THE LIABILITY OF INTERNET INTERMEDIARIES FOR THIRD PARTY'S INFRINGEMENT

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Abstract

This paper examined the liability of internet intermediaries for third-party infringement within the evolving digital environment. It traced the emergence of internet intermediaries, including internet service providers, social media platforms, search engines, and hosting services, and explored their increasing role in facilitating online communication and commerce. Using the doctrinal research method, the paper analysed relevant statutes, judicial decisions, and scholarly literature. The paper identified challenges such as the absence of comprehensive intermediary liability regulations, difficulties in monitoring online content, jurisdictional complexities, and the need to balance innovation with rights protection. Lessons were drawn from the United States, particularly the safe-harbour regime and notice-and-takedown mechanisms, which provide a balanced framework for addressing online infringements. It recommended the enactment of specific intermediary liability legislation, adoption of clear safe-harbour provisions, establishment of efficient notice-and-takedown procedures, and enhancement of regulatory and judicial capacity to ensure accountability while preserving freedom of expression and digital innovation.

Keywords: Liability, internet, intermediary, infringement, third-party

1.0 INTRODUCTION

The rapid growth of the internet and digital technologies has transformed the way information is created, shared, and accessed

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across the world. Internet intermediaries, including Internet Service Providers, web hosting companies, search engines, social media platforms, online marketplaces, and content-sharing platforms, play a crucial role in facilitating communication and commerce in the digital environment.[1] However, the increasing use of these platforms has also led to a rise in third-party infringements such as copyright violations, trademark infringements, defamation, privacy breaches, cybercrimes, and dissemination of unlawful content. This development has generated significant legal debates regarding the extent to which internet intermediaries should be held liable for wrongful acts committed by their users. The issue is particularly important because intermediaries act as gatekeepers of online content while simultaneously promoting freedom of expression and innovation.[2]

The concept of intermediary liability refers to the legal responsibility imposed on internet intermediaries for unlawful acts carried out by third parties through their platforms or networks. Traditionally, liability in law is based on direct participation in a wrongful act; however, digital technology has complicated this principle because intermediaries often neither create nor control user-generated content. Courts and lawmakers have therefore struggled to strike a balance between protecting intellectual property rights and other legal interests on one hand, and safeguarding technological innovation and freedom of expression on the other. For instance, a user may upload pirated movies on a video-sharing platform or sell counterfeit products

[1] Sadiku Ilegieuno, Nosakhare Iyamu and Lawal Kazeem, "Online Defamation: Rethinking the Liability of Internet Intermediaries for Third-Party Defamatory Contents in Nigeria" (2021) GRBPL 1-18

[2] Bukola Oluwaseun Faturoti, "Digital Copyright Challenges: Reconciling the Copyrights Holders' Rights and the Internet Intermediaries' Secondary Liability for Copyright Infringement in Nigeria" (PhD thesis, University of Leeds 2019)

through an online marketplace, raising questions as to whether the intermediary should bear responsibility for such infringements.[3]

Various international legal frameworks have emerged to regulate intermediary liability. A notable example is the United States' Digital Millennium Copyright Act (DMCA), 1998, which introduced the "safe harbour" principle that shields intermediaries from liability provided they promptly remove infringing content upon receiving notice from rights holders. Similarly, the Communications Decency Act (CDA), 1996, particularly Section 230, grants broad immunity to online service providers for third-party content. Within the European Union, the E-Commerce Directive, 2000 and the more recent Digital Services Act, 2022 establish conditions under which intermediaries may avoid liability while imposing certain obligations to address illegal online content. These frameworks have significantly influenced the development of intermediary liability regimes globally.[4]

In Nigeria, the legal framework governing intermediary liability remains fragmented. Relevant laws include the Copyright Act, 2022, which protects copyright owners against online infringements; the Cybercrimes (Prohibition, Prevention, etc.) Act, 2015, which imposes obligations on service providers to assist law enforcement agencies in combating cyber offences; the Nigeria Data Protection Act, 2023, which regulates the processing and protection of personal data; and the Federal Competition and Consumer Protection Act, 2018, which may affect online platforms involved in digital transactions. Although these

