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Active webcam and online didactics: obligation and privacy

Is it compulsory to activate the webcam during online courses and videoconferences?

We have already seen **how to create a smooth videoconference** and, in particular, we have wondered if it is appropriate to **keep the camera always on during videolessons**.

During **online education** (corporate, school, and academic) in the form of webinars, videocalls, virtual classrooms, and online courses, human interaction is definitely different than face-to-face interaction. And, very often, keeping the camera on seems to be a must, as it is the only way to look at each other's faces and not lose eye contact, despite social distancing. Not to mention that, in the context of distance learning, turning on the webcam during training sessions is the simplest and most effective way of verifying the actual attendance of the trainee at the lesson. But many will have wondered: doesn't the **obligatory use of the webcam violate the privacy of participants in the online classroom**?

The **National Council of Chartered Accountants and Accounting Experts** (CNDCEC) with the Pronto Ordini n. 65 of May 11, 2021 makes a clarification on this point: "in the context of online courses, in the absence of express regulations that provide for methods, limits and purpose of data processing, it is not possible to impose the use of the camera either to teachers or to students.

In this case, it will be the course provider (as the owner of the personal data processing) who will have to **regulate the way in which the personal data is processed** and therefore to specify through the drafting of a regulation whether the use of the webcam is compulsory, specifying, if so, what the purpose of the obligation is (for example, the attestation of attendance or the limitation to the final test phase) and also explaining the limits of the processing, respecting the confidentiality and dignity of those concerned.

As far as **schools** are concerned, even though there is no real obligation, the **Ministry of Education** had already given guidelines, specifying that if students do not have a webcam, they will not be obliged to purchase one; in this case, instead of participating live in the videoconference (in virtual classroom mode), they will be able to use the video content in deferred mode, directly on the school's digital platform and seek discussion with the teacher, as required by law, through other means, such as email, chat or call. On the other hand, if the student has a webcam but does not want to activate it without a justified reason, the teacher can take this into account when assigning the final grade.

Despite this, the obligation does not exist and it is illegitimate to request or demand it, as it could damage another right, such as the right to family privacy (in this case, if the student has access to a PC equipped with a webcam only in the parent's private office or in a common environment frequented by the whole family or, again, in an environment with less than optimal conditions).
In such cases, the student's refusal to use the webcam can be considered legitimate, and therefore the student can be given the opportunity to attend live teaching by deactivating the video mode but keeping the audio mode, so that he or she can listen to and interact live with the lesson, but be "invisible" to others.

Significant, in this regard, the clarification of the **Ministry of Education**: "Given that the conduct of video lessons in computer mode is attributable to the functions of training institutionally carried out by educational institutions, it should be noted that the use of the webcam must in any case be respectful of the rights of persons involved and the protection of personal data. In the context of digital didactics, the use of the webcam during educational sessions is the most immediate way through which the teacher can check if the student is following the lesson, but it is up to the educational institutions to establish the modalities of treatment of personal data and how to regulate the use of the webcam by students, which must take place exclusively, as specified above, respecting the rights of the persons involved".

In fact, the **Privacy Guarantor** has expressed itself clearly regarding the need to inform students about the purpose of data processing during DAD: "In order to ensure the transparency and fairness of the processing, educational and university institutions must ensure the transparency of the processing by informing the interested parties (pupils, students, parents and

teachers), in a language understandable even to minors, in order, in particular, the essential characteristics of the processing, which must, however, be limited to the execution of the distance learning activity, while respecting the confidentiality and dignity of the interested parties (D. P.R. June 24, 1998, n. 249, spec. art. 1; art. 13 of the Regulation)".

In addition, the **Guidelines for Integrated Digital Teaching** suggest that each Institute should equip itself with a platform that "meets the necessary requirements of data security to ensure privacy, taking into account also the opportunities to manage this form of teaching that are within the electronic register, ensures a smooth conduct of synchronous activity also, possibly, through the obscuration of the surrounding environment and is usable, whatever the type of device (smartphone, tablet, PC) or operating system available."

Ultimately, "the **School Plan for Integrated Digital Education** can provide that students keep the webcam and microphone on, but these indications should also be provided in the Institute Regulations and the Regulations for Discipline, documents that must be supplemented with specific provisions on the rules of conduct to be kept during the connections by all components of the school community. Having said this, we believe that - we read in the FAQ - in specific and particular cases, the right to the protection of the privacy of the student and of the minor must be taken into consideration, where it prevails over the methodological choices and regulations of the school (for example, in the case of a student who does not want to show certain aspects of his environment and family context)".

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