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THE SPECIFICS AND DEVELOPMENT TRENDS OF INTERNET INTERMEDIARIES' LIABILITY

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In recent years, the issue of the **liability regime of internet intermediaries** has become a central topic of discussion within the European legal and policy context. A particularly pressing question has emerged as to whether online platforms should bear legal responsibility in situations where their infrastructure is used to **disseminate insults, defamation, hate speech**, or other forms of content violating fundamental **human rights**.

This issue becomes especially pronounced when individuals whose rights have been infringed address these platforms with formal requests to remove offensive or defamatory material, yet the platforms fail to act.

Such situations raise the question **of two-layered (or dual) liability**, which involves not only the original authors of the unlawful content but also the intermediaries who enable its publication and continued accessibility.

The relevance of this topic increased significantly after 2016, particularly in the context of several presidential elections and the Brexit referendum in the United Kingdom. These developments intensified public debates around the **balance between freedom of expression and regulatory control over the information environment.**

Currently, the European Court of Human Rights has developed an almost consolidated body of **case law,** indicating that **internet intermediaries may be held liable** when they fail to remove defamatory or offensive content from their platforms upon notification.

This debate and its potential regulatory solutions are also highly relevant to the Armenian legal context, particularly in light of ongoing legislative reforms and the provisions of the Constitutional Court of Armenia's **decision of October 1 of the previous year**. These developments are likely to play a decisive role in shaping the future **regulatory framework** for the liability of internet intermediaries in Armenia.

Key words: *Internet intermediaries, insult, defamation, responsibility, media, law, publication.*

In the contemporary social order, shaped by a new phase of technological progress, the Internet has long since transcended its original function as a mere technical instrument for the transmission of information. It has evolved into a global platform that facilitates self-expression not only for natural and legal persons, but also for subjects of international law, acting through their highest representatives. In accordance with the

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broader dynamics of legal development, this transformation has engendered a distinct category of legal relations, notable both for the intensity of their evolution and for their unprecedented spatial and juridical complexity.

Against this backdrop, the rapid pace of technological advancement exerts a profound influence across multiple branches of law, with particular significance for the regulation of information flows in the digital environment and the delineation of liability for actors engaged in such processes. Within this framework, the legal institution of Internet intermediaries—and the contested question of their liability—assumes heightened importance.

From a juridical standpoint, the issue of intermediary liability lies at the confluence of several foundational legal principles, including the right to freedom of expression, the protection of honor and dignity, and the right to privacy. Comparative legal analysis reveals a diversity of approaches in defining the scope of intermediary liability, establishing preventive and remedial mechanisms, and evaluating the legality of intermediaries' actions.

Accordingly, this article undertakes to examine the contours of a comprehensive definition of Internet intermediaries, to analyze the divergent approaches adopted by legal systems in regulating their liability, to identify the conditions under which intermediaries may be exempted from or held subject to such liability, and to trace emerging trends in the formulation and adaptation of intermediary policies within the evolving digital legal order.

The institution of Internet intermediaries and the issue of their liability is, perhaps, a relatively new form of legal relations in a rapidly developing society. From a theoretical standpoint, there is no comprehensive, universally accepted definition of an "Internet intermediary"; however, various interpretations, classifications, and descriptions exist, some of which will be addressed below. In particular, the Organisation for Economic Co-operation and Development (OECD) defines Internet intermediaries as service and hosting providers, search engines, e-commerce and online payment systems, as well as social web platforms, which serve as key drivers of economic and social development[1].

According to the EU E-Commerce Directive[2], an Internet intermediary is considered to be a legal or natural person who provides services for the purpose of receiving and disseminating information among the public. Examples include hosting, web hosting, search engines, online shops, and other websites engaged in the transmission or dissemination of information.

A widely used classification of Internet intermediaries is offered by *Article 19*[3], which identifies the following types: Internet Service Providers (ISPs), hosting and cable Internet service providers, hosting and storage service providers (Web Hosting Providers), search engines, and social media platforms.

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[1] The Economic and Social Role of Internet Intermediaries, page 9, https://www.oecd.org/en/publications/theeconomic-and-social-role-of-internet-intermediaries_5kmh79zzs8vb-en.html#:~:text=Internet%20access%20intermediaries%20and%20hosting,of%20new%20products%20and%20s ervices. 28.06.2025.

[2] The Digital Services Act, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en , 28.06.2025.

[3] Dilemma of liability, Article 19(2013) https://www.article19.org/data/files/Intermediaries_ENGLISH.pdf, p. 6, 28.06.2025.

More comprehensive classification options have also been proposed by Google's *Transparency Reports and Policies*[4] and by the United Nations Conference on Trade and Development (UNCTAD) Reports[5].

To provide a comprehensive definition of Internet intermediaries, it is first necessary to examine the historical circumstances of the institution's emergence and the debate over their liability, the often conflicting positions adopted over time by major subjects of international law, and the current challenges to the functioning of the institution.

Discussions on the liability of Internet intermediaries began as early as the 1990s, when the Internet started to develop and take shape as a primary means of disseminating information. However, intense political and legal debates became especially active in the second half of the 2010s, entering a new stage during the presidency of Donald Trump in the United States (2016–2020), when the state began to speak more actively about exercising control over online platforms—particularly social media—and about limiting their liability.

On February 8, 1996, in the United States, Section 230 of the Communications Decency Act (CDA) was adopted as part of the Telecommunications Act of 1996. This Section provided broad protection for Internet intermediaries, stating that online platforms are not liable for content posted by users[6].

A turning point in the debates surrounding the institution of Internet intermediaries and the question of their liability occurred during the presidency of Donald Trump (2016–2020). In particular, Trump regularly criticized Section 230, claiming that social media platforms used this provision to exhibit bias toward certain viewpoints. Therefore, on May 28, 2020, Trump signed an executive order aimed at revising Section 230. The order stated that "Online platforms are engaging in selective censorship that is harming our national discourse,"[7] calling for the limitation of legal protections for Internet intermediaries in cases where they edit user content.

