

Linus J. Hoffmann, PhD researcher

European University Institute

Department of Law

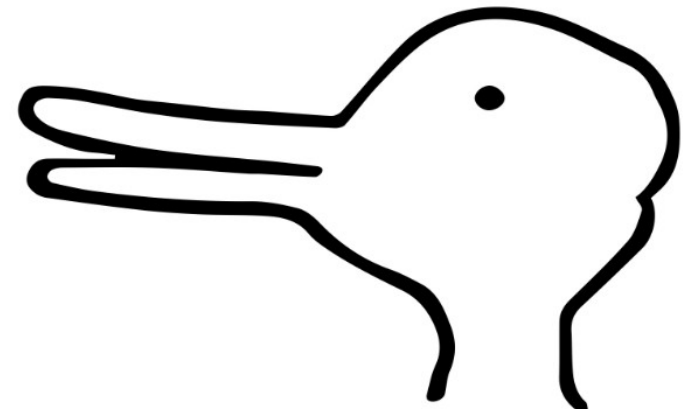
June 2020

Three entitlement problems in the digital economy and how antitrust (re-)allocates property rights

9th Conference on the Regulation of Infrastructures
Florence School of Regulation

Three entitlement problems in the digital economy and how antitrust (re-)allocates property rights

- Digital markets disputes as problems of entitlement
- The duality of digital markets disputes: harm to competition vs. issue of appropriation
- An analogy: Wittgenstein's rabbit duck



Policy issue 1: **Access to digital infrastructure**

- Example: European Commission, *Google Android* (2018)
- Parties to the dispute: Google vs. hardware manufacturers
- Entitlements in dispute: control of *Android OS* (=fork) and limitations of devices that run on the fork
- Outcome of competition law enforcement: Entitlement distributed to hardware manufacturers. Google's ownership of *Android OS* becomes more precarious

Policy issue 2: **Limits to the appropriability of network externalities**

- Example: European Commission, *Facebook/Whatsapp merger* (2014); Bundeskartellamt, *Fallbericht B6-22-16* (2019)
- Parties to the dispute: Facebook vs. Facebook users
- Entitlement in dispute: exploitation of untapped network externalities arising from matching two user bases
- Outcome of competition law enforcement: Entitlement distributed to the users. Facebook's ownership of the network externalities of its own services becomes more precarious

Policy issue 3: **Claims over third-party data**

- Example: *Autorité de la concurrence, Google Snippets (2020)*
- Parties to the dispute: Google vs. French press publishers
- Entitlement in dispute: remuneration for displaying snippets of press articles on an internet search engine
- Outcome of competition law enforcement: Entitlement distributed to the press publishers. *Autorité* reinforces the effectivity of the press publishers' property ("neighbouring") rights on snippets of their articles

Preliminary findings & consequences

- **Findings:** Competition law does shape ownership regimes
- Competition case law is a good tool to identify what digital firms try to appropriate
- **Consequences:** Competition law can be a tool for finding the optimal allocation of property entitlements (distribution is inevitable)
- Competition decision makers create *ex ante* market ordering rules; by determining the appropriability of digital resources, they define how value is shared and how future digital markets are structured; this is a particular responsibility that they should be aware of.

Q&A