

“Collaborative Connection: Opportunities in a continuous present” Operational Principles.

Operational Principles from the Workshop created at the Foundation for Research of Business and Law (FIDE by its Spanish acronym).

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The Foundation for Research of Business and Law (FIDE: Fundación para la Investigación sobre el Derecho y la Empresa) represents today a meeting place for professionals of the highest level and with an ample professional trajectory, who carry out their activities in companies, legal firms or public institutions.

Today, the legal framework, both nationally and internationally presents a different, more complex reality. It calls for the participation of more and more professionals from different sectors, and FIDE actively participates in this transformation, taking on new challenges, and enforcing day by day its leading role in the areas of economics and law in our country. The topics addressed in FIDE are a reflection of what keep professionals today occupied, and preoccupied.

Throughout the years, and with the collaboration, participation and support of all Fide members, FIDE has consolidated itself as a place that continuously updates its activities with regards to the law, economics and business, and we wish to continue working in this direction: addressing all subjects, issues and specific problems, from multiple perspectives and multidisciplinary approaches; with a continuous and permanent monitoring of regulatory and legal developments; actively collaborating and participating with organisms and entities both nationally and internationally, contributing to each topic with a complete and broad vision, and taking an active part in the modernization of business' and legal firms' structures within our country.

Continuing this line of work, FIDE has set up a discussion group composed of jurists and economists, who carry out their activities in both, businesses whose business model is based upon traditional economics, and new businesses and platforms that operate in the market, legal firms, academy and public institutions. Throughout the months of November of 2015; February, March and May of 2016, the group has met with the objective of creating a proposal that includes operational objectives that may serve as the basis to achieve a regulatory system that serves as an instrument to strengthen competition.

We live in a time of transformation, a change of era accelerated by technology. This creates a big challenge: accurate diagnosis, broaden the focus of our analysis, propose ideas and offer solutions.

Open debate and dialogue have been the guiding hands of each and every session in which we have debated about the irruption of new elements during the 21st century, which has modified, in a short period of time, the way in which we viewed the traditional social-entrepreneurial scheme. New business platforms have made use of technology to set up their social scheme, with the immediate connexion P2P as the key, trust the main means of exchange, and e-reputation as another key determinant. The "economy of property" is giving pass to the "economy of access", both inherently distinct. This newly emerged economic energy is creating challenges all over the globe, generating a vast debate regarding solutions to this emergence, as traditional laws and focus don't fit within the modern context.

During this first group exercise we have been able to go from the general to the specific, from the analysis of the phenomenon and its global streams, to the specific sector of mobility, and to question whether the industrial growth scheme continues to make sense for the cities we imagined for 2020. We have been able to study and comment with the protagonists how traditional companies have gone from seeing these new trends as threats, to seeing them as the true opportunity they suppose, and incorporating and developing them within their own structures. Many risks arise on a structural level; the complete change of the “client”, as well as the creation of communities and empowerment, in general, of the public. This new paradigm allows for the transformation of the traditional portfolio of clients into a digital community of fans who make their thought and emotions viral.

We have identified seven key aspects that we consider should be present in any regulation or analysis that is made of the subject.

- 1. It seems counterproductive to approach the collaborative economy with one generalised regulation, as it encompasses several sectors and activities.** This does not mean that regulating by sectors is senseless. Most likely, the key lies with finding the transversal lines that may be regulated, as well as allowing for some autoregulation to happen, defining and differentiating this new economy from the more traditional and heavily regulated services (In such a way that now competitive advantage may arise in different models given their regulations, or lack thereof. Take the famous reference by Judge Easterbrook in 1996 with respect to the Law of Horses to comprehend and define the Right of Internet [1]: *“Put together two fields about which you know little and get the worst of both worlds”*). Regardless of the growing number of cases relating to responsibility in these platforms, with the new ways in which work relations happen within them, with the regime of responsibility in the promotion of services *on-demand*, with the restrictions to the liberty of managing your own digital reputation in the world of *sharing economy*, or even with the abuse of power over domains which is inherent to any two-side market, **it is not necessary to create a Collaborative Economy Law or Platform Law.** What would be necessary is a Law around the figure of the intermediary or regarding contractual responsibility that is “strong”, in the sense that it may be able to contribute its own solutions to new problems, needless of other laws, communications or guidelines.
- 2. Legal norms should be based on principles rather than well detailed rules, that run the risk of becoming obsolete as technology and/or business models evolve.**
- 3. Regulation, wherever it may be necessary, should be given, and not include more restrictions than are strictly indispensable.** In the majority of sectors, where the *sharing economy* or economies *on-demand* have developed, the initial reaction of the Administration has been to create legal entry barriers, which in the majority of cases have proven unnecessary

