

Programa de Pós-graduação *Stricto Sensu* em Direito da Regulação Plano de Ensino

- **Disciplina:** Alternativas Regulatórias
- **Curso:** Mestrado
- **Tipo Disciplina:** Eletiva Comum
- **Carga Horária:** 45h (3 créditos)

- **Ementa:**

Processo de Digitalização de Serviços Privados: Conteúdo, Varejo (E-Commerce) e Mercado Financeiro. Dados como Novo Elemento de Diferenciação Competitiva. Nova Política Regulatória. Eliminação de Falhas de Mercado Tradicionais. Alteração nas Variáveis de Mercado a Serem Reguladas por Autoridades Públicas. Reestruturação das Instituições Regulatórias. Mudança de Matrizes de Habilidade para Lidar com Nova Dinâmica Regulatória. Complexificação do Processo Regulatório.

- **Objetivos:**

O objetivo da disciplina é desenvolver a capacidade analítica de alunos de Direito para criar um instrumental capaz de entender as alterações mercadológicas decorrentes do ciclo de digitalização de diversos serviços tradicionais. Para tal, a disciplina irá trabalhar com um quadro de setores que estão sendo cada vez mais disponibilizados para consumidores por meio de plataformas digitais.

A disciplina proporcionará ao aluno a oportunidade de refletir criticamente sobre a transição dos instrumentos e do aparato regulatório que está sendo alterado no Brasil e no cenário internacional para lidar com a nova economia digital nos setores mais afetados pelo modelo de plataformas, assim como escrever artigos correlacionando a literatura apresentada ao longo do curso com temas de interesse do aluno.

- **Temas e Bibliografia:**

Regulação de OTTs de Vídeo: da TV por assinatura às OTTs

Bibliografia obrigatória:

GARCÍA LEIVA, M. Trinidad; ALBORNOZ, Luis. VOD service providers and regulation in the European Union: an audiovisual diversity approach. *International Journal of Cultural Policy*, 2020, p.1-15.

KOSTOVSKA, Ivana; RAATS, Tim; DONDEERS, Karen. The rise of the 'Netflix tax' and what it means for sustaining European audiovisual markets. *Innovation: The European Journal of Social Science Research*, v.33, no. 4, 2020. p. 423-441.

BALADRON, Mariela; RIVERO, Ezequiel. Video-on-demand services in Latin America: Trends and challenges towards access, concentration and regulation. *Journal of Digital Media & Policy*, v. 10, no. 1, 2019. p.109-126.

Bibliografia complementar:

SCHNITZER, Ben. Netflix: Canadian (Dis) Content. Competing Sovereignties and the Cultural Politics of Cultural Policy. *American Review of Canadian Studies*, v.49, no. 1, 2019. p.85-104.

ANCINE. Análise de Impacto Regulatório: Vídeo sob Demanda. 2019. Disponível em: https://www.gov.br/ancine/pt-br/assuntos/atribuicoes-ancine/regulacao/relatorios-analise-impacto/relatorio_de_analise_de_impacto_-_vod.pdf/view.

Regulação de plataformas, mídia e notícias

Bibliografia obrigatória:

FLEW, Terry; WILDING, Derek. The turn to regulation in digital communication: the ACCC's digital platforms inquiry and Australian media policy. *Media, Culture & Society Journal*. 2020.

TYNER, Andrew. The EU Copyright Directive: "Fit For The Digital Age or or Finishing It?". *Journal of Intellectual Property Law*, v. 26, 2, 2020.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION. Digital Platforms Inquiry - Preliminary report. Australia, 2018. p. 95-129. Disponível em: <https://www.accc.gov.au/focus-areas/inquiries-finalised/digital-platforms-inquiry-0/preliminary-report>.

Bibliografia complementar:

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION. Digital Platforms Inquiry - Preliminary report. Australia, 2018. Disponível em: <https://www.accc.gov.au/focus-areas/inquiries-finalised/digital-platforms-inquiry-0/preliminary-report>.

