

7. Crowdsourcing Labour Relation : The Future of Employment in Information and Communication Technology Era

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Abstract

In disruptive era, developments in information and communication technology (ICT) are leading not only to fundamental changes in normal labour relationships, but also to the emergence of new forms of labour relations. Crowdsourcing labour relation often do not fit into the existing binary legal categories of dependent labour and self-employment and can be located in the grey area between employment contract and freelance labour relations. Crowdsourcing is a new information and communication technology based form of organizing the outsourcing of task to a large pool of online workers, which would normally be delegated to employees. The working conditions of this decentralized model of work appear to be poor. Global competition, dislocated physical workplaces and lack of worker organisation offering these legal insecurities result in a massive imbalance of bargaining power. As a consequence crowdwork labour relations leads to low remuneration as well as unfair terms and conditions of work letting some already talk about digital slaves and virtual sweatshops. The legal issues in this paper is who the contractual partners and what kind of contract exist between the parties. For answering this an overall assessment of the actual situation has to be undertaken. It's result may differ from what the crowdwork parties have written in their contracts as they may have been used them to disguise the true economic content and therefore the correct classification of the contractual relationships.

Keywords : crowdsourcing, labour relations, employment

Introduction

Developments in information and communication technology are leading not only to fundamental changes in normal working relationships, but also to the emergence of new forms of employment. They often do not fit into the existing binary legal categories of dependent labour and self employment, and can be located in the

grey area between employment contracts and freelance work. This is also the case with crowdsourcing labour relations, also known as crowdsourcing of labour, crowd employment, or crowdwork.

Crowdsourcing labour relation in its the broader sense is sometimes understood to include volunteer based work and non paid work, such as open source projects like Wikipedia. The main difference is that in open source projects the final result is available for everybody, at least for those who participated. Crowdsourcing labour relations though is not organized by a community but follows strict and concrete specifications set up by the crowdsourcer on the platform. Most of the time crowdsourcing is the performance of work within the value chain of profit oriented organisations.

Crowdsourcing labour relations can take place internally or externally depending on whether the crowd comprises a company's internal workforce or simply any number of individuals. With external crowdsourcing, the crowdsourcer generally uses crowdsourcing platforms, which already having an active crowd. This paper will look solely at external crowdsourcing, as internal crowdsourcing is generally linked to the existing employment relationships, and therefore poses fewer fundamental problems. The platform can be operated by an independent enterprise or by the company itself, running the platform for its own recruitment or task fulfilment.

Crowdsourcing has changed from a niche phenomenon to a large industry, there has been a rapid increase of platforms, revenues, crowdworkers, and the expansion of new fields and tasks. The platform *Clickworker* today claims to have more than 650.000 registered clickworkers : on *Amazon Mechanical Turk* there are more than 350.000 tasks offered in any point in time, and in general the annual growth in global revenue is increasing.

Crowdsourcing Labour Relations

It is a new information and communication technology based form of organizing the outsourcing of tasks to a large pool of online workers, which would normally be delegated to employees. The work usually refers to as tasks, is offered to a larger number of people (the crowd) by means of an internet based crowdsourcing platform. This process is referred to as crowdsourcing ; employers are crowdsourcers for whom crowdworkers provide services. However, these parties usually do not enter into direct contact with one another. Instead, the relationship is managed through an intermediary the crowdsourcing platform.³¹

³¹ *Felstiner, A.L.:* Working the Crowd: Employment and Labor Law in the Crowdsourcing Industry, Berkeley Journal of Employment and Labor Law, (2011)

The spectrum of tasks assigned to the external crowd is broad. It ranges from very simple, repetitive activities involving low pay and highly standardised or automated processes (e.g. labelling and creating descriptions for images, categorising data and products, translating or proofreading short texts), to somewhat more complex and time consuming tasks such as testing software products or finding errors in website, all the way to skilled activities such as writing program code or designing products. Depending on how the process is organised, crowdsourcing can be divided into two groups ; microtasking and contest based crowdsourcing.

Microtasking is the main category of crowdsourcing available to majority of the crowdworkers. Larger tasks are broken down into very small subtasks (microtasks) which can be worked independently. They are posted on platforms, where a crowdworker can see and fulfill these tasks. For this reason we sometimes speak of cognitive piece work and neo-taylorism, afterwards the microtasks are assembled.

The reason for companies to use microtasking is that large quantities of works that can be done in a short time for very little pay. Organisations have also access to skilled labour on a global virtual labour market, they can eliminate fixed costs and have a greater degree of flexibility. Due to this new form of organizing work, a cheap external on demand workforce is available. On the other side this monotonous and often very simple tasks are particularly susceptible to quality issues. Microtasking platforms often address crowdworkers like a computer processor : nameless, faceless, and exchangeable.

