

## Law Section

Abstracts of papers presented at the annual conference of the  
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<sup>1</sup> We have endeavoured to ensure that these are the abstracts of the papers actually presented at the conference. Nevertheless, due to cancellations, additions and other factors, abstracts may be included here that were not presented and abstracts that were presented may not be included.

**Id:** 19590

**Title:** The algorithm made me do it! Predictive policing, cameras, social media and affective assessment

**Session Type:** Individual submission

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**Abstract:** Christian Sandvig and his colleagues (2016) helped to set the research agenda for communication and information scholars concerned about the impact of algorithmic techniques for the generation of strategic intelligence for corporate and government decision-makers. Much of the research that followed was focused on the nature and extent of the biases and errors that emerged when assessments and recommendations affected the life chances of racial and ethnic minority population segments (Baracas & Selbst, 2016). Attention to the impact of these systems has just begun to be developed with regard to the challenges associated with the law, and its defense of the fundamental rights of members of those groups. This paper examines those concerns as they apply to the use of algorithmic systems by urban police, judges, and other central actors within the criminal justice system (CJS) in the United States (Kroll, et al., 2017; van Brakel & de Hert, 2011; Whittaker, et al., 2018; Winston, 2018).

Although the use of cameras for the surveillance of target areas within urban centers has been the subject of critical assessment almost from the beginning of their use, much of that work was focused on the behavior of the human monitors that determined what the central focus of those cameras would be, as well as the nature of the behaviors that would trigger the movement of officers to the scene (McPhail, et al., 2013). Increasingly, however, the work of human monitors has largely been re-assigned to semi-autonomous computer systems, guided by artificial intelligence resources, updated routinely through the use of machine learning techniques (Berman, 2018; Mateescu, et al., 2015). The use of cameras, especially those by officers on foot patrol, or in motor vehicles is described, but a primary focus of this paper is on the computer-aided analysis of the images captured by these devices.

The capture and use of images from mobile cameras, the analysis of social networks as well as affective assessments of individuals and members of groups derived from automated analysis of social media text and images, as well as other transaction-generated information (TGI) that has come to be referred to as “big data,” has been recognized as contributing to the development of a transformative moment in the nature of policing (Brayne, 2017; Degeling and Berendt, 2017; Hu, 2017; Manovich, 2018). The application of these and other informational resources to the development of predictive policing has been recognized as presenting a genuine threat to the traditional meaning of “reasonable suspicion” and related justifications for the application of Fourth, Fifth and Fourteenth Amendment rights to the targets of police engagement (Cohen, 2019; Ferguson, 2015, 2016; Joh, 2014; Maharrey, 2018).

This paper will explore these threats, with special regard to their likely impact upon the life chances, well-being, and social construction of members of racialized population segments in the foreseeable future (Carney & Enos, 2017; Turow, et al., 2018).

**Id:** 19868

**Title:** Derecho a la propia imagen como parte esencial del derecho al olvido en Chile: Problemática jurídica y análisis casuístico

**Session Type:** Individual submission

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**Abstract:** La ponencia pretende analizar la situación del derecho a la autoimagen en el contexto de la legislación chilena, específicamente por su vinculación con nuevos casos abordados por la justicia del país, tal como ha sucedido previamente en otras naciones, principalmente en Europa, Rusia o Japón, donde se ha aplicado el derecho a ser olvidado respecto de la información publicada en internet.

Para orientar el análisis, la presentación comenzará con una revisión de las normas legales existentes en Chile, para luego confrontarlas con los casos más conocidos que se han registrado hasta la fecha y que están creando jurisprudencia en el país .Se abordarán temas como la imagen como parte esencial del derecho al olvido en el ordenamiento jurídico chileno, la situación actual del derecho a la propia imagen en el ordenamiento jurídico chileno, la imagen como elemento esencial del ámbito jurídico protegible por el derecho al olvido en Chile, el análisis casuístico chileno, la “condena social” y la aparición de una necesidad reguladora, además del enfrentamiento del Derecho al olvido vs. Derecho a la Información.

A juicio de los ponentes, el imperio tecnológico actual y los múltiples efectos que ésta puede tener en la vida diaria de cualquier sujeto es y seguirá siendo un tópico de investigación y reflexión permanente, con cualquiera de los prismas con que se mire: personal, jurídico, profesional, comunitario, etc. En ese contexto, resulta de vital importancia el levantamiento de información teórico-normativa y su puesta en perspectiva a partir de la realidad casuística, que es el objetivo de este texto, pues a partir de ella surge el análisis y aparecen las propuestas que guiarán el debate académico y social.

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**Id:** 20082

**Title:** La ampliación del reconocimiento del derecho a la libertad de expresión y su vinculación con el ejercicio de derechos sociales en la jurisprudencia de la Corte Interamericana de Derechos Humanos: los casos "Lagos del Campo" y "San Miguel Sosa"

**Session Type:** Individual submission

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**Abstract:** El 31 de agosto de 2017 y el 8 de febrero de 2018 la Corte Interamericana de Derechos Humanos (Corte IDH) pronunció dos condenas muy severas contra el estado de Perú y contra Venezuela, respectivamente, por la violación de varios artículos de la Convención Americana sobre Derechos Humanos (CADH) en perjuicio del líder sindical Alfredo Lagos del Campo en el primer caso y respecto de Rocío San Miguel Sosa, Magally Chang Girón y Thais Coromoto Peña en el segundo.

La Corte IDH consideró que Perú violó los siguientes derechos del afectado: artículo 13 de la CADH que protege el derecho a la libertad de expresión; artículo 16 que protege el derecho de libertad de asociación; y – por primera vez en la Historia– se dictó una condena específica por la violación del artículo 26, que dispone los Derechos Económicos, Sociales y Culturales de este tratado, con motivo de la vulneración del derecho al trabajo, en particular de los derechos a la estabilidad laboral y de asociación. En el caso “Sosa San Miguel”, por distintas mayorías, se determinó la violación de los art. 23, participación política, 13, libertad de expresión, y 8 sobre acceso a la justicia. Y. nuevamente, en relación con la libertad de expresión, se entiende violado el artículo 26 de derechos sociales.

Este trabajo está orientado a rescatar y divulgar en el ámbito académico no específico de los estudios de derechos humanos los principios que amplían el reconocimiento del derecho a la libertad de expresión, de información y comunicación por su novedosa vinculación con los derechos sociales, tales como la libertad sindical, la representación de los trabajadores y el derecho al trabajo.

Ha de decirse que el reconocimiento de los derechos sociales y su justiciabilidad se configura por primera vez con “Lagos del Campo” y de allí su relevancia como leading case en el sistema interamericano. En términos comparados, el TEDH ya había consagrado este reconocimiento, y particularmente en relación con el Artículo 10 de la Convención, en diversos casos tomados como antecedente por la Corte Interamericana.

Al mismo tiempo, se buscará incorporar una evaluación sobre qué se ha de entender –en esta lógica de expansión de derechos– por interés público como valor sustantivo y también referencial, dado su necesario involucramiento en el análisis de los extremos de “fin legítimo a proteger” y “necesidad social imperiosa”, requisitos ambos para la aplicación de responsabilidades ulteriores en el ejercicio de la libertad de expresión de acuerdo con la Convención Americana.

**Id:** 20215

**Title:** Hate Speech, Human Dignity and the First Amendment

**Session Type:** Individual submission

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**Abstract:** Hate crimes and hate speech happen across the globe but there is no uniformity in how those offenses are treated. Most countries, with the exception of U.S., prohibit some degree of and international treaties such as The International Convention on the Elimination of all Forms of Racial Discrimination also seek some level of restriction (Knechtle 2006, Brown 2015). ‘Hate speech’ is a messy, highly contested concept with its meaning changing depending on the context of who is using it and to what ends (Gelber 2017). Defining the term as specifically as possible at the onset is of paramount importance because without proper definition, scholars and lawmakers talk past each. In addition, if the end goal, as it is in this presentation, is to produce a constitutionally regulable category of speech, then the parameters of what constitutes hate speech must be clearly articulated. My intention is to offer a legalistic definition that will work within a U.S. context to enable the courts to think in a more nuanced capacity about how they might assess hate speech restrictions. I am suggesting that the category of regulable hate speech should be situated somewhere between protection of human dignity (Glensy 2011, Waldron 2014, Wright 2006), a laudable goal that will not work within the constructs of the First Amendment, and the viewpoint neutral legal options currently available, which ignore much of what makes hate speech a particularly heinous type of speech. In moving forward, the best approach will be informed by the dignity emphasis underpinning many international laws and regulations. While it may seem that the First Amendment makes this path impassable, there exists room for the courts to adjust the pre-existing content-neutrality principle and the true threats doctrine in order to open up a space for protecting both freedom of speech and the intrinsic right to be recognized.

In this presentation, I review work conducted on defining hate speech. I then address the various harms associated with hate speech. Understanding the possible harms that it causes will facilitate a further refining of the term to help situate it better within a U.S. free speech context. Finally, I offer a definition of hate speech that will best protect both human dignity and freedom of speech and illustrate how this might work through analysis of Giles v. Davis, a 2005 Third Circuit Court of Appeals case dealing with on-campus hate speech.

