

Trust and its legal frontiers in a world of digital platforms

Enguerrand Marique

PhD Researcher, UCLouvain (Belgium)

June 23, 2017

Geneva Internet L@w Research Colloquium



UCL – Faculty of law

Agenda

1. Introduction
2. Trust
3. Trust in the collaborative economy
4. Prospectives
5. Questions for discussion

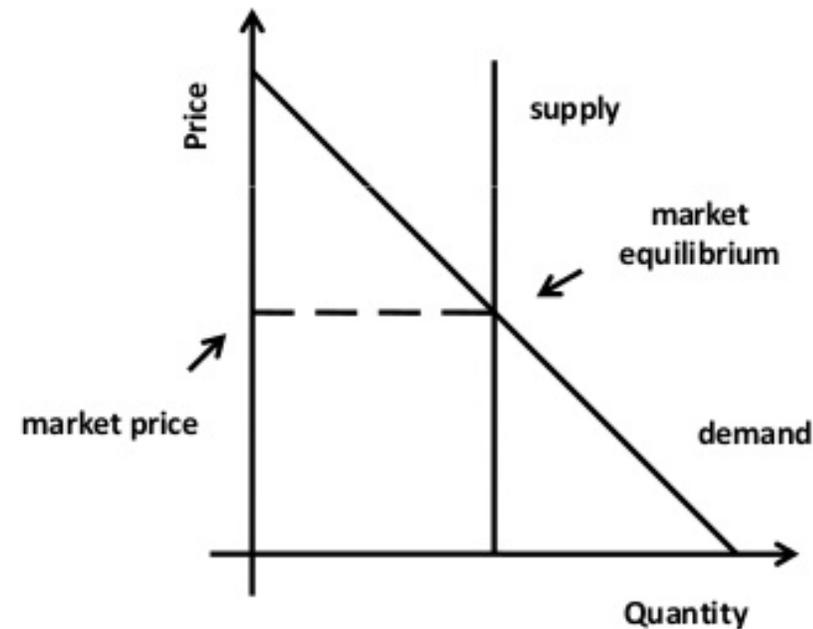
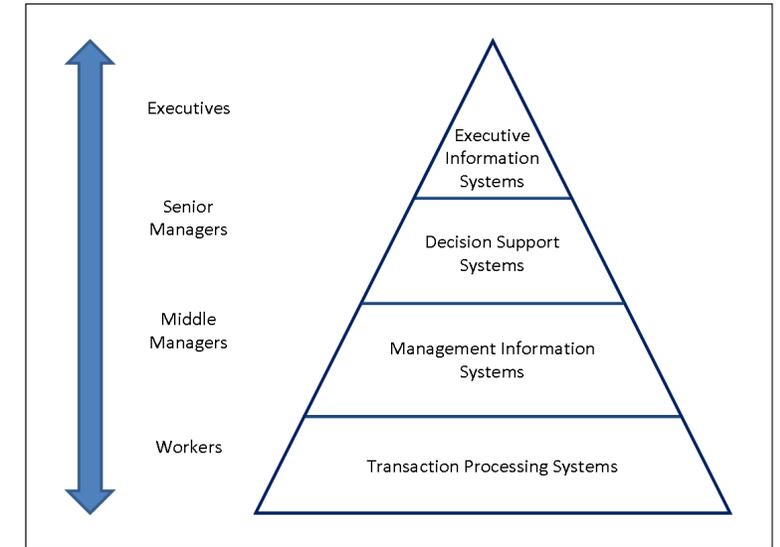
« Code is law »

« What makes the net unregulable is that it is hard to tell who someone is, and hard to know the character of the content being delivered. »

(Lessig, 2000)

1. Introduction

- Regulation of the digital economy
 - Digital economy – collaborative economy
 - Knowledge economy
- Coordination of individuals
 - Hierarchy – Authority (law)
 - Market – Price (economics)
 - New approach?
Communities – trust (sociology)
- Defining trust
 - Trust as a set of rules
 - Trust as an asset



2. «Trust »