Contestbased crowdsourcing on the other hand is the main category in the information and communication technology based creative economy, where tasks can not be broken down into small tasks. Project work is generally awarded in the form of prizes for the best entry, the best logo, the best solution, or the best software, whilst the other participants do not get anything. In contrast to the competition which has always been standard in the creative industry (e.g. architecture), the finished product is submitted rather than project proposals are being evaluated.

Implication for working conditions

The working conditions of the decentralized model of work appear to be poor. Global competition, dislocated physical workplaces, lack of worker's organisation, the oligopoly of a few platforms offering these jobs and legal insecurities result in a massive imbalance of bargaining power. As a consequence this leads to low

remuneration as well as unfair terms and conditions of work letting some already talk about digital slaves and virtual sweatshops.³²

As mentioned above the average wage on the crowdsourcing platform way less than the actual national minimum wage. Another negative aspect is insecurity about payment : in accordance with the general terms and conditions of microtasking platforms, crowdsourcers have the rights to reject the work without having to give a reason or providing payment, nonetheless they are allowed to use the work. The payment in contestbased crowdsourcing is insecure as well because just one or few winners get the award so that the payment sometimes appears more or less kind of lottery.

Most of crowdsourcing platforms try to create a dependency on them via a system of digital reputation. Crowdworkers who work regularly and provide good results are awarded points, stars, or other symbols of status. The more attractive and better paid task are assigned to those that have the best reputation, which is however not transferable between the individual platforms which are in competition with one another. Some economic sectors often have a just a few platforms due to the high infrastructure costs, so changing platforms often seems impractical.³³

But crowdsourcing labour relations offers also new possibilities. Crowdworkers can decide when to work, where to work, and what kind of tasks to fulfill. As a consequence crowdwork is very compatible with other duties like care for children and other household members and may provide extra income besides other work.

Crowdworkers themselves are also not a homogeneous group and may be categorized as full time crowdworkers and part time crowdworkers. Full time crowdworkers, often people who do not have access to regular job markets due to handicaps, social exclusion or the place they live in, but also people who prefer crowdwork to regular types of employment. Part time crowdworkers : people with other duties who want or need to add some extra income. Especially microtasking platforms tend to attract this segmen of crowdworkers.

Contractual aspects of crowdsourcing labour relations

The prevailing opinion especially put forward by the terms and conditions of the crowdsourcing platforms as well as by the crowdsourcer consider external crowdworker to be self employed, meaning that especially minimum wage and

³² *Kochan, T.A.*: Shaping the Future of Work, Business Expert Press, New York, (2016)

³³ *Boudreau, K.J.*: Using the Crowd as an Innovation Partner, Harvard Business Review, Cambridge, (2016)

other regulations of working conditions like working time laws or health and safety provisions do not apply. But is this really true? Who are the contractual parties? And what kind of contract exists between those parties?

As pointed out above we have three parties : the crowdsourcer, the crowdsourcing platform, and the crowdworker. It is often not clear between whom what kind of contract has been concluded. This, of course, can be a strategy to obstruct crowdworkers to enforce their legal rights. So clarify alone is a first step to a solution. Once the parties of the underlying contracts are detected, the second question is what kind of contract exists between those parties.³⁴

For answering the question, an overall assesment of the actual situation has to be undertaken. It's result may differ from what the crowdsourcer or the crowdsourcing platform have written in their contracts as they may have been used them to disguise the true economic content and therefore the correct classification of the contractual relationship. This classification is not only of the academic interest but of practical importance as for example minimum wages usually apply only to employment relationships.

Conclusions

The growth of crowdsourcing industry can on the one hand side be attributed to the business model itself that very efficiently makes use of information and communication technology, and enables creative processes and workflows otherwise not possible. But it is on the other hand also due to the lack of minimum remuneration conditions and other protective provisions as well as to the existence of evidently unfair contractual conditions. This is intensified by the fact that crowdwork takes place in the virtual world with no physical borders where workers compete with each other before the background of very different living costs. What is an unacceptable wage in Europe may well be considered fair in Asia or Africa, and the internet makes it possible for these workers to compete with each other without any additional transaction costs.

At least at present it seems that protective provisions under labour law are not applied to crowdworkers, even though there are a number of good arguments in favour of an employment relationship between crowdworkers and the crowdsourcing platforms. Even if this assesment is not shared by others, in any case concede that crowdworkers are in many situation comparable to employees in terms of their social and economic situation due to massive bargaining inequalities. At least in terms of legal policy applying protective provisions particularly concerning remuneration and granting crowdworkers the rights to be informed by and obtain information from the

³⁴ *Cherry, M.:* Beyond Misclassification: The Digital Transformation of Work, Comparative Labour Law and Policy Journal, (2016)

crowdsourcing platform seems desirable as concerns their economic status and employment situation.

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