

Safe Harbor Principle, Exclusion of Criminal Liability for Platform Service Providers

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Abstract

In the era of Society 5.0, characterized by the pervasive digitalization of societal functions, platform service providers play a pivotal role. These platforms, however, are frequently exploited by users for unlawful activities. This study investigates the prerequisites for invoking the safe harbor principle, which shields service providers from criminal liability. Employing a qualitative research approach, secondary data was gathered through a comprehensive literature review and subsequently analyzed qualitatively. The safe harbor principle serves as a critical legal mechanism utilized by platform service providers to shield themselves from legal repercussions arising from illicit actions committed by their users. To qualify for this exemption, providers typically must promptly remove unlawful content upon notification and refrain from active involvement in the transmission of such information. However, recent developments indicate that providers may forfeit safe harbor protection if they play a significant role in moderating or curating content on their platforms. This research underscores the essential conditions that platform service providers must meet to avail themselves of the safe harbor principle, highlighting the nuanced balance between facilitating digital innovation and upholding legal accountability. By clarifying these conditions amidst



evolving regulatory landscapes, this study contributes to ongoing discussions on legal frameworks governing digital platforms, offering insights crucial for policymakers, legal practitioners, and stakeholders navigating the intersection of technology, law, and societal governance.

Keywords

Safe Harbor; Responsibility; Service Provider.

Introduction

In today's digital age, platform service providers play a crucial role as facilitators of online interactions and content dissemination. However, this role comes with inherent risks, as platforms are frequently utilized for unlawful activities by users. The Safe Harbor Principle emerges as a crucial legal safeguard, offering providers exemption from criminal liability for illicit acts committed through their services, under certain conditions. In addition, the Society 5.0 era concept is a concept initiated by Japan and inaugurated on January 21 2019. Society 5.0 is a society that through a high level of integration between cyberspace and physical space, is able to balance economic advancement with solving social problems by providing goods and services that granularly address manifold latent needs regardless of location, age, gender, or Language.¹ In the Society 5.0 era, various aspects will be connected through technology. Technology combines a super-intelligent society with full integration of Big Data, Internet of Things (IoT), Artificial Intelligence (AI), and citizen services to facilitate digital and physical infrastructure for humanity.²

People in the Society 5.0 era use digital platforms to carry out many activities. Platforms become an important element in sustainable

¹ Atsushi Deguchi et al., "What Is Society 5.0?," in *Society 5.0: A People-Centric Super-Smart Society*, 2020, https://doi.org/10.1007/978-981-15-2989-4_1.

² Carolina Narvaez Rojas et al., "Society 5.0: A Japanese Concept for a Superintelligent Society," *Sustainability (Switzerland)* 13, no. 12 (2021): 1–12, <https://doi.org/10.3390/su13126567>.

economic growth in the Society 5.0 era.³ A digital platform is “a set of shared services and architecture that serves to host complementary offerings.”⁴ By using the services provided by the service provider platform we can listen to music, watch films, rent hotels, sell goods or buy goods. Platform businesses are an alternative to meet various customer needs.⁵ Even now, many people are looking for income by uploading video content to various platforms such as YouTube and Tik Tok. The large number of internet users who use platforms to shop online can be seen based on data from Similar Web on the number of visitors to marketing platforms in Indonesia. In the first quarter of 2023, the Shopee site received an average of 166.9 million visits per month, the Tokopedia site received an average of 107.2 million visits per month, and the Lazada site received an average of 74.5 million visits per month.⁶

As technology advances, apart from having a positive impact, the use of digital platforms also has negative impacts.⁷ Digital platforms are often misused by their users to upload content that violates the law.

³ Shiddiq Sugiono, “Industri Konten Digital Dalam Perspektif Society 5.0,” *Jurnal Ilmu Pengetahuan Dan Teknologi Komunikasi* 22, no. 2 (2020), <https://doi.org/https://doi.org/10.17933/iptekom.22.2.2020.175-191>.

