

SLOVAK UNIVERSITY OF AGRICULTURE IN NITRA

Faculty of European Studies and Regional Development

Department of Law



EU INTELLECTUAL PROPERTY

Innovations and Intellectual Property
in various fields of human life



Proceedings of papers from an International Scientific Conference

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FACULTY OF EUROPEAN STUDIES AND REGIONAL DEVELOPMENT
SLOVAK UNIVERSITY OF AGRICULTURE IN NITRA**

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(Innovations and Intellectual Property in various fields of human life)



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DIGITAL REGENERATION OF VILLAGES AND URBAN AREAS IN EUROPE: THE ITALIAN PERSPECTIVE

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Abstract

The issue of regeneration of villages and rural areas became central after the outbreak of the Covid-19 pandemic. The issue had also arisen in previous years, for various reasons, particularly depopulation dynamics. Italy is characterized by about 17% of its population living in rural areas, equal to 10 million people (compared to 51 million Italians living in urban areas). This situation calls for the implementation of specific “digital strategies” to enhance the productive capacity of these areas. One of the main strategies is that linked to brands, both of European origin and of national origin (for example geographical identification marks for products, such as DOC, DOP, “Made in Italy”, but also various types of certification such as “Borgo sostenibile”, “Borgo Autentico Certificato”, etc.), and to international standards (like ISO 9001). They are: i) forms of legal design, because they convey legal contents, and increasingly they assume this function from the point of view of communication with the user/consumer; ii) fundamental elements of the economy of reputation (brand reputation) that characterizes the technological transformation of communities and territories. The main legal profiles connected to this type of tools in the Italian experience will be analyzed, and it will be assessed whether a “brand reputation and legal design strategy” could also be adopted in other territories and regions, with a European coordination of local identities enhancement.

Keywords

Legal design; Villages; Inner areas; Reputation economy; Digitalization

Introduction

The topic of village and rural regeneration has become central since the outbreak of the Covid-19 pandemic, but the issue had arisen in previous years as well. The reasons behind this need are many and an exhaustive treatment would not be possible. Having to choose a particular point of view, highlighted starting from the trends of the last two years, it becomes interesting to talk about the “valorization” of Italian villages and inner areas starting from the digital strategies that are now in front of everyone's eyes to feed, manage or contain the digital transition and the ecological transition of territories and society as a whole.

The interest in villages and inner areas is, indirectly, also a bridge towards the enhancement of the agricultural sector, which is historically connected with the production of food and services related to them in all areas of the country, and the manufacturing sector and micro, small and medium enterprises that constitute, in Italy, the main national production fabric. Also indirectly, but with a very strong connection, it is also one of the vectors of the entire national economy for the increasingly close link with tourism, both for the development of catering services and temporary accommodation based on the enhancement of the “village” and quality agricultural production, and for the enhancement of the international image of Italy in a dynamic of “brand reputation” and, consequently, of “reputation economy”.

Among the triggers for the need to adopt strategies to enhance rural areas is their depopulation. The trend is underway throughout Europe and in almost all territories, and will

not be stopped even by the Covid-19 pandemic that has heavily affected some cities. Italy is characterized by about 17% of the population living in rural areas, compared, therefore, with an absolute majority of people living in urban areas. All in all, this is a population of around 10 million people, which as a whole is equivalent to that of a large European metropolis or the population of a small state. The remaining part of the population (around 51 million), lives, therefore, in Italian cities, Rome and Milan above all, including the declared and undeclared suburbs, which at times extend well beyond the already ample boundaries of the respective “metropolitan cities”¹. With such a marked urbanization, the problem arises of continuing to generate economic and social value in the so-called inland areas, in a specific and broad sense, so that they do not become mere dependencies of the cities and dormitories of the same².

With the Covid-19 pandemic, there has been a certain return to villages and inland areas (for example, for “second homes”, but also as a result of historical internal movements of the population in search of work, from the South to the North, and generalized fears of remaining in the city). Opportunities and offers have been proposed to entice and attract those leaving the urban area in search of alternative solutions, in which they could continue to lead a satisfying lifestyle made up of smart working and interpersonal relationships at a distance mediated by technology. This escape from the cities does not constitute, at the moment, a reversal of trend with respect to the more general trend of urbanization and does not resolve, therefore, the problem of the valorization of villages and internal areas.

