

## INTERNATIONAL CONFERENCE ON “INTERNET 2.0 AND NEW PROFILES OF REGULATION”

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On 9<sup>th</sup> May 2014, in order to celebrate the World Intellectual Property Day, the conference "Internet 2.0 and new profiles of regulation" has been organised at the European University of Rome. This event has been realized within the framework of activities of CREDA (Research Center of excellence for the copyright) in cooperation with the General Directorate for Libraries, Cultural Institutes and Copyright of the Italian Ministry of Heritage, Cultural Activities and Tourism. The conference related to the Research Project of National Interest: “The Legal Regulation of the Information and Communication Technologies (ICT) as a tool to strengthen inclusive, innovative and secure societies”. The European University is the leader of this Research Project.

"How to adjust the phenomena that have been encompassed within the definition of 'Internet 2.0' ensuring the fair balance of forces and rights in this field? We need to focus on self-regulation, on new and more effective regulation or rather on co-regulation as a third way?". With these questions, Prof. Valeria Falce, Lecturer of Economic Law at the

European University of Rome and coordinator of the conference, introduced the Conference by summarizing some of the main issues at the center of the following speeches.

By looking at the figures of the era of knowledge economy two variables have been identified: technological innovation and globalization of markets. The first component is the cause of the continuous adaptation of creative innovation in favor of technological development; on the other hand, the globalization of markets is argued forcefully through the proposition of a request for services on a transnational scale, widening the boundaries of the market almost to a worldwide extent. "Internet 2.0." can be defined in the scenario of the so-called information economy, both from the point of view of technological innovation and globalization of markets. In fact, Internet 2.0. constitutes a sort of evolutionary stage around the strengthening of the relationship of dynamic interaction between different actors. At this point, it realizes the important shift from a static to a dynamic approach with direct relapse on the changing role of the consumer: no more just a passive observer but rather the protagonist in the provision of services and in the development and sharing of content. When considering the globalization of markets, it is worth to mention the Cloud computing as a new model of service aimed to enable the

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storage of unlimited resources, and it is an important hub in the management of the flow of information through a fragmented process of constant relocation. Turning to the profiles of the regulation of the Internet 2.0., Prof. Falce concluded by indicating the critical issues, both under the perspective of method and merit, which would be the object of following speeches, emphasizing the complexity of the choice, in terms of legal technique, on how to adjust these phenomena favoring an environment of certainty and level playing field.

After the remarks of the Rector of the European University of Rome Luca, P. Gallizia, the first session entitled regulation and competition at the EU and national level has been chaired by Prof. Alberto Gambino, National Coordinator of the project 'PRIN 2010-2011'. During the session, there have been the interventions of: Angelo Marcello Cardani, President of the Italian Communications Authority (AGCOM), Giovanni Pitruzzella, President of the Italian Competition Authority (AGCM) and Roberto Viola, Member of the EU Commission - DG Connect. The latter pointed out that today a new kind of industrial revolution is taking place. In this context, the EU must adopt as soon as possible the necessary measures otherwise a simple rhetoric of innovation, unaware of all the factors, would risk to remain in a state of stasis. The digital identity, which allows the citizens to authenticate themselves via an online platform, could provide a way forward; also, the theme of Net Neutrality is

extremely delicate in relation to the free movement of services.

Commissioner Viola has long focused on the digital future, whose success is entrusted with a number of issues. In the first place, it has emerged the instance of rethinking the code of digital administration helped by introducing digital IDs for citizens. The digital identity, in fact, would allow citizens to authenticate via an online space simplifying many administrative tasks. The Commissioner Viola has also acknowledged the excellent results reached by the reform of the Directive Open Data to give to all citizens public data at marginal costs, with the hope of a timely transposition of the Directive into national law. Considering the Italian Semester of Presidency of the Council of the EU, there have been evoked two major legislative actions that affect electronic communications: the first on the regulation on the single telecoms market, the so-called connected continent; the second concerning the Directive on network security. Returning to the issue of the single market, it has been reaffirmed the importance of looking for an opening and not for a closing, an approach sometimes not appreciated by the individual firms in the market. As for the regulation of the telecommunications market, it was indicated that the intervention has looked in particular to the discipline of essential inputs, first of all in the market for radio spectrum frequencies. For the procedures to assign the frequencies, a series of new charges have, in fact, been planned at the European level including the duty of notification to the European Commission by the Member State which

wishes to sell the frequencies. Among the other delicate topics discussed, there is also the theme of Net Neutrality. The issue is stronger in the north of Europe, because of better functioning networks, however, given the necessity of a qualitative advancement in Southern Europe, it was clarified that the issue should soon be of considerable significance also in the countries of Southern Europe. Among the many open questions, it is also urgent to face some arbitrary blocks imposed by operators with regulatory strategies aimed at banning these blocks.

