

Intermediary Liability in the Digital Age: An International Human Rights Perspective

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ABSTRACT

The regulation of intermediary liability occupies a critical position at the intersection of digital governance, freedom of expression, and international human rights law. As online platforms increasingly mediate public discourse, economic activity, and civic engagement, the legal obligations imposed upon intermediaries have profound implications for democratic participation and access to information. This section examines international human rights standards governing intermediary liability, with particular emphasis on expression rights articulated in global treaties, resolutions and reports of United Nations bodies, UNESCO's normative guidance, and transnational principles governing digital content and electronic contracts. It further analyses the Manila Principles on Intermediary Liability as a consolidated soft-law framework reflecting global consensus on proportional, rights-respecting intermediary regulation. The study highlights how excessive or vague liability regimes risk producing collateral censorship and chilling effects on lawful speech, while underscoring the need for legal certainty, due process, and judicial oversight. By situating intermediary liability within international human rights jurisprudence, this section provides a normative benchmark against which domestic regulatory frameworks may be assessed and reformed.

Keywords: *Intermediary Liability, Freedom of Expression, International Human Rights Law, Digital Governance.*

Introduction

The Internet has become a vital and ever-evolving space for economic activity, personal development, and civic participation. It now serves as an indispensable source of information, with millions of people—including journalists, educators, students, entrepreneurs, scientists, government officials, politicians, and ordinary citizens—using it every day to share ideas, access knowledge, and take part in almost every sphere of public and commercial life. The dissemination of information and ideas from one part of the online world to another is facilitated by a wide variety of technical intermediaries, including Internet service providers (ISPs), telecommunications carriers, websites, online services, and a variety of other technological intermediaries. When it comes to speech, these intermediaries provide vital platforms that are accessible, up-to-date, and often free of charge. These forums may range from the political to the commonplace.¹

The Internet has brought forth new issues, despite the fact that the services that are supplied by intermediaries on the Internet have become an integral part of our regular lives. Users are able to misuse online platforms and engage in unlawful activities because it provides them with a feeling of anonymity that is often missing in face-to-face encounters. However, in many nations, there is a tendency to attempt to regulate material that is seen to be offensive by penalising not just the individuals who originally created the content but also the intermediaries that transmit or host it.²

¹ Protecting Internet Platforms for Expression and Innovation, available at <https://cdt.org/insights/protecting-internet-platforms-for-expression-and-innovation/> visited on 12.10.2025

² Puneet Bhasin, Law Relating to Social Media Crimes, Intermediaries; Digital Media, and OTT Platforms (OakBridge Publishing Pvt. Ltd., Gurugram, 2022)

Meaning of liability of Intermediaries

The phrase “intermediary liability” refers to the situation in which governments or private litigants have the capacity to hold technical intermediaries, such as internet service providers (ISPs) and websites, accountable for material that are deemed to be illegal or harmful by users of such services.¹ Intermediaries play a significant part in our day-to-day usage of the internet. They include network service providers, telecom service providers, internet service providers, search engines, web-hosting service providers, online-auction sites, online payment sites, online-marketplaces and cyber cafes.²

Intermediaries make it possible for us to access the internet, browse the internet, engage in online commerce, and produce information. This is because intermediaries facilitate the flow of information from third parties online. ISPs are the most direct means by which governments and courts may enforce laws that are found on the internet. ISPs might potentially be held legally responsible for unlawful material that is provided by third parties in a variety of situations. For the last twenty years, several ISP, such as host providers and search engines, have exerted an increasing amount of control over material that third parties provide. This is done in order to escape legal responsibility for the conduct of internet users. Furthermore, even when Internet service providers have their headquarters in a given nation, they are nonetheless subject to varying liability standards for the same material inside numerous countries when their services are made accessible to consumers in other jurisdictions.

General approaches to intermediary liability

The UNSR in the 2016 Report³ observed that while intermediary responsibility may be linked to a legitimate purpose, there are rising concerns over the “appropriate balance between freedom of expression and other human rights” and the abuse of intermediary liability to restrict access and expression. Users' rights are directly affected by the legal responsibility of intermediaries. This means that more filtering, surveillance, and limitations on acceptable and legal online speech are directly related to stringent liability laws, which are an over regulatory approach to content.

