



The Internet Association

Harmonizing Intermediary Immunity for Modern Trade Policy

Executive Summary:

The continued growth and development of the Internet as a global platform for communication, trade, and commerce depends on sound policies that preserve a free and user-oriented environment. One such policy is international trade, which should be modernized to reflect today's innovation economy. This paper discusses the importance of Section 230 of the Communications Decency Act to the development of the Internet industry in the U.S. and proposes that this underlying principle should be included in future trade agreements, namely the Transatlantic Trade and Investment Partnership. Globally, legal frameworks present challenges and serve as barriers to Internet-enabled trade. This paper illustrates these challenges through an explanation of Europe's approach to intermediary liability. Harmonizing international concepts of intermediary liability through trade policy will boost Internet-enabled trade and ultimately enhance global economic growth.

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I. Introduction

Nearly twenty years after the birth of the commercial Internet, the Internet continues to grow as an important platform for international trade. The Internet is indispensable to our daily lives - from how we communicate, do business, seek out sources of entertainment and participate in the political process to how we engage in commerce. The Internet accounts for 21% of worldwide GDP growth of advanced economies and facilitates \$8 trillion in commerce.¹ According to the U.S. International Trade Commission, U.S. exports of digitally enabled services (one measure of international digital trade) grew from \$282.1 billion in 2007 to \$356.1 billion in 2011, with exports exceeding imports every year.² As the Internet transforms how economies trade with each other, trade policy should be updated to reflect the importance of the Internet economy.

The United States is currently negotiating three key trade agreements: the Trans-Pacific Partnership (TPP), Trade in Services Agreement, and the Transatlantic Trade and Investment Partnership (TTIP). In 2013, President Obama alongside European Commission President Barroso and European Council President Van Rompuy, announced the launch of TTIP negotiations between the United States (U.S.) and the European Union (EU).³ These negotiations have been characterized as “an ambitious, comprehensive, and high-standard trade and investment agreements ... [that] will boost economic growth in the United States and the EU ... further open EU markets ... develop rules, principles, and new modes of cooperation on issues of global concern ... [and] promote the global competitiveness of small-and-medium sized enterprises.”⁴

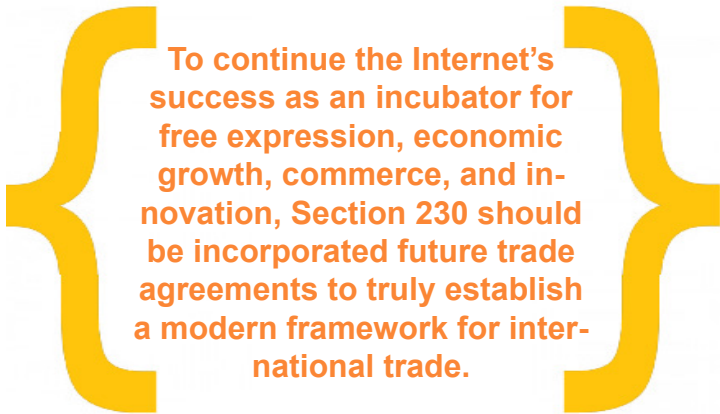
While the U.S. and EU continue negotiations, the U.S. Congress is deliberating renewed Trade Promotion Authority (TPA) legislation. TPA is the vehicle through which Congress grants the President authority to

¹ Matthieu Pélissier du Rausas et al., *Internet Matters: The Net's sweeping impact on growth, jobs, and prosperity*, MCKINSEY GLOBAL INSTITUTE 1,8 (2011), http://www.mckinsey.com/~media/McKinsey/dotcom/Insights%20and%20pubs/MGI/Research/Technology%20and%20Innovation/Internet%20matters%20-%20Nets%20sweeping%20impact/MGI_internet_matters_full_report.ashx.

