

JSA Prism Regulatory (Communications)

June 2022

Proposed Amendments to the Intermediary Rules

Ministry of Electronics and Information Technology (“**MeitY**”) has proposed certain amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**Intermediary Rules**”) to address the challenges and problems faced by the internet users as the digital eco-system and connected Internet users in India expand.

The broad principles that underpin these Intermediary Rules are:

- That the Internet should be open, safe & trusted and accountable for all Indians using the Internet;
- That all online intermediaries providing services in India may never contravene the Indian constitution or any laws or rules that are in effect in India;
- That any unlawful and harmful information violative of their own terms and conditions are to be quickly removed when reported by users, while also providing the users a reasonable opportunity to respond in case of significant social media platforms; and
- That the grievance officers of intermediaries either do not address the grievances satisfactorily and/or fairly, and hence there is a need for an appellate forum to protect the rights and interests of users.

In view of the above principles, MeitY is proposing the below mentioned four amendments:

1. It is proposed that rules 3(1)(a) and 3(1)(b) of the Intermediary Rules be amended in the below manner to require intermediaries to ensure that users comply with the due diligence requirements enshrined in them:
 - The intermediary must prominently publish the rules and regulations, privacy policy and user agreement for access or usage of its computer resource by any person and ensure compliance of the same.
 - The intermediary is required to inform the rules and regulations, privacy policy or user agreement of the intermediary to the user and require the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that belongs to another person, that is defamatory, false, obscene, invasive of another person’s privacy, impersonates another person, contrary to law including Article 19(2) of the Indian Constitution which permits the government to impose reasonable restrictions upon the freedom of speech and expression in the interests of public order, harmful to a child, infringes any proprietary right, deceives the addressee about the origin of the message, and contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource.

2. Addition of rules 3(1)(m) and 3(1)(n) to respect the constitutional rights of Indian citizens in the manner depicted below:
 - the intermediary is required to take all reasonable measures to ensure accessibility of its services to users along with reasonable expectation of due diligence, privacy and transparency;
 - the intermediary is required to respect the rights accorded to the citizens under the Constitution of India.
3. It is proposed to add the below two provisos under rule 3(2) of the Intermediary Rules:
 - The first proviso will require any complaint for removal of any content under rule 3(1)(b) to be addressed within 72 hours of the receipt of the user's complaint, because of the very nature of cyber space providing instant communication, outreach and virality. Any other grievance will continue to be addressed within 15 days. This will help to ensure that problematic content is removed expeditiously and does not become viral.
 - The second proviso allows intermediaries to implement any safeguards to prevent any misuse of the grievance redressal mechanism by users.
4. It is proposed to create an appellate body namely the '*Grievance Appellate Committee*' under rule 3(3) of the Intermediary Rules. The Central Government will constitute one or more Grievance Appellate Committees, which will consist of a chairperson and such other members, as the Central Government may, by notification in the Official Gazette, appoint. Users will have the option to appeal against the grievance redressal process of the intermediaries before this new appellate body.

As a part of pre-legislative consultation process, MeitY is seeking comments from the public on the above listed proposed amendments. The comments may be shared at the following e-mail IDs – dhawal.gupta@meity.gov.in, notan.roy@meity.gov.in in either MS Word (or compatible format) or machine readable PDF format, till July 6, 2022.

For more details, please contact km@jsalaw.com



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