up/>.

3 Claudio Tamburrino, "Italia, la svolta per Uber," *Punto Informatico*, June 5, 2015, <http://bit.ly/1jSmEPk>. This provision would exclude Uber Pop, however, after the strong protests undertaken by taxi drivers several times in 2014.

Obstacles to Access

Since the 1990s, the Italian government has supported the internet as a catalyst for economic growth, increased tourism, reduced communication costs, and more efficient government operations. As of 2014-15, this attitude still prevails but, as in the past, there is a considerable gap between aspirations and reality.

Availability and Ease of Access

According to the International Telecommunication Union (ITU), Italy had an internet penetration rate of 62 percent in 2014, an increase from 49 percent in 2009.⁴ While Italy's internet penetration rate is higher than the global average, it is much lower than the overall rate in Western Europe and, as indicated by a recent report, it lags behind in many ICT indicators in Europe.⁵ The relatively low penetration rate is only partially due to infrastructural limitations, as unfamiliarity with the internet among the older generations as well as a penchant for mobile phone devices rather than desktop computers also contribute. Naturally, Italy's most devastating financial crisis in its modern history has something to do with it as well.

Mobile phone use is much more widespread than internet access, with the penetration rate reaching 154 percent in 2014.⁶ The majority of subscriptions are still prepaid, but flat tariffs are quickly on the rise.⁷ Mobile telephone usage is ubiquitous, however, and internet access via mobile phones is almost dominant now. Mobile access now accounts for well over 60 percent of internet users. For fixed lines, Italians still prefer to access from home, with the workplace the second most common access point, followed by schools and universities. Slightly less than half of Italy's internet users are female.⁸ Cost is not a significant barrier to access. The price for a broadband connection may range from €20 to €40 (US\$26-52) per month, compared to average monthly per capita income of around US\$2,700.⁹

ADSL (fixed) broadband connections (which reach up to 2 Mbps when advertised as "basic service") are available in about 98 percent of Italy's territory. However, fast broadband (more than 30 Mbps) is only slated to reach 50 percent of the territory in 2016-17. Italy has one of lowest coverage rates of high speed broadband in the EU,¹⁰ with only 21 percent of households covered compared to a European average of 62 percent.¹¹ At the end of 2014, the average speed of connections in Italy was 5.6Mbps, with only 5.7 percent of Italians enjoying speeds over 10Mbps (albeit with a growth of 28

4 International Telecommunication Union (ITU), "Percentage of individuals using the Internet," "Explore Key ICT Statistics," 2014 & 2009, <http://bit.ly/1eKDWOQ>.

5 Telecom Italia Mobile, *Italia Connessa 2014: Agende Digitali Regionali*, <http://bit.ly/1NCcGbo>.

6 ITU, "Mobile-cellular subscriptions," "Explore Key ICT Statistics," 2014, <http://bit.ly/1eKDWOQ>.

7 Autorità Per Le Garanzie Nelle Comunicazioni (AGCOM), *Osservatorio Trimestrale sulle Telecomunicazioni*, September 30, 2013, <http://bit.ly/1PpYrG2>.

8 ITU, "Explore Key ICT Statistics," <http://bit.ly/1eKDWOQ>.

9 For the most recent (mid-2015) comparison see for instance, SOS Tariffe, "Connessioni a Banda Larga," <http://bit.ly/1Ou3hCV>.

10 The EU Digital Agenda calls for 100 percent of the territory covered with 30Mbps and at least 50 percent with ultrafast (over 100Mbps) by 2020;

Achieving the Objectives of the Digital Agenda for Europe (DAE) in Italy: Prospects and Challenges, [in Italian] (presentation of the report, Palazzo Chigi, Rome, Italy, January 30, 2014) <http://bit.ly/1L82dAF>.

11 Telecom Italia Mobile, *Italia Connessa 2014: Agende Digitali Regionali*, 47-48.

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percent compared to 2013).¹² There is no plan by telecom companies to achieve ultrafast broadband (over 100 Mbps) anytime soon.

