

The 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 user rights, including freedom of expression.

Uninformed 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.

With the aim of protecting freedom of expression and creating an enabling environment for innovation, while balancing 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.

The framework 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 more principled, interoperable, and harmonized liability regimes that can promote innovation while respecting users' rights.

Principles

- I. Intermediaries should be shielded by law from liability for third-party content**
 - a. Any rules governing intermediary liability must be provided by law, which must be sufficiently clear and accessible so as to enable individuals to regulate their conduct and must meet human rights standards.
 - b. Intermediaries may only be compelled to restrict content by a judicial order issued in a jurisdiction to which the intermediary is subject.

- c. In the absence of a judicial order, liability of intermediaries is limited to an obligation on those who host content to pass on notices requesting content restriction on grounds of alleged illegality to the content provider.
- d. Notwithstanding the preceding paragraph, intermediaries must never be held liable for failing to restrict lawful content, and must never be made strictly liable for hosting third-party content.
- e. Intermediaries may restrict lawful content hosted by them that contravenes their own terms of service, provided that they comply with principles III and V below, and that alternative options for communicating that lawful content are available.
- f. Intermediaries have no obligation to disclose personally identifiable user information as part of an intermediary liability regime without a judicial order.
- g. Intermediaries have no obligation to monitor content proactively.
- h. Intermediaries have no obligation to maintain the ability to de-anonymize users or identify past user activities, such as by logging information necessary for such purposes.

II. Orders and requests for the restriction of content must be clear and unambiguous

- a. At a minimum, content restriction requests from third party complainants must provide:
 - i. The legal basis for the assertion that the content is unlawful.
 - ii. The location and description of the allegedly unlawful content.
 - iii. A certification of good faith and consideration of limitations, exceptions, and defenses available to the content provider.
 - iv. Contact details of the issuing party or their agent.
 - v. Information sufficient to identify their legal standing to issue the request.
- b. At a minimum, government orders for the restriction of content must provide:
 - i. A legally authoritative determination that the content is unlawful.
 - ii. The location and description of the unlawful content.
 - iii. Information sufficient to identify the legal basis of the order.
- c. Intermediaries who host content must forward compliant requests for content restriction received from complainants, and content restriction orders received by governments, to the content provider.
- d. The requests and orders so forwarded must provide a clear and accessible explanation of the content provider's rights, including in any case where the intermediary is compelled by law to restrict the content, a description of any available counter-notice or appeal mechanisms.

III. Content restriction policies and practices must be procedurally fair

- a. Before any content restriction order is made, the intermediary and the content provider shall be afforded a right to be heard, except in emergency situations defined by law, in which case a post facto review of the order must take place as soon as practicable.
- b. Except in such emergency situations, the time period allotted for intermediaries to restrict content must be sufficient to allow content providers time to contest the

request before content is removed, while protecting the legitimate rights of third parties.

- c. Governments must make available to both content providers and intermediaries the right to appeal orders for content restriction.
- d. Intermediaries should provide internal mechanisms for review of decisions to restrict content for terms of service violation.
- e. To provide for cases in which a content provider wins an appeal or review of the restriction of content, intermediaries must ensure that reinstatement of content is technically possible.
- f. Intermediaries should be allowed to charge private party complainants on a cost recovery basis for the time and expense associated with processing their legal requests.
- g. Governments may sanction content removal requests that are issued with no reasonable legal justification or basis.

IV. The extent of content restriction must be minimized

- a. Content restriction orders must be narrowly tailored to the unlawful content, and nothing else.
- b. Orders for content restriction must require the least restrictive technical means to be adopted.
- c. If content is restricted because it is unlawful in a particular geographical region but does not contravene international law or the intermediary's terms of service, 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. Transparency and accountability must be built in to content restriction practices

- a. Governments must publish all legislation, policy, and other forms of regulation relevant to intermediary liability online and in accessible formats. Individuals must be able to seek explanation and clarification of the scope or applicability of such legislation, regulation and policies from the government.
- b. Intermediaries must publish their content restriction policies online, in clear language and accessible formats and keep them updated as they evolve.
- c. Governments must publish transparency reports that provide specific information about all content orders and government requests issued by governments to intermediaries.
- d. Intermediaries must publish transparency reports that provide specific information about all content restrictions taken by the intermediary, including government requests, court orders, private party requests, and terms of service enforcement.
- e. 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, in simple terms, what content has been restricted and why.

- f. 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.

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

- a. Governments and intermediaries must give all those affected, including citizens, a way to provide input on the development and revision of intermediary liability and content management policies.
- b. Governments and intermediaries should conduct and publish human rights and regulatory impact assessments before instituting new intermediary liability and content management policies.
- c. When new intermediary liability rules are introduced, they should require review after a defined period (eg. five years), 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.