Call for Papers
Private Governance and Digital Platforms
Inaugural conference on 15 June 2020

Background
The conference is the inaugural conference for the new, legal research centre, Centre for Private Governance (CEPRI) at the Law Faculty at the University of Copenhagen, which will be focusing on private actors in public roles. After an introductory session dedicated to the general concept of private governance, the conference will focus on digital platforms as private governance systems. The call for papers is for this part of the conference.

Digital platforms play an increasingly important role in society. The so-called collaborative platforms are used for commercial exchange but also for providing services of broader societal interest for instance on the housing and transportation market and social platforms such as Facebook serve as communication channels around the world for billions of people. Moreover, platforms seem to create their own, private norm systems. Platforms define the rules applicable on the platform, they implement these rules by way of rating systems and by user exclusion and they offer dispute resolution mechanisms available to the users on the platforms. By taking on the roles as both regulators, implementers and dispute resolution bodies, platforms undertake governance functions comparable to a state.

Platform private governance systems have been met with regulatory and other governmental push-backs of different kinds. More recent ones include the EU Regulation on platform-to-business relations (Regulation 2019/1150), establishing rules on unfair contract terms in the platform-to-business relationship, the EU Copyright Directive, imposing new obligations on online content-sharing service providers (Directive 2019/790), the judgment of the CJEU in Case C-18/18 (Glawischnig-Piesczek) (2019) supporting injunctions against Facebook with a worldwide effect, the German Network Enforcement Act (Netzwerkdurchsetzungsgesetz) aiming to combat agitation and fake news in social networks, and the expected proposal for a revision of the liability exemption rules in the e-Commerce Directive in a “Digital Services Act” (2020). There are also examples of consensual agreements between states and platforms to support important state policies such as the collaboration agreement between the Danish Tax Authority and Airbnb, which requires Airbnb to share certain information with the Danish Tax Authority.

The aim of the conference is to focus on the challenges created from both private and public law perspectives by platforms as private governance systems.

Against this background, the thematic part of the conference will revolve around the following themes:

1) Platforms as regulators
Platforms take on the role as regulators in various ways. Collaborative platforms often use a complicated triparty contractual setup as the central tool for establishing the ‘constitutional’ basis for interactions on the platforms. The use of the contract in triparty setups challenges the classical state law view of the contract as a bilateral construction and raises complicated questions concerning inter alia vicarious liability in tort law. Contract law thinking may also be challenged when contracts are used for serving not only commercial purposes but also in a new role as serving public policy purposes, establishing internal policies on for example anti-discrimination.
Finally, platform systems can challenge concepts of contractual fairness, generating new state regulation on business-to-business relationships.

2) Platforms as implementers
Not only do platforms create their own regulatory framework, they also implement and enforce these frameworks e.g. through rating systems and exclusion policies. This raises the question of the possible responsibility and liability of the platform if the enforcement of the policies infringes rights under statutory law, such as consumer law, copyright law and non-discrimination law. Moreover, social platforms are increasingly pushed to enforce state public policy by policing the content of information available on the platform or sharing certain information about platform users with states. Platform regulation on ‘illegal content’ may give rise to questions concerning the possible horizontal effect of fundamental rights protected by the ECHR and related responsibility and liability issues. Finally, questions of responsibility and liability may also arise based on the logic of the private governance system itself with regard to for instance incorrect ratings affecting the reputation of a company negatively.

3) Platforms as dispute resolution bodies
Some platforms (such as Airbnb and eBay) have created a system for solving certain types of disputes between platform users. Other platforms (such as Justice42) provide (online) dispute resolution “as a service” to disputing parties. Such online dispute resolution can involve automated or assisted negotiation, mediation and arbitration. In some situations, a platform does not rely on state power to implement the outcome of such dispute resolution, making its private governance system provide a form of “stateless justice” with the potential to de facto undermine the rule of law. This role of platforms in dispute resolution can raise important questions about the responsibility of platforms for safeguarding transparency and procedural justice, and questions about the liability of platforms as providers of online dispute resolution.

4) Platforms in new areas – the public sector
Today, platforms predominantly play a role in commercial and private markets. However, platforms may represent a governance tool for the public sector as well. Platforms will potentially be playing a role for instance with regard to the offering of welfare services and the provision of universal services such as the supply of energy. The digitalization of core public activities may be based on commercial experiences and/or rely on strategic public-private partnerships. The move into the public sector raises new questions of for instance the effect of digitalization on core public activities (rulemaking, implementation and dispute resolution) and the applicability of procurement law rules to the phenomenon of platforms.

Paper proposals
We welcome suggestions for papers on topics falling within these categories as well as crosscutting topics, focusing for instance on consumer protection, anti-discrimination, contractual fairness, human rights or access to justice. An abstract of max. 200 words must be sent to professor Vibe Ulfbeck (vibe.ulfbeck@jur.ku.dk) no later than March 20, 2020. Authors of selected abstracts will be notified no later than April 1, 2020.

Presenters at the conference may be invited to contribute to a special issue or other joint publication on the topic of platforms as private governance systems and travelling and accommodation costs will be covered by the conference. The conference is sponsored by the Independent Research Fund Denmark. For further information contact: Vibe Ulfbeck (vibe.ulfbeck@jur.ku.dk), Clement Salung Petersen (clement.petersen@jur.ku.dk) or Ole Hansen (ole.hansen@jur.ku.dk).