to the pursuit of some objectives, as well as far from proportional for those *players* who have already settled in.

4. Autoregulation of activities carried out within the *sharing economy* should be encouraged.

In other countries, such as Brussels, with the tradition of *common law*, autoregulation does not sound so strange, nor is feared, and is open to promotion. Because innovation is not restricted purely to business models, but also extends to normative and legal models. In Spain the CNMC has just launched their public registry of lobbying firms (Registro de Grupos de Interés¹), which represents a first step. In the United States the absence of a legal framework during the beginning of their industrial revolution allowed the large interest groups to flourish before the law did. Why couldn't those concerned decide which laws affected them and how? The creation of the National Association of Securities Dealers, Inc. (NASD, which would evolve into the Financial Industry Regulatory Authority – FINRA in 2007) supported by the Securities & Exchange Act de 1934, allowed the companies to be part of the solution, and that's something, that sadly, must sound new here in Europe.

Given that we are transitioning from an economy based on property, to one in which access will have a large participation, and just as property is legally perfectly regulated, does it make any sense to establish some sort of regulation to access property or is best left off to the autoregulation mechanisms of each platform or sector? Do legislators need to set any standards as *guidance*, which establish more specific rules to set rights of access and obligations of those who access these platforms? What if we regulate based on trust?

For this to be possible we would have to consider rules that bring tranquillity to demand, offering numerous alternatives that allow the public to freely choose depending on their circumstances, allowing them to participate in transparent schemes with the use of technology. If the progressive appearance of the everyday citizen, who may now consume and produce through technology, is one of the elements considered a catalyst of this new paradigm, his presence may not be ignored and his demands will, sooner or later, have to be met. Said citizen will, in place generate new activities that will meet the demand. Could “Demand” be the one to legislate over an activity? If such a thing were possible, digital reputation suddenly becomes greatly important.

5. The need and proportionality of the rules should reach fiscal matters. Primarily to the level of formal obligations.

6. It becomes indispensable that courts of law and national tribunals interpret the legal nature of *marketplaces* and under which premises and circumstances can the tax benefits mentioned under Article 14 of the e-commerce² Directive be applied. Recently the European

¹ Accesible en <https://rgi.cnmc.es>

² <https://www.boe.es/buscar/doc.php?id=DOUE-L-2000-81295>

Commission has published its communication of June³ the 2nd regarding collaborative economy, which offers no answers to this subject which is crucial to understand the responsibility regime that rules over these platforms, and how they should act to protect the interests of the prosumers, producers and consumers without losing its economic viability.

- 7. Before adopting any regulation that relates to this subject, it would be beneficial to get to know its problems deeply, as well as analyse the “practical improvements” that are already being introduced in other cities or countries.**

There have been left some unanswered questions that we will try to develop further throughout the next course. Some of them are:

1. The validity and utility of the recent Communication by the European Union on the 2nd of June regarding the Collaborative Economy.
2. The recent document from the Catalan Competence⁴ Authority in which a solution to the housing system based on quotas is proposed.
3. The permeability of other sectors to these new models, such as the electricity sector and energy.
4. The analysis of the possibilities and challenges that digital reputation, as a key in these new models, brings. Trust as a basis of a new economy.
5. Autoregulation as an opportunity in an ever-changing context.