The ambitious infrastructural plan, "Growth 2.0", was announced in 2012 to close Italy's digital divide between those areas that are served by high-speed connections and those that are not by 2014. In February 2014, however, the goal was delayed to 2015,¹³ albeit as of mid-2015 no further update has appeared. The same document also launched the "Digital Agenda" initiative (based on the EU Agenda 2020), intended to expand broadband access and e-government functions (including "digital identity," public e-services, "intelligent communities," and so on).¹⁴ The then-prime minister Enrico Letta appointed Francesco Caio (whom Letta nicknamed "Mr. Digital Agenda") as the government's commissioner in June 2013. Caio, a manager with a long experience in telecom, presented a comprehensive report in January 2014; the infrastructure and economic development minister, along with several other ministries (economy, research and university, public health and others) were meant to be involved in the realization of the digital agenda that would profoundly "transform" Italy's public administration.¹⁵ Then the government changed, Caio left to become Poste Italiane's CEO and the project was inevitably put on hold. Current Prime Minister Renzi has again emphasized the centrality of the digital agenda, but with this stop-and-go Italy is unlikely to fulfill the EU goal.

Restrictions on Connectivity

The government does not impose restrictions on ICT connectivity and access to social media and communication platforms. Telecom Italia owns the physical network, but it is required by European Union (EU) legislation to provide fair access to competitors. Telecom Italia began the process of "externalizing" the infrastructure at the end of May 2013.¹⁶

ICT Market

Access to the internet for private users is offered by 13 different ISPs. Telecom Italia has the largest share of the market, followed by Vodafone, Fastweb, and Tiscali. Telecom Italia Mobile (TIM), Vodafone, Wind, and 3 Italia are the major carriers, and all of them operate third-generation (3G) networks. As elsewhere, sales of tablet computers have been on the rise among the younger generation since 2010 and are likely to keep growing in the coming years.

Regulatory Bodies

The main regulatory body for telecommunications is the Authority for Communications (AGCOM), an independent agency that is accountable to the parliament. Its responsibilities include providing access to networks, protecting intellectual property rights, regulating advertisements, and overseeing

12 Akami, *State of the Internet: Q4 2014 Report*, <http://bit.ly/1LPozZz>.

13 Alessandro Longo, "Lombardo (Infratel): 'Banda larga fra le pastoie della burocrazia,'" *Corriere Digitale*, April 18, 2014, <http://bit.ly/1VOtBGO>.

14 Italian text at: D.L. 179/2012 in G.U. 46/2012, [in Italian] <http://bit.ly/1jsm8AT>; See also Agenzia per l'Italia Digitale, "Agenda Digitale italiana," <http://bit.ly/1PpZcP9>.

15 *Achieving the Objectives of the Digital Agenda for Europe (DAE) in Italy: Prospects and Challenges*. The six "strategic areas of the "Digital Agenda" include infrastructure and cyber security, e-commerce, e-government, e-learning (e-books, digital policy literacy and e-participation), research and innovation in ICT, and smart cities and communities.

16 Telecom Italia "Telecom Italia: CDA approva il progetto di societizzazione della rete di accesso," press release, May 30, 2013, <http://bit.ly/1PaTZf5>.

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public broadcasting. The parliament's majority party appoints AGCOM's president. It used to be that commissioners would come under pressure when it came television broadcasts, (particularly during Berlusconi's premiership), but today digital copyright is the agency's "beite noire," with a proposal for taxing all electronics products. AGCOM's current president Angelo M. Cardani, appointed in July 2012, is in fact a staunch supporter of the regulation that allows the agency to act in first person in case of copyright infringement.¹⁷

Another important player in the field of communications is the Italian Data Protection Authority (DPA). Set up in 1997, the DPA today has a staff of more than 100 people, and four of its main members are elected by parliament for seven-year terms. The DPA is tasked with supervising compliance by both governmental and nongovernmental entities with data protection laws, and "banning or blocking processing operations that are liable to cause serious harm to individuals."¹⁸ It is generally viewed as professional and fair in carrying out its duties. In April 2014, the authority launched a public consultation to assess public support for a large database (SIT, *Sistema Informativo Integrato*) on "bad payers" for telecom companies, which can consult it before accepting a new customer.¹⁹ There are clearly privacy issues involved, which is the rationale for the consultation.

Limits on Content

Authorities do not engage in significant blocking or filtering of internet content, although recent measures to block illegal materials without a court order have worried digital rights activists. Italians have access to the full range of domestic and international news sources and human rights websites. Indeed, a research published by AGCOM on "Internet and Information in Italy" and in April 2015 showed that, although television still represents the first source of information for most Italians, the web and social networks come in second.

Blocking and Filtering

Italy does not block or filter content of a political, social, or religious nature. However, certain websites related to gambling, copyright infringement, and terrorism are subject to blocking or removals (see "Content Removal"). The social-networking site Facebook, the Twitter micro-blogging service, the video-sharing site YouTube, and international blog-hosting sites are all freely available.