A. Definition by lawyers?

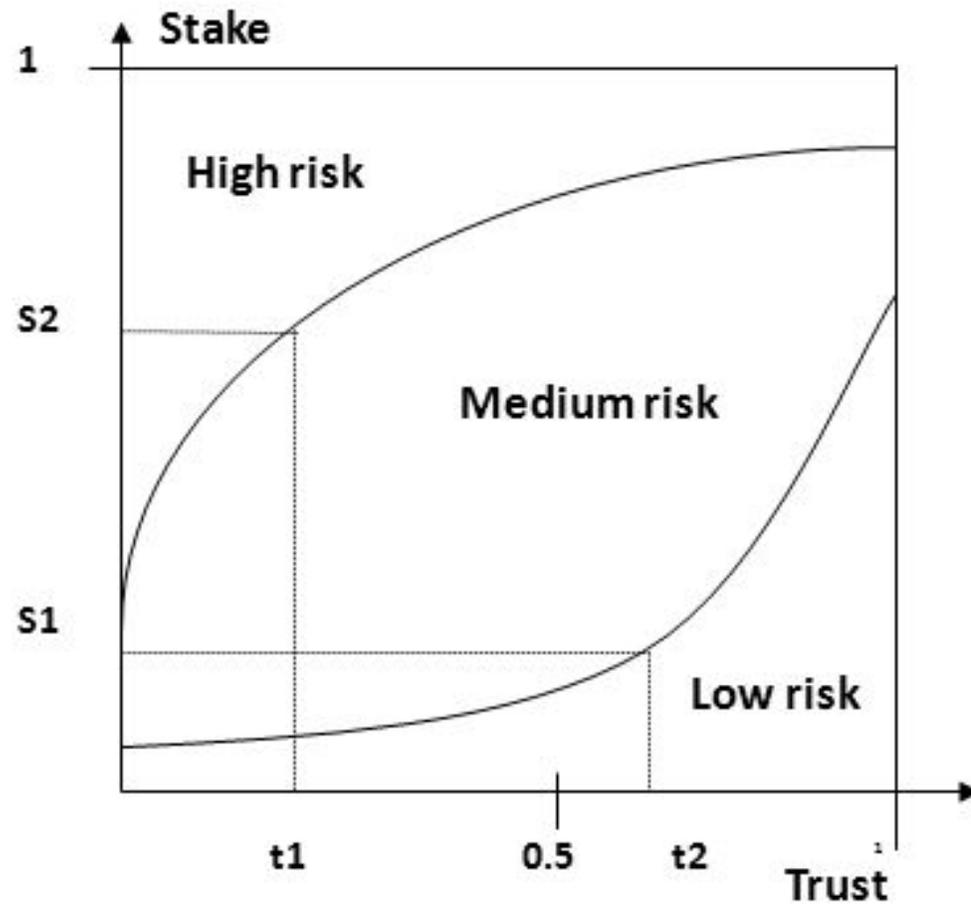
- 'Trust' and estate
 - Breach of 'Trust' and criminal law
 - Anti-'Trust' and competition law
 - 'Trust' in the financial markets
-
- See also: legitimate expectations, detrimental reliance, breach of confidence,



2. « Trust »

B. Defined by economists

- Risk and probability
- Non-calculative trust



Trust?	Value	Rules
Economists	Transaction Costs	Behavioral expectations
Lawyers	IP Rights	Fiduciary duties?

In a networked world,
trust is the most
important currency.

Eric Schmidt
Executive Chairman of Google



(Jungle Book)

Trust in me, just in me
Shut your eyes and trust in me

3. Trust in the collaborative economy

A. Sources

- Legal approach
 - Commission's proposal to develop trust
 - eID
 - Consumer protection
- Managerial approach
 - Reputational feedback and rating system
 - Corporate social responsibility
 - Old strategies!
 - Ratings in consumers' association journal
 - CSR has multiple aims!

3. Trust in the collaborative economy

B. A failing trust?

- Lack of initiatives when a problem occurs
- Sharewashing
- Rating manipulations
- Innovation & lock-in (cf Competition law)

Consumer actions when problems occur

	Gave low ranking or bad review	Complained to other peer	Appealed to platform	Appealed to authority or consumer association/institution	Did not take action
Peer Consumers	20,4%	29,8%	17,5%	4,8%	46,4%
Peer Providers	22,8%	35,6%	34,1%	7,9%	28,5%

European Commission, Exploratory study of consumer issues in online peer-to-peer platform markets, Final Report, May 2017.

4. Curing the symptoms or the disease?

- Chain of intermediaries
 - Dynamic & static trust
- Transparency
- *Appearance* theory
 - Good faith ?
- Liability

« Code is law » (Lessig, 2000)

What makes the net unregulable is that it is hard to tell who someone is, and hard to know the character of the content being delivered. Both of these features are now changing. Architectures for facilitating identification--or, more generally, for certifying facts about the user (...)--are emerging. Architectures for rating content (...) have been described and are being implemented. Each is being developed **without the mandate of government**, and the two together could facilitate an extraordinary degree of control over behavior on the Net. The two together, that is, could flip the unregulability of the Net.

Further questions for discussions

- What is 'trust' in the digital economy? What are your expectations from digital platforms?
- Should trust even be contemplated by public authorities? What should be the role of private entities?
- What should be the liabilities for the digital platforms? On which basis? Should a new set of rules for intermediation be developed ?
- What should be the default rules for contract and labour law to support trust?
 - Awareness ?
 - Protection?



UCL – Faculty of law

Thank you very much for your attention!

Any questions?

enguerrand.marique@uclouvain.be