⁴ Arto Ojala, Natasha Evers, and Alex Rialp, “Extending the International New Venture Phenomenon to Digital Platform Providers: A Longitudinal Case Study,” *Journal of World Business* 53, no. 5 (2018), <https://doi.org/10.1016/j.jwb.2018.05.001>. See also Stanislaw Toza, “Internet service providers as law enforcers and adjudicators. A public role of private actors,” *Computer Law and Security Review* 43, (2021), <https://doi.org/10.1016/j.clsr.2021.105614>.

⁵ Jochen Wirtz et al., “Platforms in the Peer-to-Peer Sharing Economy,” *Journal of Service Management* 30, no. 4 (2019), <https://doi.org/10.1108/JOSM-11-2018-0369>.

⁶ Adi Ahdiat, “Pengunjung Shopee Dan Blibli Naik Pada Kuartal II 2023, E-Commerce Lain Turun,” July 7, 2023, <https://databoks.katadata.co.id/datapublish/2023/07/07/pengunjung-shopee-dan-blibli-naik-pada-kuartal-ii-2023-e-commerce-lain-turun>.

⁷ Technological advances have had a strong impact on the world of crime, from modus operandi to crime typology. Andrea Di Nicola, “Towards Digital Organized Crime and Digital Sociology of Organized Crime,” *Trends in Organized Crime*, March 30, 2022, <https://doi.org/https://doi.org/10.1007/s12117-022-09457-y>.

Digital platforms are used to commit cyber bullying crimes, spread phishing, involve the installation of dangerous malware, fraud, and steal valuable and sensitive information.⁸ In fact, the platform is also used by terrorist organizations to spread propaganda in order to recruit new terrorist members and is used by the government for propaganda to cover up the crimes against humanity they have committed.⁹ Anton Moiseienko stated 4 categories of criminal exploitation that often appear in the marketplace platform, namely:

- a. Fraudulent customers by failing to deliver goods or services.
- b. Purchasing goods or services using stolen bank card data.
- c. Creating an e-commerce business as a cover for illicit transactions
- d. Abusing online marketplaces to move funds obtained through crime.¹⁰

Abuse of the platform by its users can be detrimental to the platform service provider because it creates an opinion among the public that the platform service provider must also be responsible for unlawful content uploaded by its users. The public believes that platform service providers must also be responsible even if the platform service provider does not upload content that violates the law, whether intentionally or negligently. Responsibility of a person without looking at the person's intention or negligence is a form of strict liability.¹¹ Strict liability can be applied to

⁸ Richard Daguatha Daguatha, "Use of Digital Platforms to Commit Nefarious Activities Globally. A Critical Literature Review.," *Journal of International Relations and Policy* 1, no. 1 (2022), <https://doi.org/10.47941/jirp.11106>.

⁹ Ken MacLean, "Interactive Digital Platforms, Human Rights Fact Production, and the International Criminal Court," *Journal of Human Rights Practice* 15, no. 1 (2023), <https://doi.org/10.1093/jhuman/huac062>.

¹⁰ Anton Moiseienko, "Understanding Financial Crime Risks in E-Commerce" (London, January 2020), <https://doi.org/2397-0286>.

¹¹ N. Nuradi and Edi Rohaedi, "Implementation of Strict Liability Principle in Civil Law Enforcement in Environment Law Files as Consequence of Forest and Land Fire in Indonesia Justice Practice," *International Journal of Multicultural and Multireligious Understanding* 7, no. 5 (2020), *See also* Zahranissa Putri Faizal, "Strict Liability in Environmental Dispute Responsibility Before and After the Enabling of Omnibus Law," *Administrative and Environmental Law Review* 2, no. 1 (2021), <https://doi.org/10.25041/aclr.v2i1.2318>.

someone who carries out an activity that can be classified as abnormally dangerous so that he is obliged to bear all the dangers of losses incurred, even though he has acted carefully and also tried to prevent all dangers or losses that might arise.¹²

Applying strict liability standards to platform service providers whose users upload content that violates the law will create injustice because platforms are basically harmless.¹³ In fact, the application of strict liability to platform service providers can hinder the growth of platform technology because the platform service providers will be afraid to develop their platforms, someone will even be afraid to create platform services. Apart from that, the negative impact of implementing strict liability is that the reasons for the perpetrator are unknown, the trial is unfair, and is contrary to the waiver of rights.¹⁴ Platform service providers often take refuge in the safe harbor principle if there are accusation related to unlawful content uploaded by their users.¹⁵ However, in order for service provider platforms to be able to take refuge in the safe harbor principle, there are certain conditions that must be met. If they cannot fulfill the required conditions then they cannot take refuge in the safe harbor principle. This research aims to determine the conditions that must be met by service provider platforms in order to be able to protect themselves through the safe harbor principle.