² U.S. INTERNATIONAL TRADE COMMISSION, DIGITAL TRADE IN THE U.S. AND GLOBAL ECONOMIES PART 1 (July 2013), <http://www.usitc.gov/publications/332/pub4415.pdf>.

³ OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, WHITE HOUSE FACT SHEET: TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (T-TIP), <http://www.ustr.gov/about-us/press-office/fact-sheets/2013/june/wh-ttp> (last visited Apr. 23, 2014).

⁴ *Id.*



To continue the Internet's success as an incubator for free expression, economic growth, commerce, and innovation, Section 230 should be incorporated into future trade agreements to truly establish a modern framework for international trade.

enter into trade agreements via an expedited process.⁵ Key congressional leaders have also vowed to produce TPA legislation that meets the highest standards for 21st century trade. The Internet is an integral part of ongoing domestic and international policy discussion regarding the future of trade.

The Internet industry's remarkable growth in the U.S. is attributable to certain key laws. One of these laws is Section 230 of the Communications Decency Act (Section 230). Section 230 provides Internet companies with immunity from liability for the speech of third parties who use an Internet company's platform.

This paper focuses on Section 230, a law essential to the growth and development of Internet companies in the U.S. To continue the Internet's success as an incubator for free expression, economic growth, commerce, and innovation, Section 230 should be incorporated into future trade agreements to truly establish a modern framework for international trade.

II. Section 230's Dual Purpose: Evolving the Web by Doing the Right Thing

Almost three billion Internet users around the globe have access to the Internet. Two hundred forty five million users are located in the U.S.⁶ In addition to searching for and pulling content from the Internet, most users now take on active roles in creating content through multiple participatory online platforms such as social media websites, blogs, and user-review websites. According to the Pew Research Internet Project, 73% of online adults use a social networking site of some kind with 42% of online adults using multiple social networking sites.⁷ In addition to using social networks, about 35% of online adults and 57% of teenagers between the ages of 12 and 17 create their own content to post to the Web as a form of creative expression.⁸ Increasing opportunities to create and share content with others online is a contributing factor to the growth of this phenomenon.⁹

During the early years of the Web, Internet users created "Internet neighborhoods" via online message boards or bulletin board systems and engaged with other users based on certain commonalities – be it a car enthusiast, a sports fan, or someone simply seeking life advice.¹⁰ Beyond these social interactions, message boards also attracted business professionals. These platforms facilitated interactions among Internet users in an otherwise static, online environment.

Though message boards dominated the Web between 1997 and 2007 and are still relevant for certain groups, the evolution of the Web gave way to increased interactivity and seamless collaboration among Internet users online. Recognizing that the Internet and interactive computer services provide a platform "for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for

⁵ William H. Cooper, *Trade Promotion Authority and the Role of Congress in Trade Policy*, CONGRESSIONAL RESEARCH SERVICE, <https://www.fas.org/sgp/crs/misc/RL33743.pdf> (Jan. 13, 2014).

⁶ INTERNET WORLD STATS, <http://www.internetworldstats.com/stats14.htm> (last visited Apr. 15, 2014).

⁷ Maeve Duggan & Aaron Smith, *Social Media Update 2013*, PEW RESEARCH INTERNET PROJECT, <http://www.pewinternet.org/2013/12/30/social-media-update-2013/#fn-6228-1> (Dec. 30, 2013).

⁸ Amanda Lenhart, *User-Generated Content*, PEW RESEARCH INTERNET PROJECT (Nov. 6, 2006), <http://www.pewinternet.org/2006/11/06/user-generated-content/>.

⁹ *Id.*

¹⁰ *Id.*

intellectual activity,” Congress passed Section 230 in 1996.¹¹ This statute addresses the treatment of online service providers and states in relevant part, “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”¹² By clarifying that an Internet service is not a publisher when facilitating the speech of a third party, Section 230 provides the legal foundation for an interactive Internet. Here are some examples of how Section 230 benefits the Internet ecosystem:

- maintaining existing relationships via Facebook or Google+
- forming new relationships while keeping up with the latest trends and breaking news on Twitter
- picking a travel destination or arranging accommodations via TripAdvisor, Expedia, or AirBnb
- finding local businesses on Yelp, or
- leveraging user reviews to decide what to purchase on eBay or Amazon.

