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The Tort Liability of Internet Hosting Providers

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Abstract

The rapid development of the Internet and digital communication has increased the importance of internet hosting providers, which play a fundamental role in storing and making information available online. However, the activities of these providers raise significant legal questions concerning their tort liability for unlawful content published or stored by third parties. This study examines the legal framework governing the tort liability of internet hosting providers, focusing on the distinction between hosting providers, internet service providers, and content providers. It also explores the conditions under which hosting providers may be held liable for damages arising from illegal or harmful online content, as well as the circumstances in which they may benefit from an exemption from liability. The study adopts a legal and comparative approach by examining relevant legislation and judicial decisions in French, European, American, and Algerian law. Particular attention is given to the legal requirements governing the establishment of liability, including the provider's knowledge of unlawful content and its response after becoming aware of such content. The study highlights the importance of balancing the protection of individuals' rights and interests with the freedom of expression and the development of digital services. It also emphasizes the need to clarify the legal obligations of hosting providers and strengthen the effectiveness of the applicable legal framework, particularly in Algeria.

Keywords: Internet Hosting Providers; Tort Liability; Online Content; Intermediary Liability; Exemption from Liability; Digital Services; Comparative Law; Algerian Law.

Introduction

Scientific progress opens vast prospects for human advancement, but it also carries many risks that threaten individuals' rights. One of the functions of law is to benefit from scientific progress and technological development without infringing individuals' fundamental rights and freedoms, and to establish legal controls within which technological development must operate. Without such controls, scientific progress may become a burden on society.[1] As technology has developed rapidly, advances in computer manufacturing and the invention of communication and information networks have brought together computing technologies and communication tools, creating a communications revolution. Users have become interconnected through a

global Internet network in which people can interact freely. The result has been an information, cultural, economic, social, and political revolution affecting many areas of life.[2]

Information and data transmitted over the Internet pass through several stages between their creation and their arrival at the user, and require the combined efforts of multiple participants whose roles in online activity differ. These participants provide intermediary services on the network, beginning with the Internet access provider, which supplies the technical means enabling its customers to access and browse the network, and including Internet hosting service providers.[3] These providers perform supervisory and follow-up functions and are generally referred to as "service providers" or "Internet service intermediaries." Among them is the hosting provider, whose role is primarily technical: storing information on the Internet or allocating part of the hosting provider's computer hard drive for the user's use.[4] The provider also stores and preserves clients' data and information and supplies the technical means through which they can retrieve such data over the information network.[5]

Anyone wishing to create a web page, or a company wishing to develop a website, must use a service that hosts the pages on a server.[6] In view of the serious infringements that occur online through the circulation of unlawful information in its various forms, the general principle is that a hosting provider is not responsible for electronic content because its role is technical and does not necessarily enable it to inspect, modify, or delete the information.[7] However, a contract connects the provider to the user, imposing contractual and legal obligations, including ensuring that the client can use the service throughout the contract period, safeguarding the security and confidentiality of data, and complying with ethical and legal standards. The provider's contractual and tort liability may therefore arise from a breach of these obligations. This raises the following question: **What is the scope of the tort liability of an Internet hosting provider?**

To address this research problem, the study examines the meaning of an Internet hosting provider and the provider's tort liability. It adopts a descriptive approach when defining the relevant concepts and an analytical approach when examining and coordinating the applicable legal provisions.

First: Identifying the Internet Hosting Provider

The hosting provider is one of the most important participants in Internet activity because it facilitates users' access to and use of the advantages of the World Wide Web.