For this reason, it becomes necessary, therefore, the implementation of specific “strategies” to maintain an agri-food production, enhance it on the national and international markets, enhance villages and towns in the inland areas not to consign them to abandonment and not to leave large portions of the national territory in situations of neglect and potential danger, including hydrogeological. These strategies, of necessity, must include an important use of digital technology, which cannot remain confined to urban areas, and the issue of intellectual property becomes central. Also starting from the Italian experience, these strategies can become the common framework for the enhancement of human, social and economic capital of all internal, rural and peripheral areas of European territories.

Material and methods

The great theme of the present, as described by the main social, economic and technological trends we are witnessing, is that of the implementation of an economy of data and platforms that can enrich the European market, without depending on services, software, cloud and other people's numbers (often mendacious) without giving up welfare and services. As for villages and internal areas, not directly touched and involved by digitalization, as well as generally excluded from its benefits, the challenge is particularly challenging and necessary. The call for awareness and media literacy is necessary, but not sufficient to redefine rights in the digital age (such as, for example, the right to “reduce or eliminate the digital divide” and harmonize the concrete reality of the territories with the most recent EU Directives and Regulations.

In the Italian experience, the valorization of the areas that most need strategic intervention in order to be attractive takes place through the fundamental contribution, and support, of ad

¹ The institution, for major cities, between the local administrative level (the Municipality) and the regional administration (the Region), as a result of Legge 7 aprile 2014, n. 56 (cd. “legge Delrio”).

² Commuting, in Italy concerns about 33 million people in 2019, of which 22 million are workers and 11 million are students (Istat data). In areas such as those of the Milanese hinterland, this causes a population of at least twice the size of the resident population to flow into the city. Similar dynamics can be found in many European cities.

hoc brands, quality certifications and recognized international standards. These are elements that, on their own, could be irrelevant in the process of valorizing an area, but which become central when encountering today's world of communication, characterized by its own dynamics that are still, despite not being “new”, to be understood.

Together with the digitalization of the Public Administration and a -in evolution-redefinition of the administrative competences, with dynamics both of administrative centralization (union of municipalities, basin authorities, regional and local parks), and of decentralization (greater devolution of subject matter and competence to regions and local authorities), there are in fact, for some years now, more and more relevant:

i) Brands. These can be for individual products or groups of products, as well as for quality and geographical identification (among the main ones are brands such as DOC, DOP, “Made in Italy”, but also the lesser-known DOT - denomination of territorial origin, DOS - denomination of historical origin);

ii) various types of certification, both for products and, increasingly, for “intangible realities” such as villages and beaches (the main ones include certifications such as “Borgo sostenibile”, “Borgo Autentico Certificato”, “Bandiera blue”).

iii) international standards, in their various forms and verticality, for the specific sectors to which they refer (among the main ones we find the ISO 9001 certification, a series of regulations and guidelines developed by the International Organization for Standardization (ISO) that define the requirements for the implementation within an organization of a quality management system, in order to conduct business processes, improve the effectiveness and efficiency in the realization of the product and in the delivery of the service, obtain and increase customer satisfaction).

The value of these tools is twofold and, as far as it is relevant here, must be analyzed for the legal scope that is connected. In particular, they can be read as:

i) forms of legal design, insofar as content and symbols intended to convey legal content and increasingly take on this function with a view to communication with the user/consumer. Legal design is characterized as a new branch of law aimed at encouraging the design and display of legal content in a form that is as consumer-readable, or client-readable, as possible. Born in the negotiation field, the legal design can be effectively applied also in the phase of ideation of the normative text.

ii) fundamental elements of the reputation economy, as a phenomenon that increasingly characterizes the technological transformation of communities and territories. The reputation economy, in principle, is characterized by the presence of trademarks, which are recognized as having a deposit of value, transferred from the product they distinguish. From the brands born to differentiate the owners of certain objects from each other, today we are fully in an economy in which the value of the product is recognized by the reputation of the brand that produces it. This is, of course, a “perception” of value, which must be built up and protected against brand counterfeiting phenomena that are much easier to achieve than the counterfeiting of the product itself. In this economy, users and consumers play a key role, especially through reviews and the use of social media.

As far as villages and territories are concerned, the use of identifying marks began several years ago and this leads to a condition whereby it becomes fundamental to have marks and certifications of quality in order to be able to compete in the global dynamics of both the production of goods and tourism. It could also be considered that in the absence of a brand that indicates an area or a village, one is in the condition of not being able to know and correctly measure its “value”, with the risk of not being considered³ (due to non-presence in guides, reviews and sites such as TripAdvisor and the like). This is marketing, but not only.

³ See Z. BAUMAN, D. LYON, Sesto potere. La sorveglianza nella modernità liquida, Laterza, 2015.

