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degli Studi Sociali Guido Carli

Social Media e Obbligo di Remunerare i "Creators"

Ludovico Bossi

ILEO

Innovation Law and
Ethics Observatory

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Introduzione

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Volunteering for the platforms – How social media terms of service may violate the fair remuneration principle of authors and performers

Ludovico Bossi 

Luiss University and Innovation Law and Ethics Observatory (ILEO), Rome, Italy

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ABSTRACT

Major social media terms of service (i.e., YouTube, TikTok, Facebook, Instagram, LinkedIn, X) impose to users a royalty-free license covering "uploaded" "contents" protected by intellectual property rights ("IPRs"). Consequently, while social media service providers' revenues are significant, users that are also authors and performers do not directly receive any remuneration in most cases. Most recently, the benefits of training artificial intelligence ("AI") tools on what is published on social media further intensify this imbalance.

This bargain has not gone completely unnoticed. However, the doctrine often questioned the workability of any legislative or judicial intervention aimed at restoring balance. This article argues that online social media service providers have an obligation under EU law to share the revenues derived from the exploitation of works and performances published on their platforms with authors and performers.

For this purpose, this work discusses the legitimacy of free licenses with the fair remuneration principle of authors and performers. It interprets the so-called "Linux clause" of Recital 82 Directive (EU) 2019/790 ("DSMD") and proposes a distinction between "free licenses for the benefit of any users" ("open licenses") and those for the benefit of specific licensees ("gratuitous licenses"). Abuses by the general public cannot occur in the case of open licenses. On the contrary, specific licensees who have a stronger position could unfairly impose gratuitous licenses to authors and performers. This inquiry runs in parallel with a recent litigation in Belgium on the matter (the "Streams" case).

1. Introduction

This article questions whether there is a legal obligation for online social media service providers to share with users that are also authors and performers the revenues derived from the exploitation of their licensed copyright protected works or performances.

Social media are an integral part of everyday life for the majority of people, in particular for the young generations.¹ The typical user spends several hours a day on these platforms.² Also most companies use at least one type of social media.³ They are instruments of communication,

E-mail address: lbossi@luiss.it

¹ The terms "social media" (i.e., where the focus is on the production of works and performances) and "social networks" (i.e., where the focus is on the interactions of users) are interchangeable nowadays. In this sense, Beatrice Kelly, 'The (Social) Media Is the Message: Theories of Liability for New Media Artists' (2017) 40(4) Columbia Journal of Law & the Arts, 511 <https://doi.org/10.7916/jla.v40i4.2040>. Social media fall under several legal definitions, such as: "online social networking service" pursuant to Article 2(1)(7) Regulation (EU) 2022/1925 ("DMA"); "online content-sharing service provider" pursuant to Article 2(1)(6) Directive (EU) 2019/790 ("DSMD"); "online platform" pursuant to Article 3(1)(i) Regulation (EU) 2022/2065 ("DSA").

² Eurostat, 'Young people – digital world' (2024) https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Young_people_digital_world_in_2023_97%_of_young_people_aged_16-29_years_in_the_EU_used_internet_daily_and_creating_a_user_profile_and_posting_messages_or_other_activity_was_a_common_practice_for_83%_of_them.

³ DataReportal, 'Digital 2024 Global Overview Report' (2024) <https://datareportal.com/reports/digital-2024-global-overview-report>, in 2024, the typical user spends more than two hours a day online.

⁴ Eurostat, 'Social media – statistics on the use by enterprises' (2024) https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Digital_economy_and_society_statistics_enterprises_in_2023_60.9%_of_EU_enterprises_used_at_least_one_type_of_social_media.

<https://doi.org/10.1016/j.clsr.2025.106246>

Available online 3 December 2025

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Introduzione

Domanda

Sussiste un **obbligo** per i provider di social media di **condividere con gli utenti che sono anche autori e performer i ricavi** derivanti dallo sfruttamento delle loro opere protette dal diritto d'autore o performances?