Since 2006, online gambling has been permitted only via state-licensed websites, and ISPs are required to block access to international or unlicensed gambling sites identified on a blacklist compiled by the Autonomous Administration of State Monopolies (AAMS). The list of banned sites is available on the AAMS website and updated regularly.²⁰ A similar blacklist system is in place for websites containing child pornography. A law passed in February 2006 (Law No. 6) called for the establishment of a National Center for the Fight against Child Pornography on the Internet within the Postal and Communications Police Service. Based on its own research and on complaints from citizens, the center maintains a list of sites deemed inappropriate and forwards it to ISPs for block-

¹⁷ Cardani is a former chief of staff of Mario Monti when the latter was EU Anti-Trust commissioner. He also worked within the EU Commission for a while; See, AGCOM, "Componenti," <http://bit.ly/1Mnsuss>.

¹⁸ The Italian Data Protection Authority, "The Italian Data Protection Authority: Who We Are," November 17, 2009, <http://bit.ly/1Lr0vvy>.

¹⁹ Italian Data Protection Authority, "Avviso pubblico di avvio della consultazione su 'Costituzione di una banca dati dei clienti morosi nell'ambito dei servizi di comunicazione elettronica,'" April 16, 2014, <http://bit.ly/1K4ziQs>.

²⁰ The blacklist is available (in Italian) at <http://www.aams.gov.it/site.php?id=2484>.

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ing.²¹ As with the AAMS list, the child pornography blacklist is publicly available, though some child advocates have raised concerns that this encourages visits to the sites by users with circumvention tools. ISPs also offer subscribers “family internet” packages that block access to adult pornography and sites with violent content, in exchange for a small premium.

Decisions related to the blocking of websites for copyright violations are implemented by the *Guardia di Finanza* (Finance Guard or GdF), which handles issues of cybercrime, fraud, and trafficking.²² In the infrequent cases in which websites containing news have to be blocked for copyright, this is made possible by a 1941 law, explicitly amended by the Berlusconi government in 2005 to include the web and computer communication.²³

In October 2011, the European Court of Justice had ruled that soccer games could not be protected by copyright, and the same year, a Rome court ruled against RTI (a subsidiary of the Berlusconi-owned Mediaset) that tried to prevent Google’s Blogger platform from streaming Italian football matches from Mediaset’s TV channels. Nevertheless, in early 2013 a court in Milan ruled that, even if the soccer game itself was not protected, distributors could seek copyright protection over its broadcast.²⁴ Thus RTI-Mediaset won the case and ten indexing platforms with links to the streaming of major sports events were shut down. This decision was reiterated again in September 2013 by a court in Rome that ruled that link to soccer game streaming cannot be justified on the basis of freedom of the press because it is a copyright violation, thus accepting Mediaset’s viewpoint against the webzine *Il Post*.²⁵

The 2014 antiterrorism law (voted in the Senate on April 15) also provides for the blocking and removal of terrorist websites by order of the public prosecutor, who may request that ISPs prevent access to a blacklist drawn up by the Interior Ministry similar to that used to block child pornography sites.²⁶

Content Removal

Provisions for the removal of content have taken center stage in recent years. In December 2013, AGCOM finally adopted the highly controversial resolution that gives it the power remove content upon review by an internal panel but without prior judicial approval,²⁷ if a copyright violation is detected.²⁸ The resolution, which had strongly been criticized by users’ organizations and ISP representatives, entered into force on March 31, 2014. In April 2014, the first procedures for violations of

21 Polizia di Stato, “Centro nazionale per il contrasto alla pedopornografia sulla rete,” [National Center for the Fight against Child Pornography on the Internet] May 10, 2010, <http://bit.ly/1LFdZQ4>.

22 The Italian Police, acting on order by a judge in Rome, who ruled in favor of a film distribution company (Sunshine Pictures), ordered 27 Italian and international ISPs to proceed with a DNS blockade to prevent Italian users to see a French movie “Un Monstre à Paris” distributed by the company. Mauro Vecchio, “Italia, maxisequestro dello sharing in corso,” *Punto Informatico*, April 15, 2013, <http://bit.ly/1L85TCA>.

23 Altalex, “L. 633/1941 in G.U. July 16, 1941, <http://bit.ly/1Lh2qPS>; and in particular it is art. 171/a/bis, amended by the D.L. 7/2005 in G.U. April 1, 2005, <http://www.altalex.com/index.php?idnot=5918>.

24 Mauro Vecchio “Mediaset, sequestro per lo streaming pallonaro,” *Punto Informatico*, January 16, 2013, <http://bit.ly/1VOyq8a>.

