

Consumer Protection in E-Commerce Contracts through Digital Platforms: A Comparative Study.

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Abstract

Digitalization has turned platforms from passive technical hosts into algorithmically active vertically integrated intermediaries, with full control over the pricing, ranking, and performance of consumer transactions, as well as the entire lifecycle of such transactions. This has brought the passive hosting model underlying the e-Commerce Directive (2000/31/EC) in the EU and the Communications Decency Act Section 230 in the United States into irreconcilable tension with platform-based economic reality. Drawing on doctrinal comparative analysis across the EU, US, China and the UAE, this article shows how existing doctrine fails to address a persistent privity-control mismatch, where consumers are the formal counterparty to third-party sellers but platforms in fact control price-setting, ranking, fulfillment, and other consumer-facing information. Drawing on the CJEU's active role rationale in *Louboutin v Amazon* (2022), Article 6(3) of the DSA, the Product Liability Directive (EU) 2024/2853 and doctrinal comparative considerations of China's codified regime for joint and several liability and of the UAE's nascent law on e-commerce, the article proposes a new *de lege ferenda* framework for Active Intermediary Liability (AIL) that will operationalize the evidence-based control criteria within a tiered joint liability framework. This is done by replacing the active/passive divide with a coherent and systematic threshold spanning product liability, contract liability and data-protection liability and articulating that threshold for the huge potential that *de lege ferenda* has for transposition as a model for other jurisdictions, especially in relation to the Gulf Cooperation Council (GCC) states where consumer-protection laws have been reformed but where never-before-in-the-world designs for intermediary liability are missing...

Keywords: active intermediary liability; digital platforms; consumer protection; Digital Services Act; comparative law; e-commerce; product liability; joint-and-several liability

Introduction

The volume of trade that moves onto platforms may be one of the factors that increase the materiality of the issue at hand. Global e-commerce accounts for 21% to 24% of all global retail, with online retail sales of approximately USD 6.86 to 7.4 trillion in 2025. The value of platform-mediated business-to-business (B2B) and business-to-consumer (B2C) trade is nearly USD 27 trillion (UNCTAD, 2023). These numbers also imply something that is often relegated to the background in the literature: Digital platforms are not marginal intermediaries operating at the edge of consumer markets. They are the primary architecture through which consumer markets now operate. One cannot write a legal regime for a marginal actor and apply it to the actor that becomes the central nervous system of the market.

The doctrinal puzzle that this scale creates is simple to state and difficult to resolve. The "passive hosting" safe harbor model inherited from the e-Commerce Directive, 2000/31/EC, and adopted in the Communications Decency Act, §230, was designed for a conduit, a bulletin board, an internet service provider, an entity that transmits content without shaping it. The conduit model does not easily fit the description of an entity who prices algorithmically, controls fulfillment and the logistics chain from beginning to end, curates and ranks the listings for commercially-driven reasons, and is considered, by a "reasonably well-informed and reasonably observant internet user", to be the seller of record (CJEU, *Louboutin v Amazon*, Joined Cases C-148/21 and C-184/21, 2022). The conduit model and the contemporary marketplace model describe two very different kinds of entity. In most jurisdictions, consumer protection law has continued to apply the same doctrine to the latter as it did to the former.

The platforms have *de facto* control over the transaction's price, visibility, fulfillment, and data, but have *de jure* no responsibility for the transaction because *de jure* the transaction is between the consumer and a nominally independent third-party seller. So the mismatch between *de facto* and *de jure* is structural, not incidental.

Consumer-platform relations in a platform economy and consumer-seller relations in a market economy are in relationship diagram, aligned in substance, but misaligned in form. The conceptual seed shown in Section 4, at the center of the article, is an information asymmetry (a consumer cannot tell seller, where their order is fulfilled, or how the seller ranks in the platform's algorithm) and a bargaining-power asymmetry (standard-form agreements are drafted by the platform in a three-way relationship).

The article's contribution is thus narrower, but also more constructive, than simply providing a catalogue of platform obligations under the DSA, the task which several recent commentators have already taken up (see Section 2). Instead, this article proposes a portable doctrinal test that allows us to determine when platform conduct shifts a platform from being an excluded host to a co-liable economic operator, which I call Active Intermediary Liability (AIL). The article then benchmarks that doctrinal test against the regimes in the United States, China, and the United Arab Emirates. The test is meant to be applied in parallel in respect of product liability, contract liability, and data layer liability, as opposed to applying the test in isolation to each type of liability.

The clearest sign that the current architecture is underperforming in practice, as well as in theory, is procedural: the EU's own Online Dispute Resolution (ODR) Platform - designed as a low-friction redress mechanism from which consumers could easily access cross-border digital traders - received an estimated 2 to 3 million annual visitors. In its final year of operation, the platform had an annual output of around 200 completed cases, about 2 percent of cases. The European Parliament and Council of the European Union passed Regulation (EU) 2024/3228 eliminating the platform effective July 2025. A redress mechanism that converts visitors to resolutions at a rate of roughly one in fifty is not one that suffers from a design flaw at the margins. Rather it is one that evidences that the substantive allocation of liability, and not the redress channel through which that liability is enforced, is the locus of the deficiency. It thus examines the closure of the ODR Platform as a leading indicator in support of this diagnosis and returns to the ODR Platform in Section 4 to sketch the institutional counterpart to the AIL framework.

