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Intermediary Liability for IP Infringement in the Age of AI: Duty of Care and Institutional Design

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ABSTRACT

The rapid rise of artificial intelligence (AI) has transformed the dynamics of intellectual property (IP) enforcement, positioning intermediaries not merely as passive conduits but as active participants in content creation, training, and dissemination. Traditional liability regimes, such as safe harbor provisions, are increasingly inadequate to address the scale and complexity of generative AI. Yet existing scholarship remains fragmented, with debates focusing narrowly on copyright subsistence or platform immunity while neglecting the institutional role of intermediaries in shaping infringement outcomes. To address this gap, the study employs a qualitative, multi-method approach that integrates doctrinal and policy analysis, cross-jurisdictional comparison, and case studies of recent disputes in the United Kingdom, United States, and China. Findings demonstrate that intermediaries operate as co-creators and gatekeepers, requiring a layered duty of care that differentiates responsibilities across dataset construction, model training, and content dissemination. This framework moves beyond binary liability models and clarifies how institutional design influences efficiency, legitimacy, and adaptability. The research contributes a theoretically grounded and policy-relevant model for calibrating intermediary liability, offering guidance for regulators, platforms, and rightsholders, while pointing to the need for transnational coordination in governing AI-driven IP ecosystems.

Keywords: Intermediary Liability, Intellectual Property, Artificial Intelligence, Duty of Care, Institutional Design

INTRODUCTION

The rapid proliferation of artificial intelligence (AI) technologies has profoundly altered the landscape of intellectual property (IP) protection and enforcement[1]. Once confined to disputes over peer-to-peer file sharing or online marketplaces, intermediary liability now extends into complex domains where AI systems actively generate, curate, and disseminate content[2]. Generative AI platforms, automated scraping tools, and algorithmic recommendation systems blur the distinction between creators, users, and intermediaries, raising urgent questions about the distribution of legal responsibility[3]. Traditional liability doctrines, such as the safe harbors of the U.S. Digital Millennium Copyright Act (DMCA) or the European Union's E-Commerce Directive, were designed for an era when intermediaries served primarily as passive conduits[4]. They are increasingly ill-suited to address circumstances where intermediaries' technical architectures, algorithmic choices, and data governance policies exert direct influence on the occurrence and scale of infringement.

Recent scholarship recognizes these emerging tensions but remains fragmented. Studies on online platform liability highlight the shortcomings of notice-and-takedown regimes, especially regarding over-removal, under-enforcement, and the lack of procedural fairness[5]. Parallel debates on generative AI have focused largely on copyright subsistence and authorship, while giving insufficient attention to the institutional role of intermediaries in preventing or facilitating infringement[6]. Meanwhile, regulatory reforms such as the EU's Digital Services Act

(DSA) and AI Act gesture toward proactive duties of care but offer limited clarity on how these obligations translate into operational standards for AI developers and hosting providers[7]. As a result, a systematic framework that bridges IP enforcement, AI governance, and institutional design remains underdeveloped.

This paper seeks to fill this gap by re-examining intermediary liability for IP infringement in the age of AI through the lens of duty of care and institutional design. It departs from existing literature in three respects. First, it foregrounds the active and constitutive role of AI intermediaries, moving beyond the binary of strict liability versus immunity. Second, it integrates doctrinal analysis with institutional design theory, emphasizing how enforcement mechanisms must balance efficiency, legitimacy, and adaptability in rapidly evolving technological environments. Third, it offers a cross-jurisdictional perspective, comparing approaches in the United States, European Union, and China to highlight divergences and convergences in regulatory strategies.

The study employs a mixed methodology. It undertakes doctrinal legal analysis of statutory texts, judicial opinions, and regulatory instruments, focusing on post-2023 developments such as ongoing litigation against AI art and music platforms, the implementation of the DSA, and China's algorithmic governance rules. Complementing this textual analysis, it uses comparative case studies to examine how different legal systems allocate responsibility among intermediaries, creators, and users. The approach is informed by institutional design theory, which provides analytical tools for evaluating the legitimacy, efficiency, and resilience of alternative liability regimes. By synthesizing legal doctrine, case law, and theoretical insights, the paper aims to generate a nuanced and contextually grounded understanding of intermediary liability in AI-driven environments.

