

### 2.2.5 Italy

In 2004, in support of the Berlin Declaration<sup>58</sup>, 31 Italian Universities signed the Messina Declaration<sup>59</sup>: the Italian road to Open Access. The Declaration was relaunched again on the occasion of the tenth anniversary with an event organized with the support of the Italian Librarian Association (AIB) and the Conference of the Rectors of the Italian Universities and (CRUI) attended by over 80 delegates from over 30 universities<sup>60</sup>.

In 2006 the Conference of Italian Universities Rectors<sup>61</sup> established a Working Group on OA as part of the CRUI Library Committee. Since its founding it has released Guidelines and Recommendations for supporting Open data and Open access successively adopted by several universities, such as Guidelines on depositing Doctoral Dissertations in open access repositories, Recommendations on OA and Research Evaluation in 2009, Guidelines for OA Journals in 2009; and Guidelines for Institutional Repositories in 2009, Guidelines on the creation and management of OA metadata in 2012; Guidelines on drafting institutional policies and mandates for publications and data sets in 2013<sup>62</sup>. Over 91 Italian universities and research centres adopted regulations and policies on OA, registered in ROARMAP<sup>63</sup>

Furthermore, Italy as a member of the G8, together with France, Germany and the UK, participated in the G8 science ministers' summit, held in London on 12 June 2013. The meeting produced two important documents: the Open Data Charter<sup>64</sup>, to reinforce the 'Open by default' concept and a statement that "proposes to the G8 for consideration new areas for collaboration and agreement on global challenges, global research infrastructure, open scientific research data, and increasing access to the peer reviewed, published results of scientific research"<sup>65</sup>.

In Italy, Open Access (OA) to scientific articles has been adopted in the law no. 112/2013 art. 4<sup>66</sup> that states that publicly funded research shall be openly available to the public. At the same time, the Conference of Italian University Rectors (CRUI) has signed a position statement to encourage the creation of repositories.

A revision of the law is currently under discussion in the Senate for establishing shorter embargo periods and for allowing the right to re-publishing after 12 months.

In accordance with this law, the Italian National Agency for the Evaluation of Universities and Research Institutes (ANVUR) produced the Guidelines for the Evaluation of Research Quality for the period 2015-2019<sup>67</sup> to promote open access publication in the case of journal articles relating to research outputs financed for a share equal to or greater than 50% with public funds.

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<sup>58</sup> Berlin declaration on Open Access to Knowledge in the Sciences and Humanities

<https://openaccess.mpg.de/Berlin-Declaration>

<sup>59</sup> [https://cab.unime.it/decennale/wp-content/uploads/2014/03/Dich\\_MessinaENG.pdf](https://cab.unime.it/decennale/wp-content/uploads/2014/03/Dich_MessinaENG.pdf)

<sup>60</sup> [https://decennale.unime.it/?page\\_id=244](https://decennale.unime.it/?page_id=244)

<sup>61</sup> CRUI, <https://www.crui.it/crui-english.html>

<sup>62</sup> See all the guidelines at <https://www.crui.it/open-access.html>

<sup>63</sup> ROARMAP: Registry of Open Access Repository Mandates and Policies - <http://roarmap.eprints.org/>

<sup>64</sup> <https://opendatacharter.net/>

<sup>65</sup> <https://www.gov.uk/government/publications/g8-science-ministers-statement-london-12-june-2013>

<sup>66</sup> <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2013;112>

<sup>67</sup> [https://www.anvur.it/wp-content/uploads/2020/02/VQR-Call\\_EN.pdf](https://www.anvur.it/wp-content/uploads/2020/02/VQR-Call_EN.pdf)

Currently the Italian Ministry of Education, Universities and Research (MIUR) has appointed a commission of national experts from different domains, to support the definition of national Open Science priorities; involved stakeholders include ICDI<sup>68</sup>, ANVUR<sup>69</sup>, CRUI<sup>70</sup>, AISA<sup>71</sup> and IOSSG<sup>72</sup>. The commission is drafting a National Plan for Open Science (to be soon released, probably as a part of the National Plan for Research) according to EC recommendation 790/2018. The Plan will offer a common framework for Open Science main axes: texts, data, research evaluation and community engagement.

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<sup>68</sup> <https://www.icdi.it>

<sup>69</sup> <https://www.anvur.it>

<sup>70</sup> <https://www.cruir.it>

<sup>71</sup> <https://www.aisa.sp.unipi.it>

<sup>72</sup> <https://sites.google.com/view/iossg>

### 6.2.5.5 Italy

#### 6.2.5.5.1 Authorship

The Italian “Legge sul diritto d’autore” (l.aut.)<sup>116</sup> introduces a presumption of authorship, which identifies as author who is indicated as such, unless proven otherwise (art. 8 l.aut.). Whoever has performed (“rappresentato, eseguito”) or published in any manner an anonymous or pseudonymous work is authorized to assert author’s rights, until the author reveals him/herself (art.9 l.aut.). State, Provinces, Municipalities, non-profit private entities, universities, and cultural institutions hold the copyright of the works created and published on their behalf and under their financial sponsorship (art.11 l.aut.). Titles of works are covered by a neighboring right.