UK GOVERNMENT. The Cairncross Review: a sustainable future for journalism. UK, 2019. Disponível em: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review.pdf.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION. Digital Platforms Inquiry - Final report. Australia, 2019. Disponível em: <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-reportt>.

Música, direitos autorais e o streaming

Bibliografia obrigatória:

CHANDLER, Kaitlin. The Times They Are a Changin': The Music Modernization Act and the Future of Music Copyright Law. *Tul. J. Tech. & Intell. Prop.*, v.21, 2019. p.53-69.

HUNT, Warren. Marching to the Beat of the EU's Drum: Refining the Collective Management of Music Rights in the United States to Facilitate the Growth of Interactive Streaming. *Ind. J. Global Legal Stud.*, v.25, 2018. p.755-774.

Bibliografia complementar:

KJUS, Yngvar. License to stream? A study of how rights-holders have responded to music streaming services in Norway, *International Journal of Cultural Policy*. 2021.

KOWALKE, Caitlin. How Spotify Killed the Radio Star: An Analysis on How the Songwriter Equity Act Could Aid the Current Online Music Distribution Market in Failing Artists. *Cybaris Intell. Prop. L. Rev.*, v.6, 2015.

MASUR, Steven. Collective rights licensing for Internet downloads and streams: Would it properly compensate rights holders. *Vill. Sports & Ent. LJ*, v.18, 2011. P 39-62.

DE BARROS, Carolina Geissler Miranda, OLIVEIRA, Matheus Andrade. Gestão Coletiva de Direitos Autorais nas Plataformas de “Streaming”. *Revista de Direito, Inovação, Propriedade Intelectual e Concorrência*, v.2, 2016. p.99-114.

Regulação de Ed Tech

Bibliografia obrigatória:

HARLEY, Diane; LAWRENCE, Shannon. The regulation of e-learning: New national and international policy perspectives. University of California Berkeley, Center for Studies in Higher Education. 2007. Disponível em: <https://escholarship.org/uc/item/74q6c70t>.

SELWYN, Neil, *et all*. What’s next for Ed-Tech? Critical hopes and concerns for the 2020s. *Journal of Learning, Media and Technology*. v.45-1, 2020.

REGAN, Priscilla; JESSE, Jolene. Ethical challenges of edtech, big data and personalized learning: Twenty-first century student sorting and tracking." *Journal of Ethics and Information Technology*, v.21, no. 3, 2019. p.167-179.

Bibliografia complementar:

MCGRATH, Cormac; ÅKERFELDT, Anna. *Educational technology (EdTech): Unbounded opportunities or just another brick in the wall?* pp. 143-157. In LARSSON Anthony; TEIGLAND, Robin. Digital Transformation and Public Services. London: Routledge, 1ª Edição. 2019.

SANCHO-Gil, Juana, *et all*. Moving beyond the predictable failure of Ed-Tech initiatives. *Journal of Learning, Media and Technology*, v. 45, no. 1, 2020. p.61-75.

Regulação de meios de pagamento: do cartão ao PIX

Bibliografia obrigatória:

SILVA, Ricardo Antunes; CRUZ, Caroline Quaresma Piccinato da. O Impacto Do Novo Ecosistema Democrático de Pagamento Instantâneo (PIX) no Sistema Financeiro Nacional. *Revista jurídica da Universidade do Sul de Santa Catarina*, v. 10, n. 21, 2020. P.195-208.

TOH, Ying Lei; TRAN, Thao. How the COVID-19 Pandemic May Reshape the Digital Payments Landscape. FEDERAL RESERVE BANK OF KANSAS CITY, 2020. Disponível em: <https://kansascityfed.org/documents/7581/psrb20tohtran0624.pdf>.