The academic contribution of this inquiry is twofold. Theoretically, it advances a layered duty-of-care model that accommodates the shifting role of intermediaries as both enablers and regulators of AI content flows. This model enriches debates in IP law by embedding liability within broader institutional frameworks of digital governance. Practically, the analysis offers guidance for policymakers, regulators, and industry stakeholders seeking to reconcile innovation incentives with the protection of rights. In contexts where over-broad liability may stifle technological progress and under-enforcement may erode creators' rights, a carefully designed intermediary framework is indispensable. More broadly, the study contributes to interdisciplinary discussions on law and technology, demonstrating how legal concepts must evolve to remain effective in the face of transformative AI capabilities.

In sum, the paper addresses an urgent and underexplored problem at the intersection of IP law, AI governance, and institutional design. By reassessing the duty of care for intermediaries and proposing a comparative, theoretically informed framework, it seeks to reorient liability debates toward solutions that are normatively grounded, technologically realistic, and institutionally sustainable.

LITERATURE REVIEW

The debate on intermediary liability for intellectual property (IP) infringement has evolved across multiple domains, each shaped by technological transformations and regulatory responses. In the age of AI, three thematic clusters dominate the discussion: (1) models of intermediary liability, (2) the impact of AI-driven infringement, and (3) the redefinition of duty of care within institutional design. Reviewing these strands reveals the limits of existing frameworks and clarifies the conceptual foundation for this study.

Models of Intermediary Liability

Early scholarship on intermediary liability was primarily concerned with the appropriate scope of responsibility for online service providers. One influential stream defended strict liability, arguing that platforms profit from infringing activities and thus should bear full responsibility for monitoring and preventing violations [8]. Proponents highlight deterrence benefits but face criticism for imposing disproportionate burdens that risk chilling innovation.

By contrast, another school emphasized immunity through safe harbor regimes, under which intermediaries are shielded from liability provided they comply with notice-and-takedown procedures. Advocates stress the necessity of fostering innovation and protecting freedom of expression [9]. Yet critics observe that such systems often lead to under-enforcement and provide little incentive for platforms to adopt proactive safeguards.

A third approach, conditional liability, attempts to balance these extremes by assigning duties contingent on knowledge, control, or scale of operations. This position aligns with the growing recognition that intermediaries exercise varying levels of influence, and that liability should be calibrated accordingly. However, the model struggles with defining workable thresholds for "knowledge" and "control" in automated and AI-enhanced environments [10].

IP Infringement in the AI Era

A second body of literature addresses how AI technologies reshape the mechanisms of infringement. Scholars in this area highlight three critical dimensions[11].

First, generative AI creates new challenges by producing outputs that closely resemble copyrighted works, raising questions about originality and derivative use. While some argue that existing copyright rules suffice, others stress the inadequacy of doctrines premised on human authorship.

Second, dataset construction has become a focal issue. The large-scale scraping of copyrighted materials for training AI models has been framed as a form of systemic infringement. One perspective maintains that such use qualifies as fair use or an exception under certain legal systems, while opponents emphasize the market harm and erosion of authors' rights[12].

Third, algorithmic dissemination compounds the risk of infringement. Recommendation systems amplify infringing materials at unprecedented scale. Some scholars propose treating algorithmic amplification as a form of contributory infringement, while others caution that such an extension could undermine legitimate content distribution.

The literature thus underscores that traditional liability models, developed for static hosting or peer-to-peer sharing, are poorly equipped to capture the dynamic and generative aspects of AI.

Duty of Care and Institutional Design

A third body of work investigates the normative basis of intermediary obligations, situating liability within broader frameworks of institutional design.

One camp, grounded in negligence-based theories, emphasizes the duty of care. According to this view, intermediaries should be held liable where they fail to take "reasonable" steps to prevent foreseeable harms[13]. The strength of this approach lies in its flexibility, allowing standards to evolve alongside technology. However, critics argue that "reasonableness" is too indeterminate, leading to inconsistent enforcement[14].