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**Id:** 20476

**Title:** The new EU Audiovisual Media Services Directive will affect YouTube, Netflix and TV broadcasting equally, although its effect will not be felt immediately

**Session Type:** Individual submission

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**Abstract:** This arduously agreed Directive (1) is part of the Digital Single Market of the European Union, an array of policies which gives us as citizens a number of rights which were unthought-of before: free data roaming in Europe, the possibility of using our on-line subscriptions throughout the Union: in other words, content such as Netflix, Amazon Prime Video or Spotify travel with us without being blocked by the new geolocation detected by an internet connection; and, what is more, enhanced data protection and network neutrality, preventing discrimination affecting price or location because of price or speed of navigation – an audiovisual service map of Europe which has been difficult to construct, but which still requires further steps. That means more regulation, which, it is to be hoped, will not be a constraint to the media, enterprises, creators and the public. The 2018/1808 Directive is on the Statute book and another is on the way – the Copyright Directive – which, although it is in its final stages, may never be passed on account of the dissolution of the EP. Our wish is that it should not become law in view of a number of odious points it contains – as the well-known YouTuber Altozano explains (<https://youtu.be/ilEsBgbm7Fo>).

Anticipating the 2020 law will also help to avoid linear TV being left behind

Given the explosive growth of Netflix, HBO, YouTube – as platforms of worldwide TV services and productions, and with a global audience – customer service considerations and the rules of fair competition may mean that regulations are anticipated de facto, without any loss of profitability. It would be desirable for there to be an agreement between the actors involved before the parliamentary act comes into force. Some companies are already taking steps in that direction. In respect of the advertising of certain products, YouTube announced some time ago that it would not accept certain content and advised that it might use blocking.

For the good of all concerned, we should not wait until 2020; this is especially true in respect of advertising and of the absolute freedom of public communication which the platforms benefit from at the present time. The market and audience protection may be cannibalized during this period in which audience share, data consumption and advertising will all increase.

It is to be hoped that member states, or rather civil society, universities and audiovisual enterprises themselves will undertake campaigns to increase media literacy. This article is written in fulfillment of that duty.

By the way, as I write this, I am listening to a music program from a public TV channel, via the screen of my TV set, which has no antenna connection and which I control from the Wi-Fi of my mobile phone. Know what I mean? It's another world.

(1) Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (AVMSD)

**Id:** 20569

**Title:** Cambios en la regulación de la publicidad en la Reforma de la Directiva sobre la comunicación audiovisual

**Session Type:** Individual submission

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**Abstract:** La Reforma de la Directiva 2010/123, de 10 de marzo de 2010, sobre servicios de comunicación audiovisual permite diferenciar cuatro principales cambios en torno a los aspectos de las comunicaciones comerciales: 1) normas de carácter general aplicadas a cualquier comunicación comercial, 2) normas para publicitar determinados productos servicios (alimentos y bebidas, juegos de azar y bebidas alcohólicas); 3) normas especiales para concretos target (menores) y; 4) normas para determinadas modalidades publicitarias (como emplazamiento de producto o patrocinios, entre otros).

Además de incluir importantes novedades como introducir en su ámbito de aplicación a las plataformas de intercambio de vídeos como YouTube y seguir insistiendo en la correlación y autorregulación para una adecuada práctica publicitaria en la que se incluyan de forma voluntaria los principales operadores económicos de la publicidad, asociaciones y Administraciones Públicas.

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**Id:** 20595

**Title:** Participación online a través de e-peticiones: un estudio con jóvenes

**Session Type:** Individual submission

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**Abstract:** En el actual ecosistema hipertecnologizado merece la pena destacar la idea de cultura participativa (Jenkins, 2014) que se relaciona con determinados valores: diversidad, inclusión, horizontalidad, democracia y relativa ausencia de barreras para cualquier forma de expresión y compromiso cívico. Una cultura participativa sería aquella en la que los miembros sienten cierto grado de conexión social y se generan espacios para la comunicación interpersonal. Las prácticas ciudadanas en los nuevos medios permiten avanzar hacia la construcción de una auténtica ciudadanía digital: activa y participativa, además de consciente y crítica. Una de las formas de participación e implicación en acciones sociales y políticas que ha tenido gran difusión y aceptación en los últimos años, ha sido el de las firmas de peticiones a favor de alguna causa social, política, medioambiental, etc., a través de Internet (e-peticiones). Este tipo de participación se caracteriza por su sencillez; en principio no requiere de grandes destrezas tecnológicas y simplemente hace falta acceder a una de las múltiples plataformas que existen en este momento en España (por ejemplo, Change.org, Avaaz.org, Mifirma.com, Oiga.me, Peticiones.org) para completar la firma cumplimentando un conjunto de datos que permiten verificar la veracidad de la identidad. El extraordinario crecimiento de este fenómeno ha comenzado a crear interés en el ámbito académico. Así hay referencias previas que han abordado el análisis de las características de algunas de estas plataformas, la manera en que los diarios digitales tratan las iniciativas y a las propias plataformas de e-peticiones, el modelo de negocio o las características, estructura y contenido de las iniciativas que difunden, pero todavía no hay ninguna investigación que haya trabajado los aspectos que aquí se abordan. En esta comunicación se presenta el perfil, las motivaciones y la repercusión de este tipo de participación, utilizando para ello los datos resultantes de un cuestionario que han respondido universitarios españoles de ambos性es.

**Id:** 20882

**Title:** Protection de la vie privée, droit du public à l'information et lanceur d'alerte à l'ère de la gouvernance algorithmique

**Session Type:** Individual submission

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**Abstract:** Au nombre des enjeux qui se présentent dans notre société numérisée figure en bonne place la protection de la vie privée (Cassili, 2014). Les risques sont nombreux, protéiformes et complexes. Si la nécessité de la protection contre les ciblages commercial et politique commence à être mieux reconnue, c'est largement grâce aux lanceurs d'alerte comme Edward Snowden, qui a révélé l'ampleur de la surveillance de masse exercée par cinq gouvernements démocratiques, et Chris Wylie, qui a révélé les dessous du scandale Facebook-Cambridge Analytica, remettant en question tant les résultats des élections étasuniennes de 2016 que ceux du référendum sur le maintien du Royaume-Uni au sein de l'Union européenne tenu la même année. L'adoption de lois protégeant les lanceurs d'alerte tant en Amérique du Nord qu'au sein de l'Union européenne peut donner à penser que le droit du public à l'information et la liberté d'expression se portent bien et que les développements technologiques font désormais l'objet d'un monitoring rigoureux. C'est oublier qu'Edward Snowden est en exil en Russie par crainte de ne pouvoir bénéficier d'un jugement équitable s'il rentre aux États-Unis (Amnistie internationale, 2016) et les nombreux cas qui font l'objet de représailles dès que le lancement d'alerte se fait dans l'espace public (Gerbet, 2019; Zafra, 2018), peu importe par ailleurs l'enjeu faisant l'objet de l'alerte. Nos sociétés d'information se seraient-elles transformées en société de surveillance où l'État détient le monopole de la surveillance légitime ? Nous proposons de revenir ici sur le cas de deux lois canadiennes visant à protéger les divulgateurs d'actes répréhensibles. Il s'agira d'abord de se pencher sur la notion de lanceur d'alerte en passant en revue la façon dont les 2 lois conçoivent les facteurs de

l'identité, de la motivation, de la nature des révélations et des modes d'expression qui le légitiment (Foegle, 2014). L'exercice nous permettra de comparer les lois entre elles, mais aussi de les contraster avec le cas emblématique d'Edward Snowden. Au moment où on assiste à la montée d'une gouvernance algorithmique et de « sciences » prédictives reposant sur le traitement de nos traces laissées en ligne (De Filippi, 2016), notre analyse contribuera à documenter les potentialités de réalisation du droit du public à l'information et de la protection de la vie privée en contexte nord-américain.

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**Id:** 20904

**Title:** Children's location tracking and their right to privacy in a mobile media world

**Session Type:** Individual submission

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**Abstract:** The use of apps, wearables and smart devices is omnipresent in the lives of children. They are active users of Google, Facebook, Instagram, TikTok, Snapchat and Fortnite, which are often accessed through mobile devices (Unicef, 2017) and allow for real-time sharing of personal information (Montgomery & Chester, 2015). Many providers track their users', including children's, location – irrespective of the necessity thereof for the functioning of the service. It has been claimed that Google, for instance, tracks the location of its users which is then used to facilitate targeted advertising (Forbrukerrådet, 2018). In addition, tracking technologies are offered by commercial companies to parents who want to keep abreast of the location of their child through smart phones or smart watches. Research has established that the constant tracking of one's location can reveal sensitive details about that person's life, such as his or her home, work, school location, religious and political views, personality, habits, health, medical issues, and sexual orientation (Forbrukerrådet, 2018; Reyes et al., 2018; Valentino-DeVries et al., 2018). Such practices put the child's right to privacy increasingly under pressure in today's digital world.

