

I. Introduction

It is certainly true that the availability of large masses of data makes it possible to have a truly precious and unique operational instrumentation. The possibilities in the field of scientific and medical research are increasing exponentially, the digital personalization of services and the creation of an *ad hoc* offer for consumers would suggest that this is the case. However, it is also important to consider other important aspects of Big Data that could be considered equally important, such as the risk of control over the whole of humanity, the loss of any boundary between private intimacy and the public scenario and the degeneration of such a massive collection. This essay will explore these conflicting purposes regarding personal data in order to discover the *aurea mediocritas* as the ideal relationship between consumers and their personal data, indeed among the garrisons and protections of multiple stakeholders.

II. The ideal relationship between consumers and their personal data

Trying to define the ideal relationship between consumers¹ and their personal data² is not an easy task. All this difficulty derives mainly from the peculiarity of the terms of the relationship that are being considered. In fact, personal data are nothing more than manifestations of one's being³. Here, then, the reason for this hard analysis: it is a complex relationship because, after all, it is a relationship between consumers and themselves.

1. Big Data's potentialities for consumers

The use of Big Data⁴ in any sector involves a real revolution in the global landscape⁵. In fact, the maximum analysis of large amounts of consumers' data allows to advance research and innovation in any area, innovate business models in real time with respect to changing preferences, set the offer of services in a targeted and personalized way⁶, improve decision making and, last but not least, minimize risks⁷. Therefore, from a such variety of advantages and utilities, the entire country system would profitably benefit.

¹ "Consumer" is defined as the natural person who acts for purposes unrelated to any business or professional activity carried out. For the notion of consumer, in the first few times it is provided for, see Council Directive of 20 December 1985 No 577 to protect the consumer in respect of contracts negotiated away from business premises, in OJ L 372, 31 December 1985, 31–33. The notion of consumer, however, is facing a crisis in the digital economy, in which Internet and social networks allows the exercise of professional activity online, ending up for mixed use.

² The definition of personal data, to which the reference is made here, is that offered in art. 4 of the General Data Protection Regulation (Regulation (EU) No 679/2016 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), in OJ L 119, 4 May 2016, 1–88 (hereinafter "GDPR"). The GDPR is a European Union Regulation on the processing of personal data whose objective is to strengthen consumers' data protection rights, giving them back the control of their personal data, and simplifying the legal framework.

³ Identification data, data subject to special processing and judicial data, respectively in Articles 4(1), 9(1) and 10 of the GDPR, are the expression of one's being.

⁴ The term Big Data refers to a large volume of data - structured and non-structured - that digital databases allow to collect, analyze and catalog

⁵ See V. MAYER-SCHÖNBERGER, K. CUKIER, *Big Data: A Revolution That Will Transform How We Live, Work and Think*, (2013) Boston - New York, 6.

⁶ M. FASAN. *Artificial Intelligence and pluralism: use and application of profiling techniques in modern democracies*, in (2019) *BioLaw Journal*, 101-113.

⁷ See EUROPEAN PARLIAMENT, *Data and Security Breaches and Cyber-Security Strategies in the EU and its International Counterparts*, Study, Directorate General for Internal Policies, PE 507.476, September 2013, 23-41.

2. Big Data's vulnerabilities for consumers

The other side of the coin of such massive use of data is that of impacting consumers and their rights which, consequently, deserve to be protected⁸. Indeed, this continuous use of consumer data risks no longer contributing to human development, rather than being solely aimed at the accumulation of wealth and the exercise of influence and power on a global scale⁹. Any delimitation of the private and personal sphere would be eroded making consumers victims and pawns of the modern global Cold War, which is purely digital. Here, then, the help coming from the current legislation on the protection of personal data, the GDPR¹⁰, the result of a long decision-making process that aims to awaken consumers from a state of passive and unarmed numbness to regain an active role in front of big players and digital platforms¹¹.

3. The ideal relationship in the way of the *aurea mediocritas*

« *est modus in rebus sunt certi denique fines, quos ultra citraque nequit consistere rectum.* »¹²

The ideal relationship between consumers and their personal data should be inspired by Horace's *aurea mediocritas*, in the search for an intermediate position between the extreme opposites of a total transfer of personal data and no transfer of any¹³. Consumers, when they are called to provide their personal data, should abandon the shore of total refusal but at the same time they should not even go so far as to transfer them all without any concern. Like precious jewels, consumers' personal data must be carefully guarded by consumers themselves and, if necessary, also shown to most, but always remembering their value as the currency of the new millennium, as rich as fragile¹⁴. After all, it is true that the consumer benefits from a saving of time, energy and an improvement in life itself, but they are doing it at a high price: they are exposing themselves to the public square as if they were selling themselves, the dearest thing they have¹⁵. It is the benefit of questioning oneself that should arise, wondering if this transfer of personal data is placed in a rational balance between advantages and disadvantages, between utilities and risks.

The problem in the acquisition of such a proactive and conscientious state by consumers lies in the fact that this ability is not acquired once and for all, but it is realized from time to time by confronting the innumerable and sometimes unpredictable facets that the existence offers¹⁶. Therefore, it is a path, and not a goal, which is articulated in a great ability to control oneself without giving in to the

⁸ See N. HELBERGER, F. ZUIDERVEEN BORGESIU, A. REYNA, *The Perfect Match? A Closer Look at the Relationship between EU Consumer Law and Data Protection Law*, in (2017) *CMLR*, 2017, 1449-1456; M.R. LLACER MATAÇAS, *La autorización al tratamiento de información personal en la contratación de bienes y servicios*, 157-161.

