



2019 Consilience

Concept Note

Conference Themes

The 3 discussion tracks for the conference are as follows:

- I. Foundational Principles of Regulation of Online Content
- II. State of Affairs in India
- III. Global Perspectives and Solutions

I. Foundational Principles of Regulation of Online Content and Platforms

We generate 2.5 Quintillion bytes of data every day. Online Content represents the bulk of what the average person uses the Internet for – Searching, Streaming and Sharing content. Online Content, however, requires a series of intermediaries to facilitate and enable the end user to access it and since the access to this content is enabled by intermediaries – ISPs, Search Engines, Social Media Platforms, their crucial role makes them vulnerable to external pressure by various groups to regulate Online Content.

Internet Intermediaries are crucial in not only making the Internet more accessible and participative but also in contributing to the growth and innovation on the Internet. Internet Intermediary Liability is thus a multi-faceted issue for policy-makers as it has major socio-political as well as economic implications.¹

Content Regulation becomes important due to multiple reasons. Platforms can be utilized for not only sharing but also collecting data. Dissemination of data can come with several complexities in terms of liability due to the differences in I.P. law, due to not only the content but also the veracity of the data. The content regulation regime should envisage appropriate rules so as to be able to not only limit the spread of offensive data but also to the spread of disinformation. Collection of data on the other hand, in light of underdeveloped privacy regimes, raises the issues of concern, notice etc. and also how the data will be used as advanced data mining techniques can be used for predictive cluster analysis also known as Microtargeting.

¹ The economic impact of safe harbours on Internet intermediary start-ups, Oxera

Consistency between various Internet Intermediary Liability regimes is also an important aspect to be considered by the policy-makers given the borderless nature of the Internet and the global scale on which the Internet Intermediaries operate.

Questions for Discussion

- a. What are the existing challenges which the Intermediary Liability regime seeks to address?
- b. Who are the relevant stakeholders in this issue? What are their interests?
- c. What are the relevant principles which should inform the debate on Intermediary Liability? How do these principles guide the discourse?
- d. How are the Manila Principles different than the current guiding principles of Intermediary Liability Regimes?
- e. How far have these principles been adopted by the legislative bodies?
- f. What principles would underpin content and platform regulation?
- g. How can a content regulation regime account for disinformation and microtargeting?

II. State of Affairs in India

India is undergoing rapid Internet proliferation and a commensurate expansion in content creation and consumption. As the volume and complexity increases, there is a need to revisit the existing regime of content regulation to see if it is compliant with the regulatory principles as well as whether it successfully protects the interests of relevant stakeholders.

The Information Technology Act, 2000 endeavours to regulate content and indeed incorporates the Safe Harbour principle. The government has also notified the I.T. (Intermediaries Guidelines) Rules, 2011 which specify the liabilities of Internet Intermediaries, but how far do these guidelines conform to the regulatory principles?

The Indian General Elections, 2019, are expected to be held in April-May 2019, the use of social media platforms cannot be understated as various groups will be utilizing them for their campaigns which is bound to strain the Intermediary Liability and Content Regulation regime. The huge influx of data during the election time raises a lot of

concerns as the partisan politics and echo-chambers leaves little room for fact-checkers and the same could result in a communally charged socio-political environment. Further, the role of the Election Commission of India (ECI) as a regulatory body with such a strenuous responsibility to shoulder as well as the measures resorted to by them can be analysed. Thus, it will be interesting to look at this regulatory regime with the backdrop of the Indian General Elections 2019.

Questions for Discussion

- a. To what extent are the regulatory principles codified in the relevant laws of India?
- b. What kind of problems does proliferation of access to the Internet pose?
- c. What are the key legal and regulatory issues involved in this discourse?
- d. What measures can be taken to address the problem of disinformation via the Intermediary liability and the Content and Platform Regulation regime, without adversely affecting trade or imposing excessive liabilities on Intermediaries?
- e. Comprehensive Regulatory Framework vs. self-regulation by the market, which one would benefit India in the long-run?
- f. Can we utilize and suitably modify the existing framework or do we need to build a regulatory framework from scratch?
- g. How does the Right to Freedom of Speech and Expression affect the regime?
- h. What was the impact of measures taken by the ECI on the Indian General Elections?
- i. What additional measures can be taken by the state bodies during elections?
- j. Is there a positive role which the citizens can play?

III. Global Perspectives and Solutions

Globally, there have been different regulatory responses to the issue of Intermediary Liability and Platform Regulation, at various levels. At a global level, the UNHCR looks at this issue in the context of Human Rights (Freedom of Speech and Expression, Privacy etc.) and their nexus with Business practices as well as State Surveillance.

Another relevant perspective at a global scale is the trade and competition perspective. Countries should consider compliance costs and its implications on cross-border trade as this not only affects the economic activity but incongruous or contradicting regimes can also restrict individual's access to speech platforms.

The individual Intermediaries, in light of the lack of global, robust, regimes regarding platform regulation and liability, are left to voluntarily decide and enforce community guidelines, to set transparency goals etc.

Questions for Discussion

- a. What frameworks exist across the globe? To what an extent do they conform to the relevant regulatory principles?
- b. To what an extent is congruity between various regimes possible? Is absolute uniformity in the regimes desirable? How relevant is the particular socio-political and economic makeup of a society?
- c. What is the position of various global-level intermediaries and platforms, the subjects of this regulation, on the issue?
- d. What is the relevance of Human Rights in this issue?