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Online Platforms: Private Actors with State-like Power?

**Early Career Platform Regulation Conference, 21-22 May 2026,
Max Planck Institute for the Study of Crime, Security and Law**

Mark Zuckerberg once famously remarked that “in a lot of ways Facebook [was] more like a government than a traditional company”.¹ This comment captures the growing role of online platforms in regulating speech, enforcing laws, and shaping political and economic landscapes—functions historically reserved for sovereign states. Today, platforms wield unprecedented power not only in influencing human behavior and interaction, but also over public discourse, political economy, and democratic processes. This raises urgent questions about their impact on fundamental rights, governance, and democracy.

Scholars have described these companies as “new governors of online speech,”² “guardians,”³ “custodians of the internet,”⁴ and “speech police.”⁵ Some have even suggested that online platforms could soon be considered actual states.⁶ While such claims may veer toward internet exceptionalism,⁷ they usually lead to the opposite conclusion: the depiction—sometimes exaggeration—of platform power is frequently invoked to justify more expansive governmental regulation.

¹ David Kirkpatrick, *The Facebook Effect* (Simon & Schuster 2010) 254.

² Kate Klonick, ‘The New Governors’ (2018) 131 *Harvard Law Review* 1600, 1669.

³ Niva Elkin-Koren and Maayan Perel, ‘Guarding the Guardians: Content Moderation by Online Intermediaries and the Rules of Law’ in: Giancarlo Frosio (ed), *Oxford Handbook of Online Intermediary Liability* (OUP 2020) 669.

⁴ Tarleton Gillespie, *Custodians of the Internet* (Yale University Press 2021).

⁵ David Kaye, *Speech Police* (Columbia Global Reports 2019).

⁶ Moritz Holzgraefe and Nils Ole Oermann, *Digitale Plattformen als Staaten* (Herder 2023) 220 ff.

⁷ In the sense of John Perry Barlow, *A Declaration of the Independence of Cyberspace* (Electronic Frontier Foundation 1996).



Indeed, recent initiatives, such as the European Union’s Digital Services Act (DSA), the United Kingdom’s Online Safety Act, and Canada’s Online Harms Act ostensibly aim to curb online platforms’ powers and strip them of any “state-like” position they may hold. But what if these laws actually do the opposite?⁸ By recognizing and codifying existing private powers—through mandated appeals procedures, transparency requirements, and risk assessments—they may inadvertently strengthen and legitimize platform authority within legal frameworks. Far from dismantling platform control, these measures often formalize it, granting platforms a recognized role in governance.

In doing so, regulation frequently portrays and treats online platforms as (de facto) exercising the traditional tripartite functions of the state—legislative, executive, and judicial—within their own digital territories, inhabited by billions of users across the globe. The difference is that they do so without a separation of powers, and under a private framework driven by corporate interests rather than public mandates.

Executive Function

Beyond setting rules, platforms perform an “executive” function by enforcing them on an industrial scale. They remove content, restrict, or even suspend user accounts. This executive function relies heavily on automated systems that filter, flag, and remove content for policy violations, supplemented by human content moderators who review escalated cases. The scale and speed of these operations exceed the capacity of most regulators, positioning platforms as powerful enforcers of online norms. Unlike states, however, their actions are not guided by principles such as the protection of fundamental rights, the rule of law, or democratic participation, but by incentives to maximize profits. This divergence explains persistent concerns over the “overblocking”⁹ of content, where lawful content is disproportionately removed in an attempt to comply with regulations at in the least resource-intensive way possible.

⁸ Cf. Petros Terzis, ‘Against Digital Constitutionalism’ (2024) 3 European Law Open 336, 346.

⁹ Especially surrounding the German Netzwerkdurchsetzungsgesetz, see e.g. Mathias Hong, ‘The German Network Enforcement Act and the Presumption in Favour of Freedom of Speech’ (*Verfassungsblog*, 22 January 2018) < <https://verfassungsblog.de/the-german-network-enforcement-act-and-the-presumption-in-favour-of-freedom-of-speech/> > accessed 13.08.2025.



