

Intermediary liability frameworks across Latin America: A snapshot



Mexico: Far from embracing a uniform intermediary liability framework

Mexico lags behind in establishing intermediary liability principles.

Legislation:

- No comprehensive intermediary liability law.

Current legislative position:

- The USMCA imposes on its signatories an express limitation from “adopt[ing] or maintain[ing] measures” that conflict with the intermediary liability principles under CDA Section 230. This provision is set to apply to Mexico starting in July 2023. Whether Mexico actually passes legislation to align with these principles is yet to be seen, given the USMCA provides that “a Party may comply with this Article through its laws, regulations, or application of existing legal doctrines as applied through judicial decisions.



Colombia: Testing the bounds of prior precedents

Colombia is yet to pass comprehensive legislation addressing intermediary liability and there are presently no bills up for formal debate.

Legislation:

- None.

Current legislative position:

- The Constitutional Court has, on numerous occasions, found that digital platforms are not directly responsible for user-generated content on their platforms. Generally, courts, rather than digital platforms, should determine the legality of user-generated content and there is no obligation to proactively monitor such content. Digital platforms should comply with a state authority's order to remove user-generated content.



Brazil: A pioneer for intermediary liability regimes in Latin America

Brazil is the only country in Latin America to have enacted a comprehensive intermediary liability regime.

Legislation:

- In 2014, Brazil adopted the Marco Civil establishing principles, rights, and obligations for internet use, under which digital platforms can only be liable for user-generated content if they fail to comply with a court order requiring the removal of content within the timeframe specified therein.

Current legislative position:

- In addition to the Marco Civil, the two most prominent proposals presented diametrically opposite compliance obligations:
- The “Fake News Bill” imposes moderation obligations on digital platforms and requires regular reports on content moderation.
 - The “Executive Provisional Measure” aims to limit digital platforms’ ability to moderate content without first obtaining a court order.



Argentina: Establishing intermediary liability principles through case law

Argentina is yet to pass comprehensive legislation regarding intermediary liability.

Legislation:

- None.

Current legislative position:

- In 2014, the Supreme Court of Argentina effectively created a “safe harbor” regime with components from the Brazilian and EU approach in which digital platforms cannot be held liable for user-generated content unless they have “actual and effective knowledge” of the content, and fail to remove it. Although not binding precedent, the Supreme Court decisions are taken into consideration by lower courts.
- The Supreme Court reaffirmed this legal standard in 2017 and again most recently in 2021.