These services have re-defined not only how we engage socially, but also how we drive competition among businesses. For instance, social media and user online review websites offer great insights into consumers’ experiences with a particular product or service, whether positive or negative. About 88% of consumers have been influenced by an online customer review when making purchasing decisions.¹³ Awareness of these reviews provides businesses with an opportunity to gain a competitive advantage by either continuing successful strategies or implementing actions to respond quickly to consumers’ dissatisfaction. Without Section 230, none of these platforms would be able to facilitate use of content on their platforms because the websites would be liable for any unlawful speech.

Such fear of liability resulted in perverse incentives for online platforms to avoid gaining knowledge of third parties’ content on their platforms. Today, questions of an Internet service providers’ (ISP) liability for third party content are still at issue. However, from cases involving online auctions of sports memorabilia with forged signatures and forged certificates of authenticity¹⁴ to less than favorable comments posted to a discussion board about health practitioners¹⁵, courts have interpreted broadly Section 230 language to bar ISP liability.

By reversing such perverse incentives, Section 230 creates a legal backdrop that enables an Internet company to enforce its terms of service relative to unsavory or illegal speech.

III. The European Approach: European E-Commerce Directive

The EU recognized that access to the Internet and the development of electronic commerce could boost employment opportunities, particularly for small-and medium sized businesses, foster economic growth and investment, and enhance the competitiveness of European industry¹⁶. Shortly after the U.S. Congress enacted Section 230, the EU passed the 2000 E-Commerce Directive (Directive) to create a framework for electronic commerce in the Internal Market¹⁷, intended to establish legal certainty and consumer confidence.¹⁸

¹¹ Protection for Private Blocking and Screening of Offensive Material, 47 U.S.C. 230 (1996).

¹² *Id.*

¹³ *Customer Service and Business Results: A Survey of Customer Service from Mid-Size Companies*, DIMENSIONAL RESEARCH (Apr. 2013), http://zd-assets.s3.amazonaws.com/resources/whitepapers/Zendesk_WP_Customer_Service_and_Business_Results.pdf.

¹⁴ *Gentry v. eBay, Inc.*, 121 Cal. Rptr. 2d 703 (Cal. Ct. App. 2003).

¹⁵ *Barrett v. Rosenthal*, 146 P.3d 510 (Cal. S.C. 2006).

¹⁶ Directive 2000/31, of the European Parliament and the Council of 8 June 2000 *on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, available at* <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000L0031> (last visited Apr. 25, 2014) [hereinafter Directive 2000/31].

¹⁷ EUROPA, INTERNAL MARKET, http://europa.eu/legislation_summaries/internal_market/index_en.htm (last visited Apr. 24, 2014) (defining the ‘Internal Market’ as “a single market in which the free movement of goods, services, capital and persons is ensured and in which European citizens are free to live, work, study, and do business.”).

¹⁸ EUROPEAN COMMISSION, THE EU SINGLE MARKET, http://ec.europa.eu/internal_market/e-commerce/directive/index_en.htm (last visited Apr. 24, 2014).

In addition, the EU aimed to ensure the free movement of information society services between Member States.¹⁹