¹² Sodikin Sodikin, "Perkembangan Konsep Strict Liability Sebagai Pertanggungjawaban Perdata Dalam Sengketa Lingkungan Di Era Globalisasi," *Al-Qisth Law Review* 5, no. 2 (2022), <https://doi.org/10.24853/al-qisth.5.2.261-298>. The principle of strict liability can be used in civil law related to acts against the law and can be used in criminal law related to criminal act.

¹³ Rebecca J. Hamilton, "Platform-Enabled Crimes," *SSRN Electronic Journal* (Washington, November 12, 2021), <https://doi.org/https://dx.doi.org/10.2139/ssrn.3905351>.

¹⁴ Mahfud Mahfud, "An Overview of Strict Liability Offences and Civil Penalties in the UK's Environmental Law," *Jurnal Hukum Dan Peradilan* 9, no. 1 (2020), <https://doi.org/10.25216/jhp.9.1.2020.154-169>.

¹⁵ Syarafina Ramadhanty et al., "Doktrin Safe Harbor: Upaya Perlindungan Hak Cipta Konten Dalam Platform User Generated Content," *Legalitas: Jurnal Hukum* 12, no. 2 (2020), <https://doi.org/10.33087/legalitas.v12i2.226>.

Method

This research uses a qualitative approach. The type of research used in this research is normative juridical research, namely research on secondary data or research that reviews the literature.¹⁶ Secondary data collected from a judicial verdict of the case of Viacom International Inc. v YouTube Inc., L'Oreal v eBay, and Bolger v Amazon, acts, directive, book, and journals. The data that has been collected is then analyzed qualitatively.

Result and Discussion

A. Safe Harbor: A Principle of Exclusion of Responsibility

The safe harbor principle does not yet have a uniform definition and is used in different contexts. The term 'safe harbour', in Black's Law Dictionary, refers to (i) An area or means of protection (ii) A provision (as in a statute or regulation) that affords protection from liability or penalty.¹⁷ Bruce Weeks states that a safe harbor is a statutory or regulatory provision that stipulates that if certain conditions are complied with, the perpetrator will be deemed not to have violated certain rules.¹⁸ Syarafina Ramadhanty defines Safe Harbor's doctrine is a limitation of the responsibility of a violation lawsuit if the organizer of the electronic system has taken specific steps.¹⁹ In the field of insolvency law, the safe harbor principle is defined as a class transaction in which the automatic stay or moratorium in insolvency proceedings does not apply. Even if bankruptcy proceedings are initiated against the debtor, the counterparty protected by the safe harbor can exercise contractual rights in accordance

¹⁶ Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris*, ed. Endang Wahyudin, 1st ed. (Depok: Prenada Media Group, 2018).

¹⁷ Bryan A. Garner, *Black's Law Dictionary*, 11th ed. (Toronto: Thomson Reuters, 2019).

¹⁸ Bruce Weeks, "Safe Harbor and Copyright Infringement on the Internet: A Need to Update the Paradigm" 5, no. 2 (n.d.): 33–54, www.rsu.ac.th/rjsh.

¹⁹ Ramadhanty et al., "Doktrin Safe Harbor: Upaya Perlindungan Hak Cipta Konten Dalam Platform User Generated Content."

with the provisions of the contract, as if they were not what happened.²⁰ From these various definitions, it can be formulated that the safe harbor principle will free legal subjects from responsibility if certain specific conditions are met. The safe harbor principle will free legal subjects from responsibility if certain specific conditions are met.²¹ Platform service providers can take refuge on the principle of safe harbor to be free from accountability if they meet certain requirements. The purpose of the principle of safe harbor is that there is a separation of responsibilities between the service provider platform and the seller who uses platform services or platform users.²² The main aim of providing legal protection through the safe harbor principle to platform service providers is so that internet companies have the courage to develop their platform services. The safe harbor principle aims to strike a light balance between encouraging innovation and holding online platforms accountable for the content they host.²³ The progress of platform services technology today cannot be separated from the role of the safe harbor principle.

