# The Manila Principles on Intermediary Liability

*Principles and Best Practices Guidelines for Limiting Intermediary Liability to Promote Freedom of Expression and Innovation—A Global Civil Society Initiative*

Alternative Version, 2 February 2015

*This is a working draft version that does not attempt to incorporate all of the comments received on the earlier 0.9 draft. The main changes in this draft are a reorganization of existing content into two main sections - "Principles" and "Best Practices". There is more editing and optimization to be done, the results of which we will send in a future draft.*

## Introduction

All communication over the Internet is facilitated by intermediaries such as Internet access providers (ISPs), social networks, and search engines.

The networks that constitute the Internet are able to interoperate thanks to an architecture that requires intermediaries to exchange information automatically, without discriminating between different messages or content. Every regulatory burden on intermediaries increases their costs, making the Internet even less accessible for the poorest people in industrialized countries and most people in the developing world.

The policies governing the liability of intermediaries for content have an impact on user rights, including freedom of expression. The development of uninformed policies, blunt and or 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.

With the aim of ensuring the protection of freedom of expression and creating an enabling environment for innovation, while balancing the needs of governments, civil society groups from around the world have come together to propose this principles and best practices framework as a set of baseline safeguards. The framework should be considered for regulators and intermediaries when developing, adopting, and reviewing legislation, policies and practices that extend liability to intermediaries for online third party content. Our objective is to encourage promote the development of more principled, interoperable, and harmonized liability regimes that can promote users' rights and innovation while respecting users' rights.

This document is divided into two main parts: a set of principles that are applicable across any intermediary liability regime, and another that describes best practices

including information about choosing a liability regime. In general, we consider as the best practice a regime in which the intermediary only should remove content in compliance with a judicial order after an independent and substantive analysis of the legality of the content. However as the nature of content or regulatory efficiency may dictate the adoption of a different regime, the best practices section provides guidance for those situations.

## Principles

### I. Intermediaries should be shielded by law from liability for content

- Intermediaries should be shielded by law from liability for third-party content in circumstances where they have not been involved in creating or modifying that content.
- Any rules governing intermediary liability limitation must be laid down in statute, which must be relevant, accessible, unambiguous and meet other human rights standards.
- Intermediaries should not legally be placed in the position of making substantive evaluation of the legality of content.
- Intermediaries should only be compelled to restrict content through an authority order issued after an independent and substantive analysis of the legality of the content and the necessity and proportionality of that restriction through a due procedure that is consistent with human rights.
- Intermediaries should not be held liable for failing to restrict lawful content.
- Intermediaries may restrict legal content that contravenes their own terms of service. Those terms of use of the service should be written in clear language and be accessible and known for the users prior to start the use of the services. Terms of use of the service should also be consistent with the respect of the users' human rights and fulfill minimum requirements including clarity, transparency and remedy.
- Intermediaries should not be required to disclose personally identifiable user information of users. Intermediaries could only be compelled to disclose personally identifiable user information of users through an authority order issued after an independent and substantive analysis of the legality and necessity of that disclosure through a due procedure that is consistent with human rights.
- Intermediaries that enter into agreements with third parties that require or enable the mass automated restriction of content outside of the procedures established by law for restriction of content should lose the limitation on liability created by law.
- Governments should not impose a positive obligation on intermediaries to proactively monitor content, nor to maintain the ability to de-anonymize users

or identify past user activities, such as by logging information necessary for such purposes.

## II. Authority orders and private requests for the restriction of content should be clear and unambiguous

- Any requirement for the restriction of content should identify the basis for the assertion of unlawfulness of content.
- Any requirement for the restriction of content should provide precise location and description of the allegedly unlawful content.
- Any requirement for the restriction of content should inform the standing under the requirement is made.

## III. Content restriction law, policies and practices must be procedurally fair and respect human rights

- Any system for intermediaries' liability limitation that allows content restriction should provide clear and accessible means for the reconsideration of any legal restriction.
- Any regulation adopted to restrict the Intermediaries liability that contains rules for content restriction should provide mechanisms for the reinstatement of the content that has been illegitimately restricted or for which the restriction order has expired. Towards this end, intermediaries should ensure that reinstatement of content is technically possible.
- Any system for intermediaries' liability limitation that allows content restriction should establish penalties for unjustified notices.
- All proceedings deliberating upon requested content restrictions shall afford the user against who the complain has been directed the right to be heard and all the procedural guarantees consistent with the protection of human rights.
- Any emergency situation that made necessary a temporal exception in the procedure should be defined by law and should be conditioned to a later review as soon as practicable to fulfill the requirement of a due process according with respect for human rights.

- The design of law, policies and practices should calibrate the emergency situations with the risks of illegitimate requests, before establishing the exceptions.

- Any penalty or damages against intermediaries should be limited and proportionate to the intermediary's obligations established in the legal regime.