The proposed paper aims to analyse the child's right to privacy in this context. The theoretical background is the comprehensive typology of privacy, developed by Koops et al. (2017), which consists of eight basic types of privacy – bodily, intellectual, spatial, decisional, communicational, associational, proprietary, and behavioural – with an overlay of a ninth type, informational privacy. The proposed paper aims to identify which types of privacy are at stake in relation to location tracking of children. Building on this, the paper will evaluate – from a children's rights perspective – whether general legislative instruments such as the European Union's General Data Protection Regulation or the Council of Europe Convention 108+ are sufficient to protect the best interests of the child (article 3 United Nations Convention on the Rights of the Child). Under the former standards, for instance, sensitive data are afforded additional protection (article 9 GDPR; article 6 Convention 108+). However, even though sensitive data may be inferred from location tracking, 'location' is not included as such a special category of data. Another question is whether child location tracking practices are fair (article 5 GDPR; article 5 Convention 108+). Fairness is one of the fundamental data protection principles, but it remains vague. Similarly, recital 38 GDPR states that children's personal data merit specific protection, but this remains equally elusive. The paper will reflect on how these abstract notions can be interpreted with regard to the collection and

processing of a child's location data. Finally, the proposed paper aims to investigate whether and how children are actually informed about location tracking on their devices, in compliance with current transparency standards (article 12 GDPR; article 8 Convention 108+). Acquiring more insight in the complexities of the child's right to privacy in an increasingly digital world will not only enrich scholarly debates but will also allow for the formulation of recommendations towards stakeholders such as policymakers, data protection authorities and children's rights ombudspersons.

**Id:** 20944

**Title:** Contesting Intermediary Liability and Ownership in Digital Copyright Policy

**Session Type:** Individual submission

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**Abstract:** This paper is an analysis of past and current trends in intermediary liability and copyright, with an emphasis on ongoing E.U. proposals. I begin with an overview of intermediary liability [IL] policy – protections that online service providers have from illegal user-generated content – and then offer a case study of proposed copyright legislation in the E.U. The proposed legislation are Articles 11 and 13 of the E.U.’s Directive on Copyright in the Digital Single Market, and would force intermediaries to filter all user-generated content through a database of copyrighted works (Doctorow, 2018). I close by arguing that the problems of IL are part of a crisis of ownership where an increasing amount of the Internet is disputed through negotiations between rights-holders, tech companies, and the state. Creators and consumers are shut out of policy processes and unable to control how they use communication technology to interact online.

The literature review on IL and copyright includes an analysis of contributions from UNESCO (MacKinnon, 2014) and the Center for Democracy and Technology (2012), as well as examination of scholarly discussion from Litman (2001), Drahos & Braithwaite (2002), and Lessig (2006). This literature assists in the formulation of guidelines and theoretical discussion about what the best practices in IL and digital copyright policy should be, and how those practices can best benefit intermediaries and rights-holders as well as users and creators.

The case study considers the broad mandate of the Articles, which would order platforms to pay fees for linking to articles and to create filtering systems that would overlook legal uses of works such as parody. IL protections have traditionally functioned to prevent service providers from censoring users over legal concerns (MacKinnon, 2014). In contrast, the Articles incentivize large companies including Google and Facebook to censor content in order to avoid legal troubles. These filters also endanger innovation and competition by being prohibitively expensive for start-ups.

I conclude that Articles 11 and 13 are harmful to intermediaries and users. They are also significant because they represent a trend of reduced ownership and loss of control by users and creators online. The Articles are reflect the conflict between tech companies trying to best monetize user-generated data, and rights-holders trying to best control access to digital content. The rights of access and control by users and creators are shut out of the policy-making process altogether. Regulatory reforms should emphasize the ability of users and creators to flourish alongside tech companies and rights-holders without eroding standards of intermediary liability or contributing to censorship.

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**Id:** 20988

**Title:** Presencia Ilícita de Testimoniales en la Publicidad de Complementos Alimenticios en la Radio Generalista en España

**Session Type:** Individual submission

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**Abstract: (PRESENTATION IN SPANISH)**

Por su potencial persuasivo como variable periférica (Buchholz & Smith, 1991; Petty, Cacioppo, & Schumann, 1983; Priester & Petty, 2003) los testimoniales son un objeto muy regulado (Federal Trade Commission). En España, el Real Decreto 1907/1996, de 2 de agosto, sobre publicidad y promoción comercial de productos, actividades o servicios con pretendida finalidad sanitaria regula la publicidad de los productos que ofrecen beneficios para la salud exceptuando los medicamentos dispensados sin receta médica que tienen su propia legislación. Ello incluye bebidas, alimentos, productos de belleza e higiene, adelgazantes y los complementos alimenticios (CA). El punto 7 del Artículo 4 de Prohibiciones y limitaciones de la publicidad prohíbe aportar testimonios de profesionales sanitarios, personas famosas o conocidas por el público o pacientes reales o supuestos como medio de inducción al consumo. Así, el objetivo del presente trabajo es analizar la presencia de testimoniales para comprobar el cumplimiento con la legislación que regula la publicidad de CA y el tipo de testimonio en la radio generalista en España.

Para tal fin, se realiza un análisis de contenido de todos los spots emitidos en 2017 y que ha permitido conformar un corpus de 165 anuncios diferentes de la categoría de productos de CA, que fueron emitidos un total de 10566 veces. A partir de los antecedentes, las variables analizadas fueron el tipo de testimonial (Brownfield, Bernhardt, Phan, Williams, & Parker, 2004; Choi & Kim, 2011; Chung, Hwang, & Kim, 2007; Kaphingst, DeJong, Rudd, & Daltroy, 2004; Main, Argo, & Huhmann, 2004; Shaw, Zhang, & Metallinos-Katsaras, 2009; Wallack & Dorfman, 1992) y de testimonio (Kaphingst, 2004; Keel & Nataraajan, 2012; Perelló-Oliver & Muela-Molina, 2017; Stern, 1991; Tulloch, 2014).

Los resultados muestran que el 40% de spots utiliza determinados testimoniales que la ley no permite como doctores, consumidores y famosos, éstos últimos con una presencia inusual para CA que no tiene en la publicidad radiofónica. Así, uno de cada cuatro spots está protagonizado por

famosos y líderes de opinión como periodistas cuyo código ético no lo permite. Asimismo, de todos los spots de CA emitidos, casi la mitad (42,2%) cuenta experiencias personales que las celebridades confiesan tras haber utilizado o consumido el producto. Y en más de la mitad (55,3%) se trata de médicos y doctores que prescriben la marca anunciada como la solución definitiva para el problema de salud que padece el oyente. En ambos casos, en primera persona del singular para reforzar la veracidad del testimonio ya que los doctores son considerados expertos en salud y son percibidos como una fuente creíble en la que el consumidor confía.

Del elevado número de anuncios ilícitos que vulneran los derechos de los consumidores -como ha mostrado la investigación- derivan implicaciones para diferentes stakeholders como anunciantes y medios de comunicación. Pero también en materia de regulación y autorregulación que precisan un mayor control y seguimiento de la publicidad de productos relacionados con la salud como los CA que son considerados de alta implicación para el consumidor.

**Id:** 21102

**Title:** Mercado relevante y pluralismo en la televisión y radiodifusión digital online.

**Session Type:** Individual submission

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**Abstract:** El estudio analiza las categorías del mercado relevante y el pluralismo estructural, entendiendo por tal el conjunto de mecanismos que, sin afectar el contenido, permiten conocer la diversidad de mensajes y efectuar un control de la concentración de los medios. En el caso chileno, tal función le corresponde a la Fiscalía Nacional Económica (FNE), la que recibe información relativa al cambio de propiedad de cualquier medio de comunicación, y cuyo informe favorable es necesario para las operaciones que involucren a medios titulares de una concesión (radio y televisión). En ese contexto cabe destacar, que el estudio antecesor a la presente propuesta[1], consideró aspectos fundamentales concluyentes como la escasez del espectro radioeléctrico, que siendo el motivo más poderoso para la intervención estatal se ha visto sin embargo alterado por la digitalización de la televisión y la radio y por el desarrollo de Internet. Un ejemplo de lo anterior ha sido Noruega el primer país del mundo en terminar las concesiones radioeléctricas para las radios FM, proceso que comenzó en enero de 2017, lo que supone el principio del fin de las emisiones por dicha frecuencia tradicional. La iniciativa del país nórdico procura que existan más canales de radiodifusión y con ello más diversidad de contenidos. La industria de la televisión de pago –de cable y satelital- también experimenta importantes cambios, pues ha surgido un fenómeno conocido en Estados Unidos como «cord cutting». Dicho término da cuenta del retiro a gran escala de clientes de servicios de televisión de pago –en especial del cable- en favor de plataformas de Internet como Netflix, Amazon, Hulu y YouTube, por citar algunas. Dicha tendencia se advierte que podría observarse en países como Chile en donde la alta penetración de Internet[2], así como la sofisticación creciente de los modelos de conexión y la velocidad de la misma, pone de manifiesto dos aspectos fundamentales: la familiaridad general de los chilenos con el uso de la Red y el ajuste que esto implica en la democratización de la información.

