KSTARR Enterprises, LLC

Negligent Delegation of Digital Enforcement™

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I. Purpose

The framework of *Negligent Delegation of Digital Enforcement*™ seeks to establish a legal standard that addresses the unconstitutional outsourcing of enforcement authority to private digital platforms under the guise of protecting public interests, especially children. This framework is motivated by recent legislative actions, exemplified by Louisiana HB 142, that assign the burden of enforcing sensitive and constitutionally complex mandates, such as age-verification or content restriction, to unregulated private entities with no public oversight.

This delegation not only undermines due process but also circumvents traditional legal scrutiny. It creates a dangerous precedent in which government enforcement responsibilities are shifted to corporations with misaligned incentives, inadequate accountability, and no legal obligation to uphold constitutional rights. The purpose of this framework is to expose this shift, articulate its harms, and provide a doctrinal foundation to challenge it in court.

II. Scope

This doctrine applies in instances where a state or government entity delegates a statutory enforcement duty to a private company or digital platform. It specifically addresses scenarios in which such delegation occurs without the retention of meaningful government oversight, liability, or procedural safeguards. The doctrine is invoked when the delegated enforcement directly or foreseeably affects rights protected under the United States Constitution, including, but not limited to, freedom of speech, privacy, due process, and equitable access to public-facing systems.

This framework is particularly salient in digital environments where private actors function as de facto gatekeepers to essential services, public information, or expressive content. It engages core constitutional doctrines, including federalism, the non-delegation doctrine, and the state actor doctrine, by asserting that enforcement of public law cannot be outsourced in ways that dilute constitutional protections or evade governmental accountability.

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III. Foundational Legal Theory

The delegation of enforcement powers to private digital platforms violates several foundational principles of constitutional and administrative law. Chief among them is the **Non-Delegation Doctrine**[1][2][3][4], which, although historically underenforced, prohibits legislatures from transferring core enforcement responsibilities to actors who operate beyond the bounds of legal accountability. In the digital era, this doctrine demands renewed application. Entrusting platforms such as Pornhub[5] or third-party age verification vendors with the statutory power to screen users, deny access, or process highly sensitive personal data is tantamount to deputizing private companies without any procedural constraint or constitutional limitation.

Second, the **State Actor Doctrine**[6][7] compels recognition that when a private entity performs a function assigned by statute, particularly when noncompliance carries legal consequences, that entity assumes the role of a state actor. As such, the platform must conform to constitutional norms. In practice, however, these private platforms routinely enforce laws in ways that enable abuse, foster discrimination, and lead to the arbitrary or opaque denial of digital access. They are not operating under the rule of law but under internal policies and commercial imperatives, while executing government-delegated authority.

Third, such delegation undermines **Due Process**[8]. When access to lawful content or digital spaces is conditioned on opaque private procedures, with no clear mechanism for notice, appeal, or correction, the legal system has effectively outsourced justice. The result is an unreviewable enforcement regime where users are stripped of procedural protections and deprived of remedy. Delegation to private platforms transforms legal enforcement into an absolute process, immune from judicial scrutiny and constitutional safeguards.

Lastly, this practice conflicts with the principle of **Federal Supremacy**. Section 230 of the Communications Decency Act[9][10] delineates the contours of liability and immunity for online platforms[11]. When states impose additional enforcement duties, particularly those that force platforms to monitor, screen, or punish users, these laws interfere with the federal regulatory framework. The result is a patchwork of conflicting obligations that erodes federal supremacy and destabilizes the uniform protections Congress enacted to govern digital communication.

IV. Elements of Negligent Delegation

Negligent Delegation of Digital Enforcement™ arises when certain structural conditions are met, collectively signaling a breakdown in lawful governance and constitutional accountability. First, a government entity must enact a statute that requires enforcement of a protected category[12], such as age, identity, or eligibility, but declines to carry out the enforcement directly[13]. Instead, the enforcement function is delegated to a private company, platform, or third-party service provider[14].

Second, this private actor must carry out enforcement without being subject to meaningful governmental oversight, public accountability, or accessible redress mechanisms for those

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affected. The absence of regulatory guardrails or appeal procedures renders the enforcement mechanism opaque and unchecked.

