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Stranger things: legal monsters versus Open Science

From Intellectual Property to Pseudo-Intellectual
Property

Associazione Dottorandi e Dottori di Ricerca in
Italia (ADI)

Siena 26.01.2026

Roberto Caso

STRANGER THINGS

Legal monsters (since the 1980s)




Roberto Caso - Stranger Things - Siena - 2025

Outline

1. Bayh-Dole Act (1980), DMCA (1998)
2. Legal monsters as weapons: MIPGA
3. Youngness (and ingenuity) versus monstrosity since the 1980s

1



Intellectual Property (TRIPS 1994): a Western (American) category conquering the world



45 years of history in a nutshell (Part I)

- **Diamond v. Chakrabarty**, 447 U.S. 303 (1980)

human-made bacteria could be patented under the patent laws of the United States because such an invention constituted a "manufacture" or "composition of matter"

- **Bayh-Dole Act** (1980) American universities can patent inventions resulting from publicly funded research activities

Bayh-Dole Act 1980 – Traficonte (2021)



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Property and Power on the Endless Frontier

74 Pages • Posted: 30 Aug 2021

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Massachusetts Institute of Technology (MIT)

Date Written: August 9, 2021

Abstract

Much of the innovation in the American economy originates in the federal research system—the vast set of federal agencies that directly fund R&D at public research centers, universities, and industrial labs. By the time these innovations are eventually brought to market, however, they are under private control, a result of the legal framework that determines ownership rights to state-backed inventions. Since the passage of the Bayh-Dole Act in 1980, government patent policy has been settled in favor of private ownership of government-funded innovation. Why does the government channel massive amounts of public resources into groundbreaking research, only to turn over the fruits of that research to private hands?

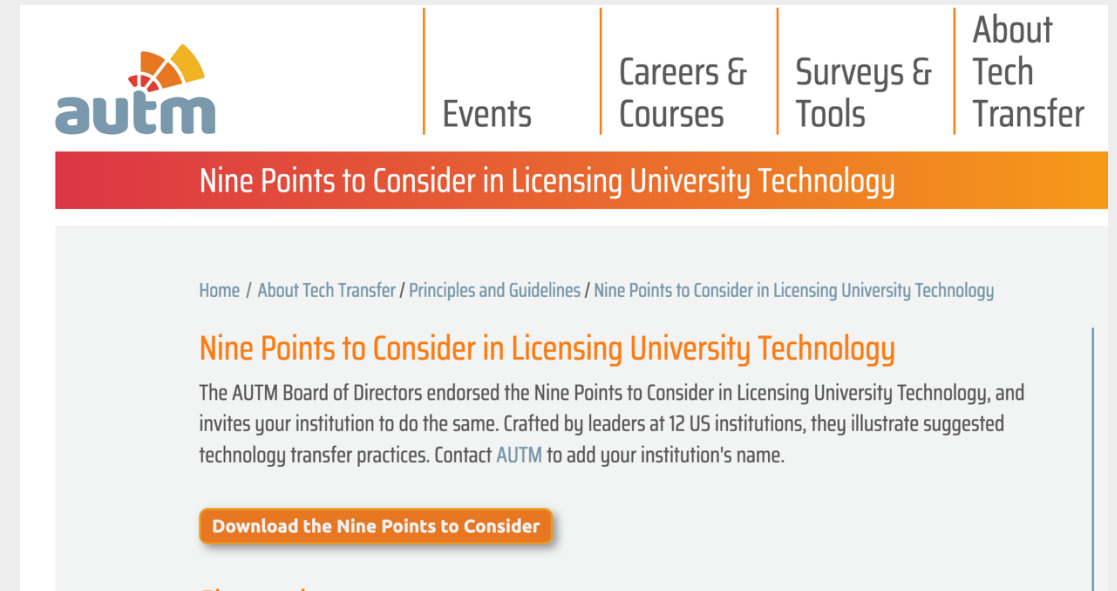
The standard explanation suggests that the “technology transfer” consensus rests on the modern rationale that intellectual property rights are necessary to encourage back-end commercial development rather than initial investments in research. Under this justification, even though private contractors do not assume the up-front risks—as the traditional defense of patent rights holds—they may still require exclusive rights in order to turn innovations into commercializable products. This rationale posits the commercial spinoff as a chief aim of the federal R&D system, and thus emphasizes patent utilization and efficiency as leading considerations. In the leadup to the 1980 watershed, this explanation goes, policy makers increasingly embraced this rationale, and it quickly became the conventional wisdom on which the new consensus rested.