A competing camp defends strict institutional responsibility, suggesting that intermediaries' structural position gives them unique capacity to mitigate harm. From this perspective, liability should not depend on fault but on systemic ability to control risk[15]. While this ensures stronger protection for rightsholders, it risks imposing compliance costs that smaller actors cannot bear.

A third, hybrid view advocates co-regulation, where state mandates, private standard-setting, and technical audits combine to shape the duty of care. Proponents highlight its adaptability and legitimacy, yet skeptics warn of fragmentation and the danger of regulatory capture.

Comparative Synthesis

The three strands of literature reveal both convergence and divergence. While all agree that AI intensifies the role of intermediaries, they differ in how duties should be defined and enforced. Traditional liability models provide partial guidance but fail to accommodate generative technologies; debates over AI-driven infringement expose unresolved tensions around authorship, data, and dissemination; and institutional perspectives highlight the need for legitimacy and adaptability, but remain contested in operational detail.

Table 1 summarizes the major perspectives.

Table 1. Comparative Perspectives on Intermediary Liability, AI-Driven Infringement, and Duty of Care.

Domain	Dominant Approach	Strengths	Weaknesses	Relation to This Study
Liability Models	Strict, Immunity, Conditional	Clarity of rules; innovation protection	Over- or under-enforcement; binary logic	Provides historical baseline but insufficient for AI contexts
AI and IP Infringement	Generative outputs, datasets, algorithmic dissemination	Identifies new forms of risk	Lacks systematic liability framework	Demonstrates urgency of reassessing duties
Duty of Care & Institutional Design	Negligence, Strict responsibility, Co-regulation	Flexibility; systemic risk allocation	Indeterminacy; compliance costs; fragmentation	Offers conceptual foundation for layered model

In sum, the literature establishes that intermediary liability in the age of AI cannot be adequately addressed by either traditional safe harbors or blanket strict liability. What remains underdeveloped is a nuanced framework that integrates doctrinal analysis with institutional design, ensuring both legitimacy and technological realism. This gap provides the foundation for the present study's contribution.

THEORETICAL FRAMEWORK AND METHODOLOGY

The challenge of intermediary liability for intellectual property (IP) infringement in the age of artificial intelligence (AI) requires a framework that integrates both normative legal reasoning and empirical institutional analysis. Traditional liability doctrines, such as safe harbor regimes and contributory infringement tests, have proven insufficient to capture the complexities of AI-generated content and large-scale algorithmic dissemination. To address this gap, this study draws on three complementary theoretical frameworks: law-technology co-evolution, risk allocation in digital ecosystems, and institutional design theory. Together, these approaches provide the analytical foundation for a comparative methodology that combines textual legal analysis, case studies, and cross-jurisdictional comparison.

Theoretical Framework

This study is guided by three complementary perspectives. The first is law-technology co-evolution, which highlights the reciprocal relationship between innovation and regulation: rules initially designed for peer-to-peer file sharing, such as notice-and-takedown, now struggle to address the scale of generative AI. The second is risk allocation in digital ecosystems, emphasizing that intermediaries, though not always direct infringers, shape the likelihood and scale of violations through their technical architectures; liability, therefore, concerns not only fault but the fair distribution of risks and incentives among developers, platforms, and users. The third is institutional design theory, which evaluates regulatory models through efficiency, legitimacy, and adaptability. These criteria underscore that liability regimes must not only prevent infringement but also remain enforceable, accepted by stakeholders, and flexible enough to evolve with technological change. Together, these frameworks provide a foundation for analyzing intermediary liability in the AI era.

Methodology

This study adopts a qualitative, multi-method design that integrates doctrinal analysis, policy review, case studies, and cross-jurisdictional comparison. Together these methods provide a comprehensive lens on intermediary liability in the age of AI.

Doctrinal and policy analysis forms the foundation. The research interprets statutes, regulations, and judicial opinions alongside official guidelines and parliamentary debates. Key sources include the U.S. DMCA safe harbors and ongoing litigation such as New York Times v. OpenAI (2023), the European Union's Digital Services Act (DSA) and related guidance, and China's 2023 Interim Administrative Measures for Generative AI Services. These materials establish the evolving doctrinal baseline and reveal how lawmakers conceptualize intermediaries' duties of care.