As to co-authorship, the author of a collective work is the natural person who organizes and coordinates its creation (art.7 l.aut.). If a created work sees the indistinguishable contributions by co-authors, joint ownership of copyright, civil code rules on joint ownership apply (art.10 l.aut.).

#### 6.2.5.5.2 Subject matter

Art.2 l.aut. offers a general definition of protected works as creative intellectual works of literary, musical, figurative art, architectural, theatrical, cinematographic nature, and couples it with an exemplificative list of works traditionally included within the subject matter of author’s right (arts. 1 and 2 l.aut.). Among the exclusion from protection, it is worth mentioning official acts by the State and public administration of Italy and other national States (art.5 l.aut.).

#### 6.2.5.5.3 Exceptions

The Italian legislator has implemented most of the optional exceptions provided by the InfoSoc Directive and fully aligned to the mandatory exceptions introduced by subsequent EU acts, adding some specifications.

**Illustration for teaching and scientific research.** While Article 5 CDSM Directive on the exception for digital teaching is expected to be implemented by the deadline of 7 June 2021, Article 70 l.aut. provides, in line with EU law, for an exception that covers reproduction and communication to the public ONLY of parts of works for teaching and scientific research purposes, without commercial aim. Italian law adds, however, also the possibility to publish via the Internet, for the same purposes and non-commercial aim, pictures and music works of lower resolution and quality (art.70bis), and provides for an ad hoc levy system to allow the unauthorized inclusion of works in textbooks (“anthology”, art.70(3)). In any case, the indication of author, publisher, and translator if any is always mandatory.

**Private use for non-commercial purposes.** According to art.68(3) l.aut., modified to align with the InfoSoc Directive, the reproduction of a book or journal by photocopying or similar technique is allowed up to 15% of the work. Levy systems are introduced via Ministerial Decree to provide fair

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<sup>116</sup> Law 22 April 1941 no. 66, Protezione del diritto d’autore e di altri diritti connessi al suo esercizio, in GU 16 July 1941, no.166.

compensation. Music sheets are excluded from the scope of the exception. Art.68(4) provides for a similar *ad hoc* levy system for copy shops or shops making copy equipment available to the public.

**Text and data mining.** Articles 3 and 4 CDSM Directive are yet to be implemented. No other provisions can be used for the purpose.

**Public lecture.** Art. 66 I.aut. provides for an exception to the right of reproduction and communication to the public of public speeches and excerpts of public conferences in newspapers, news programs and information materials, to the extent necessary for the informatorily purpose, and with the mandatory indication of author, source, date and place.

**Quotation.** In line with the Berne Convention and the InfoSoc Directive, art.70 I.aut. authorizes the reproduction and communication to the public of protected works for quotation purposes aiming at criticism or review, to the extent justified by the purpose, and provided that it does not interfere with the economic exploitation of the work. Also in this case it is mandatory to indicate author, publisher and translator if any, unless it is proven impossible.

**Uses in libraries and other CHIs.** Italian law has not followed suit the evolution of EU law in this area. While the CDSM Directive art.6 exception has yet to be implemented, the Italian legislator has not implemented the exception on digitisation and communication via dedicated terminal (art.5(3)(n) InfoSoc). As a consequence, the Italian system provides only for the possibility to photocopy books available in libraries or archives if there is no direct or indirect economic purpose (art.68(2) I.aut.), subordinated to a levy system (art.68(5) I.aut.), and for the public lending of literary works, musical (music sheets excluded) and audio-visual works, the latter only after 18 months from distribution or, if not distributed, after 24 months from fixation.

**Marrakesh (accessibility for visually impaired individuals).** Article 71bis I.aut. mirrors the exception provided by the Marrakesh Directive with no substantial addition. Entities can claim from beneficiaries only the reimbursement of the cost for making the work accessible.

**Orphan works.** Art.69bis I.aut. provides that orphan works in libraries' collections can be used for digitization, indexing, cataloguing, preservation and for making them accessible to the public at any time from any place chosen by users. While libraries can stipulate contracts with third parties to further promote orphan works, this should not limit the scope of the exception (art.69bis(5)). I line with EU law, art.69quinquies(2) I.aut. introduces a mandatory fair compensation scheme for rights holders who put an end to the orphan status of their works, proportional to the use made of the latter.