Bibliografia complementar:

BANK FOR INTERNATIONAL SETTLEMENTS. BIS Annual Economic Report 2020 - Central banks and payments in the digital era. 2020. p. 67-95. Disponível em: <https://www.bis.org/publ/arpdf/ar2020e3.pdf>.

WORLD BANK. Payment Systems Worldwide a Snapshot Summary Outcomes of the Fifth Global Payment Systems Survey. 2020. Disponível em: <https://documents1.worldbank.org/curated/en/115211594375402373/pdf/A-Snapshot.pdf>.

KLEIN, Aaron. China’s Digital Payments Revolution. Brookings Institution's Economic Studies, 2020. Disponível em: <http://euro.ecom.cmu.edu/resources/elibrary/epay/ChinaPaymentRevolution2020.pdf>.

PEREZT, Adriana Hernandez; BRUSCHITT, Claudia. A Indústria de Meios de Pagamento no Brasil: movimentos recentes. Insper. 2018. Disponível em: <https://www.insper.edu.br/wp-content/uploads/2018/09/industria-meios-pagamento-brasil-movimentos-recentes.pdf>.

CANNER, Glenn; ELLIEHAUSEN, Gregory. Consumer Experiences with Credit Cards. Federal Reserve Bulletin, v.99, n.5, 2013. Disponível em: <https://www.federalreserve.gov/pubs/bulletin/2013/pdf/consumer-experiences-with-credit-cards-201312.pdf>.

Regulação de Investimento: *advices* e proteção ao investidor

Bibliografia obrigatória:

COMISSÃO DE VALORES MOBILIÁRIOS. Edital de Audiência Pública No 03/19. Opções regulatórias relacionadas à modernização da norma que dispõe sobre os agentes autônomos de investimento – AAI e ao aprimoramento da atividade de distribuição de valores mobiliários. 2019. Disponível em: http://conteudo.cvm.gov.br/audiencias_publicas/ap_sdm/2019/sdm0319.html.

COMISSÃO DE VALORES MOBILIÁRIOS. Análise de Impacto Regulatório (AIR) - Requisito de exclusividade nas atividades de Agentes Autônomos de Investimento. Disponível em: <https://www.gov.br/cvm/pt-br/centrais-de-conteudo/publicacoes/estudos/analise-de-impacto-regulatorio-air-requisito-de-exclusividade-nas-atividades-de-agentes-autonomos-de-investimento-assessoria-de-analise-economica-e-gestao-de-riscos-da-cvm-novembro-2020/view>.

CHAROENWONG, Ben; KWAN, Alan; UMAR, Tarik. Does regulatory jurisdiction affect the quality of investment - Adviser regulation? *American Economic Review*, v. 109, no. 10, 2019. p. 3681-3712.

Bibliografia complementar:

BRUMMER, Chris. Disruptive technology and securities regulation. *Fordham L. Rev.*, v. 84, 2015.

EGAN, Mark. Brokers versus retail investors: Conflicting interests and dominated products. *The Journal of Finance* 74, no. 3, 2019. p. 1217-1260.

LAZARO, Christine; EDWARDS, Benjamin. The Fragmented Regulation of Investment Advice: A Call for Harmonization. *Michigan Business and Entrepreneurial Law Review*, v. 4, no. 1, 2015.

Regulação de *Open Banking*

Bibliografia obrigatória:

REMOLINA, Nydia. Open Banking: Regulatory Challenges for a New Form of Financial Intermediation in a Data-Driven World. SMU Centre for AI & Data Governance Research Paper 2019/05, 2019. Disponível em: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3475019.

RIBEIRO, Alexandre Ogêda, BAGNOLI, Vicente. Open Banking: Impactos e Desafios no Mercado Financeiro. *Constituição, Economia e Desenvolvimento: Revista Eletrônica da Academia Brasileira de Direito Constitucional*, v. 12, no. 23, 2020. p.219-242.