1. Definition of an Internet Hosting Provider

A hosting provider is described by several terms, including "host provider" and "hosting service provider." It enables a website to be accessed through the Internet. Both expressions are used to convey the French term *hébergement*.[8] [9] US legislation uses the term "hosting service provider," whereas French legislation uses "hosting provider."[10] Web hosting refers to the space in which a website's files are stored. "Hosting" means providing a place or location, usually on a high-capacity computer located in a data centre.[11]

A. Doctrinal Definition of an Internet Hosting Provider

Legal scholarship defines a hosting provider as any natural or legal person who stores and maintains data and information for clients and provides the technical and information-processing means that allow clients to access that data and information over the Internet at any time.[12]

It has also been defined as any natural or legal person who offers to host web pages on their servers for payment. In this sense, the provider is comparable to a lessor renting space on the Internet to a tenant. The provider may host pages containing texts or images, discussion forums, or links to other information sites.[13] Hosting providers play an important role in managing the Internet: anyone wishing to broadcast information continuously and publicly must generally use their services. They operate central storage systems and form part of the Internet's infrastructure. Their relationship with website owners is contractual and is usually governed by a hosting agreement. They may also connect users to discussion forums and news groups around the world.[14]

Dr Jamil Abdel Baqi Al-Saghir describes a hosting provider as an entity that enables access to websites through the Internet. It may be a commercial company or a public-law entity, such as a university or public institution, that hosts web pages on its servers, usually for payment.[15]

Another definition describes a hosting provider as a natural or legal person who stores clients' applications and information records and provides the technical means by which they can access that stored material online. The provider is comparable to a lessor of online space who hosts web pages on servers for a fee. The customer may publish texts, organise conferences or discussion forums, or create information links with other sites. The hosting provider stores and manages the information so that the information supplier can make it available to the public. In other words, the provider creates the technical space through which members of the public can connect to the Internet, view available websites, and obtain the information presented there.[16] The hosting service provider therefore supplies a defined amount of storage space on a host server.[17]

Philippe Le Tourneau defines hosting as the natural extension of network-access services for professionals who do more than browse and consult information, and for non-professionals who wish, for example, to participate in discussion forums. Hosting involves virtually accommodating clients' websites on the provider's equipment, storing the data and information associated with those sites, and making them available online.[18]

B. Legislative Definition of a Hosting Provider

Germany was among the first countries to adopt legislation addressing hosting-provider liability through its telecommunications-services legislation. In 1998, the United States enacted the Digital Millennium Copyright Act, followed by legislative developments in other countries.[19]

French Law No. 2000-719, amending certain provisions of the Law on Freedom of Communication No. 86-1067 of 1986, defined hosting providers in Article 43-8 as natural or legal persons who, whether free of charge or for payment, provide direct and permanent storage of information so that the public can access signals, writing, images, sounds, messages, and other material that can be received in such a space.[20]

Article 6 of the French Law on Confidence in the Digital Economy defines a hosting provider as any natural or legal person who makes available to the public, even without charge, storage of texts, images, sounds, or messages supplied by recipients of the service. Article 14 of the European Directive on Electronic Commerce similarly refers to a natural or legal person who stores websites and web pages on its servers, directly and permanently, for payment or free of charge, and provides customers with the technical and information-processing means needed to make content available on the Internet.

Under Article 2(d) of Algerian Law No. 09-04 on the specific rules for preventing and combating offences related to information and communication technologies, the term includes "any other entity that processes or stores computer data for the benefit of the aforementioned communication service or its users."[21] This provision clearly covers the functions of a hosting service provider, although it does not expressly use that label.[22]

2. Types of Internet Hosting

A hosting service provider usually operates a network that hosts websites by supplying servers and related services to websites created by individuals and companies. Several hosting options are available, including the following:

A. Shared Web Hosting: Several websites share a single computer server on which their files are stored. The server supplies information relating to the different hosted websites, making them available to Internet users.

B. Virtual Private Server (VPS) Hosting: VPS hosting is an option between shared and dedicated hosting. It is suitable for personal websites, small and medium-sized business websites, and e-commerce platforms.

C. WordPress Hosting: WordPress hosting provides tools and services designed specifically for websites built using WordPress. It often includes features such as one-click installation and automatic software updates.

