

**REPUBLIC OF ITALY**  
**IN THE NAME OF THE ITALIAN PEOPLE**  
**ROME COURT OF FIRST INSTANCE**  
**1<sup>st</sup> CIVIL DIVISION**

in the person of the Single Judge, Ms Damiana Colla, issued the following

**DECISION**

in the first instance civil proceedings registered with no. 15820 in the General Register of litigation for 2011, which has been delivered at the hearing of 17 February 2015

**BETWEEN**

**MOIGE – Movimento Italiano Genitori ONLUS**, with elected domicile in Rome, [OMISSIS]

*-Plaintiff-*

**AND**

**WIKIMEDIA FOUNDATION, Inc.**, with elected domicile in Rome, Piazza Venezia no. 11, at the Law Firm of the Lawyers M. Berliri, M. Masnada, and M. Staccioli, who represent and assist it by virtue of the special power of attorney to appear in Court

*-Defendant-*

**SUBJECT: compensation for damages suffered due to defamation**

**Pleas of fact and law**

With writ of summons, MOIGE brought legal proceedings before this Court against WIKIMEDIA FOUNDATION – in its capacity as owner and online administrator of the free encyclopaedia Wikipedia – requesting the award of payment of non-patrimonial damages suffered in relation to MOIGE's description provided in the relevant pages, allegedly detrimental to the name, image and reputation of the entity, in the amount of EUR 200,000.00, with publication of the judgement on the abovementioned web page, as well as on the main national newspapers, removal of content from Wikipedia page relating to MOIGE and conviction to pay compensation for an additional amount of EUR 1,000.00 for each day of publication of said web page following the decision of acceptance of the claim.

To this purpose, MOIGE stated that it is an association for social development and support, set up to promote the respect, defense and protection of parents and minors in any aspect of civil and social life, whose description in the online encyclopaedia Wikipedia contains wrong, false and obsolete information. Besides, the content of the sex education course held by Ms Leda Galli Fiorillo – even if removed from MOIGE's website since 2004 in order to avoid the erroneous attribution of the relevant content to the association, but anyway still accessible from Wikipedia thanks to cache copies of websites – are attributed to MOIGE, thus causing the distortion of reality as well as the identification of the association with the author of the course and the violation of the right to be forgotten, as issue of confidentiality.

In addition, the association highlighted several individual passages contained in said page in which the activities and initiatives of MOIGE in the various sectors were described, especially the television broadcasting and videogames sector, from which the negative image of an association formed by a "handful of sanctimonious, anti-liberal, anti-democratic and even aggressive people", "comparable to bigoted censors" emerged.

Finally, MOIGE underlined that it has unsuccessfully sent to the defendant several written requests and warnings, as well as it has tried – both before and after the starting of the proceedings - to modify the Wikipedia page at issue according to the procedures of the same website, without succeeding and obtaining instead the blocking of the accounts for the users who had tried to do so on behalf of MOIGE.

The defendant appeared before court, supporting the inadmissibility of the claim due to the indeterminacy of its object, challenging in the merits the grounds of the opposing claims in fact and in law and moving for the dismissal of the same.

In particular, the defendant has analytically described the functioning of Wikipedia as open content online encyclopaedia (whose content is provided by the users and therefore, there is no guarantee of the validity of the information published therein, since the encyclopaedia is managed by the users themselves and under their responsibility, also in relation to the review of the several entries contained therein, which may be regarded as extensive control in the context of knowledge sharing) and the role of Wikimedia as Internet Service Provider (limited to the provision of the virtual space and technical instruments for the submission and sharing of content online, without carrying out any precautionary supervision, control or amendment of the entries proposed by the users for the ongoing creation of the encyclopaedia), thus supporting the lack of liability of the defendant in relation to the content hosted in view of the neutrality of its role (Legislative Decree no. 70/2003, implementing EU Directive no. 2003/31).

With specific reference to the sex education course, the defendant underlined that, when it appeared before court, the content of said course were not directly attributed to MOIGE on the webpage at issue, but directly to the teacher herself, since the content has been amended/rectified.