The next phase encompasses the period following Trump's presidency (particularly after the 2020 elections), when social media platforms began blocking Trump's posts or labeling them as "misinformation." In this context, within the framework of the 2020 executive order, the question arose as to whether these platforms were acting as "passive intermediaries" or as "content editors," which could serve as a basis for limiting their legal protections under Section 230.

The discussions on the liability of Internet intermediaries, as well as the development and adoption of legislative regulations, were also significantly stimulated by the Brexit referendum (2016). During the referendum period, issues such as election manipulation policies, the spread of fake news, targeted disinformation campaigns, data protection concerns, and obstacles arising from the oversight of information platforms became highly prominent. Consequently, the effectiveness, feasibility, and legality of online

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[4] Google Transparency Report, https://transparencyreport.google.com/ 28.06.2025.

[5] UNCTAD (United Nations Conference on Trade and Development) Reports, https://unctad.org/, 28.06.2025.

[6] U.S. Congress. (1996). Section 230 of the Communications Decency Act, February 8, 1996:

[7] Executive Order on Preventing Online Censorship, https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-preventing-online-censorship/, 12.08.2025.

platforms—particularly Facebook, Google, and Twitter—acting as "passive intermediaries" were increasingly called into question[8].

In fact, starting from the period following the Brexit referendum, the international community and major subjects of international law began initiatives aimed at developing relevant regulations for certain aspects of the functioning of Internet intermediary institutions and establishing circumstances that would trigger corresponding liability. In particular, the European Union developed the **Digital Services Act**[9] initiative, which was adopted in 2022, while the United Kingdom prepared the **Online Safety Bill**[10], which was adopted in 2023.

The UK Parliament also initiated investigations related to digital campaigning and the role of social media platforms. In 2018, it published the report *"Disinformation and 'fake news': Final Report"* (UK Parliament, DCMS Committee, 2019), which called for a review of the liability of Internet intermediaries and, accordingly, the establishment of legislative regulation covering aspects such as advertising transparency and accountability for unverified information[11]. The report specifically highlighted the connections between Facebook, Cambridge Analytica, and the Brexit campaign, analyzing the role of social media in public discourse as well as issues related to the spread of disinformation and its consequences. The UK Parliament's report also paved the way for the EU Digital Services Act[12] initiative (adopted in 2022).

It is also necessary to refer to the **White Paper on Online Harms**[13] published by the UK Government, which later served as the basis for the UK **Online Safety Bill**[14] (adopted in 2023). The White Paper aimed to address issues ("online harms") such as content involving sexual abuse and exploitation of children, content promoting or encouraging suicide, hate speech and calls for violence, disinformation and misinformation, cyberattacks, cyberbullying, terrorism, and the online sale of illegal goods (e.g., drugs, weapons). It proposed an entirely new liability system, in which the main principles include a platform's **"duty of care,"** the presence of supervisory and regulatory bodies, transparent policies, and, most importantly, the protection of minors' rights.

The European Union has also actively defined its position regarding Internet intermediaries. The main provisions on the liability of Internet intermediaries are established in the **E-Commerce Directive** (2000/31/EC)[15] and in the **Digital Services**

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[8] **Cadwalladr, C.** (2018). *The great British Brexit robbery: how our democracy was hijacked*. The Guardian.
https://www.theguardian.com/technology/2017/may/07/the-great-british-brexit-robbery-hijacked-democracy, 28.06.2025.

[9] https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en, 28.06.2025.

[10] https://www.gov.uk/government/publications/online-safety-act-explainer/online-safety-act-explainer, 28.06.2025.

[11] https://publications.parliament.uk/pa/cm201719/cmselect/cmcumeds/1791/1791.pdf 28.06.2025.

[12] https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en, 28.06.2025.

[13] https://www.gov.uk/government/consultations/online-harms-white-paper, 28.06.2025.

[14] https://www.gov.uk/government/publications/online-safety-act-explainer/online-safety-act-explainer, 28.06.2025.

[15] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000, https://eurlex.europa.eu/eli/dir/2000/31/oj/eng, 28.06.2025.

Act (DSA, 2022)[16]. The E-Commerce Directive stipulates that intermediaries can be exempt from liability only if they do not know and cannot control illegal content. The DSA adds monitoring requirements, demanding greater transparency and risk assessment, especially for very large platforms. It also includes a mandatory external audit requirement to periodically verify the activities of these platforms, which is an important step to ensure adequate oversight. In practice, the regulations established by the EU impose stricter liability on Internet intermediaries compared to U.S. legal acts.

While in the United States Section 230 creates a clearly differentiated and more permissive model, where online platforms are exempt from liability if they do not engage with content, the situation in the EU is different. The **E-Commerce Directive** (2000/31/EC) defines three main types of Internet intermediaries and specifies the conditions under which each can be exempt from liability.

According to Article 12 of the Directive, if a service provider merely transmits data without altering or selecting its content, it is not liable for the content of that data. Examples of such cases include Internet Service Providers (ISPs).

The Directive also establishes the legal basis for a **"Notice and Take Down"** system, through which rights holders can notify intermediaries of illegal content and request its prompt removal[17].

The Directive prohibits requiring Internet intermediaries to engage in active monitoring of user-generated content. This provision aims to protect the technical role of platforms and to avoid imposing publisher-like obligations on them (Article 15). In this regard, although the E-Commerce Directive prohibits general monitoring, the DSA requires intermediaries to respond to illegal content posted on their platforms by maintaining regulated **"notice and action" mechanisms**.

The aforementioned regulations are practically reflected in decisions of the **European Court of Human Rights (ECtHR)** and the **Court of Justice of the European Union (CJEU)**, some of which we will discuss below:

For example, in the case of *Glawischnig-Piesczek v. Facebook*, Austrian Parliament member Eva Glawischnig-Piesczek filed a lawsuit against Facebook, requesting the removal and prevention of offensive content on her page. The case began in 2016, when a Facebook user posted a negative comment about Glawischnig-Piesczek containing offensive statements and inaccurate information. In 2019, the CJEU ruled that social networks must be held liable for content they fail to remove if that content violates the law, particularly concerning inappropriate speech or indecency. The Court determined that Facebook, as an intermediary, must comply with the law and is obliged to prevent the dissemination of similar offensive content in the future if it is identified as harmful or inaccurate[18].

