

Programa de Pós-graduação *Stricto Sensu* em Direito da Regulação Plano de Ensino

- **Disciplina:** Digital Platform Governance
- **Tipo Disciplina:** Eletiva Específica
- **Carga Horária:** 45h (3 créditos)
- **Professor responsável:** [Nicolo Zingales](#)

- **Ementa:**

This course will be taught entirely in English and will require active student participation in English. It will blend lectures, discussion, and student presentations. Each class will have a tripartite structure. The first segment will be dedicated to the discussion of the mandatory readings, providing an opportunity to review the topics discussed in the previous class and anticipate the subject of the class of the day. The second segment will feature a presentation by Professor Zingales, discussing the topic of the day. The third segment will be a presentation of the suggested readings of the day, delivered by one of the students. Questions, comments, and suggestions are welcome in every segment.

The course will be structured in four modules: a) The role of intermediaries in information law; b) The rise of the platform economy and its implications for intermediary liability; c) Virtues and perils of platforms as tools for regulation; d) The new wave of procedural regulation.

Topics will include: I. Regulation and governance of online communities; II. The dilemma of content moderation; III. The evolving framework for content moderation and the blurring boundaries of private-public; IV. Big Tech = big responsibilities in content moderation; V. Intermediaries, platforms and secondary liability; VI. Intermediary safe harbors and the scope of liability limitations; VII. Economic analysis of liability; VIII. Human rights analysis of intermediary liability; IX. The neutrality trap; X. The rise of platform responsibility; XI. The role of intermediaries in combating copyright infringement; XII. The role of intermediaries in combating fake news; XIII. The Digital Services Act and its implications for digital intermediaries; XIV. Platform regulation as risk regulation; XV. Platform Transparency: Expectations and Frustrations.

- **Objetivos:**

This course aims at providing an understanding of the evolving law regarding digital platforms and how this subject may vary across different national frameworks. Upon successful completion, students will be able to critically discuss the pros and cons of different approaches to regulation of and by digital platforms, considering the impact of their activity on the economy and society more broadly. Specifically, students will be able to:

1. Describe the multi-faceted notion of power, and the ways in which it acquires relevance in the process of law formation, particularly around digital platforms.
2. Distinguish among different types of intermediation to the actions of third parties that occur on the Internet, and different forms of responsibilities that attach.
3. Explain the legal and policy rationale behind the adoption of specific types of intermediary liabilities, and highlight potential unintended (or underestimated) consequences.
4. Identify and critically analyse the most important regulatory mechanisms for the imposition and the enforcement of platform liabilities.
5. Articulate a vision for the future direction of the evolving framework for platform governance in Brazil, and comparing that with other jurisdictions.
6. Manage and critique case-studies illustrating the imparted theoretical framework.

▪ **Temas e Bibliografia:**

REGULATION AND GOVERNANCE OF ONLINE COMMUNITIES

Lawrence Lessig, The Law Of The Horse: What Cyberlaw Might Teach, 113 Harvard Law Review 501 (1999).

Nicolas Suzor, The role of the rule of law in virtual communities, 25 Berkeley Technology Law Journal 1819 (2011).

Suggested readings:

Tim Wu, An Introduction to the Law & Economics of Information (March 22, 2016). Columbia Public Law Research Paper No. 14-399; Columbia Law and Economics Working Paper No. 482. Available at SSRN: <https://ssrn.com/abstract=2446577>.

Amy Kapczynski, The Law of Informational Capitalism, 129 Yale L. J. 1460 (2019-2020).

THE DILEMMA OF CONTENT MODERATION

James Grimmelman, The Virtue of Moderation, 17 Yale Journal of Law and Technology 42 (2015).

Eric Goldman, Content Moderation Remedies (2021). 28 Michigan Technology Law Review 1 (2021), Santa Clara Univ. Legal Studies Research Paper, Available at SSRN: <https://ssrn.com/abstract=3810580>

Suggested readings:

Robyn Caplan, 'Context or Content Moderation? Artisanal, Community-Reliant, and Industrial Approaches', Data & Society Research Institute (2018), available at <https://datasociety.net/output/content-or-context-moderation/>.

Gillespie, T. (2022). Do Not Recommend? Reduction as a Form of Content Moderation. Social Media + Society, 8(3). <https://doi.org/10.1177/20563051221117552>.