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[3] Enyinnaya C Uwadi, 'From Intermediary Liability to Intermediary Responsibility: A Juxtaposition of the EU and Nigerian Liability Regime for Internet Service Providers Over Intellectual Property Rights Infringements Online' (2021) 9 JIPLP 112-129

[4] Maureen Nwobodo, 'Internet Intermediary Liability in Nigeria: New Legislation Threatens Internet Freedom' (2012) 12 APCJ 1-8

laws contain provisions relevant to online activities, they do not comprehensively address the scope of liability of internet intermediaries for third-party infringements, thereby creating uncertainty for rights holders, intermediaries, and users.[5]

Practical instances of third-party infringement demonstrate the importance of a clear intermediary liability regime. For example, copyright owners frequently complain about unauthorized sharing of music, films, books, and software on social media and file-sharing platforms. Similarly, online marketplaces may unknowingly facilitate the sale of counterfeit goods, while social networking sites may be used to disseminate defamatory statements or infringe privacy rights. In the United States, the landmark case of Viacom International Inc. V. YouTube, Inc. Highlighted the application of safe harbour protections to online platforms accused of hosting infringing content. Such cases illustrate the continuing challenge of balancing the interests of rights holders, internet intermediaries, and the public. Consequently, examining the liability of internet intermediaries for third-party infringement is essential for developing an effective legal framework that promotes accountability, protects intellectual property rights, and supports the growth of the digital economy in Nigeria.[6]

2.0 LEGAL BASIS FOR INTERMEDIARY LIABILITY

Intermediary liability refers to the legal responsibility imposed on entities that facilitate, host, transmit, or provide access to information generated by third parties. Internet intermediaries include internet service providers (ISPs), social media platforms, search engines, web-

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[5] Maureen Nwobodo, "Internet Intermediary Liability in Nigeria: New Legislation Threatens Internet Freedom" (2012) 12 APCJ 1-8

[6] TEMPLARS Law Firm, "Liability of Internet Service Providers (ISPs) In Nigeria; Understanding the Safe Harbour Provisions" (2023) Mondaq IP Newsletter 1-6< https://www.mondaq.com>accessed 10th February 2026.

hosting services, online marketplaces, cloud service providers, and content-sharing platforms. The rapid growth of digital communication has created legal concerns regarding whether these intermediaries should be held liable for unlawful acts committed by users through their services. The debate seeks to balance innovation, freedom of expression, and the protection of intellectual property rights.[7]

The legal basis for intermediary liability stems from traditional principles of tort, contract, and intellectual property law. Under common law, a person who facilitates or contributes to the commission of a wrongful act may be held liable as a joint tortfeasor. Courts have extended this principle to online intermediaries where their actions substantially contribute to infringement. Liability may arise through direct participation, authorization, inducement, negligence, or failure to remove unlawful content after obtaining knowledge of its existence.[8]

The foundational international instrument is the World Intellectual Property Organization Copyright Treaty, 1996 and the World Intellectual Property Organization Performances and Phonograms Treaty, 1996. These treaties require member states to provide effective legal remedies against digital copyright infringement. Although they do not expressly impose liability on intermediaries, they create obligations for states to ensure that online infringements can be effectively addressed through domestic legislation. In the United States, intermediary liability is largely governed by the Digital

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[7] TEMPLARS Law Firm, 'Are Social Media Platforms, As Internet Intermediaries, Liable for Intellectual Property Infringements?' (2024) Mondaq IP Newsletter 1-8<https://www.mondaq.com> accessed 10th February 2026.

