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Social Media Liability for User-Generated Content: Balancing Free Speech and Accountability

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Abstract

The tremendous expansion of social media platforms has changed the art of communication and people can now communicate with the outside world and express themselves like never before. However, this development has also spawned sophisticated legal issues surrounding the liability of the platforms to users who post on them. Whether or not intermediaries are responsible to defamatory, harmful, or illegal postings posted by their users is at the boundary between free speech, technological advancement, and regulation. In this paper, I present a critical analysis of the changing paradigms of the intermediary liability, both in the national and the international arena, and how the legal frameworks strive to achieve a balance between freedom of speech and accountability measures. By a comparative prism, it examines the strategies taken by jurisdictions, including the United States, the European Union, and Pakistan, and evaluates the manifestation of changing perceptions of the responsibility of platforms in both legal change and legal interpretation. This paper concludes that a moderate regulatory framework - a framework that protects constitutional rights and demands transparency and due diligence requirements of online platforms - is critical to maintain freedom of the online and responsibility of the population.

Keywords

Social media liability; intermediary responsibility; user-generated content; freedom of expression; accountability; defamation; digital regulation.

1. Introduction

Social media has changed the communication, exchange of information and discussion in the society. Social media like Facebook, X (formerly Twitter), YouTube and Tik Tok have become online community parks where individuals, organizations and governments socialize with people all over the world. Such democratization of speech, regardless of its empowering power has erased traditional responsibilities of content creators, publishers, and intermediaries. In comparison with the traditional media houses that perform editorial oversight, social media platforms are highly dependent on user generated content posing intricate legal challenges in the event that the content is defamatory, harmful or illegal.

The legal system of liability of online intermediaries in different jurisdictions differs greatly. In the US, Section 230 of the Communications Decency Act (1996) offers a wide-ranging protection to online platforms against postings made by users, and hence, freedom of expression and innovation over responsibility (Lisovskaia, 2024). On the other hand, the Digital Services Act (2022) of the European Union is more cautious and rights-oriented and enforces the due diligence, transparency, and timely deletion of illegal content on platforms (Shami et al., 2025). Such developing countries as Pakistan, in their turn, are still torn between constitutional rights to free speech under Article 19 of the Constitution of Pakistan, 1973, and regulations imposed by the state that are aimed at preserving public order and morale (Sharma, 2022).

The modern discussion about social media liability is thus at the border of the constitutional law, the technology policy, and the human rights. It is a reflection of a long-standing conflict between two equally significant values the safeguarding of individual freedom of expression and the aversion of harm that can be created by the abuse of the digital space. This is a two-fold task that courts and policymakers globally are struggling to cope with: on the one hand, the digital platforms should remain the places of free speech and, on the other hand, they should not become the areas of misinformation, hate speech, and defamation (Balkin, 2017a).

In this paper, it will discuss the developing legal framework of social media liability of the user-generated content, and how different jurisdictions strike a balance between the freedom of speech and accountability. It will focus on finding normative and legal values to inform the construction of a coherent and rights-respecting model of intermediary regulation. The paper aims to suggest a middle ground that would ensure technological innovation and the rule of law by contrasting legal principles and judicial interpretations in the United States, the European Union, and Pakistan (Petkova & Ojanen, 2020).

2. Conceptual Framework – Intermediary Liability and Free Speech Principles

Intermediary liability is the very concept in the contemporary internet ecosystem. The term intermediaries mean the digital service providers that support the generation, transmission, or hosting of online content - social media networks, internet service providers, and search engines. They are a technical and communicative position: they allow users to share information and act as filters of the digital speech. The core issue that lies behind intermediary liability is the manner in which, and to what degree, such platforms should be accountable due to illegal or destructive user-created material (Bertolini et al., 2021).

The evolution of the intermediary liability theories is closely related to the further discussion of the freedom of expression. Free speech has a liberal tradition which builds on the works of John

Stuart Mill and was subsequently codified into a constitutional structure, notably in the first amendment of the United States Constitution, advocating very limited intervention of speech, asserting that the truth would be discovered through open discussion. This principle is applied to the sphere of the digital world, where free speech is considered as a key to participating in democracy. Nevertheless, online communication with its distinct characteristics instant, cross-border, and anonymity has made it hard to enforce the conventional principles of free speech (Balkin, 2017b).