Information society services are broadly defined²⁰ and cover a wide range of online economic activities such as the sale of products and services, video-on-demand, e-mail, professional services, entertainment services, and basic intermediary services.²¹ Articles 12 through 15 of the Directive address liability of intermediary service providers. More specifically, unlike the U.S. approach, limitations on liability are determined based on whether three, specific types of Internet intermediaries - (1) mere conduits -- entities that provide access to the Internet, (2) entities that transmit information, and (3) entities that host information - meet certain requirements.²² Further distinguishing the Directive from Section 230, the Directive addresses exemptions for both third party content and activities and intellectual property infringement.²³ Article 14 of the Directive covers entities that host information and generally applies to liability for defamation, breach of privacy, intellectual property infringement, and criminal laws.²⁴ This section provides that intermediaries are not liable for the content stored on their servers if “the provider does not have actual knowledge of illegal activity or information ... [or] is not aware of facts or circumstances from which the illegal activity or information is apparent...”²⁵ Additionally, Article 14 requires that service providers must “act expeditiously to remove or to disable access to the information” upon receiving notice of the illegal activity or information - otherwise known as a “notice and action” provision.²⁶ Though the Directive imposes a knowledge requirement as well as a duty to act on intermediaries, Article 15 clarifies that intermediaries generally do not have a duty to monitor.²⁷

Despite the Directive’s mission to create legal certainty for online intermediaries, businesses, and consumers alike in the Internal Market, the European Commission’s (Commission) 2010 public consultation revealed that varied interpretation of Article 14 by national courts in different Member States, and occasionally inter-jurisdictional conflicts, have created uncertainties for intermediaries that need to adjust their practices based on each interpretation and produced high compliance costs.²⁸ This is due in part to the inherent ambiguity of terms such as “actual knowledge” and “expeditiously.”²⁹

A prominent example that is illustrative of this ambiguity is a 2010 case involving Google executives in Italy. In that case, a video of a disabled teenager being harassed appeared on a company’s Italian video website.³⁰ An Italian prosecutor then brought action against three Google executives that had no direct

¹⁹ Directive 2000/31, *supra* note 18.

²⁰ Article 1(2) of the Commission Directive 98/34/EC June 1998 *adapting to technical progress Council Directive 74/151/EEC on certain components and characteristics of wheeled agricultural or forestry tractors*, OJ L 170/13, 16.06.1998, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1998:217:0018:0026:en:PDF> (defining information society services as “any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including digital compression) and storage of data and at the individual request of a recipient of a service.”).

²¹ EUROPEAN COMMISSION, http://ec.europa.eu/internal_market/e-commerce/directive/index_en.htm (last visited Apr. 16, 2014).

²² Directive 2000/31, *supra* note 18.

²³ CENTER FOR DEMOCRACY AND TECHNOLOGY, SHIELDING THE MESSENGERS: PROTECTING PLATFORMS FOR EXPRESSION AND INNOVATION 7 (Dec. 2012), <https://www.cdt.org/files/pdfs/CDT-Intermediary-Liability-2012.pdf>.

²⁴ Directive 2000/31, *supra* note 18. See also Timothy Pinto et al., *Liability of Online Publishers for User Generated Content: A European Perspective*, 27 COMM. LAWYER 5, Apr. 2010 at 6.

²⁵ Directive 2000/31, *supra* note 18.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Commission Staff Working Document on E-commerce Action Plan 2012-2015: State of Play 2013, at 17 (Apr. 23, 2013), available at http://ec.europa.eu/internal_market/e-commerce/docs/communications/130423_report-ecommerce-action-plan_en.pdf.

²⁹ Commission Staff Working Document on Online Service, including E-Commerce, in the Single Market, at 43-45, COM (2011) 942 final (Nov. 1, 2012), available at http://ec.europa.eu/internal_market/e-commerce/docs/communication2012/SEC2011_1641_en.pdf.

³⁰ Danny O’Brien, *Blaming the Middlemen of the Internet is not the Answer*, THE IRISH TIMES (Mar. 5, 2010); Katherine S. Ritchey, *Italian appeals court overturns Google privacy convictions* JONES DAY, (Mar. 2013), available at <http://www.jonesday.com/files/Publication/1409f7ea-c813-4df1-9b38-89a5071624ce/Presentation/PublicationAttachment/bb5099ab-c22f-40bb-9214-8d43fb402df3/Italian%20Appeals%20Court%20Overturns.pdf> [hereinafter JONES DAY].

