

Advisory by the Ministry of Electronics and Information Technology for intermediaries to take down prohibited content

On September 3, 2024, the Ministry of Electronics and Information Technology (“**MeitY**”) issued an [advisory](#) (“**September 3rd Advisory**”) to intermediaries, advising them to take prompt action in taking down prohibited content from their platforms.

The September 3rd Advisory directs intermediaries to initiate and complete the content takedown process as soon as it is deemed necessary, without awaiting the expiration of the time limits prescribed under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**IDMEC Rules**”) and to do so, proactively and at the earliest possible opportunity.

In issuing the September 3rd Advisory, the MeitY referenced an order of the Bombay High Court (“**Bombay HC**”) in *National Stock Exchange of India Ltd. vs. Meta Platforms, Inc.*¹ (“**NSE vs. Meta**”) where the Bombay HC directed Meta Platforms, Inc. (“**Meta**”) and the other defendants to take down content within 10 (ten) hours of receiving a complaint from National Stock Exchange of India (“**NSE**”).

Soon after the September 3rd Advisory, the MeitY also issued an [advisory dated September 13, 2024](#) (“**September 13th Advisory**”) which advised significant social media intermediaries (“**SSMIs**”) to: (a) ensure accountability towards an open, safe, trusted and accountable internet; and (b) compliance with additional obligations applicable to SSMIs, particularly publication of periodic compliance reports (regarding details of complaints received, action taken, number of links or information removed, or access disabled thereto as a result of engaging in proactive monitoring by deploying automated tools). The September 13th Advisory also requests SSMIs to publish such periodic compliance reports by the 10th of every month and forward the same to cyberlaw-meity@meity.gov.in.

Background on NSE vs. Meta

NSE had filed an interim application on the ground of urgency against Meta (operator of Facebook and WhatsApp) and other defendants (including the operator of Telegram) (“**Defendants**”) to take down: (a) unauthorised artificial intelligence generated videos of NSE managing director and chief executive officer, Mr. Ashishkumar Chauhan; and (b) unauthorised content containing NSE’s trademark.

NSE informed the Bombay HC that as and when it came across such content, it would report the same to Meta as a grievance and, consequently, the content would be removed. However, NSE submitted that the grievance redressal mechanism is time-consuming and impracticable in the long run, as during the period in which the fake videos are in circulation, there is a likelihood of grave and irreparable injury as investors may act on false information contained in the fake videos. NSE further submitted that time taken by the Defendants to take down content is critical (in some

¹ Interim Application (L) NO. 21456 of 2024 in Com IPR Suit (L) NO.21111 of 2024

cases, more than 17 (seventeen) days), since information in relation to the markets is extremely time-sensitive and investors are likely to act upon the same instantly.

Notably, the counsels for the Defendants, other than the operator of Telegram, were absent at the hearing when the Order was passed. The counsel for the operator of Telegram submitted that Telegram would be compliant with the IDMEC Rules, but Telegram cannot undertake adjudicatory or censorial function in identifying content that infringes NSE's intellectual property rights.

NSE argued that the timelines contained in the IDMEC Rules to take down content are advisory in nature, and considering the national importance of fraudulent content relating to the NSE, the Defendants must act with extreme urgency and remove unauthorised content at the earliest and not later than 10 (ten) hours. NSE also submitted that it would address all correspondence to the Defendants regarding content takedown from a designated email address.

Noting NSE's arguments, the Bombay HC held that Rule 3(1) of the IDMEC Rules requires intermediaries to undertake due diligence and make reasonable efforts to not host, display, upload, modify, publish, transmit, store, update or share any prohibited content, and consequently, the Defendants that are intermediaries are mandated to take prompt action on complaints received from entities such as NSE of their rights being violated. The Bombay HC also granted ad-interim relief to NSE directing the intermediary Defendants to take down prohibited content and dubious pages/profiles/accounts within 10 (ten) hours (and not exceeding 14 (fourteen) hours) from receiving a complaint from NSE.

Analysis of takedown provisions under IDMEC Rules

The IDMEC Rules are founded on the principles set by the Supreme Court of India ("**Supreme Court**") in *Shreya Singhal vs. Union of India*,² wherein it was held that it would not be reasonable to expect intermediaries to actively monitor users on their platforms. It noted that it is not feasible for platforms to judge the legitimacy of the millions of requests for content moderation that they receive.

The IDMEC Rules require intermediaries to take down content only upon receiving 'actual knowledge', in the form of a court order or order from authorities. Upon receipt of such an order, an intermediary must take down such content within 36 (thirty-six) hours. Additionally, intermediaries have an active obligation to take down content, within 24 (twenty-four) hours of receiving a complaint, which *prima facie* is of the nature of content which (a) exposes the private area of an individual; (b) shows such individual in full or partial nudity; (c) depicts an individual in any sexual act or conduct; or (d) is in the nature of impersonation in electronic form (including artificially morphed images).

In the absence of (a) 'actual knowledge' in the form of a court order or order from authorities; or (b) a complaint relating to sexual/impersonating content, intermediaries are required to undertake 'reasonable' due diligence efforts to prohibit their users from hosting prohibited content on their platforms. However, in view of *Shreya Singhal vs. Union of India*, an intermediary cannot be held liable where it does not actively moderate its platform.

Further, the IDMEC Rules require intermediaries to act on grievances (including by voluntarily taking down content) reported to them within 72 (seventy-two) hours to 15 (fifteen) days, depending on the nature of the content to which the grievance relates. However, this does not impose a strict takedown obligation, which is limited to only takedowns on the basis of actual knowledge and sexual/impersonating content.

Implication of NSE vs. Meta on *Shreya Singhal vs. Union of India* and IDMEC Rules

The Bombay HC's order in NSE vs. Meta may not have implications on the precedent set by the Supreme Court in *Shreya Singhal vs. Union of India* and the principles contained in the IDMEC Rules.

The Bombay HC order does not impose a general obligation on all intermediaries to proactively moderate their platforms, but only requires specific intermediaries (i.e., the Defendants that are intermediaries) to take down content

² (2015) 5 SCC 1

reported by a specific complainant (i.e., the NSE) through a specified email ID. The obligation to take down such content is similar to the obligation to take down content that is *prima facie* sexual/impersonating automatically (without adjudicatory or application of mind for censorship). Additionally, the 10 (ten) hour timeline set by the Bombay HC is an ad-interim measure set in view of the critical nature of the content in question and potential implications of the same, and not a general obligation for all intermediaries to comply with.

Advisories (such as the September 3rd Advisory) by the MeitY to intermediaries are also generally only advisory in nature and cannot be enforced without corresponding provisions contained in (binding) statutes, rules, regulations or other laws.

Conclusion

In conclusion, the Bombay HC's order in NSE vs. Meta, while significant, does not fundamentally change the established legal framework for social media intermediaries as outlined by the Supreme Court in *Shreya Singhal vs. Union of India* and the IDMEC Rules. The order specifically addresses Meta, requiring it to act quickly on complaints from the NSE without imposing a universal duty for all intermediaries to actively moderate content. However, the 10 (ten) hour removal requirement signals a growing expectation for intermediaries to respond promptly to urgent issues, which could lead to increased operational pressures. In any case, it is recommended for social media companies should implement effective content monitoring policies and grievance redressal mechanisms to avoid any potential scrutiny from the courts/regulator in the future.

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