THE EVOLVING FRAMEWORK FOR CONTENT MODERATION AND THE BLURRING BOUNDARIES OF PRIVATE AND PUBLIC

Ivar Hartmann, A new framework for online content moderation. Computer Law & Security Review, v. 35, 2019.

Daphne Keller, Who do you sue? State and Platform Hybrid power Over Online Speech, Hoover Institution Aegis Series Paper No. 1902, available at https://www.hoover.org/sites/default/files/research/docs/who-do-you-sue-state-and-platform-hybrid-power-over-online-speech_0.pdf.

Suggested readings:

Luca Belli, Pedro Augusto Francisco & Nicolo Zingales. (2017). Law of the Land or Law of the Platform? Beware of the Privatisation of Regulation and Police, in Belli L & Zingales (Eds). Platform Regulations How Platforms are Regulated and How They Regulate Us. FGV Direito Rio (2017). <http://bibliotecadigital.fgv.br/dspace/handle/10438/19402>.

Kebene Wodajo, The user state: an alternative reading of the state role and duty in the age of platformized harm, International Journal of Law and Information Technology, 2023;, eaad009, <https://doi.org/10.1093/ijlit/eaad009>.

BIG TECH= BIG RESPONSIBILITIES IN CONTENT MODERATION

Sander, Barrie, Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation (May 23, 2020). Fordham International Law Journal, Vol. 43, No. 4, 2020. Available at SSRN: <https://ssrn.com/abstract=3434972> or <http://dx.doi.org/10.2139/ssrn.3434972>

Angelopoulos, C., Brody, A., Hins, W., Hugenholtz, B., Leerssen, P., Margoni, T. , McGonagle, T., van Daalen, O. and van Hoboken, J. (2015) Study of Fundamental Rights Limitations for Online Enforcement through Self-Regulation. Other. Institute for Information Law (IvIR), available at <https://dare.uva.nl/search?identifier=7317bf21-e50c-4fea-b882-3d819e0da93a>

Suggested readings:

Helberger, N., Pierson, J., & Poell, T. (2018). Governing online platforms: From contested to cooperative responsibility. The Information Society, 34(1), 1-14. <https://doi.org/10.1080/01972243.2017.1391913>.

Stylianou, Konstantinos and Zingales, Nicolo and Di Stefano, Stefania, Is Facebook Keeping up with International Standards on Freedom of Expression? A Time-Series Analysis 2005-2020 (February 11, 2022). Available at SSRN: <https://ssrn.com/abstract=4032703> or <http://dx.doi.org/10.2139/ssrn.4032703>.

INTERMEDIARIES, PLATFORMS AND SECONDARY LIABILITY

OECD, 'The Economic and Social Role of Internet Intermediaries' (2010), at <https://www.oecd.org/internet/ieconomy/44949023.pdf> , pp. 6-14.

Graeme Dinwoodie, Who are Internet Intermediaries? , Oxford Handbook on Intermediary Liability (Oxford University Press, 2020).

Paul Belleflamme and Martin Peitz, Platforms: Definitions and Typology, in The Economics of Platform (Cambridge University Press, 2021), at <https://www.cambridge.org/core/books/abs/economics-of-platforms/platforms-definitions-and-typology/EBA51D430F062103A738AFB833FBD7C7>

Suggested readings:

Tarleton Gillespie, Platforms are not Intermediaries, 2 Georgetown Law Technology Review 198 (2018).

Daphne Keller, Internet Platforms. Observations on speech, danger and Money. Hoover Institution White Paper (2018), available at <https://www.hoover.org/research/internet-platforms-observations-speech-danger-and-money>.

INTERMEDIARIES SAFE HARBORS AND THE SCOPE OF LIABILITY LIMITATIONS

Laidlaw, Emily, Mapping Current and Emerging Models of Intermediary Liability (June 15, 2019). Available at SSRN: <https://ssrn.com/abstract=3574727> or <http://dx.doi.org/10.2139/ssrn.3574727>

Goodman, Ellen P. and Whittington, Ryan, Section 230 of the Communications Decency Act and the Future of Online Speech (August 1, 2019). Rutgers Law School Research Paper. Available at SSRN: <https://ssrn.com/abstract=3458442> or <http://dx.doi.org/10.2139/ssrn.3458442>

Suggested readings:

Frosio, Giancarlo, From Horizontal to Vertical: An Intermediary Liability Earthquake in Europe (March 1, 2017). 12 Oxford Journal of Intellectual Property Law and Practice 565 (2017), Available at SSRN: <https://ssrn.com/abstract=2956859> or <http://dx.doi.org/10.2139/ssrn.2956859>

Daphne Keller, The Right Tools: Europe's Intermediary Liability Laws and the EU 2016 General Data Protection Regulation, Berkeley Tech. LJ 33 (2018).