Methodologically, the article proceeds by doctrinal comparative analysis of four particular legal families that were selected for maximal variance in their liability philosophy: that of the European Union (a conditional safe harbor evolving toward a graduated active-role standard); that of the United States (driven by antitrust law and litigation, but with no general contractual active-role test); that of China (codified joint-and-several liability); and that of the United Arab Emirates (a rapidly modernizing but still uncoded developing market framework, representative of the broader GCC trajectory). This selection has been made to expose the full range of, and compare, existing institutional responses to a single functional problem, so as to test the proposed AIL framework for portability. Section 2 is a mapping and critique of existing platform liability scholarship. Section 3 is the comparative doctrinal analysis, jurisdiction by jurisdiction, of the standards for intermediary liability applicable to active intermediaries. Section 4 presents the Active Intermediary Liability framework that arises from the doctrinal analysis of intermediary liability law in Section 3. Section 5 concludes with jurisdiction-specific policy recommendations and a scoped research agenda.

2. Literature Review and Critical Discussion

2.1 Strand One: The Inherited Safe-Harbor Paradigm

The concept of platform liability is based on Article 14 of the e-Commerce Directive (2000/31/EC) which provides a safe harbor to hosting service providers absent actual knowledge of illegal activity and, upon becoming aware of illegal activity, expeditiously acting to remove content. Article 6 of the DSA follows the same structure, with the exception of Article 6(3), the so-called "marketplace clause", which is in the academic literature generally read as codifying a departure from this structure as far as so-called Amazon-style hybrid marketplaces are concerned. Prior to the DSA, the converged hosting functions of information control, payment, ranking and fulfillment had been seen as a binary: a host either exercised editorial control over the information it carried, or it did not. Framing was always a legal fiction when applied to marketplaces that combined hosting with fulfillment, ranking and payment. Today, the fiction can no longer be reconciled with the standard combination of functions undertaken by such marketplaces.

2.2 Strand Two: Post-DSA Platform-Liability Scholarship

The work most closely related to this chapter is Fairgrieve et al. (2024): *Product Liability and Online Marketplaces: Comparison and Reform in International & Comparative Law Quarterly*, which is another editor-compiled work. Fairgrieve and colleagues focus on product (tort and strict) liability for defective goods in a limited number of jurisdictions and seek to identify when a marketplace should be held to be an economic operator and accordingly bear (manufacturer-equivalent) liability. Thus, while this article looks on that reform as a necessary-but-insufficient measure, because Fairgrieve et al. do not address contractual consumer protection (by which I mean cancellation rights, misleading pricing, contract-formation asymmetries), and their proposal does not generalize into a portable liability test for torts beyond product safety, the gap between a product liability-specific reform and a domain-agnostic liability test is precisely what Section 4's Active Intermediary Liability framework is meant to fill.

In 2025, Namysłowska wrote in *Journal of Consumer Policy* ("The Silent Death of EU Consumer Law and Its Resilient Revival") that unfair-commercial-practices regulation is obsolete for digital markets and should be revived by reinterpreting the UCPD's categories. This article agrees that the model's obsolescence diagnosis is correct, but remains seller-facing: it focuses on which of a seller's practices are unfair instead of the intermediary's role as an unsupervised but complicit actor for a seller's unfair practice. The platform itself, however, is somewhat under-theorized in Namysłowska.

Rott (2025) identifies allocation of the burden of proof as the main enforcement challenge in so-called "black box" digital markets, in which consumers have no visibility into the algorithms that determine price (marketplace sellers) or ranking and recommendation (platforms). I conceive of this procedural understanding not as an alternative to substantive liability redesign, but as an important part of it. This permits me to adopt the rebuttable presumption of active role, per Rott's burden-shifting model, as soon as the threshold controltest has been met, and thus operationalize Rott's reasoning within a substantive (not just a procedural) modification of liability.

Some further 'bridging' scholarship, including examining the relevance of EU consumer law to the DSA and explaining how the DSA's transparency and due-diligence requirements relate to existing consumer-protection law, has emerged. Yet even this 'friendly' academic commentary has stopped short of articulating a harmonized liability standard establishing the treatment of product liability, contract, and data protection liability claims based on the same platform conduct.

2.3 Strand Three: Comparative and Non-EU Scholarship

The People's Republic of China codified joint and several liability when the platform "knew or should have known" that the consumer's safety or rights were being harmed, in Article 38 of the E-Commerce Law of the People's Republic of China (2018), effective January 1, 2019. Recent doctrinal commentary (2024) describes this provision as the most consumer-protective codified model for joint litigation liability actually in force in any major e-commerce market, and as live counterfactual to the EU's still-conditional, still-evolving approach, meaning that codified joint liability is not just theoretical but an operating system.