At the hearing of 16 May 2012 – upon request of the defendant – it has been declared the nullity of the original summons and written statements pursuant to article 183 of Civil Procedure Code, and new term have granted. The proceedings have been considered ready for final judgement without the need to start an oral investigation, with specification of the pleadings at the hearing of 17 February 2015 and the filing of final briefs.

Preliminarily, the plea of nullity of the claim due to the indeterminacy of its object, considering that the same is sufficiently determined in the remedy sought as well as in the cause of action, shall be rejected since the defendant was able to properly formulate its detailed defenses and the Judge to deliver the decision, as described below.

In the merits, the claim of the plaintiff shall be declared unfounded and therefore, it may not be accepted in any way.

It is necessary to state first that the defendant, being a subject incorporated outside the European Economic Area (company with legal office in California) is not directly subject to the provisions of Legislative Decree no. 70/2003, explicitly relating – pursuant to article 2, letter c) – only to the services provided by subjects established in the EU, even if such

dispositions – representing an organic system of rules aimed at regulating in our legislation the relationships deriving from "the free movement of services in the information society" – may be considered as regulatory principles for evaluating if the conduct of the defendant, even if analysed under the profile of Italian regulation, may represent a defamatory offense (based on the fact that the alleged violation of the right to reputation, image and name of the plaintiff are to be deemed as defamation, since the reference to the image and name is reported in the introduction in a non-technical way and both are referable to the concept of honor in general).

This Judge believes that the defendant may be qualified, according to the provisions of the EU regulation, as "hosting provider" in the management of the online encyclopaedia Wikipedia (as a consequence, based on the general principles set forth by said regulation, a general release from liability of the provider), who simply hosts on its servers information provided by the users (being liable for any offense only when, even if informed by the competent authorities of said offense, the provider does not proceed with the removal of the illegal content or block the access to it, as per article 17, paragraph III of Legislative Decree no. 70/2003, according to which the provider "is liable under civil law for the content of those services in case, after the request of the judicial or administrative authority with supervisory functions, it did not intervene promptly to block to access to said content", thus being the provider relieved from the control obligation, pursuant to EU regulation).

Besides being confirmed by the attached documentation, the description of the operating modalities of Wikipedia (an open content online encyclopaedia) indicated by the defendant in its response is extremely clear: reference is made to the five pillars of Wikipedia (it is an encyclopaedia, it represent a neutral point of view, its content is free and may be amended by anyone, it refers to a code of conduct), the style manual for a correct drafting of the entries, the General Disclaimer regarding the inability to guarantee the validity of the information published since submitted by the users - which are liable for the publication made - without any preliminary editorial control or following verification of the unlawfulness of the content submitted, as well as the possibility to remove and/or amend the inappropriate entries (illegal or useless content) always upon request of the users through specific procedure.

In light of the above, it is evident that the hosting provider is in a neutral position with respect to the content of the information drafted by its users (differently from what happens for the content provider, which is not released from liability in the abovementioned EU regulation in consideration of the fact that the recipient of the service is subject to the authority or control of the provider).

Such neutrality of the hosting provider does not disappear just because the defendant, after being informed of the illegal content of the information submitted by the users in the virtual space offered by the provider, may intervene to remove said content, provided that this activity- which is destructive rather than constructive for the encyclopaedia – is carried out to avoid incurring liability and not to affect the entries submitted, since this is up to the users without any preliminary or subsequent control.

In other words, the neutrality is connected to the creation/amendment of the entries of the encyclopaedia, regardless of any subsequent intervention of the provider for destructive purposes. As far as we are concerned for this case, said neutrality makes useless the analysis of the specific defamatory content deduced by the present defendant, since said content has been submitted and amended by the users without any involvement of the

defendant; besides, said content was completely different upon delivery of the decision, due to the several amendments made to the entry "MOIGE" over the course of the proceedings, compared to the content contained in said webpage at the moment of the notification of the preliminary statement.