ECONOMIC ANALYSIS OF LIABILITY

Alexandre De Streel et al., Liability of Online Platforms- Should Exceptionalism End? CERRE Report September 2018.

Husovec, Martin, Accountable, Not Liable: Injunctions Against Intermediaries (May 2, 2016). TILEC Discussion Paper No. 2016-012, Available at SSRN: <https://ssrn.com/abstract=2773768> or <http://dx.doi.org/10.2139/ssrn.2773768>.

Suggested readings:

Mike Masnick, 'Don't shoot the Message Board. How Intermediary Liability Harms Investment and Innovation' (June 2019), <http://netchoice.org/wp-content/uploads/Dont-Shoot-the-Message-Board-Clean-Copia.pdf>.

Grimmelmann, James and Zhang, Pengfei, An Economic Model of Intermediary Liability (April 19, 2023). Berkeley Technology Law Journal, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=4422819>.

HUMAN RIGHTS ANALYSIS OF INTERMEDIARY LIABILITY

Robert Spano, Intermediary Liability for Online User Comments under the European Convention on Human Rights, Human Rights Law Review, 2017, 1–15.

Christina Angelopoulos and Stijn Smet, 'Notice-and-fair-balance: How to Reach a. Compromise Between Fundamental Rights in European Intermediary Liability, 8 (2) Journal of Media Law (2016) 266-301.

Council of Europe, Recommendation CM/Rec (2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries.

Suggested readings:

Nicolo Zingales, Virtues and Perils of Anonymity: Should Intermediaries Bear the Burden 5 (2014) JIPITEC 155, para 1.

Aleksandra Kuczerawy, The Power of Positive Thinking: Intermediary Liability and the Effective Enjoyment of the Right to Freedom of Expression, 8 (2017) JIPITEC 226 para 1.

THE NEUTRALITY TRAP

Miquel Peguera, The Platform Neutrality Conundrum and the Digital Services Act, <https://link.springer.com/article/10.1007/s40319-022-01205-7>.

Daphne Keller, The suborn, nonsensical myth that Internet platforms must be neutral, Washington Post (29 July 2019), at <https://www.washingtonpost.com/outlook/2019/07/29/stubborn-nonsensical-myth-that-internet-platforms-must-be-neutral/>

Suggested readings:

Pasquale, Frank A., Platform Neutrality: Enhancing Freedom of Expression in Spheres of Private Power (May 12, 2016). 17 Theoretical Inquiries in Law 487 (2016)., U of Maryland Legal Studies Research Paper No. 2016-24, Available at SSRN: <https://ssrn.com/abstract=2779270>

Daphne Keller, 'Systemic Duties of Care and Intermediary Liability', Inform Blog (May 2020). Available at: <https://inform.org/2020/06/05/systemic-duties-of-care-and-intermediary-liability-daphne-keller/>.

THE RISE OF PLATFORM RESPONSIBILITY

Nicolo Zingales & Luca Belli, 'Introduction', in *Platform Regulations: How Platforms Are Regulated and How They Regulate Us* (FGV Press, 2017).

Frosio, Giancarlo and Husovec, Martin, Accountability and Responsibility of Online Intermediaries (September 10, 2019). in Giancarlo Frosio (ed.), *The Oxford Handbook of Online Intermediary Liability* (Oxford University Press, 2019, Forthcoming), available at SSRN:

<https://ssrn.com/abstract=3451220> or <http://dx.doi.org/10.2139/ssrn.3451220>

Giancarlo Frosio, *Why Keep a Dog and Bark Yourself? From Intermediary Liability to Responsibility*, 26(1) *Oxford International Journal of Law and Information Technology* 1 (2018)

European Commission, *Communication on 'Tackling Illegal Content Online: Towards an enhanced responsibility of online platforms'*, COM(2017) 555 final.

