

Index

| | |
|--|-----------|
| Introduction | 7 |
| Part I – Google vs. Vivi Down | |
| Chapter 1 – Legal Analysis of the Trial and of the Arguments of the Parties | 13 |
| 1 The Facts | 13 |
| 2 The Trial Before the First Instance Court | 14 |
| 2.1 The Accusation | 14 |
| 2.2 The Charge of Unlawful Processing of Personal Data | 17 |
| 2.3 The Charge of Defamation | 21 |
| 3 The Arguments of the Public Prosecutor Before the Appeals Court | 26 |
| 3.1 Applicable Law | 27 |
| 3.2 Defamation and the Duty of Care | 27 |
| 3.3 The Privacy Policy and the Consent of the Data Subject | 28 |
| 3.4 The Specific Risks Carried by the Data Processing | 30 |
| 3.5 The Hosting Defense | 32 |
| 3.6 Remarks | 33 |
| 4 The Arguments of the Defense Attorneys Before the Appeals Court | 35 |
| 4.1 Applicable Law | 35 |
| 4.2 The Hosting Defense | 39 |
| 4.3 The Privacy Policy and the Consent of the Data Subject: the Controller Issue | 41 |
| 4.4 The Specific Risks Carried by the Data Processing | 44 |
| Chapter 2 – The Appeals Court Decision: Procedural and Substantial Issues | 47 |
| 1 The Issue of Jurisdiction at the Heart of «Internet Governance» | 47 |
| 2 The EU Answer to the Issue Related to the Applicable Law with Regard to the Enforcement of the Euro- | |

| | |
|--|------------|
| pean Data Protection Legislative Framework and the Choice of the Appeals Court to Consider Relevant the Italian Legislation | 48 |
| 3 The Confirmation of the Acquittal from the Defamation Indictment | 56 |
| 4 The Acquittal from the Charge of the Unlawful Processing of Personal Data | 60 |
| 5 The Vexata Quaestio of the «Passive» or «Active» Hosting Provider | 68 |
| | |
| Part II – Beyond the Case. Open Issues and New Challenges | |
| | |
| Chapter 3 – The Law of the internet and the ISP: Applicable Law, Jurisdiction and Liability Regime | 75 |
| 1. Applicable Law and Jurisdiction in a Broader, Comparative, Perspective | 75 |
| 2 The Achilles’ Heel(s) of the «Futility» Argument: Three Points Overlooked by the Anarchic approach | 86 |
| 3 ISPs’ Liability Regime | 91 |
| | |
| Chapter 4 – Towards a New European Data Protection Legislative Framework | 101 |
| 1 Introduction | 101 |
| 2 Context of the Proposal | 102 |
| 3 The Draft Regulation | 105 |
| 3.1 Key Provisions of the Draft Regulation | 106 |
| 3.1.1 Definitions and Requirements for Consent | 106 |
| 3.1.2 Principles Relating to Personal Data Processing; Lawfulness of the Processing | 108 |
| 3.1.3 Rights of Data Subjects | 109 |
| 3.1.4 Obligations of Controllers and Processors | 111 |
| 3.1.5 Security Data Breaches | 115 |
| 3.1.6 The Consistency Mechanism | 116 |
| 3.1.7 Transfers of Data to non-EU Countries | 117 |

| | |
|---|------------|
| 3.1.8 Right to Compensation, Penalties and Administrative Sanctions | 118 |
| 4 Territorial Scope of the Draft Regulation | 119 |
| 4.1 Applicable Law under the Data Protection Directive | 119 |
| 4.2 Applicable Law under the Draft Regulation | 122 |
| 4.2.1 In Particular: the «Offering of Goods or Services» Criterion | 125 |
| 4.2.2 Criticalities of the «Targeting» Test and Open Issues | 128 |
| | |
| Appendix – English Translation of the Appeals Court’s Decision of 21 December 2012 | 131 |