## IV. When content is legitimately restricted, it should be done in the least restrictive manner possible

- Content restriction orders must be strictly targeted at the unlawful content, and nothing else.
- Orders for content restriction should require the least restrictive technical means to be adopted, bearing in mind the principle of proportionality.
- Any restriction applied as a consequence of a lawful order should be limited in its geographical and temporal scope. The temporal and geographical scope of a restriction should be reviewed periodically to ensure it they remains valid.
- Intermediaries should be allowed to charge for the time and expense associated with processing legal requests issued by private parties.

## V. Transparency and accountability should be built in to content restriction practices

- Governments should publish all legislation, policy, and other forms of regulation relevant to intermediary liability online in accessible formats. Individuals should be able to seek explanation and clarification of the scope or applicability of such legislation, regulation and policies the law from the government.
- Intermediaries should publish their content restriction policies online in accessible formats and keep them updated as they evolve.
- These policies must be clear and predictable.
- Governments should publish transparency reports that provide specific information about all content restriction requests received from any government authority or private party.
- Intermediaries should publish transparency reports that provide specific information about all content restrictions taken by the intermediary.
- When content is restricted, a clear notice should be provided to the users in order to explain in simple terms, what content has been restricted and why.
- 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 policy and practice
- Governments and intermediaries should provide the general public the ability to review content restriction decisions/regulation/policies.

## VI. The development of intermediary liability policies should be participatory and inclusive

- Governments should give all stakeholders including private citizens a way to provide input on intermediary liability policies.
- Intermediaries should ensure that all stakeholders have a say ~~voice~~ in both the creation and revision of content management polices.
- Governments and intermediaries should conduct human rights and regulatory impact assessments before instituting new content management policies.

- Intermediary liability content restriction policies should be created only after evidence have demonstrated widespread persistent harms that which cannot be effectively addressed in other ways in the specific jurisdiction in which the policies will be developed.
- In cases when content restriction intermediary liability policies are introduced, should establish a system of review after a set period. The review should incorporate mechanisms for the collection of evidence about their impacts, and make provision for an independent review of their costs, demonstrable benefits and impact on human rights to be conducted of such policies prior to their renewal.

## Best Practice Recommendations

### I. Standard of review

- Intermediaries should only be required to remove content following an order issued by an independent and impartial judicial body that after a substantial review has determined that the material at issue is unlawful.
- In some jurisdictions, in exceptional cases, the adjudication could be made by administrative authority, but following the same requirements of independent, impartial and substantial review of the material at issue prior to order any content removal.
- Some emergency circumstances described below the authority could authorize content restriction prior to a substantive review. Those circumstances should be exceptional, limited and precise, and in every case subject to a later independent, impartial and substantial authority review.

### II. Regimes to process complaints for content restriction

- As stated in the principles, intermediaries should be shielded by law from liability for third-party content in circumstances where they have not been involved in creating or modifying that content.
- Content removal should be exceptional and only should take place when an order has been issued by an independent and impartial judicial body after a substantial review has been made.
- All proceedings deliberating upon proposed content restrictions shall afford the user identified in the complaint a right to be heard in that proceeding, except in emergency circumstances defined by law, in which case a later review of the order must take place as soon as practicable.
- Except in emergency circumstances defined by law, the time period allotted for intermediaries to remove or block content at the request of a third party should be sufficient calibrated to allow content providers time to contest an illegitimate the request before content is removed, while protecting the legitimate rights of third parties.
- Any process to remove content conducted by an independent and impartial judicial body should considerate appellate to review the decision.

- The burden and cost for the courts to examine all applications for content removal could make efficient to adopt a notice-to-notice regime, under which the intermediaries should enjoy liability limitation subject to an obligation to pass on notices of illegality claims received from government, authority or private parties to the user who posting or providing the content.
- Any notice-to-notice regime should provide a clear, complete and accessible explanation to the implied user of the claim content.
- Any notice-to-notice regime should provide mechanism of counter-notice.

## III. Emergency circumstances

- A notice and take down regime only could be appropriate in emergency circumstances.
- Emergency circumstances should be clearly, strictly and narrowly defined by the law.
- Emergency circumstances should be defined taking into consideration and pondering the human rights involved, conforming the strict tests of necessity and proportionality . Examples of emergency circumstances that could make desirable a notice and take down regime are complaints relating to the protection of children or an imminent threat to life.
- In emergency circumstances the authority could authorize content restriction prior to a substantive review. Those circumstances should be subject to a later independent, impartial and substantial authority review.

## IV. Content of claims and orders

Any claim and order to remove content issued by authority in response to a government or third parties complains should at least fulfill the following requirements:

- The legal basis for the assertion of unlawfulness of content.
- The precise location and description of the allegedly unlawful content.
- Contact details of the issuing authority and the powers under acts and its agent if it is applicable.
- Authority standing to issue the order.
- A certification of good faith and consideration of limitations, exceptions, and other defenses under the relevant statue.
- Attestation that the complainant has made a reasonable effort, making use of the means and information publicly available, to contact the person or other entity responsible for making available the specific content on to the Internet and has asked to have it removed.

Except for the last two requirements, the same requirements should be applicable for those claims and orders issued in emergency circumstances defined by law.