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Towards a Declaration of Internet Rights

Since many years there is a wide discussion about the possibility of adopting an Internet Bill of Rights, and debates have produced a considerable number of proposals. The Berkman Centre at Harvard University counted 87 of such proposals, to which adding the Internet Magna Charta that Tim Berners-Lee is working on, and lastly a Declaration of the Rights of Internet Rights has been drafted by a Committee established by the President of the Italian Chamber of Deputies. The novelty of the latter is that for the first time the proposal of an Internet Bill of Rights is not made by scholars, associations, dynamic coalitions, enterprises, or groups of stakeholders, rather by an institutional entity.

It is suitable recalling that the beginning of debates on this topic dates back to the World Summit on Information Society organised in 2005 by the UN in Tunis, where the need for an international convention on Internet rights was explicitly underlined. This subject was deepened in the following UN Internet Governance Forums. But the international debate was progressively turned into precise rules within the European Union, even before the issue of the Internet Bill of Rights appeared in the international scenario. These are not, however, parallel situations destined not to meet at any point. The European Union progressively brought to light the constitutional basis of the protection of personal data, finding its full recognition in Article 8 of its Charter of Fundamental Rights. Here a strong similarity with the Internet Bill of Rights is identified, and it concerns precisely the constitutional scope of rules.

We are going through a phase of deep change in the way in which facing the problems highlighted by the Internet dynamics, in the passage from Web 1.0 to Web 2.0 and now to Web 3.0. It is not just a matter of following technological changes by adjusting legal provisions to them. A new definition is being developed of the rationale driving actions in this area, through a radical U-turn as regards the dynamics of the latest phase. A possible historical turning point is ahead of us, whose opportunities must be seized.

It seemed that an approach had become consolidated, which left little room to rights. From Scott McNealy's abrupt statement of 1999 – "You have zero privacy. Get over it" – up to the recent hasty conclusion by Mark Zuckerberg about the end of privacy as a "social rule", a line characterised by the intertwining of two elements

emerged: technological irresistibility and the primacy of the economic logic. On the one side, in fact, it was highlighted how technological innovations and the new social practices made it increasingly difficult, not to say impossible, the safeguard of one's private life and of the public liberties; on the other side, the statement on the "death of privacy" had become the argument to state that personal information had to be considered as property of those who collected it.

These certainties were radically challenged by Edward Snowden's disclosure on the magnitude of the National Security Agency's Prism programme and by the judgements of the European Court of Justice on data retention and Google. The idea according to which the protection of fundamental rights shall give way to the interests of security agencies and enterprises was rejected. A new hierarchy has been established, with the fundamental rights as the first and starting point. The US President had to admit the inadmissibility of the procedures provided for by the Prism program and the Court of Justice, with its decision of 8th April, declared that Directive on data retention was illegal. And in the Google case the same Court explicitly stated that "the fundamental rights under Articles 7 and 8 of the Charter (...) override, as a norm (...) the economic interest of the operator of the search engine", in a perspective broadening the European Union jurisdiction beyond its borders. We are faced with a true "resurrection of privacy" and, more generally, with the primacy of the need and legitimacy of rules effectively protecting the rights of Internet users. Making reference to article 8 of the Charter, the Court of Justice was acting as a true constitutional court, opening a new and wide perspective.

This is the framework within which the Italian initiative on the Declaration of Internet Rights was adopted. Its goal is not limited to having a text to be used for national debate only. The establishment of the Committee that drafted the document, in fact, was preceded by an international conference gathering some of the authors of the Brazilian Marco Civil, the representatives of European Institutions, and several experts from different Countries. The text drafted by the Committee was presented on 13th October during a meeting at the Chamber of Deputies with the Presidents of the Parliamentary Committees of Member Countries in charge of fundamental rights.

The present draft is now submitted to a four-month public consultation on the Internet, at the end of which the Committee will draft the final text. Such consultation, however, is also being carried out at a European and international level, as shown by the contacts with other European Parliaments and by the videoconference that will be held at the beginning of December between the Italian and the French Committees. Consultations are also taking place with experts and associations from non-European Countries.