In the Italian experience, “brand identity” is one of the pillars of communication for the valorization of areas and products, and aims to involve tourists and consumers with an active role thanks to social networks. This is fundamental in order to build a strong “brand identity” that is not just the extension of an idea of a few, or dropped from above, but is the result of the involvement of multiple stakeholders. Similar constructions of identity, even in much more enhanced and effective ways, are present in some particularly worthy European projects, even if they are still little valued. Thanks to the enhancement of the relationship between digital and community, in fact, there are experiences of construction from below and aimed at specific objectives of coexistence and improvement of the quality of life, with the involvement of “pivot groups” and new forms of widespread planning⁴. These projects, and other possible projects still to be invented, will bring people closer to a better interaction, and coexistence, with the digital.

The protection of intellectual property is, therefore, fundamental to cover these brands and certifications, but also the solutions proposed and to be proposed in the coming years. From the outset, several critical issues are noted. On the one hand, if the protection of intellectual property is so important for the protection of villages and inland areas, it should become central at European level, in a coordinated perspective. On the other hand, many of the indications that can be read about certifications concern, today, the product being certified. It should not be forgotten, however, that equally important is the process that culminates in the product, as is evident in some Italian situations through “specifications”. This is a form of protection of intellectual property that does not limit, theoretically, the knowability of the process, but protects in cascade the brands connected to it and protects producers and stakeholders (therefore, also consumers) from falsification and counterfeiting. The certification of processes, however, is still in an initial phase, in some ways embryonic, of its development. If, on the one hand, great prospects are opening up to explore this possibility, it is also necessary to remember that protection of the product alone today constitutes an important risk for companies: the know-how of the producer is today one of the main targets of IT attacks and the pervasiveness of these attacks cannot leave indifferent the producer who relies solely on a formal protection of the name and brand of his product, in which the substantial quality of the product is not taken into consideration and not protected in any way (if not by brand reputation, but this can be very volatile). To overcome this risk, it is certainly appropriate to “certify” the processes followed, in place of product certification. These processes can flow into management policies, both company-wide and extended to all producers who wish to operate under the shelter of a common quality certification.

In the Italian experience, both the legal design, the experiences of building local brand identities, and the implementation of legal design in regulation are underway. Today, these challenges are intertwined with the need to have an increasingly consumer-readable legislation, but without trivializing the legal text and without losing the protections, such as those of consumer law, which are instead essential. In this sense, legal design should not be reduced to the mere inclusion of graphic elements in the text, nor should it be a sort of “QR code” that provides a summary of the legal content, but it should refer to a traditional legal text for detailed regulations. In this capacity, the mark or symbol may even become an element that goes on to create legal liability in the case of those who issue, authorize or manage the mark. The challenge is, instead, to have a more streamlined legal text, able to be generated, understood, used and, potentially, even improved by the experience of dozens and dozens of stakeholders in various capacities and ways involved in the process of regulatory design thinking.

⁴ See one among all, the example of Smart Kalasatama, in Finland, at: <https://fiksukalasadatama.fi/en/>.

The challenge mentioned, however, is twofold: alongside a text that must be increasingly consumer-readable, there is also the need for it to be machine-readable, that is, intelligible and interoperable by algorithms for the provision of additional services.

In the Italian experience, legal design is coming into common use thanks to GDPR and the Italian Authority for the Protection of Personal Data, as well as thanks to several other frontier projects⁵. In particular, we can recognize in art. 12, par. 7-8 of the GDPR⁶ one of the main “sources”, both direct and indirect, of entry of legal design in the system, where the article provides for the use of “standardized icons” for the display of rights, duties and regulatory provisions regarding the protection of personal data. The Italian Authority has also launched a public competition in recent months to collect proposals⁷, and similar initiatives can certainly be adopted in the future, even in other fields, to bring citizens back to the center of management and government of the territories and their specific areas of activity.

Among the areas of intervention that the Italian authorities are called upon to protect, there is the fight against the so-called “Italian sounding” and the counterfeiting of typical Italian products, the possible counterfeiting of company and non-company brands, the fight against the possible importation of products from outside the EU where the national or intra-EU alternatives are not adequately valued.

On the other hand, certification procedures that formally recognize some products as “national”, or quality, can be critical, where, however, there are flaws and vulnerabilities in the certification procedures themselves. In the experience of recent years, in fact, some certifications have proved substantially inadequate to recognize the reality of the facts, with foreign products certified as domestic and other similar cases. In this case, although these marks have all the formal requirements to be affixed, as well as to be protected, there is a real possibility that the continuation of such situations will generate mistrust in certifications, if the mark or certification is no longer representative of value.