³¹ *Id.*

involvement in overseeing the website. The executives faced charges for defamation and invasion of privacy.³¹ Google argued that as an ISP it was exempt for the content of its users.³² Furthermore, upon receiving notice, Google took down the video within mere hours to meet the “notice and action” requirement.³³ The Milan court disregarded these circumstances by holding the executives liable for invasion of privacy and subsequently placed each executive under a suspended six-month prison sentence.³⁴ An Italian appellate court recently reversed this decision by reasoning that requiring Google to pre-screen content is contradictory to the principles of freedom of expression and affirmed the notion that online platforms are not responsible for user-generated content in the absence of notice.³⁵

Other defamation suits against online platforms for third party content have also yielded successful outcomes. For instance, a news portal in Estonia, Delfi, published an article about a public ferry transportation company and permitted comments from users.³⁶ The article itself was not defamatory; however, users posted 185 comments regarding the story, which included defamatory language regarding one of the company’s advisory board members.³⁷ Though Delfi complied with the notice and action policy and removed the inappropriate language upon request from the company, the Estonian Supreme Court determined that Delfi could not be exempt from liability.³⁸ In reaching this determination, the Court reasoned that Delfi’s comment environment indicated that the new portal could decide what to publish and could have prevented publication of unlawful comments.³⁹ Delfi’s appeal to the European Court of Human Rights (ECHR) proved unsuccessful as ECHR affirmed the Supreme Court’s decision.⁴⁰

Increased legal uncertainties that arise due to inconsistent applications of the Directive could negatively impact foreign direct investment in a particular Member State. An academic from the University College Dublin and chairman of Digital Rights Ireland describes the Directive as putting intermediaries “in a very weak position.”⁴¹ He argues that a company like TripAdvisor, which hosts user review comments for travel and accommodations, would be vulnerable in Ireland due to its laws.⁴² Additionally, the manager of Boards – a discussion site that accommodates its members’ postings of links, images, and opinions – admits that its site is constantly under legal pressure.⁴³

In the Commission’s action plan for achieving a digital single market for content, it acknowledged that “Europe lacks online creative content / entertainment services able to compete on the global scale; too often innovative online services choose to establish outside Europe.”⁴⁴ The vision is to create an online environment where European citizens have a clear understanding of generating user content and the sharing of information online.⁴⁵ As the Commission explores mechanisms to address some of the issues addressed above, it should consider European trade policy.

³² JONES DAY, *supra* note 26.

³³ *Google closes briefcase on Italian job: Execs ‘not liable’ for privacy breach*, THE REGISTER (Apr. 15, 2014), http://www.theregister.co.uk/2014/02/06/google_execs_not_liable_italian_privacy_breach/.

³⁴ JONES DAY, *supra* note 26.

³⁵ *Id.*

³⁶ Giancarlo Frosio, *European Court of Human Rights Holds Delfi Liable for Anonymous Defamation*, STANFORD LAW SCHOOL CENTER FOR INTERNET AND SOCIETY (Oct. 25, 2013), <http://cyberlaw.stanford.edu/blog/2013/10/european-court-human-rights-holds-delfiee-liable-anonymous-defamation>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Copyright and defamation law is repelling investors*, THE IRISH TIMES, Nov. 26, 2010 at 7.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ EUROPEAN COMMISSION, DIGITAL SINGLE MARKET FOR CONTENT, <http://ec.europa.eu/dgs/connect/en/content/digital-single-market-content> (last visited Apr. 30, 2014).