Onianova (2024) on marketplace liability does a good transatlantic doctrinal comparison, but does not discuss DSA Article 6(3) or developments around the Product Liability Directive that emerged at the same time. It also does not discuss the Global South or the GCC, though a review of the literature conducted for this chapter showed there to be a near total absence of work on GCC consumer-protection modernization (in this instance the Federal Decree-Law No. 5 of 2023 on Consumer Protection amended by Federal Decree-Law No. 8 of 2023 and Cabinet Decision No. 14 of 2023. 66 of 2023 is particularly relevant to discussions of platform liability in the international context. Accordingly, this article fills the gap by comparing the UAE in Section 3.4.

2.4 Synthesis: The Gap

No existing study integrates into a single criteria-based and portable liability doctrine (i) the DSA's emergent "active role" jurisprudence, (ii) the 2024 Product Liability Directive's extension to economic operators, (iii) a procedural burden of proof reform like Rott's (2023), and (iv) comparative lessons from codified joint-and-several liability regimes and still-nascent GCC regimes. Below, Table 1 summarizes this positioning across the principal works reviewed in this section and makes them explicit with respect to the gap each leaves, and the respect in which the Active Intermediary Liability framework proposed in Section 4 fills it.

Table 1

Literature Positioning Matrix

Work (Author, Year)	Jurisdiction(s)	Liability Domain	Mechanism Proposed	Gap Relative to AIL Framework
Fairgrieve et al. (2024)	EU; comparative (multi-jurisdiction)	Product / tort (strict) liability	Treats marketplace as “economic operator” for defective goods	Narrow to product safety; no portable cross-domain test; silent on contractual asymmetries
Namysłowska (2025)	European Union	Unfair commercial practices (contract-adjacent)	Reinterpretation of existing UCPD categories to “revive” consumer law	Seller-facing; does not reach the intermediary’s own structural role
Rott (2025)	European Union	Procedural / evidentiary (burden of proof)	Procedural alleviation of burden-of-proof in “black box” digital markets	Addresses enforcement symptom, not substantive liability allocation
Onianova (2023–2024)	United States; France	Comparative marketplace liability (general)	Transatlantic doctrinal comparison	Omits DSA Art. 6(3) / Product Liability Directive developments; omits GCC / Global South dimension
China E-Commerce Law Art. 38 commentary (2024)	China	Codified joint-and-several liability	“Knew or should have known” threshold	Codified but binary; no graduated criteria; not framed as an exportable comparative model

2.5 Theoretical Framework

The following analysis will rely on three theoretical frameworks, of which the first is the information-asymmetry framework outlined in the “market for lemons” tradition. Consumers cannot survey the identity of the seller, the location of fulfillment, or the neutrality of the algorithmic search ranking, and the platform that controls them has no structural incentive to reveal information that would make it easy to corroborate that it does indeed treat those dimensions neutrally. The second theory is bargaining-power-asymmetry theory applied to standard-form digital contracting. The platform unilaterally drafts the terms of the consumer relationship, the seller relationship, and the payment relationship. But the contract law consequences of that concentration of contractual power lie entirely with an actor that bears none of the corresponding contractual liability. The third is what this article terms the “passive conduit fiction”, a legal fiction that was descriptive when the e-Commerce Directive was drafted in 2000 but increasingly decoupled from operational reality as marketplaces vertically integrate fulfillment, ranking, and payment functionalities. Sections 3 and 4 use these three foundations to organize comparative doctrinal evidence and explain the control criteria used for the novel AIL framework.

3. Comparative Legal Analysis

3.1 European Union

The minimum standard under EU law, defined in the e-Commerce Directive’s Article 14 conditional hosting exemption, is that a host is not liable where it has no actual knowledge of facts or circumstances indicating illegal activity and, as soon as it obtains such knowledge, it acts expeditiously to remove or disable access to the information. The DSA (Regulation (EU) 2022/2065) applies in full from 17 February 2024. Article 6 preserved the Article 14 exemption, but in relation to online marketplaces, Article 6(3) said that the exemption was no longer available when the reference was made in such a way as to lead an average consumer to believe that the product is being offered for sale by it, or a trader acting in its name or on its behalf.

The CJEU’s *Louboutin v Amazon* (Joined Cases C-148/21 and C-184/21, 22 December 2022) ruling, realizing the “active role” already postulated by Article 6(3), identifies three doctrinal elements: the platform’s uniform presentation of its own advertisements with no material distinctions from a third party’s advertisements; the provision of ancillary services such as warehousing and shipping that integrate the platform into the transaction (to the extent that the platform has gone beyond just providing a listing service); and the standard of the “reasonably well-informed and reasonably observant” European internet user. These three doctrinal elements are translated into the AIL control-criteria matrix (Section 4).