Positive notes seem to come from the most recent allocations of resources. The main “engine” of future economic recovery will be, the Recovery and Resilience Facility (under the Next Generation EU) will make available €672.5 billion in loans and grants to make the economies and societies of European countries more sustainable and prepared for the challenges and opportunities of the green and digital transition. Digital agenda, together with innovation, research and support to small and medium enterprises (SMEs) are precise objectives of the European Regional Development Fund⁸, while the European Social Fund (ESF) has, among its main focuses, the delivery of better services to European citizens and not only from an economic or quantitative point of view (since the reference to efficiency should not be, reductively, linked to mere accounts and data).

Results and discussion

In the light of the Italian experience, there are certainly reasons to believe that a strategy of “brand reputation and legal design” can also be adopted in other territories and regions of the European Union, with a European coordination that takes care of the valorization of local

⁵ See *ex multis*, the project LeDiBank - Legal Design in Banking Law, by UNISOB Naples with Bank of Italy, available at: https://www.unisob.na.it/ateneo/c008_e5.htm?vr=3&lg=en (link consulted on April 29, 2021).

⁶ See EU Regulation n. 2016/679 (GDPR).

⁷ See the legal design initiative of the Italian Authority for clear policies, at: <https://www.garanteprivacy.it/temi/informativechiare> (link consulted on April 29, 2021).

⁸ See at the link: https://ec.europa.eu/info/strategy/recovery-plan-europe_it#nextgenerationeu (link consulted on April 29, 2021).

identities without dispersing their forces and following isolationist paths that are anachronistic with the reality we find ourselves living.

There are, however, some caveats that must be well considered.

First of all, a real strategy aimed at improving legislation and freeing it from the trappings of technicalities, should seriously confront the meaning that we must attribute to legal design today. As design historians teach, there is no design without utopia. This means that brands, symbols and icons, in addition to being effectively protected from an intellectual property point of view, must also possess and transmit a fundamental vision of the identity and functioning of society. On pain of their ineffectiveness and early obsolescence. Such a vision requires the definition of principles, such as the fundamental principles of our institutions and societies, but also the principles that underlie our relationship with technology and algorithms. These are legal principles, but also ethical⁹ and economic principles.

The task of an open and frank dialogue between scholars of all disciplines should be to identify possible mismatches between the world of technology and the world of law. For the purposes of this paper, however, four points can already be highlighted that deserve further investigation in the near future. These are “vulnerabilities” which, as such, are not exclusive to the new technologies or to information technology in particular, but which arise with particular incisiveness in relation to these subjects. It is opportune to analyse them and know how to correct them, before they are used through Taylor-made attacks to cause damage (economic, reputational, etc.) to our society and alter its environment.

These vulnerabilities, to date, are:

i) The absence of precise definitions. The absence of precise definitions creates legal grey-zones in which the law cannot move, or moves with difficulty, and where, above all, it loses predictability. A precise definition of “artificial intelligence” is still lacking, i.e. all those methodologies and disciplines that aim at using digital technologies to create systems capable of reproducing in full autonomy the cognitive functions of human beings, including, in particular, data acquisition and a form of understanding and adaptation (problem solving, reasoning and automatic learning). By way of example only, unambiguous definitions, legal frameworks and applicable regulations are still absent for a whole range of new jobs created by the so-called Industry 4.0: data managers, data analysts, data explorers, etc.

ii) The problem of balancing with fundamental rights. Recent EU positions on AI and robotics call for principles of participation, responsibility and ownership of production processes so that “the human being is never the executor of the machine”¹⁰. Additionally, these systems should ensure plurality, non-discrimination and fairness. In light of the recent doctrine regarding the use of algorithms for criminal trials in the US, the world of work also lends itself to an analysis in terms of the impact of algorithms in the immediate future where choices, promotions and decisions could be entrusted to machines. All this is already happening in some cases of application selection, personnel selection, decision of promotions, leaves, dismissals. The effects of artificial intelligence on employment and labor require a surplus of attention at the political level, “as institutions have in particular the task of making processes of economic transformation socially sustainable”¹¹ and not “explorable” in terms of hybrid threats and unconventional methodologies of conflict. In contrast, one of the EU Guiding Principles for Artificial Intelligence states that “Artificial Intelligence systems should be used to enhance positive social change and improve sustainability and ecological

⁹ See “Algoetric”, in P. BENANTI, *Oracoli*. Tra algoetrica e algocrazia, Luca Sossella editore, 2018.

