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On ICT law, politics and other digital stuff

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Project Gutenberg and the Crusader of Copyright

In the name of the new crusade against the 'pirates of copyright" the public prosecutor of Rome seizes gutenberg.org, the site of the cultural project that digitizes and puts online copyright-free books. But neither the court nor the Guardia di Finanza has noticed. Is it a justifiable mistake? by Andrea Monti – **originally published in Italian by Infosec.News**

A few days ago, on May 11, 2020, the Court of Rome issued a web access blocking order against gutenberg.org. This domain was "seized" as part of an investigation against copyright infringement and the illegal distribution of newspapers and magazines following the technical investigation of the Guardia di Finanza's privacy and technological fraud Special Branch (Nucleo speciale tutela privacy e frodi tecnologiche)

This would be nothing odd, except the fact that, in reality, gutemberg.org is a project for the digitization and free online publication of books in the public domain, i.e. on which there are no rights of economic exploitation (in practice, publishers are not entitled to profit from the work of authors). It is quite difficult to "make money" to the detriment of publishers if publishers have no rights on those books, but the investigators did not notice it, and the judge did not check.

From the reading of the order, **available online here**, it is clear that the domain of the Gutenberg Project has ended up in a trawling fishery investigation based on the rough equivalence between making books available online and the illegality of the behaviour because it is carried out by subjects who are not legitimate publishers.

Much needs to be said about the way authorities and the judiciary continue, almost thirty years after the first cases, to investigate with little knowledge of how internet

services work.

It should be remembered, for example, that thanks to the equivalence between "seizing" and "preventing access" to a network resource, it is now routine to order to "obscure" present and future domain names. Internet Providers are, in other words, transformed into network sheriffs.

In other cases, courts and prosecutors require the blocking of access to individual pages (which can only be done by the content hosting provider and certainly not all the other ISPs) or even which require – I read verbatim – "the deletion of content, the inhibition of the same at all national providers of communication network connection services" without even the court supervision.

These examples, the many others that could be done, and the Gutemberg case, witness the superficiality with which, even today, the legal issues of information technology are considered.

There are just two hypotheses that explains this state of the matter.

First option: magistrates and judicial police know exactly what they are doing. Therefore the Gutenberg and Gutenberg-like cases are evidence of the unfair attitude of avoiding the bureaucracy of international cooperation such as the Mutual Legal Assistance Treaty or the European Order of Criminal Investigation. Authorities choose alternative methods certainly faster, but legally questionable and technically useless.

Second option: they are not aware of what they are doing. So, in the case of gutenberg.org, they threw the baby out with the bathwater, being sure that they will not account for their lack of preparation or that, at most, they will have to "apologize". But in such cases it is to easy to claim that they have been mistaken – "we beg your pardon, in the midst of that many sites we are targeting, we took one that had nothing to do with it". We have the right to demand a magistrate to exert his power with due rigour and competence and ask that "special branches" that deals with "technological fraud" and that belongs to law enforcement body that carries out economic police activities are not allowed to make such gross oversights.

The point is not to stigmatize the even serious error of this or that single magistrate or the lack of attention of this or that investigative body. But to understand that it is as urgent as it is indispensable that the judiciary and the police forces learn, once and for all, how electronic communication services work and to whom they must direct their requests. And it is important that they do this by abandoning the assumption of having

– or being – “the power”: also in the judicial activity, to “deliberate” one must “know” and, I add, to “know” one must first “understand”.

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