⁴⁵ *Id.*

V. Meeting TTIP's Potential as the 'Gold Standard'

Copenhagen Economics' recent study noted that "the limited liability regime is not only necessary for the functioning and growth of online intermediaries, but it is also beneficial to the European economy."⁴⁶ More specifically, the study found that online intermediaries contribute 310 billion Euros to European GDP in direct and indirect impact.⁴⁷ This contribution grew to 430 billion Euros in a subsequent study.⁴⁸

The potential to capitalize on both economies' strength is astounding, as TTIP will add over 13 million American and European jobs.⁴⁹ As the U.S. and EU continue negotiations towards achieving a trade agreement of the highest standards, it is imperative that the agreement contains a harmonized policy that shields online platforms from liability of third party content. Incorporating a unified policy will not only greatly benefit each economy, but also set a strong precedent for future, modernized trade deals.

⁴⁶ KATRINE ELLERSGAARD NIELSEN ET. AL., COPENHAGEN ECONOMICS, THE IMPACT OF ONLINE INTERMEDIARIES ON THE U.S. ECONOMY 6 (Apr. 2013) , available at, <http://www.europarl.europa.eu/document/activities/cont/201305/20130529ATT66947/20130529ATT66947EN.pdf>.

⁴⁷ *Id.* at 7.

⁴⁸ *Id.* at 8.

⁴⁹ OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *supra* note 3.

Appendix

Beyond the United States and European Union, Internet companies operating in other jurisdictions are facing government mandates to monitor users' actions on their platforms as well increasing civil and criminal liability for user-generated content hosted on their platforms. Below are additional examples from Latin America and Asia Pacific countries that demonstrate the need for harmonized intermediary liability trade policy as current approaches to intermediary liability treatment yield legal uncertainty in these jurisdictions:

Latin America

While the treatment of online intermediary for users' content is well documented in the United States and Europe, less information is available with regards to intermediary liability in Latin America.⁵⁰ For instance, in Argentina, the National Chamber of Civil Appeals cleared Google and Yahoo! of defamation charges relating to Virginia Da Cunha, an Argentinian entertainer.⁵¹ Da Cunha claimed that Google and Yahoo violated her privacy among other allegations by providing access to websites that contained sexually explicit content.⁵² The appeals court overturned the lower court's ruling, which called for both companies to remove all content that had any kind of sexually explicit reference of the entertainer by name or photo.⁵³ Currently, Argentina's Congress is considering draft resolutions that specifically addresses intermediary liability.⁵⁴

In Brazil, two teenagers brought suit against Google's social networking website Orkut for jokes that offended them.⁵⁵ There, the court fined Google for each day the offending material remained on its website and ordered the company to prevent the posting of similar material in the future.⁵⁶ Since this case, Brazilian President Dilma Rousseff signed the Marco Civil legislation into law, Brazil's first law on Internet rights. The then legislation and now law addresses intermediary liability and intends to protect intermediaries from liability.⁵⁷ It extends liability to intermediaries only if they fail to comply with a court order requiring the removal of content.⁵⁸

Asia Pacific

In Australia, a man wrongfully identified by a Twitter user as the author of a hate blog, sued Twitter for defamation.⁵⁹ This first of its kind case raised questions about the liability of online intermediaries or platforms. Despite Twitter's terms and conditions, this case raised the notion that Twitter's policies would not provide absolute legal protection, but that the social platform could still be held liable for its users' content.⁶⁰ Additionally, this suit highlighted the differing treatment of ISPs and platforms that host content.⁶¹ In November 2013,

⁵⁰ David Sasaki, *Intermediary Liability in Latin America*, INFORMACION CIVICA (Oct. 25, 2014), <http://informacioncivica.info/argentina/intermediary-liability-in-latin-america/>.

⁵¹ Jacqui Chang, *Argentinian Court Applies Common Sense To Search Defamation Lawsuit*, ARSTECHNICA (Aug. 20 2010), <http://arstechnica.com/tech-policy/2010/08/argentinian-court-applies-common-sense-to-search-defamation-lawsuit/>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Daniela Schnidrig & Veronica Ferrari, *Liability of Intermediaries in Argentina: Lack of Specific Legislation and Contradictory Decisions*, INFOJUSTICE (Apr. 26, 2010), <http://infojustice.org/archives/32645>.