**Out-of commerce works.** While art.8(2) CDSMD has yet to be implemented, art.68(5) I.aut. gives the possibility to reproduce for private non-commercial uses out-of-commerce works beyond the 15% limit set by art.68(3) I.aut.

**Other software exceptions.** Articles 64-ter I.aut. reports the exception to the right of reproduction for lawful uses, backup copies and study of the functioning of the program, as in the Software Directive. Also similar is the exception on interoperability (Art.64quater I.aut.). Both provisions are mandatory and cannot be overridden by contract, while the interoperability exception is subject to the three-step test.

**Other database exceptions.** The Italian copyright act includes the exception for lawful use, for private uses and for teaching and research purposes, with the same language used by the EU Directive and the same mandatory nature (Arts. 102ter(3) and 64-sexies(1)(a) I.aut).

**Open repository right.** A very important provision for EOSC purposes is art.4 law no.112 of 7 October 2013, <sup>117</sup>which requests public institutions funding research to adopt measures to establish and promote the open access of the outcomes stemming from the research financed by them at least at 50%, if those outcomes come in the form of published articles in journals of at least 2 issues a year. Open access can be established by the published at first publication, or by way of second non-profit publication on public institutional repositories by 18 months (for natural sciences) or by 24 months (for social sciences) after first publication. Best effort shall be promoted among public institutions to merge the respective research databases. It has to be noted that the provision introduces an obligation for public funding institutions, not a right for authors, and that it excludes its application on research products which are protected by the Industrial Property Code (id est by patents and other IPRs except copyright).

<sup>117</sup> Law 7 October 2013, n.112, Disposizioni urgenti per la tutela, la valorizzazione e il rilancio dei beni e delle attività culturali e del turismo, in GU no.236 of 8 October 2013.

### 6.3.5.3 Italy

#### Relevant legislative initiatives

- Decreto Legislativo, 30 giugno 2003, n.196 recante il “Codice in materia di protezione dei dati personali” - also Privacy Code.
- Regole deontologiche per trattamenti a fini statistici o di ricerca scientifica pubblicate ai sensi dell’art. 20, comma 4, del d.lgs. 10 agosto 2018, n. 101 - 19 dicembre 2018” issued by the Italian Data Protection Authority.

#### Issues

- Legal basis for sensitive data in research is included in art. 7 of the Ethics Code:
  - Freely given written consent after having read the privacy notice is the main rule.
- Specific safeguards have been introduced for the medical-biomedical-epidemiological research under the main Privacy Code and the Ethics Code.
  - Art. 110 Dlgs196/03 states when Consent is not required:
    - When the research is undertaken under a legislative provision, including a research programme established under a specific regulatory framework for clinics (art. 12-bis del decreto legislativo 30 dicembre 1992, n. 502) and the DPIA is publicly available.
    - When, considering specific reasons, to inform data subjects is not possible or it requires an unproportioned effort, or it could seriously undermine the research purposes. In these cases, the data controller adopts appropriate safeguards to protect the data subjects’ rights and interests, the research has obtained an approval from the competent ethics committee and the Data Protection Authority provided a prior consultation under article 36 GDPR.
  - Art 8 Ethics Code provides the following safeguards to bridge data protection compliance and ethics in the field.
    - A general obligation of compliance with the applicable ethics framework is recalled also in the context of data protection.
    - Healthcare and research purposes shall be distinguished in the privacy information.
    - Incidental findings policy is required.
- Monitoring and enforcement mechanisms for research are stated under art. 9 Ethics Code:
  - Universities shall share awareness and information on the provisions established in this ethics code.
  - Universities shall report to the data protection authority any violation.
- Data collection
  - The authorized person introduces him/herself, inform the participant and does not collect data for other data controllers.
- Data retention for research purposes could be extended beyond the needed duration in order to pursuing the several scopes that enabled the previous collection and processing according to art. 99 Dlgs 196/2003.

- Communication of general data of research staff under art. 100 Dlgs 196/2003 is allowed. Data subjects can in any case exercise their rights.
- Privacy notice: art. 105 recalls the general principle of information under article 13 and 14 GDPR unless the effort to inform is unproportionate.
- Re-using: The article 110bis of the Italian Privacy Code refers to the re-using of data by third parties. The first condition for it is that data subjects must be informed. Otherwise, a prior authorization from the data protection authority is needed. This approach is not applicable when personal data are collected for healthcare purposes and used for research ones by the same (private or public) scientific hospitalization and care clinics, considering the functional link between the two purposes. The provision seems to refer to patients' personal data before being pseudonymized or anonymized for research purposes, as stated under article 89 GDPR.