Third, the delegated enforcement must result in actual or foreseeable infringement of constitutional or commercial rights[1516]. This may include infringements on speech, privacy, due process, or access to digital services, particularly when the delegated actor has discretion to deny access based on non-transparent criteria.

Finally, the harm must be structural, not merely individual. The delegation must interfere with the broader ecosystem of rights, legal recognition, and digital governance. In such cases, the injury is not limited to a single plaintiff but extends to the integrity of legal frameworks that protect public access, constitutional consistency, and the role of the state itself in upholding justice.

V. Harms and Consequences

The consequences of negligent delegation are profound, extending well beyond individual grievances to encompass systemic distortion of constitutional governance. When states delegate enforcement to private actors, the harm becomes structural. This practice creates a two-tiered society in which rights are no longer determined by democratically enacted law or judicial oversight, but instead by platform discretion, algorithmic profiling, and opaque commercial policies. Individuals' access to speech, services, or information is conditioned on criteria they cannot see, influence, or challenge.

Enforcement becomes invisible. There is no public record, no judicial process, and no avenue of appeal. By outsourcing enforcement, governments obscure their own involvement while allowing private entities to enact de facto law. The line between public mandate and private decision is blurred, intentionally so, leaving citizens unable to hold any actor accountable.

Moreover, the tools of enforcement are not neutral. Platforms monetize the process, collecting and leveraging sensitive personal data under the guise of compliance. Access is conditioned on surveillance, consent is coerced, and restrictions are imposed according to standards that serve corporate interests rather than public welfare.

Finally, the loss of legal remedy is perhaps the most dangerous outcome. When a citizen is denied access[17] or profiled by a private platform enforcing a state mandate, there is no clear defendant. The state claims it merely passed a law. The platform claims it is not a state actor. In this legal void, the individual's rights are functionally erased. The harm is real, but the system offers no recognition, and no redress.

VI. Constitutional Basis

The Negligent Delegation of Digital Enforcement™ framework is grounded in foundational constitutional principles that govern the limits of state power, particularly when intersecting with digital governance. At its core, the First Amendment[18] requires that when a law implicates

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expression[19], whether through access to content, platforms, or communicative tools, the state cannot outsource enforcement without retaining meaningful oversight[20]. Delegating these decisions to private platforms creates an impermissible buffer between state authority and individual rights, shielding enforcement from scrutiny while suppressing lawful speech.

The Fourteenth Amendment's[21] Due Process Clause[22] is equally implicated. Legal determinations about identity, eligibility, or access, especially when tied to statutory compliance, must adhere to procedural fairness[23]. Delegation to private actors without notice, opportunity for appeal, or accountability mechanisms violates this constitutional safeguard, denying individuals a voice in decisions that affect their rights[24].

The Commerce Clause[25] provides additional protection by restricting states from enacting laws that impose conflicting or burdensome requirements on entities operating across state lines[26]. Digital platforms, by their nature, are national and often global in scope. When states impose localized mandates without uniform federal oversight, they disrupt the coherence of the national digital economy and burden interstate commerce.

Finally, under the Supremacy Clause[27], federal laws such as Section 230 of the Communications Decency Act preempt state laws[28] that interfere with the balance Congress has struck between platform immunity and liability[29]. State mandates that conscript platforms into enforcement roles, especially when done without federal authorization, create legal conflict and undermine the supremacy of federal digital governance.

VII. Remedy

The Negligent Delegation of Digital Enforcement™ framework provides courts with a principled basis to restore constitutional integrity where enforcement powers have been improperly transferred to private actors. Courts may declare such delegation unconstitutional, recognizing that the outsourcing of statutory enforcement, particularly when it implicates fundamental rights, violates established principles of due process, accountability, and public oversight. As a corrective measure, judicial remedies may include requiring that enforcement duties remain under the control of public agencies, subject to legal scrutiny and procedural safeguards.

Furthermore, courts may enjoin the operation of laws that permit or rely on private enforcement without adequate protections for those affected. Such injunctions serve not only to prevent further harm but to reaffirm the state's non-transferable obligation to administer justice and uphold constitutional standards. By doing so, the judiciary can restore legal clarity, reestablish due process in the digital realm, and ensure that fundamental rights are not silently eroded through unregulated delegation.

