



INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

Volume 3 | Issue 6

Art. 7

2024

PLATFORM LIABILITY VS. USER RESPONSIBILITY DILEMMA

Avilasha Sarkar

Recommended Citation

Avilasha Sarkar, *Platform Liability vs. User Responsibility Dilemma*, 3 IJHRLR 73-87 (2024).

Available at www.humanrightlawreview.in/archives/.

This Article is brought to you for free and open access by the International Journal of Human Rights Law Review by an authorized Lex Assisto Media and Publications administrator. For more information, please contact info@humanrightlawreview.in.

Platform Liability vs. User Responsibility Dilemma

Avilasha Sarkar

*Law Student,
Christ Deemed to be University Lavasa, Pune*

Manuscript Received
01 Dec. 2024

Manuscript Accepted
10 Dec. 2024

Manuscript Published
27 Dec. 2024

ABSTRACT

With the emergence of the digital world which exposes individual lives to a plethora of information, the authenticity of such information is often difficult to ascertain. It is notable that there is a conflict that arises between the users of the digital platforms and the liability that is borne by those respective platforms during times of misuse. This article shall address all the intricate aspects of the digital world and shall try to answer the question that in times of misuse of an anonymous entity, such as the internet who is to be held accountable for it, the individual users of the platform or the digital platform, who under a digital veil are carrying out such unprecedented activities. The power of the internet is not unknown to individuals in the present time, but with the active part played by the internet in connecting individuals across the globe, it often plays the role of a mis-informer. The words which are often spoken in the digital platforms are not often verified and backed up by proper information, this in turn results in misinformation which may cause legal implications such as defamation and often violates the right to privacy of the individuals. If platforms are held accountable for their harmful content, it is noted that it can further aim to mitigate risks such as misinformation, hate speech and content inciting violence, this aspect is noteworthy in the landmark case of digital world, LICRA vs. Yahoo (2006). Furthermore, it is also recognized that users of digital platforms play an inciting role by generating, sharing and interacting with the content available online. The principle of user responsibility talks about individual accountability for individual posts. This article will examine how the actions and inactions of both platforms and users contribute to the spread of such content, posing significant legal and ethical challenges.

KEYWORDS

Platform liability, user responsibility, anonymity, digital world, risk mitigation, digital veil.

INTRODUCTION

The digital age has brought forward unprecedented changes to human interaction and the way people share ideas as well as conduct business. Along with Facebook, YouTube, and Twitter, these platforms have taken centre stage in everyday life, connecting people across the globe and providing spaces for expression, learning, and commerce. After all, this rapid proliferation of digital platforms has brought with it a fundamental and unresolved question: who is liable when harmful or illegal activity occurs on these platforms—the platform offering the infrastructure or the user who creates and disseminates the content? This is the central question of the platform liability versus user responsibility dilemma, a problem that touches law, ethics, and technology policy.

The debate has been amplified by real-life incidents. For example, in India, the Supreme Court of India discussed the issue of platform accountability under the law in *Facebook Inc. v. Union of India*, where the court actually considered the use of social media platforms for promoting hate speeches and false news. The ruling piqued media attention on the tension between protecting free speech and remedying the harm that unregulated content causes to society. Similarly, in the *United States*, *Gonzalez v. Google LLC* and its related issues of whether YouTube's algorithms suggest content linked with terrorism amount to a tacit endorsement or negligence have grabbed people's attention and form examples of a debate raging across the globe and implicating immediacy in

issues of governance, regulation, and user behaviour.¹

This becomes all the more complicated in decentralized technologies, such as blockchain platforms and artificial intelligence. As accountability, once diffused among several stakeholders—from platform developers to users—occasionally lacks a very obvious regulatory frame, the problem could get messy pretty quickly. For instance, it is a common scenario that platforms like Reddit or blockchain-based networks host user-generated content that cannot easily be monitored or regulated because of how their infrastructure is designed.

Indeed, this dilemma at its core is one of balancing competing priorities. Platforms say an excessive liability discourages innovation and chills free speech. Regulation advocates add their voices to protect individuals and societies from harm caused by misinformation, hate speech, and illicit activities. This sets a wider strain of social tension related to the rights of the individual to speak and the collective need for safety, fairness, and accountability in digital spaces².

This was a complex and dynamic digital ecosystem. So far, dealing with the dilemma of platform liability vs. user responsibility required delicate navigation among legal principles, ethical considerations, and technological realities. It is not so much about how to apportion blame as how to rethink the shared responsibilities of platforms, users, and regulators toward creating a safer and more just digital environment.