European Commission, *Recommendation on 'on measures to effectively tackle illegal content online'*, C(2018) 1177 final.

Suggested readings:

Mac Sithigh, Daithi, *The Road to Responsibilities: New Attitudes Towards Internet Intermediaries* (October 3, 2019). *Information and Communications Technology Law*, October 2019, Available at

SSRN: <https://ssrn.com/abstract=3463688> or <http://dx.doi.org/10.2139/ssrn.3463688>

Muhammad Ali et al, *Discrimination through optimization: How Facebook's ad delivery can lead to skewed outcomes*, available at <https://arxiv.org/abs/1904.02095>

THE ROLE OF INTERMEDIARIES IN COMBATING COPYRIGHT INFRINGEMENT

Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance.).

Husovec, Martin, *How Europe Wants to Redefine Global Online Copyright Enforcement* (April 15, 2019). In: Tatiana Eleni Synodinou (ed.), *Pluralism or Universalism in International Copyright Law* (Kluwer law, Forthcoming), Available at SSRN: <https://ssrn.com/abstract=3372230>.

Bridy, Annemarie, *The Price of Closing the 'Value Gap': How the Music Industry Hacked EU Copyright Reform* (June 30, 2019). *Vanderbilt Journal of Entertainment & Technology Law*, volume 22, pp. 323-358 (2020), Available at SSRN: <https://ssrn.com/abstract=3412249> or <http://dx.doi.org/10.2139/ssrn.3412249>.

Suggested readings:

Thomas Spoerri, *On Upload-Filters and other Competitive Advantages for Big Tech Companies under Article 17 of the Directive on Copyright in the Digital Single Market*, 10 (2019) *JIPITEC* 173 para 1.

Quintais, João, *The New Copyright in the Digital Single Market Directive: A Critical Look* (October 14, 2019). *European Intellectual Property Review* 2020(1) (Forthcoming), Available at SSRN: <https://ssrn.com/abstract=3424770> or <http://dx.doi.org/10.2139/ssrn.3424770>.

THE ROLE OF INTERMEDIARIES IN COMBATING FAKE NEWS

David Lazer et al., *The science of fake news*. 359 (6380) *Science* (09 Mar, 2018).

Alberto Alemanno, How to Counter Fake News? A Taxonomy of Anti-fake News Approaches. 9 (1) European Journal of Risk Regulation (2018).

European Commission, Communication on Tackling Misinformation: A European Approach, COM/2018/236 final European Commission, The Strengthened Code of Practice on Disinformation 2022, at: <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation#:~:text=The%20Code%20will%20strengthen%20the,challenges%20related%20to%20such%20techniques>.

Griffin, Rachel and Vander Maelen, Carl, Codes of Conduct in the Digital Services Act: Exploring the Opportunities and Challenges (May 30, 2023). Available at SSRN: <https://ssrn.com/abstract=4463874> or <http://dx.doi.org/10.2139/ssrn.4463874>.

Draft Bill no. 2630 of 2020, as approved by Brazilian Senate: <https://docs.google.com/document/d/1MHMDHsVJBi45PI1R5IAyoLmZvZk8eULHisYFqGy9X2s/edit?ts=5f0478be>.

Suggested readings:

A multi-dimensional approach to disinformation, Report of the independent High level Group on fake news and online disinformation. Available at <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>

P.H. Chase, The EU Code of Practice on Disinformation: The Difficulty of Regulating a Nebulous Problem, August 29, 2019, available at <https://www.ivir.nl/twg/publications-transatlantic-working-group/>

Richard Mackenzie-Gray Scott, Managing Misinformation on Social Media: Targeted Newsfeed Interventions and Freedom of Thought, 21 Nw. J. Hum. Rts. 109 (2023). <https://scholarlycommons.law.northwestern.edu/njihr/vol21/iss2/1>

THE DIGITAL SERVICES ACT AND ITS IMPLICATIONS FOR DIGITAL INTERMEDIARY GOVERNANCE

Husovec, Martin and Roche Laguna, Irene, Digital Services Act: A Short Primer (July 5, 2022). Martin Husovec and Irene Roche Laguna, Principles of the Digital Services Act (Oxford University Press, Forthcoming 2023), Available at SSRN: <https://ssrn.com/abstract=4153796> or <http://dx.doi.org/10.2139/ssrn.4153796>.

