

MANILA PRINCIPLES ON INTERMEDIARY LIABILITY

“Manila principles on intermediary liability” represents a framework of fundamental safeguards espoused by civil society groups from around the world. The principles aim at protecting freedom of expression and creating an enabling environment for innovation that strikes a balance among the needs of stakeholders. The objective is to encourage the development of interoperable and harmonized liability regimes that respect users’ rights in line with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the United Nations Guiding Principles on Business and Human Rights.

1. Intermediaries should be shielded from liability for third-party content

- a) Any rules governing intermediary liability must be provided by law. Laws must be precise, clear, and accessible.
- b) Intermediaries should be immune from liability for third-party content in cases when they have not modified that content.

2. Content must not be restricted without an order by a judicial authority

- a) Intermediaries must not be required to restrict content unless an order has been issued by an independent and impartial judicial authority.
- b) Any liability imposed on an intermediary must be proportionate and directly correlated to the intermediary’s wrongful behavior.

3. Requests for restrictions of content must be clear, unambiguous, and follow due process

- a) Intermediaries must not be required to substantively evaluate the legality of third party content.
- b) Intermediaries who host content may be required to respond to content restriction requests pertaining to unlawful content. They have to either forward lawful and compliant requests to the user content provider, or notify the complainant of the reason it is not possible to do so (‘notice and notice’).
- c) Abusive or bad faith content restriction requests should be penalized.

4. Laws and content restriction orders and practices must comply with the principles of necessity and proportionality

- a) Laws, orders and practices restricting content must be necessary and proportionate in a democratic society:
 - Any restriction of content should be limited to the specific content at issue;
 - The least restrictive technical means must be adopted;
 - The geographical scope of the content restriction must be

limited to a particular geographical region;

- If content is restricted for a limited duration, the restriction must not last beyond it. The restriction order must be reviewed periodically.

5. Laws and content restriction policies and practices must respect due process

- a) The intermediary and the user content provider must be provided an effective right to be heard except in exceptional circumstances, in which case a post facto review of the order and its implementation must take place.
- b) Any law regulating intermediaries must provide for the right of appeal against content restriction orders.
- c) Intermediaries should provide user content providers with mechanisms to review decisions to restrict content in violation of the intermediary’s content restriction policies.

6. Laws and content restriction policies and practices should provide for transparency and accountability

- a) Governments must publish all legislation and other forms of regulation relevant to intermediary liability online in a timely fashion and in accessible formats.
- b) Governments must not use extra-judicial measures to restrict content.
- c) Intermediaries should publish their content restriction policies online, in clear language and accessible formats, and keep them updated.
- d) Governments must publish transparency reports that provide specific information about all content orders and requests issued by them to intermediaries.
- e) Intermediaries should publish transparency reports that provide specific information about all content restrictions taken by the intermediary.
- f) Governments, intermediaries and civil society should cooperate to develop and maintain independent, transparent, and impartial oversight mechanisms.
- h) Intermediary liability frameworks should be subject to a regular, systematic review to ensure that they are up to date, effective, and not overly burdensome. Such periodic review should incorporate also mechanisms for collection of evidence about their implementation and impact including impact on human rights.

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