

An Internet Bill of Rights? Pros and cons of the Italian way



*Last week, an Italian committee of politicians and experts announced its Declaration of Internet Rights, making Italy the **first country to introduce an internet bill of rights**. **Oreste Pollicino**, Professor of Comparative Public Law and Media Law at Bocconi University and Counsel of Portolano Cavallo Studio Legale, and **Marco Bassini**, PhD Researcher in Constitutional Law at the University of Verona and Fellow at Bocconi University, look at what the Declaration means in practice.*

A Political or Legal Tool?

The limitations of the Italian project of an Internet Bill of Rights, to give a constitutional basis to the principles and rights of the Internet, became clear last week in the **final version of the document** released by the Committee on Internet Rights and Duties of Italy's Chamber of Deputies.

Far from setting up constitutional or legislative provisions encapsulating the digital new rights that have emerged in the age of the Internet, the Bill, consisting of fourteen articles, resulted in an exclusively political document, with no legal binding value.

The purpose of the Declaration, indeed, is of a predominantly cultural nature: urging the Italian Government and the Parliament to commit themselves to the principles laid down in the Bill. This seems to be, also in light of statements from Laura Boldrini, the President of the Committee (who also heads the Italian Chamber of Deputies), the main goal of the Internet Bill of Rights. When it comes to regulating the Internet, the idea is that the Government and Parliament should conform to the provisions of the Bill.

Despite public opinion apparently welcoming the draft of the Declaration as a first attempt to regulate the new digital scenario with provisions specifically tailored to the rights exercised on the Internet, no legislative process has been undertaken in this respect. Rather, the bill represents a first step in a roadmap which rather aims at raising the awareness of the institutions as to the critical issues posed by the rise and the growth of the Internet. The provisions of the Bill of Rights, then, do not work as a binding legal parameter, but they are expected to exercise a kind of moral suasion over the competent bodies. It goes without saying that, as result, legislation in contrast with the content of the Declaration should not be repealed as such. In other words, the provisions which protect the rights on the Internet laid down in the Bill are not enforceable. So, from a strictly legal standpoint, no particular effect should derive from the document released one week ago.

On the contrary, moving from the legal to the cultural realm, the Declaration could lead to significant benefits.

An International Consensus?

President Boldrini explained that the country intends to present this Bill at the Internet Governance Forum, which will take place in Brazil in November, in order to contribute to the debate at a supranational level.

However, despite its predominantly political nature, making the content of the Bill of Rights shared and accepted by different states seems to be a long shot. Many of the principles singled out in the Declaration, in fact, reflect the exclusively domestic view of certain issues and also the **choice** to expressly refer to some principles (and not to others) may be challenged.

For instance, the Bill regards the right to be forgotten or the right to anonymous speech in a manner that may not be compatible with the constitutional background of states other than Italy, most notably the US. How could this Declaration be approached by the US, where protection of freedom of information encapsulated is in the First Amendment when it supports, for example, the right to delisting from search engines?

Looking at the content of the Declaration, the Bill of Rights lacks a clear and direct reference to the most important among human rights affected by the Internet: freedom of expression. In the view of the Committee, this fundamental right is the backdrop of each of the provisions of the Declaration. But even though freedom of speech is of course concerned when it comes, for example, to data protection, the right to be forgotten or the right to Internet access, an explicit reference would have highlighted the importance of the Internet for the exercise of the free speech. Furthermore, the Declaration carves out a wide set of fundamental rights which may enter into conflict with the protection of freedom of speech and the lack of a specific reference reduces the clarity of how this balance should be carried out.

Pros and Cons

Some parts of the Declaration seem to be inconsistent with the reality of new rights on the Internet. Among others, the issue of copyright seems to have been underestimated by the Committee: while the draft paid no regard to this fundamental right, the text of the final version of the Declaration advocates “due consideration” for the rights arising from the recognition of the moral and material interests connected with the production of knowledge. This undoubtedly constitutes an advance, but it is unlikely that such a provision serves to regulate, for example, how freedom of expression and copyright should be balanced on the Internet. It should also be taken into account, in this regard, that the committee’s aforementioned underestimation of the fundamental status of copyright is going against the choice of the drafters of the Charter of Fundamental Rights of the European Union, which, in Article 17, par. 2, expressly protects intellectual property as a fundamental right. This is a hot topic in the Italian scenario, given that in 2013 the Italian Communication Authority (ICA) adopted regulation on the enforcement of copyright online and many actors challenged whether the ICA had powers to exercise such competences.

Another issue worth noting concerns the protection of the right to be forgotten, which, in line with the European Court of Justice decision in the Google Spain case, sees the right to be forgotten as a right to delisting in search engine results, rather than the right to obtain the removal of personal data from the website which is the source of that information.

In spite of these limitations, many of the principles set forth by the Declaration are of course very welcome. Recognition of the right to Internet access as fundamental marks a very significant step. However, this provision is disconnected from the state of the debate in Italy concerning the constitutional status of the access to the Internet: while some pledge to introduce in the Constitution a specific provision to guarantee this right, others reject this argument, noting that the existing guarantees do also cover the access to the Internet.

In conclusion, the Declaration of Internet Rights must of course be welcome as an instrument whose purpose lies with increasing the awareness of the institutions (of the domestic ones, first of all) with respect to the critical points that have come up after the rising of the Internet and the development of new technologies. Having said that, the content of the Declaration seems nevertheless to be far from construing a framework which might trigger the consensus of other actors at international level. The actual value of the Declaration, instead, rests in the hands of the Italian Government. To the extent the Government will be able to promote the principles behind the Declaration, the document could have significant effects while making legislation more oriented towards fundamental rights, and, thus, even if indirectly, make the new rights of the Internet era more effective.



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