Strict liability, the wide immunity model, and the safe-harbour model are the three major approaches to intermediary responsibility, each with different concerns and ramifications.⁴

- **Strict Liability**

According to this method, intermediaries are accountable for material created by third parties. According to a UNESCO report,⁵ proactive material monitoring, filtering, and removal in compliance with state law is the only way to avoid culpability. An intermediary faces penalty, criminal responsibility, and the loss of business or media licenses if they fail to comply with this requirement. Strict responsibility governs China and Thailand, according to the UNESCO study. With reference to China, the State Council placed restrictions in 2000 on “producing, assisting in the production of, issuing, or broadcasting” information that went against a vague list of beliefs (such as opposing the fundamental values affirmed in the Constitution, interfering with national religious policies, promoting evil cults and feudal superstitions, spreading rumors, upsetting social order, or upsetting social stability, among other things). China has adhered to its policy of strict responsibility, holding internet businesses accountable for noncompliance. This has resulted in extensive surveillance and screening by middlemen. Social media corporations are now mostly in charge of censoring the information that their users post because of this degree of monitoring. Most people believe that this strategy violates international principles and conventions.⁶

- **Broad Immunity Model**

The wide immunity paradigm, which offers exclusions from liability without discriminating between intermediate function and content, is at the other end of the spectrum from the narrow immunity model. In the study that was published by the “United Nations Educational, Scientific, and Cultural Organization (UNESCO)”, the Communications Decency Act⁷ in the United States is cited as an example

¹ Intermediary Liability: Protecting Internet Platforms For Expression and Innovation, available at [https://cdt.org/wp-content/uploads/pdfs/CDT-Intermediary%20Liability_\(2010\).pdf](https://cdt.org/wp-content/uploads/pdfs/CDT-Intermediary%20Liability_(2010).pdf) visited on 11.10.2025

² Protecting Internet Platforms for Expression and Innovation, available at <https://cdt.org/insights/protectinginternet-platforms-for-expression-and-innovation/> visited on 11.11.2025

³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression 2016 available at https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/38 visited on 21.12.2025.

⁴ Edwards and Charlotte Waelde, eds. *Law and the Internet* (Bloomsbury Publishing, 2009)

⁵ 2014 UNESCO report on Fostering Freedom online and the Role of internet intermediaries available at <https://unesdoc.unesco.org/ark:/48223/pf0000231162> visited on 30.12.2025.

⁶ *Ibid*

⁷ Communications Decency Act of 1996 (47 U.S. Code § 230)

of this approach. This act shields intermediaries from responsibility for unlawful behavior by users when they delete information in accordance with the policy of private companies. In accordance with this model, intermediaries are not accountable for the content that they transport; rather, they are accountable for the content that they disseminate, as explained in Article 19. In its Council Recommendation on principles for internet policy, the “Organization for Economic Co-operation and Development (OECD)”¹ makes reference to this as the preferred model. This is due to the fact that it is in accordance with the best practices that will be discussed further down, and it affords due regard to the promotion and protection of the global free flow of information which is conducted online

- **Safe-Harbor Model**

It seems that the safe harbor concept, sometimes referred to as conditional liability, takes a moderate stance. Intermediaries are granted protection under this strategy as long as they meet certain standards. With this method, intermediaries are expected to deactivate or delete content upon receiving notification that it contains infringing material, rather than being obligated to actively monitor and filter content. The concept of “notice and takedown procedures,” which might be issue- or content-specific, is fundamental to this strategy. There are differing opinions about this strategy: some see it as a reasonable compromise, while others see it as a necessary evil to prevent more filtering or a radical alteration of the intermediate landscape. Others are concerned about this technique due to its misuse potential, as mentioned in the UNESCO study², since it might encourage self-censorship and provide intermediaries quasi-judicial authority over content evaluation and legality determination.

Liability of Intermediaries: International Perspective

- **Intermediary Liability and Expression Rights in Human Rights Documents**

The regulation of intermediary liability directly implicates the internationally protected right to freedom of expression. Human rights instruments recognise the Internet as a critical medium for the exercise of expression, access to information, and participation in public life. While most foundational human rights documents predate the digital age, their principles have been interpreted expansively to apply to online platforms and intermediaries.³

The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, is the principal global treaty safeguarding freedom of expression. Article 19 guarantees the right to “seek, receive and impart information and ideas of all kinds, regardless of frontiers,” through any media of choice.⁴ This formulation has been repeatedly interpreted by international bodies to include digital and internet-based communication. Any intermediary liability regime that compels content removal, filtering, or surveillance must therefore be assessed against the necessity and proportionality standards under Article 19(3).

Similarly, the Universal Declaration of Human Rights (UDHR) affirms under Article 19 that everyone has the right to freedom of opinion and expression, including the freedom to “receive and impart information and ideas through any media.”⁵ Though not legally binding, the UDHR has achieved the status of customary international law and informs the interpretation of later binding instruments dealing with digital expression.

Regional human rights regimes reinforce this approach. Article 10 of the European Convention on Human Rights and Article 13 of the American Convention on Human Rights emphasise prior restraint prohibitions and caution against indirect restrictions, which include imposing excessive liability on intermediaries that leads to over-removal of lawful speech. These protections are particularly relevant when intermediaries, rather than state authorities, are made primary gatekeepers of expression.

