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Tort Liability of Internet Service Providers: A Comparative Study

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Abstract
This article examines the tort liability of Internet service providers (ISPs) for unlawful online content, with particular attention to access providers, hosting providers, and information providers. It adopts a comparative analytical approach based on legal scholarship, selected case law, and legislation from the United States, the European Union and France, Algeria, and Bahrain. The study evaluates three principal bases of liability: proven fault, risk-based liability, and special intermediary-liability regimes. It finds that the decisive factors are the provider's role, its knowledge of unlawful content, its ability to control or disable access, and the speed of its response after receiving notice. Purely technical intermediaries are generally protected from liability where they neither create nor control the content and act promptly upon acquiring knowledge. By contrast, liability may arise where a provider creates or develops content, exercises substantive control, or fails to remove or block unlawful material after notice. The article supports clearer statutory rules, specialized judicial mechanisms, judicial training, and stronger international cooperation.
Keywords: Internet service providers; tort liability; intermediary liability; unlawful online content; comparative law.

Introduction

The use of the Internet to infringe the rights of others is increasing. Unlawful content may violate privacy, restrict freedoms, or otherwise cause harm. It is therefore necessary to determine the civil liability of Internet service providers for unlawful online content.
The study of the civil liability of Internet operators, and tort liability in particular, is highly complex. This complexity stems from the distinctive nature of the digital environment in which such liability arises. Its technical character also requires frequent reference to related technical concepts.
A further difficulty lies in the number of actors operating on the Internet and the diversity of their roles. The role of each Internet service provider depends on the service supplied. An access provider supplies the technical means that enable users to connect to the Internet. A hosting provider stores and retains data and information for clients. Users can then consult this material through the hosted websites.
Determining the liability of Internet service providers for harm caused through the Internet is a particularly delicate issue. Several factors explain this difficulty. First, the Internet has a complex technical structure. Second, online activity is global and is not controlled by one state or a central authority. Roles and responsibilities are therefore difficult to identify. Third, many entities offer services in this field.

In the absence of a contract, questions arise concerning the prevention of these risks and the allocation of their consequences. These questions require the scope of liability to be defined.
This raises several questions. Can Internet service providers incur tort liability for unlawful information and data that they host or disseminate online because they have breached their legal duties? If so, what is the legal basis of that liability? How have comparative legislation and judicial decisions addressed this issue?
This study examines the tort liability of access providers, hosting providers, and information providers. It reviews selected Anglo-Saxon, continental European, and Arab legislation governing the liability of Internet service providers. It also considers scholarly opinion and case law. Approaches range from non-liability, based on freedom of expression and the practical impossibility of monitoring all information, to the imposition of liability on providers.
This article does not examine the criminal liability of an Internet service provider that personally commits an offence punishable under criminal law. That issue falls outside the civil-law scope of the present study.
The doctrinal basis of the tort liability of Internet service providers is examined in Section One.
Section Two considers selected Anglo-Saxon, continental European, and Arab legislation. Section Three reviews judicial approaches through selected cases.

Section One: Scholarly Approaches to the Basis of the Tort Liability of Internet Service Providers

In the absence of a specific provision establishing the liability of an access provider for unlawful content, general rules of tort liability apply. Legal scholars have differed over the proper basis of liability. They have also disagreed on how to characterize fault in this context. Some support liability based on proven fault. Others favour presumed fault, which approaches strict liability.
Liability without fault has regained importance with the expansion of Internet use. The use of the network in every field has encouraged legal scholars to seek principles capable of establishing a fair liability regime for technical service providers. The initial approach applied ordinary tort rules to access providers and required proof of fault. A later approach relied on the assumption of risk.

Subsection One: Tort Liability Based on Fault That Must Be Proved

An electronic tort is a breach of a pre-existing duty and an infringement of a right committed with awareness of the wrongful act. It may be defined as the omission of an act that should have been performed, or the performance of an act that should have been avoided. It is a deviation from lawful conduct and exceeds permitted limits. Fault, as an element of tort liability, therefore requires both an unlawful act and discernment.
For tortious fault to exist, the person who committed the wrongful act must have understood it and must have possessed the capacity for discernment. A person who lacks discernment is not liable. Discernment is thus a basis of tort liability: liability arises when it is present and is excluded when it is absent.[1]
Fault by a service provider is proved by showing that it breached its duties of monitoring and supervision. It may also be established when the provider failed to take the necessary steps to withdraw or delete unlawful information after learning of its illegality. Notice may come from a

