

The New IT Guidelines- Privacy censored

A critical analysis of Intermediary
Guidelines and Digital Media
Ethics Code Rules 2021

Author:
Tarun Pratap, Sana Alam

Ideation and Review:
Osama Manzar





The New IT Guidelines- Privacy censored

A critical analysis of Intermediary Guidelines and Digital Media Ethics Code Rules 2021

March 2021

This work is licensed under a creative commons Attribution 4.0 International License.



You can modify and build upon document non-commercially, as long as you give credit to the original authors and license your new creation under the identical terms.

Author: **Tarun Pratap, Sana Alam**

Editor: **Dushyant**

Reviewer: **Osama Manzar**

Design and Layout: **Satish Kumar**

Year of Publication: **2021**

DEF Paper Series/SN-02/2021



You can read the online copy at www.defindia.org/publication-2

Published and Distributed by:

Digital Empowerment Foundation

Email: def@defindia.net | URL: www.defindia.org



The New IT Guidelines- A road down to censorship

Table of Contents

Introduction	4
OTT and Digital News Platforms	4
Social Media platforms	6
What do these guidelines mean for the following:	7
Social Media Intermediary	7
General Media Publication	7
For General Consumers:	8



Introduction

On 25th February 2021, The Ministry for Electronics and IT notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021. The rules have been framed under the Information Technology Act, 2000 and will supersede the 2011 guidelines for internet intermediaries. These rules are in the context of social media companies, Over The Top platforms (OTT) and digital news encrypted messaging apps, and any content about current affairs- podcasts, YouTube, news website.

The rise of the internet and digital world in recent years has been unmatched. We are witnessing a complete cultural change in terms of habits and practices of creation and consumption of content. These rules in that context come as muzzle on digital development and may end up having a negative impact.

OTT and Digital News Platforms

In recent times there was public outrage over certain web shows on OTT platforms such as Amazon, Netflix, Altbalaji etc. The government stated in the press release that it has received complaints from the civil society actors, Chief Ministers and public stakeholders about the content on OTT platforms and its negative impact leading the government to formulate these new guidelines.

These new guidelines mainly prescribe OTT and digital news platforms to follow a **code of ethics, have a self-classification of the content and establishing a three level grievance redressal mechanism** which would entail self-regulation by the publisher at the first level, a six member self-regulatory body led by a retired judge of the Supreme Court, High court or an eminent person, at second level. Finally at third level, the Ministry of Information and Broadcasting will formulate an oversight mechanism which will publish a charter for self-regulating bodies, including Codes of Practices and establish an Inter-Departmental Committee for hearing grievances. The government will also have the power to review and block any content if it deems to be not following guidelines.

The first and foremost problem with these guidelines is the censorship. The idea that government can wish to block the content which they feel like is nothing but state surveillance. Also, the formulation process of these guidelines does not seem to have followed the constitutional guidelines in terms of these rules are presented without a parliamentary debate ignoring the very democratic process of involving all stakeholders and opposition while formulating new policies.

Secondly, self-regulation is something that turns into the practice of self-censorship which inherently is contradictory to the spirit of artistic freedom. In recent times OTT platforms have provided a breath of fresh air to the Indian audience, a new place for artistic expression.

“The idea that government can wish to block the content which they feel like is nothing but state surveillance. Also, the formulation process of these guidelines does not seem to have followed the constitutional guidelines in terms of these rules are presented without a parliamentary debate.”



“A journalist or a director working with the fear of censorship from the outset will have his work impacted in order to be preemptive. Other long term impacts are the quality of content that audiences will have on offer which will leave no space for a different form of expression and create a less sensitive audience and a generation with less desire of producing creative and fearless content.”

The content usually on OTT platforms is targeted at younger audiences who perhaps were tired of being fed the same monotonous content on normal pay per view television. The quality of content on OTT platforms in India is of international standard proved by the Emmy Award win by Netflix show Delhi Crime which proves the positive impact of content creation without constant censorship. The censorship as often discussed is a complicated subject as it involves various subjective topics such as nationalism, religion or gender which different people may see differently depending on their personal context and in that sense different governments too may have different parameters of censorship which will always leave a few unsatisfied and some not so. The self-regulatory body which will be mostly comprised of judges and bureaucrats have been given too much of censoring power in terms of warning/ censoring/ admonishing/ reprimanding the publisher, require a warning card or disclaimer, require an apology, reclassify ratings, or even censor the content as it deems fit and recommend action under Section 69A of the IT Act. This seems to be shaky ground which can be used for political benefits easily since government can decide who will or will not be part of this body according to their preferences.

