



Conference SIDE - Call for papers 2024 Topos: Contracts; Intellectual property, cyber law and privacy

Avv. Ph.D (c) Davide Silvio D'Aloia, Dottorando di ricerca *Sugli ambiti di interazione e integrazione tra le scienze umane e le tecnologie avanzate. Humanities and Technologies: an integrated research path - XXXVII ciclo.*

Junior Researcher del Centro di ricerca in Diritto Privato Europeo (ReCEPL)

Università degli Studi Suor Orsola Benincasa di Napoli

via Suor Orsola no. 10 - 80135, Naples (Italy)

Membro dell'Editorial Board dell' *European Journal of Privacy Law & Technologies* (EJPLT)

Database and trust.

The economic importance of the information chain according to *L&E* analysis

In today's European legal-technological ecosystem, there is an increasingly obvious contrast: person vs. market.

Just as in the twentieth century the person vs. market contrast was played out on the civil law level of the relationship between the natural person and the legal person, in the current historical moment, the antagonism takes on a new form: the person, whether business or consumer, his or her personal data and their relative protection, find themselves facing a new market, made of intangibility and 'hungry' for data.

It is no coincidence, therefore, that the great British mathematician Clive Humby, a scholar of data science, already said in 2006: *"Data is the new oil. It is precious, but if you don't refine it, you can't really use it. You have to turn it into gas, plastics, chemicals, etc. to create an entity of value to drive profitable activities, so data also has to be detailed and analysed to have value."*

The institution of trust, applied to database management, represents an innovative approach that integrates legal principles with modern economic and technological needs. In this configuration, the database becomes the object of the trust.

Moving on with order, the main function of databases is to collect data (including personal data) from customers, so that it can be organised and archived in order to derive value from it, both internally, to select the products with the highest margin and most successful in the market, and externally, to obtain revenue through the process of data vending to other companies.

The innovation and development of a company's intangible assets, including its database, enable it to acquire specific distinctive skills and a greater competitive advantage in the market. However, the continuous evolution of such intangible assets, which modifies business models, making them increasingly digital, often clashes with

regulatory immobility, which finds it difficult to react quickly to the rapid changes resulting from the technological revolution.

In order to answer these questions, however, it is necessary to broaden the boundaries of the analysis, which concerns not only databases in the strict sense of the term and the relevant sector regulations, but also requires the approach of law and economics to assess which is the best interpretative strategy to adopt, and if this is not sufficient, which should be the interventions of the legislator with regard to databases and trusts, but more generally to all intangible assets.

While there has been a transition from an industrial economy, based on the use of material resources, to a knowledge-based economy, where value creation is driven by the use of intangible resources, accounting documents do not reflect this transition, failing to qualify certain intangible assets as assets. Indeed, not all intangible investments are shown in the balance sheet as assets capable of generating future economic benefits, i.e. as assets on the asset side of the balance sheet.

Moreover, the accounting rules are very clear: internally generated intangible resources cannot be capitalised, whereas the same resources, if purchased, are considered as assets and can be capitalised. This difference in treatment is closely linked to the definition of an asset provided by the main standard setters: an asset is an economic resource that has the potential to generate economic benefits.

In this perspective, while the value of an intangible resource that is purchased is certain, since it is determined in a transaction between independent parties, the value of an internally generated intangible asset (e.g., a database) is uncertain and, therefore, cannot be recorded as an asset in the balance sheet.

It is precisely for this reason that the trust comes into play, which can serve multiple purposes, including protecting sensitive data, managing data on behalf of third parties, ensuring regulatory compliance, or using data for research and development, but above all it is a tool that succeeds in economically valorising intangible assets.

The trustee, who assumes responsibility for managing the database, must operate in compliance with applicable laws and privacy regulations, ensuring the security and integrity of the data, and facilitating access as set forth in the trust. The beneficiaries, who may be the original owners of the data, end users, or other designated parties, have specific rights to access and protect their data.

The economic analysis of law applied to the institution of the database trust allows the effectiveness and efficiency of this legal structure to be assessed, considering the economic impact of rules and regulations on market dynamics. The trust can improve allocative efficiency and reduce transaction costs associated with the management and sharing of data, creating incentives that encourage virtuous behaviour on the part of the various actors involved.

Furthermore, analysis of the trust highlights its ability to manage risks and uncertainties, facilitate regulatory compliance, and promote innovation and investment in new technologies. However, the successful implementation of a trust depends on a clear definition of ownership rights over data, the management of jurisdiction issues, and a careful assessment of the associated costs and benefits.

In conclusion, the institution of trust applied to databases offers a significant opportunity to improve the safe and responsible management of data in an increasingly digital environment, promoting user trust and market efficiency. The economic analysis of the law provides valuable guidance in understanding how to optimise the application of this legal instrument, effectively balancing benefits and costs.