

## **The Liability of Online Hosting Platforms: Should exceptionalism end?**

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Against the background of the growing economic and societal importance of online platforms, this paper considers if and how their liability for illegal content or product carried over their platforms should increase. Since 2000, the e-commerce Directive has offered online intermediaries a liability exemption if the online intermediary does not know the illegality or, when it knows, it acts expeditiously to remove or block access to the material. As platforms have gained economic and societal importance they also feature more illegal material, such as terrorism content, child pornography, hate speech, copyrighted material without license or counterfeit goods. This paper considers the appropriate liability rule for hosting service providers from an economic perspective, proposing policy recommendations for an efficient EU liability regime. Online intermediaries may often be best-placed to remove illegal material, when they have the best information and monitoring tools available. Online intermediaries may take suboptimal monitoring efforts on their own initiative due to the presence of externalities and asymmetric information problems, warranting some form of liability. However, for more fundamental reasons of free speech and preventing censorship, we may not want to entrust – and burden – private parties with such an extensive ‘policing’ role. Additionally, higher monitoring requirements may disproportionately burden small entrants. Since many actors participate to the diffusion of illegal material online, the responsibility of a safe Internet should be shared among all these actors. Concrete regulatory improvements may encourage online intermediaries to do their part in monitoring proactively and diligently, such as affirming a clear good Samaritan clause in the EU.