Traficonte (2021)

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Nine Points to Consider in Licensing University Technology (2007)

- https://www.autm.net/AUTMMain/media/Advocacy/Documents/Points_to_Consider.pdf



The screenshot shows the AUTM website's navigation menu with links for Events, Careers & Courses, Surveys & Tools, and About Tech Transfer. Below the menu is a red header bar with the page title. The main content area includes a breadcrumb trail, the page title, a paragraph explaining the document's origin and purpose, and a prominent orange button labeled 'Download the Nine Points to Consider'.

Rapporto NetVal 2025

Italian Technology Transfer:

- The five best-performing entities hold a total of 4,090 patents, accounting for approximately 46% of the total.
- 2023 (expenditure): approximately €6.12 million.
- 2023 (income from active licenses): €5.87 million, with an average value of €94,300.



Premio Nobel per la medicina 2023

- <https://www.robertocaso.it/2023/09/24/liberta-di-ricerca-e-profitto/>

THE NOBEL PRIZE

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The Nobel Prize in Physiology or Medicine 2023

Summary

Laureates

Katalin Karikó
Drew Weissman





Prize announcement


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Katalin Karikó
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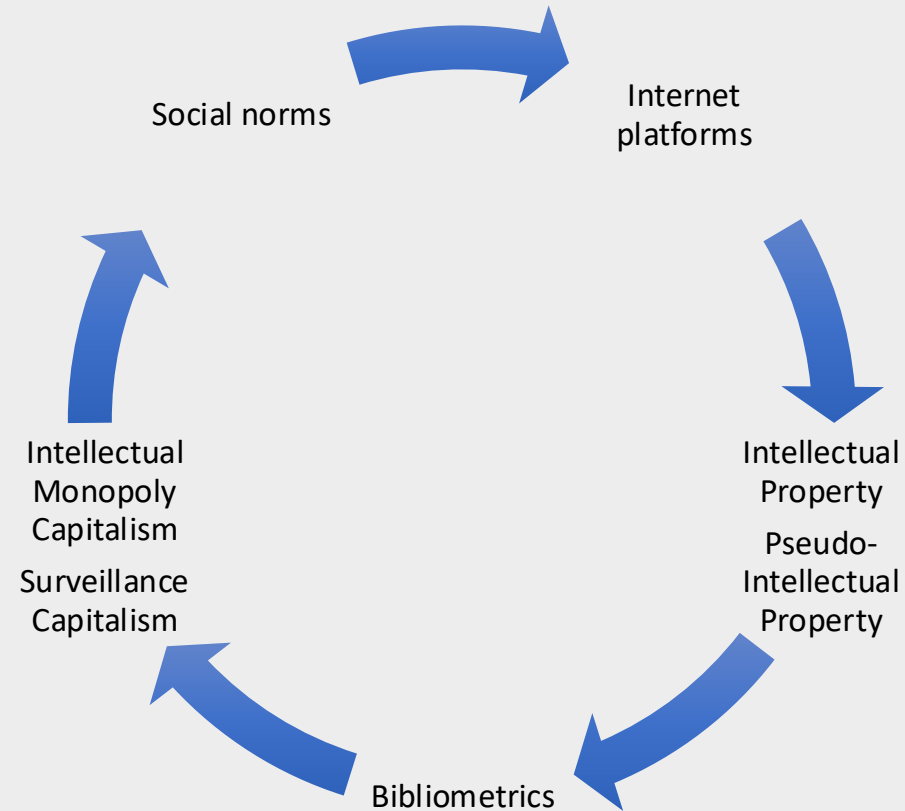
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Drew Weissman
Prize share: 1/2