D. Dedicated Hosting: One or more servers are allocated to a single customer, giving the customer greater control over the website according to their needs, including performance and security. The service also includes the physical server, its environment, associated services, and technical support.

E. Cloud Hosting: Cloud hosting enables access to applications and websites through specialised tools. A network of virtual and physical cloud servers hosts the application or website, offering greater flexibility and scalability.[23]

3. Distinguishing Hosting Providers from Similar Actors

Examples of hosting providers include GoDaddy, Web.com, Bluehost, Crazy Domains, Hostinger, and DreamHost; in Algeria, Dz Security is also mentioned. Hosting providers must be distinguished from Internet access providers, which transmit or facilitate access to information, and from information or content providers.

A. Distinguishing an Information Hosting Provider from an Internet Service Provider

An Internet service provider may also be called an access provider, Internet provider, access-point provider, or access operator. Its technical role is to enable users to connect to the Internet, including by providing connection software and technical support to overcome difficulties users encounter.[24] An access provider (*fournisseur d'accès*) is a natural or legal person that enables users to access the Internet or another communications network by supplying the necessary technical means. It connects hosting providers with electronic-content publishers by facilitating communications and access to the network. This may include providing login credentials, passwords, and email services for sending and receiving messages.[25] The relationship is generally governed by a subscription contract under which the access provider undertakes to connect the user to the Internet and provide the necessary technical tools in return for a fee.[26]

An Internet service provider enables subscribers to access and use the Internet by supplying the necessary facilities, particularly connection software linking the computer to the network. It may also provide a modem and the associated connection line to fulfil the purpose of the subscription contract.[27] Article 10(30) of Algerian Law No. 18-04 of 10 May 2018, establishing the general rules relating to post and electronic communications, defines an "operator" as any natural or legal person operating an electronic communications network open to the public and/or providing electronic communications services to the public.[28]

The distinction is that an Internet service provider enables the other party to use the Internet by providing the technical means required to access and browse it, particularly software connecting a computer to the network. A hosting provider, by contrast, allocates part of its technical resources—such as hard-drive space on its servers—for the user's use.[29]

B. Distinguishing a Hosting Provider from an Information Provider

An information provider, also called a content provider, is a natural or legal person who publishes information and messages on a particular subject online so that users can access them free of charge or for payment. The information provider is primarily responsible for the content. The role resembles that of a publisher or editor in print journalism. The provider may be responsible for information published in written, visual, or audio form, or for a trademark, and can inspect, compile, and supply information for public access. The information provider may be the author of the content or an intermediary who collects it between the author and users wishing to consult it.[30]

An information provider supplies content to the network. This may be an ordinary individual or a professional specialising in collecting and supplying information. The provider is responsible for creating or collecting information on a subject and is the source of the information flow. Claims for harm caused by published information are generally directed against this person, who has the power to assess its lawfulness and control its publication online.[31] [32]

An information provider has also been defined as a person who supplies informational content to websites. This may mean the author or publisher who creates a website and supplies its content; in that case, the information provider is also the author, site manager, owner, operator, and person responsible for the site.

In a second sense, the information provider may be the website manager whose role is mainly technical. The manager designs the website and transfers information received from the content's author from its traditional format into organised, user-friendly electronic records.[33]

The relationship under an information-supply agreement is generally between the information provider and an Internet intermediary, whereas a hosting agreement is generally between the hosting provider, as an Internet intermediary, and the user. The information provider authors or collects electronic content, while the hosting provider merely stores that information on its equipment under an agreement with the information provider so that the public can access it.[34]

Second: The Rules Governing the Tort Liability of Hosting Providers

The possibility of holding a hosting service provider liable for data and information stored on its servers, where the provider is shown to have known about it, has played an important role in litigation. However, courts have faced difficulty determining the provider's obligations and the scope of those obligations, particularly in the absence of specific legislation. This issue must be addressed so that the Internet does not become a law-free space.[35]

1. Judicial Foundations of the Tort Liability of Hosting Providers

A review of court decisions concerning hosting providers identifies two landmark French cases that helped establish the basis of their liability: the Estelle Hallyday case, which considered liability through the theory of risk, and the Lynda Lacoste case, which focused on personal fault.