[1] Al-Arabi Belhaj, The General Theory of Obligations in Algerian Civil Law (University Publications Office, 2007), p. 74.

competent judicial authority or from a third party. The provider's conduct may be assessed against the standard of the reasonable person or that of the competent professional.[2]
One view treats the provider as a specialized professional. It must exercise accuracy and prudence because it possesses scientific and technical qualifications and professional experience. Its conduct should therefore be assessed more strictly against the standard of a competent specialist, rather than that of an ordinary person. A person harmed by unlawful online content must prove the provider's fault. Fault is the breach of a legal duty, including the general duty not to harm others. This is a duty of reasonable care.[345]
Modern approaches to civil liability address harm associated with Internet services and the content carried through those services. These developments may produce distinct forms of civil liability for a party that breaches its duties.
The form of liability varies according to the treatment of fault. At times, fault must be established. In other cases, it is presumed, bringing liability closer to strict liability based on harm. The scope of liability is also affected by fault. It is narrower where there is a single fault and broader where several faults are involved.
Fault in the digital environment takes numerous and potentially unlimited forms. Publishing digital works, such as computer programs, without the author's permission constitutes a tort. The same applies to altering such works or deleting data or information from them. Liability may also arise when companies copy programs without authorization, especially popular programs, and offer them for sale, lease, or other commercial exploitation.
Interference with data and information is another form of fault giving rise to tort liability. It includes unauthorized access to databases belonging to individuals or institutions. It also includes infringements of the right to privacy[6]. Modern technologies have made privacy violations easier, including defamation and misuse of personal data.[7]
Online defamation may be committed through several means of publication. These include email, bulletin board systems, web pages, file transfers, and text-based conversations conducted through websites[8].
The image rights of a political figure may also be infringed by placing a degrading image of that person's face in an electronic game recorded on video and presenting it in an offensive form[9].
Conduct giving rise to electronic tort liability also includes introducing malware, computer viruses, or spyware into another person's devices. Such conduct may destroy data or cause information to be disclosed. It is a harmful act for which compensation is due.[10]

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[2]Muhammad Abu al-Hayja and Ala al-Din al-Khasawneh, previously cited, p. 99.
[3]Ayman Mustafa al-Baqli, The Legal Regime of Subscription Contracts with Electronic Databases: An Applied Comparative Study of Online Contracting (Cairo: Dar al-Nahda al-Arabiyya, 2010), p. 48.
[4]Philippe Le Tourneau, 'La responsabilité civile des acteurs de l'Internet,' Expertises, January 1999, p. 419.
[5] Abd al-Majid Hakim, A Concise Commentary on the Iraqi Civil Code, 4th ed. (Iraq: Legal Library, n.d.), p. 489.
[6]Yusuf Khalif, 'Protection of Personal Data in the Digital Environment,' Journal of Law and Political Science, University of Guelma, no. 9 (2021), p. 91.
Odine Salloum al-Hayek, Liability of Internet Service Providers (Tripoli, Lebanon: Modern Book Foundation, 2009).[7]
[8]Fatima al-Zahra Teboub, 'Electronic Tortious Fault,' Journal of Comparative Legal Studies 6, no. 2 (2020), p. 188.
[9]Versailles, 14th Chamber, 8 March 1996, Gazette du Palais, 4 May 1996, p. 6, conclusions of Dupra.
[10]Muhammad al-Tarawneh, Civil Liability Arising from Internet Use (Amman: Dar al-Thaqafa, 2019), p. 84.

Another form of fault is the unlawful publication of protected content. Examples include electronic books and audio or audiovisual material owned by others and published without the authors' permission. This violates digital intellectual property rights. Liability may also arise from a breach of the duties to inform and advise. A subscriber may claim compensation in tort where the provider failed to offer advice or disclose relevant information before the contract was concluded.[11]
The overlap between the roles of these actors makes it difficult to determine the liability of each one, particularly that of service providers. Proving liability is also problematic despite their important role. They act as intermediaries between website owners and Internet users. The variety of their functions and activities may enable them to trace and identify unlawful information activity. Their liability nevertheless depends on clear legal rules. Such rules must define the rights and duties of participants in online activity toward one another and toward society.