45 years of history in a nutshell (Part I): Pseudo-Intellectual Property

- Technological control
- Contract (e.g. End User License Agreement)
- Copyright: legal protection of Technological Protection Measures (TPMs)

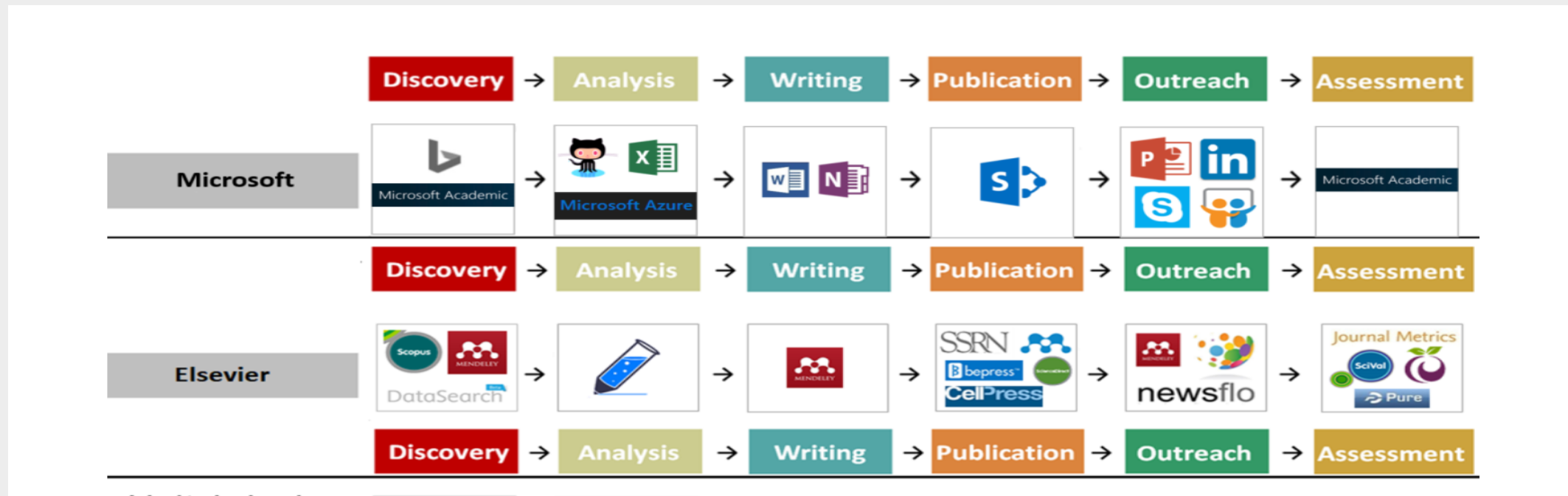


The death of the scientific author: a vicious circle



Brembs et al. Plan I (2021)

«While public institutions hesitantly deliberate, commercial providers act»



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Trento Law and Technology

Research Group

Student Paper n. 86

IL CAPITALISMO DEI MONOPOLI INTELLETTUALI E L'EDITORIA DELLA SORVEGLIANZA. UN'ANALISI DELLE POLITICHE EUROPEE SULL'OPEN SCIENCE E SULLA REGOLAZIONE DEI DATI

