The Insolvency Dimension of Digital Platforms and Private Law

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Introduction

- Three critical problems:
  - Asymmetric contractual architecture creates debtor-creditor problems;
  - Custodial dependencies compound exposure to risk; and
  - Ambiguity in terms of property rights leaves users vulnerable in insolvency cases

Asymmetric Contractual Architecture & the Creditor Problem

- The Gap Between Promise & Protection
- The Insolvency Consequence
- Marketing vs. Contractual Reality: Proper Disclosure & Alignment

Custodial Dependencies & Compound Risk Exposure

- The “Custodial Chain Problem”
- Information Asymmetry

Property Rights Ambiguity in Platform Insolvency

- The Fundamental Ambiguity
- Ways Platforms May Obscure the Relationship
- The Bankruptcy Consequence

Conclusion: Implications for Platform Private Law

Private law tools are necessary–but they must be tailored to the problem.

Conclusion Continued

- Four areas where a private law framework could make a meaningful contribution:
  - Clarifying the characterization of the platform-user relationship as it pertains to asset holding;
  - Establishing default transparency and disclosure obligations within the platform-user contract framework;
  - Developing principles for allocating risk and liability across the custodial chain; and
  - Considering whether existing private law remedies are adequate for platforms that hold user value

Thank you