**Objetivos y metodología**

El objetivo general de la investigación consistió en definir el concepto de pluralismo estructural y las categorías del mercado relevante de televisión y radiodifusión digital.

**Objetivos específicos**

Conocer las formas de consumo que se presentan en jóvenes chilenos de 18 a 24 años con uso de Internet plenamente generalizado, en las plataformas digitales de la televisión y la radiodifusión on-line.

Medir la sustituibilidad de la demanda en el grupo de jóvenes chilenos de 18 a 24 años (millennials) del consumo de los contenidos en las plataformas digitales de la televisión y la radiodifusión on-line.

Determinar la relación entre las preferencias de las audiencias-usuarios y contenido-consumo en las plataformas digitales la televisión y la radiodifusión on line.

### Metodología

La metodología que se seleccionó para la presente investigación consta de dos etapas: una primera etapa de carácter inductivo centrada en el análisis del pluralismo externo (diversidad de voces en el sistema) e interno (diversidad de mensajes al interior de cada medio), y una segunda etapa que consiste en una encuesta de medición de hábitos y tendencias de consumo en las plataformas digitales de televisión y radiodifusión de los jóvenes chilenos en el rango etario de 20 a 24 años; de carácter exploratorio. Diseñada para estudiantes millennials en edad universitaria de la Región Metropolitana, Región de Valparaíso, Región del Biobío y Región de Antofagasta. Estas cuatro zonas territoriales representan el norte, centro y sur de Chile, y las tres primeras concentran 71% de la matrícula de la educación superior en Chile.

La muestra considera 2000 jóvenes, que residen en las regiones mencionadas. Para la selección de la muestra se realizó un procedimiento estratificado, considerando la siguiente composición demográfica que se estimó relevante para el estudio, según los datos del último Censo 2017:

- a) Composición por sexo
- b) Composición por nivel educacional

El estudio además describe criterios o tendencias que pueden constituirse como aporte para inferir alguna línea o doctrina relacionada con el mercado relevante, lo cual debería ser la base para una futura regulación normativa y también puede servir a instituciones como Subtel, Anatel, Archi y el Consejo Nacional de Televisión entre otras

Un aspecto fundamental, relacionado con el mercado relevante y el pluralismo estructural radica en si el régimen jurídico aplicable al mercado de los medios de comunicación es el adecuado.

**Id:** 21447

**Title:** Age verification mechanisms on pornographic websites: protecting children, platforms or both'

**Session Type:** Individual submission

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**Abstract:** In their navigation of the online environment, children may come across or seek out for harmful internet content such as pornographic material. In fact, according to studies, adolescents have become significant users of internet pornography (Mead, 2016). They consume pornographic content either as part of their sexual education and exploration or for pleasure, ignoring age restricting indications or adult content warnings. Research shows that repeated consumption of pornography at a young age might have a negative impact on their development (HM Government, 2017; Narayanan et al, 2018). Risks are being acknowledged and intensified regulatory attempts to ensure that children cannot access adult content websites have emerged. The most prominent example is the latest amendment to the UK Digital Economy Act regarding the mandatory implementation of age verification (AV) mechanisms on platforms that host pornographic material for commercial purposes. As laid down in the legislative text, non-compliance on behalf of the platforms instigates financial penalties. Moreover, age verification tools are listed in the new EU Audiovisual Media Services Directive as potential measures for protecting minors from viewing harmful content, such as pornography, on videosharing platforms.

Online age verification mechanisms constitute technical measures that verify the age of the user who attempts to access or obtain age-restricted content and may consequently block access to such material. The methods implemented by websites hosting pornographic material for blocking access to users under the age of 18 vary, yet their success rate is contested (LexisNexis, 2017). Moreover, technical solutions engaged for solving this problem usually necessitate the documentation of the users' personal data (for instance, electronic Identification (e-ID)) and therefore raise additional concerns on the protection of other fundamental rights of the users, such as their right to privacy. The focus of this paper is twofold. On the one hand it aims at exploring whether the implementation of AV mechanisms succeeds in advancing the level of protection for children as well as indicating potential shortcomings affecting their rights to protection, but also participation and expression, in the online environment. On the other hand, it explores the manner in which the liability of platforms is affected in terms of efficiently restricting children from accessing the content they host. The research will draw on both social science and legal doctrine on the operation of AV mechanisms and their impact on children's online behaviour as well as on EU policy and legislative documents with regard to the responsibilities and liability of platforms and intermediaries, and data protection.

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**Id:** 21470

**Title:** Tecnología y derechos humanos: el papel del derecho (de y a la información) en el momento actual

**Session Type:** Individual submission

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**Abstract:** Cada vez es más penetrante el papel de las tecnologías, ya no tan nuevas, en la marcha de los acontecimientos, sobre todo si las relacionamos con la comunicación y más concretamente con el papel de los medios en la sociedad actual. Lo que debía ser en teoría una ayuda para la metainformación, para el desarrollo comunicativo de las sociedades, está sin embargo derivando en situaciones que claramente debilitan los derechos de los ciudadanos.

Acabamos de cumplir setenta años desde que la Declaración Universal de Derechos Humanos fue proclamada. Nadie duda que su contenido supuso un avance verdaderamente extraordinario en la defensa de los derechos humanos. Muchos gobiernos han ido incorporando su contenido, en mayor o menor medida, de tal manera que el progreso global en esos campos ha sido claramente uno de los hechos positivos en la última mitad de siglo.

Pero junto a esa Declaración, de forma paralela, han ido naciendo lo que se dio en llamar las Nuevas Tecnologías, que han supuesto un avance extraordinario en el campo tecnológico en todos los aspectos del saber humano y muy especialmente en el informativo, entendiendo este término en su acepción más global, no solo referido al informativo clásico.

Y en medio de ese proceso, que nos lo podemos imaginar en forma paralela, ha ido naciendo el Derecho de y a la información, que siendo un “hijo” de la Declaración Universal, ha tenido que ir dando respuestas, no siempre acertadas, al otro campo, al tecnológico, en este caso si referido al proceso informativo. La dificultad, en algunos países como España, fruto del enfoque napoleónico del derecho, es que, durante muchos años, incluso después de la promulgación de la Declaración Universal, las normas jurídicas referidas a la información, se entendían como parte del derecho administrativo, o sea norma que formaba parte del poder estatal, lo cual dificultaba enormemente el derecho de los ciudadanos para gozar de su derecho a la información, emanado de la declaración de 1948.

Esto es particularmente difícil de entender en la mentalidad anglosajona y muy especialmente si nos atenemos a la primera enmienda “Libertad de culto, de expresión, de prensa, petición y de reunión”, por la cual se prohibía, entre otras cuestiones, realizar ninguna Ley de prensa que coartase la libertad de expresión, hecho que ha durado hasta nuestros días.

A medida que esta dualidad ha ido desapareciendo y se ha avanzado decididamente en el enfoque de considerar a las normas jurídico informativas como parte del derecho constitucional, se ha potenciado de manera decisiva el disfrute del derecho a la información por parte de los ciudadanos. Sin embargo, esta situación, que nunca la hemos podido considerar idílica, porque el choque entre la información y el derecho ha sido, es y será constante, se ha visto complicada con el nacimiento y posterior desarrollo de las llamadas nuevas tecnologías, como hemos señalado al inicio de estas líneas. El desarrollo tecnológico, en el campo informativo, ha supuesto un desafío al derecho de la

información, que en no pocas ocasiones, no ha sabido dar la respuesta adecuada ni en el fondo, ni en la forma, y sobre todo, en el tiempo debido a las demandas que se le pedían.

**Id:** 21511

**Title:** Suspicious mindsets: national law and journalistic cultures as conditioning factors of crime reporting in European online media

**Session Type:** Individual submission

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**Abstract:** Do European media care about and uphold Human Rights - and does it matter? “Innocent until proven Guilty” is a legal maxim rooted in a long history of civil rights and provided for, among others, in Article 48 in the European Charter of Human Rights and Fundamental Freedoms and in Article 11 in the UN Declaration of Human Rights. The recent EU directive 2016/343 on presumption of innocence aims at preventing the social tarnishing of crime suspects in the public sphere and provides a regulatory ‘partner’ to the well-established case law of the ECHR providing for due process and a fair trial.

Given a remarkable historical comprehensive regulatory framework at global, supranational and national levels, mature democratic systems and fairly robust journalism cultures of self regulation, the conditions for a culture of crime reporting which upholds the human right to be presumed innocent until proven guilty are arguably optimal.

Through the lens of governance of information and media treatment of human rights, this paper explores crime reporting online in seven European countries. Against the background of national media landscapes, the paper identifies patterns of reporting on suspects and accused individuals in Austria, Croatia, Hungary, Spain, France, Greece and Malta. It explores further the broader conditions of information generation and dissemination deriving from legal frameworks, the technological affordances to publish rapidly and elements of journalistic cultures, which, we argue, contribute to a) an uneven picture of crime reporting across nations b) a systemic undermining of the right to presumption of innocence and c) a conflict in following the letter of the law and subverting its spirit. The paper also identifies institutional and cultural features manifest in best practices of reporting.