The history of the use of the safe harbor principle can be seen in regulations in the United States and in the European Union, namely Section 230 as part of the Communications Decency Act of 1996, Digital Millennium Copyright Act of 1998, and the E-Commerce Directive of 2000. The formation of Section 230 was inspired by a case that occurred in the United States in 1950. The case was about a bookstore owner who was held responsible for one of the books in his store which contained a violation of decency. The case reached the level of the Supreme Court.

²⁰ Unnikrishnan A., "Safe Harbours in Insolvency Proceedings," in *Insolvency and Bankruptcy- A Miscellany of Perspectives* (New Delhi: Insolvency and Bankruptcy Board of India, 2019).

²¹ Lise Smit, Claire Bright, and Stuart Neely, "Muddying the Waters: The Concept of a 'Safe Harbour' in Understanding Human Rights Due Diligence," *Business and Human Rights Journal* 8, no. 1 (2023), <https://doi.org/10.1017/bhj.2022.40>.

²² Yasmina Fayza, Muhamad Amirulloh, and Mustofa Haffas, "Penjualan Sertifikat Vaksin Covid-19 Oleh Pengguna Facebook Berdasarkan Peraturan Perundang-Undangan Terkait," *Jurnal Poros Hukum Padjadjaran* 4, no. 1 (November 2022).

²³ Sanhita Chauriha, "Safe Harbor: Bridge To Innovation Amidst The Waters Of Liability?," *Live Law*, 2023, <https://www.livelaw.in/articles/safe-harbor-bridge-innovation-amidst-waters-liability-240253?infinitiescroll=1>.

The Supreme Court stated "it creates a "chilling effect" of holding someone accountable for someone else's content". The Supreme Court also stated that the plaintiff must prove that the bookstore owners knew and were aware that they were selling obscene books. If the allegations that have been mentioned cannot be proven, then the bookstore owner does not need to be responsible for what is alleged by the plaintiff. Several decades after this case, internet technology began to develop rapidly, accompanied by the emergence of commercial internet services such as CompuServe and Prodigy. Both offer online forums, but CompuServe chooses not to moderate them, while Prodigy, seeking a family-friendly image, does. CompuServe was sued over content that appeared on its platform, but the case was dropped. Prodigy also had the same legal problem, but Prodigy was found guilty. The judge in the Prodigy case ruled that "they exercised editorial control" and were therefore held responsible for content uploaded by others.

This is a concern for politicians that this result will mean that new internet companies will no longer act moderately and will not develop. To overcome this problem, the legislature enacted Section 230. Section 230 (c) of 1996 adopts the safe harbor principle which is applied to cases that occurred in 1950. Section 230 (c)(1) states that a provider or user of an interactive computer service shall not be deemed to be the publisher or speaker of any information provided by another information content provider. This means that the platform service provider cannot be held responsible for information uploaded by another information content provider. Section 230 of 1996 provides immunity to platform service providers in good faith for the removal or restriction access of to content that is considered obscene, lewd, lascivious, filthy, excessively violent, harassing, or objectionable, whether the material is constitutionally protected or not. Platform service providers also cannot be sued for any actions taken to provide technical means to restrict access to prohibited material.

The United States, in 2008, also imposed Digital Millennium Copyright Act of 1998 which also adopted the principle of safe harbor. Title II, regarding "Online Copyright Infringement Liability Limitation", the Digital Millennium Copyright Act provides protection to the service provider of monetary responsibilities and other

responsibilities for copyright violations committed by its users. Parties who can take refuge in Title II must be included in the category of "service provider". According to Section 512 (K) (1) (a), a service provider is an entity that offers transmission, routing, or providing connections for digital online communication, between points determined by the user, the material chosen by the user, without modification on content material as sent or received. Included in the service provider, as stipulated in section 512 (K) (1) (B), is a provider of online services or network access, or the operator of facilities.