Case studies illustrate how liability is contested in practice. Three recent disputes are examined: a U.K. lawsuit over dataset scraping, a U.S. dispute on the use of news content in large language model training, and Chinese litigation concerning AI-generated music. These examples, summarized in Table 2, demonstrate how different intermediaries, developers, platforms, and distributors, shape the scale and nature of infringement.

Table 2. Recent AI-Related IP Litigation and Implications for Intermediary Liability.

Case (Year, Jurisdiction)	Core Issue	Role of Intermediary	Implications for Duty of Care
Dataset Scraping Case (2023, UK)	Unauthorized use of copyrighted images for AI training datasets	AI developer as content aggregator and distributor	Suggests need for clearer rules on dataset transparency and lawful sourcing
News Content Case (2023, US)	Use of copyrighted journalism in large language model training; fair use debate	AI platform as generator and content mediator	Highlights risk of market substitution and calls for proactive oversight standards
Music Streaming Case (2023, China)	Distribution of AI-generated songs without authorization	Platform as distributor and algorithmic recommender	Illustrates integration of state regulatory enforcement with platform compliance

Finally, cross-jurisdictional comparison of the U.S., EU, and China highlights both convergence (e.g., recognition of proactive duties) and divergence (e.g., scope of safe harbors). Sources were collected from official databases between 2023–2024, coded thematically, and interpreted through the study's theoretical frameworks. This integrated approach ensures that normative analysis is grounded in empirical legal and institutional developments.

Justification of Research Design

The combination of theoretical and methodological tools is justified by the nature of the research problem. Purely doctrinal analysis risks overlooking the institutional dynamics that determine whether liability regimes are enforceable in practice. Conversely, purely institutional perspectives may neglect the normative content of IP law. By integrating law-technology co-evolution, risk allocation, and institutional design, the study avoids these pitfalls and provides a framework capable of both describing and evaluating liability models.

The case studies are particularly significant because they exemplify the concrete tensions between innovation and rights protection. The Getty Images litigation highlights the systemic risks of dataset construction; the New York Times dispute underscores the role of generative AI in substituting human-created works; and the Tencent Music cases show how state regulation interacts with market enforcement. Together, they demonstrate the inadequacy of existing liability models and the urgent need for redefined duties of care.

Expected Contribution of Methodology

Methodologically, this study contributes in three ways. First, it demonstrates how doctrinal and policy analysis can be enriched by institutional theory, producing a more holistic understanding of intermediary liability. Second, it establishes a replicable framework for comparative analysis that can be extended to other jurisdictions. Third, it highlights the value of integrating real-time case studies into theoretical debates, ensuring that normative proposals are grounded in empirical realities.

FINDINGS AND DISCUSSION

The preceding literature review and case analyses highlight the pressing challenges posed by intermediary liability in the age of artificial intelligence (AI). Unlike earlier disputes over peer-to-peer networks or online hosting, today's conflicts revolve around intermediaries whose technical architectures and generative capabilities actively shape the scale and character of infringement. This section synthesizes findings across three dimensions: the evolving role of intermediaries, the reinterpretation of duty of care, and the institutional design challenges that arise across jurisdictions. The discussion evaluates these findings against existing scholarship, identifies the study's contributions, and interprets results through the theoretical frameworks of law-technology co-evolution, risk allocation, and institutional design.

Shifting Nature of Intermediary Roles

A central finding is that AI technologies transform intermediaries from passive conduits into active participants in content production and dissemination. The dataset scraping litigation in the United Kingdom illustrates how AI developers function as content aggregators, embedding copyrighted material into training datasets without consent. The New York Times case demonstrates the dual role of AI platforms as both content mediators and substitutes for original works. The Chinese music litigation highlights platforms' algorithmic recommendation functions, which directly influence market reach and revenue distribution.

