

Stanford Law School

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# Intermediary Liability Outside the US

Daphne Keller

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## General Overview

- Common Architecture: knowledge-> liability
- Differences
  - Is there a statute?
  - Who counts as intermediary?
  - What claims are covered?
  - Are there notice and takedown procedures?
  - Does law see a connection bt intermediary liability and speech?

## Common Disputes

- Who counts as intermediary
  - Type of technical service
  - “Neutrality”
- What is “knowledge”
- Monitoring and filtering

## Latin America: A Gross Generalization

- Very strong recognition of IL $\leftrightarrow$ speech rights at high level
  - Including in Inter-American human rights system
  - Argentina major S Ct case (Belen Rodriguez)
  - Chile “judicial notice” © law
  - Brazil Marco Civil
- Lots of legislative threats
- Cases all over the place in practice
- Look out for Right to Be Forgotten
  - But! Mexican case requiring notice to webmaster, which EU regulators say is prohibited

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## Asia: An Even Grosser Generalization

- Relatively few statutory regimes
- Massive scale human moderation, by platforms or gov't is a norm in some countries (China, Korea, Vietnam)
- Keep an eye on India
  - Major good S Ct case (Shreya Singhal)
  - Several alarming cases in the pipeline

Africa: I don't know, sorry 😞

## Europe: In the Global Driver's Seat (1)

- EU-Wide Statutory Framework: Ecommerce Directive, implemented w some differences in national law
  - Specified services: ISP, cache, host
  - No NTD process
  - Platforms can't have "general" monitoring obligation

## Europe: In the Global Driver's Seat (2)

- Major new pressures
  - NetzDG – German 24 hour turnaround for “obvious” illegality
  - Draft copyright directive with filtering requirement
  - Commission and other politicians calling for terrorism filtering
  - Global removal orders: Two cases pending at CJEU (Right to Be Forgotten and Austrian Facebook hate speech case)



## Europe: In the Global Driver's Seat (3)

- Connecting Intermediary Liability to Human Rights
  - ECHR and CJEU rulings on filtering
  - A few cases on “knowledge”
  - Interesting disagreement bt Commission and Council of Europe

Thank You

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