President Cardani has focused his intervention on an initial assessment of the effects of the anti-piracy Regulation which entered into force last 31th March, by stressing that the regulation aimed to contrast any violation of intellectual property rights on the web without affecting the final user, neither the user's privacy, nor by restricting the freedom of expression and information. To underline that the regulation allows, at any time, the parties of the proceedings to request the intervention of the magistrates with the immediate filing of the administrative process in front of the Authority. Cardani has continued by specifying how the expected changes against piracy would not be immediate, especially after just one month from their release. However, he has announced positive gradual results given the widespread use and legal supply of new technologies. In fact, for the first time after 25 years, Italy has been removed from the blacklist of countries under observation for problems related to the protection of copyright by the American Report Special301. This result can fit

into an overall relegation of digital piracy, according to the objective of AGCOM upstream the release of the Regulation. In addition, one strength of the proceedings appears to be its quickness. The absence of sanctions shows the intention to leave up to the judiciary body alone the task of punishing the theft of intellectual property, while it is up to the administrative procedure the role of helping to decrease, through the suspension of the conduct, criminal acts. With regard to the organizational structure it is based on a computer technology that allows full digitization of the proceedings. The President has emphasized the objective and subjective difficulties which have always encompassed the regulation of the web; in this context, a non-invasive but working and promising tool to advance towards the rule of law in the network should be hopefully welcomed with the due enthusiasm. Looking at the first cases treated by the Authority, albeit the numbers are still low, the President has in general terms described the case studies showing how there were, on the one hand, a lot of adjustments to the spontaneous mere receipt of the notice, on the other hand, cases of intervention by the Commission services and products which was forced to order to the owners the block of illegal content sites since the providers were abroad.

Afterwards, President Pitruzzella has pointed out how in the telecommunications sector there is an important focus on the creation of the digital single market, considered as a factor able to bridge the gap with countries that are already equipped with more advanced

infrastructure. The Commission relates the causes of the slowdown of investments in this sector to the weakness of the European telecommunication providers, which act in a very fragmented scenario of national markets. However, for the future, any possible concentration of the operators in the internal market should be realized according to the principles of competition. "Europe - said the President of Agcm - is not only that of the fiscal compact, but a complex reality in which the single market is crucial for the process of growth, without which many of the gains achieved in the past decades will be irreparably lost. "

The President has invited to consider that antitrust rules do not represent an obstacle to the efficient balance of the market of technologies for the creation of a single market. The antitrust is only one antidote to the creation of non-competitive markets, with a high risk for the development of innovation. As for the role of over-the-top, there is an important relationship between operators ruling the networks and those that provide services and travel on the same networks; this turns out to be, according to the President, perhaps the most delicate issue in the new regulatory architecture of internet, just thinking about the enormous debate on net neutrality. In this regard, it was mentioned the judgment of the Court of Appeal of the District of Columbia, which re-launched in the US the debate on net neutrality. The decision has changed the principles of the Federal communication commission, stating that it should have adopted, pursuant to the

judgment, the new rules on network neutrality that will allow the providers to enter into agreements with content providers, such as Google and Netflix, to treat their traffic preferentially, provided that the terms of these agreements were commercially reasonable; assessing the reasonableness rests with the Federal communication commission. It is evident how the American position is very different from the European on which, on the contrary, reduces the space for arrangements of this type.

Referring to the increasingly close relationship between the European institutions and national Authorities, as observed during the debate, Prof. Gambino has noted how this trend could also be interpreted as a weak point questioning therefore on the role of national parliaments and territoriality as a whole. Taking up the challenge launched at Salone del Libro in Turin few days ago by Dario Franceschini, the Minister for Cultural Heritage, about a "compensation for damages to literature caused by the TV networks ", Professor Gambino has introduced a further reflection on the value of reading in a time when the new technologies change the use of culture. In recent decades, in fact, there has been a break in the first cultural enjoyment from a reading-based-model to a more liquid-based-one which has found in the medium of television its natural expression. Today in the internet scenario, the cultural production is oriented towards new forms of expression which could be considered as a brand-new literary genre. However, the present case is very distant from the traditional models. In this sense, a reflection on the value of reading in digital age is highly topical.

In the second session, devoted to network operators and rights in the 2.0 environment, among the panelists: Prof. Scythe, Prof. Paul Nihoul (University of Louvain), Prof. Roberto Pardolesi (LUISS Guido Carli), Prof. Vincenzo Zeno-Zencovich, (University of Roma Tre - Unint Chancellor), Prof. Vincenzo Franceschelli (University of Milano-Bicocca) and Paolo Coppola, Italian MP of the Democratic Party. A vivid debate has arisen with regard to the rules that govern the migration of the Italian Public Administration towards the digital era.

