



THE LEGAL STATUS OF INFORMATION INTERMEDIARIES AND THE RIGHT OF ACCESS TO INFORMATION: A COMPARATIVE AND NORMATIVE ANALYSIS

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Abstract

This article examines the legal status of information intermediaries and their right of access to information in the context of contemporary digital communication. The study proceeds from the premise that information intermediaries such as search engines, hosting providers, social networks, and content aggregation platforms have evolved beyond purely technical service providers and now play a decisive role in shaping information circulation and public discourse. Despite this functional transformation, existing legal frameworks in the United States, the European Union, Germany, France, and the Russian Federation continue to regulate information intermediaries primarily on the basis of property rights and contractual freedom. Using comparative and doctrinal legal analysis, the article demonstrates that prevailing regulatory models inadequately reflect the social role of information intermediaries and disrupt the balance between proprietary interests and freedom of information. Special attention is paid to intermediary immunity regimes, algorithmic content governance, and the lack of clearly defined public-interest obligations. The article argues that excessive reliance on contractual and property-based mechanisms limits access to socially significant information and weakens the protection of fundamental rights related to information access. In conclusion, the article substantiates the need for a revised legal approach that reconceptualizes information intermediaries as hybrid legal subjects simultaneously private-law actors and entities bearing responsibility for safeguarding public interests. It proposes the development of a balanced



regulatory model aimed at harmonizing freedom of access to information with the protection of property rights through transparency, accountability, and proportional legal obligations.

Keywords: information intermediary; access to information; freedom of information; property rights; contractual freedom; digital platforms; intermediary liability; algorithmic governance; public interest; comparative law.

Introduction

The rapid expansion of digital technologies and platform-based communication has fundamentally transformed the structure of information circulation in modern societies. Information intermediaries such as search engines, hosting providers, social networks, and content aggregation platforms have become central actors in the creation, organization, dissemination, and restriction of information flows. Although these intermediaries do not, as a rule, create information themselves, their technical, contractual, and algorithmic functions allow them to exercise decisive influence over which information is accessible to users, how it is prioritized, and under what conditions it may be removed or restricted. As a result, information intermediaries increasingly shape not only market relations, but also public discourse, access to socially significant knowledge, and the practical realization of fundamental rights related to freedom of information.

Despite their growing influence, the legal status of information intermediaries remains conceptually ambiguous. In most legal systems, intermediaries are still predominantly treated as technical service providers operating within the framework of property relations and contractual freedom. Access to information is typically conditioned upon the consent of information owners and regulated through licensing or contractual mechanisms. At the same time, intermediaries are often granted broad discretion to filter, prioritize, or remove content particularly under legal regimes such as Section 230 of the U.S. Communications Decency Act without corresponding obligations to ensure transparency, accountability, or the protection of public interests. This regulatory imbalance has led to a situation in which intermediaries exercise substantial control over



information circulation while remaining largely exempt from civil liability or public-law duties.

Against this background, the article examines the legal regulation of information intermediaries' right of access to information in comparative perspective, focusing on the legal frameworks of the European Union, the United States, Germany, France, and the Russian Federation. The analysis demonstrates that, notwithstanding doctrinal differences, these systems largely rely on property-based and contractual models that limit intermediaries' access to information and fail to adequately reflect their evolving social function as de facto gatekeepers of the digital information environment. The article argues that this approach disrupts the balance between the protection of property rights and freedom of information, restricts the dissemination of socially significant information, and undermines the public interest.

The purpose of this study is to substantiate the need for a revised legal approach that reconceptualizes the information intermediary as a hybrid legal subject one that simultaneously operates as a private-law actor and bears responsibility for safeguarding public interests. Such an approach, it is argued, should aim to harmonize freedom of access to information with the protection of proprietary rights through transparent, balanced, and rights-oriented regulatory mechanisms. In Germany, this regulatory framework is governed by the Telemedia Act (Telemediengesetz, TMG) of 2007. Under this Act, an information intermediary performs a mediating function in organizing the dissemination of information and access thereto on the Internet. The intermediary may provide access to information only on the basis of a contract, license, or other lawful authorization granted by the information owner. It is not empowered to modify or independently create information and operates solely as a technical service provider. Accordingly, access to databases or digital content is permitted only where a legal relationship exists between the intermediary and the information owner¹.

In France, the Law on Confidence in the Digital Economy of 2004 (Loi pour la confiance dans l'économie numérique, LCEN) similarly treats information intermediaries as technical actors and provides that their access to information

¹ Schulz W. Regulating intermediaries to protect personality rights online the case of the German NetzDG //Personality and data protection rights on the Internet: Brazilian and German approaches. – Cham : Springer International Publishing, 2022. – C. 289-307.



must be based on lawful grounds, including contractual arrangements with information owners. Under this legislation, hosting service providers and data-storage platforms do not enjoy autonomous access to information resources, but may obtain such access exclusively on the basis of agreement².