The legal assessment of the institution of Internet intermediaries places a key role on the **ECtHR's case law**, which over the last decade has significantly developed the

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[16] The Digital Services Act, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en , 28.06.2025.

[17] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32000L0031, 28.06.2025.

[18] https://globalfreedomofexpression.columbia.edu/cases/glawischnig-piesczek-v-facebook-ireland-limited/, 28.06.2025.

standards for the liability of online platforms, particularly news portals and blogs. The ECtHR has adopted a multifaceted approach, seeking to balance the right to freedom of expression with the protection of an individual's honor, dignity, and reputation.

The first systematic consideration of the liability of Internet intermediaries was made in the case of *Delfi AS v. Estonia*, which was resolved by the Grand Chamber of the ECtHR in 2015. The case concerned anonymous comments posted by users on an online news portal, which contained hate speech, threats, and insults directed at a commercial organization. Although the website removed the comments only after a written complaint—six weeks later—the domestic courts held the company civilly liable, requiring it to pay damages. The court noted [Lastly, the Court observes that the applicant company has argued that the Court should have due regard for the notice-and-take-down system that it had introduced. If accompanied by effective procedures allowing for rapid response, this system can, in the Court's view, function in many cases as an appropriate tool for balancing the rights and interests of all those involved. However, in cases such as the present one, where third-party user comments are in the form of hate speech and direct threats to the physical integrity of individuals, as understood in the Court's case-law (see paragraph 136 above), the Court considers (…), that the rights and interests of others and of society as a whole may entitle Contracting States to impose liability on Internet news portals, without contravening Article 10 of the Convention, if they fail to take measures to remove clearly unlawful comments without delay, even without notice from the alleged victim or from third parties][19].

In the case, the Court applied the following criteria:

1. The intervention was provided for by law and satisfied the requirement of foreseeability.
2. It pursued a legitimate aim, namely the protection of individual rights.
3. It was necessary in a democratic society, taking into account the clearly harmful nature of the comments.

The ECtHR emphasized that if a news portal initially creates technical conditions that allow users to anonymously and unmoderatedly post content containing hate speech, the portal assumes a certain degree of **publisher liability**. In the Delfi case, this liability was considered proportionate, also taking into account the company's commercial nature and its wide audience.

The ruling effectively established that freedom of expression yields in cases of hate speech or incitement to violence, and an intermediary cannot rely solely on the **"Notice and Take Down"** mechanism for comments of such content.

In this context, a significant counterbalance was noted in the case of *MTE and Index.hu Zrt v. Hungary* (2016), which is perceived as a corrective to the Delfi ruling. This case also dealt with the issue of news portals' liability for comments posted by users. However, unlike Delfi, the comments did not contain hate speech or calls for violence; instead, they were considered sharp, evaluative statements directed at companies in the real estate sector.

The Court therefore considered that "the imposition of objective liability on the applicant company for the reproduction of statements made by third parties, irrespective

[19] CASE OF DELFI AS v. ESTONIA, *(Application no.* 64569/09*)*, https://hudoc.echr.coe.int/fre?i=001-155105, 28.06.2025.

of whether the author or publisher acted in good or bad faith and in compliance with journalistic duties and obligations, is difficult to reconcile with the existing case-law according to which the "punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so"[20].

Notably, the websites had active moderation mechanisms in place, including a **"Notice and Take Down"** procedure, a monitoring team, and a code of conduct for comments. At no point did the injured party submit a request for the comments to be removed.

The ECtHR disagreed with the domestic courts' position that these measures were insufficient, noting that *"such an approach could create an excessive and impracticable planning burden which would seriously hamper the freedom to impart information on the Internet"*. The Court found that the sanctions applied by the domestic courts did not constitute a necessary intervention in a democratic society.

Therefore, the distinction lies in the fact that if the content involves hate speech and violence, independent intervention by the intermediary is necessary. In cases of merely offensive or sharp comments, the **"Notice and Take Down"** approach is lawful without prior general monitoring.

The ECtHR later further clarified the standards for the liability of Internet intermediaries. In the case of *Pihl v. Sweden* (2017), the Court held that a blogger should not be held liable if they remove the contested content immediately after receiving an appropriate request. The Court also emphasized that the blog did not constitute a news platform, which was an important factor in determining exemption from liability.

The court stated that «In view of the above, and especially the fact that the comment, although offensive, did not amount to hate speech or incitement to violence and was posted on a small blog run by a non-profit association which took it down the day after the applicant's request and nine days after it had been posted, the Court finds that the domestic courts acted within their margin of appreciation and struck a fair balance between the applicant's rights under Article 8 and the association's opposing right to freedom of expression under Article 10"[21].

Based on this and similar cases, the ECtHR developed an evaluation mechanism consisting of four factors, which is applied when conducting judicial analysis regarding the liability of intermediaries:

1. The content and context of the comments,
2. The potential liability of the comment authors,
3. The measures taken by the intermediary and the conduct of the injured party,
4. The consequences for both the injured party and the intermediary.

By applying these criteria, the ECtHR seeks to avoid a condemnatory approach in cases where the intermediary has acted in good faith and the content clearly does not exceed the limits of freedom of expression.

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[20] CASE OF INDEX.HU ZRT v. HUNGARY, *(Application no.* 77940/17*)*, https://hudoc.echr.coe.int/eng?i=001-226196, 28.06.2025.

[21] Case of Rolf Anders Daniel PIHL v. Sweden, Application no. 74742/14, https://hudoc.echr.coe.int/fre?i=001-172145, 28.06.2025.

The European Court has also developed interesting case law regarding the monitoring of a user's personal account on a platform. For example, the *Sanchez v. France* case[22] concerns freedom of expression and the justification for its limitation. The applicant, politician Julien Sanchez, was held criminally liable for failing to remove Islamophobic comments made by third parties on his public Facebook page, which he used for pre-election purposes. The Court held that, as an experienced politician and a conscious user of digital platforms, he was obliged to delete in a timely manner any comments expressing hate speech. Although he did not author the comments himself, the Court considered his inaction sufficient to constitute a basis for liability. "In view of the foregoing, on the basis of an assessment in concreto of the specific circumstances of the present case and having regard to the margin of appreciation afforded to the respondent State, the Court finds that the decisions of the domestic courts were based on relevant and sufficient reasons, both as to the liability attributed to the applicant, in his capacity as a politician, for the unlawful comments posted in the run-up to an election on his Facebook "wall" by third parties, who themselves were identified and prosecuted as accomplices, and as to his criminal conviction. The impugned interference can therefore be considered to have been "necessary in a democratic society"[23].

