Online intermediaries as Hybrid Bodies: The Case of infringing Content Monitoring

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The digital information environment is operated by a pyramid of “in-between” actors, known as online intermediaries. All these online actors are involved in the flow of information, and thus may function as “valves,” controlling the traffic of content in their “pipelines.” The issue of online content monitoring stands at the heart of contemporary social and legal discourse since it challenges other public, individual, or commercial entities’ rights and freedoms, such as freedom of speech, or more broadly other “digital human rights”.

Online intermediaries are facing a new legal and social challenge, since they are the ones that should strike the appropriate human-rights balance, although they are private-commercial entities. This phenomenon could be demonstrated through several examples concerning content monitoring in cases of allegedly copyright infringement, such as the legal schemes of “notice and takedown” or “blocking orders”. The online intermediaries are expected to act as gatekeepers, for the sake of public interest — but with no legal and social infrastructure.

Considering this background, the proposed research aims to explore whether and how some of the public law standards, such as accountability, transparency, equality, and reasoning, could be imposed on relevant private entities that are currently engaged in online content monitoring. European countries, in contrast to the U.S., are more willing to accept the introduction of public law standards into the private law sphere. An accepted doctrine acknowledges that in some cases private entities, such as commercial companies that serve a social function in nature, may be perceived as a hybrid private/public body. The legal consequence stemming from such perception is that the door is opened for the direct imposition of public law standards on the relevant private entity. The proposition that will be presented is that in relevant cases major online intermediaries should be acknowledged as hybrid bodies, in order to promote a balanced and fair digital information environment. There are many advantages in using this doctrine, which allows a gradual and dynamic application of public law principles and on a global scale. The significance of this proposed research lies in its potential to assist in shaping better policies and practices in the future.