CAMILLA FRANCH



2

Legal monsters as weapons: MIPGA



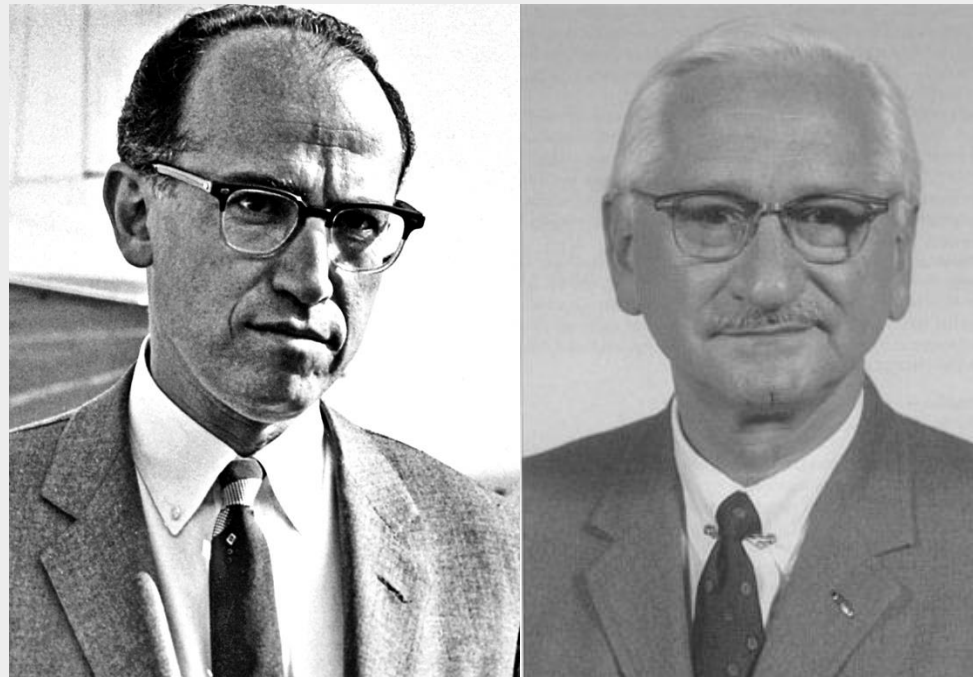
- [April 26, 2025](#) (Trump)
- «Through the strategic use of tariffs, we are recentering our trade policy and **securing stronger intellectual property** protections in **new and existing trade deals**. Just as we protect our physical property, we will not tolerate the theft of **our intellectual property**, and **we will defend our businesses and people from those who are seeking to steal American jobs and wealth**».

3



Salk [e Sabin]: Could you patent the sun?

- [Salk Interviewed by Ed Murrow: Murrow](#) «Who owns this patent?» Salk: «The people, I would say. There is no patent. Could you patent the sun?»
- Enzo Biagi intervista Albert Sabin (1992): “I wanted this vaccine to be inexpensive and widely available. I didn't want to get rich.”
- [Milena Gabanelli, Francesco Tortora 22.12.2025](#)



Istituto Mario Negri (Silvio Garattini) Why do we not patent our findings?

«[Why do we not patent our findings?](#)»