Introduzione

Stato dell'arte

OECD (2007): *“It is expected that the quality of the UCC can be improved if creators are remunerated. Finally, professional and paying careers can arise for users creating content”.*

Helberger et al (2009): *“Yet an open question is to what extent users have an interest or even right to participate in the profits if platforms commercialize user created content. [...] further initiatives might be needed to prevent that professional suppliers abuse the inexperience and weaker negotiation position of amateur users”.*

Bonadio, Lucchi and Mazziotti (2022): *“[the platform economy] has irreversibly weakened and threatened the essence of authors’ economic rights, persuading creators to prioritise online exposure over remuneration expectations”.*

Mazziotti (2024): *“Social media have prompted the replacement of [...] authors legitimate expectation to transfer or license their rights, and receive remuneration ex ante, with a widely accepted culture of ‘sharing by default’”.*

Quintais et al (2024): *“monetization of UGC by platforms, despite its economic significance, remains a relatively unregulated space in EU copyright law”.*

Harkai and Mezei (2024): *“The gatekeeper role of platforms in the use of user-generated content should be the subject of further research in the future, if only because the relevant standard contractual clauses raise competition issues, in particular with regard to abuse of dominant position”.*

Introduzione

Stato dell'arte

Ginsburg (2022): *“the author-protective mandatory remuneration rules of the DSM Directive do not seem to apply to platform licenses”*.

Ginsburg (2023): *“for ‘exposure’ (or the hope of it), creators often turn to internet platforms, signing up for a Faustian exchange: the prospect of finding an audience in return for the loss of control over the dissemination of their works. [...] Platform Term of Services do not appear to be subject to the obligations of Articles 18-22 of the DSM Directive because the Article 18 principle of fair remuneration applies only to transfers of exclusive rights”*.

Adams and Ruse-Khan (2020): *“simply introducing mandatory rights for an adequate remuneration will not solve the issue—unless effective enforcement mechanisms are included”*.

Senftleben, Quintais and Meiring (2023): *“[Article 18 CDSMD] is too broadly defined to effectively constraint a platform’s remuneration and monetization policies towards users”*.

Quintais, De Gregorio and Magalhães (2023): *“the regime on fair remuneration in exploitation contracts of creators only marginally limits the discretion of platforms in defining their private ordering regimes vis-à-vis user-creators”*.

Lukoseviciene (2024): *“articles 18-23 of the recent DSM Directive do not fully address the complexities and power dynamics observed on three large content creator platforms, namely, YouTube, Roblox, and Instagram”*.

Introduzione

Struttura

1. Il principio di equa remunerazione e la “clausola Linux”
 2. I termini di servizio dei social media
 3. Una possibile violazione e enforcement

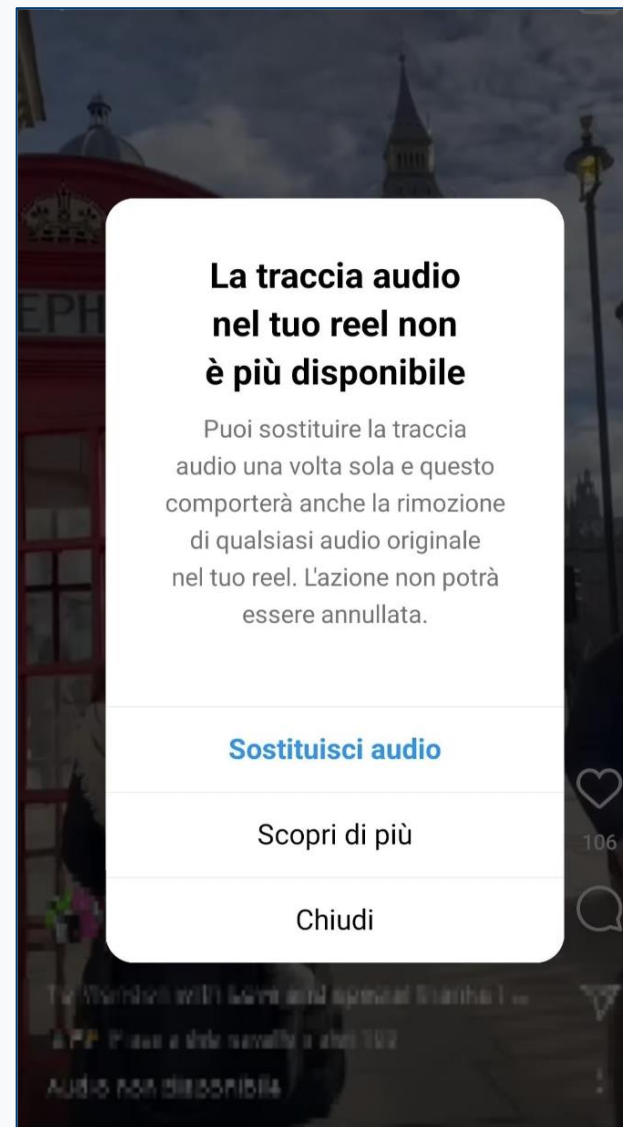
Introduzione



16 marzo 2023

Meta avvia la procedura di rimozione dei brani degli autori ed editori SIAE dalle sue piattaforme. SIAE: “scelta unilaterale e incomprensibile”