In the US, the legal framework of intermediary protection is founded on the theory of Section 230 of the Communications Decency Act (1996), which infamously states that no interactive computer service provider or user shall have a status of speaker or publisher of the third-party contents. This clause is considered to be a successful move towards protecting online platforms against liability of user-generated content and this encourages a culture of innovation and free expression. However, critics state that Section 230 leads to the culture of impunity, as platforms will not face the responsibility of spreading misinformation and hate speech (Kosseff, 2019).

Conversely, the European law stresses proportionality and human rights demands. Digital Services Act (2022) provides a due diligence model that mandates platforms to assess systemic risks, possess clear moderation policies and also cooperate with regulators. This model describes a shift to shared responsibility, between the freedom of expression and the interests of the society, and privacy, dignity, and democratic integrity (Müller & Kettemann, 2024).

The intermediary liability in the developing context such as Pakistan, is regulated by a series of statutory and regulatory documents, in particular, the Prevention of Electronic Crimes Act (PECA) 2016, and the Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2021. Although the purpose of these grounds is to reduce internet extremism and libel, they have brought up serious issues as to the extent of overreach and censorship the laws are concerned with the constitution of Pakistan of freedom of speech, which is limited to what is reasonable (Pakistan & Assembly, 1973).

Therefore, the theoretical approach of intermediary liability represents a new legal dialectic between two opposing imperatives which are the protection of free expression and the responsibility of online harm. The dilemma of developing a model that would maintain the emancipatory potential of the digital platforms without compromising the rule of law and the human right challenges the challenge.

3. Legal Framework – Comparative Approaches to Platform Liability (US, EU, Pakistan)

The debate on social media liability takes different legal philosophies and regulatory traditions across the globe. The European Union, United States and Pakistan are all models of different intermediary regulation- broad immunity to conditional responsibility. The comparative study of these jurisdictions can be used to see how the balance between free expression and accountability is determined by constitutional values, institutional design as well as societal concerns.

3.1 The United States: Broad Immunity and Free Speech Protection

The American method of intermediary liability is based on Section 230 of the Communications Decency Act (CDA) 1996 that offers blanket immunity to online service providers. This is expressly stated in Section 230(c)(1) that states no provider or user of an interactive computer service shall

be considered the publisher or speaker of information posted by another content provider. This was added because of the necessity to promote the innovation of the internet and avoid self-censorship in the case of platforms that would otherwise run the risk of legal action against users (Horath, 2023).

This general immunity has been observed to be maintained by court interpretations. In *Zeran v. America Online, Inc.* (1997), the U.S Court of Appeals, the America on-line, Inc. (1997) stated that online middlemen were not liable to defamatory messages left by third parties online. The rationale used by the court was that liability imposition will cause a chilling effect on speech, which is not warranted and will interfere with the free flow of information (Ziniti, 2008). Subsequent cases, such as *Force v. Facebook, Inc.* (2021), even when social media were accused of amplification of harmful content by algorithms, Facebook, Inc. (2021) confirmed this principle. Experts consider this blanket protection to enable large platforms to escape systemic harm like disinformation and online harassment (Bottini Jr et al., 2021).

3.2 The European Union: A Rights-Based and Conditional Liability Model

The European Union is more balanced and human rights based. The initial set of rules defined by the E-Commerce Directive (2000/31/EC) was the provision of limited liability to the intermediaries as long as they take measures they deem expedient to take down the illegal contents upon notification. With development of digital platforms, though, this regime shifted because the Digital Services Act (DSA) 2022 has provided a layered system of accountability.

The DSA specifies that big platforms should perform due diligence, which implies that they should share information regarding content moderation and algorithmic decision-making and risk evaluation. It is also aimed at the compliance with the Charter of Fundamental Rights of the European Union according to which the control over the content is coordinated with the freedom of expression, privacy and non-discrimination (Domínguez Romero, 2024). This conditional liability regime will solve online harms in a way that they will not hamper democratic discourse. The EU model, therefore, embodies a proportionality principle, in such a way that restrictions on speech are neither unlawful nor unnecessary nor do they conflict with each other.

3.3 Pakistan: Emerging Regulations and Constitutional Dilemmas

The law dealing with the liability of intermediaries in Pakistan is still developing and is a loud indication of the conflict between the constitutional rights and regulation. The main legislation that regulates the crimes occurring online is the Prevention of Electronic Crimes Act (PECA) 2016, and the responsibility of requiring platforms to block content that is considered unlawful is granted to the Pakistan Telecommunication Authority (PTA) by the Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules 2021.