Subsection Two: Tort Liability Based on the Assumption of Risk

Under this approach, an Internet service provider may be liable without proof of fault. Liability is based on harm, and the occurrence of harm is sufficient to require compensation. The theory holds that a person who engages in an activity capable of causing harm is responsible when that activity harms another[12], even if the person's conduct was not wrongful. This is known as the theory of created risk.[13]
Victims often find it difficult to prove fault by technical service providers. Those who favoured applying general rules to access providers therefore sought a basis that would be easier for injured parties to invoke. The matter remained uncertain, and debate arose over whether strict liability could apply to these providers.[14]
Under this theory, a person who benefits from an activity must bear the risks associated with that benefit. This reflects the principle that the person who receives the gain should also bear the burden.[15]
Case law has played an important role in shaping the general features of the liability of technical service providers, including hosting providers. Courts have both imposed duties on providers and exempted them from liability.[16]
A special liability regime appears well suited to the technical and neutral role of hosting providers in relation to hosted content. Imposing strict liability would place an excessive burden on them. Although it would protect victims, it would require a technical intermediary to compensate for harm caused by content of which it had no knowledge and with which it had no connection.
The passive and technically neutral role of a hosting provider in relation to data and information justifies a reduced liability regime. It also supports protection from risks created by clients' misuse of the online facilities made available to them.[17]

[11]Rizgar Abdul Muhammad Amin, The Civil Liability of Internet Service Providers: A Comparative Analytical Study (Egypt and the United Arab Emirates: Dar al-Kutub al-Qanuniyya and Dar Shatat, 2017), p. 186.
Marzouq Suleiman Hilal al-Amoush, 'The Civil Liability of Service Providers over the Internet,' doctoral dissertation in Law, Department of Civil Law, Faculty of Law, 2015-2016, p. 331.[12]
Alaa Muteb Abu Keif, 'The Liability of Internet Service Providers for Unlawful Electronic Content: A Comparative Study,' master's thesis in Private Law, Faculty of Law, Alexandria University, 2017-2018, p. 145.[13]
[14]Odine Salloum al-Hayek, p. 74.
[15]Abd al-Razzaq al-Sanhuri, The Intermediate Commentary on the Civil Code: Theory of Obligations, vol. 2 (Lebanon: Al-Halabi Legal Publications, 2000), p. 817.
[16]Ben Azza, p. 372.
[17]Elise Ribourg-Attal, p. 184.

The Algerian legislature has not adopted strict liability for personal acts. It has based such liability on fault that must be proved. Legal scholarship and the courts have nevertheless used strict liability in matters arising from technological development.

Subsection Three: A Special Legal Regime Proposed by Legal Scholarship

Before special legislation was enacted, legal scholars sought to determine the extent of a provider's liability for unlawful online content. Their analyses focused on the provider's role in publishing the content and on the nature of the service performed. Two views emerged. The first excluded liability because of the provider's technical role. The second imposed liability according to the type of service provided.

Part One: The View That a Service Provider Is Not Liable for Unlawful Content Transmitted Through Its Technical Facilities

This view is based on the provider's technical function. When the provider merely connects a subscriber or user to selected websites, its role is purely technical. It does not monitor the content of a website chosen freely by the user. Nor is it legally qualified to decide whether a site contains unlawful information that infringes the rights of others and causes them harm. Supporters of this view compare the provider to a person who advises a user to buy a newspaper containing unlawful information or to watch a television channel that broadcasts such information.

This position therefore relies on the provider's technical role. If its activity is limited to connecting users to the websites they select, it performs a technical function and exercises no control over the content of those sites.[18]

As a rule, a hosting provider is not liable for the content of information made available to its clients. It is a neutral intermediary in the transmission of information. Liability may arise, however, if the provider assumes obligations toward its clients and controls the information through its operation of the website. In that situation, it exceeds the role of an intermediary.

Most scholars consider the liability of an access provider to depend on the type of service performed. If it acts as a carrier that connects a client's computer to websites, it is not liable for the illegality of information passing through its technical facilities.[19]

Part Two: The View That a Service Provider Is Liable for Unlawful Content

If the provider goes beyond transmission and performs the function of a hosting provider that enables website operators to publish unlawful information, it may incur tort liability for the resulting harm to others.

