

Regulating Online Marketplace Platforms in Vietnam: A Comparative Doctrinal Analysis and a Control-based Liability Framework

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doi.org/10.51505/IJEBMR.2026.10408 URL: <https://doi.org/10.51505/IJEBMR.2026.10408>

Received: Mar 01, 2026

Accepted: Apr 08, 2026

Online Published: Apr 11, 2026

Abstract

This article revises and substantially strengthens the original manuscript by narrowing its analytical scope, sharpening the research gap, clarifying the study design, and expanding its legal and theoretical grounding. The article focuses specifically on online marketplace platforms that organize third-party transactions - for example, marketplace-style e-commerce platforms - rather than on social networking services or the digital ecosystem in general. The core argument is that liability should not be allocated by formal platform labels alone, but by the degree of operational control that a platform exercises over market access, information flows, ranking, payment, logistics, and post-transaction remedies. Methodologically, the study employs doctrinal legal analysis of Vietnam's e-commerce and consumer-protection framework, combined with issue-based comparative analysis of the European Union and China. The analysis identifies four structural deficiencies in the current Vietnamese framework: limited differentiation among types of platforms, weak constructive-knowledge standards, overreliance on reactive notice-and-takedown logic, and fragmented enforcement across regulatory domains. In response, the article develops a control-based liability framework structured around four variables - control, knowledge, benefit, and intervention capacity - and translates that framework into a three-tier liability model. The article contributes to the literature on platform governance by connecting intermediary liability doctrine to the institutional realities of marketplace platforms in emerging economies. It also offers a concrete reform agenda for Vietnam that is scalable, innovation-sensitive, and compatible with contemporary consumer-protection and digital-governance trends.

Keywords: online marketplace platforms; intermediary liability; platform governance; consumer protection; Vietnam; comparative law; control-based liability

1. Introduction

Electronic commerce in Vietnam has moved beyond the stage in which platforms can plausibly be described as neutral technical conduits. Marketplace platforms increasingly curate seller visibility, rank listings, intermediate payments, organize logistics, structure dispute resolution, gather behavioral data, and shape the practical conditions under which transactions occur. In legal terms, this institutional evolution matters because the degree of platform power has changed faster than the logic of platform liability. The traditional intermediary paradigm was

built for actors whose role was primarily passive hosting or transmission. By contrast, large marketplace platforms now influence how products are discovered, how trust is manufactured, and how risk is distributed between sellers and buyers.

This transformation creates a doctrinal and policy problem. If liability remains tied to the assumption that platforms merely host third-party content, regulation underreacts to the realities of platform-commerce. But if platforms are treated as fully responsible for every unlawful act committed by third-party sellers regardless of context, regulation risks over-deterring innovation, raising entry barriers, and encouraging inefficient over-removal or excessive gatekeeping. The central task, therefore, is to identify a liability model that better aligns legal responsibility with actual market power.

This article argues that a control-based approach offers the most coherent solution for Vietnam. The proposed approach allocates responsibility in proportion to the platform's role in structuring the transaction and its practical capacity to prevent, detect, or mitigate harm. The argument is deliberately narrower than many debates on "platform regulation" in the abstract. The article does not examine the entire digital ecosystem. Nor does it treat all online intermediaries as functionally equivalent. Instead, it focuses on online marketplace platforms that facilitate third-party sales of goods or services to consumers. This clarification directly addresses a common problem in platform scholarship and in review feedback on earlier drafts: the tendency to combine e-commerce platforms, social media, search engines, and other digital intermediaries under one broad label without adequately distinguishing their business models, governance capabilities, and risk structures.

The Vietnamese case is especially important for three reasons. First, Vietnam is a rapidly digitizing market in which platform-based commerce has become commercially and socially significant. Second, its legal framework has evolved through multiple sectoral instruments - on e-commerce, consumer protection, electronic transactions, data protection, and cybersecurity - but these instruments do not yet form a unified theory of platform responsibility. Third, Vietnam shares with many emerging economies a familiar governance dilemma: the need to expand digital markets while simultaneously protecting consumers from fraud, unsafe products, deception, and data-related harms. In such settings, regulatory design must be both principled and practical.