The comparison content-analysed crime-related news published in quality and tabloid press as well as in online-only press, from June to September 2018 with geographical and legal variety as well as variety in the size of media markets.

Keywords: governance, human rights, presumption of innocence, online media, journalistic cultures.

**Id:** 21910

**Title:** The algorithmic governance of information and communications

**Session Type:** Individual submission

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**Abstract:** This paper will critique the responses of platforms and governments to fake news and other information and communications policy dilemmas by drawing on the concept of 'algorithmic imperialism'. In part one of the paper, I define algorithmic imperialism, drawing on Jin's (2015, 2013) notion of 'platform imperialism.' This notion of platform imperialism builds on concepts of cultural imperialism (Schiller, 1969) as evidenced in an international communication system "characterized by imbalances and inequalities between rich and poor nations (MacBride 1980, 111–15) that were "the outcome of fundamental historical inequalities" (Jin 2015, 40). Second, I note that algorithmic imperialism, like platform imperialism, can be seen as the fusion of nation-state political interests with capitalist expansion. Used by multinational corporations and nation states alike, algorithmic tools and techniques help to lay the groundwork for deepening and intersecting global inequalities (Barbrook and Cameron 1996; Crenshaw 1991; Eubanks 2011, 2018). Third, I argue that algorithmic imperialism fuses the problems associated with both imperialism and algorithmic governance. Algorithms are posed as a tool of governance that responds to various problematizations in information and communications governance, including fake news. However, the algorithmic governance of information and culture by global platforms incorporates the political problems associated with algorithmic bias, scale, and speed. The global and historical context of the global algorithmic governance of information and communications means that problems of alienation from technologized political processes (Medina 2015), and colonial cartography (Shepherd 2015), among others, are compounded globally, while the benefits (of advertising revenues and data services) accrue to a relative few. Algorithmic governance of information and communications takes place in neocolonial context, and requires a decolonial response (Ali 2016). Drawing on these points, this paper elaborates the concept of algorithmic imperialism in relation to the algorithmic governance of information and communications governance.

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**Id:** 22008

**Title:** The Vulnerable Internet: FOSTA-SESTA and the Safe Harbor

**Session Type:** Individual submission

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**Abstract:** In April 2018, U.S. President Donald Trump signed into law a duo of controversial bills that claim to curb online sex trafficking. The Allow States and Victims to Fight Online Sex Trafficking Act and the Stop Enabling Sex-Trafficking Act, collectively known as FOSTA-SESTA, make it illegal to “knowingly assist, facilitate, or support sex trafficking.” The law was conceived mainly to target the shadier practices of the website Backpage, which, according to a U.S. Senate investigation in 2017, facilitated child trafficking. Most importantly, FOSTA-SESTA amended Section 230 of the Communications Decency Act, which immunizes websites from liability for third-party content.

With the historically robust protections of Section 230 shrouded in uncertainty, some companies reacted harshly to the passage of FOSTA-SESTA. Google, Microsoft, Facebook and Twitter, for example, proactively began to censor adult content or even ban sex workers’ accounts altogether. Legal commentators suggested that the companies, unable to parse the vague language of FOSTA-SESTA, elected instead to chill users’ speech. The voices of sex workers were abruptly and thoroughly silenced. Even more concerning, crime data suggests that FOSTA-SESTA has failed to stymie sex trafficking. Some reports even claim trafficking and abusive practices have increased. These reports extend beyond U.S. borders too. Sex workers overseas, lacking relatively safe avenues to advertise, have reported an increase in work-related violence.

Adding fuel to the fire, commercial enterprises such as Disney and 20th Century Fox publicly supported FOSTA-SESTA, signaling that even though their website-related activities were wholly unrelated, they expected some benefit from the law’s passage. Indeed, these companies could use FOSTA-SESTA as an avenue to chip away at the Digital Millennium Copyright Act (“DMCA”) safe harbor, which shields websites from liability for copyright infringement by third parties. Extending the rationale of FOSTA-SESTA could result in the government broadly requiring websites to police third-party content. Shifting these policing requirements to websites that host third-party content would ultimately be disastrous, especially for smaller sites that cannot bear that burden.

This paper first provides the historical background for the safe harbors articulated in Section 230 and the DMCA. It asserts that FOSTA-SESTA undermines the free speech-protective practices, particularly Section 230, that fortify the architecture of the internet. FOSTA-SESTA not only fails to achieve its asserted objectives, it functionally encourages widespread censorship, particularly of marginalized and vulnerable voices. Furthermore, the paper demonstrates how FOSTA-SESTA can be weaponized by companies to diminish the safe harbor protections of the DMCA. Resolving these

concerns is critical, especially given that (1) these laws have directly impacted not only U.S. citizens, and (2) some parliament members have expressed their desire to pursue the passage of similar laws in the U.K. Thus, the issues explored in this paper extend beyond the boundaries of the U.S.

Finally, this paper fills a gap in the current research. Although news articles and blogs have discussed FOSTA-SESTA, a Westlaw search shows only 13 secondary sources that address FOSTA-SESTA. And of these, zero articles analyze the possible impact FOSTA-SESTA could have on the DMCA safe harbor.

**Id:** 22051

**Title:** El nuevo reclamo revolucionario del siglo XXI en México: la repartición espectral.

**Session Type:** Individual submission

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**Abstract:** El reclamo en la época de la Revolución Mexicana sobre la “repartición agraria” ha llegado a su versión moderna de la “repartición espectral”. Pocos tienen la posesión de este recurso fundamental para ejercer los derechos a la comunicación en su vertiente de acceso a las tecnologías de la comunicación e información (TICs).

De la tierra al aire, las cosas han cambiado. Nadie, en teoría, tiene derechos adquiridos sobre los bienes nacionales. Sin embargo, en los tiempos de las TICs es necesario repasar esto, pues existe una confusión teórica sobre la posesión de los bienes públicos como el espectro radioeléctrico, el cual es un insumo esencial para operar la infraestructura de los servicios públicos de telecomunicaciones, cada vez más necesario hoy en día.

Sin embargo, el nuevo reclamo de “repartición espectral” tiene una realidad: la concentración comercial y el argumento de la insuficiencia espectral.

La propuesta es encontrar una luz en el camino. El contexto actual en México tiene al parecer un nuevo espíritu revolucionario, propio del siglo XXI, a través del reconocimiento de derechos fundamentales como el de acceso a Internet.

Asimismo, se requiere de un régimen especial para el acceso al espectro radioeléctrico basado en el rango constitucional que tienen, por ejemplo, las concesiones para uso social, incluyendo las comunitarias e indígenas.

Por tanto, una nueva realidad se vislumbra en México y, basados en evidencia empírica, se afirma que es necesario el acceso a más espectro radioeléctrico por agentes que no lo subutilicen ya que éste no puede estar en “manos muertas” (como era el reclamo revolucionario de hace más de 100 años). Ello con el objetivo de reducir la brecha digital y permitir que más población tenga el beneficio de las TICs.

Fuentes de Consulta

Legislación Nacional:

Constitución Política de los Estados Unidos Mexicanos (Artículos 2, 6, 27 y correlacionados)  
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**Id:** 22298

**Title:** SOLICITUDES DE INFORMACIÓN PÚBLICA EN ESPAÑA: "TOREANDO' AL PETICIONARIO

**Session Type:** Individual submission

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**Abstract:** En la actualidad, el acceso a la información es imprescindible para el correcto funcionamiento de la sociedad y para el desarrollo personal y profesional. El periodismo de datos, de investigación, de precisión... precisa información en bruto sobre la que trabajar, por eso el derecho a acceder a la información es esencial en el mundo de la comunicación.

Pero no son solo los profesionales de la información los únicos que necesitan la transparencia de las instituciones públicas para realizar su trabajo. También los académicos, los investigadores, abogados, emprendedores... precisan que la información pública esté a su alcance, tanto por la publicidad activa, como por medio de las preguntas que se hagan ejercitando el derecho de acceso. En los países occidentales se han aprobado leyes sobre transparencia y acceso a la información pública que permiten obtener conocer la información en manos de los poderes públicos. El problema se plantea cuando para conseguir una determinada información el peticionario se encuentra ante una negativa esquiva que dilata la entrega de la información, un procedimiento farragoso que desanima y hace desfallecer a quien necesita una información de forma rápida. En la comunicación se expondrá una experiencia sobre el derecho de acceso a información que en principio debe ser pública pues compromete fondos públicos. Se hicieron dos solicitudes de información sobre los profesores universitarios con méritos de investigación reconocidos y, de momento, los peticionarios hemos sido “toreados” por la Administración con argumentos “peregrinos” que nos han llevado ante los tribunales.

Cuáles son los argumentos esgrimidos para no dar la información y, cuál ha sido el proceso y los tiempos empleados serán expuestos en la comunicación, para finalizar con unas propuestas de mejora del sistema de transparencia en España.