Liability equivalent to manufacturers was extended in the Product Liability Directive (EU) 2024/2853 to economic operators acting as platforms when the platform's own conduct causes consumers reasonably to rely on it as the product's supplier rather than as a mere intermediary. In *X v Russmedia Digital SRL* (CJEU, Case C-492/23, 2 December 2025) this "active" or "joint controller" approach was extended to data protection for the General Data Protection Regulation, disapplying the hosting safe harbor for the advertisement content by users over marketplaces. Thus, read together, these three pieces of legislation (Louboutin, Product Liability Directive, Russmedia) suggest that cross-doctrinal convergence is applicable to intellectual property, product liability, and data protection, and that marketplaces are to be considered co-responsible, rather than simply a neutral intermediary, although as yet none of the instruments explicitly make this claim.

Based on findings of empirical studies of manipulative interface design, the Digital Fairness Act, whose public consultation by the European Commission closed in October 2025 and whose draft is due in Q3 2026, will address dark patterns, price discrimination and compulsive design. According to Mathur, Mayer, and Kshirsagar (2019), a large-scale audit of websites covering 11,000 e-commerce platforms found a total of 1818 instances of dark patterns that can be categorized into 15 types and observed on 1254 e-commerce platforms. This suggests that manipulative design is structural to the architecture of e-commerce platforms, and the consumer harm that structural manipulative design causes is the baseline effect that the Digital Fairness Act and, as this article argues, the AIL framework set out in Section 4 must eliminate.

3.2 United States

US courts have not established an analogous test of an "active role" for liability for third-party content, but have held that a platform's design rather than its content typically determines whether it is liable. In this regard, US courts have developed a patchwork of standards for platform liability under state laws on product liability based on the platform's elements of design. The closest example, *FTC and 17 States v. Amazon.com, Inc.* (No. 2:23-cv-01495, W.D. Wash., filed 26 September 2023; motion to dismiss denied September 2024), is not a consumer contract case, but an antitrust and unfair competition lawsuit.

That case is worth noting not so much for its specific antitrust theory but for what it signals institutionally. The U.S. constraint on platform power, at present, runs through competition law as mediated by the state attorneys general. An ex post, decentralized intervention route contrasts sharply with the EU's ex ante regulatory architecture. The two approaches address the same functional problem (the control of digital platforms without corresponding liability). The means they employ to address the problem are very different: the EU approach relies on uniform harmonizing regulation across the internal market, while the US one relies on state and court-based litigation.

3.3 China

Article 38 of the 2018 E-Commerce Law of China (which came into effect on 1 January 2019) provides for joint-and-several liability where the online platform operator knows, or must know, that a transaction it hosted has harmed the safety or rights of consumers, but fails to take appropriate measures. In contrast to the fact-based analysis of consumer understanding in Article 6(3), Article 38 attaches liability as soon as a knowledge threshold is crossed, irrespective of platform integration with the presentation or operation of the transaction.

As such, China's legal environment provides a "maximalist" comparator for the purposes of this article. The outer bound of codified platform liability is not just a policy hypothetical; it has already been established in one of the world's largest e-commerce markets. This undercuts any argument that joint and several liability for platforms cannot be scaled up and provides the upper limit against which one can calibrate the graduated AIL mechanism discussed in Section 4.

3.4 United Arab Emirates and the GCC

The United Arab Emirates' Federal Decree-Law No. 14 of 2023 on Trading through Modern Technical Means (the E-Commerce Law) and Federal Law No. 15 of 2020 on Consumer Protection as implemented in Cabinet Decision No. 66 of 2023 (the Executive Regulations of Law No. 15 of 2020, in force October 2023) extends information, safety, and due diligence obligations to suppliers selling goods and services through e-commerce and to e-commerce platforms easing goods and services in/out of the UAE.

The comparative analysis this article does not conduct but which supports the article's recommendations is that, compared to the EU, the UAE has not yet imported an "active role" test into its own law, or clearly delineated the liability allocation between a platform and a third-party seller using its platform. The article does not argue that the UAE is different from other countries in this approach. Rather, the UAE is one of many developing and GCC countries that are quickly adopting consumer protections for e-commerce, without the accompanying intermediary-liability doctrine that provides an avenue for holding the platform liable rather than the seller. A comparison of the four jurisdictions is provided in Table 2, with Table 3 and Figure 1 providing a timeline of the instruments and decisions discussed in this section.