The Court ruled that the actions of the French authorities—criminal prosecution and fines—did not constitute a disproportionate interference with the right to freedom of expression. Since the speech in question involved hate speech disseminated during the political pre-election period, targeting the Muslim community and specific individuals on the basis of religion, the required diligence and responsibility of Sanchez, as a public figure, had to be higher. Considering the context of the situation and the proportionality of the measures applied, the Court concluded that no violation had occurred.

A different situation concerning treating a personal Facebook page as a platform arose in the *Petrascan v. Romania* case. This case dealt with whether the liability for one's own posts and user comments on Facebook violated the right to freedom of expression. The applicant had criticized a state institution regarding the appointment of a director at another institution, and some user comments were deemed offensive. The Romanian courts required him to remove these comments and pay compensation. The European Court of Human Rights found that this violated Article 10 of the Convention, as it was not foreseeable that the applicant, as an ordinary social media user, would be held responsible for other people's posts. The Court emphasized that the legal basis was not sufficiently clear and that the state interference was disproportionate, as it could have limited the right to free expression online[24].

A number of countries have specific regulations concerning the institution of internet intermediaries and their liability, which clearly define the limits of such liability. Similar regulations exist in Germany, France, and Russia, which will be discussed in turn below.

Since 2018, Germany has implemented the *Netzwerkdurchsetzungsgesetz* or *NetzDG* (Network Enforcement Act), which obliges social media platforms to remove notifications from German users that contain "spamming" or hate speech (hate speech, defamation, incitement to violence, etc.). The law imposes fines of up to approximately

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[22] CASE OF SANCHEZ v. FRANCE (Application no. 45581/15) https://hudoc.echr.coe.int/eng?i=001-224928, 23.07.

[23] Ibid.

[24] Case of Alexandru Pătraşcu v. Romania, https://hudoc.echr.coe.int/eng?i=001-238635 , 28.07.2025.

50 million euros, depending on the severity of the offense and the platform's attitude and responsiveness. The main purpose of the law is to combat "obviously illegal" content—insults, hate speech, defamation, or calls for violence. The law sets a clear deadline for the removal of illegal content: 24 hours[25].

According to German law, in addition to the obligation to remove illegal content, platforms are also required to publish a report on complaints within six months after the previous report and/or after the removal of content[26]. Under this law, the first enforcement action took place in July 2019, when the Federal Office of Justice (BfJ) found Facebook in breach of the requirement. The BfJ imposed a €2 million fine for "under-reporting complaints," as the company failed to include all user reports. In practice, the company had reported only part of the user complaints regarding the removal of illegal content, while other platforms such as YouTube and Twitter had reported significantly higher numbers—specifically, YouTube reported 215,000 cases, Twitter reported 265,000, while Facebook reported only 1,704 cases in the first half of the year[27].

Perhaps the above-mentioned case is still the only one, but already in 2023 it was reported that an investigation had also been launched against Twitter due to a systemic flaw[28].In France, the Law of December 22, 2018 "On the Fight Against Information Manipulation" allows electoral candidates or parties, during the three months preceding national elections, to apply to the court to verify whether the disseminated information is manifestly false, deliberately planned, has a massive negative impact, and could undermine the impartiality of the vote or public peace. The judge must make a decision within 48 hours, and, if necessary, require the deletion of the publication or the suspension of access to the website[29]. The law also establishes liability measures — up to one year of imprisonment and a fine of up to €75,000.

The first actual application of the law took place during the 2019 European Parliament elections. Only one case was registered in the Paris High Court. The case concerned a claim filed by Communist MPs Marie-Pierre Vieu and Pierre Ouzoulias regarding a tweet published by Castaner. The court noted that the message distorted actual facts, but it was not recognized as entirely "manifestly false," and therefore the claim was rejected[30].

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[25] Germany implements new internet hate speech crackdown", https://www.dw.com/en/germany-implements-new-internet-hate-speech-crackdown/a-41991590?utm 28.07.2025.

[26] "Germany: Facebook Found in Violation of "Anti-Fake News" Law", https://www.loc.gov/item/global-legal-monitor/2019-08-20/germany-facebook-found-in-violation-of-anti-fake-news-law?utm 28.07.2025.

[27] "Germany fines Facebook over hate speech complaints", https://www.dw.com/en/germany-fines-facebook-for-underreporting-hate-speech-complaints/a-49447820?utm 28.07.2025.

[28] "Germany Threatens Twitter With €50 Million Fine For Failing To Tackle Illegal Content", https://www.forbes.com/sites/emmawoollacott/2023/04/05/germany-threatens-twitter-with-50m-fine-for-failing-to-tackle-illegal-content/ 28.07.2025.

[29] The French Law No. 2018-1202 of December 22, 2018, on combating the manipulation of information, https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000037847559 , 28.07.2025.

[30] "France's anti-fake news law fails test over interior minister's false claims", https://www.mediapart.fr/en/journal/france/210519/france-s-anti-fake-news-law-fails-test-over-interior-minister-s-false-claims?utm , 28.07.2025.

In 2018, amendments were made to the Russian Federal Law "On Information, Information Technologies, and the Protection of Information," allowing the Prosecutor General or his deputy, without a court decision, to demand the removal of internet information if it is deemed unreliable[31]. Under this authority, the Prosecutor's Office may contact Roskomnadzor (the telecommunications regulatory body), which is obliged to ensure the immediate blocking or removal of such information.

In 2019, new laws No. 31-ФЗ and No. 27-ФЗ were also adopted, expanding this mechanism. They grant Roskomnadzor the authority, without court intervention, to block information deemed unreliable and posing a threat to public order, health, or security.