Earlier scholarship often characterized intermediaries as "neutral hosts," emphasizing their technical passivity and justifying safe harbor protections. By contrast, these recent disputes show that intermediaries now act as gatekeepers whose algorithmic choices shape both the likelihood of infringement and its economic consequences. This confirms the inadequacy of binary liability models, strict liability or blanket immunity, and supports the move toward more differentiated standards.

Reinterpreting Duty of Care

The cases further reveal that the duty of care cannot remain limited to reactive notice-and-takedown procedures. In the dataset scraping dispute, reliance on ex post remedies would be meaningless once millions of images have already been incorporated into AI models. Similarly, in the U.S. litigation, the question is not whether platforms remove infringing content upon notification but whether they exercised reasonable oversight in designing training practices. In China, liability extends to recommendation algorithms, reflecting the idea that proactive monitoring is integral to responsible platform governance.

This contrasts with much of the pre-2023 literature, which argued that proactive duties risk chilling innovation and over-policing user activity. The findings here suggest that a layered duty of care, requiring different forms of oversight at the stages of dataset construction, model training, and content dissemination, better aligns with the realities of AI ecosystems. This layered approach balances flexibility with accountability: smaller intermediaries might be expected to ensure basic dataset transparency, while larger platforms bear heightened responsibilities for auditing algorithms and mitigating systemic risks.

Institutional Design Challenges

Cross-jurisdictional comparison highlights the importance of institutional design. The EU's Digital Services Act and AI Act illustrate a co-regulatory model, where law sets baseline duties but technical standards and independent audits operationalize compliance. The U.S., by contrast, relies heavily on litigation, producing fragmented and reactive enforcement. China adopts a state-led model, mandating algorithmic transparency and embedding compliance into licensing frameworks.

Each approach presents trade-offs. The EU model scores high on adaptability but risks bureaucratic complexity. The U.S. model emphasizes legitimacy through judicial process but suffers from under-enforcement and uneven coverage. The Chinese model ensures efficiency and predictability but raises concerns about regulatory capture and freedom of expression. Institutional design theory helps explain these patterns: regimes differ in their balance of efficiency, legitimacy, and adaptability, and no single model yet fully reconciles these goals.

Integration with Theoretical Frameworks

Viewed through law-technology co-evolution, these findings confirm that legal doctrines lag behind technological change yet must adapt dynamically. Safe harbor rules crafted for hosting services cannot address generative AI; their reinterpretation illustrates the recursive adaptation of law to technology.

Through the lens of risk allocation, intermediaries emerge as central actors capable of both amplifying and mitigating infringement. A layered duty of care redistributes risk more equitably: rightsholders gain greater protection, users retain access to innovation, and intermediaries face calibrated obligations reflecting their scale and capacity.

Finally, institutional design theory clarifies that effectiveness depends not only on normative justification but also on institutional viability. For example, proactive oversight duties are legitimate in principle but require institutional mechanisms, audits, certification bodies, technical standards, to ensure enforceability. Without these, legal rules risk remaining symbolic.

Comparative Insights and Novel Contributions

This study contributes three innovations beyond prior research. First, it reconceptualizes intermediaries as AI co-creators, rejecting the traditional view of neutrality. Second, it develops a layered duty of care framework, moving beyond reactive or binary models and tailoring obligations to different stages of the AI lifecycle. Third, it situates liability within institutional design debates, demonstrating that legitimacy, efficiency, and adaptability must be evaluated together rather than in isolation.

Compared to earlier studies that focused narrowly on copyright doctrine or platform immunity, this integrative approach foregrounds both normative and institutional dimensions. By embedding case study findings into broader theoretical debates, the paper provides a holistic framework that is both doctrinally grounded and policy-relevant.

Policy and Practical Implications

The findings suggest several practical implications. For policymakers, a layered duty of care provides a blueprint for calibrating obligations without stifling innovation. For platforms, the analysis underscores the importance of building compliance into the design of datasets and algorithms, not merely responding to takedown requests. For rightsholders, the framework clarifies where accountability lies and how enforcement strategies might differ across jurisdictions. At a systemic level, the study points to the need for transnational coordination: absent harmonization, divergent liability regimes risk forum shopping and regulatory arbitrage.