Table 2

Comparative Liability Regimes Across Four Jurisdictions

Jurisdiction	Governing Instrument(s)	Liability Trigger Standard /	Safe-Harbor Conditions	Consumer Remedies	Enforcement Body / Leading Authority
EU	DSA (Reg. (EU) 2022/2065) Art. 6 / 6(3); Product Liability Directive (EU) 2024/2853	“Active role” / reasonable-consumer perception of platform as supplier	Conditional: no actual knowledge + expeditious removal; unavailable once marketplace clause triggered	Content removal / redress under DSA; product-liability damages under PLD	National Digital Services Coordinators; European Commission; CJEU (Louboutin, 2022; Russmedia, 2025)
United States	Communications Decency Act §230; FTC Act	Antitrust / unfair competition; no general statutory “active role” contract test	Broad immunity for third-party content; eroding in state product-liability courts	Antitrust remedies; limited, state-dependent tort recovery	Federal Trade Commission; State Attorneys General; federal courts
China	E-Commerce Law of the PRC (2018, in force 2019), Art. 38	“Knew or should have known” of harm to consumer safety/rights + failure to act	None once knowledge threshold is met (joint-and-several liability attaches)	Joint-and-several damages; administrative penalties	State Administration for Market Regulation (SAMR)
UAE	Federal Decree-Law No. 14/2023 (E-Commerce); Federal Law No. 15/2020 + Cabinet Decision No. 66/2023	Supplier compliance and product-safety duties; no codified “active role” test	Under-specified; platform/seller liability allocation not clearly demarcated	Administrative remedies; consumer complaints to competent authority	Ministry of Economy; Emirate-level Departments of Economic Development

Table 3

Timeline of Regulatory Evolution, 2000-2026

Year	Jurisdiction	Milestone
2000	EU	e-Commerce Directive (2000/31/EC), Art. 14 — baseline conditional hosting safe harbor
2018	China	E-Commerce Law of the PRC enacted, Art. 38 — joint-and-several liability for platform knowledge of consumer harm
2019	EU	Omnibus Directive (EU) 2019/2161 — ranking-transparency obligations for online marketplaces
2020	UAE	Federal Law No. 15 of 2020 on Consumer Protection enacted
2022	EU	Digital Services Act (Reg. (EU) 2022/2065) enacted; Louboutin v Amazon (CJEU, Joined Cases C-148/21 & C-184/21) decided (December)
2023	UAE	Federal Decree-Law No. 14/2023 (E-Commerce Law); Cabinet Decision No. 66/2023 (Executive Regulations, in force October 2023)

Year	Jurisdiction	Milestone
2023	US	FTC and 17 States v. Amazon.com, Inc., No. 2:23-cv-01495 (W.D. Wash.) filed September 26
2024	EU	DSA fully applicable (17 February); Product Liability Directive (EU) 2024/2853 adopted (23 October)
2025	EU	X v Russmedia Digital SRL (CJEU, Case C-492/23) decided (2 December); EU ODR Platform discontinued (July)
2026	EU	Digital Fairness Act — formal draft expected (Q3, projected)