Bibliografia complementar:

VEIGA, Fábio Da Silva; GIBRAN, Sandro Mansur; BONSERE, Silvana Fátima Mezaroba. Open Banking: Expectativas e Desafios para o Mercado Financeiro No Brasil. *Administração de Empresas em Revista*, v. 1, no. 15, 2020. p.203-226.

COLANGELO, Giuseppe, BORGOGNO Oscar. Consumer Inertia and Competition-sensitive Data Governance: The Case of Open Banking. *Journal of European Consumer and Market Law*, v. 9, no. 4, 2020.

LEONG, Emma. Open Banking: The Changing Nature of Regulating Banking Data-A Case Study of Australia and Singapore. *Banking & Finance Law Review*, v. 35. N. 3, 2020. p.443-469.

BANK FOR INTERNATIONAL SETTLEMENTS. Report on open banking and application programming interfaces. 2019. Disponível em: <https://www.bis.org/bcbs/publ/d486.pdf>.

TRINDADE, Manoel Gustavo Neubarth. Open Banking: Trinômio portabilidade–interoperabilidade–proteção de dados pessoais no âmbito do sistema financeiro. *Revista Jurídica Luso-Brasileira*, 7 n.4, 2021. p.1159-1189. Disponível em: http://www.cidp.pt/revistas/rjlb/2021/4/2021_04_1159_1189.pdf.

Regulação de e-money

Bibliografia obrigatória:

NABILOU, Hossein; PRUM, Andre. Central Banks and Regulation of Cryptocurrencies. *Review of Banking and Financial Law (Forthcoming)*, University of Luxembourg Law Working Paper No. 2019-014, 2019. Disponível em: <https://ssrn.com/abstract=3421417>.

LEE, David Kuo Chuen; YAN, Li; WANG, Yu. A global perspective on central bank digital currency. *China Economic Journal*, v.14, no. 1, 2021. p.52-66.

LARUE, Louis; FONTAN, Clément; SANDBERG, Joakim. The promises and perils of central bank digital currencies. *Revue de la régulation. Capitalisme, institutions, pouvoirs*, v. 28, 2020.

Bibliografia complementar:

BANK FOR INTERNATIONAL SETTLEMENTS. Central bank digital currencies: foundational principles and core features. 2020. Disponível em: <https://www.bis.org/publ/othp33.pdf>.

KAHN, Charles M; RIVADENEYRA, Francisco; WONG, Tsz-Nga. Should the Central Bank Issue E-Money? FRB St. Louis Working Paper No. 2019-3, 2019. Disponível em: <https://ssrn.com/abstract=3318871>.

HÄRDLE, Wolfgang Karl *et all*. Understanding Cryptocurrencies. *Journal of Financial Econometrics*, v. 18, Issue 2, 2020. p. 181–208.

NABILOU, Hossein. Testing the waters of the Rubicon: The European Central Bank and central bank digital currencies. *Journal of Banking Regulation*, v. 21, no. 4, 2020. p. 299-314.

ZETZSCHE, Dirk Andreas; BUCKLEY, Ross P.; ARNER, Douglas W. Regulating LIBRA: The Transformative Potential of Facebook’s Cryptocurrency and Possible Regulatory Responses. *European Banking Institute Working Paper Series 2019/44*, University of New South Wales Law Research Series UNSWLRS 19-47, University of Hong Kong Faculty of Law Research Paper No. 2019/042, University of Luxembourg Faculty of Law Research Paper, *Oxford Journal of Legal Studies (Forthcoming)*, 2019. Disponível em: <https://ssrn.com/abstract=3414401>.

Regulação Financeira: fintechs/bigtechs

Bibliografia obrigatória:

OMAROVA, Saule T. Technology v Technocracy: Fintech as a Regulatory Challenge. *Journal of Financial Regulation*. v.6, no. 1, 2020. p.75-124.

PADILLA, Jorge. Big Tech 'Banks', Financial Stability and Regulation. 2020. Disponível em: <https://ssrn.com/abstract=3580888>.