A core concern in intermediary liability regulation is the phenomenon of “collateral censorship.” Human rights bodies have consistently warned that when intermediaries face the risk of civil or criminal liability for third-party content, they tend to err on the side of removal, thereby chilling lawful expression.

¹ OECD Council Recommendation on Principles for Internet Policy Making available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> visited on 22.11.2025.

² *Supra note 7*

³ Frank La Rue (Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression), Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, 20–47, U.N. Doc. A/HRC/17/27 (May 16, 2011), <https://documents.un.org/doc/undoc/gen/q11/130/35/pdf/q1113035.pdf> visited on 22.11.2025.

⁴ International Covenant on Civil and Political Rights art. 19, Dec. 16, 1966, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> visited on 05.11.2025.

⁵ Universal Declaration of Human Rights art. 19, G.A. Res. 217 (III), U.N. Doc. A/810 (Dec. 10, 1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights> visited on 22.11.2025.

Consequently, international human rights law discourages strict liability regimes and promotes models that require clear legal authority, judicial oversight, and narrowly tailored obligations.¹

- **Reports and Resolutions by United Nations Offices**

The normative framework on intermediary liability has been significantly shaped by reports and resolutions of United Nations bodies, particularly those addressing freedom of expression in the digital age. These instruments, while not binding, exert strong persuasive authority and guide state practice.

The United Nations Human Rights Council (UNHRC) has adopted several landmark resolutions affirming that “the same rights that people have offline must also be protected online.”² These resolutions emphasise that restrictions on online speech must comply with legality, legitimacy, necessity, and proportionality, and caution against imposing disproportionate responsibilities on intermediaries.

The reports of the UN Special Rapporteur on freedom of expression have been particularly influential in developing global standards on intermediary liability. In his 2011 and subsequent thematic reports, the Special Rapporteur rejected broad intermediary liability and blanket monitoring obligations, describing them as incompatible with international human rights law. The reports underscore that intermediaries should not be required to proactively monitor content, as such obligations undermine privacy and freedom of expression.

Further, the UN Office of the High Commissioner for Human Rights (OHCHR) has highlighted the risks posed by automated content moderation and algorithmic enforcement, especially when implemented without transparency or remedies.³ These reports stress that state-mandated takedown obligations must be subject to independent oversight and accessible appeal mechanisms to ensure accountability.

Collectively, UN resolutions and reports advocate a safe-harbour-oriented approach, where intermediaries are shielded from liability for third-party content unless they fail to comply with clear, lawful, and specific removal orders. This approach seeks to strike a balance between combating harmful content and preserving the Internet as an open forum for democratic discourse.

- **The UNESCO Reports and Guidelines**

The UNESCO has played a pivotal role in conceptualising Internet governance within a broader framework of human rights, cultural diversity, and sustainable development. Its work on freedom of expression and digital regulation emphasises normative guidance rather than coercive enforcement.⁴

UNESCO’s Internet governance framework is anchored in the ROAM principles—Human Rights-based, Open, Accessible, and Multistakeholder governance.⁵ Under this model, intermediary regulation must be grounded in respect for freedom of expression, privacy, and due process. UNESCO has repeatedly cautioned that imposing excessive content control obligations on platforms risks undermining openness and pluralism online.⁶

In its reports on digital platforms and content regulation, UNESCO has highlighted the dangers of vague or overbroad legal standards that incentivise over-censorship. It calls for clarity in defining unlawful content, transparency in moderation processes, and accountability mechanisms that protect users’ rights.⁷ UNESCO has also stressed the importance of media and information literacy as a complementary strategy to address harmful content without resorting to heavy-handed legal controls.

Notably, UNESCO discourages state practices that shift the responsibility of determining legality entirely onto private actors. Instead, it promotes collaborative governance involving states, platforms, civil society, and users. This approach aligns with international human rights standards that reject the privatisation of censorship through intermediary liability regimes.

¹ David Kaye, *Speech Police: The Global Struggle to Govern the Internet* 68–70 (2019).

² Human Rights Council Res. 32/13, U.N. Doc. A/HRC/32/L.20 (July 1, 2016).

³ Office of the High Commissioner for Human Rights, *The Right to Privacy in the Digital Age*, 41–45, U.N. Doc. A/HRC/48/31 (Aug. 13, 2021).

⁴ UNESCO, *Freedom of Expression and the Internet* (2016), <https://unesdoc.unesco.org/ark:/48223/pf0000246515> visited on 12.01.2026.

⁵ UNESCO, *Internet Universality: A Means Towards Building Knowledge Societies* (2015), <https://unesdoc.unesco.org/ark:/48223/pf0000231908> visited on 12.01.2026.

⁶ UNESCO, *World Trends in Freedom of Expression and Media Development* (2018), <https://unesdoc.unesco.org/ark:/48223/pf0000265581> visited on 12.01.2026.