Article 1253.1 of the Civil Code of the Russian Federation recognizes an information intermediary as an entity engaged in the dissemination, storage, or facilitation of access to information. Pursuant to this provision, the right to access information may be exercised only where the consent of the information owner has been obtained. If the information is not made publicly available, the information intermediary is not entitled to use or disseminate such data³. The conditions governing access to information are determined through civil-law contracts, a mechanism that is particularly significant in the operation of databases, web-based content, and digital platforms.

In the laws of the United States, the European Union, Germany, France, and Russia, the right of information intermediaries to access information has a complex legal nature and is primarily regulated on the basis of property rights and the principle of contractual freedom. The European Union's 2000 Directive on Electronic Commerce conceptualizes the intermediary as a mere technical service provider and makes access to information dependent on the consent of the information owner, thereby limiting the intermediary's autonomy, subordinating it to proprietary interests, and reducing opportunities for public access.

By contrast, Section 230 of the U.S. Communications Decency Act grants intermediaries the authority to manage information in accordance with their own rules and algorithms; however, while this enables them to influence the content and visibility of information, it does not impose corresponding obligations to safeguard the public interest, effectively exempting powerful intermediaries from responsibility. The legal systems of Germany, France, and Russia largely follow the EU model by linking access to information to contracts, licenses, or other lawful grounds, and by treating intermediaries as technical carriers that do not independently create information. Within these models, the fundamental balance between the protection of property rights and freedom of information is disrupted:

² Stalla-Bourdillon S. Sometimes One Is Not Enough—Securing Freedom of Expression, Encouraging Private Regulation, or Subsidizing Internet Intermediaries or All Three at the Same Time: The Dilemma of Internet Intermediaries' Liability //J. Int'l Com. L. & Tech. – 2012. – T. 7. – C. 154.

³ Ларионова В. А. Информационный брокер как новый субъект информационного права в эпоху Big Data //Право в сфере Интернета. – 2018. – С. 62-103.



access to information is frequently restricted through contractual or licensing mechanisms, the control of information owners is strengthened, and intermediaries' ability to disseminate information in the public interest is curtailed⁴. For example, if a pharmaceutical company fails to disclose adverse effects of a medicinal product, an intermediary cannot disseminate such information without a contractual basis, which may result in the concealment of information directly affecting public health and cause harm to the public interest. Therefore, in order to reduce inequality in the information environment and to restore the social function of information intermediaries, a new legal approach is required that harmonizes freedom of access to information with the protection of property rights.

A second shortcoming lies in the fact that legislative models similar to Section 230 of the U.S. Communications Decency Act grant intermediaries broad discretion to filter, present, or remove content, while failing to clearly define their legal obligations to guarantee access to information⁵. Through algorithmic systems, intermediary platforms shape content distribution and thus participate in information circulation not merely as technical actors, but as legally relevant subjects. However, adequate requirements of accountability and transparency for such influence are largely absent. As a result, selective dissemination of information, one-sided content distribution, and de facto censorship become possible⁶.

The internal content rules of intermediaries are often opaque, leaving users unaware of why certain information is presented to them while other information is withheld. For example, platforms such as Facebook or YouTube may, on the basis of their internal policies, decline to distribute, recommend, or may entirely remove certain videos or messages. In doing so, platforms independently determine which information reaches the public and which does not, without bearing responsibility for these decisions and without providing transparent criteria for their content moderation practices. This situation undermines the

⁴ Van Alstyne M., Brynjolfsson E., Madnick S. (1995). Why not one big database? Principles for data ownership. *Decision Support Systems*, 15(4), pp. 267–284.

⁵ Liu H. W. The transatlantic divide: intermediary liability, free expression, and the limits of trade harmonization // *International Journal of Law and Information Technology*. – 2023. – Т. 31. – №. 4. – С. 376-398.

⁶ Жевняк О. В. Цифровые платформы как вид экономических рыночных отношений и отражение этого аспекта в правовом режиме цифровых платформ // *Юридические исследования*. – 2023. – №. 8. – С. 96-127.



public interest and restricts individuals' right to equal and impartial access to information.

A third shortcoming is that the legislation of the United States, Germany, and France does not provide a clear legal assessment of the civil responsibilities of information intermediaries toward society. In these jurisdictions, intermediaries are predominantly treated as technical service providers operating within property relations, while their role in information dissemination is not regulated from the perspective of public interests. For example, the U.S. Digital Millennium Copyright Act (DMCA), Germany's *Telemedia Act* (TMG), and France's Law on Confidence in the Digital Economy (LCEN) exempt intermediaries from liability where they do not directly interfere with content, yet they fail to take into account the intermediary's impact on information security or socio-political stability. As a result, the information intermediary is regulated not as a key gatekeeper of information in the digital environment, but merely as a technical partner.

