

# 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*

Version 0.9~~87~~, ~~169~~ March 2015

## 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 laws, 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 **[preferably]** **only** by a judicial order ~~issued in a jurisdiction to which the~~

- intermediary is subject, and only to the extent to which the restricted content is offered within the jurisdiction where the order is issued.
- c. In the absence of a judicial order, intermediaries must not be required to substantively evaluate the legality of third-party content nor be made liable for content that is unlawful~~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, i~~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 content hosted by them that contravenes their own terms of service, provided that they comply with principles III and V below, and that when appropriate, alternative options for communicating that content are available.
  - f. Intermediaries ~~have no obligation to~~ must not disclose personally identifiable user information as part of an intermediary liability regime without a judicial order.
  - g. Intermediaries ~~have no obligation to~~should not monitor content proactively as part of an intermediary liability regime.
  - 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 as part of an intermediary liability regime.~~

## 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 user content provider.
  - iv. Contact details of the issuing party or their agent.
  - v. ~~Information sufficient to support~~Evidence sufficient to document 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~~Internet address and description of the unlawful content.

- iii. ~~Information sufficient to identify~~ Evidence sufficient to document the legal basis of the order.
- iv. ~~When~~ applicable, the time period for which content should be restricted.
- c. Intermediaries who host content may be required by law to forward compliant requests for content restriction received from complainants, and must forward content restriction orders received by governments, to the user content provider.
- d. The requests and orders so forwarded 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.

### III. Content restriction policies and practices must be procedurally fair

- a. Before any content restriction order is made, the intermediary and the user content provider shall be afforded a right to be heard, except in ~~emergency situations~~ exceptional circumstances defined by law, in which case a **post facto** review of the order and its implementation must take place as soon as practicable.
- b. Except in such ~~emergency situations~~ exceptional circumstances, the time period allotted for intermediaries to restrict content must be sufficient to allow user 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 user content providers and intermediaries the right ~~to~~ appeal against orders for content restriction.
- d. Intermediaries must provide user content providers with mechanisms ~~for~~to appeal ~~of~~ decisions to restrict content for terms of service violation.
- e. ~~In order to~~ provide for cases in which a user content provider wins an appeal ~~of~~ against the restriction of content, intermediaries must ensure that the reinstatement of the 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 content restriction requests [at a rate provided by law].
- g. Governments may sanction content restriction requests that are issued with no reasonable legal justification or basis.
- h. Any liability placed on an intermediary must be proportionate, not excessive, and directly correlated to the offence caused by the content.

#### IV. **The extent of content restriction must be minimized**

- a. Content restriction orders must be narrowly tailored to ~~the~~specified unlawful content, and nothing else.
- b. When restricting content, the least restrictive technical means must be adopted by the intermediary.
- 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. **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~~them to intermediaries.
- d. Intermediaries ~~must~~should 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 user and non-user 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.