OMAROVA, Saule T. Dealing with disruption: emerging approaches to fintech regulation. *Wash. UJL & Pol'y*, v.25, 2020.

Bibliografia complementar:

LEMMA, Valerio. *FinTech Regulation: Exploring New Challenges of the Capital Markets Union*. Springer Nature, 1ª ed. 2020.

BANK FOR INTERNATIONAL SETTLEMENTS. Fintech regulation: how to achieve a level playing field. 2021. Disponível em: <https://www.bis.org/fsi/fsipapers17.pdf>.

OFIR, Moran; SADEH, Ido. More of the Same or Real Transformation: Does FinTech Warrant New Regulation? 2020. Disponível em: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3531718.

LEMMA, Valerio. *FinTech Regulation: Exploring New Challenges of the Capital Markets Union*. Springer Nature, 1ª ed. 2020.

RODRÍGUEZ, Lucía Pacheco; ORTÚN, Pablo Urbiola. From FinTech to BigTech: an evolving regulatory response. *BBVA Research*. 2020. Disponível em: https://www.bbva.com/wp-content/uploads/2020/06/WP_From_FinTech_to_BigTech_an_evolutionary_regulatory_response_WB.pdf.

Regulação de plataformas e e-commerce

Bibliografia obrigatória:

KHAN, Lina The separation of platforms and commerce. *Columbia Law Review*, v.119, no. 4, 2019. p.973-1098.

Legislação:

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on contestable and fair markets in the digital sector (Digital Markets Act). Disponível em: <https://eur-lex.europa.eu/legal-content/en/TXT/?qid=1608116887159&uri=COM%3A2020%3A842%3AFIN>.

US CONGRESS. Bills to (i) provide that certain discriminatory conduct by covered platforms shall be unlawful, and for other purposes (<https://cicilline.house.gov/sites/cicilline.house.gov/files/documents/American%20Innovation%20and%20Choice%20Online%20Act%20-%20Bill%20Text.pdf>);

(ii) promote competition and economic opportunity in digital markets by eliminating the conflicts of interest that arise from dominant online platforms' concurrent ownership or control of an online platform and certain other businesses (<https://cicilline.house.gov/sites/cicilline.house.gov/files/documents/Ending%20Platform%20Monopolies%20-%20Bill%20Text.pdf>).

Bibliografia complementar:

GERADIN, Damien. What is a digital gatekeeper? Which platforms should be captured by the EC proposal for a Digital Market Act? 2021. Disponível em: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3788152.

COLOMO, Pablo Ibáñez. The Draft Digital Markets Act: a legal and institutional analysis. 2021. Disponível em: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3790276.

Regulação da Economia do Compartilhamento 1: os parceiros

Bibliografia obrigatória:

ACEVEDO, Deepa Das. Regulating employment relationships in the sharing economy. *Emp. Rts. & Emp. Pol'y J.*, v. 20, 2016. P.1-35

Bibliografia complementar:

FORDE, Chris, *et all.* The Social Protection of Workers in the Platform Economy. European Parliament, 2017. Disponível em: [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU\(2017\)614184_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/614184/IPOL_STU(2017)614184_EN.pdf).

CODAGNONE, Cristiano, *et all.* The Future of Work in the 'Sharing Economy'. Market Efficiency and Equitable Opportunities or Unfair Precarisation? Institute for Prospective Technological Studies, JRC Science for Policy Report, 2016. Disponível em: <http://www.bollettinoadapt.it/wp-content/uploads/2016/06/future-of-sharingeconomy-EU.pdf>.

Regulação da Economia do Compartilhamento 2: a sociedade

Bibliografia obrigatória:

EDELMAN, Benjamin; GERADIN, Damien. Efficiencies and regulatory shortcuts: How should we regulate companies like Airbnb and Uber. *Stan. Tech. L. Rev.*, v.19, 2015. P. 293-328.