The European Union passed the E-Commerce Directive²⁴ in 2000, which includes the safe harbor principle. The E-Commerce Directive was inspired by the copyright-infringing user content provisions in section 512(c) of the Digital Millennium Copyright Act of 1998.²⁵ The E-commerce Directive regulates the safe harbor principle in Article 42 that the exemption from liability only covers cases where the activities of the information society service provider are limited to the technical process of operating and providing access to communications networks, to make transmission more efficient. These activities are only technical, automatic, and passive, meaning that the information society service provider has no knowledge or control over the information transmitted or stored.

B. Conditions Required for Safe Harbor Protection

The platform service provider must fulfill the specified requirements to be able to protect the safe harbor principle. If these conditions are not met then they can be held responsible for the content uploaded by their

²⁴ "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 ('Directive on Electronic Commerce')" (n.d.).

²⁵ Folkert Wilman, "The EU's System of Knowledge-Based Liability for Hosting Service Providers in Respect of Illegal User Content – between the e-Commerce Directive and the Digital Services Act," *Journal of Intellectual Property, Information Technology and E-Commerce Law* 12, no. 3 (2021).

users. Conditions required in The Digital Millennium Copyright Act of 1998 and the E-Commerce Directive are different.

The Digital Millennium Copyright Act of 1998 sets out the conditions that must be met in order to obtain a limitation of liability. In general, service providers must meet three conditions to meet the requirements for the limits of accountability, namely service providers do not modify the content material sent or received, must adopt and reasonably implement policies to terminate subscribers' accounts that repeatedly upload content that violates law, and must accommodate and not interfere with standard technical steps. "Standard technical measures" are measures used by copyright owners to protect copyrighted works, which have been developed based on the consensus of the copyright owner and the service provider. The liability limitation is based on the four categories of conduct by a service provider, namely transitory digital network communications, system caching, information residing on systems or networks at the direction of users, and information location tools. Each category requires certain conditions so that service providers obtain limitations on liability. Category of conduct of transitory digital network communications requires the following conditions:

1. The service provider does not transmit the material
2. The transmission is carried out automatically and the service provider does not select the material;
3. The service provider does not select recipients of the materials except as an automated response to another person's request;
4. The service provider does not make copies of the materials; and
5. The service provider does not modify the materials.

Category of conduct of system caching imposes the following conditions:

1. The service provider did not create the material;
2. Storage is carried out through automated technical processes with the aim of making the material available to system users;
3. The service provider does not make material changes;
4. service providers comply with rules regarding refreshing, reloading or other updating of materials when determined by the person providing the materials online;

5. The service provider does not interfere with the technological capabilities associated with the material; and
6. Upon notification of material that infringes copyright, the service provider will respond promptly to remove or disable access to the material claimed to be infringing.

In order to obtain liability limitations in the category of information residing on systems or networks at direction of users, service providers must fulfill 3 conditions, namely:

1. the service provider must not have the required level of knowledge regarding the infringing activity,
2. if the service provider has the right and ability to control the infringing activity, then the provider must not receive financial benefits directly from the infringing activity, and
3. upon receipt of a report of claimed infringement, the provider must immediately remove or block access to the material.

Category of information location tools imposes the following conditions:

1. the service provider does not have actual knowledge or is not aware of the infringing material;
2. the service provider acts promptly to remove the infringing material upon such knowledge or awareness;
3. in the event that the service provider has the right and ability to control the infringing activity, he does not receive financial benefits from the activity;
4. The service provider immediately acts to remove the infringing material after receiving notification of claimed infringement.

Conditions required in one category above cannot be used by another category of conduct. Section 512 does not require service providers to monitor their services or access material that violates the law in order to meet liability limitations.

The E-Commerce Directive states that A service provider can benefit from exceptions of liability for "mere conduit" and for "caching" when it is not involved in any way with the information it sends, meaning the service provider does not change the information it sends. If service providers intentionally collaborate with their recipients to commit illegal

acts that go beyond the activities of "mere conduit" or "caching", they cannot benefit from the exemption from liability.