Nicolo Zingales, The DSA as a paradigm shift for online intermediaries' due diligence, Verfassungblog, at <https://verfassungsblog.de/dsa-meta-regulation/>.

Martin Husovec, Will the DSA work? On money and effort, Verfassungblog, at <https://verfassungsblog.de/dsa-money-effort/>

Daphne Keller, The EU's new Digital Services Act and the Rest of the World, Verfassungblog, at <https://verfassungsblog.de/dsa-rest-of-world/>

Sebastian Becker, Jan Pefrat, The DSA fails to reign in the most harmful digital platform businesses – but it is still useful, Verfassungblog, at <https://verfassungsblog.de/dsa-fails/>

Pietro Ortolani, If You Build It, They Will Come, Verfassungblog, <https://verfassungsblog.de/dsa-build-it/>.

Catalina Goanta, Now What, Verfassungblog, a <https://verfassungsblog.de/dsa-now-what/>.

Aleksandra Kuczerawy, Remediating overremoval, Verfassungblog, at <https://verfassungsblog.de/remediating-overremoval/>.

Suggested readings:

Suzanne Vergnolle, Putting collective intelligence to the enforcement of the Digital Services Act Report on possible collaborations between the European Commission and civil society organisations, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4435885.

Frosio, Giancarlo and Geiger, Christophe, Taking Fundamental Rights Seriously in the Digital Services Act's Platform Liability Regime. *European Law Journal* 2022 (forthcoming), Available at SSRN: <https://ssrn.com/abstract=3747756> or <http://dx.doi.org/10.2139/ssrn.3747756>.

PLATFORM REGULATION AS RISK REGULATION

Alessandro Mantelero, Fundamental rights impact assessments in the DSA, <https://verfassungsblog.de/dsa-impact-assessment/>

Evelyn Douek, Content moderation as Systems Thinking, 136 *Harv. L. Rev.* 526 (2022).

Substitute text of P.L. 2630 currently discussed in Brazilian Congress (English translation to be provided) ACT Coalition on Meaningful Transparency, Audit frameworks under the Digital Services Act - an ACT briefing note (April 2023), at <https://www.meaningfultransparency.tech/post/audit-frameworks-under-the-digital-services-act-an-act-briefing-note>.

COMMISSION DELEGATED REGULATION (EU) .../... Supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council, by laying down rules on the performance of audits for very large online platforms and very large online search engines at https://eur-lex.europa.eu/resource.html?uri=cellar:3b47c104-b900-11ed-8912-01aa75ed71a1.0008.02/DOC_2&format=PDF

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS, COM/2021/206 final at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0206>

Suggested readings:

Thomas Kadri, Juridical Discourse for Platforms, 136 *Harv. L. Rev. F.* 163 (2022).

Lindsay Sain Jones and Tim R. Samples, On the Systemic Importance of Digital Platforms, 25 *J. Bus. L.* 141 (2023) Available at: <https://scholarship.law.upenn.edu/jbl/vol25/iss1/5>.

World Economic Forum, Digital Safety Risk Assessment in Action: A Framework and Bank of Case Studies.

PLATFORM TRANSPARENCY: EXPECTATIONS AND FRUSTRATIONS

Goldman, Eric, Zauderer and Compelled Editorial Transparency (2023). *Iowa Law Review Online*, Forthcoming, Santa Clara Univ. Legal Studies Research Paper No. 4246090, Available at SSRN: <https://ssrn.com/abstract=4246090> or <http://dx.doi.org/10.2139/ssrn.4246090>.

Mariana Mazzucato, Ilan Strauss,im O'Reilly,and Josh Ryan-Collins, Regulating Big Tech: the role of enhanced disclosures *Oxford Review of Economic Policy*, 2023, 39, 47–69.

Keller, Daphne, Platform Transparency and the First Amendment (March 3, 2023). Available at SSRN: <https://ssrn.com/abstract=4377578> or <http://dx.doi.org/10.2139/ssrn.4377578>

Suggested readings:

Paddy Leerssen, An end to shadow banning? Transparency rights in the Digital Services Act between content moderation and curation Rieder, B. & Hofmann, J. (2020). Towards platform observability. *Internet Policy Review*, 9(4). <https://doi.org/10.14763/2020.4.1535>.