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Original article

## «ВЫБОР АКТИВНОСТИ» В СЕТИ И ПРОИЗВОДСТВО ПРАВ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ: МЕДИАПОТРЕБЛЕНИЕ МЕЖДУ СВОБОДНОЙ СЛУЖБОЙ И БЕСПЛАТНОЙ РАБОТОЙ

### THE “ACTIVITY OF CHOICE” ON THE WEB AND THE PRODUCTION OF INTELLECTUAL PROPERTY RIGHTS: THE MEDIA CONSUMPTION BETWEEN FREE SERVICE AND UNPAID WORK

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**Аннотация.** Цель данной статьи — отражение некоторых последствий деятельности, обычно осуществляемой пользователями в интернете, на экономическом и правовом уровнях, их возможное оформление в действующем правовом поле.

**Ключевые слова:** интернет, просьюмер, бесплатная работа

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• **Abstract.** The purpose of this article is to reflect on some of the consequences of the activities commonly carried out by users on the Internet on an economic and legal level, proposing their possible framing in the current legal frameworks.

• **Keywords:** *Internet, prosumer, unpaid work*

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The theme of this article is related to the reflection on the nature and effects of the activities that users commonly and daily carry out on the Internet.

The question before us is whether such “behaviors” can be considered within a system of value production, here also properly understood as generating wealth.

As an introduction, it must be said that if we consider the categories of tangible and intangible assets, it is certain that the activities carried out are of an intangible type. Could we, therefore, attract them into the sphere of immaterial labour, given that they have an economic relevance?

In fact, with regard to what is strictly operated, they usefully produce data and information both directly and indirectly. We refer here, with respect to the first case, to the personal entry of data in the form of the upload of images, writings, sounds and so on; compared to the second, we refer to the indication of tastes, preferences, locations on multiple levels, deriving from the same choices of interest made with respect to content already present on the Web (choose a service, listen to a message, looking for a product are themselves actions that give shape to our virtual image, indicative, at least in part, of our real one). Thus, the data so provided and, conversely, extracted in this way express the boundaries of our person and allow an extraction of identity, computerized [1].

All this produces a value, not only of use but also and above all of exchange, taking into consideration the preciousness of what is linked to these procedures, useful both for political and commercial purposes and for proper security policies, even in the different plots that each of them can practice.

If this is correct, we can define the user’s activity as productive work. It is no coincidence that the user, in the form of the consumer, has been defined as *prosumer*, at the same time consumer and producer of information content. It is, therefore, an activity properly of creation (of products), which also recalls the discourses on the “merchandise-audience”.

In general, *data mining* can be understood, according to some positions, as “bartering” an intended activity of (self-)exploitation with the offer of a free service [2], which hides the alienation of the product from its manufacturer [3]. Such activities can be productive in many ways and at the same time: productive, as we said previ-

ously, of wealth, as well as productive of social expressiveness (clearly, qualifications can diverge: there may be for the same act an economic productivity but not a social one and so on).

If we take into consideration the category of productive work as a reference, we can also get to the point, for these activities, at their approach to the category of reproductive work, intended as a reproduction of cultural values that are purely “generational”. This perspective, which brings us closer to a theoretical background proper to post-Fordist bio-capitalism, also brings us back to the considerations on “domestic” work. A proper scheme and very useful phenomenon in this sense, but misunderstood and hidden, precisely because it is apparently confined, formally in the free sphere of private life, to personal behaviors socially expected and compliant, but economically unpaid, despite their being essential to allow (socially) the maintenance of the dominant (and culturally hegemonic) economic system.

This brings a pure monetization of “free” time and a modification of the behaviors that are adopted there, for properly productive [4] purposes. However, it is not generally allowed to speak of work *status*, despite the presence of an activity that (indirectly or even directly) could justify it (although, as a bond of subordination, the link is more psychological and economic than purely labor-substantial).

If we then add here the manifestations of *gamificatio* [5] of computer action, for which even what objectively should not be pleasant can become pleasant, we see that the question also concerns the level of self-consciousness, that is, the consciousness of one’s own action. The work on the image accomplished on oneself in the computer world (perhaps exhibitionally) in view of an adequate interactive self-maintenance is certainly done for oneself, in relation to social dictates, but it is also extremely economically useful for the computer framework.

At this point, it is noted that the problem of framing the activities under consideration is relevant both on a political-economic level — even possibly in the context of a materialist critique of the digital economy — and on a proper legal level.

In relation to this last mentioned level, the traditional categories deriving from our civil law and the specific labor law ones can help us, at least initially.

Even before that, however, it must be said that, in order to refer to one of these areas, it is necessary to ask whether, in the context of the relationship between the user of the platforms in the so-called Web 2.0 and the platforms themselves, what is used by the user can be considered an apparently free or semi-free service or other.

Can there be some sort of collaborative co-creation, at least in part, legally recognizable? Is “collaborative consumption” a (more or less) collaborative production? If we consider it this way, we would have to evaluate the relationship in terms of sinallagmaticity, going to detect any mismatch between performance and counter-performance and, therefore, an imbalance of the relationship, theoretically amendable with the classic instruments of civil actions. If, on the other hand, we consider that the activity of the users as properly considered an unpaid work (in a context of extraction of a value surplus or even of a “toto-value” through an alienating speculation, namely, as alienation of the product of labor from the same worker-producer, thus going to reason in the course of a materialist criticism of the digital economy), the remedies of economic and formal recognition appear theoretically useful, although difficult to practice.

The questions that cannot fail to arise here are related to the sufficiency of the legal actions that can be individually proposed to correct contractual anomalies or to counter any alterations, speculations or dispossessions of value before a framework of global interest.

Even the collective expansion of these actions (in the form of *class actions* or industrial actions) does not really seem to resolve the issue completely.

Even overcoming these difficulties of framing and reconstruction within a classic legal framework (civil and labor law), rigidly focused on the idea of contractual “anomalies” of different types, with the risk of reducing the issue to hypothetical remedies that tend to be individual and not focusing on a necessary public intervention, there has been talk of a possible direct proposal, focused on a “digital social income” as [6] an element of resolution; not without problems, however, as noted with regard to a sort [7] of “contributory income on social bases”, it relates the “documedial” *surplus* with a new possible dimension of the work of the spirit of *homo sapiens*, also thanks to an income redistribution and a different use of the asymmetrically derived income. The proposal of digital social income, in fact, given that digital expressions are pure substantive expressions, and that existing computerized is only a sub-specification of actually existing (despite the possible practices discrepancies between the two levels of existence), ask substantial doubts, as well as concrete difficulties, preferring to speak of income redistribution policies that know how to enhance (even just recognizing the value produced) those work activities

increasingly different from the purely material ones of our previous *homo faber* and progressively further away from the sense of suffering and fatigue etymologically connected to work.

Therefore, in the face of the inadequacy that our traditional legal categories can express, we can only stress the importance of the phenomena noted also for the purpose of rethinking the political and economic paradigms of reference.

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