**Id:** 22414

**Title:** Revising open justice for the digital era

**Session Type:** Individual submission

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**Abstract:** The ability of courts to administer justice and uphold social order depends on maintaining public confidence in their capacity to carry out this role fairly and impartially (Blackham & Williams 2015). This requires courts to show their work to the public, using the principle of open justice – that is, the public scrutiny of judicial proceedings. While courts usually actively embrace this legal principle, they have eschewed the idea of proactively seeking publicity or responding to criticism. The result is that courts are less equipped than other arms of government, or the corporate sector, in managing the changing communication and media environment they face as they enter the 2020s (Johnston 2018). This paper examines why special social, cultural and legal considerations have impacted on courts management of the communication and media environment. It uses a case study approach to examine recent changes within the Australian courts and also considers how the issue has impacted courts internationally. It reports on the most recent developments within courts' communication and publicity, including the employment of professional communication and media staff, media judges, the use of judgment summaries, streaming of audio judgments, and televised court proceedings. The paper concludes by proposing how courts might continue to expand these strategies and progress their open justice agenda as they enter the new decade.

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**Id:** 22521

**Title:** A True Right or A Fake One' - Discussion on the right of claiming to introduce abortion and the right to abortion in Taiwan

**Session Type:** Individual submission

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**Abstract:** The purpose of the study is to discuss the freedom of speech of minors, which is if it is just an abstract right, or it is substantive. The right to freedom of speech of minors in Taiwan is not restrictive. However, this does not reflect on various rights. Among them, the most controversial issue is abortion of minors. This thesis is aiming at this interesting topic and in-depth discussion. Nowadays, young people enjoy their freedom of speech on various media, but does it mean the freedom of speech is equal to the right, which allows minors to put their speech into practice? In order to go further on this topic, this thesis will focus on the area of abortion. Do minors have the right to abort? According to the laws in Taiwan, minors may not abort without the consent of the legal representative. Even though it is absolutely no doubt that minors can express the message of wanting an abortion, they do not have the right to make it. For those who are under 20 years old, they are under the protection of speech, yet the actual rights are limited. Do we consider this fair? By discussing about different propositions, this thesis expects to make a bold interpretation of the communication rights and legal substantive rights of Generation Z, and to create more possibilities for the development of communication law.

The research method of this thesis using Document analysis and In-depth interview. By Document analysis, this thesis will collect other studies in the same field, and point out the relevance of the research of this thesis. By In-depth interview, this thesis intends to interview 5 to 6 people, who has had similar experience before or who are encountering this kind of problems. The conclusion of this thesis will summarize the results of interviews and make references to the results.

Key words: Freedom of speech. Minors. Abortion. Right of Abortion. Communication rights. Substantive rights

**Id:** 22573

**Title:** la censura disfrazada

**Session Type:** Individual submission

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**Abstract:** Estamos viviendo en los últimos años una creciente labor legislativa orientada, en teoría, a limitar los discursos de odio y, por ende, a castigar aquellos que han llamado delitos de odio. Digo en teoría, porque la realidad es que este tipo de normas está incidiendo en la libertad de expresión de los ciudadanos. En el derecho a decir lo que queramos aunque moleste. Como decía Orwell, “si la libertad significa algo, es el derecho a decirle a la gente lo que no quiere oír”. Esta forma de legislar y las últimas reformas penales que introdujeron entre otros, los delitos de odio, ha planteado un debate sobre si estas están limitando la libertad de expresión de una manera injusta y desproporcionada. Las declaraciones que eran chistes simples u opiniones simples hasta hace poco, ahora pueden ser castigadas como delitos de odio, las opiniones que no reproducen el sentir de lo políticamente correcto se consideran discurso del odio, machista, fascista.... La libertad de expresión no es un derecho absoluto e ilimitado, ¡obvio!, pero necesita de una protección especial dentro de las democracias. La libertad de expresión tiene como objetivo crear una opinión pública libre. Es por eso debe respetarse y considerarse preferente, incluso si algunas opiniones son diferentes o contrarias a lo que piensa la mayoría. No tendría sentido proteger una libertad de expresión consistente, tan solo, en replicar aquellas ideas más populares y correctas. ¿Dónde poner el límite? El objetivo de esta comunicación es poner en evidencia la proliferación de este tipo de normas sobre discurso del odio en España y en Europa y analizar, a través de casos reales, cómo su aceptación nos está llevando a asumir como normal la censura. Se trata de normas generalmente imprecisas, poco claras y que habitualmente se aplican de manera arbitraria, lo que, además, provoca una gran inseguridad jurídica. En esta comunicación se pretende demostrar que estas leyes implican una clara, desproporcionada e inaceptable limitación a la libertad de expresión. Algo que debemos combatir.

(Para la realización de este trabajo, además de referirnos a otros autores como Coleman, Pérez Madrid, W. Bull, etc. Se hará un repaso legislativo y jurisprudencial.)

**Id:** 22661

**Title:** News diversity for diluting disinformation: a fundamental rights perspective

**Session Type:** Individual submission

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**Abstract:** With the EU elections coming up in May, the European Commission is urging the signatories of the EU self-regulatory Code of Practice on disinformation to step up their game (European Commission, 2019). In September 2018, Google, Facebook, Twitter, Mozilla and the advertising sector committed themselves to contribute to solutions to the challenges posed by the dissemination of “verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm” (European Commission, 2018). ‘Voluntarily’ drawn up by the industry, the Code aims to achieve the objectives set out in the April 2018 Commission’s Communication on “Tackling online disinformation: a European approach”. In the latter, four overarching principles were put forward to guide any action in that respect, one of which being: “to promote diversity of information to enable citizens to make informed decisions based on critical thinking” (European Commission, 2018). The aforementioned Internet giants accordingly committed to invest in features and tools that make it easier for people to find diverse perspectives about topics of public interest (‘EU Code of Practice on Disinformation’, 2018). That, however, seems to remain just a promise so far. Indeed, from their recently submitted progress reports, the Commission concluded that, as of yet, user empowerment mechanisms are insufficiently being deployed and additional action will have to be taken by the start of the electoral campaign (European Commission, 2019).

Against this background, the question arises whether and how the argument that enhancing news diversity might “uncover, counterbalance, and dilute disinformation” (European Commission, 2018) is underpinned by a ‘right to diverse information’, stemming from article 10 of the European Convention on Human Rights and article 11 of the EU Charter of Fundamental Rights. While it has been argued that a diverse news offer fosters public debate, ultimately securing democracy (UN Special Rapporteur on Freedom of Opinion and Expression et al., 2017), this paper will explore whether the right to freedom of expression and information and the positive obligations stemming from the above-mentioned articles, include a right to diverse information – in particular in times of elections – and, hence, require stronger measures than an industry-drawn code of conduct in order to tackle disinformation. In order to uncover this, human rights instruments, policy documents, case-law and doctrine will be examined and interdisciplinary input from political and social sciences will be included.

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**Id:** 22874

**Title:** A Decade of CoE Digital Constitutionalism Efforts: Human Rights and Principles Facing Internet Privatized Regulation and Multistakeholder Governance

**Session Type:** Individual submission

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**Abstract:** While attempts to conceptualize normative developments in the online environment are almost contemporary with first efforts to define and adopt Internet-related policies since the mid-90s (Celeste 2019), a more holistic definition of the concept of digital constitutionalism was only recently proposed as the set of various efforts “to articulate a set of political rights, governance norms, and limitation on the exercise of power on the Internet” (Gill et al. 2015). Since then, a growing number of scholarly work adopted this umbrella definition to explore more in depth the contribution of specific actors to digital constitutionalism (see, e.g., Padovani & Santaniello 2018).

This proposal addresses the case of the Council of Europe (CoE) as a major contributor in this framework. In the last decade, the CoE has adopted no less than 34 soft law instruments specifically dealing with the online environment. While other entities such as ‘Data Protection’ and ‘Cybercrime’ have concentrated on the international Treaties they respectively have in charge, the ‘Media and Internet Governance’ Division seems to have balanced the non binding nature of its own instruments with their quantity, their variety, and the width of their scope.

The proposed paper analyzes this true fabric of international soft law for the online environment that this CoE Division has become. It is structured around three main research questions: why the turn to such an intense activity in 2006; the kind, scope and substance of the considered 34 soft law instruments and especially the reasons for this choice of non binding instruments; the cooperation and tensions that punctuated the drafting and adoption of the considered instruments during the ten years period.

The multidisciplinary approach draws from communication studies, international and human rights law, political science and international relations. It shows a strong empirical dimension, based on data collection through interviews, document analysis and archival research, and enriched by the author’s unique experience of participant observation, from 2005 to 2013, to different CoE committees of experts.

The paper shows that CoE digital constitutionalism efforts and results cannot be isolated from both endogenous transformations and exogenous shifts that intensified in post-WSIS Internet governance. The former relates to the internal transformations of International organizations, as also confirmed in the literature in other global governance sectors. The latter is a direct consequence of the shift in how human rights and principles are envisaged and debated - from the traditional focus

on state obligations and state enforcement to an increasing involvement of private actors to play a prominent role - accompanied by a shift to multistakeholderism.

