

Towards a Free and Open Internet Search Infrastructure: How Law and the Legal Experts can Help?

OSSYM 2020, Monday 12 October 2020

Dr. Olivia Tambou, Associate Professor at the University
Paris-Dauphine

Introduction

- Need for a paradigm shift for building a Free and Open Internet infrastructure :
 - Nothing is totally free
 - Search of Engine are closed by Intellectual Property Rights

- What is the State of Play on Law and Search Engine ?
- What are the proposals on the table you should be aware of?
- What are the three main legal challenges ?
- What kind of legal concepts could be useful ?
- What key legal principles should we consider?

How Law and
the Legal
Experts can
Help?

What is the State of Play on Law and Search Engine ?

- No legal definition of what is a Search Engine
 - **Digital content provider** : “a provider of content which consists in finding information published or placed on the internet by third parties, indexing it automatically, storing it temporarily and, finally, making it available to internet users according to a particular order of preference »
CJUE Google Spain c. Costeja
 - Variety of Legal Status depending on the functionality of the Search Engine

What is the state
of play on Law
and Search
Engine ?

Variety of the
Legal Status of
Search Engine

Information society services

Technical intermediaries

Data controller

Emerging concept of online Platform

What is the state of play on Law and Search Engine ?

Overlapping of legal qualification implies overlapping of legal regime

Specific obligations

Liability

What is the state of play on Law and Search Engine ?

Importance of the normative power of the stakeholders

**Self regulation
Certification**

Contracts

- What are the new proposal on the table ?

Digital Services Act (DSA)

- Self regulation is not enough urgent need for a legal Framework
- Focus on the gatekeepers, “structuring online platform”

The European data strategie and the future Data Act

Cross-sectoral governance framework of common European Data spaces

Nine common European data spaces in strategic sectors and domain of public interest

Industrial data

Green Deal data

Mobility data

Health data

Financial data

Energy data

Agricultural data

For public administrations

Skills

Legislative proposal

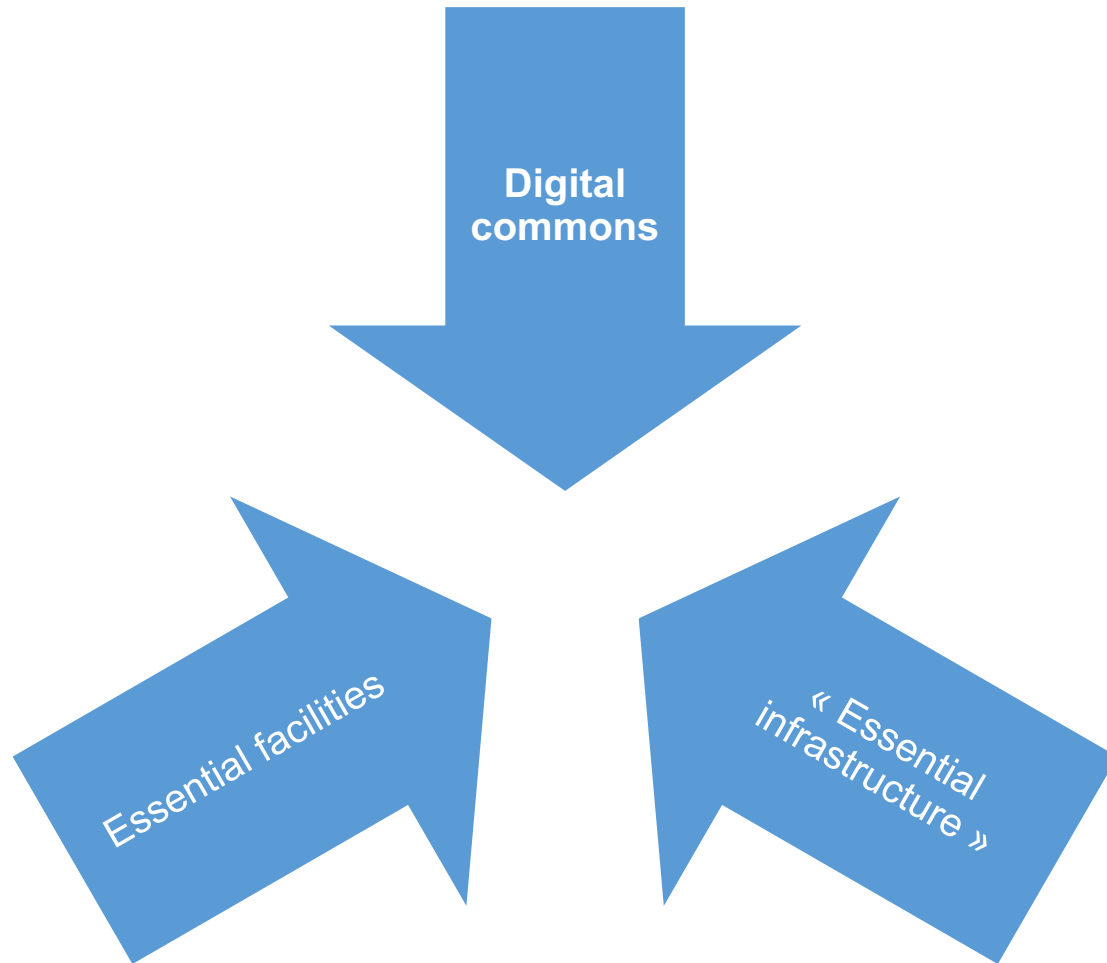
Framework for the governance of the European data spaces, 2020

Data Act, 2021 (?)
Data sharing

What are the 3 main legal challenges ?

