



ELTE LAW  
FACULTY OF LAW

COMPACT Project<sup>1</sup>

Budapest Symposium

**The intermediaries and their liability:**

**“If there is a quick, easy and permanent solution, please tell us as soon as possible.”**

***11 September 2019***

*Eötvös Loránd University, Faculty of Law (Budapest, Hungary)*

*Faculty Council Room (ground floor)*

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<sup>1</sup> <http://compact-media.eu/about-us/>

In cooperation with the Internet Generation Forum (IGF) Budapest

The logo for the Internet Generation Forum (IGF) Budapest 2019. It features the letters 'IGF' in a large, bold, white sans-serif font. The 'I' and 'G' are connected at the top, and the 'F' is positioned to the right of the 'G'.

INTERNET GENERATION FORUM  
BUDAPEST **12 SEPTEMBER 2019**

## Programme

9.00 – 9.30 Networking welcome coffee (*Pázmány Room, ground floor*)

**9.30 – 9.35 Welcome address** (István VARGA, Vice Dean for Research)

**9.35 – 9.55 Keynote speech**

*Providing and overview of the measures taken, taking stock of lessons learnt and existing problems.*

*Charlotte ALTENHÖNER-DION (Germany) Head of Internet Governance Unit, Council of Europe: A human rights framework towards intermediaries – what are the bases?*

**10.00 – 11.20 Let all flowers blossom?**

**Chair: Gergely GOSZTONYI (Hungary)**

*Where are the limitations of freedom of expression in the online media sphere? Where should the states, private companies or communities regulate their and each other's conduct? What is the role of the government? Is there any connection between a platform's business interest and a state's regulatory duty?*

Fanny HÍDVÉGI (Belgium/Hungary): No chance of getting intermediary liability right - so why are we even trying?

Aleksandra KUCZERAWY (Belgium/Poland): Safeguards for freedom of expression in the era of online Gatekeeping

Andrea KOVÁCS (Hungary): Possible regulatory models for social media: ideas and analogies

Gábor POLYÁK (Hungary): Are private companies impose a risk to the fundamental rights?

Miklós LIGETI (Hungary): Limiting freedom of expression by limiting the freedom to seek, receive and impart information – the Hungary case

Kate COYER (USA/Hungary): Online violent extremism and the importance of human rights' frameworks

11.20 – 11.35 Coffee break (*Pázmány Room, ground floor*)

**11.35 – 12.55      What terms should the regulatory framework use? Should there be a single regulation? Should we regulate the algorithm or the conduct of humans?**

**Chair: Andrej ŠKOLKAY (Slovakia)**

*Do we need so many terms? ISP, ISSP, intermediary, platform... Different level of regulation for different intermediaries? (content, size, active/passive) Is the human rights' law or antitrust law or other legal fields should be used?*

*Is AI clever enough already to give it full credit for content regulation? If not or the user-generated content's volume is so large, should we use ex-ante or ex-poste solutions? How to regulate intermediaries' content review system in Far East? How should we regulate intermediaries? More like speech venues or speech actors? Are they similar to common carriers? Could a private company's online place be public sphere and regulated as such?*

András KOLTAY (Hungary): Rethinking the constitutional foundations of the public sphere

Bissera ZANKOVA (Bulgaria): Documents dedicated to the regulation of platforms against the background of human rights protection

Krisztina ROZGONYI (Austria/Hungary): Holding digital platforms accountable: what role to public scrutiny? – A blueprint for audiovisual media policy intervention

Dejan ĐUKIĆ (Serbia): ccTLD registries status on content and abuse issues

Andrej ŠKOLKAY (Slovakia): Global suggestions for social media regulation: technology vs. economy-based approaches and the rest. What are these about and can they actually work?

Anna ZANATHY (Hungary): Facebook, Twitter, YouTube and other similar platforms are ad companies! It is time to regulate them as such!

