



Manila Principles on Intermediary Liability

Best Practices Guidelines for Limiting
Intermediary Liability for Content
to Promote Freedom of Expression and Innovation

A GLOBAL CIVIL SOCIETY INITIATIVE

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Introduction

All communication over the Internet is facilitated by intermediaries such as Internet access providers, social networks, and search engines. The policies governing the legal liability of intermediaries for the content of these communications have an impact on users' rights, including freedom of expression, freedom of association and the right to privacy.

With the aim of protecting freedom of expression and creating an enabling environment for innovation, which balances the needs of governments and other stakeholders, civil society groups from around the world have come together to propose this framework of baseline safeguards and best practices. These are based on international human rights instruments and other international legal frameworks.

Uninformed intermediary liability policies, blunt and heavy-handed regulatory measures, and a lack of consistency across these policies has resulted in censorship and other human rights abuses by governments and private parties, limiting individuals' rights to free expression and creating an environment of uncertainty that also impedes innovation online.

The framework presented here should be considered by policymakers and intermediaries when developing, adopting, and reviewing legislation, policies and practices that govern the liability of intermediaries for third-party content. Our objective is to encourage the development of interoperable and harmonized liability regimes that can promote innovation while respecting users' rights in line with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the United Nations Guiding Principles on Business and Human Rights.



I. Intermediaries should be shielded from liability for third-party content

- a) Any rules governing intermediary liability must be provided by laws, which must be precise, clear, and accessible.
- b) Intermediaries should be immune from liability for third-party content in circumstances where they have not been involved in modifying that content.
- c) Intermediaries must not be held liable for failing to restrict lawful content.
- d) Intermediaries must never be made strictly liable for hosting unlawful third-party content, nor should they ever be required to monitor content proactively as part of an intermediary liability regime.

II. Content must not be required to be restricted without an order by a judicial authority

- a) Intermediaries must not be required to restrict content unless an order has been issued by an independent and impartial judicial authority that has determined that the material at issue is unlawful.
- b) Orders for the restriction of content must
 1. Provide a determination that the content is unlawful in the jurisdiction.
 2. Indicate the Internet identifier and description of the unlawful content.
 3. Provide evidence sufficient to document the legal basis of the order.
 4. Where applicable, indicate the time period for which the content should be restricted.
- c) Any liability imposed on an intermediary must be proportionate and directly correlated to the intermediary's wrongful behavior in failing to appropriately comply with the content restriction order.
- d) Intermediaries must not be liable for non-compliance with any order that does not comply with this principle.

III. Requests for restrictions of content must be clear, be unambiguous, and follow due process

Consistent with Principle II, intermediaries should not be required to restrict content without an order from a judicial authority. In the event that governments or private complainants request content restriction, the following principles apply.

- a) Intermediaries must not be required to substantively evaluate the legality of third-party content.
- b) A content restriction request pertaining to unlawful content must, at a minimum, contain the following:
 - 1. The legal basis for the assertion that the content is unlawful.
 - 2. The Internet identifier and description of the allegedly unlawful content.
 - 3. The consideration provided to limitations, exceptions, and defences available to the user content provider.
 - 4. Contact details of the issuing party or their agent, unless this is prohibited by law.
 - 5. Evidence sufficient to document legal standing to issue the request.
 - 6. A declaration of good faith that the information provided is accurate.
- c) Content restriction requests pertaining to an intermediary's content restriction policies must, at the minimum, contain the following:
 - 1. The reasons why the content at issue is in breach of the intermediary's content restriction policies.
 - 2. The Internet identifier and description of the alleged violation of the content restriction policies.
 - 3. Contact details of the issuing party or their agent, unless this is prohibited by law.
 - 4. A declaration of good faith that the information provided is accurate.
- d) Intermediaries who host content may be required by law to respond to content restriction requests pertaining to unlawful content by either forwarding lawful and compliant requests to the user content provider, or by notifying the complainant of the reason it is not possible to do so ('notice and notice'). Intermediaries should not be required to ensure they have the capacity to identify users.
- e) When forwarding the request, the intermediary must provide a clear and accessible explanation of the user content provider's rights, including in all cases where the intermediary is compelled by law to restrict the content a description of any available counter-notice or appeal mechanisms.
- f) If intermediaries restrict content hosted by them on the basis of a content restriction request, they must comply with Principle VI on transparency and accountability below.
- g) Abusive or bad faith content restriction requests should be penalized.

IV. Laws and content restriction orders and practices must comply with the tests of necessity and proportionality

Laws, orders and practices restricting content must be necessary and proportionate in a democratic society:

- a) Any restriction of content should be limited to the specific content at issue.
- b) When restricting content, the least restrictive technical means must be adopted.
- c) If content is restricted because it is unlawful in a particular geographical region, and if the intermediary offers a geographically variegated service, then the geographical scope of the content restriction must be so limited.
- d) If content is restricted owing to its unlawfulness for a limited duration, the restriction must not last beyond this duration, and the restriction order must be reviewed periodically to ensure it remains valid.

V. Laws and content restriction policies and practices must respect due process

- a) Before any content is restricted on the basis of an order or a request, the intermediary and the user content provider must be provided an effective right to be heard except in exceptional circumstances, in which case a *post facto* review of the order and its implementation must take place as soon as practicable.
- b) Any law regulating intermediaries must provide both user content providers and intermediaries the right of appeal against content restriction orders.
- c) Intermediaries should provide user content providers with mechanisms to review decisions to restrict content in violation of the intermediary's content restriction policies.
- d) In case a user content provider wins an appeal under (b) or review under (c) against the restriction of content, intermediaries should reinstate the content.
- e) An intermediary should not disclose personally identifiable information about a user without an order by a judicial authority. An intermediary liability regime must not require an intermediary to disclose any personally identifiable user information without an order by a judicial authority.
- f) When drafting and enforcing their content restriction policies, intermediaries should respect human rights. Likewise, governments have an obligation to ensure that intermediaries' content restriction policies respect human rights.

VI. Transparency and accountability must be built into laws and content restriction policies and practices.

- a) Governments must publish all legislation, policy, decisions and other forms of regulation relevant to intermediary liability online in a timely fashion and in accessible formats.
- b) Governments must not use extra-judicial measures to restrict content. This includes collateral pressures to force changes in terms of service, to promote or enforce so-called “voluntary” practices and to secure agreements in restraint of trade or in restraint of public dissemination of content.
- c) Intermediaries should publish their content restriction policies online, in clear language and accessible formats, and keep them updated as they evolve, and notify users of changes when applicable.
- d) Governments must publish transparency reports that provide specific information about all content orders and requests issued by them to intermediaries.
- e) Intermediaries should publish transparency reports that provide specific information about all content restrictions taken by the intermediary, including actions taken on government requests, court orders, private complainant requests, and enforcement of content restriction policies.
- f) Where content has been restricted on a product or service of the intermediary that allows it to display a notice when an attempt to access that content is made, the intermediary must display a clear notice that explains what content has been restricted and the reason for doing so.
- g) Governments, intermediaries and civil society should work together to develop and maintain independent, transparent, and impartial oversight mechanisms to ensure the accountability of the content restriction policies and practices.
- h) Intermediary liability frameworks and legislation should require regular, systematic review of rules and guidelines to ensure that they are up to date, effective, and not overly burdensome. Such periodic review should incorporate mechanisms for collection of evidence about their implementation and impact, and also make provision for an independent review of their costs, demonstrable benefits and impact on human rights.