25 Mauro Vecchio, “Il link allo streaming non è diritto di cronaca,” *Punto Informatico*, September 16, 2013, <http://bit.ly/1jkIEfi>.

26 Sghirinzetti, “Italy: Anti-terrorism decree to strengthen government surveillance.”

27 European Parliament, “Subject: Internet censorship in Italy—via administrative procedure,” July 13, 2011, February 2, 2013, <http://bit.ly/1MsiZrQ>.

28 AGCOM, “Regolamento in materia di tutela del diritto d’autore sulle reti di comunicazione elettronica,” December 12, 2013, <http://bit.ly/1WXMfys>.

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copyrights by foreign hosts began, and the problematic construction of the resolution was fully revealed. Previous laws from 2000 and 2003 gave AGCOM an executive mandate to act to take down violations of copyrights.²⁹

The most controversial aspect is that on the basis of an administrative order by AGCOM, after the relevant investigation, ISPs can inhibit access to specific websites, even those that simply contain links through which it is possible to download content that is copyright protected. In May 2014, the authority granted Italian ISPs the mandate to block access to foreign websites that did not reply to AGCOM's solicitations on the basis of the order that would "eventually" arrive.³⁰ This posture would give ISPs a highly discretionary power, without a judicial order or ruling, to filter access to websites. Furthermore, in so doing, ISPs would impede users' access to other legal links and content hosted by those web sites.

Based on these concerns, consumers' organizations and ISP associations appealed the resolution, and in April 9, 2014 Rome's administrative court ruled that opposition to the resolution was justified and asked AGCOM for a moratorium until June 2014 for further consideration and examination. The authority, however, decided to proceed and run the risk that, after a future contrary ruling, its executive decisions may all be void and unlawful.³¹

At times, Italian authorities continue to request the removal of specific content, though the amount is limited. According to Google, the government issued 65 requests for content removal between July and December 2013 (compared to 33 over the previous six months), a considerable increase.³² 77 percent of the requests were broadly interpreted as "defamatory". Finally, a draft bill being introduced in parliament in March 2015, as part of new anti-terrorism law, may affect ISPs as well, because, if passed, it would oblige ISPs to remove controversial material (especially hate speech).³³

Foreshadowing the European Union ruling in favor of the so-called "the right to be forgotten" (or "right to oblivion"), in April 2012, the Italian Supreme Court imposed an obligation on publishers to update their online archives to ensure that outdated facts do not inadvertently damage someone's reputation. But the court also pointed out there were no grounds for libel against the online news outlet that posted the story because events recounted in the article were true, even if they were incomplete or outdated. Routinely, bill proposals to exacerbate the current law and punish bloggers more harshly are presented in parliament, albeit they do not go much farther than that.³⁴

Because of Italy's civil-law system, some judges may occasionally still issue rulings imposing responsibilities on intermediaries to regulate user-generated content, though, judges have repeatedly affirmed that intermediaries should not be liable for the content posted by users. Many in the Italian legal community now believe that, based on existing jurisprudence and thanks also to the provisions laid out in the European Union (EU) e-Commerce Directive,³⁵ service providers should not be

29 Claudio Tamburrino, "AGCOM approva il regolamento sul diritto d'autore," *Punto Informatico*, December 12, 2013, <http://bit.ly/1Ou8KcT>.

30 Gaia Bottà, "AGCOM: a filtrare comincia tu," *Punto Informatico*, April 18, 2014, <http://bit.ly/1QIKerY>.

31 Altroconsumo, "Regolamento AGCOM sul diritto d'autore: il Tar Lazio accoglie le richieste di Altroconsumo," April 9, 2014, <http://bit.ly/1g8JbvS>.

32 Google, "Removal Request by Country," *Transparency Report*, January- June 2014, accessed May 31, 2015, <http://bit.ly/1dWNRJq>.

33 AntiDigital Divide, "Decreto antiterrorismo: Troppi poteri nella mani della Polizia?" March 26, 2015, <http://bit.ly/1MnveGn>.

34 The last instance was in June 2013; Mauro Vecchio, "Obbligo di rettifica, più volte ritornano," *Punto Informatico*, June 26, 2013, <http://bit.ly/1jZg8jA>.