An ambitious target was set: drafting a text allowing a common international debate, accompanied by a constant monitoring by the Chamber of Deputies. The goal is not limited to working in the complex and remote perspective of an international convention. Short-term and feasible results can be achieved, concerning the strengthening of the European system, its developments and the relationships with other countries, and most of all the consolidation of a culture highlighting common dynamics in the different legal systems. In this way, the debate around a future Internet Bill of Rights may lead to the awareness that in the different legal systems several elements already exist that, once connected to one another, establish an informal Internet Bill of Rights. An evidence of such trend is found in the decisions of the Courts of the different Countries and in the choice of legislative models, as shown by the clear influence of the European model on the Brazilian Marco Civil.

The Italian Declaration is characterised by a fundamental choice. Differently from almost all the other ones, it does not contain a specific and detailed wording of the different principles and rights already stated by international documents and national Constitutions. Of course, these are generally recalled as an unavoidable reference. But the attempt of the Declaration, as a matter of fact, was to identify the specific principles and rights of the digital world, by underlining not only their peculiarities but also the way in which they generally contribute to redefining the entire sphere of rights.

The key words – besides the most well-known ones concerning the protection of personal data and the right to the informational self-determination - include access, neutrality, integrity and inviolability of IT systems and domains, mass surveillance, development of digital identity, rights and guarantees of people in Internet platforms, anonymity and right to be forgotten, interoperability, right to knowledge and education, and control over Internet governance. The importance of the needs linked to security and to the market is obviously taken into consideration, but the balancing of these interests with fundamental rights and freedoms cannot take place on equal terms, in the sense of ensuring first and foremost the full respect for rights and freedom according to the clear provisions of the Charter of Fundamental Rights and to the European case law. In particular, security needs shall not determine the establishment of a society of surveillance, control and social sorting. Economic needs are taken into consideration in the framework of the neutrality principle that, by guaranteeing the generative nature of the Internet, keeps the possibilities for innovation unchanged, and prevents strong subjects from creating conditions of exclusion of possible competitors. Furthermore, whenever Internet platforms provide public services that are essential for the life and the activities of people, it is

necessary to guarantee the conditions for a suitable interoperability in compliance with the principle of competition and equal treatment of people.

Provided that not all the issues can be analysed in this document, it is suitable recalling the need to consider the access to the Internet as a fundamental right of individuals (Tim Berners-Lee compared it to the access to water), as an essential guarantee not only against any form of censorship, but also against indirect limitations, such as taxation as it is presently happening in Hungary. The set of rights recognised does not guarantee a general freedom on the Internet, but specifically aims at preventing the dependency of people from the outside, the expropriation of the right to freely develop one's personality and identity as it may happen with the wide and increasing use of algorithms and probabilistic techniques. The autonomy in the management of personal data, therefore, shall also consider new rights as those not to be tracked and to keep silent the chip. This perspective requires a particular in-depth analysis, since a deeply interconnected society is being developed, with a passage to Internet of Things in forms that have suggested some people to speak on an Internet of Everything, which determines a digitalisation of day-to-day lives able to transform any person and their bodies.

People cannot be reduced to objects of external powers, they must recover the sovereignty on their digital person. Identity is a key issue. The free development of one's personality must be safeguarded.

Starting from this set of references, it is necessary to thoroughly examine the issue of the transformation of copyright, whose analysis was postponed to the end of the consultation, since knowledge on the Internet appears as a shared asset that can be considered as a common global resource.

A broader perspective is therefore opened by the Italian draft Declaration, in consideration of the large amount of topics to be tackled and the debate between different points of view; and such Declaration is significantly in line with the European Union policy that particularly emphasises the Charter of Fundamental Rights. The unquestionable aspect is the need to fine-tune a constitutional policy for the Internet, whose users – presently amounting to three billion people – cannot rely on a freedom guaranteed by the absence of rules, as it is still presently stated. The reality is very different, showing an interconnected network heavily regulated by private subjects that cannot be controlled and that have no democratic legitimation, as it happens – beyond any disputes – with the “Over the Top” operating on the Internet. Internet rights are denied by totalitarian regimes and, unfortunately, by democratic regimes as well. The perspective of a Declaration of Internet rights aims at developing - through procedures different from the ones of the past - the

constitutional rules fundamental for allowing the Internet to keep its main feature as a place of freedom and democracy, as the widest space of the history of the mankind.