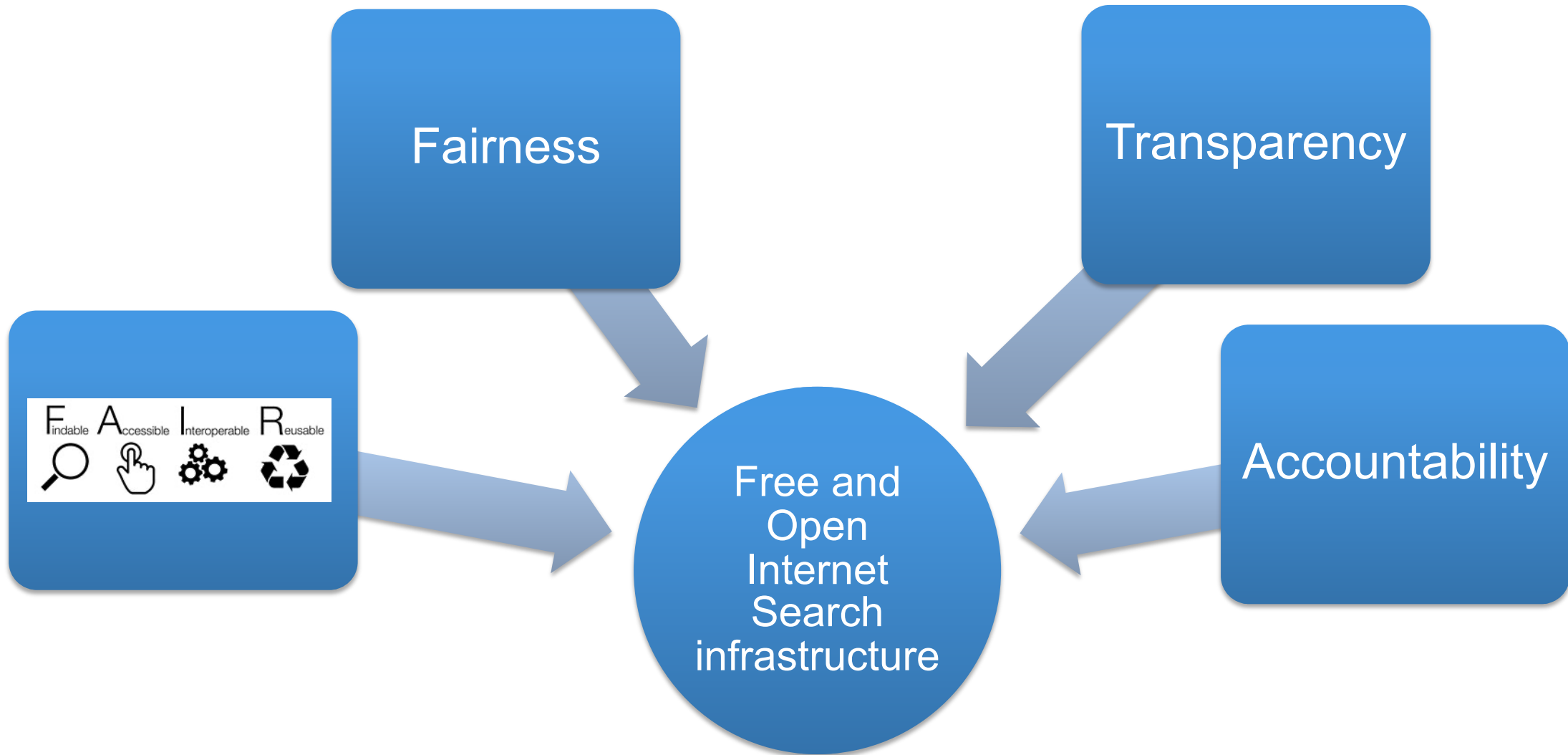
- Interplay between Public and Private law approach
- The need for a multilevel approach : EU law, National laws and maybe international Law
- European Digital Law is still under construction :
 - Technological neutral approach of Law :
 - AI, Blockchain, Cloud Computing, Data sharing
 - Legal vacuum and legal uncertainty but also legal opportunity

What kind of legal concepts could be useful?



- Lack of consideration on PUBLIC or non-profit Search infrastructure
- Public/Commons Partnership (PCP) ?
- Could we consider a legal status for Essential Digital Plattform:
 - Concretisation of European digital sovereignty
 - Obligations of public service
 - Specific financial framework

What key legal principles should we consider ?



What does it say about the design of the Free and Open Internet Search Infrastructure ?