[8] Faruq Abbas, "Understanding How to Prosecute a Copyright Infringement Claim in Nigeria: A Review of the Supreme Court's Judgment in Ubom V. Globacom (Nig.) Ltd (2025) 6 NWLR (Pt 1985) 157' (2025) Mondaq Copyright Newsletter 1-5< https;//www/mondaq.com> accessed 11th February 2026

Millennium Copyright Act, 1998. Section 512 established a notice-and-takedown system and safe harbour protections for online service providers. The DMCA limits liability where service providers act merely as conduits, caching providers, hosting providers, or information location tools, provided they comply with statutory requirements. The European Union addressed intermediary liability through the E-Commerce Directive of 2000. Articles 12–15 provide exemptions for mere conduit, caching, and hosting services. More recently, the Digital Services Act strengthened intermediary obligations by introducing transparency, risk assessment, and content moderation requirements while maintaining safe harbour principles for compliant providers.

Nigeria does not have a comprehensive intermediary liability statute comparable to the DMCA. However, provisions relating to intermediary responsibilities are found in the Copyright Act, the Cybercrimes (Prohibition, Prevention, etc.) Act, the Constitution of the Federal Republic of Nigeria 1999 (as amended), and regulations issued by the Nigerian Communications Commission. These laws impose varying obligations on service providers regarding unlawful online activities. One major form of third-party infringement is direct copyright infringement. This occurs where users upload, distribute, stream, or reproduce copyrighted works without authorization. Examples include unauthorized sharing of movies, music, software, books, and academic materials on platforms such as video-sharing websites and file-hosting services. The intermediary may face liability if it knowingly facilitates such activities.[9]

[9] Chijioke Nwosu, "Liability of Internet Intermediaries for User-Generated Content in Nigeria: A Critique of the Absence of Safe Harbour Provisions" (2020) 8 NJIP 45-67

Third-party trademark infringement occurs when users employ another person's registered mark without authorization in online advertisements, domain names, social media pages, or counterfeit product listings. Online marketplaces often face scrutiny where counterfeit goods bearing protected trademarks are sold through their platforms. Courts assess whether the intermediary had knowledge of the infringement and failed to take reasonable steps to prevent it. Although less common, patent infringement may occur when online platforms facilitate the manufacture, sale, or distribution of patented inventions without authorization. E-commerce websites can become implicated where patented products are advertised and sold by third-party vendors. Liability generally depends on whether the intermediary actively participated in or encouraged the infringing conduct.[10]

Internet intermediaries frequently confront claims relating to defamatory content posted by users. Statements damaging another person's reputation may be published through blogs, forums, social media platforms, or comment sections. Courts have increasingly examined whether platform operators become liable once they receive notice of the defamatory content and fail to remove it within a reasonable time. Third-party infringement may also involve unlawful disclosure of personal information. Users may upload private photographs, confidential records, or personal data without consent. Under the Nigeria Data Protection Act and similar international laws, intermediaries may incur liability where they fail to implement adequate safeguards or neglect requests to remove unlawfully disclosed personal information. Intermediaries may facilitate cybercrimes such as identity theft, phishing, hacking, online fraud, and dissemination of malware. The Cybercrimes (Prohibition, Prevention,

[10] Aisha Bello, "The Proposed Copyright Amendment Bill and ISP Liability in Nigeria" (2016) 4 ULLR 89-104

etc.) Act imposes obligations on service providers to cooperate with law enforcement agencies and preserve traffic data. Failure to comply may expose intermediaries to legal sanctions.[11]

Contributory liability arises where an intermediary knows or ought reasonably to know of infringing activities and materially contributes to them. A notable example is the case of A&M Records, Inc. V. Napster, Inc. Where the court held Napster liable because it had knowledge of widespread copyright infringement and materially contributed to users' unlawful activities. Vicarious liability exists where an intermediary has the right and ability to control infringing conduct and derives financial benefits from it. Courts have imposed liability on platform operators who profit from user infringements while retaining significant control over platform operations. This doctrine is frequently applied in copyright infringement disputes.[12]