The Internet is a means of communication involving many actors, including users, page publishers, service providers, access providers, hosting providers, servers, and carriers. Their liability varies according to their involvement in disseminating the information. Some scholars nevertheless maintain that an access provider is not liable for unlawful content that merely passes through its technical facilities.[20]

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[18]Sherif Muhammad Ghannam, The Legal Regulation of Online Commercial Advertising (Alexandria: New University House, 2011), p. 146.

[19]Marzouq Suleiman Hilal al-Amoush, previously cited, p. 294; Muhammad Husayn Mansour, previously cited, p. 13.

[20]Etienne Montero, La responsabilité civile des médias: prévention et réparation des préjudices causés par les médias (Larcier, 1998), p. 104.

An information provider incurs tort liability when its information causes harm to another. The material may consist of false, harmful, malicious, or degrading data, information, or messages. General rules require the information provider to respect the rights of others.
General rules also require the provider not to harm others. Tort liability arises when the provider disseminates information that violates another person's privacy, reputation, or honour. Liability also arises when the content infringes intellectual property rights, incites the commission of an offence, or contains false, incomplete, or defamatory information.[21]
Under general rules, an access provider may incur tort liability when its fault harms a person who is not bound to it by a subscription agreement. This may occur where the provider knew that the content or message was unlawful, or where the violation was manifest, particularly when it was criminal, and failed to stop its online transmission. Liability therefore depends on knowledge of the unlawful information and the ability to control or block it.[22]
Most scholars consider liability to depend on the type of service supplied. A provider acting only as a carrier between a client's computer and websites is not liable for unlawful information transmitted through its technical facilities. The position changes if it also acts as a hosting provider and enables operators of hosted websites to publish unlawful information. It may then incur tort liability for harm caused by that information. This broader role allows it to review information before publication and may therefore make it liable for unlawful website content.
Egyptian and Jordanian scholarship has adopted similar views. An information provider supplies guidance and advice. That duty may assist a beneficiary in operating an information system.

Section Two: Legislative Approaches to the Tort Liability of Internet Service Providers

The growing number of proceedings brought against Internet service providers over published content required legislative intervention. Legislatures in many states adopted rules governing this liability and established controls for abuses committed online.

Subsection One: The Position of Selected Anglo-Saxon Legislation on the Liability of Internet Service Providers[23]

United States law grants Internet service providers broad protection. It treats them as parties that supply online services without necessarily knowing what passes through their systems.
Section 230(c)(1) of the Communications Decency Act generally prevents providers or users of interactive computer services from being treated as the publisher or speaker of information supplied by another information content provider. The protection concerns third-party content transmitted through their services; it does not extend to content that the provider itself creates or develops.
These providers are treated as technical operators with no connection to online content. They may be unable to examine or alter the content, or even to determine whether it is unlawful. Their technical function is to deliver it to the public at users' request.
United States law contains several provisions exempting technical intermediaries from liability. These include provisions of telecommunications law that reject analogies imposing a high degree of liability on Internet providers.[24]

[21]Samir Hamid Abd al-Aziz al-Jammal, previously cited, p. 31.
[22]Abd al-Hadi Kazim Nasir, previously cited, p. 237.
[23]Ahmad Faraj Qasim, 'The Legal Regime of Internet Service Providers: A Comparative Analytical Study,' Al-Manara Journal, Al al-Bayt University, Jordan 13, no. 9 (2007), p. 320.
[24]Section 230(c)(1) of the United States Communications Decency Act.

Subsection Two: The Position of Selected Continental European Legislation on Tort Liability

Part One: The European Union Directive

The European Directive on electronic commerce reflects the urgent need for comprehensive legislation. Such legislation must define the legal status of Internet service providers and the liability of each provider for online violations. This objective requires coordinated legislative efforts at the international level.

The European Parliament and the Council adopted Directive 2000/31/EC on electronic commerce. It addresses certain legal aspects of information society services, particularly electronic commerce in the internal market.[25]

Articles 12 to 15 in Section 4 govern the liability of professional service providers. The Directive does not impose a general duty on technical intermediaries to monitor the legality of information or advertisements transmitted through a website. It does, however, require appropriate action to prevent access to unlawful content. A service provider is exempt from liability for unlawful acts carried through a website when the following conditions are met:[26]

First condition: the provider is not the source of the harm.

Second condition: the provider does not select the recipient of the transmitted information.

Third condition: the provider does not select or modify the information transmitted.