A. Liability Based on the Theory of Risk

In the absence of specific statutory provisions, courts had to rely on general tort principles. One approach was the theory of risk, or assumption of risk, under which a hosting provider bears the risks associated with its commercial activity and the potential harm it may cause to third parties.[36] Under this approach, the focus is on harm rather than proof of fault, as reflected in certain European, French, and American legal approaches, potentially imposing stricter responsibility for unlawful electronic content.[37]

The Estelle Hallyday case became a foundation for judicial consideration of hosting-provider liability. A well-known model sued the hosting provider altrem.org after a website hosted on its service published a private, sexually explicit photograph of her, which she considered an infringement of her image rights and privacy. She asked the urgent applications judge of the Paris Tribunal de grande instance to order the provider, subject to a penalty, to disclose the identity of the website operator, suspend hosting, and pay compensation.

The company argued, among other things, that the allegations concerned the substance of the rights at issue and therefore fell outside the scope of urgent proceedings. The court nevertheless found against the hosting provider and ordered it to close the website, inform its customers of the need to respect third-party rights, periodically examine hosted content, and take the necessary measures to stop infringements of others' rights.

The order was appealed to the Paris Court of Appeal, which upheld the decision of the urgent applications judge. The court considered that the provider had hosted an anonymous website created and managed by unknown persons to make electronic content available to the public, rather than to facilitate private correspondence. The provider had therefore gone beyond the role of a mere information carrier and could be held responsible for infringements of third-party rights arising from its activity, for which it received payment.[38]

A hosting provider's tort liability may also arise from a breach of its duty to inform. Under the applicable rules, website owners using hosting services must be informed of the need to comply with laws and regulations and to refrain from infringing the rights of others or causing them harm.[39]

B. Liability Based on Personal Fault

Supporters of the personal-fault theory argue that a hosting provider's liability should be based on the general rules of liability requiring proof of fault, damage, and causation, as reflected in Articles 1382 and 1383 of the

former French Civil Code. The provider is at fault if it breaches monitoring or supervisory obligations or fails to take the necessary steps to remove information or delete a website after learning of unlawful content, whether through a competent judicial authority or a third party.[40]

French legal scholarship argues that basing Internet intermediaries' liability, including that of hosting providers, on proven fault is justified by the decentralised nature of the Internet. Each intermediary acts independently, without a predetermined administrative hierarchy allocating roles and tasks. A person should therefore be liable only for information that they can monitor and control, and personal fault must be established under Articles 1382 and 1383 of the former French Civil Code. Liability for a personal act requires proven fault, damage, and a causal relationship between them.[41]

Applying this approach, the Tribunal de grande instance of Nanterre ruled in a case brought by the French model Lynda Lacoste, who sought to hold four hosting providers liable for hosting a website that published her photographs without permission. The court relied on Article 1382 of the French Civil Code, which provided that anyone whose fault causes damage to another must repair that damage, and Article 1383, which provided that a person is liable not only for damage caused by their actions but also for damage caused by negligence or imprudence.[42]

The court identified obligations whose breach could constitute fault. The hosting provider, MultiMania, was required to inform and advise its customer and to remain vigilant by taking appropriate measures to exclude from its server websites whose unlawfulness was apparent, and to respond to notices or complaints concerning unlawful and harmful content.[43] The Nanterre court therefore found the hosting provider liable for failing to exercise the required care in relation to the unlawful content.[44]

2. Conditional Exemption from the Tort Liability of Hosting Providers

This system is also described as limited liability. It reflects the practical impossibility of requiring hosting providers to monitor all information stored on their servers. Thousands of websites may be hosted automatically and electronically, without direct contact between the provider and each website owner. The customer typically completes an online form requesting storage space and then receives the information needed to transfer the website to the provider's server.[45]