These laws are applied extensively, especially against opposition and critical information. For example, publications by *Novaya Gazeta*, *Open Media*, and other outlets have been blocked under these legislative amendments without judicial proceedings. Reports by Freedom House and OVD-Info confirm that these regulatory regimes have been actively applied since 2019 — for instance, numerous news websites and bloggers have been blocked over key publications considered "unreliable," with the matter resolved not through court action but solely via a prosecutorial letter[32].

In summary, the EU and the US have diametrically opposed approaches to the issue of internet intermediaries' liability. While the ECtHR holds an online platform responsible for improper content posted on it, US courts — relying on Section 230 regulations — do not consider such situations as violations committed by internet intermediaries.

In light of the foregoing, the following comprehensive definition of internet intermediaries may be proposed.: **Internet intermediaries are natural or legal persons who, by providing an online platform, facilitate the transmission, hosting, or accessibility of content — including services or goods — while possessing certain supervisory rights or obligations over the platform's content.**

In this context, it is important to note that in January of this year, Meta announced that it was eliminating its fact-checking program, considering it an interference with free speech. According to the International Fact-Checking Network (IFCN)[33], Meta's decision to remove third-party fact-checking...

If we turn to the problematic aspects of the issue of internet intermediaries' liability, we can note that this institution can often serve as a tool for states to indirectly restrict internet users' right to freedom of expression. Any state with sufficient influence, which can be exercised through significant market control, can, in practice, shape the rules of

[31] The Russian Federation Federal Law No. 149-FZ of July 27, 2006, "On Information, Information Technologies, and Information Protection" (as amended), https://www.consultant.ru/document/cons_doc_LAW_61798/?utm , 28.07.2025.

[32] "Internet blocks as a tool of political censorship", https://fluent-beyer-954835.appspot.com/en/internet-blocks-tool-political-censorship?utm , 28.07.2025.

[33] https://www.poynter.org/fact-checking/2025/meta-ends-fact-checking-community-notes-facebook/, Meta is ending its third-party fact-checking partnership with US partners. Here's how that program works, 28.06.2025.

speech for all users worldwide[34]. Under such circumstances, content adverse to the state may be removed, thereby transferring the locus of responsibility from the public to the private sphere. Even where infringements of fundamental constitutional rights are established, their attribution to private internet intermediaries effectively precludes recognition of such infringements as violations of constitutional rights, leaving them without corresponding legal consequences.

This practice has been described as **"laundering state action"**, in which states "launder" or "cleanse" their authority by pressuring or cooperating with platforms to remove speech that governments could not directly prohibit[35].

The adoption of sufficiently clear and restrictive legal acts on the liability of internet intermediaries often leads to a "risk-averse" policy, which is mainly manifested in the removal of lawful content and the restriction of the rights of bona fide users. Under this policy, in order to avoid liability, internet intermediaries prefer to remove disputed content regardless of whether it actually violates the law.

A vivid example of this is the case of the international human rights initiative **Syrian Archive**. Following a chemical attack in Syria, Syrian Archive uploaded to YouTube documentary videos of human rights violations in Syria—covering chemical attacks and strikes on civilian infrastructure. However, the platform's automated algorithm, applying counterterrorism rules, removed them.

According to *Wired*, between 2012 and 2018, Syrian Archive uploaded about **1.18 million** videos, of which YouTube removed more than **123,229**[36].

Under the EU **Digital Services Act (DSA)**, particularly strict obligations are imposed on platforms classified as **Very Large Online Platforms (VLOPs)**—those with more than 45 million monthly users in the EU. These platforms are required not only to respond to illegal content but also to regularly conduct **systematic risk assessments**, which include analyzing the spread of disinformation, societal polarization, manipulative advertising, and other threats. When such risks are identified, platforms must develop and implement **mitigation strategies**, which should include both technical measures and user education, including promoting media literacy[37].

Considering these obligations and the liability risks, Very Large Online Platforms are reviewing their **policies**. Specifically, on **January 7, 2025**, Mark Zuckerberg announced that Meta would discontinue its third-party fact-checking program in the U.S., replacing it with a **"Community Notes" system**, which relies on contextual notes from users—similar to X's model. He also stated that "fact-checkers have just been too politically

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[34] **Keller, D.,** "Who Do You Sue? State and Platform Hybrid Power over Online Speech." Hoover Institution, Stanford, 2018, էջ 7, https://www.hoover.org/sites/default/files/research/docs/who-do-you-sue-state-and-platform-hybrid-power-over-online-speech_0.pdf, 04.05.2025.

[35]Ibid, page 4.

[36] https://www.wired.com/story/chemical-weapons-in-syria-youtube-algorithm-delete-video/?utm_source=chatgpt.com, YouTube keeps deleting evidence of Syrian chemical weapon attacks, 05.06.2025.

[37] The Digital Services Act, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_en , 28.06.2025.

biased and have destroyed more trust than they've created[38]." Joel Kaplan, Meta's Global Policy Head, confirmed that the fact-checking program in the U.S. would officially end, and the Community Notes system would gradually appear on **Facebook, Instagram, and Threads**[39].

The issue of **liability for online intermediaries** is particularly problematic in the context of the rapidly expanding use of **artificial intelligence (AI)**. On many intermediary platforms, the development, deployment, and implementation of algorithms are entrusted to AI systems, which autonomously generate content recommendations based on user data and preferences. In this context, a key legal question arises: should the **intermediary** be held liable for the removal or non-removal of content that is determined solely by AI-generated algorithms, without any human intervention from the platform?

A striking example of this issue is the **Myanmar cases**, where Facebook's algorithms facilitated the rapid spread of hate speech and disinformation against the Rohingya Muslim population. This algorithmic amplification overshadowed lawful and legitimate content, ultimately contributing to widespread violence. «In 2017, the Rohingya were killed, tortured, raped, and displaced in the thousands as part of the Myanmar security forces' campaign of ethnic cleansing. In the months and years leading up to the atrocities, Facebook's algorithms were intensifying a storm of hatred against the Rohingya which contributed to real-world violence," said Agnès Callamard, Amnesty International's Secretary General.[40]**:**

Discussions regarding the **liability of online intermediaries in the context of artificial intelligence (AI)** raise additional challenges, which is why different jurisdictions adopt different approaches on this issue.