A service provider may temporarily store information during transmission. Such temporary storage does not create liability or transform its role into that of a hosting provider. It is therefore not subject to the liability applicable to hosting providers.[27]

Paragraph 3 of the relevant article allows Member States to require a service provider to terminate a service and remove unlawful website content.

Under the European Directive on electronic commerce, the information provider bears primary responsibility for information transmitted over the Internet.[28]

A hosting provider benefits from the liability exemption where it lacks actual knowledge of unlawful activity or information and is unaware of facts or circumstances from which the illegality is apparent. Once it obtains such knowledge or awareness, it must act expeditiously to remove the information or disable access to it.[29]

The European Union later recast the intermediary-liability framework through Regulation (EU) 2022/2065, the Digital Services Act. The DSA retains conditional liability exemptions for intermediary services, confirms that no general monitoring obligation may be imposed, and adds harmonized due-diligence mechanisms, including notice-and-action requirements for hosting services.[30]

[25]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 L 178, 17 July 2000, pp. 1 et seq.

[26]Article 12(1) of the European Directive.

[27]Article 12(2) of Directive 2000/31/EC.

[28]Directive 2000/31/EC on electronic commerce.

[29]Article 14 of the European Directive.

[30]Regulation (EU) 2022/2065 on a Single Market for Digital Services (Digital Services Act).

Part Two: French Legislation

French Law No. 2004-575 of 21 June 2004 for Confidence in the Digital Economy (LCEN) is a central national statute governing intermediary services. Chapter II regulates technical service providers. Persons whose role is limited to providing Internet access must inform subscribers that technical means exist to restrict access to certain services. The law also confirms that providers have no general duty to supervise or monitor transmitted content and are not required to search actively for facts indicating unlawful activity.[31][32][33]

The law exempts providers from liability except in specified cases. The victim must prove the provider's liability for harm caused by hosted content. Some scholars have expressed concern that this burden of proof may weaken the protection of victims.

The Law for Confidence in the Digital Economy requires technical service providers to inform Internet users of the network's rules and procedural requirements. It also confirms that Internet service providers are not required to monitor or supervise the data or information transmitted over the network, as stated in Articles 5 to 9.

Because monitoring all online content is technically impracticable, Article 6-I-5 of the Law for Confidence in the Digital Economy establishes a notice procedure. Persons harmed by unlawful online content may notify the hosting provider so that the provider can remove it.[34]

French law imposes civil or criminal liability on persons who store information only when they fail to take the necessary steps to prevent subscribers or the public from accessing unlawful information after judicial intervention. Liability may also arise when a third party notifies them that stored information is unlawful and they fail to block its transmission or publication.

Natural and legal persons who, without charge or for remuneration, directly and continuously store writings, drawings, images, or messages for public or subscriber access are not ordinarily civilly or criminally liable. They may be liable if they fail to take appropriate precautionary measures after being warned that the content is unlawful.[35]

Service providers have no general duty to supervise or monitor the content and data they transmit. Nor are they required to investigate facts indicating unlawful activities.[36]

The law does not regulate the liability of information providers. In the absence of a specific provision, their liability is governed by general rules, adapted where necessary to the particular nature of Internet services.[37]

[31]Law No. 2004-575 of 21 June 2004 on confidence in the digital economy (LCEN), as amended.
[32]Articles 5 to 9 of the European Directive.
[33]Article 6(1) of the French law.
[34]Christiane Feral-Schuhl, Le droit à l'épreuve de l'Internet, 6th ed. (Paris: Dalloz, 2010), p. 801.
[35]Article 14 of the Law of 1 August 2000 amending certain provisions of the Law of 30 September 1986 on audiovisual communications.
[36]Abd al-Fattah Mahmoud al-Kilani, Civil Liability Arising from Electronic Transactions over the Internet (Alexandria: New University House, 2011), p. 190.
[37]Marzouq Suleiman al-Amoush, previously cited, p. 319.

Subsection Three: The Position of Selected Arab Legislation on Electronic Tort Liability

Part One: Algerian Legislation

Several Algerian laws regulate online activity. These include the Criminal Code, the Civil Code, consumer protection legislation, the Organic Law on Information, and legislation on electronic commerce. Together, they address the liability of different online service providers.

Algerian legislation contains express provisions establishing conditional non-liability. This approach also follows, at least implicitly, from the nature of a hosting provider's work. The first relevant text is Executive Decree No. 98-257. Although it concerns access providers, Article 14(6) also refers briefly to hosting providers. It requires an Internet service provider, in carrying out its activities, to assume responsibility for the content of pages and data servers that it creates and hosts, in accordance with the legislation in force.

