

Contractual Architecture of Digital Platforms: A Delicate Balance

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Contractual Aspects of Digital Platforms: Roadmap

- Contracts are central to platform operation
- There are many benefits of a contractual approach
- But also, structural issues inherent to the nature of contracting and platform markets that merit attention/intervention:
 - standard form contracts
 - sticky defaults
 - private rulemaking may displace state-supplied defaults and diverge from welfare-enhancing outcomes
- Some facts about platforms that reflect current regulatory challenges

Platforms Operate Through Contract Architecture

- Contract governs platform participation (*Apple Developer Program License Agreement*):
- Determine who can access, use, and be excluded (*App Store review and removal; Amazon seller suspension*)
- Incorporate mandatory rules displacing state law (*Amazon IP Policy and Brand Registry rules, Uber driver registration, Airbnb pricing*)
- Built-in enforcement combines contract and technology (*Automated takedowns; app delisting tools; YouTube's Content ID*)
- Contract architecture supports scale and coordination across jurisdictions (*Uniform platform terms applied globally (s.t., exceptions)*)

The eBay logo, featuring the word "eBay" in a multi-colored font (red, blue, yellow, green).The Amazon logo, featuring the word "amazon" in a lowercase, sans-serif font with a curved arrow underneath it.

Why Contract?

The Good, the Bad, and, the Ugly

- Contract offers flexibility and coordination; enables scale and learning in markets characterized by complexity and innovation (Davis & Marotta-Wurgler 2020; Dari-Mattiacci & Marotta-Wurgler 2022)
- But boilerplate tends to be unread and sticky, even in b2b settings, increasing the risk of overreach
- Some evidence: EULAs tend to favor sellers relative to statutory defaults; become more pro-seller over time (Marotta-Wurgler 2007; Bakos et al 2014; Marotta-Wurgler & Taylor 2013)

Why Contract?

The Good, the Bad, and, the Ugly

- Platforms present additional complexities:
 - applicable default rules are often unclear
 - multi-jurisdictional operation
 - multiple legal domains, diverse contractual relationships
 - displacement of state supplied rules
- **Two examples:** Apple and Amazon

Apple: De Facto Contract Regulator?

- Apple's App Store Developer Program License Agreement:
 - Imposes mandatory rules on liability, warranties, IP claims, refunds, governing law, and enforcement, requires privacy policies, and
 - Supplies a default end-user EULA that developers can tailor
- A study of over 1 mill App licenses, found that:
 - Over 97% of apps retain Apple's default EULA, customization related in-app purchases
 - **Defaults are sticky**
 - Over 90% of apps that customize their EULAs violate Apple's mandatory rules
 - **Suggesting compliance and enforcement problems**
 - Davis, Nenadic, and Bechtold (2026)

Platform Rules Deviate From Statutory Law

- Consider Amazon's Services Business Solutions Agreement (Fromer and McKenna 2025)
 - Sellers wishing to use the platform adapt to Amazon's rules rather than court-based trademark law
 - Fast, platform-based enforcement replaces litigation as the relevant constraint on behavior
 - Shifts trademark incentives, increasing filings, including lower quality marks, and moving disputes away from courts
- Platform rules thus replace statutory law designed to balance competing interests

Conclusion and Implications

- Digital platforms increasingly act as de facto regulators, supplying the framework within which contracts are formed and performed
- Use of boilerplate offer several advantages, including much needed flexibility, but also present some challenges
- Platforms design these systems with their own incentives, which may diverge from those of other participants and affect outcomes
 - Not unlike the dynamics involving consumer boilerplate agreements
- Regulatory influence would operate indirectly, by shaping platform-designed contractual architecture, and focusing on monitoring, enforcement, and the role of default and mandatory rules.