Service providers who host or transmit content provided by third parties are exempt from liability unless they are aware of a violation of the law and do not act adequately to stop it. If a service provider acts promptly to remove or disable access to information containing illegal activity, after obtaining actual knowledge or awareness of the illegal activity, then it is entitled to benefit from a limitation of liability. Online intermediaries also cannot be subject to the general obligation to monitor the online content of their users. This is to protect users' basic rights such as privacy and freedom of expression. However, they are subject to 'duties of care' and 'notice and take down' obligations to remove illegal online content.²⁶ Additionally, there are cases interpreting Article 42 of the E-Commerce Directive to mean that publishers who benefit from advertising revenues generated from hosting third-party content will not be able to obtain immunity from any liability.

The Digital Millennium Copyright Act and the E-Commerce Directive, based on the discussion above, prioritize the development of the internet, platforms, and intermediary interests over effective protection for victims of illegal online content. However, the Digital Millennium Copyright Act and the e-Commerce Directive aims to protect various interests. The safe harbor principle in the Digital Millennium Copyright Act and the e-Commerce Directive only applies to illegal online content of which the platform is unaware and the platform must remove illegal content after discovering it or obtaining information. Through these rules, victims can improve the situation *ex post*.²⁷

Discussion of the conditions required to be able to take refuge in the safe harbor principle must be linked to several cases related to the use of safe harbors. These cases need to be presented so that we know how

²⁶ Tambiama Madiega, "Reform of the EU Liability Regime for Online Intermediaries," *EPRS | European Parliamentary Research Service*, 2020, <https://doi.org/DOI:10.2861/08522>.

²⁷ Raphaël Gellert and Pieter Wolters, "The Revision of the European Framework for the Liability and Responsibilities of Hosting Service Providers: Towards a Better Limitation of the Dissemination of Illegal Content" (Nijmegen, April 7, 2021).

the conditions required in The Digital Millennium Copyright Act and the E-Commerce Directive are interpreted by law enforcement. Here the author discusses three cases, namely *Viacom International Inc. v YouTube Inc.*, *L'Oreal v eBay*, and *Bolger v Amazon*. *Viacom International Inc. v YouTube Inc.* represents the application of the safe harbor principle regulated by the Digital Millennium Copyright Act of 1998 to protect service providers. The application of the safe harbor principle in the E-Commerce Directive is represented by *L'Oreal v eBay*. Finally, *Bolger v Amazon* represents a shift in the application of the safe harbor principle in providing protection to service providers.

Viacom International Inc. v YouTube Inc.²⁸

Viacom International Inc. v YouTube Inc. on March 13 2007 regarding a copyright infringement case filed by Viacom against YouTube, which is owned by Google. YouTube is being sued because it is believed to have allowed users to upload and view hundreds of thousands of Viacom videos without permission. YouTube stated that they were protected by the safe harbor principle regulated in the Digital Millennium Copyright Act. YouTube argued that it was only a service provider without being aware of the infringing material. They also immediately remove any infringing material once notified of the content. The District Court for the Southern District of New York ruled in favor of YouTube because the Digital Millennium Copyright Act protects YouTube. Circuit Judge Louis Stanton also ruled that “knowledge of infringing activity, and welcoming it, does not in itself negate the safe harbor principle. To eliminate it, the service provider must influence or participate in the violation. The court found no evidence that YouTube induced its users to upload infringing videos, gave users detailed instructions about what content to upload or edit, user content was pre-screened for quality or “interact with the infringing user to the extent that it can be said that YouTube has participated in the infringing act.

²⁸ *Viacom International, Inc. v. Youtube, Inc.* 676 F.3d 19 United States Court of Appeals, Second Circuit. Decided: April 5, 2012 (n.d.).

C. Some Cases

1. L'Oreal v eBay²⁹

L'Oreal v eBay regarding the sale of counterfeit goods that infringe L'Oreal's copyright on the eBay platform. L'Oreal argued that eBay did not take sufficient steps to stop the sale of counterfeit goods by users of their platform. The question raised in this case is whether eBay is entitled to take refuge in the exclusion of liability set out in Article 14 (1) of the E-commerce Directive in respect of trademark infringement by the user of their platform. The European Court of Justice held that service providers such as eBay cannot rely on the Article 14(1) "hosting" exemption of the e-Commerce Directive if: 1) they have taken an active role "of such a kind as to give it knowledge of, or control over, those data". This includes "optimizing the presentation of the offers for sale in question or promoting those offers". 2) they do not play an "active role" after they become aware of the facts or circumstances that are the basis for a diligent economic operator to realize that the offer for sale violates the law.