Prof. Nihoul specified that nobody really knows what it means Web 2.0, for somebody is blogs and wikis, then that is people to people. But that was what the Web was supposed to be all along. Web 2.0, for some people, it means moving some of the thinking [to the] client side, so making it more immediate, but the idea of the Web as interaction between people is really what the Web is. That was what it was designed to be, a collaborative space where people can interact.

The Web will be understood not as screenfuls of text and graphics, but as a transport mechanism, the ether through which interactivity happens. It will appear on computer screen, TV, car dashboard, cell phone, hand-held game machine, maybe even microwave oven!

In conclusion for professor Nihoul, Internet 2.0. represent: more importance to audiovisual, to user driven, to business efficiency (cost saving, computing capacity, know how), special

attention to copyright and competition, generalized computerized environment.

Professor Pardolesi has introduced the theme of neutrality by investigating the different ways to interpret it, even debunking the myth of interoperability. Based on the testimonies of free culture, such as Lawrence Lessig, Professor Pardolesi has proved contrary to the election of net neutrality as the guarantor of democracy, manifesting himself closer to moderate models of anarchy of the network. The ruling of last January 14<sup>th</sup> 2014, already quoted by President Pitruzzella, has been evoked as the milestone on net neutrality. Then, by making a taxonomy of broadband service providers, he has said that there is a "bipolar Antitrust" which alternates antitrust and organizations that offer non-invasive *ex post* controls.

On the issue of online anonymity, Professor Zeno-Zencovich has highlighted the large gap between Italy and the United States outlining how the American legal traditions on anonymity with a complete protection of anonymity are not shared in Europe. In the USA the anonymity model is strongly diverging from the principles and values formed in Europe over the last thousands years, just thinking about the dogma of accountability, which would never admit anonymity as a means to avoid the taking of responsibility. Another problem of substance appears to be that the distinction must be made between the secrecy of communications and anonymity. In interpersonal communication, in fact, art. 15 of the Constitution, applies the secrecy of correspondence, however, that protects the

contents of the communication, not the secret external identification of the sender. Something else is the question of anonymity on the network where the content can be public while the identity of the author of the message is hidden. The location of digital communication affects the knowledge of the subject who writes: the sender, often concealed by the use of a nickname. The American I Amendment covers broadly all forms of free expression of thought, absorbing also the anonymity in communications.

Professor Franceschelli has introduced a new food for thought about a rethinking of the duration of copyright which today looks rather anachronistic given the rate of technological innovation. Subsequently, the debate shifted towards the subject of conflict between copyright and freedom of information and expression: it has been reaffirmed the importance of mediation in the light of the judgments of the Court of Justice, although it is still increasingly difficult to distinguish between virtual trade and commerce material in the protection of consumer rights that often become citizen's rights. In this sense, the path indicated by the European Court of Justice, would seem to favor the protection of freedom of expression rather than that of copyright. Professor Franceschelli has finally shown the impact with respect to the rights of consumers, in the transition from a static website to a dynamic one. In the perspective of the consumer, in fact, there is a more and more complex distinction between virtual and material commerce; in the future, there should be uniform rules otherwise this would create a

gap in the protection between consumer rights and rights of the citizens.

The third session opened the debate on issues like New services, data, and content protection. Chaired by Prof. Salvatore Sica (University of Salerno), it has been animated by: Prof. Rosaria Romano (University of Chieti-Pescara), Prof. Giorgio Resta (University of Bari), Prof. Andrea Stazi (European University of Rome) and Prof. Gustavo Ghidini (University of Milan - LUISS Guido Carli).

Looking at the many issues that deal with the scenario of internet 2.0., it has been introduced the idea to expel the mortgage of freedom of speech, as, according to Professor Sica, the complexity of the Internet cannot be reduced to a mere trench between proponents and critics of the freedom of expression. According to the regulatory instruments of the network, it has seemed appropriate to make a saving of traditional legal categories and models.

Prof. Giorgio Resta has also focused the analysis on the critical factors of privacy, identifying four phenomenological aspects underlying the transformation of the established framework of confidentiality. Firstly, it has been recognized the increasing surveillance by public authorities, no longer national but transnational; secondly, the massive collection of data by private entities: Prof. Romano has long focused on the phenomenon of big data. As a third crucial aspect of the crisis of the rules on confidentiality it has, then, been called the phenomenon of social media, indicative of the

change in awareness and perception of social, talking about the role of the so-called “prosumer”, consumer-producer. Finally, it has been analyzed the trend on the continued existence of the data circulating on the web where the release of results is almost non-removable, a subject stimulating thoughts with regard to the right to be forgotten. The analysis of these four factors showed the transition from a centralized monitoring mechanism, pan-opticon, to one of fluid surveillance, sun-opticon, decentralized and put in place also by private entities for onward transit to the centers of public powers.