35 European Commission, "E-Commerce Directive," 2000/31/EC, <http://bit.ly/1iuT1su>.

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required to censor search results. Likewise, at the end of 2011, Italy's Supreme Court declared that editors of online magazines were not responsible for defamatory comments posted by readers (thus taking into account the difference between the printed and electronic press). Attempts at introducing bills that would require websites to engage in pre-publication censorship have mostly stalled. At times, proposals that raised alarm bells for free expression advocates have been put forward by past governments (with Berlusconi's being the most determined), but nothing has come out of them.³⁶

Media, Diversity, and Content Manipulation

Even in the absence of legal requirements, ISPs tend to exercise some informal self-censorship, declining to host content that may prove controversial or that could create friction with powerful entities or individuals. Online writers also exercise caution to avoid libel suits by public officials, whose litigation—even when unsuccessful—often takes a significant financial toll on defendants in the traditional media. The Italian government does not proactively manipulate news websites.

Blogging is very popular in Italy, though television remains by far the leading medium for obtaining news. Most policymakers, popular journalists, and figures in the entertainment industry have their own blogs, as do many ordinary citizens. Social-networking sites, especially Facebook and Twitter, have emerged as crucial tools for organizing protests and other mass gatherings, such as concerts, parties, or political rallies, although, at times, some content may be aggressive. It is now “mandatory” for all parties to be adept at communicating via Facebook, Twitter and other social media.

Some restrictions on internet content uncommon in other Western European countries remain in place in Italy. Drawing on a 1948 law against the “clandestine press,” a regulation issued in 2001 holds that anyone providing a news service, including on the internet, must be a “chartered” journalist within the Communication Workers’ Registry (ROC) and hold membership in the national journalists’ association.³⁷ With the exception of one case from late 2000s, these rules have generally not been applied to bloggers and, in practice, millions of blogs are published in Italy without repercussions. Nonetheless, many people who create websites on a range of issues (including scholarly research) still continue to collaborate with registered journalists to protect themselves from potential legal action.

Digital Activism

The use of social media and the web in the general elections of February 2013 proved to be a major innovation. Online tools were central, not only as a communication medium, but also to measure political sympathies by measuring “likes”, hashtags and tweets for the many political players.³⁸ The Five Star Movement, a political party led by former comedian Beppe Grillo, based their political campaign almost exclusively on the internet and declined to take part in political talk-shows or television interviews.

As soon as the new parliament was in office, following the February elections, Grillo and his move-

36 In previous years one blog dealing with a sensitive criminal trial had been shut down, but that has been an exception rather than the rule.

37 Diritto Tecnologia Informazione, Legge March 7, 2001, n. 62, “Nuove norme sull’editoria e sui prodotti editoriali,” [New Rules on Publishing and Publishing Products] accessed August 21, 2012, http://www.interlex.it/testi/101_62.htm.

38 Luca Annunziata, “Chi vince le elezioni su Internet?” *Punto Informatico*, February 8, 2013, <http://bit.ly/1L887BP>.

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ment used the web and internet both to strengthen their political basis and to survey it. The Five star Movement used the web and social media to: (1) select a candidate as the new president of the Italian republic,³⁹ (2) vote on expulsion from the movement/party of those MP who did not conform to the movement's rules and internal decisions, and (3) provide an outlet for Grillo's announcement and statements.⁴⁰

Finally there has been a considerable talk about adopting an FOIA provision for Italy's public administration (PA), modeled on the American act. Yet a comparison between the Italian (Law n. 241/1990) and U.S. legislation shows that, in the Italian case, open data is mostly a declared "intention" as opposed to a real, sanctioned obligation.⁴¹ As of mid-2015, however, the government has opened a dedicated web site⁴² that offers data and information voluntarily made available by local and central administrations. Such data, while valuable for scholarly research, are still a far cry from constituting an Italian FOIA.

Violations of User Rights

Violations against user rights are uncommon in Italy. Criminal defamation laws remain a grave threat to online journalists and social media users, particularly in the ambiguous form they have been applied to the online sphere. A new antiterrorism law was passed in April 2015 extended the period ISPs must keep users' metadata from 12 to 24 months, despite a ruling from Europe's high court striking down such requirements as an affront to human rights.

Legal Environment

As a signatory to the European Convention on Human Rights and other relevant international treaties, freedoms of speech and the press, as well as the confidentiality of correspondence, are constitutionally guaranteed in Italy.⁴³ Yet, given the country's civil law system, inconsistent judicial interpretations are not unusual. This has created some uncertainty when judges issue conflicting decisions on similar cases related to internet freedom, such as intermediary liability. For this reason, online free expression advocates have focused their efforts on proposing legal amendments to improve protections and prevent censorship rather than engaging in public interest litigation.⁴⁴

An inter-parliamentary committee appointed in July 2014 to draft an internet bill of rights released its nonbinding "Declaration of Internet Rights" in July 2015. The declaration makes Italy the first European country to release such a document, following in the footsteps of Brazil.⁴⁵ The declaration contains language defending the right to internet access, data protection, net neutrality, anonymity,

39 The first candidate was Milena Gaibanelli, a journalist, who declined then followed by Stefano Rodotà, former leader of the Privacy authority. In the end the incumbent president, Giorgio Napolitano, was re-elected.

