

Is It Time to Abolish Safe Harbor? When Rhetoric Clouds Policy Goals

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The safe harbor, which exempted online intermediaries from liability for materials hosted by their systems, has been the cornerstone of internet policy over the past several decades. Recently however, the worrying proliferation of illegal content, from copyright infringement to fake news to hate speech to terrorist propaganda, is triggering calls to abolish the safe harbor. The rhetoric is rather straightforward: platforms benefit from the sharing of content, they have the power to efficiently and effectively guard against illicit content, and if held liable for users' content they will act to address the spread of illegal content. Inflaming this rhetoric is a widespread understanding that platforms might have become too powerful and that in practice they have become the new online governors. Nevertheless, the current debate on platform liability is heavy on rhetoric but light on facts. It rarely addresses the consequences of abolishing the safe harbor and hardly questions whether introducing liability would be likely to achieve a desirable outcome. Using the example of the music industry's call to amend copyright safe harbor because it has allegedly generated a "value gap," this paper aims to demonstrate the dangers of designing policy based on unsubstantiated and populist rhetoric. The paper analyzes the value gap debate and debunks the allegations of right holders claiming that they generate insufficient income from digital platforms and this reduces their incentives to create. While creators might have legitimate claims regarding a drop in their revenues, misleading rhetoric that remains unchecked might lead to misguided policy. At a macro level, our findings suggest that it is not necessarily the safe harbor that should be blamed for the worrying power concentration in today's platform economy and that populist allegations must be verified carefully before being acted upon.