As a rule, responsibility for content rests with its authors. A hosting provider has no responsibility for that content unless it created or produced it. In that case, the provider may bear any resulting liability.

Article 2(1) of Law No. 09-04 defines a hosting provider as any other entity that processes or stores computer data for the communication service concerned or for its users. In addition to the duties stated in Law No. 09-04, Internet service providers, including hosting providers, must act to remove unlawful content to which they provide access as soon as they acquire direct or indirect knowledge that it violates the law. They must delete the content or disable access to it.[38]

Providers must establish technical arrangements that restrict access to servers containing information contrary to public order or public morals, or inform their subscribers of the existence of such content.

The duty of a hosting provider to remove unlawful content once it learns of its existence suggests that the provider is not initially responsible for the content. Its duty is to remove the content or make access to it impossible.[39]

Law No. 16-02 of 19 June 2016 added Article 394 bis 8 to the Criminal Code. It penalizes an Internet service provider that, despite formal notice from the competent National Authority or a binding judicial order, fails to intervene without delay to remove, store, or render inaccessible content constituting a criminal offence, or fails to put in place the technical measures required to enable such action.

Law No. 18-07 on the protection of natural persons in relation to the processing of personal data was also enacted. It provides legal protection for individual privacy online and responds to the rapid development of information and communication technologies. The law grants judicial authorities broad powers to obtain personal information during investigations as part of the modernization of justice.

Part Two: Bahraini Legislation on Electronic Tort Liability

Bahrain's Electronic Communications and Transactions Law regulates the liability of trust service providers. A provider is liable for harm suffered by a person who reasonably relied on a trust service covered by the provider. Liability arises when the harm results from the provider's failure to comply with the law and its implementing decisions and was caused intentionally or negligently.

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[38] Article 12 of Law No. 09-04 containing special rules for the prevention and combating of offences related to information and communication technologies.

[39] Ben Azza Amin, previously cited, p. 385.

An accredited trust service provider is not liable if the person knew, or in the ordinary course should have known, that the certificate relied upon had expired, been revoked, or been suspended, or that the accreditation of the relevant trust service provider had been withdrawn.
Unless the contrary is proved, harm is presumed to have resulted from the intentional or negligent conduct of an accredited trust service provider.[40]
For a non-accredited trust service provider, the injured person bears the burden of proving that the harm was caused by the provider's intentional or negligent conduct.
Bahrain's Electronic Communications and Transactions Law also regulates the liability of intermediaries. An intermediary is not civilly or criminally liable for information concerning a third party that is contained in electronic records, provided that the intermediary did not originate the information and merely enabled access to it, stored it, or performed both functions.[41]
B. Exemption from liability is subject to the following conditions:
The intermediary did not know that the information could give rise to civil or criminal liability.
The intermediary did not know of facts or circumstances that, in the ordinary course, would indicate the existence of civil or criminal liability.
Upon obtaining such knowledge, the intermediary immediately removes the information from any information system under its control and stops providing access to, storing, or displaying it.
C. This article imposes no legal duty on an intermediary to monitor electronic records concerning third parties. The intermediary is not required to determine whether the information could create civil or criminal liability, or whether facts or circumstances exist that would ordinarily indicate such liability, when its role is confined to providing access to or storing those records.
D. This article does not affect the following:
Any obligation arising from a contract.
Obligations imposed by law in relation to the provision of wireless communication services.
Obligations imposed by law or by an enforceable judicial decision to restrict, prevent, or remove information contained in electronic records, or to prevent access to it.
For information concerning a third party, the phrase 'providing access' means supplying the technical means to access or transmit information contained in electronic records, or merely improving the efficiency of transmission. It includes automatic, intermediate, or temporary storage undertaken to provide access to that information.[42]
Accordingly, an intermediary does not incur civil liability when it did not originate the information and merely provided access to it. Under Bahrain's Electronic Communications and Transactions Law, exemption from liability requires that the intermediary did not know the information could give rise to civil or criminal liability. It must also have been unaware of facts or circumstances that would ordinarily indicate such liability.
Once an intermediary acquires such knowledge, it must immediately delete the information from any information system under its control and stop providing access to or displaying it.