- FREEDOM FROM CONFLICTS OF INTERESTS
- FREEDOM FROM CRITICISM
- FREEDOM TO COMMUNICATE
- FREEDOM TO COLLABORATE



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MARIO NEGRI · IRCCS

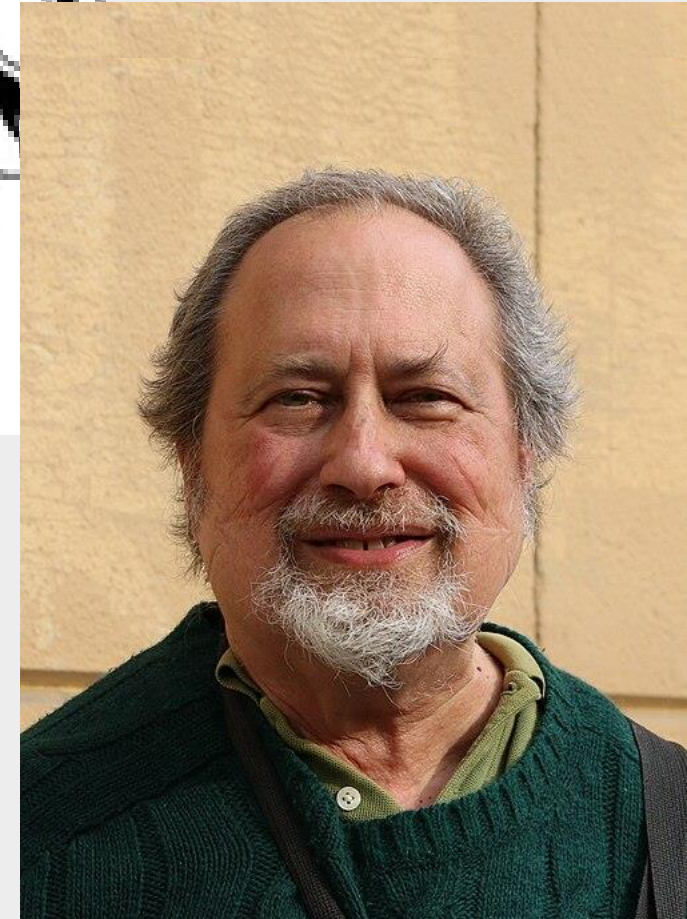
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ISTITUTO / PERCHÉ NON BREVETTIAMO

Perché non brevettiamo le nostre ricerche

Free software: What is Copyleft?

- «In the [GNU project](#), our aim is to **give *all* users the freedom to redistribute and change GNU software**. If middlemen could strip off the freedom, our code might “have many users,” but it would not give them freedom. So instead of putting GNU software in the public domain, we “copyleft” it. Copyleft says that anyone who redistributes the software, with or without changes, must pass along the freedom to further copy and change it. Copyleft guarantees that every user has freedom».



AISA: denouncing contradictions (some examples)

- Promoting open science without weakening or eliminating intellectual property
- Promoting technology transfer from public research to the market without addressing the consequences of the privatization of knowledge and social costs (including in terms of human lives)
- Promoting exclusive control by the national state over digital cultural heritage in the public domain while proclaiming the principles of open science
- Promoting espionage in universities while proclaiming respect for autonomy and the protection of personal data



References

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- R. Caso, G. Dore, [Academic Copyright, Open Access and the “Moral” Second Publication Right](#), Trento LawTech Research Paper nr. 47, 2021, in [European Intellectual Property Review, 6/2022, 332-342](#)
- R. Caso, [The academic copyright in the age of commodification of scientific research](#), in SCIRES-IT – SCientific RESearch and Information Technology, [Volume 10, Special Issue \(2020\) Open Science: New models of scientific communication and research evaluation](#), Issue edited by P. Gargiulo and Editors in-Chief V. Valzano and M. Cigola
- R. Caso, [The Darkest Hour: Private Information Control and the End of Democratic Science](#), Trento LawTech Research Papers, nr. 35, Trento, Università degli studi di Trento, 2018, in I. De Gennaro, H. Hofmeister, R. Lüfter (eds.), [Academic Freedom in the European Context. Legal, Philosophical and Institutional Perspectives](#), in [Palgrave Critical University Studies](#) book series (PCU), Springer Nature, 2022, 259-288

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- R. Caso, [Proprietà intellettuale](#), AISA, [Dizionario della scienza aperta](#), 2022-2023
- M.C. Pievatolo, [Improprietà intellettuale. Ricostruire il diritto d'autore](#), Bollettino telematico di filosofia politica, 2024-...