Comunicato stampa di SIAE del 16.03.2023



Introduzione



Provvedimento AGCM, 20 aprile 2023: “Gli short videos sono una componente **tutt’altro che trascurabile** [...] la quota mondiale di utenti che condividono Reels è più che raddoppiata su FB e IG negli ultimi 6 mesi e oltre **140 miliardi di Reels sono visualizzati ogni giorno** su FB e IG nel mondo. A ciò si aggiunga che anche gli short videos contribuiscono alla crescita economica di Meta e al riguardo il management di Meta ha recentemente dichiarato che solo gli Instagram Reels hanno superato il tasso di entrate annuali **di \$1 miliardo**: *«last quarter [...] Instagram Reels had crossed \$1 billion annual revenue run rate. We continue scaling monetization across both Instagram and Facebook, and the combined run rate across these apps is now \$3 billion»* (dati 2022)”.

1. Principio di equa remunerazione

Art. 18 Direttiva (UE) 2019/790 (“CDSMD”)

Principio di una remunerazione adeguata e proporzionata

1. Opera o
performance

2. Licenza o cessione

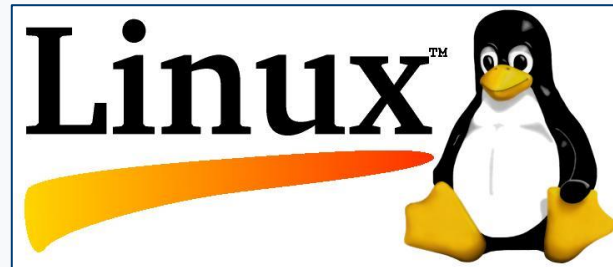
3. Finalità di
sfruttamento

1. Principio di equa remunerazione

Considerando 82 CDSMD

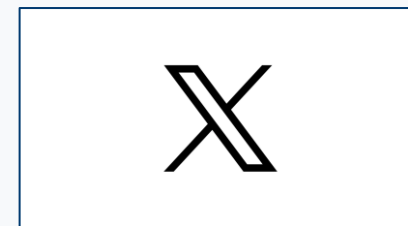
“Clausola Linux”

“Nessuna disposizione della presente direttiva dovrebbe essere interpretata in modo da impedire ai titolari di diritti esclusivi ai sensi del diritto dell'Unione in materia di diritto d'autore di **autorizzare l'uso a titolo gratuito** delle loro opere o altri materiali, tra l'altro per mezzo di **licenze non esclusive gratuite a vantaggio di tutti gli utilizzatori**”.



2. Termini di servizio

Servizi considerati
(27 ottobre 2025)



