

Legal Implications of the Platform Economy

Report on the WU Research Group Meeting

| Philipp Homar

From March 12 to March 13, 2018, the WU Research Group Meeting 'Legal Implications of the Platform Economy' was held at the WU Vienna. In this meeting, researchers from seven different research institutions in four different countries (USA, Germany, Hungary and Austria) gathered to discuss the impacts of digital platforms such as YouTube, Instagram, Wikipedia, Uber and Airbnb and the challenges they pose for the legal environment. The meeting was funded by the WU and the 'Forschungsverein für Technikrecht'. This summary report provides a short insight into the research group meeting and outlines the main issues that were tackled by the researchers.

1 Background: Digital Platforms and the Platform Economy

Recent years have seen the emergence of digital platforms in economic, social and cultural sectors: media content is consumed on YouTube, SoundCloud and Instagram, news consumption, personal and commercial communication takes place on Google, Facebook, Twitter and Wikipedia, products are purchased on eBay and Amazon Marketplace, transport services are arranged via Uber, rooms are rented using Airbnb and workforce is offered on Amazon Mechanical Turk. Although these phenomena are very diverse, some common features can be detected:

- By connecting individuals and resources, platforms lower transaction costs, so that products and services can be offered by new market participants. For example, former passive recipients create and share media content on social network sites and user upload platforms; private individuals offer goods, services and resources on online market places. As a result, platforms create and shape new markets and new relationships between market participants (e.g. producers and consumers).¹⁾
- The above mentioned platforms do not produce or supply the products or services that are transacted; they rather act as intermediaries and facilitate transactions between suppliers and demanders.²⁾ Therefore, platforms are described as 'matchmakers'.³⁾ According to their configuration, they have varying degrees of control over the interactions among their users.⁴⁾

- Their role as facilitators between different groups of market participants is linked to another characteristic feature: Platforms operate in two- or multisided markets.⁵⁾ For example, a video platform like YouTube does not only serve one group of customers; it rather serves the suppliers of the media content, the consumers of the media content and the companies that place advertisements on the platform.
- A consequence of their role as intermediaries between multiple groups of market participants is the presence of network effects:⁶⁾ For example, the value for an individual to join a social network increases with the number of users it has ("direct" or "same-side" network effect);⁷⁾ at the same time, an increasing number of users on one side of a platform, e.g. Uber drivers, attracts more users on the other side of the platform, e.g. transport customers ("indirect" or "cross-side" network effect).
- Another effect of platforms acting in multisided markets is that customer groups on one (or more) side(s) often do not pay a monetary compensation for using the services of the platform. For example, people can use a search engine like Google without paying a fee; however, they pay indirectly with their attention to the advertisements and with providing their data.⁸⁾ Consequently, user data has become a major resource in the platform economy and many business models consist of accumulating data provided by users and extracting value from it.
- Furthermore, as the above mentioned platforms are rooted in the digital environment, their business models generally rely on using information and communications technologies (ICT).⁹⁾



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¹⁾ Communication from the Commission "Online Platforms and the Digital Single Market – Opportunities and Challenges for Europe", COM(2016) 288 final, 2. For the blurring boundaries between producers and consumers see *Homar/Lee*, The Rise of the Prosumer, MR-Int 2016, 152 (152).

²⁾ *De Franceschi*, Uber Spain and the "Identity Crisis" of Online Platforms, EuCML 2018, 1 (1).

³⁾ *Evans/Schmalensee*, Matchmakers: The New Economics of Multisided Platforms, Harvard Business Review Press, 2016, 1.

⁴⁾ Communication from the Commission "Online Platforms and

the Digital Single Market – Opportunities and Challenges for Europe", COM(2016) 288 final, 2.

⁵⁾ *Cohen*, Law of the Platform Economy, U.C. Davis Law Review, 2017 51(1), 133 (146); *Körber*, Konzeptionelle Erfassung digitaler Plattformen und adäquate Regulierungsstrategien, ZUM 2017, 93 (93 et seq).

⁶⁾ *Busch*, The Rise of the Platform Economy: A New Challenge for EU Consumer Law?, EuCML 2016, 3 (4).

⁷⁾ *Körber*, ZUM 2017, 93 (94).

⁸⁾ *Körber*, ZUM 2017, 93 (94).

⁹⁾ Communication from the Commission "Online Platforms and the Digital Single Market – Opportunities and Challenges for Europe", COM(2016) 288 final, 3.

Due to their disruptive and innovative business models, platforms have become driving factors in societal, technological and economic development. They provide access to information (Google, Wikipedia), enable citizens' participation in social and democratic processes (Twitter, YouTube), increase consumer choice (eBay, Amazon Marketplace, Airbnb, Uber) and facilitate efficiency gains (Airbnb).¹⁰ At the same time, the 'platformisation' entails a series of negative effects: For example, we encounter phenomena like 'filter-bubbles' in our media and news environment, an increasing precarity in the platform-based labour market, negative effects of algorithmic and cloud-based decision making and the loss of sovereignty over our data. Not surprisingly, addressing the challenges posed by online platforms is currently a key issue of the European legal reform discourse.¹¹⁾

Against this background, the aim of the research group meeting was to gather legal scholars and social scientists in order to discuss the manifold challenges the platform economy poses for the legal environment.