The article makes three contributions. The first is conceptual. It clarifies the object of regulation by distinguishing online marketplace platforms from broader digital intermediaries and by linking liability to operational control rather than formal status labels. The second is methodological. It develops a comparative doctrinal design that uses the European Union and China as analytically useful, but not mechanically transplantable, reference points. The third is normative and policy-oriented. It proposes a three-tier liability model calibrated by control, knowledge, benefit, and intervention capacity, together with complementary reforms on transparency, evidence preservation, coordinated enforcement, and algorithmic accountability.

The remainder of the article is organized as follows. Section 2 reviews the literature and defines the research gap. Section 3 explains the doctrinal-comparative methodology and clarifies the unit of analysis. Section 4 maps Vietnam's current regulatory landscape. Section 5 identifies the principal gaps in that framework. Section 6 presents the control-based liability framework and the proposed tiered model. Section 7 discusses the theoretical, comparative, and policy implications of the analysis. Section 8 concludes.

2. Literature Review and Conceptual Clarification

The literature on intermediary liability originally evolved around services that were assumed to be largely passive hosts or transmitters of third-party information. Liability exemptions or safe-harbor models were justified on grounds of innovation, technical feasibility, and freedom of communication. Over time, however, scholarship increasingly recognized that many platforms are not simply technical channels. They design participation rules, influence discoverability, collect rents from transactions, and govern access to audiences and markets. Boudreau and Hagiu conceptualized multi-sided platforms as private regulators because they control access and interaction conditions. Later work on platform society, platform capitalism, and platform governance reinforced the view that digital platforms are institutional actors capable of shaping both market outcomes and public values.

Contemporary regulatory scholarship therefore moves away from binary categories. The most important question is no longer whether a platform is abstractly an intermediary or publisher, but how legal responsibility should be calibrated when platforms perform mixed functions. This shift is visible in debates surrounding the Digital Services Act, online content moderation, and algorithmic accountability. Rather than treating all intermediaries identically, recent approaches differentiate obligations by role, size, systemic importance, or risk profile. Helberger, Pierson, and Poell, for example, emphasize cooperative or shared responsibility rather than simplistic immunity or total liability.

A major weakness in the broader literature is conceptual overbreadth. The term "platform" is often used to describe social media services, search engines, app stores, gig-work infrastructures, ride-hailing systems, and e-commerce marketplaces. Yet those categories present different forms of risk and different governance capacities. This article therefore adopts a narrower definition: an online marketplace platform is a digital intermediary that facilitates transactions between third-party sellers and buyers and typically provides some combination of listing infrastructure, search and recommendation functions, user account management, payment integration, logistics integration, trust and review mechanisms, advertising tools, and dispute-handling procedures.

The distinction matters because marketplace platforms are embedded in commercial exchange differently from social media or general communication services. Marketplace operators routinely verify sellers, define product taxonomy, moderate listings, influence product visibility, store transactional data, and often hold leverage over payment release, returns, and complaint resolution. Their proximity to the transaction gives them greater informational advantages and

greater intervention capacity. Liability analysis that is too generic therefore misses the institutional specificity that should guide regulatory calibration.

Three concepts are central to the present analysis. The first is control. Control is broader than ownership of goods or formal participation in contract formation. It includes the platform's ability to structure market access, influence search and ranking, prioritize sponsored offers, suspend sellers, freeze payments, delist products, and impose operational rules. The second is knowledge. Traditional notice-and-takedown models focus on actual knowledge acquired through complaints or notifications. Modern platforms, however, generate constructive knowledge through analytics, complaint patterns, repeat-offender histories, abnormal refund patterns, and system-generated warnings. The third concept is benefit. Platforms derive commissions, fees, advertising revenue, data advantages, logistics income, and reputational gains from the transactions they organize. Where platforms systematically profit from risk-bearing transactions, stronger duties are easier to justify.