2. Termini di servizio

| | Instagram | Facebook (Meta) | TikTok |
|-------------------------|--|---|---|
| Ownership | We do not claim ownership of your content, but you grant us a license to use it. Nothing is changing about your rights in your content. We do not claim ownership of your content that you post on or through the Service and you are free to share your content with anyone else, wherever you want. | Some content that you share or upload, such as photos or videos, may be protected by intellectual property laws. You retain ownership of the content that you create and share on Facebook and other Meta Company Products you use, and nothing in these Terms takes away the rights you have to your own content. You are free to share your content with anyone else, wherever you want. | We don't own your content. If you are the owner of the intellectual property rights in the content that you make available on the Platform, then nothing in these Terms changes that. |
| License to the provider | However, we need certain legal permissions from you (known as a "license") to provide the Service. When you share, post, or upload content that is covered by intellectual property rights (like photos or videos) on or in connection with our Service, you hereby grant to us a non-exclusive, royalty-free, transferable, sub-licensable, worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content (consistent with your privacy and application settings). | To provide our services, though, we need you to give us some legal permissions to use that content. However, to provide our services we need you to give us some legal permissions (known as a "license") to use this content. This is solely for the purposes of providing and improving our Products and services as described in Section 1 above. Specifically, when you share, post, or upload content that is covered by intellectual property rights on or in connection with our Products, you grant us a non-exclusive, transferable, sub-licensable, royalty-free, and worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content (consistent with your privacy and application settings). This means, for example, that if you share a photo on Facebook, you give us permission to store, copy, and share it with others (again, consistent with your settings) such as Meta Products or service providers that support those products and services. | To provide the Platform, we need certain rights from you (called a license). The details of these licenses are set out below. By creating, posting or otherwise making content available on the Platform, you grant to TikTok a non-exclusive (which means that you can license your content to others), royalty-free (which means that we don't pay you for this license), transferable (which means that we can give the rights you give us to someone else), sub-licensable (which means that we can license your content to others, e.g. to service providers that help us to provide the Platform or to trusted third parties that have entered into agreements with us to operate, develop and provide the Platform) and worldwide (which means that the license applies anywhere in the world) license to use your content, including to reproduce (e.g. to copy), adapt or make derivative works (e.g. to translate and/or create captions), perform and communicate your content to the public (e.g. to display it), for the purposes of operating, developing and providing the Platform, subject to your Platform settings. The license to your content that you grant to us extends to Affiliates as part of making the Platform available. |
| Duration | This license will end when your content is deleted from our systems. You can delete content individually or all at once by deleting your account. | This license will end when your content is deleted from our systems. You can delete individual content you share, post, and upload at any time. In addition, all content posted to your personal account will be deleted if you delete your account. [...] | Your licenses to TikTok and to users end when you close your account or when you or we remove your content from the Platform in accordance with these Terms. However, due to the nature of the Platform and our legal obligations, the license granted will continue after you have removed your content to the extent that you have allowed, via your Platform settings, other users of the Platform to use or reuse your content (e.g. by using Duet, Stitch, download or share functionalities), or we are obliged to store or process your content for legal reasons. |
| License to other users | / | / | You also grant to each user of the Platform a non-exclusive, royalty-free, worldwide license to access and use your content, including to reproduce (e.g. to copy, share or download), adapt or make derivative works (e.g. to include your content in their content) perform and communicate that content to the public (e.g. to display it) using the features and functions of the Platform for entertainment purposes, subject to your Platform settings. |
| Monetization | / | / | / |