12.55 – 14.00 Lunch break

**14.00 – 15.20      New legislations around the world and the case-law of international courts. Do we need a new European directive?**

***Chair: András KOLTAY (Hungary)***

*The situation of case-law. The situation of NTDS. What is a proper notice? What is expeditious? New legislations (Russia, Argentina, etc.)*

*What can be the way forward? What should we do with conflicting laws? More regulation such as GDPR and AVMSD? Or targeting large dominant platforms via competition law?*

Levente NYAKAS (Hungary): Is there any trend in regulating media at European level? Ideas on the development of the European regulatory framework.

Attila TATÁR (Hungary): Different approaches taken by domestic and international courts with regard to the NTDS

Nevena BORISOVA (Bulgaria): Destructive and constructive practices in the relation to shaping credibility and ethical standards in the social media? Some recent developments in Bulgaria.

Dalma DOJCSÁK (Hungary): Strict liability under Hungarian law, and its afterlife before the ECtHR

Irini KATSIREA (United Kingdom/Greece): 'From the 'right to be forgotten' to the German Network Enforcement Act: Are private platforms fit to act as the guardians of free speech?'

Ivan SMIEŠKO (Slovakia): Several thesis on criminal regulation of social networks with focus on hate speech

Gergely GOSZTONYI (Hungary): How intermediaries' liability is related to censorship?

**15.20 – 15.40      Wrap up & lessons learnt**

# Concept Note

## Budapest Symposium

**Background:** These days most expressions take place over huge networks and those are owned by private companies. Those tech giants such as Google, Facebook or Twitter play an important role in our everyday life although most people don't have any clue about their legal situations. We should learn new phenomena every day: fake news, hate speech, deepfake, right-to-be-forgotten are in our vocabularies. It seems we now could see a New School Speech Regulation<sup>2</sup> when states try to aim their regulations at the digital infrastructure instead of the speakers. We do see a growing pressure nowadays from the governments' side toward intermediaries to block or to remove (almost) all unlawful content like hate speech, defamation, violation of privacy, copyright infringement and such. How this liability could be regulated? How a company could be held liable for third party content and how is it connected to prior censorship?

The two main regulatory regimes are both under fire: the China-based strict regime because of its rigidity<sup>3</sup>, and the US and EU-based safe harbour because of the immunities<sup>4</sup>. But what if we start to oblige them to monitor all their content? Would that be technically possible when there is a 500 hours' video content uploaded only to YouTube in each and every minute<sup>5</sup>? Would proactively removing user generated content influence freedom of expression, free culture or the online communities?

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<sup>2</sup> Balkin, Jack M., Free Speech in the Algorithmic Society: Big Data, Private Governance, and New School Speech Regulation (September 9, 2017). UC Davis Law Review, Yale Law School, Public Law Research Paper No. 615., [https://lawreview.law.ucdavis.edu/issues/51/3/Essays/51-3\\_Balkin.pdf](https://lawreview.law.ucdavis.edu/issues/51/3/Essays/51-3_Balkin.pdf)

<sup>3</sup> Friedmann, D., Oscillating from Safe Harbor to Liability: China's IP Regulation and Omniscient Intermediaries, 2017, The World Intermediary Liability Map (WILMap): Mapping Intermediary Liability Online (Giancarlo Frosio, ed., OUP: Oxford)

<sup>4</sup> More about this: Section 230 of the US Communications Decency Act, Section 512 of the US Digital Millennium Copyright Act, Article 14 of the EU E-commerce Directive

<sup>5</sup> <https://tubularinsights.com/hours-minute-uploaded-youtube/>

Would that lead us to some Orwellian manipulation, to censorship or to the end of a flourishing new technology?

Although we could see that the need for regulation is growing steadily, we also should emphasize that the new online media landscape is not only Facebook, YouTube and Twitter. There are much more small fishes in the pool and when we are talking about the regulation, there are so many factors a government should consider not to destroy instantly other players of a pulsing sector.

It seems to be clear that for the time being, nobody finished its homework properly. There should be better legislations, better self-regulation and more-caring users to be able to say that we fulfilled the dream of online free speech and democratic values.

**Purpose of the event** is to bring together policy-makers, academics, NGOs and other stakeholders to talk about how to create a proper regulatory framework on the liability of intermediaries.