40 Grillo was criticized on his blog for the advertisements revenues from his blog. See *Il Blog di Beppe Grillo*, <http://www.beppegrillo.it/>.

41 Mauro Vecchio "PA, l'incubo della trasparenza tricolore," *Punto Informatico*, February 6, 2013, <http://bit.ly/1N977ya>.

42 I dati aperti della Pubblica Amministrazione, <http://www.dati.gov.it>.

43 An English copy of the constitution is available at, Constitution of the Italian Republic, <http://bit.ly/1hARFPS>; See especially art.15 and 21 Cost.

44 Andrea Monti (lawyer specialized on Internet freedom and activist), in a conversation with author, February 20, 2012.

45 Oreste Pollicino and Marco Bassini, "An Internet Bill of Rights? Pros and Cons of the Italian Way," LSE Media Policy Project Blog, August 5, 2015, <http://blogs.lse.ac.uk/mediapolicyproject/2015/08/05/an-internet-bill-of-rights-pros-and-cons-of-the-italian-way/>.

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and the right to be forgotten.⁴⁶ Some observers criticized the declaration for falling short in protecting free speech, balancing copyright, and protecting anonymity and encryption.⁴⁷

Several laws present a threat to internet freedom in the country. Italy passed a new antiterrorism law in April 2015 that broadened language in the criminal code on terrorist recruitment as well as the endorsement or incitement of terrorism to include their action via online channels.⁴⁸ Critics worry that the law will be applied broadly and may sanction legitimate instances of free expression that fall within international norms for protected speech. On a positive note, the government withdrew provisions from the bill that would have authorized law enforcement agencies to remotely break into private computers. Prime Minister Renzi noted that the delicate issue needed further discussion.⁴⁹

Defamation is a criminal offense in Italy, punishable by prison terms ranging from six months to three years and a minimum fine of EUR 516 (US\$670). In cases of libel through the press, television, or other public means, there is no prescribed maximum fine.⁵⁰ Though these provisions are rarely applied, civil libel suits against journalists, including by public officials and politicians, are a common occurrence, and the financial burden of lengthy legal proceedings may have chilling effects on journalists and their editors. As of May 2015, there have been extremely few libel suits against bloggers and other online writers in Italy.

Prosecutions and Detentions for Online Activities

No online activists have been detained, prosecuted or sanctioned by law enforcement agencies for disseminating or accessing information on the internet. However, concerns remain over the enforcement of libel law on platforms such as Facebook. In early 2013, a young woman who posted negative and racist remarks about her former employer on the social network was found guilty of libel and made to pay a EUR 1,000 (US\$1,100) fine.⁵¹ The prosecution successfully argued that libel may occur through any medium, online or traditional, that can reach a larger public. Going further, the third-level appeals court convicted a non-commissioned officer of the GdF who posted negative comments against a colleague on Facebook, even though the culprit never mentioned the colleague's name. The court ruling reported that it is sufficient that enough details are included so that the offended person can be identified by as few as two persons.⁵² It was later struck down on appeal.

46 For a full text of the declaration in English, consult "Declaration of Internet Rights," http://www.camera.it/application/xmanager/projects/leg17/commissione_internet/testo_definitivo_inglese.pdf.

47 For more details on this, see for example Camera dei deputati, "Partecipa a Bill of Rights," <http://bit.ly/1qcmcn1>; also consult, Agenzia Nazionale Stampa Associata, "Italy presents bill of Internet rights," July 28, 2015, <http://bit.ly/1K4FjGs>; and "Massimo Russo, "Ecco la bozza di Internet bill of rights, ora tocca ai cittadini migliorarla," *Wired*, October 13, 2014, <http://bit.ly/1v6TKGU>.

48 Sghirinzetti, "Italy: Anti-terrorism decree to strengthen government surveillance."

49 "Tolto dal decreto antiterrorismo l'emendamento sui computer," *Internazionale*, March 26, 2015, <http://bit.ly/1Lr1CeP>.

50 Organization for Security and Cooperation in Europe Representative on Freedom of the Media, *Libel and Insult Laws: A matrix on where we stand and what we would like to achieve*, (Vienna: OSCE, 2005), 79, <http://www.osce.org/fom/41958>.