| | YouTube | LinkedIn | X |
|-------------------------|---|---|---|
| Ownership | Rights you Grant You retain all of your ownership rights in your Content. In short, what belongs to you stays yours. | Because you own your original content and we only have non-exclusive rights to it, you may choose to make it available to others, including under the terms of a Creative Commons license. | You retain your rights to any Content you submit, post or display on or through the Services. What's yours is yours — you own your Content (and your incorporated audio, photos and videos are considered part of the Content). |
| License to the provider | We do require you to grant certain rights to YouTube and other users of the Service, as described below. License to YouTube. By providing Content to the Service, you grant to YouTube a worldwide, non-exclusive, royalty-free, transferable, sub-licensable license to use that Content (including to reproduce, distribute, modify, display and perform it) for the purpose of operating, promoting, and improving the Service. | You grant LinkedIn and our affiliates the following non-exclusive license to the content and other information you provide (e.g., share, post, upload, and/or otherwise submit) to our Services: A worldwide, transferable and sub-licensable right to use, copy, modify, distribute, publicly perform and display, host, and process your content and other information without any further consent, notice and/or compensation to you or others. | By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display, upload, download, and distribute such Content in any and all media or distribution methods now known or later developed, for any purpose. For clarity, these rights include, for example, curating, transforming, and translating. This license authorizes us to make your Content available to the rest of the world and to let others do the same. You agree that this license includes the right for us to (i) analyze text and other information you provide and to otherwise provide, promote, and improve the Services, including, for example, for use with and training of our machine learning and artificial intelligence models, whether generative or another type; and (ii) to make Content submitted to or through the Services available to other companies, organizations or individuals, including, for example, for improving the Services and the syndication, broadcast, distribution, repost, promotion or publication of such Content on other media and services, subject to our terms and conditions for such Content use. |
| Duration | Duration of License. The licenses granted by you continue until the Content is removed as described below. Once removed, the licenses will terminate, except where the operation of the Service, use of Content permitted before your removal, or the law requires otherwise. For example, removal of Content by you does not require YouTube to: (a) recall Content that is being used by other users within any limited offline viewing functionality of the Service; or (b) delete copies we reasonably need to keep for legal purposes. | These rights are limited in the following ways: You can end this license for specific content by deleting such content from the Services, or generally by closing your account, except (a) to the extent you (1) shared it with others as part of the Services and they copied, re-shared it or stored it; (2) we had already sublicensed others prior to your content removal or closing of your account; or (3) we are required by law to retain or share it with others; and (b) for the reasonable time it takes to remove from backup and other systems. | You may end your legal agreement with us at any time by deactivating your accounts and discontinuing your use of the Services. |
| License to other users | You also grant each other user of the Service a worldwide, non-exclusive, royalty-free license to access your Content through the Service, and to use that Content (including to reproduce, distribute, modify, display, and perform it) only as enabled by a feature of the Service. | / | / |
| Monetization | Right to Monetize. You grant to YouTube the right to monetize your Content on the Service (and such monetization may include displaying ads on or within Content or charging users a fee for access). This Agreement does not entitle you to any payments. Starting June 1, 2021, any payments you may be entitled to receive from YouTube under any other agreement between you and YouTube (including, for example, payments under the YouTube Partner Program, Channel memberships or Super Chat) will be treated as royalties. If required by law, Google will withhold taxes from such payments. | Such additional uses by us, or other companies, organizations or individuals, is made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services as the use of the Services by you is hereby agreed as being sufficient compensation for the Content and grant of rights herein. | We will not include your content in advertisements for the products and services of third parties to others without your separate consent (including sponsored content). However, without compensation to you or others, ads may be served near your content and other information, and your social actions may be visible and included with ads, as noted in the Privacy Policy. |

2. Termini di servizio



2. Termini di servizio

Programmi di monetizzazione

Restrizioni basate su luogo, età, tipo di opera, durata, rispetto dei termini di servizio, minimo numero di follower o visualizzazioni, verifica dell'identità, invito.



Joining the Creator Rewards Program

Ready to dive right in? Just make sure you meet these criteria to get started:

- The program is currently open to creators in the United States, United Kingdom, Germany, Japan, South Korea, France, and Brazil, so you must be based in one of these countries and have an account registered there.
- Your TikTok account should be in good standing, meaning you've been following our [Community Guidelines](#) and [Terms of Service](#).
- Only [Personal Accounts](#) are eligible. Business Accounts and accounts associated with political or government organizations won't qualify.
- You need to be at least 18 years old to participate.
- Your account should have at least 10,000 followers and 100,000 video views in the last 30 days.
- You must not tamper with the program, engage in fraudulent activities, or violate our [Community Guidelines](#) in any way.



2. Termini di servizio

Programmi di monetizzazione



Enable monetization for ads in Instagram profile feed

[Copy link](#)

[Computer Help](#)

[Android App Help](#)

[iPhone App Help](#)

[iPad App Help](#)

[More](#)

Monetizing ads in Instagram profile feed and Reels are currently being tested and are only available to a select group of accounts at this time.

If you're eligible for monetization with ads on Instagram profile feed, you will receive an email invitation and an in-app notification to your Instagram account. [Learn more about monetization for ads in Instagram profile feed](#)

Eligibility requirements

- You must pass and remain compliant with Instagram's [Partner Monetization Policies](#).
- You must have a [professional account on Instagram](#).
- You must be at least 18 years old.
- You must be located in the United States, Japan, South Korea or Canada.

2. Termini di servizio

Programmi di monetizzazione

The image shows a screenshot of the LinkedIn BrandLink interface. At the top, a yellow banner contains the text: "LinkedIn is currently beta testing BrandLink. Connect with your LinkedIn Sales Team to get started." A red arrow points from the text "Programmi di monetizzazione" to the underlined word "beta testing". To the right of the banner is the LinkedIn logo. Below the banner, the main content area is dark green. On the left, there is a preview of a LinkedIn post from "Flexis News" (Promoted - Financial Services) featuring a video ad for "Oustia". On the right, the text "BrandLink" is displayed in large white font, followed by the description: "Connect brands with trusted publishers & creators by promoting pre-roll video ads along video content in the feed." A red arrow points from the right towards the underlined word "trusted". Below this text is a white button labeled "Create a Video Ad".

