

# INTERMEDIARY LIABILITY AN AIC PERSPECTIVE

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40th TWNIC IP Open Policy Meeting

Nov 16 2023

## INTRODUCTION

### AIC AND TAIWAN

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## Our Mission Statement

We bring together businesses and governments across the **digital value chain** to promote the advantages of the Internet and ICT, and to provide a trusted and reputable voice on key Internet policy issues in the Asia Pacific region.



The AIC is an industry association of leading Internet and technology companies, seeking to promote the understanding and resolution of Internet and ICT policy issues in the Asia Pacific region.



Founded in 2010, today it represents member across diverse industries including Cloud Computing, e-Commerce, Social Media, Tourism, Consumer electronics and software, and Online services.



AIC aims to expand its network and work with other industry bodies and the governments to lead as a growing industry voice for the digital economy development in the Asia Pacific region.

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AIC has been participating in dialogue and advocacy for best practices in ICT and the digital economy in Taiwan.

## Some of AIC's recent advocacy work in Taiwan includes:

Digital  
Intermediary  
Services Act

Act Regulating  
Internet  
Audiovisual  
Services (OTT)

Child and Youth  
Sexual Exploitation  
Prevention Act and  
Sexual Assault Crime  
Prevention Act

Civil Servants recall  
Act and the  
Presidential, Vice-  
Presidential Election  
and Recall Act

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# WHAT IS INTERMEDIARY LIABILITY



*Describes the allocation of legal responsibility of (Internet) intermediaries for the content and activities of third parties using their services*

## 1 STRICT LIABILITY

platforms can be held legally responsible for any content that violates laws, even if they were not aware of it or did not actively participate in its creation

## 2 SAFE HARBOR PROVISIONS

protect intermediaries from strict liability for the actions of their users as long as they meet specific conditions

### Manila Principles

Shielded from liability for third-party content

Must not be restricted unless there is an order by a competent judicial authority

Restriction of content must be clear, unambiguous, and follow due process

Content restriction orders must comply with the tests of necessity and proportionality

Must respect due process and international law

Transparency and accountability must be incorporated into the laws

# THE INTERMEDIARY LIABILITY LANDSCAPE IN ASIA PACIFIC



Multiple APAC jurisdictions generally established provisions in their laws to protect intermediaries from strict liability for the actions of their users. These provisions often grant legal immunity to intermediaries as long as they follow certain conditions, such as promptly responding to takedown requests or having policies in place to address infringing or harmful content.

## 1 NATIONAL SECURITY

Several countries have imposed liability on intermediaries for content made available via their platforms using national security as the legal basis.

## 2 SANCTIONS REGIME

Thailand, Myanmar, Cambodia, Vietnam and the Philippines have enacted cybersecurity measures to enforce additional penalties on intermediaries that do not moderate content.

### More recently.....

Indonesia and Singapore also have recently introduced elements of penalties on intermediaries with, respectively, Ministerial Regulation 5 and the Protection from Online Falsehoods and Manipulation Act



# AIC'S INSTITUTIONAL VIEW ON INTERMEDIARY LIABILITY



## Some key concerns of the private sector regarding intermediary laws for content moderation:

1

Proposal to subject platforms to liability is seen as **unnecessary and excessive** given that intermediaries are not data controllers.

2

Liability **should not fall** on the employees of intermediaries as this is not aligned with global norms and trends and will have a chilling effect on the business environment.

## Example from content moderation perspective:

### How our Members deal with harmful content:

- using AI/ML
- building relationships and trust with regulators
- Building a bigger regional team

### How AIC Members regulate requests:

- in writing;
- as specific as possible about the content to be regulated/removed;
- clear in its explanation of how the content is illegal with legal basis

### Sometimes our members may not remove content:

- might not be specific enough for Members to know what the government wants them to moderate/remove
- Members ask for more information; and
- Members don't take action because the content has already been removed

**Analysis of cease-and-desist and takedown letters have also found many risk conflicting with internationally recognised human rights, which Internet companies consider when they assess these requests**

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# POLICIES TO CONSIDER

## Liability limitations

Web hosting providers or host should be immune from liability for third-party content

### Safe harbor

guarantee that as long as an online platform meets certain conditions, it is not liable for the acts of its users

### Good Samaritan protection

takes other voluntary steps to address illegal content to reassured that these measures cannot have the negative consequences of being unprotected from legal liability

## Rule of law, clarity and certainty

Any form of privatised enforcement mechanisms should be avoided

Hosts should only be required to remove content following an order issued by an independent and impartial court or other adjudicatory body which has determined that the material at issue is unlawful

Clear conditions should be set for content removal in cases of alleged serious criminality

## Notice and takedown (or 'notice and action') procedures

should be developed that require intermediaries to act expeditiously on illegal content when notified

essential for allowing businesses to operate and grow, and for companies to act on illegal content without undue risks to fundamental rights

# GLOBAL BEST PRACTICES

Some jurisdictions that have had various levels of success adopting flexible regimes appropriately suited to the wide variety of online intermediaries

## 1 UNITED STATES

Under the Communications Decency Act, section 230



## 2 BRAZIL

Under the Brazil's Marco Civil da Internet legislation of 2014



## 3 EUROPEAN UNION

Under European Union's Digital Services Act (DSA)



**THANK YOU**