Closing the session, Prof. Stazi has confirmed that the application of traditional institutions for the new problems that have arisen in the digital environment represents the real challenge for Internet 2.0. The professor suggests two ways of investigation: the first represented by the conflictual relationship between intellectual property rights and other fundamental rights; the second is that of the new questions posed by the User Generated Content.

Prof. Ghidini has represented the position taken by European Authority on Personal Data entitled “Privacy and Competitiveness in the age of big data”, in which it is argued the need for an integrated approach and a functional link between the activities of the antitrust authorities and privacy protection, moving from the assumption that the growth of information through the big data corresponds more and more to an instrument of market power and therefore of dominance. This marks an *aporia* for the antitrust analysis carried out so

far as there have been considered as factors of market power only pay services, while today the acquisition of personal data takes place not only through fee-based services, but mainly through many free services where the user, most of the time unaware, with its signature transmits its data that represents a real wealth. In the assessment of market power it has, therefore, to be calculated the plurality of sources of acquisition of personal data.

Following the conclusions of Prof. Ubertazzi (University of Pavia), it has started the Round Table on Circulation of digital content and enforcement of copyright in the network, organized on the occasion of the publication of Volume of Eugenio Prosperetti “The digital work between rules and the market.” The debate, moderated by journalist Marco Cecchini, has been opened by the intervention of the MP of Forza Italia Antonio Palmieri, who stressed how the interest in relation to the themes of Internet has emerged in politics: ie. the WebTax, the so-called fair compensation and the debate about the Agcom Regulation. However, the importance of the subject requires a dialogue with the European institutions in order to optimize the reforms; the presidency of the European Union would seem the perfect opportunity to showcase the many instances with a realistic hope of seeing effective measures for the protection of copyright also on the Web, which should not be read as a world apart, but as integral part of our society.

Then, the comments of Maria Concetta Cassata (Mibact), Maria Candida Gregorio (Rai) and Giovanni Napolitano (WIPO). The latter has emphasized how what happens in countries like China and India on the subject of piracy, makes it almost marginal the western phenomena. Napolitano went on to explain how the WIPO has for several years focused its activities on multilateral coordination issues arising from the relationship between intellectual property rights (in particular copyright) and digital technologies. Of equal importance the issues related to the illicit spread of products protected by copyright and tools that have been developed thanks to WIPO to try to restrict their further disclosure.

On the specific aspect of the role of Internet providers, WIPO has recently completed a comparative in-depth study both on common law jurisdictions and those of civil law, in an attempt to identify the elements on which any regulatory developments at the international level could be based. In common law jurisdictions it has been developed the concept of violation of the right to authorize ("Authorizing INFRINGEMENT"), whereas civil law jurisdictions have not yet defined a clear distinction between direct and indirect responsibility (of the internet provider) that is found on a case-by-case basis.

In addition to the enforcement tools designed to protect copyright, WIPO has also sought to identify those aspects of the law on the protection of free competition which can play a positive role by both reducing the incentives for violation of intellectual property rights and

ensuring access to basic and cheap goods covered by copyright.

Roberto Bedani (Director of Confindustria Digitale), has contributed to the debate by stressing how important is for the Web economy to find solutions to some complex transnational problems. The first of them is the need to implement measures that make the Internet a space where irregularities are reduced to a tolerable amount. The second relates to the taxation of big players. The third underlines the need to wonder if there are any dominant positions, trying to cordon off the new markets. The works of the conference ended with the speeches of: Carmelo Fontana (Corporate counsel of Google Italy), Isabella Splendore, Responsible for legal and international area of the Federazione Italiana Editori Giornali, Andrea Franceschi (Confindustria Radio Tv) and Prof. Francesco Graziadei (LUISS).

The Round Table has concluded that in Italy there is an extraordinary cultural heritage, where the protection of copyright is an instrument to ensure, to preserve and to promote this heritage, as well as the incentive for the creation of a new process of cultural production. Looking at institutions, it is clear that they play a delicate role in supporting, on the one hand, the necessary technology development and scientific progress, on the other hand, the productions of the artists, assisting them in the difficult protection of their works from the many, sometimes too many channels of exploitation permitted by the

new technologies. In this way, the difficulty for the institutions lies in being able to cooperate in order to ensure a fair balance between the conflicting three instances: the need to protect the cultural heritage that already exists, the guarantee of the right of access to information and the duty to stimulate new creative processes. The development of the Web provides, in fact, an extraordinary opportunity to produce and disseminate culture and share values, knowledge and ideals. However, there is the need to pursue regulatory policies able to uphold the freedom and at the same time the rights of the various players involved in the network. In this sense, the topics discussed during the conference, such as access to the content and its control, the digitalization of literary-scientific heritage and the rules for their exploitation, assume primary importance in the dialogue between the protection of intellectual property and the correct regulation of the web.