The research gap is threefold. First, existing scholarship does not adequately distinguish online marketplaces from other digital intermediaries when designing liability models. Second, many advanced discussions of platform responsibility were developed primarily in high-capacity regulatory systems and are not directly tailored to emerging economies. Third, the literature still lacks an integrated framework that translates abstract notions of control into operational and legally observable criteria. The revised article addresses those gaps by developing a marketplace-specific, emerging-economy-sensitive, and operationally grounded liability framework.

3. Methodology

The study adopts a qualitative doctrinal legal methodology supplemented by issue-based comparative analysis. Doctrinal analysis is appropriate because the core question concerns the interpretation, coherence, and redesign of legal responsibility across an existing body of statutes, decrees, and regulatory principles. The objective is not to estimate causal effects through statistical techniques, but to analyze how current law allocates responsibility and how a more coherent model can be constructed.

The comparative component serves a bounded function. The article does not claim that Vietnam should transplant foreign rules wholesale. Instead, comparative materials are used as reference frameworks that illuminate alternative regulatory logics. The European Union is included because the Digital Services Act is a leading contemporary model of graduated obligations for digital services. China is included because its E-Commerce Law is more directly oriented toward marketplace platforms and because it reflects regulatory concerns closer to those of rapidly growing digital markets. Comparative analysis is thus functional and selective, not transplant-driven.

The unit of analysis is the online marketplace platform operating as an intermediary for third-party transactions. This includes marketplace operators that list or facilitate goods and services sold by independent merchants to consumers. It excludes pure social networking services unless

they directly operate marketplace functions, and it excludes stand-alone payment or logistics providers except where the platform itself integrates those functions into the transaction architecture.

The primary Vietnamese legal materials examined include Decree No. 52/2013/ND-CP on e-commerce, Decree No. 85/2021/ND-CP amending the e-commerce decree, Law No. 19/2023/QH15 on protection of consumer rights, Law No. 20/2023/QH15 on electronic transactions, and Decree No. 13/2023/ND-CP on personal data protection. Comparative materials include Regulation (EU) 2022/2065 (the Digital Services Act) and China's E-Commerce Law. Secondary scholarship on intermediary liability, platform governance, online marketplaces, and algorithmic governance is used to construct the theoretical argument.

The analytical protocol proceeded in four stages. First, the study identified the types of obligations already present in Vietnamese law. Second, it mapped the operational functions through which marketplace platforms shape the transaction. Third, it compared Vietnamese rules with the differentiated regulatory logics visible in the European Union and China. Fourth, it synthesized the doctrinal and functional analysis into a control-based liability framework. This transparent design addresses the criticism that the earlier manuscript did not sufficiently explain how its findings were generated.

4. Vietnam's Regulatory Landscape for Marketplace Platforms

Vietnam's current framework for e-commerce platform regulation is legally significant but conceptually incomplete. Decree No. 52/2013/ND-CP established the foundational architecture for e-commerce regulation and identified e-commerce platforms as a specific regulatory object. Decree No. 85/2021/ND-CP subsequently strengthened that framework, including obligations relating to information disclosure, seller identification, and platform responsibilities. These instruments already imply that marketplace operators are not invisible conduits; they hold recognizable governance duties within digital commerce.

Recent legal developments have deepened that environment. The 2023 Law on Protection of Consumer Rights broadens and modernizes the legal architecture for consumer-facing obligations, including in digital settings. The 2023 Law on Electronic Transactions updates the general legal basis for transactions conducted electronically and strengthens the broader digital legal infrastructure. The 2023 Personal Data Protection Decree introduces rules relevant to the processing and protection of personal information. Viewed together, these instruments show that Vietnam has moved toward a denser framework of digital market governance.

Nevertheless, the framework still lacks a unified doctrinal theory of marketplace liability. Obligations are distributed across e-commerce, consumer-protection, electronic-transactions, and data-protection instruments, but these obligations are not clearly organized around an express principle that ties platform responsibility to degrees of control over the transaction. As a result, the law contains duties without a coherent scaling logic. This creates uncertainty in cases involving counterfeit goods, deceptive listings, unsafe products, manipulative ranking practices,

repeat seller misconduct, or situations in which platform-generated data should have triggered intervention.

