Social Networking Sites’ Terms of Use: addressing imbalances in the user-provider relationship through \textit{ex ante} and \textit{ex post} mechanisms

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Broader context

- Balancing of fundamental rights in the SNS context

Freedom to conduct business

Consumer rights, user rights (freedom of expression, privacy, IP, ...)

[Image of an arrow pointing downwards from the top left to the bottom right, and another arrow pointing upwards from the bottom right to the top left, with a diagonal line connecting the two.]
"The informed user"

More than 1 billion active users!

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'Standard contracts'
Will a single user go to court?
Ex post
Collective redress mechanisms

- Commission Communication 2013:

  Collective redress is a procedural mechanism that allows, for reasons of procedural economy and/or efficiency of enforcement, many similar legal claims to be bundled into a single court action. Collective redress facilitates access to justice in particular in cases where the individual damage is so low that potential claimants would not think it worth pursuing an individual claim. It also strengthens the negotiating power of potential claimants and contributes to the efficient administration of justice, by avoiding numerous proceedings concerning claims resulting from the same infringement of law.”

  California & Canada  
  ~ Facebook ‘sponsored stories’
Collective redress mechanisms in Europe

Group actions

Representative actions

Test procedures

France: UFC v. AOL France
Germany: VBVZ v. Facebook, ...
Belgium: Test Aankoop v. Apple
Collective redress mechanisms in Europe

• Currently fragmented and underused
• Lack of awareness: users and consumer organisations?
  o ‘Free services’?
  o Impact not immediately tangible?
• Cross-border?

→ pervasive nature SNS, infringements on privacy and consumer rights
Ex ante

→ intervention before agreement with ToU
Pre-approval of contracts

- Review and approval to ensure fairness and efficiency
- Control by a third party → Independent body? Resources? Consumer organisation?
- Voluntary? Incentives? Immunisation against future claims?
- Co-regulatory?
- Risk of freeriding? No shopping for terms? Never read ToU again? SNS dominant player in the market?
Negotiated contracts

- ‘Model form contract’ through negotiation between traders and consumers / consumer organisations
- Improve consumers’ contractual position, allow for competing interests to be taken into account, lower enforcement costs (enhancement of enforcement costs against one-sided provisions)
- Risk of freeriding? No shopping for terms?
- Self-/co-regulation?
- Ex.: Consumer Ombudsman (Scandinavia)
Interactive contracts

• Customisation of certain parts of the contract
  o Eg. place of storage of personal data, applicable law, license condition IP
• More desirable terms, taking into account personal values (vb. more/less privacy)
• Cost? Too much choice?
Incentives?
SNS providers and CSR

- Supporting the emergence of *knowledgeable and responsible* (future) users

- Developing and maintaining *trust and confidence* towards services

  → sustain competitive knowledge economy & digitally skilled labour force
European Commission

SNS providers

Consumer organisations

Users

Mobile apps!

European level

Participation & awareness!
Visual law lab

Law + Design = More engaging, understandable legal documents

Language
Thank you!

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