The most important factor about these guidelines that needs to be understood is in the context of long term impact. This can completely change the form of content, both artistic and press that is being produced in the country. A journalist or a director working with the fear of censorship from the outset will have his work impacted in order to be preemptive. Other long term impacts are the quality of content that audiences will have on offer which will leave no space for a different form of expression and create a less sensitive audience and a generation with less desire of producing creative and fearless content. These rules will also have an impact on political and social issues. The artistic ability to show and talk about socio-political issues in the form of entertainment and subtly introducing complex issues to the audience will be compromised. The government said that these rules are formed after consultation with key stakeholders and public, does not give a fair idea and clarity on who are those that were involved. It would have been a far better approach to follow the traditional approach of presenting the guidelines first to the nation or the public through parliamentary debate to make the rules more inclusive and participatory.





Social Media platforms

According to the newly introduced laws, the definition of social media intermediaries has been split; any platform with a threshold of 50 lakhs registered users will now fall under the ambit of 'Significant Social Media Intermediaries' (SSMI). So, in the context of growing objectionable content and the long awaited guidelines around end-to-end encryption, SSMLs will be required to comply with certain stringent rules like:


- Acknowledging the takedown requests of unlawful, misinformation and violent content within 24 hours and delivering a complete redressal within 15 days.
- In the cases of sensitive cases (like, explicit sexual content), firms will be required to take down the content within 24 hours.
- In addition to this, these firms will be required to set up local offices in India and appoint compliance, nodal contact and resident grievance officers to address on-ground concerns, the names of which shall be submitted in New Delhi.
- Disclosing the origin of the objectionable content.
- Firms will also be required to publish a monthly compliance report to disclose the number of requests they have received and specify the actions they took.

Ramifications -- One prominent area that will be hit hard would be the end-to-end encryption policy of the messaging applications like WhatsApp, for the company had previously said that it can't comply with traceability requests without having to compromise with the end-to-end encryption security. Moreover, since WhatsApp does not store source data, the newly issued rules with their mandate of tracing the originator of messages will effectively break the end-to-end encryption protocols, leading to the weakening of the overall security of the users.

With WhatsApp's updated privacy policies that seek to share limited user data with Facebook and its group firms, India observed a mass shift to other messaging applications like Signal and Telegram. Now, the question arises on these apps as to how they will now take steps to ensure compliance with the new norms, breaking their end-to-end encrypted policies which have been considered as a safe haven from surveillance.

Moreover, with India slipping from 'free' to 'partly free' democratic country, these newly introduced laws have the potential to pose threats on the [journalists](#) and activists with growing surveillance and sedition charges against them.

“India observed a mass shift to other messaging applications like Signal and Telegram. Now, the question arises on these apps as to how they will now take steps to ensure compliance with the new norms, breaking their end-to-end encrypted policies which have been considered as a safe haven from surveillance.”



What do these guidelines mean for the following:

Social Media Intermediary

- (1) Companies like WhatsApp would have to destroy the business model or create a new product only for India.
- They will have to give up end to end encryption whenever the government asks.
- Acknowledging the takedown requests of unlawful, misinformation and violent content within 24 hours and delivering a complete redressal within 15 days.
- In the cases of sensitive cases (like, explicit sexual content), firms will be required to take down the content within 24 hours.
- In addition to this, these firms will be required to set up local offices in India and appoint compliance, nodal contact and resident grievance officers to address on-ground concerns, the names of which shall be submitted in New Delhi.
- Firms will also be required to publish a monthly compliance report to disclose the number of requests they have received and specify the actions they took.
- Losing millions of consumers over privacy issues.

General Media Publication

- Every non-newspaper news website and/or blog/YouTube channel/newsletter/podcast to appoint a 'grievance officer' who will have to 'acknowledge' to every grievance anyone has about anything on their platform in less than 24 hours and then 'resolve' it within 15 days.
- Groups of publishers to establish a self-regulation body which will be headed by a retired High Court or Supreme Court Judge "or an independent eminent person.
- Self-regulation body to register itself with the government.
- A body of bureaucrats from multiple ministries will spend their time resolving 'grievances' people have with news websites, YouTube videos, podcasts etc. This body has been given the power to ask any publisher to delete any content it doesn't like. It can do this without hearing the publisher of the content.
- The government has also given itself the power to 'delete' or block any content it doesn't like.
- Similar to social media intermediaries, losing countless consumers.

“Personal chat will be opened up in search of originator of an ‘unlawful’ text which when found upon, will be punishable offense. The definition of ‘unlawful’ as discussed is problematic.”

For General Consumers:

- With end to end encryption not in practice personal chats will not have secrecy which has negative affects especially on journalists.
- Anyone can file a complaint against the content that they find problematic.
- Blocking of the content will mean lack of access for consumers.
- Personal chat will be opened up in search of originator of an ‘unlawful’ text which when found upon, will be punishable offense. The definition of ‘unlawful’ as discussed is problematic.
- Artists and content creators as individuals can lose their work and financial returns because of censoring.





Digital Empowerment Foundation
House No. 44, 2nd & 3rd Floor (Next to Naraina IIT Academy)
Kalu Sarai, (Near IIT Flyover), New Delhi – 110016

Tel: 91-11-26532786 / Fax: 91-11-26532787
Email: def@defindia.net | URL: www.defindia.org