A. The European Directive

The European Directive drew many of its provisions from the German Telecommunications Services Act of 1998[46] and established the general principle that technical Internet service providers are not liable except in specified circumstances and subject to defined conditions. Under Article 14, a hosting provider is generally not liable for unlawful information hosted on its service. Liability may arise as an exception if the provider has actual knowledge of the unlawful information, or if its unlawfulness is apparent and the provider has the technical means to control it, but fails promptly to remove it, disable access to it, or otherwise prevent its availability after becoming aware of it.[47] The Directive on electronic commerce sought to reduce uncertainty and instability among Member States caused by divergent legislation and judicial decisions concerning Internet service providers' liability for transmitting or hosting information supplied by third parties.[48]

B. US Legislation Addressing Internet Offences

A review of US legislation addressing Internet offences indicates that Internet service intermediaries are generally not liable for unlawful electronic content where they are unaware of its unlawful nature, have not received a financial benefit from the infringement, and remove the content once notified by the injured party. This approach means that a service provider is not liable for another person's act, and its liability is limited to its own faults.[49]

C. France's Law on Confidence in the Digital Economy

Article 43 of French Law No. 2000-719 on freedom of communication supports the principle that a hosting provider is not liable unless it fails to act to remove the disputed material following a request from the judicial authority.[50]

The French Law on Confidence in the Digital Economy of 21 June 2004 established a system of conditional exemption from liability for hosting providers in relation to content published on the websites they host. Article 6(2) provides that the general rule is non-liability for information disseminated through hosted websites. However, if the provider becomes aware that information is unlawful and remains inactive instead of promptly removing it or preventing users from accessing it, the provider commits a fault and may be liable for the resulting harm to third parties. This approach reflects the technical and neutral nature of hosting services and the practical impossibility of examining and monitoring the enormous volume of information they host.[51]

D. Algerian Legislation

Algerian legislation sets out a number of obligations for Internet service providers in Law No. 09-04 on the specific rules for preventing and combating offences related to information and communication technologies.[52] These include promptly removing or disabling access to content once the provider becomes directly or indirectly aware that it violates the law, establishing technical arrangements to block access to servers containing information contrary to public order or public morals, and informing subscribers of the existence of such content.

The provision indicates that hosting providers must intervene to prevent access to unlawful content by deleting it or implementing technical arrangements that block access or make it impossible. Their criminal liability may be excluded where they were unaware of the content's unlawful nature. However, Algerian legislation does not specifically address the hosting provider's civil liability. It is therefore necessary to return to the general rules of tort liability, particularly Article 124 of Ordinance No. 75-58 of 26 September 1975, containing the Civil Code, as amended. The provision states that any act committed through a person's fault that causes harm to another obliges the person responsible for causing it to compensate for the harm.[53]

3. Conditions and Elements of a Hosting Provider's Tort Liability

A review of the legal provisions governing hosting-provider liability indicates that liability may arise where unlawful information transmitted through hosted websites causes harm to a third party and a causal relationship exists between the provider's fault and the damage suffered.

A. Conditions for Tort Liability

For a hosting provider to be liable, the following conditions must be met:

A.1. Knowledge of the Unlawful Nature of the Information

If the provider lacks knowledge, liability does not arise. Article 6(2) of the French Law on Confidence in the Digital Economy distinguishes between two situations when determining whether the provider knew that information was unlawful.

Where the unlawful nature of the information is unclear, only a court is competent to determine its unlawfulness. The court will often exercise this authority by issuing an interim order or an order on petition, at the request of the injured party, directing the hosting provider to remove the unlawful information, stop its dissemination, or prevent access to it.[54]

To establish the provider's actual knowledge of the information's unlawfulness and require its removal or the blocking of access, notice is generally necessary. Without notice, it may be difficult for a hosting provider to know the actual content users publish on their personal pages, over which the provider has no direct control.[55]

Where the unlawful nature of the information is apparent, the provider may be presumed to know that it is unlawful because its illegality is clear from the circumstances. Such presumed knowledge may arise in the course of the provider's activities or when the injured party notifies it of the content and explains why it is unlawful, while providing evidence that a request to stop dissemination has also been sent to the content's author or publisher.

