

CONTENTS

<i>Foreword</i>	v
<i>Acknowledgments</i>	vii
Introduction	1
1. Context of the research	1
2. Problem statement	5
3. Research hypothesis and questions	8
4. Methodology	10
5. Structure	12
PART I. STATE OF THE ART	15
Chapter 1	
The Concept of ‘Gatekeeping’	17
1. Theories of gatekeeping	17
2. Gatekeeping in media	19
Chapter 2	
Gatekeeping in Online Media	23
1. New media, new challenges?	23
2. Internet intermediaries as points of control	30
3. Regulatory response	37
4. Gatekeeping as indirect interference	40
Chapter 3	
Freedom of Expression in the EU and the US	45
1. The European Convention on Human Rights	45
2. The Charter of Fundamental Rights of the European Union	49
3. The First Amendment to the US Constitution	50
4. Interim conclusion	53

Chapter 4

Internet Intermediary Liability in the EU and the US 55

1. Directive 2000/31/EC..... 55
2. Digital Millennium Copyright Act..... 65
3. Section 230 of the Communications Decency Act 67
4. Interim conclusion..... 73

Chapter 5

Towards Platform Responsibility 75

1. Review of the E-Commerce Directive..... 75
2. Digital Single Market Strategy..... 78
3. Interim conclusion..... 82

Chapter 6

Main Criticisms..... 85

1. Policy incoherence..... 85
2. Notice and action procedures..... 96

Chapter 7

Conclusion 103

PART II. NORMATIVE FRAMEWORK 105

Chapter 1

Introduction..... 107

Chapter 2

Interference with Freedom of Expression (Obligation to Respect)..... 109

1. The European Convention on Human Rights..... 109
 - 1.1. Prescribed by law 110
 - 1.2. Legitimate aim 114
 - 1.3. Necessary in a democratic society..... 116
2. The Charter of Fundamental Rights of the European Union 128
3. Interim conclusion..... 131

Chapter 3

Positive Obligations for Freedom of Expression (Obligation to Protect) ... 133

1. Positive obligations – the European Convention on Human Rights..... 133
 - 1.1. Positive obligations under the ECHR – general 133

1.2. Positive obligations and freedom of expression	139
1.3. Interplay between substantive and procedural obligations.....	145
1.4. Positive obligations and procedural safeguards	147
2. Positive obligations – the Charter of Fundamental Rights	152
2.1. Positive obligations under the Charter – general	152
2.2. Effective protection of Charter rights	155
3. Interim conclusion.....	162

Chapter 4

Criteria for Safeguards for Freedom of Expression Online

1. Methodology.....	163
2. Guiding principles	164
2.1. Legal certainty	165
2.2. Legitimacy.....	166
2.3. Proportionality.....	167
3. Assessment criteria.....	169
3.1. Quality of law	170
A. Accessibility.....	170
B. Foreseeability.....	171
C. Practical implications.....	173
3.2. Protection of democratic society.....	173
A. Democratic values.....	174
B. Manifest illegality.....	174
C. Practical implications.....	176
3.3. Tailored response	176
A. Least restrictive means.....	177
B. Practical implications.....	178
3.4. Procedural fairness	178
A. Due process	179
1. Explicit rights.....	179
2. Implicit rights.....	183
B. Requirements for decision-making processes	184
C. Practical implications.....	185
3.5. Effective remedy	186
A. Possibility to appeal	187
B. Judicial redress	189
C. Practical implications.....	191

Chapter 5

Conclusion

193

PART III. EVALUATION OF EXISTING NOTICE AND ACTION MECHANISMS.....	195
Chapter 1	
Introduction.....	197
1. Methodology.....	197
2. Different forms of 'notice and action'	198
Chapter 2	
Analysis of Different Response Mechanisms	203
1. Notice and take down	203
1.1. Definition.....	203
1.2. Country profiles	203
A. Finland	204
B. France	205
C. Germany.....	206
D. Hungary	206
E. South Korea	207
F. United Kingdom	207
G. United States	208
1.3. Assessment	208
A. Quality of law	208
B. Protection of democratic society	213
C. Tailored response	216
D. Procedural fairness.....	217
E. Effective remedy	225
1.4. Lessons learned.....	230
2. Notice and stay down.....	233
2.1. Definition.....	233
2.2. Country profiles	233
A. France	234
B. Germany.....	235
2.3. Assessment	236
A. Quality of law	236
B. Protection of democratic society	240
C. Tailored response	242
D. Procedural fairness.....	243
E. Effective remedy	245
2.4. Lessons learned.....	245
3. Notice and notice	246
3.1. Definition.....	246

3.2.	Country profiles	247
A.	Canada	248
B.	Chile	248
C.	France	249
D.	South Korea	250
3.3.	Assessment	250
A.	Quality of law	250
B.	Protection of democratic society	254
C.	Tailored response	254
D.	Procedural fairness.....	259
E.	Effective remedy	265
3.4.	Lessons learned.....	266
4.	Full immunity.....	267
4.1.	Definition.....	267
4.2.	Country profile.....	268
A.	United States	268
4.3.	Assessment	269
A.	Quality of Law.....	269
B.	Protection of democratic society	273
C.	Tailored response	277
D.	Procedural fairness.....	279
E.	Effective remedy	280
4.4.	Lessons learned.....	284

Chapter 3

Safeguards for Freedom of Expression in Notice and Action 287

1.	Quality of the law	288
1.1.	Accessibility.....	288
1.2.	Foreseeability	292
A.	Defined scope	292
B.	Defined procedure	298
1.3.	Transparency.....	302
2.	Protection of democratic society.....	304
2.1.	Democratic values	304
A.	Types of content and activities	304
B.	Application.....	304
2.2.	Manifest illegality.....	305
3.	Tailored response	306
3.1.	Least restrictive means	306
A.	Proportionate response	306
B.	Limiting intrusiveness	308
4.	Procedural fairness	310

4.1. Due process	311
4.2. Requirements for decision-making processes	315
5. Effective remedy	316
5.1. The possibility to appeal	316
5.2. Judicial redress	317
Conclusion and Outlook	319
<i>Annex – Detailed Country Profiles</i>	<i>331</i>
1. Notice and take down	331
A. Finland	331
B. France	334
C. Germany	339
D. Hungary	341
E. South Korea	344
F. United Kingdom	349
G. United States	356
2. Notice and stay down	357
A. France	357
B. Germany	360
3. Notice and notice	368
A. Canada	368
B. Chile	370
C. France	373
D. South Korea	376
4. Full immunity	377
A. United States	377
<i>Bibliography</i>	<i>379</i>