BIDERMAN, Ciro. Regulating Ridesharing Services in São Paulo. International Transport Forum Discussion Papers, No. 2020/05, OECD Publishing, Paris. 2020. Disponível em: <https://www.itf-oecd.org/sites/default/files/docs/regulating-ridesharing-sao-paulo.pdf>.

Bibliografia complementar:

NIEUWLAND, Shirley; VAN MELIK, Rianne. Regulating Airbnb: how cities deal with perceived negative externalities of short-term rentals. *Current Issues in Tourism*, v.23, no. 7, 2020. p.811-825.

RAUCH, Daniel; SCHLEICHER, David. Like Uber, but for local government law: the future of local regulation of the sharing economy. *Ohio St. LJ* 76. 2015. P.901-963

MILLER, Stephen R. First principles for regulating the sharing economy. *Harv. J. on Legis.*, v.53, 2016. 147-202.

LI, Ziru, *et all.* An Empirical Analysis of On-Demand Ride Sharing and Traffic Congestion. Proc. International Conference on Information Systems, 2016. Disponível em: <https://ssrn.com/abstract=2843301>.

CADE. Efeitos concorrenciais da economia do compartilhamento no Brasil: A entrada da Uber afetou o mercado de aplicativos de táxi entre 2014 e 2016? Brasília, 2016. Disponível em: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/documentos-de-trabalho/2018/documento-de-trabalho-n01-2018-efeitos-concorrenciais-da-economia-do-compartilhamento-no-brasil-a-entrada-da-uber-afetou-o-mercado-de-aplicativos-de-taxi-entre-2014-e-2016.pdf>.

RAYLE, Lisa, *et all.* App-based, on-demand ride services: Comparing taxi and ridesourcing trips and user characteristics in San Francisco. University of California, Berkeley, Working Paper, 2014. Disponível em: https://www.its.dot.gov/itspac/dec2014/ridesourcingwhitepaper_nov2014.pdf.

Concorrência e plataformas digitais

Bibliografia obrigatória:

LIANOS, Ioannis. Digitalisation and Competition Law: New Challenges. *Revista de Defesa da Concorrência*, v. 7, no. 1, 2019. p.5-50.

CRÈMER, Jacques; MONTJOYE, Yves-Alexandre de; SCHWEITZER, Heike. Competition Policy for the digital era: Final report. Brussels: European Commission, 2019. p. 1-16. Disponível em: <https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>.

ROBERTSON, Viktoria. Antitrust Law and Digital Markets: A Guide to the European Competition Law Experience in the Digital Economy. 2020. Disponível em: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3631002.

Bibliografia complementar:

CONSELHO ADMINISTRATIVO DE DEFESA ECONÔMICA. Concorrência em mercados digitais: uma revisão dos relatórios especializados. CADE: Departamento de Estudos Econômicos Disponível em: <https://cdn.cade.gov.br/Portal/centrais-de-conteudo/publicacoes/estudos-economicos/documentos-de-trabalho/2020/documento-de-trabalho-n05-2020-concorrencia-em-mercados-digitais-uma-revisao-dos-relatorios-especializados.pdf>.

HOVENKAMP, Herbert. Antitrust and Platform Monopoly. *Yale Law Journal*, v.130, 2021. P.1901-2001.

EZRACHI, Ariel; STUCKE, Maurice E. Artificial intelligence & collusion: When computers inhibit competition. *University of Illinois Law Review*, 2017. P.1775-1810.

RAGAZZO, Carlos; MONTEIRO, Gabriela. BIG DATA e CONCORRÊNCIA: Quando big data é uma variável competitiva em mercados digitais e deve ser considerada na análise concorrencial? *Brasília: Economic Analysis of Law Review*, Vol 9, Nº 3, 2018, p. 150-177.

ECONOMIDES, Nicholas; LIANOS, Ioannis. Restrictions on Privacy and Exploitation in the Digital Economy: A Market Failure Perspective. *Journal of Competition Law and Economics*, 2020. p.1-83.