

Stanford Law School

Intermediary Liability Outside the US

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January 2018

General Overview

- Common Architecture: knowledge-> liability
- Differences
 - Is there a statute?
 - Who counts as intermediary?
 - What claims are covered?
 - Are there notice and takedown procedures?
 - Does law see a connection bt intermediary liability and speech?

Common Disputes

- Who counts as intermediary
 - Type of technical service
 - “Neutrality”
- What is “knowledge”
- Monitoring and filtering

Latin America: A Gross Generalization

- Very strong recognition of IL \leftrightarrow speech rights at high level
 - Including in Inter-American human rights system
 - Argentina major S Ct case (Belen Rodriguez)
 - Chile “judicial notice” © law
 - Brazil Marco Civil
- Lots of legislative threats
- Cases all over the place in practice
- Look out for Right to Be Forgotten
 - But! Mexican case requiring notice to webmaster, which EU regulators say is prohibited

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Asia: An Even Grosser Generalization

- Relatively few statutory regimes
- Massive scale human moderation, by platforms or gov't is a norm in some countries (China, Korea, Vietnam)
- Keep an eye on India
 - Major good S Ct case (Shreya Singhal)
 - Several alarming cases in the pipeline

Africa: I don't know, sorry 😞

Europe: In the Global Driver's Seat (1)

- EU-Wide Statutory Framework: Ecommerce Directive, implemented w some differences in national law
 - Specified services: ISP, cache, host
 - No NTD process
 - Platforms can't have "general" monitoring obligation

Europe: In the Global Driver's Seat (2)

- Major new pressures
 - NetzDG – German 24 hour turnaround for “obvious” illegality
 - Draft copyright directive with filtering requirement
 - Commission and other politicians calling for terrorism filtering
 - Global removal orders: Two cases pending at CJEU (Right to Be Forgotten and Austrian Facebook hate speech case)

Europe: In the Global Driver's Seat (3)

- Connecting Intermediary Liability to Human Rights
 - ECHR and CJEU rulings on filtering
 - A few cases on “knowledge”
 - Interesting disagreement bt Commission and Council of Europe

Thank You

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