⁷ UNESCO, *Guidelines for the Governance of Digital Platforms* (2023), <https://unesdoc.unesco.org/ark:/48223/pf0000387339> visited on 12.01.2026.

- **International Principles Relating to Digital Content and E-Contracts**

The regulation of digital content and electronic contracts operates alongside intermediary liability frameworks, influencing how online platforms manage user interactions and commercial transactions. International principles in this area emphasise legal certainty, transparency, and user protection.

The UNCITRAL Model Law on Electronic Commerce (1996) and the Model Law on Electronic Signatures provide foundational principles for the recognition and validity of electronic communications and contracts.¹ These instruments establish technological neutrality and functional equivalence, ensuring that online transactions are treated on par with offline agreements.

In the context of digital content, international principles stress that contractual terms—such as platform terms of service—must not undermine non-derogable human rights. Human rights bodies have cautioned that platforms' private contracts cannot be used as mechanisms to circumvent freedom of expression guarantees, particularly where such terms are imposed unilaterally and lack transparency.

Additionally, international consumer protection frameworks, including UN guidelines on consumer protection, require fairness and clarity in digital contracts.² These principles are increasingly relevant as platforms regulate content through contractual enforcement rather than formal legal processes. When contractual obligations are enforced through automated takedowns or account suspensions, concerns arise regarding due process, notice, and the right to remedy.

Thus, international norms relating to digital content and e-contracts reinforce the need for intermediary liability regimes that respect user autonomy, procedural fairness, and fundamental rights, while providing predictable and balanced governance of online spaces.

- **The Manila Principles on Intermediary Liability**

The Manila Principles on Intermediary Liability represent a consolidated set of global best practices reflecting international human rights norms. Developed by civil society organisations and digital rights experts, the Principles articulate six core standards governing intermediary liability.³

These include the rejection of intermediary liability for third-party content absent a court order, opposition to mandatory monitoring obligations, requirements of necessity and proportionality, transparency in content restriction processes, and access to effective remedies. The Manila Principles explicitly recognise the risk of collateral censorship and seek to preserve the Internet as an open and neutral platform for expression.

Though not legally binding, the Principles have been widely cited by courts, policymakers, and academics as persuasive authority. They serve as a normative bridge between binding human rights instruments and domestic intermediary regulation, offering a rights-respecting blueprint for national legal frameworks.

Conclusion

The international legal framework governing intermediary liability remains largely fragmented, indirect, and dependent on soft-law instruments rather than binding legal norms. While foundational human rights treaties such as the ICCPR and UDHR provide a broad normative basis for protecting freedom of expression in the digital sphere, they do not offer concrete, intermediary-specific standards capable of addressing the complex realities of platform governance, algorithmic moderation, and cross-border digital regulation. As a result, the regulation of intermediaries is primarily shaped through interpretative documents, thematic reports, and resolutions issued by United Nations bodies, as well as normative guidance developed by UNESCO and civil society-led initiatives such as the Manila Principles.

This reliance on non-binding instruments reveals a significant regulatory gap at the international level. Although these documents collectively articulate important principles—such as the rejection of strict intermediary liability, opposition to mandatory monitoring, and the need for proportionality and due process—they lack uniform enforceability and are applied inconsistently across jurisdictions. In the absence of a coherent and binding international regime, states have adopted divergent domestic intermediary liability frameworks, many of which impose expansive obligations on private platforms that risk enabling indirect censorship and chilling lawful expression.

¹ UNCITRAL, *Model Law on Electronic Commerce with Guide to Enactment*, G.A. Res. 51/162 (Dec. 16, 1996), https://uncitral.un.org/en/texts/e-commerce/modellaw/electronic_commerce visited on 14.01.2026.

² United Nations, *Guidelines for Consumer Protection*, G.A. Res. 70/186 (Dec. 22, 2015), https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf visited on 14.01.2026.

³ Manila Principles on Intermediary Liability (2015), <https://www.manilaprinciples.org/> visited on 14.01.2026.

Moreover, existing international commercial instruments addressing digital content and electronic contracts focus primarily on transactional validity and technological neutrality, rather than on the human rights implications of intermediary governance. This normative asymmetry has allowed platform liability and content regulation to evolve in an ad hoc manner, often driven by national security, misinformation, or public order concerns, without adequate regard for transnational free speech guarantees.

In this context, there is a compelling need for the development of international model laws or binding conventions that specifically address intermediary liability. Such instruments could harmonise state practice, incorporate human rights safeguards, and provide clear guidance on safe-harbour protections, takedown procedures, transparency obligations, and remedies for users. Model laws, in particular, would allow states to adapt global principles to domestic contexts while ensuring consistency with international human rights standards. Without such structured and universally endorsed frameworks, intermediary regulation will continue to be marked by legal uncertainty, regulatory overreach, and uneven protection of expression rights in the digital public sphere.