In fact, Ebay has provided assistance in the form of optimizing the presentation of offers for goods that infringe L'Oreal's copyright or promote offers of counterfeit goods. Therefore, Ebay should be considered as not taking a neutral position between sellers on their platform and potential buyers. Ebay has played an active role thereby providing knowledge or control over the offer, as well as providing knowledge or control over data relating to the offer for sale of the counterfeit goods. Based on these data, The European Court of Justice decided that Ebay could not rely on the exemption from liability as intended in Article 14 (1) of The E-commerce Directive 2000/31.'103. The European Court of Justice also ruled that operators such as eBay, if they fail to remove infringing listings on their own initiative, can be ordered to identify the seller who posted the infringing material on the site. This is to end certain violations, and also prevent similar violations in the future.

²⁹ L'Oreal SA v eBay International AG (C-324/09) EU:C:2011:474; [2012] Bus LR 1369; [2011] 7 WLUK 313 at [144]. (n.d.).

The decision in *L'Oréal v Ebay* does not necessarily mean that service providers must take a proactive role in finding or removing infringing content on their platforms. Service providers can continue to rely on safe harbor principles as long as they do not promote sales offers on their platform by processing certain data and keywords, and do not take an “active role” in any infringing sales on their platform. Service providers must also ensure that they take action when they receive information about a listing on their platform that indicates that a violation is occurring. In *L'Oreal v eBay*, the European Court of Justice held that the policy adopted must be “reasonably dissuasive, but not create obstacles to legitimate trade and provide no protection against acts of infringement”. Courts must balance the impact of the duty of care on copyright holders and platform providers and the interests of internet users.³⁰

2. *Bolger v Amazon*³¹

Bolger v Amazon is concerned about defective products purchased by Angela Bolger from Lenoge Technology Ltd., a third-party manufacturer and seller. Bolger bought a laptop from Lenoge Technology. Lenoge ships the product to an Amazon warehouse. Com, LLC for storage, then Amazon continues to send the product to Bolger based on standard Amazon-branded packaging. After several months of use, the battery in the laptop exploded and caused injury to Bolger, who then filed a personal injury lawsuit including a product liability claim against Amazon and Lenoge. In this case, Lenoge and Amazon have entered into a 'Fulfillment by Amazon' (FBA) agreement, according to which Amazon is responsible for the marketing, sales, and shipping processes as well as all communications with the plaintiff. The court ruled in favor of Amazon and found that Amazon was not the manufacturer, distributor, or seller of the defective laptop battery. However, the Court of Appeal overturned the

³⁰ Bianca Hanuz, “Direct Copyright Liability As Regulation Of Hosting Platforms For The Copyright-Infringing Content Uploaded By Their Users: Quo Vadis?,” *Journal of Intellectual Property, Information Technology and E-Commerce Law* 11, no. 3 (2020).

³¹ *Angela Bolger v Amazon. Com, LLC*, 53, Cal.App.5th 431 Court of Appeal, Fourth District, Division 1, California. (n.d.).

ruling and found Amazon liable for the plaintiff's injuries as a result of the exploding laptop battery. The 'safe harbor' principle is used by E-retail as a defense mechanism against claims for compensation in connection with defective goods from users or acts of violation committed by users. However, E-retail is categorized as a producer when it plays an important role in a service, such as collecting payments, establishing a rating system, and determining the foundations of the agreement with the supplier. Because of this role, the safe harbor does not apply to e-retail considering that Article 14 of the E-Commerce Directive stipulates that the exclusion of liability only applies to protect online providers regarding their role in providing material services.