From this perspective, it is important to note that **clear regulations exist in the EU through the Artificial Intelligence Act**[41]. The EU AI Act is primarily directed at developers of AI systems and those responsible for their deployment. It requires them to conduct **risk assessments**, ensure **transparency**, and, in some cases, implement **human oversight or evaluation procedures**. While the Act does not directly regulate the liability of online intermediaries, **Article 2, paragraph 5** explicitly references the **Digital Services Act (DSA)**, stating that the AI Act does not override or replace the existing liability rules applicable to online intermediaries.

In the **United States**, there is no uniform federal regulation regarding AI. Some rules exist at the state level, but no comprehensive national framework is in place. However,

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[38] Meta to get rid of fact-checkers and recommend more political content, https://www.theguardian.com/technology/2025/jan/07/meta-facebook-instagram-threads-mark-zuckerberg-remove-fact-checkers-recommend-political-content, 11.08.2025.

[39] Meta Ends Third-Party Fact-Checking, Adds 'Community Notes' System, https://learningenglish.voanews.com/a/meta-ends-third-party-fact-checking-adds-community-notessystem/7946074.html, 28.06.2025.

[40] https://www.amnesty.org/en/latest/news/2022/09/myanmar-facebooks-systems-promoted-violence-against-rohingya-meta-owes-reparations-new-report/, Myanmar: Facebook's systems promoted violence against Rohingya; Meta owes reparations – new report, 01.07.2025.

[41] The **EU Artificial Intelligence Act,** REGULATION (EU) 2024/1689 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 June 2024 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689 , 04.08.2025.

in **July 2025**, the U.S. published an **AI Action Plan**[42], which outlines directions for AI development and deployment. This document also touches on **freedom of speech limits**, **content impartiality**, and, to some extent, signals the **scope of responsibilities for online intermediaries**.

Regarding the situation in the Republic of Armenia, **currently there are no regulations** in Armenian legislation concerning either the **institution of online intermediaries** or their **liability**.

Notably, as of **2014**, the draft law titled **"On Amendments and Additions to the Civil Code of the Republic of Armenia"** included provisions on the liability of online intermediaries and the removal of content containing defamation or insults.

According to **Part 2 of Article 1** of the draft law, it was proposed to supplement the Civil Code of Armenia, *inter alia*, with the following articles:

- **Article 9.2.** In cases of defamation or insult, an individual may demand that the owner of a public electronic website remove any comment on the site containing defamation or insult. The owner is obliged to remove the comment **immediately upon receipt of the request, but no later than 12 hours**.
- **Article 9.5.** The relevant media outlet is liable for comments containing insults or defamation posted on its electronic site if it **does not remove the comment immediately, and no later than 12 hours after receiving the request**, or refuses to remove it.

These provisions aimed to establish **clear obligations for online intermediaries** regarding defamatory or insulting content, ensuring the **protection of individuals' rights**[43].

In the **justifications of the draft law**, reference is made to the aforementioned **Delfi AS v. Estonia** case from the European Court of Human Rights (ECtHR), emphasizing the importance and relevance of prior cases in **preventing the dissemination of defamatory information** and ensuring the effective protection of **personal and family life** and **dignity rights**, as safeguarded by the Constitution of Armenia and international conventions.

In practice, the draft law proposed an **operational "Notice and Take Down" mechanism**, specifically by establishing the obligation to remove comments containing insults or defamation **immediately upon receipt of the request, but no later than 12 hours**, which is both effective and precise. Setting a specific time frame for removing illegal content is aimed at preventing arbitrary deletions as well as abuses of the law. A similar approach was adopted in **Germany**, where removal is required within **24 hours**, as discussed earlier.

However, the draft law became the subject of **intense public debate and criticism** in Armenia, and as a result, it was **not adopted**[44]. The **OSCE** expressed concerns about the draft, mainly criticizing its overly broad scope, vague definitions, and general lack of

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[42] AMERICA'S AI ACTION PLAN, JULY 2025, https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf, 04.08.2025.

[43] The **Draft Law on Amendments to the Civil Code of the Republic of Armenia** (Պ-456-04.03.2014-ՊԻ-010/0), http://parliament.am/drafts.php?sel=showdraft&DraftID=33026 , 28.07.2025.

[44] "Armenian Bill Threatens Online Anonymity" https://www.eff.org/deeplinks/2014/04/armenian-bill-threatens-online-anonymity , 28.07.2025.

clarity[45]. Nevertheless, despite numerous criticisms, **over time**, the logic and principles of the draft law have been reflected in **ECtHR practice**, and in later years, also in decisions of the **Constitutional Court of Armenia** and, soon, in **Armenian legislation**.

More than **10 years after the circulation of the 2014 draft**, on **October 4, 2024**, the **Constitutional Court of Armenia**, in its decision **No. ՍԴՈ-1752**, emphasized the importance of establishing an obligation to remove information containing defamation. The Court found that **Article 1087.1, part 8, of the Civil Code of Armenia**, to the extent that it does not provide a remedy for a concerned person in cases of defamation published online by a non-journalistic actor—such as the ability to refute, respond to, remove, or otherwise effectively address the defamatory content—**contradicts Article 31 of the Constitution (in conjunction with Article 75) and is therefore invalid**[46].

In decision No. ՍԴՈ-1752, the Constitutional Court noted that **human dignity, honor, and good reputation** are **supreme constitutional values** that require exceptional protection even in **digital and informational platforms**. The Court concluded that existing legal provisions, in particular **Article 1087.1, part 8, of the Civil Code**, **do not provide effective legal remedies** that would ensure the protection of individual rights when defamation is disseminated not by a journalistic entity, but by an ordinary internet user—for example, via a social media account.

The Court found that in such situations, a person is deprived of the possibility to **legally request a retraction of the publication or to publish their response**, which in turn means that the violation of rights is **not effectively and fully remedied**, and the defamatory content remains accessible online. This **limits the individual's constitutional right to inviolability of honor and good reputation**, guaranteed by **Article 31 of the Constitution**, and demonstrates that the state **fails to fulfill its constitutional obligation** to establish effective organizational and procedural mechanisms, as required under **Article 75 of the Constitution**.