51 Adriana Apicella "Diffamazione a mezzo stampa, è reato anche su Facebook", *Justicetv.it*, January 17, 2013, <http://www.justicetv.it/index.php/news/2992-diffamazione-a-mezzo-stampa-e-reato-anche-su-facebook>; and also, Mauro Vecchio, "Diffamazione, stampa e social pari sono?" *Punto Informativo*, January 15, 2013, <http://bit.ly/1L88ZGK>.

52 "Cassazione: è diffamazione parlar male su Facebook anche senza fare nomi," *La Repubblica*, April 16, 2014, <http://bit.ly/1PaZqKX>.

Surveillance, Privacy, and Anonymity

Monitoring of personal communications is permissible only if a judicial warrant has been issued, and widespread technical surveillance is not a concern in Italy. Wiretapping is generally restricted to cases involving ongoing legal proceedings, except for terrorism investigations. In such instances, since 2001, “pre-emptive wiretapping” may occur even if no formal prosecutorial investigation has been initiated. More lenient procedures are also in place for Mafia-related investigations.⁵³ Overall perception is that the country’s authorities are engaged in a large number of wiretaps,⁵⁴ but that is probably an exaggeration. On the other hand, the news media regularly publicize wiretap information that is leaked to them and have generally avoided facing jail sentences or even high fines for disseminating classified information.

In March 2008, Parliament approved a law (No. 48 of 2008) that ratified the Council of Europe’s Convention on Cybercrime, which established how long internet-related communication data should be retained.⁵⁵ This matter was further refined with the inclusion in the Italian legislative system of the 2006 EU Data Retention Directive.⁵⁶ Although the Court of Justice of the European Union struck down the directive in 2014, Italy passed an antiterrorism law in April 2015 that extended the period ISPs must keep users’ traffic records (metadata), as opposed to the content of communications—from 12 to 24 months.⁵⁷

Providers must retain information such as broadband internet data, internet telephony, internet use via mobile phone, and email activity. The records can only be disclosed in response to a request from a public prosecutor (a judge) or a defendant’s lawyer, and, like their counterparts elsewhere in Europe, Italy’s law enforcement agencies may ask ISPs to make such information readily available so that they can respond to the needs of criminal investigations. Given the technical burden of this directive, most ISPs now use a third-party service that offers the necessary security guarantees for encryption and data storage. Finally, the law extends the period that internet providers must retain user data to 24 months.

As Italy moves towards greater e-governance, some concerns have been raised over the protection of user data in the hands of public agencies. In the past, the national postal service Poste Italiane’s certified electronic mail (PEC) service was named as the public agency most damaging to individual privacy at the “Annual Big Brother Awards,” an event hosted by civil society activists for greater privacy, for its gross mishandling of private information kept by the government’s Registro delle Opposizioni, a register of people who wish to keep their contact information hidden from advertisement companies.⁵⁸ Nevertheless, it is now mandatory for all business to use the PEC service in their communications with the public administration to cut costs and reduce paperwork.

53 Privacy International, “Italy: Privacy Profile,” in *European Privacy and Human Rights 2010* (London: Privacy International, 2010).

54 Although it is difficult to determine the real number of people affected by wiretaps (estimates range from 25,000 to over 130,000), many individuals who are caught up in wiretaps have no incriminating connection to the main target of the eavesdropping. The current law stipulates that such peripheral communications cannot be transcribed and any recordings should be destroyed right away, though this is not always carried out in practice. Thus it may happen that some exchanges are recorded and leaked to the media. This is the problem that the proposed bill on electronic surveillance was meant to address.

55 For a useful timetable of the required retention periods, see Gloria Marcoccio, “Convention on cybercrime: novità per la conservazione dei dati,” [Convention on Cybercrime: News on Data Retention] *Diritto Tecnologia Informazione*, April 10, 2008, <http://www.interlex.it/675/marcoccio7.htm>.

56 D.L. 109/2008.

57 Sghirinzetti, “Italy: Anti-terrorism decree to strengthen government surveillance.”

58 Cristina Sciannamblo “Big Brother Awards Italia: tutti i vincitori,” *Punto Informatico*, June 6, 2011, <http://bit.ly/1OubcQG>.

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Finally, in June 2015, the Privacy Authority published the long-awaited new guidelines for managing browser cookies. These guidelines signal an improvement from those published in 2012 that some found cumbersome to implement.⁵⁹ Earlier in the year, the authority also launched a public consultation to define guidelines and rules for the “Internet of Things.”⁶⁰

Intimidation and Violence

Reports of extrajudicial intimidation or physical violence in response to online activity are rare, although individuals directly exposing the activities of organized crime in some parts of the country may be at risk of reprisals.