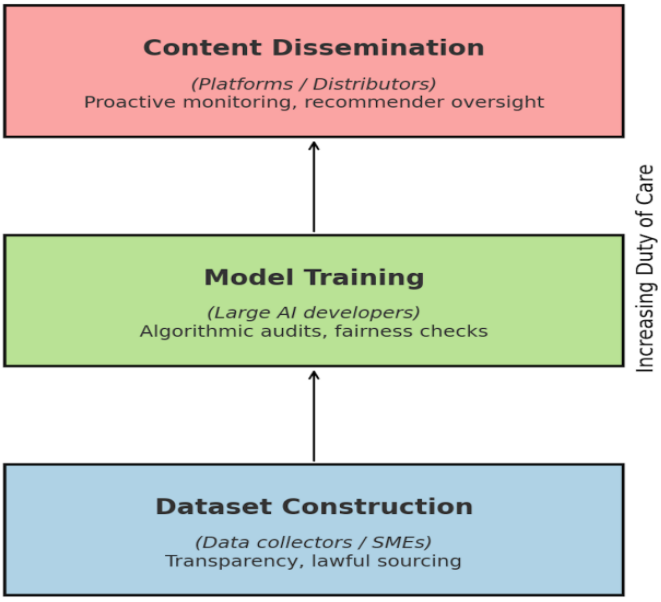

Figure 1. Layered Duty of Care for AI Intermediaries.

Figure 1 illustrates the proposed layered duty of care, assigning differentiated responsibilities at each stage of the AI lifecycle.

Table 3. Comparative Institutional Models of Intermediary Liability.

Jurisdiction	Dominant Model	Strengths	Weaknesses	Implications for AI Context
European Union	Co-regulation (DSA + AI Act)	Adaptable, proactive, independent audits	Bureaucratic complexity, compliance costs	Supports layered duties but may slow innovation
United States	Litigation-based	Legitimacy via courts, flexible interpretation	Fragmented, under-enforcement	Reactive approach ill-suited for generative AI
China	State-led regulatory enforcement	Efficient, predictable, integrated licensing	Risk of capture, limited pluralism	Strong compliance but constrained freedom

Table 3 compares institutional approaches to intermediary liability across major jurisdictions, highlighting their suitability for AI governance.

Overall Synthesis

Taken together, the findings reveal that intermediary liability in the AI era cannot be reduced to either strict liability or immunity. Instead, effective governance requires reinterpreting the duty of care through a layered framework and embedding this within institutional designs that balance efficiency, legitimacy, and adaptability. While each jurisdiction has adopted divergent models, the common trajectory is clear: intermediaries are no longer passive actors but central participants in shaping the IP ecosystem. Recognizing and operationalizing this shift is essential for ensuring that legal systems remain capable of protecting rights without stifling technological progress.

CONCLUSION

This study has examined intermediary liability for intellectual property infringement in the age of artificial intelligence, focusing on the redefinition of duty of care and the institutional design of regulatory frameworks. By integrating theoretical perspectives on law-technology co-evolution, risk allocation, and institutional design, and grounding the analysis in recent disputes across the United Kingdom, United States, and China, the research demonstrates that intermediaries can no longer be treated as neutral conduits. Instead, they function as active co-creators and distributors, requiring a layered duty of care that differentiates responsibilities across dataset construction, model training, and content dissemination.

The findings contribute to the academic debate by moving beyond binary liability models and proposing a hybrid, stage-specific framework that reconciles innovation with rights protection. For policymakers, this

framework offers a blueprint for calibrating obligations without stifling technological progress. For platforms, it underscores the need to embed compliance into system design rather than rely solely on reactive takedown measures. For rightsholders, it clarifies pathways for enforcement and accountability in AI-driven environments.

Future research should expand empirical testing of auditing mechanisms, evaluate the economic impact of layered liability regimes, and explore the potential for international harmonization. As AI ecosystems continue to evolve, adaptive and coordinated approaches will be crucial to ensuring both legal effectiveness and technological sustainability.

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