2 The Research Group Meeting

The first day of the research group meeting was opened by presentations from social scientists, which laid the foundations for discussing the legal implications and challenges of digital platforms: In the keynote „Entering the Platform Economy: New (Business) Models and their Consequences“, *ao. Univ.Prof. Mag. Dr. Elfriede Penz, MAS, Eur. Ph.D.* (WU Vienna) provided an insightful overview of current developments in the platform and sharing economy; *Mag. Dr. Barbara Hartl* (WU Vienna, Competence Center for Empirical Research Methods / JKU Johannes Kepler University Linz) and *Mag. Dr. Eva Hofmann* (WU Vienna, Competence Center for Empirical Research Methods) then presented current research results on “Regulation in the Sharing Economy” that were elaborated in the research project „Collaborative Consumption – Trust, Power and Cooperation“. *Dr. Stefan Holzweber* (University of Vienna) opened the legal part of the meeting with his talk „It's Every Man for Himself? Self-preference in Platform Markets“, in which he focused on the preference of a search engine's own services in search results from an antitrust perspective. *Dr. Miriam Kullmann* (WU Vienna) continued

with her presentation „Working in the Platform Economy – The Implications on Labor Law“, in which she elaborated on phenomena like 'crowdwork' and the 'gig economy' and their challenges on labor law. The presentation was followed by *Prof. Peter Yu* (Texas A&M University, USA) and his talk on „Data Producers' Rights and the Platform Economy“. Prof. Yu critically reviewed the discussion of introducing a data producer's right for non-personal anonymized machine-generated data by raising a list of policy questions and drawing comparisons to the introduction of the sui generis database right. Thereafter, the focus switched on challenges for the copyright framework: In his presentation on “The Applicability of the Making Available Right on Content Platforms“, *Univ.Prof. Dr. Clemens Appl, LL.M.* (Danube University Krems) raised the most controversial issue of the current European copyright reform discourse. He examined if the making available right (Art 3 InfoSoc-Directive), as interpreted by the CJEU in the *Pirate Bay* case, is applicable on user upload platforms like YouTube and elaborated on Art 13 of the proposed Directive on Copyright in the Digital Single Market. In the following presentation “Remunerating Rightholders in a Platform Economy“, *MMag. Philipp Homar* (Danube University Krems / WU Vienna) analysed the implications of the proposed Directive on Copyright in the Digital Single Market on the remuneration of rightholders for uses on user upload platforms. *Sang Wha Lee, LL.M.* (WU Vienna) then gave his presentation on “Hate Speech and Shitstorm: The Obligation of Social Media Platforms to delete Offensive Comments“, in which he focused on the scope of the host-provider's safe harbour provision (Art 14 E-Commerce-Directive). The first conference day was closed by *Dr. Alexandra Santangelo-Reif* (Herbst Kinsky Attorneys at Law), who questioned the adequacy of the existing consumer protection law in her talk “Consumer Protection and Digital Transaction Platforms“.

The second day of the meeting was opened by *Dr. Roland Stürz* and *Dr. Alexander Suyer* (both Max Planck Institute for Innovation and Competition, Munich, Germany) who presented instructive results of their quantitative survey “The Use of Copyright-Protected Creative Online Content by German Consumers“. Afterwards, *Mag. Bettina Höchtel* (Danube University Krems) gave her presentation on “Making Economic Use of Data and Protecting Individuals from Full Transparency: An Opposing Pair?“, in which she analysed the legal framework for a data economy and presented the research project Data Market Austria, which aims at establishing an innovative data-services ecosystem in Austria. *Dr. Gabriel M. Lentner* (Danube University Krems) then raised the question “Can Data be treated as Property?“ and elaborated on implications of treating data as property in the context of investment arbitration. The talk was followed by *Assoc.Prof. Dr. Peter Mezei, PhD* (University Szeged, Hungary) and his presentation on “Platform Economy vs. Piracy: The (Un)expected Consequences of Online Media Consumption“, in which he discussed the interrelations between the copyright framework and media consumption and also looked back on foreseeable and unforeseeable consequences of P2P filesharing. Finally, *Yafit Lev-Aretz, S.J.D., LL.M., LL.B.* (New York University, USA) spoke

¹⁰⁾ Communication from the Commission “Online Platforms and the Digital Single Market – Opportunities and Challenges for Europe“, COM(2016) 288 final, 3.

