

Appendix 8: International Comparison of Intermediary Liability Measures

European Union

1. In the EU, the *Electronic Commerce Directive* (“ECD”) requires member states to implement domestic laws that protect carriers from liability for all forms of content they carry, provided that certain conditions are met:
 - the carrier acts as a “mere conduit”; that is, it does not initiate the transmission; select the receiver;
 - the carrier does not select or modify the content; and
 - the carrier does not store the content longer than is reasonably necessary for the transmission.¹
2. (There are also similar exclusions of liability for caching (automatic, intermediate and temporal storage of information in the network for the sole purpose of making more efficient the information’s onward transmission to recipients)² and hosting (provision of storage space on web servers for use of third parties).³)
3. Carriers that provide services of the types identified above do not have a general obligation to monitor the information they transmit or store, or a general obligation actively to seek facts or circumstances indicating illegal activity. However, ISPs must inform the appropriate authorities of alleged illegal activities undertaken or information provided by a recipient of their service as soon as ISPs become aware of it; and must disclose the identity of recipients with whom they have a storage agreement upon receiving a request from competent authorities.⁴

United States

¹ *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market*, OJ L178, July 17, 2000, p. 1, article 12; <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32000L0031>. Transposed into UK law by the Electronic Commerce (EC Directive) Regulations 2002, [SI](#) 2002/2013.

² *Directive 2000/31/EC*, article 13.

³ *Ibid.*, article 14.

⁴ *Ibid.*, article 15.

4. The *Digital Millennium Copyright Act of 1988* (“DCMA”) provides protections similar to those available under the EU *Electronic Commerce Directive* for ISPs and other intermediaries, but limited to circumstances where the claim arises from infringement of copyright.⁵ Section 512 of the DCMA provides as follows:

§ 512. Limitations on liability relating to material online

(a) TRANSITORY DIGITAL NETWORK COMMUNICATIONS.—A service provider shall not be liable for monetary relief, or, except as provided in subsection (j), for injunctive or other equitable relief, for infringement of copyright by reason of the provider’s transmitting, routing, or providing connections for, material through a system or network controlled or operated by or for the service provider, or by reason of the intermediate and transient storage of that material in the course of such transmitting, routing, or providing connections, if—

- (1) the transmission of the material was initiated by or at the direction of a person other than the service provider;
- (2) the transmission, routing, provision of connections, or storage is carried out through an automatic technical process without selection of the material by the service provider;
- (3) the service provider does not select the recipients of the material except as an automatic response to the request of another person;
- (4) no copy of the material made by the service provider in the course of such intermediate or transient storage is maintained on the system or network in a manner ordinarily accessible to anyone other than anticipated recipients, and no such copy is maintained on the system or network in a manner ordinarily accessible to such anticipated recipients for a longer period than is reasonably necessary for the transmission, routing, or provision of connections; and

⁵ 17 U.S.C. §511 and following.

(5) the material is transmitted through the system or network without modification of its content.

5. (There are also similar exclusions of liability for caching and hosting.)
6. Other types of content-related claims are covered by the *Communications Decency Act of 1996*, which provides, in part, that "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".⁶

Japan

7. In Japan, the *Provider Liability Limitation Act*⁷ specifies that when a right is infringed by information distributed by a relevant service provider, the provider shall not be liable for any consequential loss unless it knew or could reasonably have known, that an infringement was occurring. The law applies, inter alia, to copyright and trademark rights, invasion of privacy and defamation with respect to individuals and damage to honour or credibility with respect to juridical persons.

⁶ 47 U.S.C. §230.

⁷ Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders, Act No. 137 of November 30, 2001, Article 3; http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=02&id=2088. See also the guidelines on the interpretation and application of the law relating to copyright, defamation and privacy and trademarks published by the Provider Liability Limitation Act Guidelines Review Council Review Council: https://www.telesa.or.jp/consortium/provider/pconsortiumproviderindex_e-html.