

Shri Ravi Shankar Prasad
Minister of Electronics and Information Technology
Government of India

January 7, 2020

To the Hon'ble Minister Prasad,

On behalf of a group of global internet organisations with millions of users in India, we are writing to urge you to ensure the planned amendments to India's intermediary liability regime allow for the Internet to remain an open, competitive, and empowering space for Indians. We understand and respect the need to ensure the internet is a safe space where large platforms take appropriate responsibility. However, the last version of these amendments which were available in the public domain suggest that the rules will promote automated censorship, tilt the playing field in favour of large players, substantially increase surveillance, and prompt a fragmentation of the internet in India that would harm users while failing to empower Indians.

The current safe harbour liability protections have been fundamental to the growth of the internet in India. They have enabled hosting platforms to innovate and flourish without fear that they would be crushed by a failure to police every action of their users. Imposing the obligations proposed in these new rules would place a tremendous, and in many cases fatal, burden on many online intermediaries - especially new organizations and companies. A new community or a startup would be significantly challenged by the need to build expensive filtering infrastructure and hire an army of lawyers.

During the public consultation on these amendments in January 2019, several of our organizations raised serious concerns about their impact to Indian users and the vibrancy of the Indian online ecosystem. We have not seen any public evidence which alleviates these concerns. For example:

- The extremely broad definition of the term "intermediary" would likely lead to many unintended parties being impacted by these amendments. This may include browsers, operating systems, online repositories of knowledge, software development platforms, and services even further down the internet stack such as DNS, cybersecurity and caching services among others—none of which we believe to be the targets of this regulation and all likely to face a considerable increase in legal risk.
- The blunt requirement for legal local incorporation of any services with more than 5 million users in India is a major operational obligation being imposed without justification nor a timeline for compliance. This raises fears of international companies, services, and nonprofits being forced to close themselves off to Indian users, while also deterring potential market expansion of new players into India.
- The requirement to enable the 'traceability of the originator' of content, which would require all intermediaries to surveil their users, undermine encryption, and harm the fundamental right to privacy of Indian users.

- The technically infeasible requirement to “proactively” monitor platforms for “all unlawful content”, which would lead to overcensorship and an untenable increase in liability, especially for small and medium service providers across the internet. This would upend the careful balance set out in the existing law which places liability on the bad actors who engage in illegal activities, and only holds companies accountable when they know of such acts.

Additionally, the short timelines of 24 hours for content takedowns and 72 hours for the sharing of user data pose significant implementation and freedom of expression challenges. Intermediaries, especially small and medium service providers, would not have sufficient time to analyse the requests or seek any further clarifications or other remedies under the current draft. This would likely create a perverse incentive to takedown content and share user data without sufficient due process safeguards, with the fundamental right to privacy and freedom of expression suffering as a result.

It has now been almost a year since the public last saw a draft of these rules which have the potential to fundamentally reshape the way the internet will work in India. Given your government's commitment to the Supreme Court of India to notify these rules by January 15, 2020, it is vital that the public has the opportunity to see a final version of these amendments to help ensure that they assuage the concerns which have been voiced by a wide variety of stakeholders during the public consultation. We appeal for this increased transparency and we remain committed to working with you to achieve the broader objective of these amendments while allowing Indians to benefit from a global internet.

Signed,



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