Taking into account the **specific features of online communication**, including a wide audience, rapid dissemination, and low controllability, the Court concluded that the existing normative framework **needs to be revised** to ensure **effective protection of rights violated by defamation**, including on social media platforms. With this, the Constitutional Court **affirmed the inconsistency of the contested legal framework with the Constitution**.

This decision of the Constitutional Court has **served as the basis for new legislative initiatives**, notably the draft laws currently under consideration since **April 30, 2025**, circulated by the **Ministry of Justice of Armenia**, concerning **"Amendments and Additions to the Civil Code"** and **"Amendments and Additions to the Law on Mass Media**[47]**."**

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[45] "LEGAL ANALYSIS OF DRAFT AMENDMENTS TO THE CIVIL CODE OF THE REPUBLIC OF ARMENIA" https://www.osce.org/files/f/documents/9/5/116911.pdf , 28.07.2025.

[46] **Decision No. ՍԴՈ-1752 dated 04.10.2024** on the issue of compliance of **Article 1087.1, Part 8 of the Civil Code of the Republic of Armenia** with the Constitution https://www.concourt.am/decision/decisions/670926c7423d9_SDV-1752.pdf , 28.07.2025.

[47] Draft laws on **"Amendments and Additions to the Civil Code"** and **"Amendments and Additions to the Law on Mass Media"** of the Republic of Armenia, https://www.e-draft.am/projects/8612 28.07.2025.

The draft laws provide for the **possibility to request the removal of offensive content** from publications on an online platform carried out by a person engaged in journalistic activity. Specifically, **Article 1, Clause 1** of the draft establishes that:

"If an insult is contained in a publication on an online platform carried out by a person engaged in journalistic activity, including comments made by users of that platform regarding the journalist, the expression(s) containing the insult must be removed in accordance with the procedure established by the Law of the Republic of Armenia 'On Mass Media.'"

The draft also foresees the possibility to request **full or partial removal** of a post containing insults published by a person **not engaged in journalistic activity**, if it appears on an online platform (user account), provided that the post itself (not just a comment) contains offensive content.

According to the **additions proposed in Article 2**, the above requirements also **apply to defamatory content**. In particular:

"If defamation is contained in information disseminated by a person engaged in journalistic activity (including publications on an online platform) or in information published by a person not engaged in journalistic activity on an online platform (user account), the individual has the right to publicly refute the facts considered defamatory and/or publish their response via the same medium or online platform, or, if already published online, to partially or fully remove the defamatory information, in accordance with the procedure established by the Law of the Republic of Armenia 'On Mass Media.'"

In sum, the draft **extends the right to request removal or response** to both insulting and defamatory content, covering publications by both journalists and ordinary users on online platforms.

The draft also introduces **amendments and additions to the Law "On Mass Media."** Specifically, changes are proposed to **Article 8** of the law, which, in addition to the right to request a refutation or response, now also explicitly provides the **right to request removal** of content. According to the draft:

- The removal request may concern **individual expressions, sentences, or an entire publication**.
- **Requests for refutation and removal cannot be submitted simultaneously**: if a refutation request is fulfilled, the removal request must be rejected; conversely, if a removal request is fulfilled, the corresponding refutation request is rejected.

The draft law also sets **deadlines for submitting requests and for carrying out the obligations to remove or refute content**:

- Requests for refutation or removal may be submitted **within one month** from the date the information was disseminated.
- Persons engaged in journalistic activity must:
    - Fulfill a refutation request **within one week** of receiving it.
    - Fulfill a removal request **immediately** upon receiving it.
- The person submitting the request must be informed either of the **time when the refutation will be published or the removal carried out**, or, in writing, of the **rejection of the refutation or removal request**.

This framework ensures that both refutation and removal procedures are **timely and regulated**, providing clarity for users and media actors regarding their rights and obligations.

In practice, the draft envisions that, in cases where a refutation request is submitted, the content should be **removed immediately**. This reflects the "Notice and takedown" mechanism. However, the mechanism would operate more effectively if the term **"immediately"** were replaced with a clearly defined timeframe—for example, a **6–12 hour period** to carry out the removal obligation. In legal practice, the vague requirement to act "immediately" can lead to **misunderstandings** and, during implementation, may conflict with the principle of **legal certainty**. Establishing a specific timeframe is justified by the **lifespan of content** on social networks and news platforms, and the need to protect human rights during the most active phase of content circulation.

For Armenia, it is essential to acknowledge the absence of substantive influence over the decision-making processes and policy frameworks of global online intermediaries. Consequently, regulatory mechanisms employed in jurisdictions such as Germany, or at the international level—frequently premised upon established partnerships with such intermediaries or upon robust supervisory architectures—are, in many instances, not directly transferable to the Armenian context. In view of the foregoing, and taking into account the legal principles articulated in *Delfi AS v. Estonia*, *Phil v. Sweden*, and other relevant judgments of the European Court of Human Rights, it may be concluded that, at present, the most practical, realistic, and implementable course of action for Armenia is the formulation of domestic legal regulation harmonized with the "Notice and take down" mechanism. Accordingly, it is recommended to establish a **national-level system** capable of **directly responding to challenges in the media sector**, such as the spread of disinformation, hate speech, and other unlawful content, while simultaneously **preserving the balance between these restrictions and the right to freedom of expression**.

For the **practical implementation of the "Notify and take down" mechanism**, several conditions must be simultaneously met:

A. The relevant entity must meet internationally recognized standards for online intermediaries. This particularly concerns the entity having **a certain degree of control or responsibility over the content posted on the platform**. It is important to understand that the concept of an online intermediary applies not only to large social platforms but also to **any actor operating on those platforms with supervisory functions over other users' posts or comments**, especially regarding their removal. Examples include **administrators of Facebook groups or pages**, and similar roles.

B. The online intermediary must be notified by the concerned party that it considers a specific post or comment under its control to be unlawful. In other words, the intermediary must **receive a formal notice regarding the problematic content**.

C. The online intermediary must make a decision on whether to remove the content or not, **in accordance with ECtHR standards**.

