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Jindal Initiative on Research in IP and Competition



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You are cordially invited to attend to a discussion

on

Transparency by (Legal) Design in the Platform Economy

with



Dr. Rossana Ducato
UCLouvain and USL-B, Belgium

Programme

Introductory Remarks

12:00 pm – 12:05 pm

Dr. Vishwas H. Devaiah, Associate Professor, Jindal Global Law School & Co-Director, Jindal Initiative on Research in IP and Competition (JIRICO)

Seminar Talk (Skype)

12:05 pm – 12:50 pm

Professor Rossana Ducato, Postdoctoral research at UCLouvain & USL-Bo, Postdoctoral research fellow, Faculty of Law, University of Trento

Vote of Thanks

12:50 pm – 1:00 pm

Dr. Indranath Gupta, Associate Professor, Jindal Global Law School & Co-Director, Jindal Initiative on Research in IP and Competition (JIRICO)

Date: Wednesday, 9th May, 2018 | **Time:** 12:00 pm – 1:00 pm

Venue: JIRICO Conference Room, O.P. Jindal Global University, Sonapat 131001, Haryana, India

RSVP: Ms. Isha Gaba, Project Manager, JIRICO, +91-8396907321, igaba@jgu.edu.in

Abstract

The information paradigm and its main policy technique, information duties or mandated disclosures, are the backbone of both European Consumer and Data Protection Laws. The framework of the information paradigm is based on the idea that if the individual receives all the relevant information, she will be able to make an informed choice and express a meaningful consent. The principle is complemented by the duty of transparency: information has to be provided before the conclusion of the contract in a clear and intelligible language in order to ensure that the consumer understands the content of the agreement.

However, despite the crucial role of mandated disclosures as a means to reduce contractual asymmetries, very few users pay attention to the online boilerplates.

Several cognitive studies explain the reasons of such a behavior: Terms of Service (ToS), privacy policies, licenses are often long, badly written, and full of legal jargon; at the same time, individuals suffer several forms of bias and degrees of illiteracy. Therefore, some users may find quite hard to find, read and fully comprehend the basic conditions of the agreement and/or its legal consequences. Other users, instead, may decide to "click" without reading because of the impossibility to negotiate those terms.

The situation of legal complexity is a factor that discourages consumers from reading the contracts, thus disempowering end-users and undermining their protection. Indeed, the "clicking-without-reading" problem, version 2.0 of the signing-without-reading one, is considered one of the main cause of the persistence of unfair terms in contracts.

Hence, the current state of implementation of the information duties as well as the fact that the real consumers are different from the rational one (envisaged in consumer and data protection legislations) are the two main reasons why the information paradigm is failing its policy goal.

This problem is exacerbated in the current platforms economy. In this context, not only users find it difficult to retrieve the relevant information before entering into contracts, but it is often quite hard for them to read and fully comprehend the basic conditions of the agreement and their corresponding effects, such as the identity of the counterparty, the rights and remedies available, the allocation of responsibilities, the fairness of the clauses. For example, the way some platforms present their service and regulate the relationship between users may create the impression among consumers that they are directly contracting with the intermediary. While, on the contrary, the counterparty is another (not professional) peer, thus excluding the applicability of consumer protection remedies.

In the ongoing debate on the regulation of the digital economy in Europe, policy makers and scholars have highlighted how the lack of transparency and fairness of platforms is one of the main issue able to both undermine trust in the digital economy and harm the users. Indeed, this has been one of the first areas of policy intervention at both European and national level. Quite recently (April 2018), the European Commission has published a proposal for a directive on better enforcement and modernisation of EU consumer protection rules and a further proposal for a regulation on promoting fairness and transparency for business users of online intermediation services. In particular, while the proposal for a directive adds a specific transparency obligation in the consumer protection acquis (namely, the platform will have to clearly states who is the provider of the service, its legal status, and what are the legal consequences for the consumers of this classification), the proposal for a regulation establishes a duty to transparency also for B2B contracts within the context of online intermediation services.

However, despite new legislative measures and proposals directed to ensure transparency in the digital market are certainly welcome, they do not solve the underlying problem: the concrete implementation of the transparency principle. My argument is that if we want to fix the failure of the information paradigm, we must rethink the way information is communicated by platforms and perceived by the users, adopting an interdisciplinary approach that combines the evidences coming from behavioral studies with the methodology of design and technological solutions. To this end, I will present some preliminary results of an empirical analysis conducted on terms of service of a representative set of online platforms, operating in Belgium within the so-called sharing economy sector. Secondly, I will introduce the innovative concept of Transparency by Legal Design, a new interdisciplinary approach to solve such a legal problem.

Biography

Dr. Rossana Ducato is post doctoral researcher at UCLouvain and USL-B. She was postdoctoral research fellow at Faculty of Law, University of Trento. In 2014, she completed her Ph.D. in European and Comparative Legal Studies – Comparative Private Law. She completed J.D. (summa cum laude) in 2010 and BA in European and Transnational Legal Sciences in 2008 from University of Trento's Faculty of Law. In 2016, she was appointed by the European Commission as independent expert for the evaluation of H2020 projects. In November 2013, she was made a visiting fellow at Max Planck Institute for Comparative and International Private Law, Hamburg, Germany. From June to October 2013, she was a visiting scholar researcher at Center for Science, Technology, Medicine and Society, UC Berkeley, California. Earlier, she did research at the Institute for Information Law, University of Amsterdam; TIPSA, Summer Academy, McGill University, Montreal; and Max Planck Institute for Comparative and International Private Law, Hamburg.