Inducement liability occurs where an intermediary intentionally encourages users to commit infringement. Safe harbour provisions are statutory mechanisms that shield intermediaries from liability for unlawful activities committed by users.[13] These provisions recognize that intermediaries cannot monitor every piece of content transmitted through their systems. Safe harbour laws encourage technological innovation and internet development by preventing excessive legal exposure for service providers acting in good faith. To benefit from safe harbour protection, intermediaries generally must satisfy several conditions. They must act as neutral facilitators, lack actual knowledge

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[11] Aisha Bello, "The Proposed Copyright Amendment Bill and ISP Liability in Nigeria" (2016) 4 ULR 89-104

[12] Tunde Fagbohun, "Cybercafé Operators and Liability for Third Party Online Infringement Under Nigerian Law"(2015) 3 ABULJ 112-130

[13] Ikechukwu Nwankwo, "Defamation on Social Media: Intermediary Liability and the Nigerian Legal Framework" (2022) 11 NULJ 201-218

of infringement, avoid receiving direct financial benefits from unlawful conduct, and promptly remove infringing material upon receiving valid notice. Compliance with notice-and-takedown procedures is often a key requirement.[14]

Section 512 of the DMCA 1998 provides four principal safe harbours: transitory digital network communications, system caching, information residing on systems at users' direction, and information location tools. Providers that comply with notice-and-takedown requirements are generally immune from monetary damages arising from user-generated copyright infringement. Beyond copyright law, immunity provisions exist in various jurisdictions. In the United States, the Communications Decency Act grants broad immunity to online platforms for content posted by third parties. Section 230 provides that providers of interactive computer services shall not generally be treated as publishers or speakers of information supplied by another content provider. This provision has significantly influenced global discussions on intermediary liability.[15]

3.0 ANALYSIS OF LIABILITY REGIME

The liability of internet intermediaries for third-party infringement remains one of the most contested issues in contemporary digital law. Internet intermediaries such as social media platforms, search engines, web hosts, internet service providers, cloud service providers, and online marketplaces facilitate the transmission and dissemination of user-generated content. While these intermediaries do not usually create the content, they often become central actors in disputes involving copyright infringement, trademark violations, defamation,

[14] Oluyemi Oke, "Safe Harbour or No Harbour: Assessing ISP Liability Under the Nigerian Copyright Act" (2018) 6 BSULJ55-73

[15] Oluyemi Oke, "Safe Harbour or No Harbour: Assessing ISP Liability Under the Nigerian Copyright Act" (2018) 6 BSULJ 55-7

privacy breaches, and cybercrimes. Modern legal frameworks therefore seek to determine when intermediaries should be held accountable for unlawful activities committed by their users.[16]

Knowledge requirement refers to the legal principle that an intermediary may only be held liable where it possesses actual knowledge, constructive knowledge, or awareness of unlawful content or activities occurring through its services. This principle emerged from the recognition that intermediaries process vast amounts of information and cannot reasonably monitor every communication transmitted through their systems. Actual knowledge exists where an intermediary becomes directly aware of specific unlawful content. This may occur through a court order, a notice from a rights holder, a regulatory directive, or independent discovery. Once actual knowledge is established, many legal systems impose a duty upon the intermediary to remove or disable access to the offending content within a reasonable time.[17]

Constructive knowledge arises where circumstances suggest that a reasonable intermediary should have known of the infringement. Courts may infer knowledge where infringement is obvious, repeated, widespread, or openly encouraged by the platform. This standard prevents intermediaries from deliberately ignoring unlawful conduct while claiming ignorance. The United States adopted a knowledge-based liability regime under the Digital Millennium Copyright Act (DMCA) 1998. Section 512 provides that online service providers lose safe harbour protection if they possess actual knowledge of infringing

[16] Rachael E Dottle, "Section 512 of the Digital Millennium Copyright Act: User Experience and User Frustration" (2018) 103 LLR 751-786
[17] Miquel Peguera, "Converging Standards of Protection from Secondary Liability for Trademark and Copyright Infringement Online" (2014) 37 CJLA 609-642

material or become aware of facts making infringement apparent and fail to act expeditiously to remove the content.[18]