⁹ M. THON, *Transnationaler Datenschutz: Das Internationale Datenprivatrecht der DS-GVO*, in (2020) *RabelsZ*, 25; L.A. BYGRAVE, *Data Privacy Law: An International Perspective*, (2014) Oxford, 199.

¹⁰ 10 See D. SVANTESSON, *Enforcing Privacy Across Different Jurisdictions*, in D. WRIGHT, P. DE HERT (eds.), *Enforcing Privacy. Regulatory, Legal and Technological Approaches*, (2016) Berlin, 195-222; B. VAN ALSENOY, *Liability under EU Data Protection Law: From Directive 95/46 to the General Data Protection Regulation*, in (2016) *JIPITEC*, 270-288; A. GALETTA, P. DE HERT, *The Proceduralisation of Data protection Remedies under EU Data Protection Law: Towards a More Effective and Data Subject-oriented Remedial System*, in (2015) *Rev. eur. adm. law*, 125-149.

¹¹ D. SVANTESSON, *Between a Rock and a Hard Place – An International Law Perspective of the Difficult Position of Globally Active Internet Intermediaries*, in (2014) *Comp. L. Sec. Rev.*, 348-349.

¹² Horace, *Satires* (I, 1, 106-107): "There is a measure in things; there are certain boundaries, beyond and on this side of which there cannot be the right".

¹³ C. HODGES, *Delivering Data Protection: Trust and Ethical Culture*, in (2018) *Eur. Data Prot. L. Rev.*, 66.

¹⁴ See GULIZZI E., CANNETTI G. A., *Diritto alla privacy e trattamento automatizzato dei dati fra diritto civile, diritto penale e diritto internazionale ed europeo*, in *I Quaderni Europei*, Università di Catania, April 2014 No 63.

¹⁵ K. YARROW, *Decoding the new consumer mind: how and why we shop and buy*, (2015) San Francisco, California, 10.

¹⁶ Therefore, digital education must be taught at school in parallel with civic education for the new generations, explaining them the consequences of their online actions and those that could derive from the transfer of personal data. This is because digital is a new dimension of life.

frivolous utility of the moment, then a conscious choice and, finally, a coherent action. Hence, this articulation of moments cannot be easily reached here and now, since it requires a commitment and a use of energy from consumers, far from a free landing.

Therefore, consumers have a very important task to ensure that this system operates positively and does not degenerate into the abyss of negativity. The whole new legislative architecture developed on the protection of personal data rests on them, on consumers, the pivot and keystone for the correct functionality of this magnificent system.

III. The role of other stakeholders

In this journey of growth, consumers are not left alone, as they can count on valid support from other stakeholders securing a more equitable *status quo* regarding data protection.

First, consumer organizations. The latter, if founded with the aim of protecting consumers who choose to purchase goods or use services, see their role expanded: not only they will have to monitor what happens in the protection of personal data and, if necessary, intervene¹⁷ as an active party in the field of private enforcement¹⁸, but also educating consumers to consciously choose the platforms on which to interact, promoting the individual critical sense. A reconsideration of the subject to whom they offer protection will then be necessary, who is no longer a mere passive consumer, as happened in the past, but a "prosumer"¹⁹ with an increasingly active dimension.

Second, even large industry groups, especially digital giants, cannot fail to take part in this process. Facing a changed legislation²⁰, they have to participate cooperatively with all parties involved and they have to process consumers' personal data in a legal and compliant way²¹, abandoning the many dark sides they enjoyed in the past. Ultimately, then, it is in their own interest: by doing so, indeed, they will guarantee a reputation on an international scale and they will be chosen by consumers.

Third, the public sector must be solicited. It has a role to play too in this game on a global scale: with a look at monitoring and protecting consumers' personal data, they must take action, if necessary, in the context of public enforcement²² to sanction any violation and restore the legal *status quo*. But perhaps the biggest challenge for them lies in ascertaining on a daily basis whether the legal framework is still suitable for a technological context that is evolving and revolutionizing so rapidly, almost at the speed of light.

IV. Conclusion

¹⁷ See C. ETTELDORF, *Consumer Association Succeeds in First Round of Dispute Concerning Facebook's Terms of Service and Privacy Setting*, in (2018) *Eur. Data Prot. L. Rev.*, 114; P. ROTT, *Data protection law as consumer law - How consumer organizations can contribute to the enforcement of data protection law*, in (2017) *EuCML* 113.

¹⁸ See Art. 80 GDPR; M. ISIDRO REQUEJO, *Procedural Harmonization and Private Enforcement in the Area of Personal Data Protection*, cit., 5-8. In order to deepen a parallel case law, see Test-Achats (in Belgium), OCU (in Spain), Altroconsumo (in Italy), DECO (in Portugal) vs Facebook; some references to the Italian proceeding are available in <<https://www.altroconsumo.it/azioni-collettive/facebook>>.

¹⁹ Who is a consumer of a good but, at the same time, is involved in the its production process.

²⁰ I. GRAEF, D. CLIFFORD, P. VALCKE, *Fairness and enforcement: Bridging competition, data protection, and consumer law*, in (2018) *IDPL*, 200-223.

²¹ S. CALZOLAIO, "Privacy by design". *Principi, dinamiche, ambizioni del nuovo Reg. Ue 2016/679*, in *Fed. – Riv. dir. pub. it. com. comp.*, 2017, No 24, p. 1-21.

²² F. CAFAGGI, H.-W. MICKLITZ (eds.), *New Frontiers of Consumer Protection. The Interplay between Private and Public Enforcement*, (2009) Oxford-New York, 263-282.

Overall, the balance between the utilities deriving from the transfer of personal data and the risks of their accumulation seems to be the main way for consumers to follow, always in the face of the checks and balances' system provided for by the other stakeholders involved.

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