

Salient Features of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

I. Introduction

Among a plethora of changes catalysed by the pandemic, the rise of OTT has been one of the more significant and perhaps welcome success stories for India. During the pandemic induced lockdown, India registered a reported 60% growth in paid OTT subscribers. The advantages of OTT are numerous in that the audience has access to a much wider range of consumer-controlled content which they can watch from the comfort of their homes at a much lower cost. However, content streamed on OTT platforms has been less regulated than its offline counterparts like cinema and television. With OTT platforms gaining popularity, a much-debated question for the media and entertainment industry has been, *“Will big screen cinema enjoy a level playing field where content is concerned?”*

Answering this question in the affirmative, on 25th February 2021, the Ministry of Electronics and Information Technology (“**MEIT**”) notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**Rules**”). In addition to providing a regulatory framework for OTT services, these Rules also provide for due diligence to be adopted by intermediaries. In this news alert we propose to provide a summation of the salient features of the Rules.

The Rules are divided into 3 parts:

- A. Part I provides for the definitions in the Rules;
- B. Part II provides for due diligence by intermediaries;
- C. Part III provides for the Code of Ethics And Procedure And Safeguards in relation to digital/online media.

II. Salient Features of the Rules

Key Highlights:

- Sets out a policy and process driven due diligence for social media intermediaries to comply with. Non-compliance thereto has a severe consequence of removal of immunity granted to intermediaries under section 79 of the IT Act.

- Clearly identifies content/ information that is offending e.g. which breaches copyright, is defamatory or obscene, harmful to a child, impersonates another etc. ("Offending Content")
- Provides process for removal/ takedown of offending content by the social media intermediary either (i) voluntarily, (ii) based on a complaint or grievance or (iii) pursuant to an order of a court or notification by the appropriate government.
- Sets out a thorough process to trace the origin / first originator of content.
- The Rules introduce a three-tier mechanism for regulation of media / online content.
- Confers powers upon an inter-ministerial committee to recommend a block / takedown direction pursuant to a complaint received after following the process set out under the Rules.
- Social media and OTT platforms will be required to appoint compliance officers, namely the (a) chief compliance officer, (b) nodal contact person and (c) the resident grievance officer to enhance accountability and ensure compliance with the Rules. All these officers are required to be resident in India.
- Introduction of a content rating system, akin to that imposed upon traditional media bodies such as U (universal), U/A 7+, A (adult) etc. The content will have to be classified according to context, theme, tone and impact, and target audience. They will also have to display content descriptors prominently for users to see before accessing the content.

Social media and OTT platforms are also expected to enable access control mechanisms, including parental locks, for content for those over 13 and put in place a reliable age mechanism regulation.

A. Part I- Important Definitions

Rule 2 provides for important definitions such as:

- (i) 'digital media' means digitized content that can be transmitted over the internet or computer networks and includes content received, stored, transmitted, edited or processed by-
 - (i) an intermediary; or
 - (ii) a publisher of news and current affairs content or a publisher of online curated content;
- (q) 'online curated content' means any curated catalogue of audio-visual

content, other than news and current affairs content, which is owned by, licensed to or contracted to be transmitted by a publisher of online curated content, and made available on demand, including but not limited through subscription, over the internet or computer networks, and includes films, audio visual programmes, documentaries, television programmes, serials, podcasts and other such content;

- *(u) ‘publisher of online curated content’ means a publisher who, performing a significant role in determining the online curated content being made available, makes available to users a computer resource that enables such users to access online curated content over the internet or computer networks, and such other entity called by whatever name, which is functionally similar to publishers of online curated content but does not include any individual or user who is not transmitting online curated content in the course of systematic business, professional or commercial activity*
- *(w) ‘significant social media intermediary’ means a social media intermediary having number of registered users in India, above such threshold as notified by the Central Government;*
- *(x) ‘social media intermediary’ means an intermediary which primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services;*
- *(y) ‘user’ means any person who accesses or avails any computer resource of an intermediary or a publisher for the purpose of hosting, publishing, sharing, transacting, viewing, displaying, downloading or uploading information and includes other persons jointly participating in using such computer resource and addressee and originator;*

B. Part II -Due diligence to be observed by intermediaries and subsequent grievance redressal mechanism to be adopted by intermediaries.