Notice-and-takedown procedures constitute the primary mechanism through which knowledge is communicated to intermediaries. Rights holders notify the intermediary of infringing content, and the intermediary removes or disables access to the content. Compliance often determines whether safe harbour protections remain available. Under the DMCA 1998, a valid notice must identify the copyrighted work, specify the infringing material, provide contact information, and contain a good-faith declaration. Failure to satisfy these requirements may render the notice ineffective. To protect users from wrongful removal of lawful content, many jurisdictions provide counter-notice procedures. Users may challenge allegations of infringement, requiring intermediaries to restore content unless legal proceedings are initiated by the complainant.[19]

The E-Commerce Directive 2000 introduced a notice-based regime under which hosting providers become liable when they possess actual knowledge of illegal activity and fail to act expeditiously. The Directive rejected a general monitoring obligation for intermediaries. The European Union Digital Services Act (DSA) 2022 modernized notice-and-action mechanisms by imposing transparency obligations, risk assessments, complaint procedures, and accountability measures on online platforms while preserving conditional liability exemptions.

Nigeria does not currently maintain a comprehensive intermediary liability regime. However, the Copyright Act 2022, Cybercrimes (Prohibition, Prevention, etc.) Act 2015, and regulatory directives of

[18] James Gibson, 'Notice and Takedown, Here and Abroad' (2011) 39 URLR 39-48
[19] Derek Bambauer, 'The Missing Stakeholder of DMCA 512: Non-Infringing Users' (2020) AAR 1-15

the Nigerian Communications Commission (NCC) impose obligations on service providers upon receiving lawful notices concerning unlawful content. Notice systems are frequently criticized for abuse. Rights holders may issue excessive or inaccurate notices, resulting in over-removal of lawful content. Such actions may suppress legitimate speech and undermine due process rights. Content moderation refers to the process through which intermediaries review, restrict, label, remove, or prioritize online content to ensure compliance with legal requirements and community standards. Moderation has become central to intermediary liability frameworks worldwide.[20]

Content moderation may be proactive or reactive. Proactive moderation involves automated detection tools and algorithms, while reactive moderation relies on user complaints, reports, and notices from rights holders or regulators. Many digital platforms employ copyright filtering systems to identify unauthorized uploads. For example, video-sharing platforms utilize automated detection technologies to identify copyrighted music, films, and audiovisual works uploaded without authorization. Social media platforms routinely moderate content alleged to be defamatory. Following notification, platforms may remove or restrict access to statements capable of damaging reputations to minimize exposure to liability. Intermediaries also moderate content involving hate speech, child exploitation, terrorism, fraud, cyberbullying, and misinformation. Governments increasingly expect platforms to remove such content promptly once notified.[21]

[20] Mark A Lemley, 'Inducing Patent and Copyright Infringement' (2003) 71 UCLR 1035-1083

[21] Jane C Ginsburg, 'Separating the Sony Sheep from the Grokster Goats: Reckoning the Future Business Plans of Copyright-Dependent Technology Entrepreneurs' (2005) 50 ALR 577-620

Automated moderation systems frequently generate errors. Algorithms may fail to distinguish between infringement and lawful uses such as criticism, parody, commentary, education, and fair dealing, resulting in excessive censorship. Excessive content moderation may interfere with freedom of expression. Consequently, courts and regulators increasingly emphasize procedural fairness, transparency, and accountability in content moderation decisions. Monetary obligations concern the financial responsibilities imposed upon intermediaries for third-party infringements. Liability may arise in the form of damages, compensation, statutory penalties, fines, or account of profits.[22]

Where safe harbour protections are unavailable, intermediaries may become liable for substantial copyright damages. Courts may award compensatory damages reflecting losses suffered by copyright owners due to unauthorized exploitation of protected works. Several jurisdictions permit statutory damages irrespective of actual losses. Such provisions strengthen enforcement by enabling rights holders to obtain remedies where precise damages are difficult to quantify. Online marketplaces may incur monetary liability where counterfeit products are sold through their platforms. Courts consider factors such as knowledge, control, financial benefit, and responsiveness to complaints. Modern legislation increasingly imposes regulatory penalties. The European Union Digital Services Act authorizes substantial financial sanctions against very large online platforms that fail to comply with statutory obligations.[23]