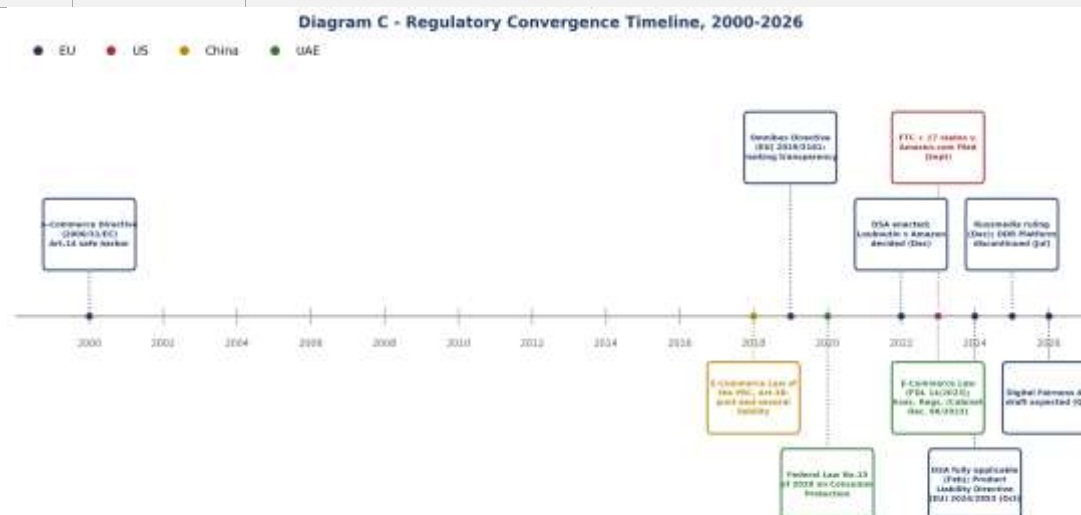


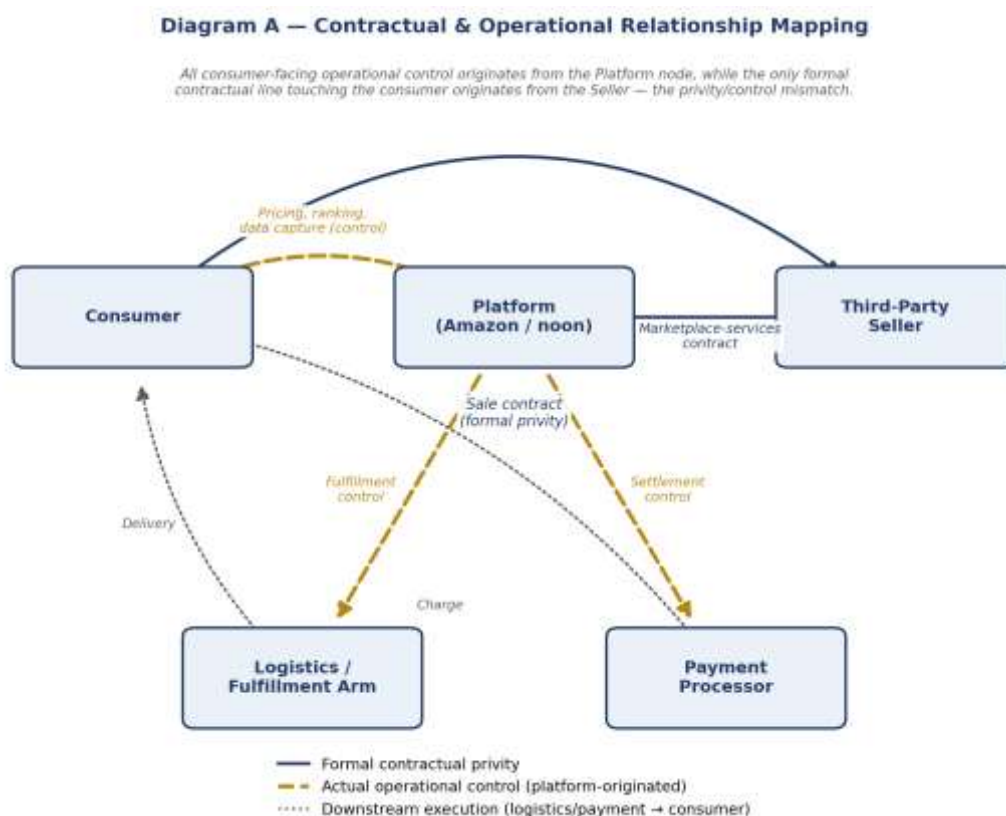
Figure 1

Regulatory Convergence Timeline, 2000-2026

The pattern adheres more closely to the chronological timeline below than to the individual assessment of each jurisdiction's tools: from 2022 the EU has released four major doctrinal or legislative developments (the DSA coming into force, Louboutin, the Product Liability Directive and Russmedia) compared to the USA (FTC action), China (the core instrument predates the 2022-2026 window but is still the governing instrument), and the United Arab Emirates (2023 E-Commerce Law and Executive Regulations). This accelerating frequency in the EU's doctrinal development since 2022 is evidence of the functional pressure this article identifies. Regulators are responding, instrument by instrument, to the same active-intermediary problem that the AIL framework in Section 4 proposes to address directly and comprehensively.

4. Proposed Framework: Active Intermediary Liability

Figure 2 identifies the structural problem this section seeks to address. The only entity that has a contractual relationship with the consumer is the third-party seller, who contracts with the platform to have its goods and services sold. Every other operational feature of the user experience (price display, search sorting, data collection and storage, physical fulfillment routing, payment settlement) is controlled by the platform. There is no existing privity doctrine in any of the four jurisdictions analyzed in Section 3 that can make sense of both the privity line and the control lines.

**Figure 2****Contractual and Operational Relationship Mapping****4.1 Four Control Criteria**

Based on Louboutin, the DSA's Article 6(3) and the economic-operator clause of the Product Liability Directive, this article identifies four functional control factors that empirically distinguish active from passive intermediation. While doctrinally present elsewhere, the four factors are combined in a single, weighted, cross-domain test that has not been previously developed.

Algorithmic pricing and ranking control: the platform sets or adjusts the retail price algorithmically, or controls the search ranking or listing visibility of competing offers for the same product.

Fulfillment and logistics integration: the platform stores, ships, or handles returns for third-party inventory, including through fulfillment-by-platform programs.

Uniform or branded presentation: third-party listings are presented under uniform platform branding such that seller identity is not clearly distinguishable to a reasonably observant consumer.

Data-layer control: the platform exclusively, or near-exclusively, controls consumer reviews, identity verification, or payment routing for the transaction.

4.2 A Graduated Joint-Liability Model

This article proposes that liability attach in three graduated tiers according to the number of criteria satisfied, rather than through the binary active/passive determination that current doctrine -- including the DSA's own Article 6(3) -- still nominally requires courts to make.

Two or more criteria met: full joint-and-several liability between the platform and the third-party seller, analogous to, but more precisely specified than, China's Article 38 standard.

Exactly one criterion met: secondary or residual liability, subject to a rebuttable presumption of active role. This tier operationalizes Rott's (2025) burden-of-proof insight directly: the evidentiary burden shifts to the platform, which alone holds the algorithmic and operational data needed to rebut the presumption, rather than requiring the consumer to prove control the platform's own systems conceal from view.