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[40]Article 24(c) of Legislative Decree No. 54 of 2018 promulgating Bahrain's Electronic Communications and Transactions Law.
[41]Article 24 of Legislative Decree No. 54 of 2018 promulgating Bahrain's Electronic Communications and Transactions Law.
[42]For the purposes of Bahrain's Electronic Communications and Transactions Law, a third party is any person over whom the intermediary has no control.

It follows that a network intermediary is not civilly liable for information concerning third parties that is contained in electronic records, provided that it did not originate the information and merely enabled access to it. This rule applies where liability would otherwise arise from creating, publishing, transmitting, or distributing the information or any data it contains.
Bahraini law therefore makes an intermediary's exemption from liability subject to the following conditions:
The intermediary must not know that the information could give rise to civil or criminal liability. It must also be unaware of any facts or circumstances that would ordinarily indicate civil liability.
Bahrain's Electronic Communications and Transactions Law further requires a network intermediary that acquires such knowledge to act immediately. It must remove the information from any system under its control and stop providing access to, storing, or displaying it.

Section Three: Judicial Approaches to the Liability of Internet Service Providers

Before European states adopted specific legislation, their courts sought to determine the tort liability of service providers for unlawful information under general rules of liability. Judicial approaches were divided. Some decisions imposed liability on providers, while others exempted them. The following discussion presents both approaches.

Subsection One: The Approach Imposing Liability on Service Providers

From the earliest proceedings against service providers, some European courts sought to hold them accountable for unlawful information transmitted online. Liability was imposed when a provider breached its duties. One example is the action brought by the Union of Jewish Students against Yahoo before the Paris Court of First Instance. Yahoo was sued as an access provider. The court applied general rules of liability and held the company responsible for unlawful advertisements and transactions on websites accessible through its service. It ordered Yahoo to filter the unlawful content so that Internet users in France could not access Nazi symbols offered for sale on certain websites. Yahoo's liability arose only after it had knowledge of the unlawful content and advertisements. The court accepted the Union's argument that Yahoo enabled the public to access websites promoting Nazi-related items.[43]
French judicial decisions indicate that an information provider must disclose all relevant information about an information program. French scholarship describes this duty in several ways, including the duties to consult, explain, advise, and inform. The person requesting the service must also cooperate by stating its needs accurately. This enables the provider to perform its work properly. The provider must supply the technical means needed to filter material uploaded to the network.
Filtering may use classification programs. Blacklists block access to specified websites. Whitelists identify sites that may be accessed. Neutral programs may be used to establish the identity of certain websites.
French and German courts have held that a service provider is liable when it knows what subscribers transmit or display on websites and fails to take the necessary measures.
The court held Yahoo liable for unlawful advertisements and transactions conducted through the Yahoo website in connection with an online auction of Nazi-related items.
Its liability arose once it obtained knowledge of the website's unlawful content.

[43] Abd al-Hadi Kazim Nasir, 'The Civil Liability of Internet Intermediaries,' Al-Qadisiyah Journal of Law and Political Science 2, no. 2 (2009), p. 332.

Subsection Two: The Approach Excluding the Liability of Service Providers
Some European decisions have adopted the principle of non-liability. They exempt information providers from liability for unlawful information passing through their technical facilities because their role is limited to connecting clients to the Internet. The Paris Court of First Instance applied this approach in October 1999 in the EDV case. EDV had published an article entitled 'Small Businesses and How to Choose Their Financial System' on its website without the author's consent. To publish the article, EDV used UUNet France and UUNet Technologies Inc. as access providers. The author sued EDV and both access providers, seeking removal of the article and compensation for harm caused by its online publication. The court held that the access providers were not liable because their work was limited to transmitting information from the website to users. They were therefore not responsible for the legality of the data published on the site.[44]

An information provider is regarded as the publisher of information on a website. It has actual power to control that information and its publication. The information provider therefore bears primary responsibility for the messages, information, and images it transmits over the Internet.[45]

Like a traditional content provider, an online information provider has a duty to monitor the content it receives. The extent of its control corresponds to the nature of its role as the electronic publisher of the material.[46]

A review of the case law reveals two French decisions that marked a significant development in the judicial basis of hosting-provider liability.

These were the Lynda Lacoste and Estelle Hallyday cases. The first sought to establish liability on the basis of risk, while the second relied on personal fault.[47]

Certain cases concern honour and the restoration of reputation. These matters are subjective and difficult to determine, particularly because the defendant may plead the truth of facts attributed to the person who alleges defamation[48].