¹¹⁾ C.f. Communication from the Commission “A Digital Single Market Strategy for Europe“, COM(2015) 192 final; Communication from the Commission “Online Platforms and the Digital Single Market – Opportunities and Challenges for Europe“, COM(2016) 288 final; Commission Staff Working Document “Online Platforms“ SWD(2016) 172 final; Synopsis Report on the Public Consultation on the Regulatory Environment for Platforms, Online Intermediaries and the Collaborative Economy, available under <https://ec.europa.eu/digital-single-market/en/news/full-report-results-public-consultation-regulatory-environment-platforms-online-intermediaries> [26.7.2018]; Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market, COM(2016) 593 final; Weissbuch “Digitale Plattformen – Digitale Ordnungspolitik für Wachstum, Innovation, Wettbewerb und Teilhabe“ by the German Bundesministerium für Wirtschaft und Energie.

on “Personalized Choice Architecture”. The presentation focused on practices of using users’ data for tailoring preferences and settings of platforms, which, of course, treads a fine line between legitimate benefits of personalisation (e.g. of search engine results or advertisement) and manipulation of consumers and citizens in general.

3 Outlook

Both days of the research group meeting were characterised by instructive presentations and intensive discus-

sions among the researchers. They revealed both similarities and interrelations between the challenges discussed in different areas of law. Therefore, the research collaboration provided a foundation for further intensifying the scientific exchange between legal scholars and social scientists as well as legal scholars from different areas of law. The following short papers contain excerpts of the presentations held in the research group meeting.

Regulation in the Sharing Economy: A Social Science Approach

| Barbara Hartl/Eva Hofmann/Elfriede Penz

Sharing activities are often organized via online platforms. It is argued that the sharing economy lacks regulation and bears more risks for consumers than regular e-commerce. This article provides an overview of research in social science on regulation in the sharing economy.

1 Introduction

Technical developments of the last centuries are an important enabler of innovation and development. In combination with economic crises and increased environmental concerns, the use of new technologies has given rise to alternative economic phenomena: “platform economy”, “collaborative economy”, “gig economy” and “sharing economy”.¹⁾ Only recently, online peer-to-peer marketplaces, so called digital ‘sharing platforms’, help to coordinate sharing among strangers worldwide. Ownership of a good is replaced by the access to it, so that consumers share goods they need, like a car, and temporary use them instead of buying them²⁾. One of the most successful examples is Airbnb, an online community marketplace facilitating short-term rentals without owning any real estate. Due to the popularity of digital platforms organizing sharing economy activities, the concept of the sharing economy is highly related to the platform economy.

2 Sharing Economy and regulation

Social science research has predominantly focused on the issue of regulation from a consumers’ perspective. In contrast to conventional businesses, in which consumers are protected by law, regulation in the sharing economy is rare. It is debated vigorously whether the sharing economy needs to be regulated: The proponents, e.g., argue that the sharing economy is said to encourage self-interest and

exploitation and thereby threatens societal welfare.³⁾ Thus, consumers are often confronted with price gouging and asymmetric information that put them in an unfavourable position.⁴⁾ Also racial, sexual and other discrimination have been shown to occur in the sharing economy more often than in conventional business. For instance, Afro-Americans are less likely to be accepted as a sharing partner⁵⁾ and receive lower prices for their shared good.⁶⁾ A clear consequence would be that governmental regulation is needed.

But while some stress the need for governmental interference, others argue that self-regulation of sharing economy businesses might be sufficient.⁷⁾ Self-regulation means that the responsibility of regulation is allocated to an actor other than a governmental institution. Thus, the businesses



Photos
(from left):
B. Hartl,
E. Hofmann,
E. Penz

Mag. Dr. Barbara Hartl, WU Vienna University of Economics and Business, and Johannes Kepler University Linz.

Mag. Dr. Eva Hofmann and ao. Univ. Prof. Mag. Dr. Elfriede Penz, MAS, Eur. Ph.D., WU, Vienna University of Economics and Business.

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¹⁾ Tussyadiah, An exploratory on drivers and deterrents of collaborative consumption in travel (2015). In I. Tussyadiah & A. Inversini (Eds.), Information & Communication Technologies in Tourism 2015. Switzerland: Springer International Publishing.

²⁾ Belk, You are what you can access: Sharing and collaborative consumption online (2014), Journal of Business Research, 67(8), 1595-1600.

³⁾ c.f., Schor, Debating the sharing economy (2016), Journal of Self-Governance and Management Economics, 4(3), 7-22.

⁴⁾ Koopman, et al., The sharing economy and consumer protection regulation: The case for policy change (2014). J. Bus. Entrepreneurship & L., 8(2), 529-545.

⁵⁾ Edelman, et al., Digital discrimination: The case of Airbnb. Com, (2014).

⁶⁾ Edelman, et al., Racial Discrimination in the Sharing Economy: Evidence from a Field Experiment, (2017). American Economic Journal-Applied Economics, 9(2), 1-22.

⁷⁾ e.g., Cohen, et al., Self-regulation and innovation in the peer-to-peer sharing economy (2015), U. Chi. L. Rev. Dialogue, 82, 116-133.