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- Roberto Caso, [La società della mercificazione e della sorveglianza: dalla persona ai dati. Casi e problemi di diritto privato comparato. Seconda Edizione](#), Milano, [Ledizioni](#), 2025
- Capitoli 22, 23, 24, 25



AISA: Diritto di ripubblicazione in ambito scientifico (2016)

- From secondary publication right to right to open scientific publications

Proposta di modifica alla legge italiana sul diritto d'autore

Art. 42-bis (L. 22 aprile 1941, n. 633, Protezione del diritto d'autore e di altri diritti connessi al suo esercizio)

1. L'autore di un'opera scientifica che sia il risultato di una ricerca interamente o parzialmente finanziata con fondi pubblici, come un articolo, una monografia o un capitolo di un libro, ha il diritto di riprodurre, distribuire e mettere a disposizione gratuita del pubblico la propria opera nel momento in cui l'editore l'abbia messa a disposizione gratuita del pubblico o dopo un ragionevole periodo di tempo, comunque non superiore a un anno, dalla prima pubblicazione. L'autore rimane titolare di tale diritto anche qualora abbia ceduto in via esclusiva i diritti di utilizzazione economica sulla propria opera all'editore o al curatore. L'autore nell'esercizio del diritto indica gli estremi della prima edizione, specificando il nome dell'editore.

2. Le disposizioni del primo comma sono di ordine pubblico e ogni clausola contrattuale che limiti il diritto dell'autore è nulla.

AISA: Per un vaccino anti Covid-19 aperto a tutti (2021)

- «Universities and research institutions could finally be encouraged to collaborate in order to make available to everyone—all Italians and all human beings—the knowledge and technologies necessary to produce a new vaccine, in fair competition with multinational pharmaceutical companies, based on principles rather than products»



The screenshot shows the website of AISA (Associazione italiana per la promozione della scienza aperta). The page features the AISA logo, a navigation menu with items like 'Associazione', 'Organi', 'Statuto', 'Attività', 'Notizie', 'Politiche', 'Seguici', 'Scrivici', 'Sostienici', 'Mappa del sito', and 'Privacy'. The main article is titled 'Per un vaccino anti Covid-19 aperto a tutti', published on February 14, 2021, and updated on March 13, 2021. The article is divided into two sections: '1. Cooperazione invece di competizione' and '2. Un vaccino libero'. The first section discusses the importance of cooperation between research centers, while the second section advocates for a free vaccine based on principles rather than products. A sidebar on the right lists recent articles, including 'Video dell'audizione AISA in Senato (5 ottobre 2021)' and 'La borsa e la vita. Scienza aperta e pandemia'.

AISA: libera riproduzione delle immagini dei beni culturali (2023)

- «For these reasons, AISA calls for an immediate change in ministerial policies towards total and absolute liberalization, without the payment of fees, of the reproduction and reuse for scientific purposes of Italian cultural heritage assets. AISA also calls for an amendment to the Cultural Heritage Code in order to establish by law the principle of free reproduction and reuse of cultural heritage for scientific purposes.».



AISA

Associazione Italiana per la promozione della scienza aperta

Prof. Roberto Caso – Presidente

Al Ministro della Cultura della Repubblica Italiana
Gennaro Sangiuliano

e.p.c.

al Ministro dell'Università e della Ricerca della
Repubblica Italiana
Anna Maria Bernini

AISA: servizi segreti, sicurezza e università (2024, 2025)

- «The imposition, in the university and public research sectors, of an obligation to cooperate [with intelligence agencies] in connection with the disclosure of information in derogation from sectoral confidentiality rules is a cause for concern».



The screenshot shows the header of the AISA website. On the left is a vertical orange bar. To its right is the AISA logo, a blue stylized 'Q' with an orange dot. Below the logo, the text 'AISA' is written in blue, followed by 'Associazione italiana per la promozione della' in black. A navigation menu is located below, with items: 'Associazione', 'Organi', 'Statuto', 'Attività', 'Notizie', 'Politiche', 'Seguici', and 'Scrivici'. A small UK flag icon is visible below the menu. At the bottom of the screenshot, the text 'Ricerca pubblica, servizi segreti: il ddl sicurezza e l'università' is displayed, followed by 'Pubblicato il 15 Dicembre 2024 da Maria Chiara Pievatolo'.

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