VIII. Application

The Negligent Delegation of Digital Enforcement™ framework applies to statutes in which enforcement of legal duties, particularly those implicating fundamental rights, is transferred from

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the state to private, unaccountable entities. Notable examples include Louisiana's HB 142, which mandates age verification on pornography platforms without government oversight; and social media laws in Texas and Utah, which compel platforms to moderate speech according to state-defined standards. These laws assign enforcement responsibilities to digital platforms, thereby bypassing constitutional procedures, eliminating public accountability, and creating enforcement regimes that operate without transparency or remedy.

Although such statutes often arise in response to moral panic or genuine social concerns, their structural design betrays constitutional principles. The problem lies not in the stated purpose of protecting children or preserving public order, but in the method of enforcement, one that circumvents due process, delegates state authority to private actors, and fractures the boundary between law and commerce. This framework challenges the underlying structure of these laws, offering a legally coherent and constitutionally grounded blueprint for contesting their validity beyond surface-level justifications.

IX. Closing Statement

Digital governance must not evolve into a regime of privatized law. When governments delegate their most sensitive enforcement duties, such as protecting speech, privacy, or public safety, to private, unregulated platforms, they abdicate the very foundation of constitutional order: the rule of law. The Negligent Delegation of Digital Enforcement™ doctrine restores legal clarity by drawing a firm boundary between state authority and private action. It insists that enforcement functions, especially those implicating fundamental rights, must remain public, visible, and accountable.

This doctrine is not merely reactive; it is preventive. It is designed to halt the subtle and accelerating erosion of constitutional governance that occurs when laws are enforced not by courts or agencies, but by commercial algorithms and content moderators operating in legal silence. Beneath the digital veneer of protection lies a dangerous inversion, where law is enforced without law, and rights are denied without remedy. This framework reasserts the essential premise that justice must not be outsourced.

Citations and Attributes

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Bluebook (Legal):
Katherine Starr, *Negligent Delegation of Digital Enforcement™: A Framework for Constitutional Accountability in Platform Governance*, KStarr Enterprises, LLC (2025), https://www.katherinestarr.com/citations/Digital-Enforcement-Katherine-Starr.pdf

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[1] *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935)
[2] 295 U.S. 495 (1935)
[3] Mistretta v. United States
[4] 488 U.S. 361 (1989)
[5] Louisiana HB 142
[6] Brentwood Academy v. Tennessee Secondary School Athletic Association
[7] 531 U.S. 288 (2001)
[8] *Goldberg v. Kelly*, 397 U.S. 254 (1970)
[9] 47 U.S.C. § 230;
[10] *Zeran v. America Online*, 129 F.3d 327 (4th Cir. 1997)
[11] *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000)
[12] Doe v. Reed, 561 U.S. 186 (2010)
[13] West v. Atkins, 487 U.S. 42 (1988)
[14] Lebron v. National Railroad Passenger Corp., 513 U.S. 374 (1995)
[15] Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963)
[16] Packingham v. North Carolina, 582 U.S. 98 (2017)
[17] Whole Woman's Health v. Jackson, 595 U.S. ___ (2021)
[18] The First Amendment to the U.S. Constitution states:
"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
[19] *Manhattan Community Access Corp. v. Halleck*, 587 U.S. ___ (2019)
[20] *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288 (2001)fairness
[21] The Fourteenth Amendment to the U.S. Constitution states:
"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (U.S. Const. amend. XIV, § 1)
[22] The Due Process Clause of the Fourteenth Amendment prohibits state governments from depriving any person of life, liberty, or property without fair legal procedures. It serves as a constitutional safeguard against arbitrary government action and is central to many civil rights protections. *See* U.S. Const. amend. XIV, §
[23] *Mathews v. Eldridge*, 424 U.S. 319 (1976)
[24] *Goldberg v. Kelly*, 397 U.S. 254 (1970)
[25] *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945)
[26] *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012)s
[27] *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000)
[28] 47 U.S.C. § 230(e)(3)
[29] *Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398 (6th Cir. 2014)

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