- Intermediary is defined under Section 2 (w) of the Information Technology Act, 2000 (“Act”) as “one with respect to any electronic record, on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.”
- **Rule 3(1) deals with the due diligence to be observed by intermediaries**

including social media intermediaries and significant social media intermediaries which *inter alia* includes the following:

- a. To prominently publish on their website and/or application, the rules and regulations, privacy policy and user agreement for access or usage of their computer resource by any persons. These rules are to inform the users that:
 - they are not to host, display, upload, modify, publish, transmit, store, update or share any information that is specifically mentioned in Rule 3(1) (b)¹ and *inter alia* includes information which is harmful to a child, is inconsistent or contrary to the laws in force, infringes any proprietary rights and is patently false and untrue.
 - that in the event of non-compliance with the rules and/or the privacy policy, the intermediary has the right to terminate the users' access or usage rights and/or remove the non-compliant information.
- b. To periodically (at least once a year) inform its users that in the event of non-compliance of the Rules, privacy policy for access/usage, it has the right to terminate the access or usage rights and/or remove the non-compliant information.
- c. The Intermediary upon receiving an order of a court or on being notified by the Appropriate Government or its agency under clause (b) of sub-section (3) of section 79 of the Act, shall not host, store or publish any unlawful information deemed so as per Rule 3(1)(d).
- d. As per Rule 3(1)(l) the intermediary shall report cyber security incidents and share related information with the Indian Computer Emergency Response

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- (i) ¹ belongs to another person and to which the user does not have any right;
 - (ii) is defamatory, obscene, pornographic, paedophilic, invasive of another's privacy, including bodily privacy, insulting or harassing on the basis of gender, libellous, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or otherwise inconsistent with or contrary to the laws in force;
 - (iii) is harmful to child;
 - (iv) infringes any patent, trademark, copyright or other proprietary rights;
 - (v) violates any law for the time being in force;
 - (vi) deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any information which is patently false or misleading in nature but may reasonably be perceived as a fact;
 - (vii) impersonates another person;
 - (viii) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting other nation;
 - (ix) contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource;
 - (x) is patently false and untrue, and is written or published in any form, with the intent to mislead or harass a person, entity or agency for financial gain or to cause any injury to any person;

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- **Rule 3(2) provides for a grievance redressal mechanism to be adopted by an intermediary which *inter alia* include the following:**
 - a. Rule 3(2)(a) provides for the appointment of a Grievance Officer whose contact details ought to be prominently published on the website/application. It also provides that any complaint made by a user/victim must be acknowledged within 24 hours and the complaint itself ought to be disposed within 15 days from the date of its receipt.
 - b. Under Rule 3(2)(b) the intermediary must take all reasonable and practicable measures to remove or disable access to illicit content within 24 hours of receiving a complaint in relation to such content if it is *prima facie* in the nature of any material which exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct, or is in the nature of impersonation in an electronic form, including artificially morphed images of such individual.
- **Rule 4 provides for additional due diligence to be observed by a significant social media intermediary which *inter alia* include the following:**
 - a. Rule 4(1)(a) provides for the appointment of a Chief Compliance Officer who shall be responsible for ensuring compliance with the Act and Rules. The Rules also affix liability on the Chief Compliance Officer in case he fails to observe due diligence.
 - b. Rule 4(1)(b) provides for the appointment of a nodal contact person for 24x7 coordination with law enforcement agencies and officers to ensure compliance of their orders or requisitions made in accordance with the provisions of law or rules made thereunder.
 - c. Rule 4(1)(c) provides for the appointment of a Resident Grievance Officer based in India to redress grievances as per the prescribed process.
- **Rule 5 requires an intermediary in relation to news and current affairs content to furnish details of its user accounts to the Ministry in accordance with Rule 18.**
- **Rule 6 empowers the Central Government (by order for reasons to be recorded in writing) to require any intermediary to comply with the rules framed in respect of a significant social media intermediary if its service**

permits the publication or transmission of information in a manner that may create material risk to the sovereignty of India etc.

- **Rule 7 provides that in the event of non-compliance of the Rules in the immunity granted to an intermediary under section 79 of the Act would be withdrawn and such intermediary would be liable for punishment accordance with the provisions of the Act and the Indian Penal Code, 1860.**