Even where intermediaries avoid liability, they incur substantial costs associated with content moderation systems, legal compliance

[22] Douglas Lichtman and William Landes, "Indirect Liability for Copyright Infringement: Napster and Beyond" (2003) 17 JEP 113-128

[23] David Nimmer, "A Riff on Fair Use in the Digital Millennium Copyright Act" (2000) 148 UPLR673-742

departments, automated detection technologies, and dispute resolution procedures. One of the greatest challenges in intermediary liability is balancing enforcement against infringement with the protection of freedom of expression. Excessive liability may encourage platforms to remove lawful content merely to avoid litigation. Section 39 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees freedom of expression and the right to receive and impart information. Intermediary liability rules must therefore avoid unnecessary restrictions on lawful speech. The right to privacy under Section 37 of the Nigerian Constitution similarly influences intermediary regulation. Monitoring obligations must be carefully tailored to avoid excessive surveillance of users.[24]

The principle of fair hearing under Section 36 of the Constitution requires procedural safeguards before content is permanently removed or accounts are suspended. Notice and appeal mechanisms help protect affected users. Copyright and trademark rights constitute valuable property interests deserving protection. Intermediary liability frameworks therefore seek to balance these interests against constitutional rights and technological innovation.

The United States adopts a relatively protective approach towards intermediaries. Section 230 of the Communications Decency Act 1996 grants broad immunity regarding user-generated content, while the DMCA 1998 provides conditional copyright safe harbours. The European Union adopts a more regulatory approach. While maintaining safe harbours, the Digital Services Act imposes enhanced responsibilities concerning transparency, risk mitigation, and content governance. The United Kingdom's Online Safety Act 2023 imposes

[24] Mike Masnick, "The DMCA's Notice-and-Takedown System: A Comprehensive Analysis" (2014) 29 SCHTLJ 1-58

extensive obligations on online platforms to address harmful content while preserving freedom of expression and privacy rights. India's Information Technology Act 2000 and Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 require intermediaries to exercise due diligence and remove unlawful content upon obtaining actual knowledge through lawful notification.

4.0 LESSONS FOR NIGERIA

Emerging regulatory frameworks increasingly focus on platform accountability, algorithmic transparency, artificial intelligence governance, and risk-based regulation. Governments are moving beyond traditional notice-and-takedown models toward broader compliance obligations. Nigeria can learn from the United States by adopting clear safe harbour protections that encourage innovation while ensuring effective remedies for rights holders. Legal certainty promotes investment in digital technologies and online services. Nigeria may also learn from the European Union by establishing transparent notice-and-action procedures, independent oversight mechanisms, user appeal processes, and accountability obligations for large online platforms. Such reforms would improve enforcement while safeguarding fundamental rights.[25]

5.0 CONCLUSION AND RECOMMENDATIONS

The liability of internet intermediaries for third-party infringement requires a careful balance between accountability and innovation. Knowledge and notice requirements remain essential mechanisms for determining liability, while content moderation has become indispensable in combating unlawful online activities. Nevertheless, excessive liability may threaten freedom of expression, privacy, due

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[25] Mike Masnick, "The DMCA's Notice-and-Takedown System: A Comprehensive Analysis" (2014) 29 SCHTLJ 1-58

process, and technological development. Nigeria should enact a comprehensive Intermediary Liability Act establishing clear safe harbour provisions, standardized notice-and-takedown procedures, counter-notice mechanisms, transparency obligations, judicial oversight, proportional monetary penalties, and constitutional safeguards. Such reforms would align Nigerian law with international best practices while protecting intellectual property rights, promoting digital innovation, and preserving fundamental freedoms in the online environment.