All this being said, and in view of the non-applicability to the case at issue of the provisions of articles 11 of Law no. 47/48 regarding crimes committed by means of press (since there is no contractual relationship between the author of the text and the hosting provider and considering the huge amount of data submitted by the users, a kind of objective liability is not supported by any rule), it is necessary to apply the statutory provisions of non-contractual liability.

In fact, the position of the hosting provider may not be classed as liability for dangerous activity (article 2050 of Civil Code), since the defendant underlined the existence of a webpage named "General Disclaimer" in which the same provides preliminary information, clarifying that it may not guarantee the validity of the information submitted by the users, clearly distancing itself from the truthfulness of the facts reported in the single entries ("even if there are rules and an unofficial anonymous and voluntary management system, the structure of the project allows anyone to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. Wikipedia cannot guarantee, in any way, the validity of the information found here. That is not to say that you will not find valuable and accurate information in Wikipedia, but you shall keep in mind that the content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields").

In this way, the liability of the defendant for participation in the defamation may be excluded as well as the existence of the subjective element in the defamatory offense.

Besides, also in relation to liability by omission – which would imply the liability for who has the obligation to control the information published by the users on the encyclopaedia, the defendant has no duty to ensure that no illicit acts which may offend others' reputation are performed, as the hosting provider offers a service which is based indeed on the freedom of users to draft the articles of the encyclopaedia: this freedom eliminates the duty to ensure truthfulness and accuracy of the contents, and is counterbalanced by the possibility for everyone to modify the contents and ask for their removal.

After all, not even the ownership of the servers and of wikipedia.org domain may constitute relevant elements to change the nature of the activity actually performed by the defendant, which is completely unrelated to the organization and selection of the content submitted, against which the present plaintiff is raising objections in the current proceedings.

Having confirmed the lack of involvement of the company in the content of the encyclopaedia (only the users – whose address is stored by the provider for precautionary purposes - may be deemed liable for any defamatory conduct), it shall be noted that, according to the free encyclopaedia approach, the page of the encyclopaedia dedicated to the MOIGE – which is the subject of the dispute - has been modified many times since the start of the proceedings until today, as evidenced by both parties also in the specification of the pleadings and conclusive papers; in particular, as per the attribution to MOIGE of the content of the sex education course, the reference to the entity has been removed, repeatedly replaced by the reference to the teacher who held the course, therefore being removed the unwanted link to the plaintiff.

This provides evidence of the described functioning of the encyclopaedia (which follows the so called "wiki" model, described in the statement of defense of the defendant) and of the suitability of the system developed by the defendant to "self-correct" pages through the amendments made by users, since it is not possible to exclude that said amendments has been made by the same plaintiff (besides, the same plaintiff has stated that it has tried several times to amend the content of the Wikipedia page relating to MOIGE).

In the latter regard, according to this Judge, no significance shall be given to the objections raised by the plaintiff in relation to the inability to make the desired amendments to the page dedicated to "MOIGE" in Wikipedia through user accounts, provided that – even if this fact has not been challenged, thus making irrelevant any oral testimony – the possibility to amend and remove content is provided for by Wikipedia, but it is necessary to follow the procedure analytically described therein. In the records of the proceedings, there is no evidence that the plaintiff has properly followed said procedures when trying to amend the content (besides, in the notice of filing of February 17, 2015, the plaintiff states that it has made some amendments through a user account during 2014, and this is an evidence of the freedom to amend and remove the entries of the encyclopaedia at issue and of the groundlessness of the request to remove the content from the page).

After all, as evidenced by the defendant in the statement of defense, the "Wiki" system explicitly provides for the blocking of the accounts of the users who repeatedly tried to amend existing entries without the support of reliable sources and verifiable reasons or in contrast with editorial rules, in order to protect the service and its integrity.

Therefore all the plaintiff's claims shall be rejected.

Legal costs shall be set-off between the parties, taking into account the peculiarity and novelty of the issues at issue when the proceedings started (2011).

**For these reasons**

Rejects the claims, legal fees are set-off between the parties

Rome, July 10, 2015 (published on July 14, 2015)

the Judge