D. Once notified, if the intermediary removes the comment, its **liability should be excluded**.

This framework ensures a **clear, predictable, and legally compliant process** that balances the protection of individual rights with the intermediary's operational responsibilities.

At the same time, we believe it is worth considering in the future the rationale underlying the French model. Certainly, it has faced severe criticism for disproportionate interference with freedom of speech and lack of balance. However, the underlying logic cannot be dismissed: in electoral processes, where a massive amount of information about candidates and parties circulates within a limited timeframe—undoubtedly including false and defamatory content—it is crucial to have certain countermeasures.

Undoubtedly, such mechanisms must balance the public's right to be informed with the individual's right to protect their honor and dignity. Moreover, defamatory information can, within a limited period, influence voters' political will and expression; therefore, delayed or prolonged legal remedies cannot be considered effective protection. In this context, considering the evolution of legal relations and the effectiveness and practical application of such mechanisms in Armenia's information sphere, the introduction of a **rapid-response model during the pre-election period** could be considered for the Armenian legal system.

Ultimately, it must be underscored that, at the current stage, the institutionalization of online intermediary liability in Armenia transcends the realm of legislative refinement; it constitutes a normative imperative dictated by contemporary realities. The absence of effective oversight over the digital information space engenders significant risks to the protection of the legitimate interests of the state and society, as well as to the integrity and stability of democratic processes.

In the conditions of modern information society, the responsible use of social media cannot be ensured without a precise delineation of the scope of online intermediaries' obligations and liabilities. It is therefore essential to adopt a regulatory model that is optimally suited to Armenia's specific context, one that accounts for the actual leverage exercisable over platforms, the dynamics of social media ecosystems, and the broader trajectory of legal development.

ԱՐՓԻՆԵ ՀՈՎՀԱՆՆԻՍՅԱՆ – *Համացանցային միջնորդների պատասխանատվության առանձնահատկությունները և զարգացման միտումները* – Վերջին տարիներին եվրոպական տիրույթում առավել ակտիվ է քննարկվում համացանցային միջնորդների պատասխանատվության առանցքային հարցը: Արդիական է դարձել այն խնդիրը, թե արդյոք հարթակները պետք է պատասխանատվություն կրեն այն դեպքերում, երբ իրենց միջոցով տարածվում են վիրավորանք, զրպարտություն, ատելության խոսք և մարդու իրավունքները խախտող այլ բովանդակություն: Խնդիրը հատկապես ակնառու է դառնում այն իրավիճակներում, երբ անձինք, որոնց իրավունքները խախտվել են, դիմում են հարթակներին՝ խնդրելով հեռացնել վիրավորական կամ զրպարտչական տեղեկատվությունը, սակայն հարթակները չեն արձագանքում:

Այս պարագայում առաջանում է երկաստիճան պատասխանատվության հարցը: Այն վերաբերում է ոչ միայն վիրավորանք կամ զրպարտություն տարածած անձանց, այլև այն սուբյեկտներին, որոնք հնարավորություն են տվել այդ բովանդակությունը հրապարակելու: Թեման առանձնակի կարևորություն ստացավ 2016 թվականից՝ նախագահական մի քանի ընտրություններից և Մեծ Բրիտանիայում Brexit-ի հանրաքվեից հետո, երբ եվրոպական հանրային դիսկուրսում սրվեց տեղեկատվական միջավայրի

նկատմամբ վերահսկողության և խոսքի ազատության հավասարակշռության հարցը: Ներկայումս Մարդու իրավունքների եվրոպական դատարանը ձևավորել է գրեթե բյուրեղացված պրակտիկա այն տեսակետի շուրջ, որ համացանցային միջնորդները կարող են ենթարկվել պատասխանատվության այն դեպքերում, երբ չեն ձեռնարկում անհրաժեշտ քայլեր իրենց հարթակներում վիրավորական կամ զրպարտչական բովանդակությունը հեռացնելու հարցում: Այս հարցադրումն ու դրա հնարավոր կարգավորումները դիտարկվում են նաև հայաստանյան իրավական իրականության մեջ՝ հաշվի առնելով գործող օրենսդրական զարգացումները և Սահմանադրական դատարանի նախորդ տարվա հոկտեմբերի 1-ի որոշման կարգավորումները, որոնք կարող են էական ազդեցություն ունենալ մեր երկրում համացանցային միջնորդների պատասխանատվության ինստիտուտի ձևավորման հարցում:

Բանալի բառեր – *համացանցային միջնորդներ, վիրավորանք, զրպարտություն, մեդիա, իրավունք, հրապարակում, պատասխանատվություն*

АРПИНЕ ОГАННЕСЯН – ***Особенности и тенденции развития ответственности интернет-посредников.*** **–** В последние годы в европейском пространстве всё более активно обсуждается ключевой вопрос ответственности интернет-посредников. Актуальной стала проблема, должны ли платформы нести ответственность в случаях, когда посредством их сервисов распространяются оскорбления, клевета, речь ненависти и иные материалы, нарушающие права человека. Особенно остро эта проблема проявляется в ситуациях, когда лица, чьи права были нарушены, обращаются к платформам с просьбой удалить оскорбительную или клеветническую информацию, однако платформы не реагируют.

В таких обстоятельствах возникает вопрос двухступенчатой ответственности: она касается не только лиц, распространивших оскорбление или клевету, но и тех субъектов, которые предоставили возможность публикации такого контента. Тема приобрела особую значимость после ряда президентских выборов и референдума по Brexit в Великобритании с 2016 года, когда в европейском общественном дискурсе обострились вопросы контроля над информационной средой и поддержания баланса со свободой выражения мнения.

В настоящее время Европейский суд по правам человека выработал практически кристаллизованную практику относительно того, что интернет-посредники могут быть привлечены к ответственности в случаях, когда они не предпринимают необходимых шагов по удалению оскорбительного или клеветнического контента на своих платформах. Данная проблематика и возможные механизмы её регулирования рассматриваются и в армянской правовой действительности с учётом действующих законодательных процессов и решения Конституционного суда от 1 октября прошлого года, которое может оказать существенное влияние на формирование института ответственности интернет-посредников в нашей стране.

Ключевые слова: *интернет-посредники, оскорбление, клевета, медиа, право, публикация, ответственность.*

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