¹ Frosio, G. and Geiger, C., 2023. Taking fundamental rights seriously in the Digital Services Act's platform liability regime. *European Law Journal*, 29(1-2), pp.31-77.

² Flew, T., Martin, F. and Suzor, N., 2019. Internet regulation as media policy: Rethinking the question of digital communication platform governance. *Journal of Digital Media & Policy*, 10(1), pp.33-50.

LEGAL FRAMEWORKS GOVERNING PLATFORM LIABILITY

Safe Harbor Provisions

Safe harbour laws aim to balance the incentives of innovation and checks on accountability. They usually extend immunity from liability to online service providers provided they are able to meet specific conditions, such as the removal of illegal content upon notice. But the interpretation and application of these provisions of safe harbours vary considerably across jurisdictions because of diverse societal and legal priorities.³

United States: Section 230 of the Communications Decency Act (CDA)

This section of the CDA has performed an important function in the formation of the internet economy, offering an immunity of content that users submit to the platforms but urging them to remove or moderate harmful or illegal content. Yet this section of the CDA has also been criticized.

Gonzalez v. Google LLC (2023), it was the plaintiffs' argument that YouTube's algorithm amplified content created by ISIS, making it easier for people to come to radical views and ultimately allowing terrorist attacks. The case limits the Section 230 immunity as platforms not only host content but actively promote some content through recommendation systems.

*Doe v. Internet Brands (2016)*⁴ in this case Section 230 immunity was denied to a platform that had allegedly failed to warn users about known dangers posed by third-party users, emphasizing

³ Bertolini, A., Episcopo, F. and Cherciu, N.A., 2021. Liability of online platforms.

⁴ Strachan, K., 2016. *Doe v. Backpage. com: The United States Court of Appeals further extends immunity for Internet service providers under the Communications Decency Act. Tul. J. Tech. & Intell. Prop.*, 19, p.261.

that platforms can face liability for negligence unrelated to their role as publishers.

Despite Sections 230 spurring innovation, critics argue that it lets platforms off the hook for enabling harm such as misinformation and hate speech.

India: The IT Act and Intermediary Guidelines

India has established due diligence from platforms to remain immune under Section 79 of the Information Technology Act, 2000, and its 2021 Intermediary Guidelines. Content removal timelines and such grievance redressal mechanisms shall be the primary obligations.

*Shreya Singhal v. Union of India (2015)*⁵: Supreme Court ruled out Section 66A of the IT Act as violative of free speech, while allowing Section 79 but again emphasizing the importance of due diligence on the part of intermediaries. This landmark judgment settled that an intermediary cannot be held liable unless he has actual or constructive knowledge and fails to act upon the same.

*WhatsApp's Pegasus Controversy (2019)*⁶: the Indian government held the platforms responsible for data breach and surveillance issues, asking whether the platforms had done enough to protect the privacy of their users in respect of their due diligence obligations.

The 2021 guidelines herald a wave of toughening regulations that are more stringent than before, especially for major social media intermediaries, wherein they are to have grievance officers and

⁵ Bhadauria, A., 2019. *Shreya Singhal v/s Union of India (2013) 12 SCC 73. Supremo Amicus*, 9, p.55.

⁶ Roy, S., 2023. The Impact of the Recent Pegasus Spyware Controversy on the Right to Privacy in India. *International Journal of Law Management and Humanity*, 6(3), p.1060.

report compliance monthly.

GLOBAL VARIATIONS

European Union: Digital Services Act DSA

The European Union has been proactive on the path to platform accountability. The DSA forced platforms to identify and mitigate systemic risks relating to illegal content, misinformation, and disinformation.

Glawischnig-Piesczek v. Facebook Ireland (2019): The European Court of Justice established the case law that one could compel platforms to remove illegal content worldwide, hence setting a precedent for stricter platform liability. This case expanded the scope of obligations for EU-based platforms, with it being brought to the fore that such platforms have to ensure global compliance with local laws.

Meta's Oversight Board (2020): Not a legal case, the self-regulation by Meta of creating an independent oversight board to engage in content moderation shows that these platforms are moving ahead of EU law.

ETHICAL CONSIDERATIONS

Ethical concerns within the debate between liability and responsibility have revolved around the tension between individual freedom and societal good. While platforms have allowed for unprecedented connectivity and expression, they have inadvertently enabled harm. This section conducts a closer examination of the free speech, harm prevention, algorithmic design, and platform accountability dilemmas.

➤ Balancing free speech and harm prevention

Platforms often point to free speech as a foundational principle,

citing neutrality as mere intermediaries. The unchecked dissemination of harmful content, however, is seriously problematic on ethical grounds.