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**Id:** 22994

**Title:** Cultural Commons: An Examination of Lebanese People's Knowledge of Copyright

**Session Type:** Individual submission

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**Abstract:** Among the Arab countries, Lebanon was the first to legislate a copyright law in 1924 besides signing and joining a number of international conventions such as the Berne Convention for the Protection of Literary and Artistic Works, Universal Copyright Convention and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. The 1924 copyright law was only amended in 1999 when the Lebanese parliament issued an Act replacing chapter VII of the 1924 Act.

While Lebanon has been on the forefront of copyright legislation in the Arab world, it still does not have a copyright law to deal with online material and the sharing of digital information on social media platforms. Add to that, and although many studies exist on copyright (Abdallah, 2013; Obeid, 2001; Rabah, 2001), none of these studies assesses Lebanese people's awareness of the law in Lebanon. This study, therefore, investigated the Lebanese people's awareness and knowledge concerning copyright and the use of the copyrighted material online. Moreover, this study offers a framework and suggestions for a new copyright law for the country - noting that the current law was issued in 1999 before the existence of the Internet in Lebanon.

To investigate the topic, the study used both the quantitative and qualitative research methods. A questionnaire was sent out and filled in by 533 respondents in the winter of 2018. The questionnaire asked about the use of social media, knowledge about the copyright law, awareness of copyright and respect of online copyright material. For the qualitative research method, face to face semi-structured in-depth interviews were conducted with parliament members and copyright lawyers including member of parliament Georges Okais, judge Charbel El Helo, lawyer Joseph Chamoun and lawyer Dolly Farah. The interviews covered the law's application, hindrances, complications and shortcomings. The questionnaire's results were also shared with the interviewees to get their feedback and recommendations for the putting together of a framework for a new copyright law in Lebanon.

Findings of the questionnaire showed a lack of knowledge concerning the online copyrighted material despite the fact that the Lebanese were in general aware of copyright as a concept. Findings also showed the nonchalance of the Lebanese who they do not file complaints against

copyright violators. The findings demonstrated as well that Lebanese know that they should take permission to use others' work but they do not. They do not apply the rules. The study revealed that age and education were not major factors when it came to knowledge about copyright. More importantly, it showed the urgent need for the suggested copyright law – an initiative that was welcomed by the interviewed law makers and members of parliament.

**Id:** 23074

**Title:** Retos legislativos de la publicidad interactiva en la televisión híbrida

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**Abstract:** La televisión e Internet son dos medios claves desde un punto de vista publicitario: año tras año, su liderazgo en términos de inversión publicitaria así lo constata (Infoadex, 2018). Los avances tecnológicos han transformado las formas de consumo y acceso a los tradicionales medios de comunicación y han posibilitado el desarrollo de nuevos formatos publicitarios. Convergen los medios y las acciones de comunicación se hibridan. En este contexto, la progresiva introducción de la televisión inteligente –Smart TV– y el también progresivo grado de penetración del estándar Hybrid Broadcast Broadband (HbbTV) han facilitado la creación de nuevos servicios que utilizan de manera complementaria la conectividad broadcast a través de la TDT y la conectividad broadband a través de Internet (Uteca, 2018).

Nacido e impulsado por la industria audiovisual europea, en España el conocimiento y uso del HbbTV se incrementa progresivamente al ritmo del factor de convergencia (Boronat, Montagud, Marfil y Luzón, 2018). Televisores conectados, decodificadores y dispositivos multipantalla posibilitan experiencias más interactivas y personalizadas y, también, de monetización y control de la actividad del telespectador que interactúa con los contenidos publicitarios (Fondevila, Botey, Rom y Vila, 2018) con los consiguientes riesgos en términos de privacidad del usuario (Irion y Helberger, 2017). En un contexto de revisión y actualización de la normativa europea en materia audiovisual y de privacidad, ¿hasta qué punto el legislador comunitario y estatal contempla los riesgos que esta convergencia entraña para los destinatarios de estas nuevas modalidades de publicidad televisiva interactiva?

El objetivo del presente estudio es identificar, describir y analizar los retos legislativos de la publicidad interactiva en la nueva televisión híbrida. ¿Qué normativa regula la publicidad televisiva interactiva difundida a través del HbbTV? ¿Se contempla este tipo nuevo tipo de publicidad en la nueva normativa en materia audiovisual, de privacidad en el entorno digital y de protección de datos

personal? Mediante un modelo mixto que combina la metodología descriptiva y analítica, el trabajo presenta un análisis del contenido de la legislación comunitaria y estatal en materia de servicios audiovisuales, publicidad y privacidad en el entorno digital aplicable a la publicidad interactiva difundida a través del HbbTV.

Los resultados de la investigación constatan una carencia de regulación que contemple específicamente el HbbTV y, en consecuencia, la publicidad interactiva difundida a través de la televisión híbrida. Sobre la base de los resultados obtenidos, el trabajo concluye con una síntesis del marco jurídico básico aplicable a esta modalidad publicitaria y una serie de propuestas para paliar los déficits en la regulación de la publicidad interactiva en HbbTV.

**Id:** 23096

**Title:** La privatización de los derechos en el entorno digital

**Session Type:** Individual submission

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**Abstract:** Conciliar los legítimos intereses de las empresas privadas que ostentan un papel central en el ecosistema digital con los derechos de los ciudadanos, y especialmente con sus derechos fundamentales a transmitir y recibir informaciones y opiniones con total libertad es cada vez más complejo en el ecosistema digital.

A ello se añade una posición respecto al aseguramiento de estos derechos por parte de los poderes públicos estatales limitada. Las razones son variadas, pero podíamos destacar: 1) el carácter transnacional de la sociedad digital impide la aplicación de las regulaciones estatales que siguen el principio de territorialidad; 2) las iniciativas regulatorias en Internet de carácter transnacional surgidas en el marco de las organizaciones internacionales tropiezan con el modelo regulatorio imperante basado en la gobernanza a través de diversas entidades privadas; 3) la tradición regulatoria en el ámbito de la comunicación ha considerado que la función que debe desarrollar el Estado es meramente garante del ejercicio de las libertades por los particulares, pues toda intervención se ve como injerencia o incluso censura.

Ante esta situación, los grandes gigantes de Internet se encuentran en una posición de dominio cuasimonopolístico (algunos de ellos como Google o Facebook, sin el cuasi), y adquieren un poder sustitutivo del poder de Estado pues establecen las condiciones de ejercicio de las actividad en Internet a través de sus condiciones de uso o términos de servicio, llegando a actuar con funciones cuasijurisdiccionales para valorar si se está ejercitando las libertades de información y opinión de forma correcta o no, como pone de manifiesta el ejercicio del derecho al olvido por parte de Google o las consecuencias del artículo 13 de la propuesta de Directiva comunitaria sobre derechos de autor en el mercado único digital.

Autores como Morozov destacan la censura llevada a cabo por el sector privado y su propio poder regulador en el desarrollo de términos de servicio, normas y prácticas que rodean el filtrado y eliminación de determinados contenidos en línea. Los gobiernos sencillamente no son capaces de emprender la compleja tarea de reglamentación de Internet, que ha dejado a las empresas privadas su carga y su poder regulador. Intermediarios como Google, You Tube y Facebook han logrado un dominio que, en términos prácticos, significa que los activistas digitales están obligados a comprometerse con estos mecanismos si buscan audiencias globales. Un ejemplo aquí es la confianza de la comunidad de derechos humanos en You Tube, Facebook, Twitter y otros operadores comerciales después de una ola inicial de sitios independientes que no pudieron competir por la atención de las masas.

Incluso la efectividad de los mensajes alternativos es limitada debido a que las formas de comunicación/información mayoritarias son las redes sociales donde se acentúa la idea de la disonancia cognoscitiva. Esto es contrario a la idea de pluralismo como bien social, entendido que el pluralismo requiere de intercambio de ideas.

**Id:** 23184

**Title:** PRIVACY IN PUBLIC SPHERE WITHIN DECISIONS FROM ECrtHR AND TURKISH SUPREME COURT ON COMMUNICATION, TECHNOLOGY AND HUMAN DIGNITY

**Session Type:** Individual submission

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**Abstract:** The improvement of mobile phones in the last 10 years, made the access of people to internet easier and faster. However, this rapid distribution of information brought up some legal issues along. The protection of personal data and privacy in the digital world became the most discussed subjects in the last years.

According to European Data Protection Supervisor (2015), 'Opinion 4/2015 Towards a New Digital Ethics Data, Dignity and Technology', privacy is one of the fundamental human rights which is an integral part of human dignity. As it is stated inside the constitutions of many democratic countries, the respect and protection of human dignity is the duty of all state authority. Therefore, data protection and privacy have constitutional dimensions on the basis of the guarantees of human dignity and personhood.

Privacy can be described as one's own space which he/she doesn't want to share with the public and limit the access of the others to his/her personal information, data or secrets. Privacy cannot be localised as home or family, which is associated with certain procedures and it can be in everywhere, also in the middle of public places. By the technological developments, impact of digital technology on right to privacy has changed. The people are watched 24 hours by cameras in streets or inside buildings. Companies monitor their staff's emails and web searching habits.