2. Termini di servizio

Programmi di monetizzazione



Right to Monetize

You grant to YouTube the right to monetize your Content on the Service (and such monetization may include displaying ads on or within Content or charging users a fee for access). This Agreement does not entitle you to any payments. **Starting June 1, 2021, any payments you may be entitled to receive from YouTube under any other agreement between you and YouTube (including for example payments under the YouTube Partner Program, Channel memberships or Super Chat) will be treated as royalties.** If required by law, Google will withhold taxes from such payments.

3. Violazione e enforcement

Art. 18 Direttiva (UE) 2019/790 (“CDSMD”)

Principio di una remunerazione adeguata e proporzionata

1. Opera o performance

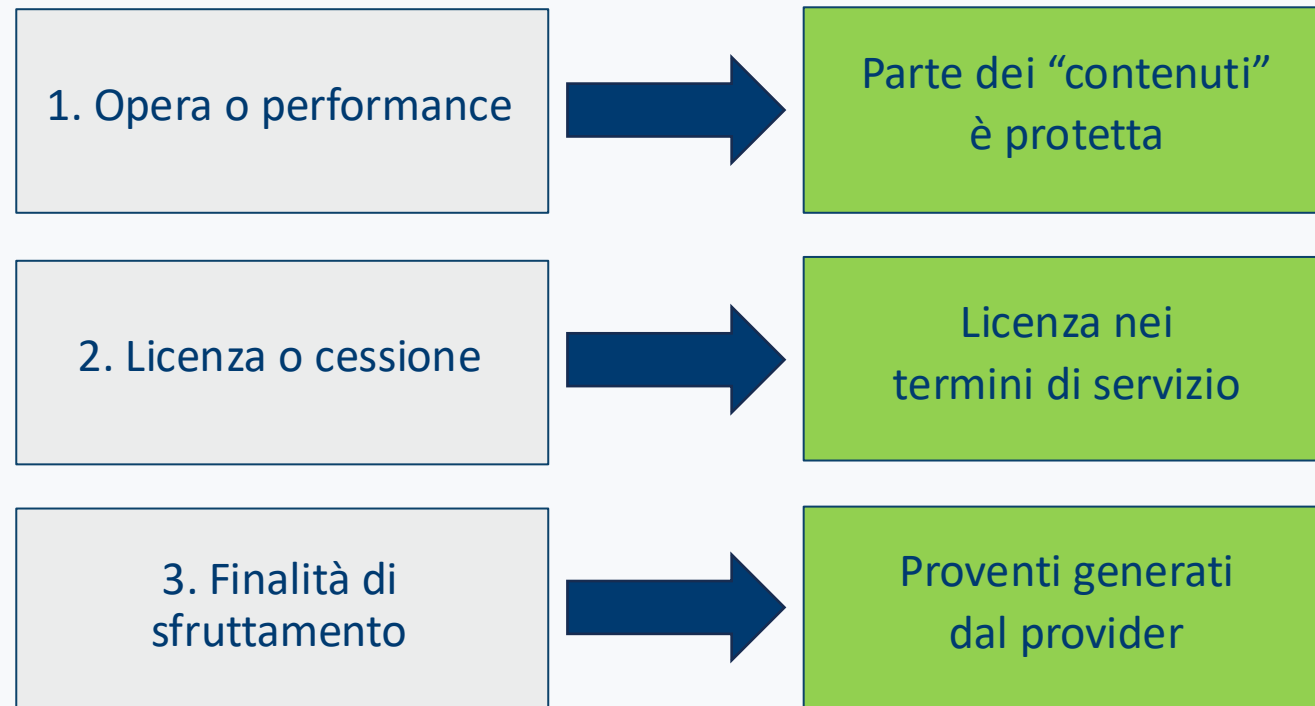
2. Licenza o cessione

3. Finalità di
sfruttamento

3. Violazione e enforcement

Art. 18 Direttiva (UE) 2019/790 (“CDSMD”)

Principio di una remunerazione adeguata e proporzionata



3. Violazione e enforcement

Considerando 82 CDSMD

“Clausola Linux”

“Nessuna disposizione della presente direttiva dovrebbe essere interpretata in modo da impedire ai titolari di diritti esclusivi ai sensi del diritto dell'Unione in materia di diritto d'autore di **autorizzare l'uso a titolo gratuito** delle loro opere o altri materiali, tra l'altro per mezzo di **licenze non esclusive gratuite a vantaggio di tutti gli utilizzatori**”.