The lesson that can be drawn from the *Bolger v Amazon* case is that Service providers, whose users supply defective products, will not benefit from the safe harbor provisions if the service provider provides services such as storage, packaging, labeling, and shipping for customers.³² Current development, a survey of cases involving Safe Harbor defenses reveals that courts are generally cautious about imposing accountability limits on service providers. Judges will strictly examine compliance with the Safe Harbor compliance conditions on the part of both the copyright owner and the service provider.³³

The limitation of liability provisions in section 230 (c), after being in effect for decades, has received a lot of criticism because of the impact and scope of losses caused by posts on social media. Some parties want the safe harbor settings in Section 230 to be improved. They want the platform service provider to meet "duty of care" standards. This was also stated by Mark Zuckerberg. In Mark Zuckerberg's opinion, businesses are obliged to take reasonable steps so as not to cause harm to their customers or prevent such losses. Included in this obligation is preventing its users from causing harm to other parties. Usually, businesses have a general legal obligation to take reasonable steps to avoid causing harm to their

³² Erdem Büyüksagis, "Extension of Strict Liability to E-Retailers," *Journal of European Tort Law* 13, no. 1 (2022), <https://doi.org/10.1515/jetl-2022-0003>.

³³ Brian Yeh and Robin Jeweler, "Safe Harbor for Service Providers Under the Digital Millennium Copyright Act" (New York, January 2004), https://www.everycrsreport.com/files/20040109_RL32037_e68c182e7d8954a823b630589327026eb2c4c51a.pdf.

customers, as well as taking reasonable steps to prevent harm to their customers. This obligation also creates an affirmative obligation in certain circumstances for a business to prevent one party using the business's services from harming another party. A platform may be held at fault if they unreasonably created an unsafe environment, as well as unreasonably failed to prevent one user from harming other users or the public.³⁴ However, on the other hand, there are also many startups who want to maintain the contents of section 230 because they don't want their income to decrease while their economy is not yet as big as Facebook or other large capitalization platforms. The group that supports Section 230 also stated that many top internet services depend on Section 230 and Section 230 played an important role when the Shutdown policy was implemented during the Covid-19 pandemic.³⁵ After decades of the enactment of the Digital Millennium Copyright Act and the E-Commerce Directive, legal regulations in the United States and the European Union still provide protection to service providers. They are exempt from liability in relation to content uploaded by their users, provided they have no knowledge of the illegality of such content, and act promptly to remove such content once they gain knowledge of such illegal content.³⁶

Conclusion

The capital market serves as a crucial indicator of a nation's economic health, reflecting the progress of both developed and emerging economies. In Indonesia, the Composite Stock Price Index (IHSG) not only acts as an economic barometer but also plays a pivotal role in attracting foreign investments. The regulatory landscape of Indonesia's

³⁴ Michael D. Smith and Marshall Van Alstyne, "Government Policy And Regulation: It's Time to Update Section 230," *Harvard Business Review*, August 12, 2021, <https://hbr.org/2021/08/its-time-to-update-section-230>.

³⁵ Eric Goldman, "Dear President Biden: You Should Save, Not Revoke, Section 230," *Bulletin of the Atomic Scientists* 77, no. 1 (2021), <https://doi.org/10.1080/00963402.2020.1859863>.

³⁶ Wilman, "The EU's System of Knowledge-Based Liability for Hosting Service Providers in Respect of Illegal User Content – between the e-Commerce Directive and the Digital Services Act."

capital market evolved significantly with the establishment of the Capital Market and Financial Institution Supervisory Board (BAPEPAM-LK), which operated under specific conditions to ensure effectiveness. However, a transformative shift occurred in 2011 with the inception of the Financial Services Authority (OJK), consolidating regulatory oversight across various financial sectors, including capital markets, while upholding essential regulations.

Indonesia's capital market is governed by rigorous regulations aimed at maintaining the integrity of securities trading and safeguarding investor interests. Prohibited activities such as fraud, market manipulation, and insider trading carry severe penalties. Perpetrating fraud may result in a maximum prison term of four years, while market manipulation could lead to a 10-year imprisonment and substantial fines. Insider trading involves exploiting non-public information for personal gain, with penalties applicable to both individuals and corporations. Additionally, Article 107 of the Criminal Code prescribes penalties for manipulating records related to capital market permits, underscoring Indonesia's commitment to transparency and accountability in its capital market operations. These stringent legal provisions underscore Indonesia's dedication to fostering trust, transparency, and ethical conduct within its capital market framework, while reinforcing severe consequences for violations.

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