C. Part III - CODE OF ETHICS AND PROCEDURE AND SAFEGUARDS IN RELATION TO DIGITAL MEDIA.

- **Rule 8 provides that the Code of Ethics is applicable to the following persons/entities and is to be administered by the Ministry of Information and Broadcasting (“MIB”):**
 - a. publishers of news and current affairs content;
 - b. publishers of online curated content;
- **Rule 9 provides a three-tier structure to ensure better adherence and observance to the Code of Ethics as follows:**
 - a. Level I – Self-regulation by the publishers;
 - b. Level II – Self-regulation by the self-regulating bodies of the publishers duly registered with the Ministry;
 - c. Level III – Oversight mechanism by the Central Government.
- **Rule 10 provides for Furnishing and processing of grievances and lays down the following procedure :**
 - a. Rule 10(1) provides that any person having a grievance regarding content published may furnish the grievance as per the mechanism established in Rule 11.
 - b. Rule 10(2) provides that the publisher should issue to the complainant an acknowledgment of his grievance within 24 hours of receipt.
 - c. Rule 10(3) provides the manner in which the grievance is to be addressed which is as follows :
 - i. The publisher ought to address the grievance within 15 days of

registration i.e. Level I;

ii. In the event the grievance is not addressed within 15 days of registration or if the complainant is unhappy with the publisher's decision, the grievance is escalated to the self-regulating body of which the publisher is a member i.e. Level II, within a period of 15 days. The complainant must be informed of the decision of the self-regulating body within 15 days along with the guidelines and/or advisories issued to the publisher, as the case maybe.

iii. Where the complainant is not satisfied with the decision of the self-regulating body, it may, within fifteen days of such decision, prefer an appeal to the Oversight Mechanism referred to in Rule 13, for resolution.

- **Rule 11 provides for the following steps to be taken by a publisher in the course of self-regulation:**

a) As per Rule 11(2) the publisher must take the following steps:

- Establish a grievance redressal mechanism and appoint a Grievance Officer in India and prominently publish the contact details of such officer on the website/interface.
- Ensure timely redressal of complaints by the Grievance Officer within 15 days of receipt of the complaint.
- The Grievance Redressal Officer to be the contact person for receipt of grievances and the interface/ point of contact with the MIB;

b) Rule 11(2)(4) significantly provides that Online Curated Content as defined under Rule 2 shall be classified by the publisher into categories referred to in the Schedule, having regard to the context, theme, tone, impact and target audience of such content.

c) Publishers of online curated content shall prominently display the rating of such content along with an explanation of the relevant content descriptors, for its users in a manner that ensures that its users are aware of this information before accessing such content.

- **Rules 12(1) and 12(2) provide for the establishment of a self-regulating body and the composition thereof.**

- **Rule 12(4) lays down the functions to be performed by the self-regulating**

body which are follows:

- a. to oversee and ensure the alignment and adherence by the publisher to the Code of Ethics;
 - b. to provide guidance to publishers on various aspects of the Code of Ethics;
 - c. to address grievances which have not been resolved by publishers within the specified period of fifteen days;
 - d. to hear appeals filed by the complainant against the decision of publishers;
 - e. to issue such guidance or advisories to such publishers as specified in sub-rule (5) for ensuring compliance of the Code of Ethics.
- **Rule 12(5) empowers the self-regulating body to issue the following guidelines/advisories while disposing off a complaint/grievance:**
 - a. to warn, censure, admonish or reprimand the publisher; or
 - b. to require an apology by the publisher; or
 - c. to require the publisher to include a warning card or a disclaimer; or
 - d. in case of online curated content, to direct the publisher to, —
 - reclassify ratings of relevant content;
 - make appropriate modification in the content descriptor, age classification and access control measures;
 - edit synopsis of relevant content; or
 - e. where the self-regulating body is satisfied that there is a need for taking action to delete or modify any content to prevent incitement to the commission of a cognizable offence relating to public order, or in relation to the reasons enumerated in sub-section (1) of section 69A of the Act, the self-regulating body may refer such content to the MIB for consideration by the Oversight Mechanism referred to in Rule 13 for appropriate action.
 - **To increase transparency and ensure compliance of the Rules, Rule 18 requires publishers and self-regulating bodies to make a true and full disclosure of all grievances received by them in the manner specified therein.**

III. Conclusion

The introduction of the Rules has ensured that there is comity in content being streamed across all platforms and that the primary grievance redressal mechanism is handled by the publisher or an industry association or group of publishers. The emphasis on self-regulation is seen throughout the Rules. Rule 11 of the Rules deals extensively with publishers being able to regulate their content and adequately handle grievances; thus, preserving artistic freedom whilst at the same time ensuring a sense of accountability to their viewers. On the other hand, vulnerable viewers and users of services are adequately protected under the various grievance redressal mechanisms provided under the Rules.

Another noteworthy feature of the Rules is the strict time bound redressal of complaints. This ensures that complaints and grievances are expeditiously addressed by the intermediaries and/or publishers, as the case maybe.

These Rules and the efforts by the Indian government are certainly laudable and ensure that technological advancements go hand in hand with legal developments thereby creating a level playing field for all service providers and also protecting citizens of the country.

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