A notable illustration is the 2020 decision by YouTube to temporarily remove videos related to the "Black Lives Matter" ⁷ movement following user complaints. These videos addressed issues of police violence and racial inequality, and YouTube justified its actions by reference to its policies against hate-based content. However, human rights organizations criticized this decision as a restriction on public debate and as the concealment of socially significant information. U.S. law, in turn, treated the platform's actions as decisions taken within the scope of a technical service provider's internal rules⁸. This example clearly demonstrates the absence of a legal framework that adequately accounts for the social role and public responsibilities of information intermediaries.

In conclusion, the identified shortcomings necessitate a reconsideration of the legal status of information intermediaries and their functional role within information relations. From a scholarly perspective, a new legal approach should be based on recognizing the information intermediary as a hybrid subject—that is, simultaneously a private-law actor and an entity bearing responsibility for safeguarding public interests. Such an approach should aim to develop a balanced legal model that incorporates mechanisms for access to information,

⁷ Case, S. (2020). Why Are Black Lives Matter YouTube Videos Getting Removed? Teen Vogue. Retrieved from: <https://www.teenvogue.com/story/black-lives-matter-youtube-videos>

⁸ Chase G. The early history of the Black Lives Matter movement, and the implications thereof //Nev. LJ. – 2017. – T. 18. – C. 1091.



dissemination of information, and its processing on the basis of transparency and the equilibrium of competing interests.

Conclusion and Proposals

The conducted comparative analysis demonstrates that existing legal models regulating information intermediaries in the United States, the European Union, Germany, France, and the Russian Federation are structurally insufficient to address the contemporary realities of digital information circulation. Despite doctrinal differences, these systems share a common conceptual limitation: they predominantly perceive information intermediaries either as purely technical service providers or as private contractual actors, while failing to adequately reflect their factual role as key organizers and gatekeepers of information flows. This discrepancy between legal qualification and functional reality generates systemic imbalances between property rights, freedom of information, and the protection of public interests.

First, the prevailing reliance on property-based and contractual mechanisms to regulate access to information leads to the excessive dominance of information owners and contractual asymmetries. In practice, access to socially significant information is often contingent upon licensing agreements or proprietary consent, which may be denied for commercial, reputational, or strategic reasons. As a result, information intermediaries are legally prevented from disseminating information of public importance even where such information directly concerns public health, safety, or democratic discourse. This approach undermines the societal value of information and transforms it into a purely commodified object, detached from its public function.

Second, legal regimes modeled on broad intermediary immunities most notably those inspired by Section 230 of the U.S. Communications Decency Act grant intermediaries extensive discretion to curate, filter, prioritize, or remove content through algorithmic and internal governance mechanisms. However, these regimes do not impose corresponding duties of transparency, procedural fairness, or accountability. Consequently, intermediaries exert substantial influence over information visibility and public discourse while remaining legally shielded from responsibility for the social consequences of their decisions. This imbalance facilitates selective information dissemination, opaque moderation practices, and



forms of indirect censorship incompatible with the principle of equal and impartial access to information.

Third, the analyzed legal systems largely neglect the civil and social responsibilities of information intermediaries toward society as a whole. Existing legislation focuses primarily on limiting liability for unlawful content or copyright infringement, while ignoring the intermediary's impact on information security, democratic stability, and the formation of public opinion. As a result, intermediaries are not legally recognized as actors bearing duties toward the public interest, but are instead regulated as neutral technical partners even in cases where their decisions significantly affect public debate and access to socially relevant information.

In light of these shortcomings, the article substantiates the necessity of a revised legal paradigm for regulating information intermediaries. From a doctrinal standpoint, information intermediaries should be reconceptualized as **hybrid legal subjects** entities that simultaneously operate as private-law actors within contractual and property relations and as socially significant participants responsible for ensuring fair and transparent information circulation. Such a model must move beyond the binary opposition between “technical neutrality” and “editorial control” and instead adopt a functional approach that correlates legal obligations with the intermediary's actual influence over information flows. As a normative proposal, a balanced legal framework should incorporate the following elements:

1. **Recognition of a limited public-interest access regime**, allowing information intermediaries to disseminate socially significant information particularly in areas such as public health, environmental protection, and human rights even in the absence of explicit proprietary consent, subject to strict safeguards against abuse.
2. **Introduction of transparency and due-process obligations** for algorithmic content curation and moderation, including clear criteria for content prioritization, meaningful explanations for removal or restriction decisions, and accessible mechanisms for user appeal.
3. **Differentiation of intermediary responsibilities based on functional capacity**, whereby intermediaries that actively shape information visibility and distribution bear enhanced duties proportional to their societal impact.



4. Harmonization of property rights with freedom of information, ensuring that proprietary interests do not automatically prevail over the public's right to access information essential for informed participation in social, economic, and political life.

The implementation of such a model would contribute to reducing inequality in the digital information environment, restoring the social function of information intermediaries, and ensuring a more equitable balance between private autonomy and public interest. Ultimately, the evolution of digital societies requires a legal framework that treats information intermediaries not merely as passive conduits or private contractors, but as responsible participants in the governance of the modern information space.

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