The Manila Principles on Intermediary Liability

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

Things still to do for principles:

* Discuss tone and approach of principles
* Discuss format and structure of principles
* Discuss fleshing out introduction, preamble, etc.
* Revisit principle content with fresh eyes

Version 1, 31 October 2014

# Introduction

All communication over the Internet is facilitated by intermediaries such as ISPs, social networks, and search engines. The policies governing liability of intermediaries for content have an impact on user rights including freedom of expression. A lack of consistency across these policies has resulted in censorship and other human rights abuses by governments and private parties, creating an environment of uncertainty that also impedes innovation online.

To address this, civil society groups from around the world have come together to propose this best practices framework for regulators and intermediaries to consider when developing and reviewing legislation, policies and practices that extend liability to intermediaries. The recommendations apply to both content and platform blocking or restriction at the intermediary level, cutting across all grounds of liability. Our objective is to promote the development of more principled national and global liability regimes that can promote users’ rights and innovation.

# Principles

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

* Any rules governing intermediary liability must be laid down in statute, which must be accessible, unambiguous, and meet human rights standards.
* Intermediaries should only be compelled to restrict content with a judicial or equivalent order.
* If the content is legal, intermediaries should not be held liable for failing to restrict the content.
* Intermediaries’ liability should be limited to an obligation to pass on notices of alleged illegality to the party who posted the content.
* Intermediaries may restrict content that contravenes their own terms of service, provided those terms of service incorporate minimum requirements including clarity, transparency, and remedy.
* Intermediaries should not be required to disclose personally identifiable information of users without a judicial order.
* Governments should not impose a positive obligation on intermediaries to proactively monitor content.

## Notices that request the restriction of content should be clear and unambiguous

As a minimum notices should provide:

* Legal basis for the alleged illegality of content
* Location and description of alleged illegal content
* Certification of good faith and consideration of limitations, exceptions, and defence
* Contact details of the issuing party [exception to not provide details needed?]
* Standing to issue the notice
* Explanation of all appeal and counter notice mechanisms

Explanation of applicable penalties for unjustified notices

## Content restriction policies and practices must be procedurally fair

* Intermediaries should forward notices received for content restriction to the affected party.
* All proceedings deliberating upon proposed content restrictions shall afford the author of the content a right to be heard in that proceeding except in emergency situations defined by law, in which case a post facto review of the order must take place as soon as practicable.
* Governments and intermediaries should provide the affected user the right to appeal content orders or content restrictions.
* Intermediaries should provide a mechanism through which affected users can request reinstatement of content. Towards this end intermediaries should ensure that reinstatement of content is technically possible

## When content must be restricted, it should be restricted in the most limited way possible

* Content restriction orders must be strictly targeted at the illegal content
* Orders for content restriction should require the least restrictive technical means to be adopted..
* If content is restricted due to its illegality in a particular country, the geographical scope of the content restriction should be limited to that country.
* Penalties or damages against intermediaries for non-compliance should be proportionate.
* Intermediaries should be allowed to charge for the time and expense associated with processing legal requests.

## Content restriction should be transparent and accountable

* Intermediaries should publish their content restriction policies online and keep them updated as they evolve.
* Governments should publish transparency reports that provide specific information about all content orders and government requests issued by governments to intermediaries.
* Intermediaries should publish transparency reports that provide specific information about all content restrictions taken by the intermediary, including court orders, government requests, private party requests, and TOS enforcement.
* When content is restricted, a clear notice should be provided in the product that explains in simple terms what content has been restricted and why.
* Governments must ensure independent, transparent and impartial oversight mechanisms to ensure accountability of content restriction policy and practice by government and companies, drawing from comparative studies undertaken by transnational civil society groups.
* Governments and intermediaries should provide the general public the ability to review restriction decisions.

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

* Governments should give all stakeholders a way to provide input on intermediary liability policies. Governments must ensure that private citizens’ participation is given (priority?) consideration.
* Intermediaries should ensure that all stakeholders have a 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.