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Abstract: In a World where Internet, and therefore the information technology is the greatest novelty, it is necessary to overcome the consumers information asymmetry and to enhance the consumer digital literacy. Moreover internet has introduced the concept of “digital market”, a market independent from geographical borders. In this market, in which consumers play an active role along with the enterprises, we have to face several issues, such as access to the internet, geo-blocking and internet neutrality. These and other issues cannot be addressed with a simple adjustment of traditional categories but it is necessary to create a “new list”.

The internet today is the “complex system” par excellence, perhaps the greatest novelty of the last century with a worldwide impact.

The specificity of the internet is given by, among other things, the elevated technological gradient of its environment, the information technology: this requires to overcome the competition and consumers rules enforcers’ information asymmetry even before to enhance the consumer digital literacy.

Its innovative impact extends to different systems, including the global economy, becoming the epitome of the process whereby markets are achieving a progressive independency from geographical borders: this has resulted in the creation of a real “digital market” and explains the initiation of a Digital Single Market Strategy in May 2015.

Such Strategy describes a digital single market as “one in which the free movement of goods, persons, services and capital is ensured and where citizens, individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition”.

Therefore, the internet assumes a great importance for the construction of a general competitive market, in which the consumers play an active role along with the enterprises.

In a market conformed by the rules, Directive 2011/83/EU of 25 October 2011 on consumer rights, implemented in Italy by the Legislative Decree no. 21/2014, has contributed to building the “Europe of rights”.

Moreover the 28 July 2015 the Declaration of Internet Rights was officially published as an outcome of the work of the study commission established in July 2014 by the President of the Italian Chamber of Deputies, Laura Boldrini, and led by Prof. Stefano Rodotà for the development of principles and guidelines on the subject of Internet rights.

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1 Commissioner at the Italian Competition Authority.
In this respect, it is important to stress that market and rights are not antinomic concepts. During the consultation for the Declaration of Internet Rights, the Chairman of the Italian Competition Authority indeed stated that “there is no ontological inconsistency between the protection of fundamental rights and a competitive market”.

Said Declaration also take into account “the function of Internet as an economic space that enables innovation, fair competition and growth in a democratic context.”

Nevertheless, the specificity of the digital market raises several problems on this point. I will try to address briefly some of these. The first issue is ensuring the consumer’s right of access to the internet, which right is articulated in two profiles: freedom of connection to the internet and freedom of choice of the contents of the internet. In this context, bridging the digital divide becomes a factual application of the constitutional principle of equal treatment.

An important precedent in this field is the European Commission decision in the “Microsoft II” case (Comp/39530 del 2009), in which the commitments assumed by Microsoft, under article 9 of Council Regulation (EC) 1/2003, were meant to bridge the information deficit on the demand side by enabling the consumer to exercise in practice its right of choice in a context of technology interoperability.

Moreover, it is worth mentioning the “geo-blocking issue”, i.e., the practice of restricting access to the internet contents based upon the user’s geographical location. Geo-blocking is currently being investigated by the European Commission in a Competition Sector Inquiry on the application of competition law in the e-commerce area. But it is also covered by the copyright law reform and the provisions related to collective rights management and multi-territorial licensing of rights. Competition Authorities, both at European and national level, have extensively intervened in this field.

A second issue is the internet neutrality, which is relevant for the relationship among the companies of the digital market but also for consumer’s rights. The two different viewpoints on this matter, the American and European ones, are well known.

In the balance between such different approaches, the “pros” of neutrality are constituted by the incentive for innovation and by the potential competitiveness of the markets, whereas the “cons” is the risk of investments decrease, which could affect the development of new generation infrastructures.

In this respect, it is relevant to mention the decision of the Court of Appeal District of Columbia on the Open Internet Order issued by the U.S. Federal Trade Commission, which excludes the contrast between the two different positions through the mechanism of growing the demand of the end consumers.

The third issue is the specificity of Multi-sided markets, in relation to the role and the protection of consumers on IT platforms. Consumers suffer an irrefutable information asymmetry for the lack of costs’ transparency and for the data – whether confidential or not – managements procedures.

As a matter of fact, the conclusions of the European Consumer Summit of 2014 on European Consumers in the digital era include,
among the goals to be pursued by the European Commission and National Competition Authorities, digital trust and digital literacy and knowledge, considered tools to overcome the on-line consumer information asymmetry and to make the exercise of the rights effective.

Finally, the fourth issue is the protection of intellectual property right from the online infringement: the Internet has revolutionized the way of using literary and artistic works and, with the e-commerce, this extends to the distinguishing signs, digging up new counterfeiting and hacking and, therefore, new approaches for protection.

On this point, there is consistent EU case law. One need only mention some of the most relevant judgments of the European Court of Justice.

First of all the Judgement C-275/06, Promusicae v. Telefonica, in which the Court ruled that since personal data are specifically protected under several EU directives, any court order addressed to an Internet provider to disclose the identities of alleged copyright infringers must be proportionate.

Then in C-324/09, L’Oreal v. Ebay, the ECJ held the operator of an online marketplace immune “where that operator has not played an active role allowing it to have knowledge or control of the data stored. The operator plays such a role when it provides assistance which entails, in particular, optimizing the presentation of the offers for sale in question or promoting them”.

Moreover in C-70/10 SABAM c. Scarlet, the ECJ ruled that a court order, which required an internet provider to install a general system for filtering all of its Internet traffic as a preventive measure against unauthorized file sharing, is incompatible with EU rules.

Last but not least, Judgment C-314/12 Telekabel c. Costantin, where the Court concluded that “it must be observed that an injunction such as that at issue in the main proceedings, taken on the basis of Article 8(3) of Directive 2001/29, makes it necessary to strike a balance, primarily, between (i) copyrights and related rights, which are intellectual property and are therefore protected under Article 17(2) of the Charter, (ii) the freedom to conduct a business, which economic agents such as internet service providers enjoy under Article 16 of the Charter, and (iii) the freedom of information of internet users, whose protection is ensured by Article 11 of the Charter”.

In conclusion, these and other issues that will be raised in the future cannot be addressed with a simple adjustment of traditional categories. In terms of digital consumer’s rights, it is necessary to create a “new list” and it is not sufficient a “constitution-oriented interpretation of the constitutional principle underlying the fundamental rights”, as suggested by Mr. Giovanni Pitruzzella during the consultation process for the Declaration of Internet Rights.