³ <http://ec.europa.eu/DocsRoom/documents/16881>

⁴ http://acco.gencat.cat/web/.content/80_accu/documents/arxiu/actuacions/P2P-Un-pas-endavant_DEF_es-vX.pdf

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The following have participated in the sessions held by the workshop group of collaborative reflexion:

Silvia Abella, Inspectora Delegada-Servicio de Inspección, Consejo General del Poder Judicial, Consejo General del Poder Judicial; **Gonzalo Babé**, Director de Desarrollo de Negocio, Telecor (Grupo El Corte Inglés); **Luis Miguel Barral**, Socio Fundador de Two Much; **Alexander Benalal**, Asociado Senior, Bird & Bird; **Albert Cañigüeral**, Ingeniero multimedia. Fundó ConsumoColaborativo.com en 2011; **Ángel Carrasco**, Catedrático de Derecho Civil, Universidad de Castilla La Mancha. Consejero Académico, Gómez Acebo & Pombo; **Joseba Cortázar**, Director De Comunicación de Homeaway Para España Y Portugal; **Orazio Corva**, Location Manager de Car2Go; **Carlos Cuevas**, Director Comercial de Hertz; **Mónica Deza**, Socia fundadora y Global CEO de Bendit Thinking; **Eduardo Echave**, Colabora dirigiendo el equipo de embajadores de Milingual; **Juan Carlos Fernández**, Senior Regional Director South of Europe, HomeAway; **Ricardo Fernández Flores**; Chief Legal Officer, Destinia; **Marc Arthur Gauthey**, Responsable de la estrategia de Desarrollo y comunicación, OuiShare; **Juan Ignacio García Braschi**, Country Manager de España de Cabify; **Ignacio González**, Abogado asociado sénior de J&A Garrigues S.L.P.; **Gabriel Herrero-Beaumont**, Presidente de Bluemove; **Rafael Hurtado**, Director de Inversiones, Allianz Popular Asset Management Sgiic; **Carles Lloret**, Director General de Uber en el Sur de Europa; **Isabel López**, Área de Expansión de Be Mate; **Juanjo López**, Socio Fundador de la consultora Royal Profit y Royal Comunicación en España, Finlandia, Colombia y Ecuador; **Eduardo Martínez de la Fe**, Editor Tendencias21; **Javier Maroto**, Ex Alcalde de Vitoria; **Rafael Martínez-Cortiña**, CEO de Thinkers; **Adolfo Merás**, Presidente de la Asociación Madrid Aloja; **Juan Manuel Nieto**, Fundador y Ceo, Micocar; **Gonzalo Ocejo**, Managing Director, L.E. Hotels; **Ricardo Pabon**, Marketing Manager de Uber en Madrid; **Gabriel Pazos**, Co-Fundador y Ceo, Milingual; **Carolina Pina**, Socia de J&A Garrigues S.L.P.; **Sara Pizzinato**, Responsable de la Campaña de Soluciones en Greenpeace España; **Luis Guillermo Rivero**, Director de Desarrollo de Negocio en el Área De Mercancías, Renfe; **Jaime Rodríguez**, Country Manager Spain de Blablacar; **Silvia Rodriguez**, Abogado del Departamento de Derecho Procesal Civil, EJASO; **Vicent Rosso**, Co-Fundador de Blablacar España; **Ricardo Ruiz de la Serna**, Abogado en ejercicio y profesor colaborador en la Universidad CEU San Pablo de Madrid; **Alejandro Sánchez del Campo**, Digital Regulation Counsel, Telefónica Digital; **Luis Tamayo**, Conector de Ouishare en Madrid; **Pedro Serrahima**, Director General de PepePhone; **Enrique Titos**, Asesor Estratégico, Consultor E Inversor en Empresas Y Proyectos de transformación tecnológica; **Javier Wrana**, Profesor de Economía, Universidad Rey Juan Carlos I.

Each person has participated as a person and not as an institution.