No criteria met: the conditional safe harbor is retained, subject to enhanced notice-and-action duties consistent with Article 6 of the DSA and Article 14 of the e-Commerce Directive.

Figure 3 renders this graduated model as a decision flowchart, annotating each terminal outcome with its doctrinal analogue in existing law, so that the model's relationship to current doctrine -- rather than its departure from it -- remains visible at each branch.

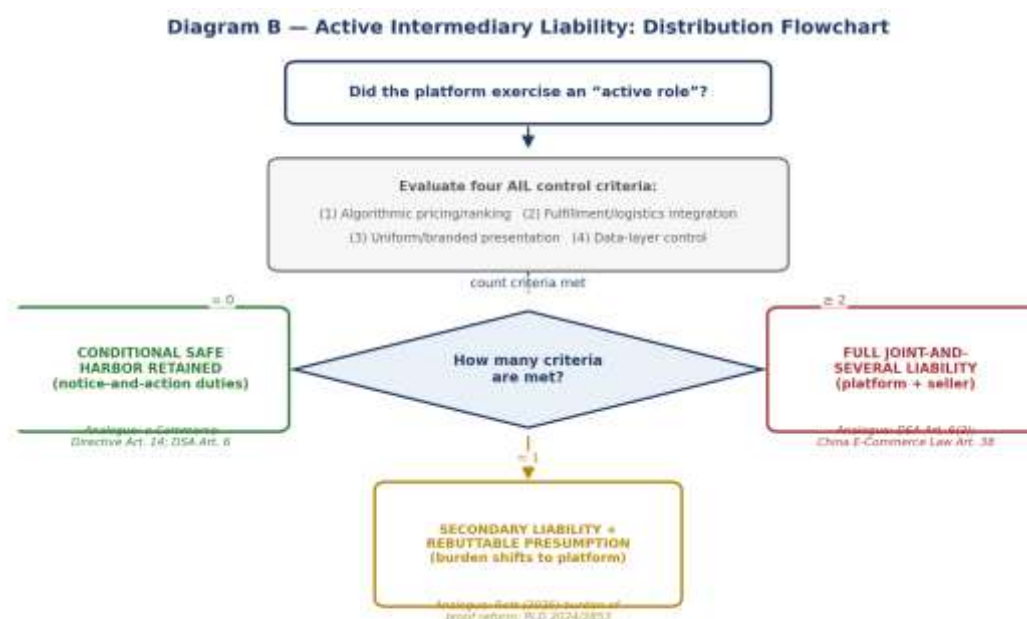


Figure 3

Active Intermediary Liability: Distribution Flowchart

Table 4 sets out the same four criteria with their indicative evidence, EU doctrinal source, and liability consequence in matrix form, for direct doctrinal reference.

Table 4

Active Intermediary Liability Criteria Matrix

Control Criterion	Indicative Evidence	EU Doctrinal Source	Liability Consequence (per criterion)
(1) Algorithmic pricing / ranking control	Platform sets or adjusts retail price algorithmically; controls search ranking or listing visibility	Louboutin v Amazon (2022); DSA Art. 6(3)	Counts toward “active role” determination
(2) Fulfillment / logistics integration	Platform stores, ships, or handles returns for third-party inventory (e.g., fulfillment-by-platform programs)	Louboutin v Amazon (2022) — ancillary-services criterion	Counts toward “active role” determination
(3) Uniform / branded presentation	Third-party listings presented under uniform platform branding; seller identity not clearly distinguishable	Louboutin — “reasonably well-informed and reasonably observant” consumer standard; DSA Art. 6(3)	Counts toward “active role” determination
(4) Data-layer control	Platform exclusively or near-exclusively controls reviews,	Product Liability Directive 2024/2853 —	Counts toward “active role” determination

Control Criterion	Indicative Evidence	EU Doctrinal Source	Liability Consequence (per criterion)
	identity verification, or payment routing	economic-operator clause	

Note. Liability tier is determined by the count of criteria satisfied: two or more criteria yield full joint-and-several liability; exactly one criterion yields secondary liability subject to a rebuttable presumption of active role; zero criteria leave the conditional safe harbor intact, subject to enhanced notice-and-action duties.

4.3 Anticipated Doctrinal Objections

Three key objections must be addressed. First, a joint-liability standard would injure the business model of platforms by discouraging services to consumers that add value (fulfillment, search/ranking optimization, buyer protection). The graduated structure answers that very question. A platform that does none of the four things will be fully protected. Similarly, fulfillment of only one of the four tests does not in and of itself render the platform liable unless the presumption is not rebutted. This also reflects a concern with concentration of control, not with the provision of each service.

Second, the application of AIL to platforms outside the regulating jurisdiction raises concerns of non-discrimination under the general WTO trade-law rules. AIL consists of criteria that apply in the same way and regardless of the nationality of the platform. The conduct of the platform in the regulating market is the only determining factor. Thus, it is designed to comply with, and is likely to comply with, the national-treatment principle, in the same way as the DSA.