¹⁰ European Commission, “White Paper on Artificial Intelligence - A European approach to excellence and trust”, 2019.

¹¹ European Economic And Social Committee (EESC), Parere del Comitato economico e sociale europeo su «L'intelligenza artificiale: anticipare i suoi effetti sul lavoro per assicurare una transizione equa», 2018.

responsibility”¹². A lack of precision in the regulation of AI can easily allow, instead, the exploration of this vulnerability with the aim of damaging the economic and social fabric of European countries; draining technological know-how from Europe to abroad; creating a sense of distrust in institutions.

iii) AI regulation and robotics in the absence of sufficient data. Again, according to the EESC¹³, “the EU lacks sufficient data on the digital economy and the resulting social transformation.” For some time now, the EESC has been recommending that statistical tools and research be improved, in particular on AI, the use of industrial and service robots, the Internet of Things and new economic models (the platform economy, new forms of employment and work), as well as calling for the European Commission to promote and support the conduct of studies (at the level of European sectoral social dialogue committees) on the sectoral impacts of artificial intelligence and robotics and, more generally, of the digitization of the economy.

iv) A multifaceted legislative landscape. The complexity of the digital society is leading to a world increasingly regulated by soft law and, as seen, guidelines. Even in the oft-cited “principle of algorithm transparency,” reference is made not so much to the disclosure of source codes, but to making transparent, understandable, and clear the principles, parameters, and criteria used to develop the algorithm and guide its future decisions. However, the use of this approach is problematic for continental European law since it is based on regulations that aspire to be precise, mandatory and binding (while it is more natural for common law regimes). The real novelty, however, lies in the fact that Europe must “open up” to emerging norms that originate elsewhere, think of China. These regulations present ethical principles and socio-cultural references that are different, inapplicable or inadmissible in Europe. Particular complexity is brought about by the fact that, alongside documents of public origin, documents, guidelines and private policies are also becoming increasingly relevant.

In light of these problems, the scenario that emerges risks proving destructive.

The legal response seems to rely more and more on the soft law that our institutions can still effectively deploy. The principles referred to are, in the first instance, certainly those expressed in Western Constitutions, but increasingly today also in recitals, guidelines, opinions and working papers - such as the increasingly important ones adopted by the European Commission. Soft law becomes the most widely used tool to regulate technology, since, as illustrated in the previous paragraph, it is becoming (increasingly) difficult to manage to adopt detailed legislation quickly in step with the technological state of the art.

Some of these principles are not newly developed, but they still have to reckon with the digital society and the concrete applicability in it. Sometimes, they are sufficiently “known” to suggest a semblance of precision: interpretations, however, are often a harbinger of differences and localism. It is clear, at this point, that recourse to “principles” and soft law can only be a temporary expedient in view of new and more stable determinations. If this does not happen, we will be faced with a progressive detachment of reality from the “principles” that are called upon to regulate it. The risk is, quite evidently, that of damaging the principles and all that is positive in them.

Conclusions

In highlighting the key points of this contribution, it is necessary to consider:

¹² European Commission, “White Paper on Artificial Intelligence - A European approach to excellence and trust”, 2019

¹³ European Economic And Social Committee (EESC), Parere del Comitato economico e sociale europeo su «L'intelligenza artificiale: anticipare i suoi effetti sul lavoro per assicurare una transizione equa», 2018.

i) that we find ourselves in a technological paradigm, that of the infosphere¹⁴, in which the dynamics of brand reputation involve all subjects, starting from private individuals up to territories and even institutions. From this point of view, those who do not have these tools run the risk of not being seen and of not obtaining sufficient value, remaining marginal and indeed facing increasingly significant devaluation and depopulation dynamics.

ii) in order to respond to the challenges of the digital society today, the role of trademarks and certifications is fundamental, with the attention that must be shifted to the protection of legal property and the independence and efficacy of certifying bodies, on pain of the progressive devaluation of the entire system and distrust in it.

iii) Legal design is characterized by being the fundamental opportunity to rethink legislation, to make it both consumer-readable and machine-readable. However, it should not only be an effort to simplify the “visualization” of the legal content, but should become an opportunity to innovate / renew the core values of social cohesion, enhancing the identities of the territories in a common European coordination.

From this point of view, what is a fundamental component of the Italian strategy for the valorization of villages and inland areas can become a model and an example to be applied throughout Europe, since it lends itself well to being a framework that takes into account local specificities and enhances them for their inalienable specificity.

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¹⁴ See L. FLORIDI, *Pensare l'infosfera*, Raffaello Cortina, 2020.