

**CONTEMPORARY CHALLENGES TO ONLINE FREEDOM OF
EXPRESSION: PLATFORM LIABILITY AND NOTICE AND
TAKEDOWN**

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ABSTRACT

The openness of online speech increasingly relies on private digital intermediaries that set and enforce their own rules through automated systems, community guidelines, and rapid-response takedown procedures. As governments worldwide impose heightened due-diligence obligations on these platforms, the resulting compliance pressures often push companies to remove content excessively, thereby constraining legitimate speech. This paper analyses the evolving landscape of intermediary liability by comparing key regulatory frameworks: India's Intermediary Guidelines (2021/2023), the European Union's Digital Services Act (2024), and the United States' Section 230 model. It explores the constitutional implications of delegating speech-governance functions to private actors, deficiencies in due process within platform-led moderation, and the absence of meaningful avenues for users to contest takedowns. The study proposes a rights-oriented regulatory structure that incorporates procedural guarantees—such as notification, representation, reasoned decisions, and independent oversight—alongside proportionate obligations on platforms. The goal is to ensure that content moderation remains transparent, accountable, and consistent with democratic protections for freedom of expression.

KEYWORDS

Freedom of expression, Intermediary Liability, Online Speech regulation, platform governance, content moderation, notice-and-takedown, digital rights.

1. INTRODUCTION

Digital platforms have become the modern arena for public discourse, political participation, and community building. Yet, these spaces operate primarily under privately drafted rules rather than constitutional mandates. As a result, the responsibility placed on online intermediaries to regulate speech has emerged as one of the most contested legal and policy issues of recent years.

Regulators across jurisdictions seek to curb harmful content—including hate speech, misinformation, extremism, and defamation while simultaneously protecting citizens’ expressive freedoms. Notice-and-takedown regimes have become central to this endeavour, but their operation raises serious concerns: opaque enforcement systems, overbroad censorship, and inadequate procedural safeguards for users.

This paper examines these tensions and outlines pathways for a more coherent, rights-protective governance model for digital speech.

2. INTERMEDIARY LIABILITY: CONCEPT AND COMPARATIVE APPROACHES

Intermediaries—such as social networks, messaging platforms, hosting services, and search engines—facilitate and store large volumes of user-generated data. Legal frameworks vary widely in how they assign responsibility to these actors.

2.1.India

The Information Technology Act 2000, together with the Intermediary Guidelines 2021/2023, imposes extensive compliance duties on platforms. They must remove content deemed “unlawful” after receiving a notice from authorities or users, often within strict timelines. The system reflects a regulatory model where the state imposes detailed obligations, with limited procedural protection for affected users.

2.2.European Union

The Digital Services Act (DSA 2024) adopts a layered approach, imposing heightened duties on large platforms. It focuses on transparency, systemic risk assessments, and user empowerment through structured appeals. The DSA positions itself as a rights-focused, accountability-driven framework.

2.3.United States

Section 230 of the Communications Decency Act grants broad immunity to platforms for third-party content, while allowing voluntary moderation. This model prioritises innovation and broad expressive freedom, though critics claim it gives platforms too much unregulated power. Together, these regimes illustrate three distinct philosophies: state-driven responsibility (India), rights-based oversight (EU), and immunity-centred self-regulation (US).

3. **NOTICE-AND-TAKEDOWN: OPERATION AND LIMITATIONS**

3.1. **Mechanism**

A notice—submitted by a user, authority, or rights holder—triggers a platform’s evaluation of content. If the content appears to violate applicable law or internal rules, the intermediary removes or restricts it, often under urgent timelines.

3.2. **Challenges**

Over-removal: Platforms frequently err on the side of deletion to avoid penalties, leading to suppression of lawful speech.

Under-removal: Some harmful content slips through due to high volumes and imperfect automated tools.

Opacity: Users seldom receive clear explanations about the criteria or reasoning behind removal decisions.

Absence of due process: Most systems lack notification requirements, opportunities to contest decisions, or robust appeal infrastructure.

4. **PRIVATE CENSORSHIP AND CONSTITUTIONAL QUESTIONS**

Although content moderation is carried out by private entities, the scale and societal impact of platforms grant them quasi-public significance. In India, constitutional protections such as Article 19(1)(a) historically apply only to state action; however, when platforms perform de facto governance functions over public discourse, the distinction blurs.

Key constitutional concerns include:

Unpredictable removal of political critique.

Disproportionate enforcement affecting marginalised communities.

Algorithmic curation that silently shapes visibility and speech.

Governmental influence over moderation practices through pressure or directives.

The absence of constitutional safeguards within private content regulation poses profound risks for democratic communication.

5. **CASE STUDY COMPARISONS**

5.1. **India**

The Intermediary Guidelines impose strict timelines (such as 72-hour compliance windows) for responding to takedown orders. Ambiguous categories like “morality,” “decency,” and “public order” allow broad discretion. Grievance Appellate Committees exist but face questions regarding independence and effectiveness.

5.2. European Union (Digital Services Act)

The DSA mandates transparency reports, systemic risk assessments, and independent audits. Users are entitled to internal appeals and external dispute mechanisms. The Act also limits algorithmic amplification of harmful content.

5.3. United States (Section 230)

Section 230's strong immunity regime has supported a flourishing digital economy and broad freedom of online expression. Yet critics argue the model allows platforms to evade accountability for the societal impacts of content dissemination.

6. KEY DEFICIENCIES IN EXISTING MODELS

6.1. Vagueness and Overbreadth

Broad legal categories lead to inconsistent and unpredictable moderation outcomes.

6.2. Algorithmic Bias

Automated moderation tools often misinterpret minority dialects, culturally specific expression, and political speech, resulting in disproportionate takedown rates.

6.3. Lack of Procedural Rights

Platforms commonly fail to provide:

- Timely notification
- Opportunity for users to present their case
- Clear, reasoned decisions
- Independent review mechanisms

6.4. Government Overreach

Authorities worldwide increasingly deploy takedown mandates to suppress dissent, especially during politically sensitive periods such as elections and protests.

7. TOWARD A BALANCED REGULATORY FRAMEWORK

A future-ready model must counter online harms while safeguarding fundamental freedoms.

7.1. Procedural Safeguards

- Advance or prompt notice before removal
- Detailed reasoning for decisions
- Human-led internal appeals
- External, independent review akin to DSA models

7.2. Transparency Norms

- Quarterly publication of moderation statistics
- Public repositories of takedown requests

- Disclosure of algorithmic ranking and content curation principles

7.3. **Proportionality Principles**

- Platforms must differentiate between:
- Content that is unlawful
- Content that may be harmful but legally permissible
- Contextual expression such as satire, activism, or artistic work

7.4. **Shared Responsibility**

- A sustainable system requires:
- Users to report responsibly
- Platforms to moderate fairly and consistently
- Governments to enact narrow, rights-compatible laws

8. **CONCLUSION**

Protecting freedom of expression in the digital era requires moderation systems that are transparent, proportionate, and grounded in rights-based principles. While regulators aim to curb harmful content, excessive liability pressure can incentivise platforms to remove more speech than necessary, creating a form of digital censorship.

A modern approach must integrate constitutional values, procedural safeguards, and robust oversight. A harmonised global framework—drawing on the EU’s rights-centred design, the US’s innovation-friendly immunity model, and India’s accountability-driven concerns—offers a promising way to protect democratic engagement while ensuring responsible platform governance.

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