A vantaggio di tutti gli
utilizzatori
(Open licences)

A vantaggio di specifici
licenziatari
(Gratis licenses)

3. Violazione e enforcement

Considerando 82 CDSMD

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A vantaggio di tutti gli
utilizzatori
(Open licences)

A vantaggio di specifici
licenziatari
(Gratis licenses)

3. Violazione e enforcement

Consumo:

Considerando 2 Regolamento (UE) 2019/1150 ("P2B"): "*Dato l'aumento della dipendenza, i fornitori di tali servizi spesso hanno un potere contrattuale superiore, che consente loro di agire di fatto unilateralmente in un modo che può essere iniquo e quindi **dannoso per gli interessi legittimi dei loro utenti commerciali** e, indirettamente, anche dei consumatori dell'Unione*".

Concorrenza:

Art. 6(12) DMA: "*Il gatekeeper applica **condizioni generali eque, ragionevoli e non discriminatorie per l'accesso degli utenti commerciali** ai propri [...] servizi di social network online [...]. La **Commissione valuta** se le condizioni generali di accesso pubblicate sono conformi al presente paragrafo*".

Privacy:

EDPB, 'Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms' (2024) in cui la posizione dominante è stata ritenuta importante nel determinare se il **consenso fornito fosse libero e valido**.

3. Violazione e enforcement

Contro argomenti

Pagamento
del servizio

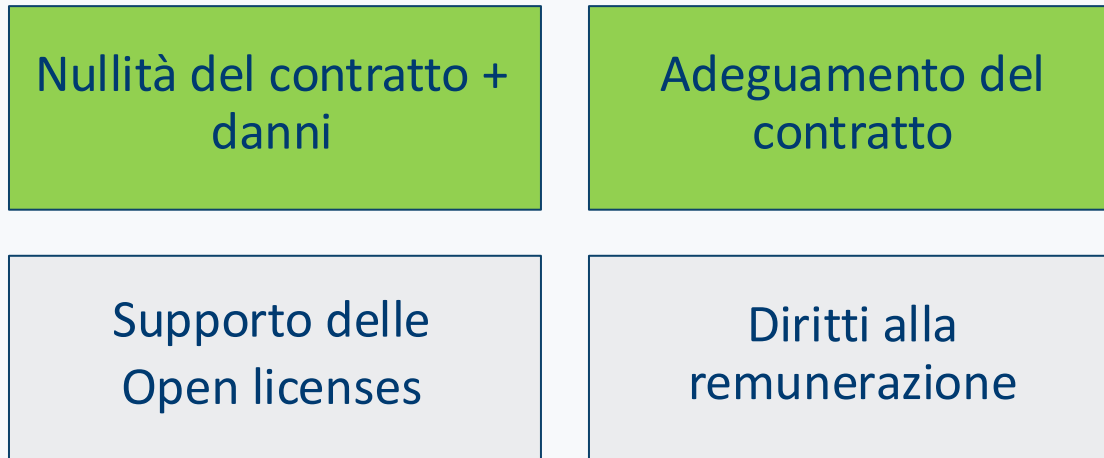
Visibilità

Assenza di motivazioni
economiche

Proventi minimi

3. Violazione e enforcement

Enforcement



3. Violazione e enforcement

Diritto internazionale privato



Conclusione

Elkin-Koren (2012): *“The discourse of disparities of power may have to make way for a more egalitarian view of partnership, where platform owners and users may have to collaborate to attain the optimal terms of use that will maximize the interests of all. [...] We need to develop a framework that will help us conceptualize a social activity that is a commercial asset, a market commodity, and at the same time a community”*.

Ricolfi (2015) underlining the necessity to: *“avoid that the flourishing of network-driven cooperation ends up being sucked up by the exuberance – and belligerence – of platforms”*.

Grazie per l'attenzione

Ludovico Bossi
LUISS Guido Carli University
Innovation Law and Ethics Observatory (ILEO)
lbossi@luiss.it