Under these conditions there is a need to balance the right to privacy and the public interest. In the last years there are many cases from the ECrtHR on breach of privacy which is regulated in article 8 of the European Convention on Human Rights. As it is stated, everyone has the right to respect for his private and family life, his home and his correspondence. Privacy is regulated under the article 20 of Turkish Constitution and in some other codes. For example, Turkey has Data Protection Code which is very new since 2016 in accordance to EU Directives.

For the protection of the individuals, the effective application of international law in different countries is very important. Therefore, there is a need to harmonise national legislation with international regulations and to take the international court decisions into account in national States. In this presentation, the effect of communication technology on human dignity and privacy in public sphere will be discussed within decisions from ECrtHR and Turkish Supreme Court.

**Id:** 23486

**Title:** HACKING, LEAKING AND DATA DUMPING: BARTNICKI V. VOPPER AND THE STILL-UNSETTLED LAW OF REPUBLICATION

**Session Type:** Individual submission

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**Abstract:** One of the disquieting effects of the Digital Age is the ease with which private data can be illegally captured by hackers and revealed by leakers or intermediaries. The laws in most countries provide strict punishments for those who engage in computer crimes involving the acquisition of private material. The law is less clear, however, about the extent to which people can be civilly or criminally liable for publishing or re-publishing information that was illegally obtained by someone else.

In the United States, a key Supreme Court precedent seems to give publishers strong protections in these situations. In *Bartnicki v. Vopper* (2001), the Court held that those who disclose illegally acquired information are protected by the First Amendment, provided: 1) they played no part in the illegal acquisition of the material, and 2) the material addresses a matter of public concern.

In media reports about hacking and leaking incidents, journalists and commentators regularly overstate the extent of *Bartnicki*'s protections, treating it as essentially a grant of absolute immunity and overlooking either the "public concern" condition noted above or the concurring opinion by Justice Breyer, which narrowed the scope of the ruling. They also commonly overapply *Bartnicki* by referencing it in coverage of cases like *Bollea v. Gawker* (involving a leaked sex tape) where it has limited relevance.

These flawed media accounts mask the fact that *Bartnicki* is simply not the robust, anchoring precedent that many people assume; it is, rather, a cautious, narrow and somewhat ambiguous first step by the Court into this domain, and a precedent whose utility and durability are even more uncertain in light of new technologies and changes in the makeup of the Court. New cases involving the republication of stolen or hacked information are arising every day, from Donald Trump's leaked tax returns to the DNC's hacked emails to Jeff Bezos's intercepted text messages. After 18 years, the law is still not clear about who has immunity in these situations.

There is an urgent need to fill these gaps and to provide some legal certainty by addressing some unanswered questions: Is *Bartnicki* protection limited to journalists? Can organizations that acquire and then "dump" huge caches of data always rely on *Bartnicki*? What constitutes a matter of public concern? What level of constitutional scrutiny should apply to laws limiting republication of stolen data?

The purpose of this paper is not to outline a normative solution but to help initiate that process by providing a comprehensive assessment of judicial interpretations of *Bartnicki*. The authors will conduct a case analysis and thematic analysis of all federal and state court decisions applying *Bartnicki* to understand how courts have answered the questions the Supreme Court left open in 2001. The ultimate goal is to be able to identify the remaining points of disagreement or

uncertainty (in terms of outcomes, doctrine and theory) and to establish a roadmap for scholars, judges and policymakers as they seek to bring clarity to this important but still-unsettled area of law.

**Id:** 23625

**Title:** 'Centuries old and tradition bound': Can Constitutions Adapt to Guarantee Fundamental Rights Online'

**Session Type:** Individual submission

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**Abstract:** Internet, and new communication technologies, in particular social media, have proven to be a challenge to constitutionalism in general and to fundamental rights in particular. Constitutional guarantee of rights such as the right of citizens to freely impart and receive information and opinions online is mostly exercised through a handful of social media platforms controlled by a handful of private companies that in practice, have tremendous power to set the conditions for expression in said platforms (Rosen, 2011; Klonick, 2018). Another example of this is personal and data privacy protection, under pressure by a business model based on pervasive surveillance of people and the extraction of profit through personal data processing (Zuboff, 2015) which in turn, also gives these companies tremendous power to decide the degree of privacy people are afforded (Cohen, 2012; Hildebrandt, 2017).

One assumption that has emerged around the conflicts above described is presuming that the most veteran constitutions, those that are “centuries-old and tradition bound” (McKeown, 2014), face the greatest challenges to adapt to a new reality and to effectively guarantee rights in the online context than more novel constitutional frameworks, for example in relation to the principle of territoriality applied to platforms that are not constrained by physical space or national borders (Balkin, 2018); or state action aimed at guaranteeing the capacity to speak (Yemini, 2019) by trying to interfere as little as possible and by seeking a balance between the protection of both privacy and expression online (Youm & Park, 2016).

This work analyzes jurisprudence from the Court of Justice of the European Union in relation to articles 7, 8 and 11 of the EU Charter of Fundamental Rights from a comparative perspective with a selection of jurisprudence from Member States in order to determine if indeed there has been a qualitative leap that has allowed the European Union system to adapt and face the aforementioned challenges successfully in comparison with older national constitutional orders.

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Zuboff, S., Big Other, Surveillance Capitalism and the Prospects of an Information Civilization, Journal of Information Technology, 30, 75-89, 2015.

**Id:** 23673

**Title:** Tracing the Tensions between Disputed Rights and Contested Truths in the Context of Right to Information: Turkey's Case

**Session Type:** Individual submission

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**Abstract:** Many valuable studies question the nature and features of the interaction between government and citizen in the modern state structure. The right to information is one of the rights which play leading role to promote the interaction between government and citizen. This right has important ties with the freedom of thought and expression as well as citizen's right to ask their government to be accountable. It is a "right" with political and social implications: On the one hand, it can be a measure of the openness of the society, on the other hand it can give citizens a sense of ownership, and serve confidence in the legitimacy and appropriateness of public administration.

In Turkey, the regulations and practices related with the right to information, as the instrument of making the acts and actions of the government "public", came to the agenda on the beginning of 2000's. The law on the right to information was enforced in 2004. This presentation aims to investigate legal procedures and practices of the right to information in Turkey. The most significant practices of the right to information and the main problems encountered in the application process during the period 2004-2018 will be handled and elaborated by considering the worldwide experiences and the discussions on the issue. Within that respect, this study will also explore the decisions of the Council of Cassation of Right to Information in Turkey, as the final authority, which reviews the decisions related with partial or full refusal of access to information and documents by regarding the limitations in the legislation.

The statistical data on the applications for the access to information is made to public by the Turkish Grand National Assembly every year. Also, the decisions of the Council of Cassation of Right to Information are regularly published on its website. In our study, we will analyze this data and information and try to determine certain trends and explore some disputed issues in the practices of the right to information within the period between 2004-2018. Besides the data and the information related with the right to information, we consider the assessments and criticisms of the academicians, lawyers and experts on the practices and decisions related with the right to information in our analysis. Finally, the last part of the presentation is reserved for evaluations and recommendations based on the findings of the study, which can serve to advance the right to information and encourage the interaction between the citizens and the government.

**Id:** 23814

**Title:** Mercado relevante y pluralismo en la televisión y radiodifusión digital online.

**Session Type:** Individual submission

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**Abstract:** El estudio analiza las categorías del mercado relevante y el pluralismo estructural, entendiendo por tal el conjunto de mecanismos que, sin afectar el contenido, permiten conocer la diversidad de mensajes y efectuar un control de la concentración de los medios. En el caso chileno, tal función le corresponde a la Fiscalía Nacional Económica (FNE), la que recibe información relativa al cambio de propiedad de cualquier medio de comunicación, y cuyo informe favorable es necesario para las operaciones que involucren a medios titulares de una concesión (radio y televisión). En ese contexto cabe destacar, que el estudio antecesor a la presente propuesta[1], consideró aspectos fundamentales concluyentes como la escasez del espectro radioeléctrico, que siendo el motivo más poderoso para la intervención estatal se ha visto sin embargo alterado por la digitalización de la televisión y la radio y por el desarrollo de Internet. Un ejemplo de lo anterior ha sido Noruega el primer país del mundo en terminar las concesiones radioeléctricas para las radios FM, proceso que comenzó en enero de 2017, lo que supone el principio del fin de las emisiones por dicha frecuencia tradicional. La iniciativa del país nórdico procura que existan más canales de radiodifusión y con ello más diversidad de contenidos. La industria de la televisión de pago –de cable y satelital- también experimenta importantes cambios, pues ha surgido un fenómeno conocido en Estados Unidos como «cord cutting». Dicho término da cuenta del retiro a gran escala de clientes de servicios de televisión de pago –en especial del cable- en favor de plataformas de Internet como Netflix, Amazon, Hulu y YouTube, por citar algunas. Dicha tendencia se advierte que podría observarse en países como Chile en donde la alta penetración de Internet[2], así como la sofisticación creciente de los modelos de conexión y la velocidad de la misma, pone de manifiesto dos aspectos fundamentales: la familiaridad general de los chilenos con el uso de la Red y el ajuste que esto implica en la democratización de la información.