➤ **Incitement to Violence and Hate Crimes**

Twitter, Facebook, and Parler platforms were blamed for enabling the spread of conspiracy theories that incited the violence targeting the U.S. Capitol. Following the de-platforming of former President Donald Trump, there was a plethora of discussions regarding the limits of free speech and the responsibilities of the platform.⁷

As seen during incidences of violence in Delhi (2020), social media has acted as a vector for communal tensions, with misinformation, hate speech and inflammatory videos spreading unchecked with the conflicts mounting and calls for strict content regulation.

➤ **Misinforming Campaigns**

The platforms failed to contain the explosion of false information regarding vaccines and treatments. YouTube and Facebook received criticism for procrastination in flagging and removing misleading content, despite its impact on public health.⁸

➤ **Elections and Political Polarization**

Misinformation and manipulated information during elections, especially during the U.S. election in 2016 and the Brazil election in 2022, have jeopardized democracy. As algorithms amplify polarizing content, this inadvertently feeds

⁷ Conway, P., 1996. *Preservation in the digital world*. Council on Library and Information Resources.

⁸ French, J., Deshpande, S., Evans, W. and Obregon, R., 2020. Key guidelines in developing a pre-emptive COVID-19 vaccination uptake promotion strategy. *International journal of environmental research and public health*, 17(16), p.5893.

misinformation campaigns.

➤ **Social Responsibility to Protect Marginalized Communities**

The most marginalized become the casualties of online harassment and targeted misinformation. For example, harassment against women journalists and women activists tends to be organized and menacing, pointing to questions about whether or not social media platforms have the responsibility to ensure a safe space for speech.

CHALLENGES EMERGING TECHNOLOGIES PRESENT

Emerging technologies alter dynamics on how platforms are used, in a way that brings unprecedented avenues for innovation and efficiency. However, they do present very unique challenges particularly in the areas of platform liability and user responsibility. The challenges arise from decentralized new platforms, AI complexities, and the challenge of finding an appropriate balance between innovation and regulation.

Decentralized Platforms

Platforms, for instance, blockchain-based social networks or peer-to-peer content-sharing networks, do not have a central authority that could keep track of it. Such platforms allow users considerable freedom and are inherently resistant to censorship but pose huge challenges to accountability and liability.

No Central Authority

In a traditional system, for instance, a centralized entity can be held liable for moderation of content and compliance with legal frameworks. Decentralized systems, however, cannot identify one entity that controls the operations or content of the platform and

make it impractical to enforce liability for illegal or harmful content.

Example: Distributed control is a crucial factor in the decentralized nature of federated-based services such as Mastodon, making it challenging to enforce consistent policies of content moderation across the different nodes or servers.⁹

Cross-Border Regulation Challenges

Decentralized systems mostly cross boundaries, making the enforcement of local laws quite tough. For instance, that which is regarded illegal in one country may not violate the laws in another, creating a gray area in regulation.

Cyberspace Vulnerability

The decentralized platforms and AI systems, without exception, get infected from cyber threats. Poor security mechanisms leave the doors open for hackers to infiltrate the data breach or exploit platform vulnerability.

CASE STUDY AND ANALYSIS

Emerging technologies, particularly on digital platforms, have opened up tremendous avenues for users to engage with each other and share content. However, along with such avenues comes certain new difficulties regarding content moderation, platform accountability, and user responsibility. Here are the case studies that throw light on the challenges in action and point out how emerging technologies change the direction of platform liability and user responsibility.

⁹ Helberger, N., Pierson, J. and Poell, T., 2018. Governing online platforms: From contested to cooperative responsibility. *The information society*, 34(1), pp.1-14.

Case Study: Facebook and Hate Speech in Myanmar

Facebook was under huge public scrutiny in Myanmar for spreading hate speech and misinformation that triggered violence against the Rohingya Muslim minority. A platform with great potential to facilitate communication and support democratic engagement, because of ineffective content moderation and oversight on its part, Facebook became a formidable instrument in spreading harm on a massive scale.¹⁰

Background

The tensions between the Rohingya people and the military-led government of Myanmar had escalated during 2017, as hate speeches flooded through Facebook, promoting posts that incited violence against Rohingya people. Facebook faced criticism for failure to detect and remove inflammatory content in time." Algorithms that were developed to keep the users at their best form promoted engagement and also pushed the dangerous narrative fast. Consequences:

The situation in Myanmar became a humanitarian crisis as thousands of Rohingya people were killed and hundreds of thousands of them displaced. According to the United Nations, it was a "textbook example of ethnic cleansing."