In this situation, the provider must promptly remove the content or prevent access to it. Failure to do so may constitute tortious fault and give rise to liability for damage caused by the unlawful content. The injured party must establish that the content's unlawfulness was clear and apparent.[56]

A hosting provider may be exempt from liability for information stored at a service user's request if it lacks actual knowledge of the illegality of the activity or information, and lacks sufficient awareness of facts or circumstances that would make the activity or information unlawful.[57]

A.2. Failure to Remove Unlawful Information

The provider must remove the unlawful information or prevent access to it as soon as it becomes aware of its unlawful nature, whether that knowledge is actual or presumed. The provider must also have the technical means to remove the information, stop its dissemination, or block access to it. Liability is based on proven fault where the provider fails to remove or block the unlawful content despite having knowledge of its illegality.[58] Exemption from liability therefore depends on acting without delay to block or remove the unlawful content, or to prevent access to it, once the provider becomes aware of its unlawful nature.

B. Elements of Tort Liability

A hosting provider's tort liability rests on the following elements:

B.1. Tortious Fault

Article 124 of the Algerian Civil Code addresses fault-based liability. In the context of hosting providers, fault may be defined as a failure to comply with specific obligations arising from the provider's professional role and imposed by law. It includes a material element, such as failure to comply with laws and regulations by allowing unlawful electronic content to be disseminated despite knowing it is unlawful, or failing to take the necessary measures to prevent public access to it.[59] If information is false, misleading, unlawful, or incomplete and causes harm to others, the provider may incur tort liability if it negligently or carelessly fails to stop its dissemination or remove it after learning of it, receiving notice from the judicial authorities, or encountering circumstances that make its unlawful nature apparent.[60] The mental element concerns the provider's awareness of its conduct.

B.2. Damage

Damage may be material or moral. Material damage may include infringement of the right to one's image, while moral damage may include damage to a person's reputation or an insult to that person. Compensable tort damage includes direct damage, whether foreseeable or unforeseeable.

B.3. Causal Relationship

The damage must be linked to the fault through a direct causal relationship. The claimant bears the burden of proving the causal connection between fault and damage. The causal relationship is broken if an external cause is established.

Conclusion

Hosting providers are among the most important participants in the provision of Internet services. Anyone wishing to publish information online generally needs a hosting provider to store that information on the network. Hosting providers operate central storage systems, and as regards tort liability, the general rule is that they are not liable because they act as neutral intermediaries, supplying technical facilities and making their equipment available to customers for a specified period under a rental arrangement. Their role is technical and separate from the substance of the electronic content.

Nevertheless, liability may arise where a provider breaches a legal obligation and thereby causes harm to another person. Its liability is therefore particularly relevant when it receives a judicial order to remove disputed content but delays or refuses to act, notwithstanding its technical role.

Recommendations

Based on the findings, the following recommendations are proposed:

• Liability based on proven fault may be inadequate in many cases when determining a hosting provider's responsibility. It may therefore be preferable to develop a system that gives greater weight to the harm caused, providing a broader basis for determining the provider's tort liability.

• Specialised sections in courts of first instance and specialised chambers in courts of appeal should be established within the Algerian judicial system to hear electronic civil-liability claims.

• Judges' expertise should be strengthened through specialised training and exposure to comparative judicial practice, enabling them to assess compensation arising from a hosting provider's failure to fulfil its obligations.

• A specific legal framework should be developed for Internet intermediaries, including hosting providers, clearly defining the nature of their work, their roles, and the scope of their liability.

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Footnotes

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