Technical Attacks

The most common forms of technical attacks in Italy are the defacement or launching of denial-of-service (DoS) attacks against websites—mostly government-linked ones—as a form of political protest.⁶¹ More serious cyberattacks—particularly against banks, government institutions, and business websites—remain a problem in Italy, as in other European Union member states. Nevertheless, Italy does not rank highly on the list of countries identified as points of origin for cybercrimes.⁶²

The law enforcement agency with primary responsibility for cybercrimes is the Postal and Communications Police Service. Police officers are primarily concerned with cybercrime in the form of child pornography, cyber-bullying, and various forms of fraud.⁶³ In May 2013, the Italian Ministry of Interior was attacked by the Italian branch of Anonymous in retaliation for the arrest of a group of “hacktivists” a few days earlier.⁶⁴ The country’s official cybersecurity strategy was published in December 2013.⁶⁵

In July 2015, the Milan-based private security firm Hacking Team was hacked, leading to the release of several hundred gigabytes of emails and other data that was later posted to Wikileaks.⁶⁶ The company provides software applications to intelligence agencies around the world and had been criticized in the past for cooperating with nondemocratic regimes and lacking sufficient consider-

59 Garante per la protezione dei dati personali, “Linee guida in materia di trattamento di dati personali per profilazione online, 19 Marzo 2015,” March 19, 2015, <http://bit.ly/1H0tiGj>.

60 Garante per la protezione dei dati personali, “Internet delle cose”: il Garante privacy avvia consultazione per definire regole e tutele,” April 28, 2015, <http://bit.ly/1PR1eXb>.

61 The Police and the judiciary are often targeted, see for example “Gli hacker colpiscono ancora: attaccato sito della polizia campana,” *Corriere della Sera*, February 17, 2013, <http://bit.ly/1L8atk1>.

62 An independent report by HostExploit shows Italy scoring quite well on a “badness” scale (France, Germany and the United Kingdom, all get a worse score). These results are graphically visible in here: Global Security Map, “Italy,” accessed 19 May 2015, <http://globalsecuritymap.com/#it>.

63 Figures on cybercrime are difficult to assess, as the main providers of data are computer security companies such as Symantec or government entities like the postal police, as opposed to “third-party” sources. Nevertheless, Italy’s rates appear to be slightly above the world average. See, Tiziana Moriconi, “Crimini online, i dati italiani,” [Online Crime, the Italian Data] *Daily Wired*, November 23, 2010, <http://bit.ly/1G9KQk1>; Alessandra Talarico, “Cybercrime. Italia vittima e carnefice: è il paese che più abbozza al phishing e tra i più attivi negli attacchi web based,” [Cybercrime. Italy Victim and Victimizer: It Is the Country That Takes the Bait in Phishing and Is Among the Most Active in Web-Based Attacks] *Key4Biz*, April 22, 2010, <http://bit.ly/1GEzXBD>.

64 Matteo Campofiorito, “Anonymous, attacco al ministero dell’Interno: Pubblicati sul blog documenti e email,” *La Repubblica*, May 28, 2013, <http://bit.ly/1RD1da3>.

65 Presidency of the Council of Ministers, *National Plan for Cyberspace Protection and ICT Security*, December 2013, <http://bit.ly/1Lr3Gn4>; and Presidency of the Council of Ministers, *National Strategic Framework for Cyberspace Security*, December 2013, <http://bit.ly/1qVEWpW>.

66 Wikileaks, “Hacking Team,” <https://wikileaks.org/hackingteam/emails/>.

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ations of users' privacy.⁶⁷ The company has been classified by the nongovernmental organization Reporters Without Borders as an "Enemy of the Internet."⁶⁸

67 Alfonso Maruccia, "L'orgoglio ferito di Hacking Team", *Punto Informatico*, July 23, 2015, <http://bit.ly/1LFkylL>. See also the conclusions by CitizensLab here, "Tag Archives: Hacking Team," <https://citizenlab.org/tag/hacking-team/>; and by computer security expert Bruce Schneier here: Bruce Schneier, "Hacking Team Is Hacked," *Schneier on Security* (blog), July 6, 2015, <http://bit.ly/1RD0iWY>.

68 Reporters Without Borders, "Hacking Team," *The Enemies of the Internet: Special Editions*, <http://surveillance.rsf.org/en/hacking-team/>.