Facebook was criticized for its platform becoming the means through which hate is mobilized on a large scale, after which it came under intense pressure over its role in hot conflict regions. The company revealed that its content moderation systems are not adequate and that the company has not been effective enough to prevent harmful contents among its users.

¹⁰ Fink, C., 2018. Dangerous speech, anti-Muslim violence, and Facebook in Myanmar. *Journal of International Affairs*, 71(1.5), pp.43-52.

This case thus affirms that the accountability of platforms would entail content moderation robust enough to address sensitive geopolitical and ethnic issues. The inadequacy of the regulatory framework, especially in regions, is another key takeaway - platforms seem to be taking reactive moderation after the damage is done rather than proactive measures.¹¹

One of the root issues in the Myanmar case was the lack of local regulatory control to inform content moderation best practices. Even though Facebook did several things- hiring more language moderators in-country, and removing hate speech-it was criticized for not doing enough because the platform was still largely reliant on algorithms, which were ineffective at dealing with the more nuanced nature of the content.

TOWARDS A BALANCED FRAMEWORK

As emerging technologies continue to shape the digital landscape, so does the question of balancing the liability of platforms and the responsibility of users. An effective and robust framework for regulating online platforms and ensuring responsible behaviour needs collaboration and complete transparency with a shared commitment to ethical principles. Below are some key elements that can contribute toward building a balanced framework for platform accountability and user responsibility:

Shared Responsibility Model

A responsible stewardship model holds both the platforms and users accountable to handle contents online. Platforms must take initiative to create a system for content moderation, while users need to learn and understand the rules of behaving themselves

¹¹ Yue, N., 2019. The "Weaponization" of Facebook in Myanmar: A Case for Corporate Criminal Liability. *Hastings LJ*, 71, p.813.

online for their proper governance.

Platform Accountabilities

Platforms should invest in advanced moderation technologies, such as AI and human oversight, to identify and manage harmful content before it spreads. They should also maintain openness in their content moderation processes and should enable users to contest wrongful removals. The legal standards that platforms have to comply with include regulations on protection of data, safety guideline, and more.

Example: YouTube updated its policies in 2019 with removals of violent extremism and harmful content, and states were supposed to be more responsible about content moderation.¹²

User Responsibility

Users should respect the community guidelines posted by platforms, following the rules of acceptable speech, harassment, or illegal activities. Consequences in case of breaching these guidelines ought to be definite and fair, such as removal of content, account suspension, or bans.

Example: Twitter enforces the "three strikes" rule, whereby accounts that have been repeatedly violating their terms of service are permanently suspended. At this point, the deterrent factors for users engaging in such behaviours are thus set in.¹³

Balancing Responsibility

While it is fundamentally the responsibility of such platforms to create safe environments, their users also have a part in the

¹² Flew, T., 2021. *Regulating platforms*. John Wiley & Sons.

¹³ Gillespie, T., 2017. Platforms are not intermediaries. *Geo. L. Tech. Rev.*, 2, p.198.

matter. An equitable and unbiased system of penalties, complete with mechanisms for users to appeal decisions, helps both parties take responsibility for their part in ensuring a safe, ethical, and digital environment.

CONCLUSION

The issues of liability versus user responsibility in the constantly evolving digital landscape are indeed very complex ones. With growing dominance of online platforms across communication, commerce, and information sharing, the question of accountability becomes increasingly critical. Even as platforms provide the infrastructure and algorithms that enable the creation and propagation of content, users also play an active role in shaping content landscapes through their posts, interactions, and engagement.

The balanced approach to this issue requires shared responsibility between the content moderation system of platforms and user participation in online platforms. Platforms should ensure that their systems for content moderation are robust, transparent, and responsive to harmful content while holding users accountable for adhering to community guidelines and ethical standards when engaging with online spaces. The approach in this model refers to both parties having an essential role in ensuring the safety and ethics of a digital environment.

Governments and regulatory agencies have a significant role to play in defining clear, enforceable standards that balance both encouragement of innovation and holding the platforms responsible for their contents. Properly crafted regulations—stemming from due diligence requirements and penalties for non-compliance—should be part of policymakers' mechanisms that enable this balance between innovation and accountability.

Effective solutions require collaboration between platforms, governments, civil society, and academia. Divergence in viewpoints supports the need to go through the ethical challenges newly presented by new technologies to ensure open spaces for constructive dialogue and innovation on platforms that are free of harm.

The only way this platform liability vs. user responsibility dilemma can be resolved is by having a holistic, adaptive framework that will change and adapt based on technological developments. Shared responsibility, accountability, and cooperation can ultimately help to create an informed digital ecosystem that works as much to the benefit of individual stakeholders as to minimize harm and maximize positive societal impact.