As much as PECA is meant to prevent cybercrime and safeguard national security, its implementation has in many cases been perceived to be overbearing and censoring. Critics claim that the wide provisions of the Article 19 of the Constitution of Pakistan, 1973 (Pakistan & Munir, 1967). However, the legal ambiguity and judicial ambiguity surrounding intermediary immunity remain a threat to accountability of the platforms and digital rights of the users.

3.4 Comparative Analysis

The U.S. model is more innovative and open, therefore less accountable, whereas EU is more responsible and rights-oriented, whereas Pakistan has a more regulatory and control-based

structure, as is characteristic of more general governance issues. An intermediate solution, which incorporates American values of free discourse, European values of proportionality and the Pakistani constitutional system would result in a more pragmatic legal system that promotes both liberty and accountability in the cyber space.

4. Accountability Mechanisms and Platform Governance Models

The control of user generated content involves the regulation of such sites in ways that they take responsibility, but do not overly regulate the online speech. Although the classical liability regimes have been concerned with judicial enforcement, the digital world has moved into hybrid forms that are integrated with state regulation, corporate governance and self-regulations. These models are intended to operationalize accountability and consider basic rights and transparency in the content moderation process.

4.1 State Regulation and Statutory Obligations

Content governance has legal foundations in terms of state-imposed mechanisms of accountability. Governments in most jurisdictions have also implemented statutory duties of care whereby the platforms are obligated to avoid spreading illegal or harmful material. An example of this is the Digital Services Act (DSA) of the European Union, which requires systemic risk assessment, disclosure of algorithmic activity, and creation of internal complaint and response systems (Magalhães & Calle, 2025). By analogy, Online Safety Act (2023) in the United Kingdom impose duties on the providers of the so-called Category 1 services to ensure that they do not expose their users to harmful content, especially children, and promotes safety-by-design principles.

But critics claim that overpowering of government will result in censorship and political obstruction. Researchers caution that assigning content moderation authority to the state will compromise the autonomy of digital media and limit the freedom to express (Gillespie, 2018). The dilemma, however, is to understand ways in which legal systems can be set up to make people responsible and at the same time maintain the pluralistic and participatory aspect of the internet.

4.2 Corporate Self-Governance and Ethical Responsibility

The social media firms have been adopting self-regulation strategies in order to control user generated information. These are community policies, automated censorship, and external oversight boards. The establishment of the Oversight Board by Meta, commonly referred to as a digital constitutional court, is a novel effort to establish institutional controls over the ethical decision-making process concerning the content issues (Klonick, n.d.).

Nevertheless, the transparency and democratic legitimacy of the structures of private governance is challenged by critics. The ability of corporations to decide which speech to regulate, especially by use of non-transparent algorithms, creates the problem of bias, oversensitivity, and discriminatory enforcement (Douek, 2021). This has been called in many ways as the private governance of speech as it is a type of paradigm that represents the situation in which global corporations can influence the limits of expression with no direct democratic control. As a result, there have been increasing calls to make the reporting duties more transparent and provide due process protection so as to create fairness in moderation practices.

4.3 Co-Regulation and Multi-Stakeholder Approaches

The co-regulatory model is emerging as an alternative involving state regulation and the compliance of the states with the civil society as well as the private. This policy is focused on cooperation instead of coercion, and platforms are expected to adopt regulatory norms that are formed in consultation with governments, academia, and users. An example of such a voluntary and still regulated framework is the EU Code of Practice on Disinformation, in which businesses pledge to particular accountability indicators, which are checked by an external body (Park, 2022).

Co-regulatory mechanisms are not culturally developed in Pakistan, but the recent discussion surrounding the Pakistan Media Development Authority (PMDA) and PECA 2016 amendments has once again brought about a discussion on the multi-stakeholder approach to regulation. Nonetheless, institutional lack of independence and judiciary checks are still impediments to the creation of a balanced regulatory culture.

4.4 The Role of Transparency and Due Process

The transparency reporting and procedural fairness have become the key elements of digital accountability. According to the scholars, platforms are supposed to offer their users with effective notice-and-appeal procedures when content or accounts are removed, thus strengthening the procedural justice in online environments (Kaye, 2019). These measures encourage the trust of the users and make sure the content moderation is not arbitrary and disproportional. Transparency, accountability, and involvement of the users are the key pillars that need to be incorporated in a rights-based model of platform governance.