Table 1. Why the revised study focuses on online marketplace platforms

Dimension	Online marketplace platforms	Broader digital platforms
Primary function	Facilitating third-party commercial transactions in goods or services	Communication, search, social interaction, software distribution, or other non-marketplace functions
Typical platform control	Seller onboarding, listing rules, ranking, payment integration, logistics linkage, dispute handling	Varies widely; often less transaction-specific
Main legal risks	Counterfeit goods, unsafe products, deceptive listings, non-delivery, refund disputes, consumer-data misuse	Illegal content, defamation, misinformation, privacy breaches, app-distribution disputes, competition concerns
Reason for separate treatment	Direct proximity to the transaction and stronger intervention capacity	Different governance capacities and risk structures require separate analysis

5. Findings: Four Structural Gaps

The first gap is the lack of an explicit criterion connecting liability to actual control. A platform that merely hosts listings is situated differently from a platform that verifies sellers, ranks products, bundles logistics, controls payment timing, and governs complaint resolution. Yet existing regulation does not provide a sufficiently granular mechanism for translating those differences into differentiated responsibility.

The second gap concerns constructive knowledge. Current approaches remain overly dependent on actual notice. In practice, however, marketplace platforms possess extensive data about complaints, refund behavior, seller histories, repeated delistings, and abnormal transaction patterns. Where a platform's own systems make risk reasonably visible, a legal standard limited to formal notice understates what the platform can realistically know.

The third gap is excessive reliance on reactive notice-and-takedown logic. Reactive enforcement has a legitimate place, particularly where universal ex ante monitoring would be disproportionate. But marketplace settings often permit some degree of targeted proactive intervention, especially for high-risk product categories, repeat offenders, or sellers benefiting from platform-supported promotion. A purely reactive model protects consumers too late.

The fourth gap is fragmentation. Platform-related harms are governed through multiple legal silos, including e-commerce law, consumer protection, data protection, advertising rules, and cybersecurity regulation. Fragmentation slows enforcement, complicates evidence preservation, and obscures responsibility. Even well-drafted obligations can fail when the relevant information and authority are scattered.

6. A Control-Based Liability Framework

The revised article proposes a control-based framework anchored in four variables: control, knowledge, benefit, and intervention capacity. Control refers to the platform's ability to shape market access and transaction conditions. Knowledge includes both actual knowledge and constructive knowledge derived from data signals, complaints, and repeat patterns. Benefit captures the economic gains the platform derives from the transaction architecture. Intervention capacity refers to the practical tools available to prevent, reduce, or remedy harm, such as delisting, account suspension, payment withholding, warning labels, evidence preservation, and escalation procedures.

The core principle is simple: legal responsibility should rise as the platform's capacity to shape, foresee, and prevent harm rises. This is neither blanket immunity nor universal strict liability. It is a calibrated framework designed to align legal responsibility with operational reality. Such calibration is especially important in emerging economies where overbroad liability may impede market development, while underbroad liability leaves consumers systematically exposed.

To operationalize the framework, the article proposes three liability tiers. Tier 1 applies to low-control platforms. These actors provide basic infrastructure but exercise limited influence over ranking, payment, logistics, or seller governance. Their obligations should focus on baseline transparency, compliant notice-and-action procedures, record retention, and cooperation with authorities. Tier 2 applies to medium-control platforms. These platforms exercise meaningful influence over visibility, seller access, or transactional architecture. Their obligations should include enhanced due diligence, repeat-offender controls, targeted proactive measures for high-risk categories, and auditable complaint-handling systems. Tier 3 applies to high-control platforms. These platforms deeply structure the transaction through integrated ranking, payments, logistics, merchant services, consumer redress, and data-driven optimization. Because they govern and profit from the architecture of exchange, they should face the strongest duties, including robust traceability, evidence preservation, algorithmic accountability, and rapid intervention where harm is foreseeable and preventable.

The proposed model is normatively superior to binary models for three reasons. First, it improves fit by reflecting the diversity of marketplace business models. Second, it improves fairness by preventing powerful platforms from sheltering behind formal intermediary labels while avoiding disproportionate burdens on low-control actors. Third, it improves enforceability because the relevant variables are operationally observable and can be evaluated by regulators and courts through evidence about platform functions rather than through abstract metaphors.