Rules of electronic tort liability have also been applied to the press and publishing.

If the provider of unlawful content cannot be identified, the person that enabled its transmission, such as a hosting provider, may be held accountable. That person may then seek recovery from the actual author of the unlawful act. By contrast, an access or hosting provider is not liable when the author or publisher of the information is known.[49]

Conclusion
Legal scholarship and case law differ on the basis of the civil liability of Internet service providers. Some approaches support the non-liability of providers and communications intermediaries on the grounds of freedom of expression or the technical and practical impossibility of monitoring all

[44]Tribunal de commerce de Paris, ordonnance de référé, 1 October 1999, Groupe Revue Fiduciaire v. EDV, UUNet France and UUNet Technologies Inc., Juriscom.
[45]Abd al-Fattah Mahmoud al-Kilani, 'The Legal Liability of Internet Service Providers,' Journal of Legal Thought, Benha University, no. 1 (2011), p. 490.
[46]Ahmad Qasim Faraj, previously cited, p. 339.
[47]Samir Hassan al-Masri, Tort Liability Arising from Internet Use: A Comparative Study with United States Law (Cairo: Dar al-Nahda al-Arabiyya, 2017), p. 220.
[48]Alexandre Bc v. JFG Network, www.legalis.net.
[49]Ziyad Tariq Jassim, previously cited, p. 180.

information. Other approaches seek to impose liability when the provider's fault is established and the responsible party can be identified.
The liability of Internet service providers depends on the role performed by each provider. An access provider supplies the technical means that allow clients to connect to the Internet. A hosting provider stores information and supplies the technical means through which clients can access the stored material.
The Internet contains diverse forms of content, including websites involving the sexual abuse of children and content containing racist statements. Minors are often the first victims of such unlawful material, even where legislation exists. Legislative shortcomings must therefore be addressed. Courts, followed by legislatures, have sought to curb these violations through new laws.
An Internet service provider generally performs a purely technical role by supplying the means that enable subscribers to connect to the network. This role has a major effect on liability. As a rule, a provider acting as an intermediary is not responsible for information transmitted through its technical facilities. Tort liability arises only when it knows the information is unlawful, or when it is notified by a competent judicial or administrative authority or by the injured person.
The legislation reviewed links provider liability to knowledge of unlawful information and activities transmitted through the service supplied to subscribers. It grants an exemption when the provider removes the unlawful information or activity after acquiring such knowledge.
Where more than one provider participates in supplying information that causes harm, all participating providers are liable to the injured person.
The nature of the civil liability of Internet service providers does not vary according to the type of online violation, but according to its basis. Liability is contractual when it results from the provider's breach of contractual obligations. It is tortious when it arises from unlawful informational content transmitted over the Internet.
During the early expansion of Internet use, no special legal provisions regulated this form of liability. Courts therefore addressed disputes through general rules of tort liability, whether strict liability or liability based on personal fault that had to be proved.
Some states enacted legislation defining the legal framework for the activities of technical operators. In view of the technical nature of those activities, providers were exempted from liability unless they knew the content was unlawful.

Recommendations

Comprehensive legislation is urgently needed to define the legal status of Internet service providers and the liability of each provider for violations committed online.
The wide reach of the Internet makes legislation governing this form of activity necessary.
Specialized communications authorities should be consulted.
Legislation should permit actions and applications seeking to stop the transmission of unlawful electronic content. It should also define the procedures for removing that content. Courts should apply general rules of liability with greater flexibility and in a manner that reflects the importance of electronic transactions and modern communications.
Imposing liability may encourage Internet service providers to monitor information more carefully in order to avoid claims. This could restrict freedom of expression. Conversely, excluding liability entirely may discourage providers from using the means available to limit or prevent the dissemination of unlawful information.

Specialized judicial divisions for Internet disputes are now necessary, similar to specialized commercial courts.
Judges should receive training on the Internet and its technical and legal problems.
International cooperation is needed to conclude agreements governing Internet service providers and their liability. Such agreements should also identify the competent court and the law applicable to disputes involving providers.
Legislatures must keep pace with rapid developments in electronic transactions. The speed at which the Internet is expanding makes legislation for this type of activity essential.
Other states' experience should be used in this field, with guidance drawn from foreign case law and comparative legislation.

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