5. Challenges and Future Directions – Balancing Freedom, Accountability, and Innovation

The regulation of the social media platforms can be viewed as one of the most complex challenges of the digital era. Law enforcement systems across the globe are grappling to create the means of harmonizing the opposing demands of free speech protection, accountability, and technological creativity. The higher the stakes of this balance; as more of the democratic discourse is mediated by social media, the issues of law and governance are not the only ones at stake, but also of morality and popular confidence.

5.1 The Dilemma of Over-Regulation and Censorship

Avoiding excessive regulation that would stifle healthy expression is one of the leading issues in intermediary liability regimes. The governments usually support regulatory intervention on the basis of national security, general morals, or control of misinformation, but these types of authority are easily subject to abuse in politically polarized situations. As an example, in Pakistan, wide discretionary authority under PECA 2016 and the 2021 Removal and Blocking Rules has been criticized as chilling speech and restricting journalistic freedom (Afzal, 2025). On a global scale, strict content removal obligations have been reported to pressurize platforms to over-respond, resulting in the so-called collateral censorship of legal speech (Douek, n.d.). The challenge, thus, is to come up with laws to deal with real harms and constitutional protection of free expression.

5.2 Algorithmic Moderation and the Risk of Bias

There is another aspect of accountability with the growing use of automated moderation tools. Algorithms have become the key to content detection and filtering, but they do not always have

a contextual sense, leading to false positives and partial enforcement. Researchers have put forward claims that non-transparent algorithmic systems are recreating the likeness of inequalities within a society and support discrimination in content moderation (Lopezmalo, 2025). The Digital Services Act of the European Union addresses this issue by requiring transparency in the design of the algorithm and the need to have large platforms audited independently. This kind of checks and balances makes sure that innovation is not at the expense of their fundamental rights but also begs the question of which among corporate confidentiality and accountability to the outside world should dominate.

5.3 The Global Governance Gap

The digital platforms are cross-border based but regulation is mostly national. This disposition forms what is commonly dubbed as a global governance gap, in which platforms leverage the differences in jurisdiction in order to avoid liability. Corporate due diligence and human rights compliance have been prioritized in the attempts to establish transnational norms, such as the UN Guiding Principles on the business and human rights and OECDs digital policy frameworks (Buhmann, 2015). Nevertheless, these soft-law tools are non-binding, and the enforcement relies upon the will of a nation and business ethics. To eliminate this gap in governance, more international cooperation, globalization of norms and the creation of watchdog institutions that can handle cross-border content regulation is needed.

5.4 The Future of Platform Accountability

The future of social media regulation is the establishment of a rights-based, pluralistic and transparent regulation structure. Researchers support the so-called shared responsibility model, according to which states, corporations, and civil society jointly establish the norms of lawful and ethical online conduct (Rebelo, 2024). An alternative that has a potential to proceed is digital constitutionalism, which is the application of human rights to the online governance. The model places responsibility in a democratic model that puts aside user autonomy and places a focus on procedural fairness.

Finally, the development of the intermediary liability must leave the punitive regulation behind and adopt the model of the sustainable governance that would empower the users, would facilitate fair process, and would encourage innovation without undermining or breaching the human dignity or democratic principles. The future of online liberty therefore lies in finding this constitutional balance between freedom and responsibility in this delicate balance of liberty and responsibility.

6. Conclusion

Managing social media in terms of the content that is generated by users is a challenging area of law and technology and human rights. With the emergence of digital space becoming a central element of popular discussion, the law regulating the question of intermediary liability has to balance two competing priorities: protecting freedom of speech and enforcing liability on unethical or unlawful contents on the Internet.

Comparative analysis shows that there is no model that is a perfect solution. The United States is focused on broad immunity to encourage innovation and protect speech, the European Union is focused on proportionality and respect to human rights and Pakistan maneuvers through a regulatory environment that aims to ensure people can remain in order and still has to address

constitutional limits. Both methods provide teachings regarding the trade-offs of digital governance.

In the future, it is important to regulate the situation with a sensitive, multi-layered approach. The statutory clarity, procedural fairness, and transparency should be integrated into the legal frameworks and the mechanisms of strong internal governance, ethical moderation policy, and accountability should be introduced on the platforms. The co-regulatory/ multi-stakeholder models are especially promising because they guarantee that the strength to influence online discourse is distributed between the state power and corporate responsibility, as well as civic engagement.

Finally, social media liability frameworks must not aim at curbing speech or creating a risk-free space but ensuring that a healthy digital ecosystem where innovation, expression, and accountability thrive is formed. Achieving this balance is essential for the sustainability of democratic discourse, the protection of human dignity, and the responsible development of digital platforms in an increasingly interconnected world.

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