

UW project highlights liability of internet 'intermediaries' in developing countries

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How much liability do website owners and other online service providers have for content posted by other people? If someone posts content on your website that is defamatory, constitutes hate speech, disseminates child pornography or invades someone's privacy, are you liable?

The answers to such questions can be murky in developing countries. And as internet use expands around the globe, so does the potential liability for the owners of websites, search engines, social media sites and other online platforms, who are subject to laws in each country where their websites and services are accessible.

"As sites such as Instagram and Snapchat have exploded in the number of photos and videos and other information posted, this problem has exponentially increased," said Sean O'Connor, director of the University of Washington's Center for Advanced Study and Research on Innovation Policy (CASRIP).

"Each of those platforms has this potential liability hanging out there, with the firehose of content that's being posted every day."

To advance understanding of the issue, CASRIP recently commissioned and released a series of [reports](#) on the liability facing these kinds of online [service providers](#) as "internet intermediaries," or entities that facilitate online use. Many of these intermediaries provide platforms where content can be posted by users; the most well-known include Facebook, Twitter, Snapchat and Instagram.

But the problem also affects search engines, blogs, network operators and even comments sections on websites and blogs. The 16 reports focus on laws concerning [hate speech](#), privacy, child protection and defamation in five countries—Brazil, Russia, India, China and Thailand—that have research ties to the UW and are becoming increasingly important players in the internet liability landscape.

The reports detail differences in laws and social norms among the countries. Penalties can range from fines to suspension of business activities, criminal charges and even imprisonment.

In Russia, for example, internet service providers are required to block websites containing information about mass riots or extremist activities; a government "blacklist" of those sites totaled more than 17,500 in November 2015.

The report on India cites a study which found that more than three-quarters of Indian parents were unaware of software available to protect children online, and half of parents in Delhi allowed their children to spend more than 10 hours a day online.

The project, which received funding from Google, was carried out over a few years and involved authors, scholars and students in the five countries. Anna Bakhmetyeva, CASRIP's program manager, said the reports show that all the countries studied—despite the sometimes strict penalties their laws carry—are striving for a balance between control over internet content and the free flow of information.

"All of the countries want to protect freedom of speech. They want to protect [social media](#) and the dissemination of information, but at the same time impose some limitations to protect people's rights," said Bakhmetyeva.

"But the question is, can they achieve this balance or not?"

Among the reports' most positive findings, Bakhmetyeva said, is that the five countries generally do not hold internet intermediaries liable for unlawful content posted by users unless they knew about the content and failed to remove it. Most countries usually grant online service providers immunity, referred to as "safe harbor," provided they comply with certain rules and remove problematic content quickly.

The reports cite a case in Brazil which concluded that holding an online provider liable "would be the same as holding the post offices liable for written crimes on letters, which would be unreasonable." At the same time, Bakhmetyeva said, some websites have become known havens for criminal or offensive material. Governments must be careful to balance protections for intermediaries with enforcement against sites that ignore or even encourage hateful and other problematic content, she said.

Internet intermediary liability has become an issue of heightened focus in recent years, as governments worldwide increasingly expect internet companies to police illegal and other problematic content, and in some cases are holding them legally accountable for doing so. Consequently, O'Connor said, internet companies—particularly those with large numbers of users posting [content](#)—have a tremendous amount at stake in determining their potential liability.

"Penalties in some [countries](#) are quite severe," said O'Connor, the Boeing International Professor in the UW law school. "Individuals could potentially go to jail. So this is of great concern to anyone operating in the online space.

"If people understand the stakes, they should be keenly interested in what's going on in these reports."

Provided by University of Washington

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