⁵⁵ Sasaki, *supra* note 47.

⁵⁶ *Id.*

⁵⁷ Angelica Mari, *Brazil Passes Groundbreaking Internet Governance Bill*, ZDNET (Mar. 26, 2014), <http://www.zdnet.com/brazil-passes-groundbreaking-internet-governance-bill-7000027740/>.

⁵⁸ Pedro Nicoletti Mizukami, *Brazilian Chamber of Deputies Approves Marco Civil Bill* (Mar. 25, 2014), <http://infojustice.org/archives/32527>.

⁵⁹ Peter Black, *Is Twitter Liable for Defamation*, CNET (Feb. 20, 2012), <http://www.cnet.com.au/is-twitter-liable-for-defamation-339331971.htm>.

⁶⁰ *Id.*

⁶¹ *Id.*

Australia's Department of Communications launched an initiative to reduce the regulatory burden on industry to foster innovation and increase productivity across its economy.⁶² Internet companies and technology companies alike contributed to this inquiry by calling for clear and robust safe harbor provisions for online intermediaries to facilitate growth of a strong online environment.⁶³

India's 2000 Information Technology Act (IT Act) also proves disadvantageous to a potential thriving Internet ecosystem as intermediaries and users may be subject to negative consequences.⁶⁴ While the IT Act intended to provide a legal framework for electronic commerce, its subsequent 2011 guidelines to advise intermediaries on how to remain compliant has led to varying interpretations by the law enforcement community and what is considered legal between users' access to content and users' generation of content.⁶⁵ For instance, an Indian court found that a blogging website that hosted less than favorable comment about a guru to have editorial control over content on its platform though a user and not the blogger posted the comment.⁶⁶ In addition to ordering the blogger to remove the content, the court also required the blogger to monitor future posts to preempt further defamation of the guru.⁶⁷

As legal uncertainty across many jurisdictions regarding intermediary liability persists, other jurisdictions implemented restrictions to further stifle free expression online. In September 2013, the Vietnamese government enacted Decree 72, which requires use of social networks be limited to posting of personal information rather than to share news articles or other information.⁶⁸ The decree also requires service providers to comply with regulations to remove content such as material that could harm national security.⁶⁹

⁶² AUSTRALIAN GOVERNMENT DEPARTMENT OF COMMUNICATIONS, DEREGULATION IN THE COMMUNICATIONS PORTFOLIO (Nov. 2013), http://www.communications.gov.au/__data/assets/pdf_file/0010/204877/Framing-Paper.pdf.

⁶³ James Hutchinson, *Google, eBay want 'safe harbor,'* FINANCIAL REVIEW (Mar. 4, 2014), http://www.afr.com/p/technology/google_ebay_want_safe_harbour_gMcgYyaf1ASiptZV93S7vM.

⁶⁴ Copenhagen Economics, *Closing the Gap: Indian Online Intermediaries and a Liability System Not Yet Fit for Purpose* (Mar. 2014), http://www.global-networkinitiative.org/sites/default/files/Closing%20the%20Gap%20-%20Copenhagen%20Economics_March%202014_0.pdf.

⁶⁵ *Id.* at 19. Additionally, another aspect open to interpretation is what procedure should be followed between aggrieved parties and online intermediaries.

⁶⁶ *Id.* at 20.

⁶⁷ *Id.*

⁶⁸ Tim Yu, *Shooting the Messenger? Intermediary Liability in Southeast Asian Cyberspace*, ASIA PACIFIC FOUNDATION OF CANADA, <http://www.asiapacific.ca/thenationalconversationonasia/blog/shooting-messenger-intermediary-liability-southeast-asian-cy> (Oct. 10, 2013); *Vietnam Internet Restrictions Come Into Effect*, BBC NEWS ASIA (Sept. 1, 2013), <http://www.bbc.com/news/world-asia-23920541>.

⁶⁹ Yu, *supra* note 64.