Third, that AIL risks blurring the established boundary between product liability and contract liability. The article treats that blurring as a feature. Unlike the product-liability-specific reform proposed in Fairgrieve et al. (2024), AIL is deliberately domain-agnostic. The same four criteria are engaged, whether the underlying claim is based in product safety, contract formation, or data protection. The argument goes the same for whatever kind of divergence is alleged from the rule of strict liability: the platform exercises the same kind of algorithmic pricing control over the subject of a defective product, or over the subject of a service represented by an inaccurate description. Whatever doctrinal label a consumer's claim is attached to, it ought not to matter in principle.

4.4 An Institutional Complement: Redress Mechanism Design

Because the failure of the ODR Platform, discussed in Section 1, was a failure of voluntary referral architecture rather than liability substance, I propose that platform-funded, binding-arbitration redress should be directly keyed to the AIL liability tier triggered by the underlying claim. Platforms in the full joint and several tier should be required to fund and submit to binding arbitration on terms set by the regulator, rather than being directed to a voluntary portal with no power to compel platform participation. This recommendation treats the design of redress mechanisms as inseparable from the design of substantive liability, addressing both halves of the deficiency this article diagnoses.

4.5 AIL as the Articulation of an Existing Trajectory

The EU's own legal development trajectory from the DSA through the Product Liability Directive, and now the forthcoming Digital Fairness Act, moves instrument-by-instrument toward the logic AIL explicitly articulates: that concentrated operational control over a transaction is the relevant trigger for liability, regardless of the formal contractual structure dressing that control. This article's contribution is to make that trajectory explicit, portable, and criteria-based, rather than leaving it to be reconstructed piecemeal from successive instruments and case-by-case CJEU elaboration. AIL's model may serve as an exportable template not just for the UAE, but the broader GCC and other developing e-commerce markets that, to date, have modernized their consumer-facing rules without codifying any active-role doctrine at all.

5. Conclusion and Policy Recommendations

This article has instead argued that the active/passive intermediary binary inherited from both the e-Commerce Directive and section 230 of the Communications Decency Act is outmoded in practice. Digital platforms can exert explicit control over pricing, ranking, fulfillment, and the final consumer-facing data layer, but the contract of sale still runs, in most cases, to a nominally independent third-party seller. Thus, we have proposed an AIL approach. Crucially, it is not an absolutist rule that platforms are always liable or never liable (a common misunderstanding of our framework). It is a flexible and evidence-based approach that allows a platform to exercise its safe harbor in full if it does not meet any of our criteria. The graduated structure is the point, not an afterthought.

These jurisdictional recommendations follow from our comparative analysis in Section 3. In the EU, these four criteria should be codified in the forthcoming Digital Fairness Act, rather than left to the gradual competence-building of case law development by the CJEU, which for the Louboutin and Russmedia cases shows could take years even to construct a single doctrinal rule on a single factual scenario for only those parties and facts

concerned. Finally, a U.S. legislative carve out to Section 230, modeled on the DSA Article 6(3) rationale, would reduce reliance on state-by-state tort litigation as the primary federal regulatory approach for closing the same liability gap. A more structured application of the four-criteria evidentiary framework proposed herein could eliminate the operational dependency of the Chinese Article 38 "knew or should have known" standard on a single knowledge threshold subject to rebuttal. This article recommends that the UAE and the GCC should address the liability-allocation gap discussed in Section 3.4 with an explicit active-role test in the Executive Regulations of the Consumer Protection Law before the GCC's burgeoning e-commerce sector exceeds the legal principles intended to regulate it.

Three caveats have to be mentioned. First, this is a doctrinal and comparative study and does not, therefore, offer a new quantitative dataset on the prevalence of control-criteria across platforms. To its credit, the article uses the available empirical studies, such as Mathur, Mayer and Kshirsagar (2019) on the prevalence of dark patterns. The article's choice of jurisdictions (four legal systems in which the philosophies of liability diverge most) is illustrative, and not thorough. The framework's application to other GCC countries, to the e-commerce markets in South and Southeast Asia, and Latin American consumer-protection systems remains to be tested. The analysis in this article is based on instruments that were still in development: rather than yet reaching a final form, as the article was written, the Digital Fairness Act may well differ from the conclusions this article draws from the Commission's consultation documents.

The limitations lead to a number of future research opportunities, ranging from estimating the distribution of the four AIL control criteria across the major platforms operating across jurisdictions, to testing whether the criteria produce stable and reproducible liability-tier classifications. Another research direction is determining the degree to which platform liability-insurance markets are responsive to AIL-style exposure. The cost of insurance is an independent, market-based signal of whether the graduated tiers are correctly calibrated. Third, once the Digital Fairness Act is enacted in 2026, it will be possible to examine how the AIL interacts with other forms of algorithmic control such as AI-driven personalization and dynamic pricing. The first prong of the AIL covers personalization technology, which is poised to be a prominent site of conflict in the Digital Fairness Act...

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