Legislative Function

In their “legislative” capacity, platforms unilaterally create rules through instruments such as Community Standards and Terms of Service. They define what is allowed and not allowed within their spaces. These platform “laws” generally apply uniformly across jurisdictions, with little regard for local legal or cultural differences. Often, platforms go beyond state laws by prohibiting “lawful but awful” speech—content that is legally protected yet perceived as problematic or harmful.¹⁰ While merely contractual in nature, these rules exert influence far beyond mutual rights and obligations. Moreover, platforms legislate through a more subtle but also more powerful mechanism: code.¹¹ Their algorithms and user interface designs regulate user behavior and determine which information becomes visible, amplified, or marginalized.

Judiciary Function

Completing the tripartite structure of governance, platforms also exercise “judicial” functions. In response to the growing volume of problematic speech online and mounting public pressure, they have developed internal complaint and appeal mechanisms. Meta’s Oversight Board represents a particularly sophisticated model of adjudication and appellate review: an independent body designed to hear appeals from users challenging Meta’s content moderation decisions. Sometimes colloquially dubbed Meta’s “Supreme Court”, the Oversight Board issues decisions that set precedents and influence Meta’s broader content policies. In the EU, the emergence of out-of-court dispute resolution bodies under Article 21 of the DSA, such as User Rights and Adroit, adds a new dimension and poses the threat of a parallel judicial system.

¹⁰ Simon Chesterman, 'Lawful but Awful: Evolving Legislative Responses to Address Online Misinformation, Disinformation, and Mal-Information in the Age of Generative AI' (2025) 20 *The American Journal of Comparative Law* <<https://doi.org/10.1093/ajcl/avaf020>> accessed 13.08.2025.

¹¹ Cf. Lawrence Lessig, *Code and Other Laws of Cyberspace* (Basic Books 1999).



Call for Abstracts

The concentration of legislative, executive, and judicial powers within online platforms raises profound questions about how they influence society. The assumption of state-like powers by companies such as Meta, Google, X, and TikTok invites critical examination of their impact on fundamental rights, governance, and democracy.

This conference explores the extent to which major platforms exercise functions historically associated with sovereign states, and the implications this has for law and policy. Through keynote speeches, panels, and discussions, we will examine how all three branches of state power are exercised in the digital sphere, and the legal consequences this might have.

We welcome abstracts engaging with, but not limited to, the following themes:

- Regulation of online speech and the privatization of content governance
- Platforms' influence on public discourse, democratic processes, and electoral integrity
- The platforms' impact on the exercise and protection of fundamental rights in the digital sphere
- Different regulatory approaches such as self-regulation, "hard" governmental regulation, and co-regulation
- The evolving role of platforms as private regulators and norm-enforcers
- Platform accountability and user redress mechanisms, and their effectiveness
- Legal and theoretical implications of the blurring boundaries between "public" and "private" power in platform regulation
- The ways in which regulation may legitimize, rather than constrain, platform power

By fostering discussion on these timely and often controversial issues, the conference aims to critically investigate platforms' responsibilities in the digital age and chart pathways toward more transparent, accountable, and equitable governance in the digital public sphere. Contributions may engage with any relevant aspect, including but not limited to EU law, other domestic or regional legal frameworks, comparative or international law, policy debates, and theoretical or doctrinal foundations.



The conference is designed to bring together early career researchers. We especially encourage applications from current PhD candidates. Abstracts should not exceed 600 words and should be submitted (as PDF) to the organizers' emails (m.bovermann@csl.mpg.de; m.rabajante@csl.mpg.de; d.buchmann@csl.mpg.de) by **19 December 2025** at the latest. Please use the subject line "Early Career Platform Regulation Conference 2026."

We plan to publish the papers presented at the conference and are in the process of identifying suitable publication venues. Papers will be around 6.000 words in length, depending on publisher requirements. Funding for travel and accommodation is, in principle, available for all speakers, subject to confirmation by the Max Planck Institute for the Study of Crime, Security and Law.

Key Facts

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| Date: | 21-22 May 2026 (full days) |
| Place: | Max Planck Institute for the Study of Crime, Security and Law, Fürstenbergstraße 19, 79100 Freiburg, Germany |
| Organizers: | Marc Bovermann (m.bovermann@csl.mpg.de) Maria Diory Rabajante (m.rabajante@csl.mpg.de) Daniel Buchmann (d.buchmann@csl.mpg.de) |
| Deadline for Abstracts: | 19 December 2025 |
| Notification of Acceptance: | 7 January 2026 |
| Deadline for Completed Papers: | 7 May 2026 |