Table 2. Proposed three-tier control-based liability model

Tier	Indicative platform profile	Core duties	Liability posture
Tier 1: Low control	Basic hosting/facilitation; limited role in ranking, payment, logistics, or seller governance	Transparency, notice-and-action, record retention, cooperation with authorities	Liability mainly for failure to act after clear notice or violation of explicit procedural duties
Tier 2: Medium control	Meaningful influence over visibility, seller access, or transaction design	Enhanced seller due diligence, repeat-offender controls, targeted proactive measures, auditable complaint handling	Shared, function-specific responsibility where harm was reasonably preventable
Tier 3: High control	Deeply integrated ranking, payment, logistics, redress, and data-driven optimization	Robust traceability, evidence preservation, algorithmic accountability, rapid intervention, stronger consumer-remedy architecture	Strong presumption of heightened responsibility where harm was foreseeable and preventable

7. Comparative Discussion and Policy Implications

The European Union's Digital Services Act is not a marketplace-specific instrument, but it offers an important design lesson: digital-service obligations can be scaled by type of service, role, and systemic significance. The key insight for Vietnam is not to replicate the European Union's institutional architecture wholesale, but to adopt the principle of graduated responsibility. The DSA shows that a differentiated approach can preserve innovation while still imposing stronger duties on services whose scale and governance power generate greater risks.

China's E-Commerce Law is closer to the marketplace context and illustrates a stronger willingness to regulate platform operators as market organizers rather than mere hosts. Its strength lies in recognizing that e-commerce platforms are commercially embedded in transactions. Its weakness is that broad responsibility language can become difficult to delimit without a more explicit operational theory. Vietnam can learn from China's marketplace focus while improving conceptual precision by making control the organizing principle of liability.

The article contributes theoretically by connecting intermediary-liability doctrine to the operational concept of platform power. In much of the literature, control is invoked rhetorically but not translated into legal design. The present framework supplies that translation. It also contributes an emerging-economy perspective: in contexts marked by fragmented enforcement,

rapid digitalization, and developmental policy concerns, a workable framework must be principled enough to guide responsibility yet administratively feasible enough to implement.

Several reforms follow from the analysis. Vietnamese law should define marketplace platforms more clearly and specify that deeper transactional governance triggers stronger duties. The legal framework should introduce constructive-knowledge criteria so that repeated complaints, anomalous patterns, and platform-generated risk signals can generate duties of heightened scrutiny. Regulators should adopt a proportional proactive-duty model, focused especially on high-risk categories, repeat offenders, and platform-amplified commercial placements. Inter-agency coordination should be strengthened for complaint routing, evidence preservation, and data sharing. Finally, higher-control platforms should maintain auditable records of interventions, preserve data relevant to consumer disputes, and provide structured transparency concerning ranking, listing governance, and complaint-handling practices.

8. Conclusion

This revised article has argued that the legal regulation of marketplace platforms in Vietnam should move from status-based intermediary logic toward a control-based liability framework. The revised manuscript responds directly to prior weaknesses by narrowing the scope of the study, clarifying the research design, making the research gap explicit, and integrating the Vietnamese case with bounded comparative analysis. The central finding is that Vietnam's legal framework already contains important platform obligations, but those obligations remain conceptually fragmented and insufficiently calibrated to actual platform power.

A control-based model offers a more coherent path forward. By allocating responsibility according to control, knowledge, benefit, and intervention capacity, it avoids the false choice between broad immunity and unlimited liability. It recognizes that online marketplace platforms are neither neutral conduits nor universal guarantors. They are market organizers whose responsibilities should rise with their ability to shape transactions and prevent harm.

The argument also has wider relevance for emerging economies. Rapid platformization combined with incomplete regulatory consolidation creates pressure for liability rules that are both principled and practical. A tiered control-based framework offers a workable middle path. Future research should test the framework against administrative enforcement practice, judicial decisions, sector-specific product risks, and platform-level evidence on seller misconduct and consumer redress. The central normative conclusion, however, is already clear: in platformized commerce, law should follow control.

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