

March 6th, 2021

To:

1. Shri. Prakash Javadekar

The Union Minister for Information and Broadcasting
Shastri Bhavan,
New Delhi - 110001

2. Shri Ravi Shankar Prasad

The Union Minister for Electronics and Information Technology
Electronics Niketan, 6 CGO Complex,
Pragati Vihar, Lodhi Road
New Delhi – 110003

Subject: Concerns regarding Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 notified on 25.02.2021 under Section 87(1), Section 87(2)(z) and Section 87(2)(zg) of the Information Technology Act, 2000.

Hon'ble Ministers,

Editors Guild of India [“**EGI**”] is the apex body of editors from across the country, representing all forms of media — print, television, digital. It was set up in 1978 with the twin objectives of protecting press freedom and raising the standards of editorial leadership in media. Since our establishment, we have consistently defended the freedom of speech and expression of news publishers and the right to information of the citizens of India. We have continued our efforts in the digital age, as several of newspapers, magazines, and TV channels started online editions, along with the growth of the several new standalone digital only news publishing websites.



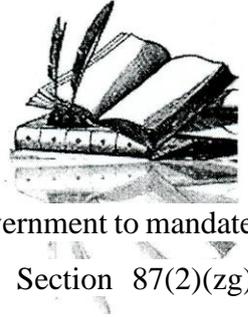
On 25th February 2021, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 [**“Rules”**] were announced and notified. Part III of the Rules mandates that Digital News Media establish a Self-Regulating Mechanism to resolve grievances raised by any person and empowers the Government to delete, modify and block content published by Digital News Media. We are conscious of the challenges posed by the digital age, and as such, we recognize the need for self-regulation of Digital News Media. However, we have grave concerns regarding the Rules, which can fundamentally alter how news publishers operate over the internet and undermine the freedom of press in the country.

First, Rules 13, 14 and 15 (Oversight Mechanism) permit officers of the Government to block, delete or modify news published by Digital News Media. This affects the publishers’ Fundamental Right to Expression and the citizens’ right to access differing points of view, both guaranteed under Article 19(1)(a) of the Constitution. The concern here is the absolute decision-making power conferred upon the executive, which will inhibit Digital News Media and thereby press at large from fulfilling its obligations as the Fourth Estate. The Guild urges the ministry to withdraw such an onerous and regressive regulatory mechanism, and to initiate consultations for putting in place a more equitable self-regulatory system.

We believe that the question whether any speech violates any law in force, or be bound to a Code of Ethics, or whether it should be evaluated in accordance with Article 19(2) of the Constitution, is a complicated question of not only facts but also of law. Therefore, any action on such speech should be taken only after adjudication by an independent judiciary, rather than the executive.

Second, the Rules have been enacted under the Information Technology Act, 2000 [**“IT Act, 2000”**] which does not contemplate regulation of Digital News Media. Our concern is that the Government has introduced a regime to regulate the functioning of Digital News Media which impacts Freedom of Speech and Expression, without the Parliament’s approval.

In law, a delegated legislation must only implement the parent statute. The provisions of the IT Act, 2000 under which the Government has introduced the Rules, do not pertain to regulation of Digital News Media. Section 87(2)(z) empowers the Government to establish the procedure



related to blocking information over the internet but does not permit the Government to mandate publishers to establish a Grievance Redressal Mechanism. Similarly, Section 87(2)(zg) empowers the government to issue guidelines only to intermediaries like Internet Service Providers, but not to publishers of news and current affairs.

Third, there is lack of clarity on the applicability of Part III of the Rules. As per Rule 8, Part III applies to publishers of news and current affairs content as long as the publishers have a physical presence in the territory of India and are conducting the ‘*systematic activity*’ of making their content available in India. Such application is overbroad as there is no threshold requirement of readership to differentiate between Digital News Media based on scale. The consequence of this is that even blogs, individuals reporting news through social media and nascent news organizations will have to comply with the onerous obligations imposed by the Rules.

Lastly, the Rules were announced and notified on the same day and the Union Government did not consult any stakeholders, including EGI, in the drafting of the Rules. A consultation before notification of any rule ensures that concerns of stakeholders are addressed prior to the notification of the rule and that no stakeholder is disproportionately affected. In this case, consultation was critical as this is the first time the Government is regulating publishers of news and current affairs and online curated content.

In view of the concerns raised above, we request you to put the Rules on abeyance and undertake meaningful consultation with all the stakeholders.

We have attached a table containing our comments on each rule affecting Digital News Media along with this letter.

Sincerely,

Seema Mustafa
President

Sanjay Kapoor
General Secretary

Anant Nath
Treasurer

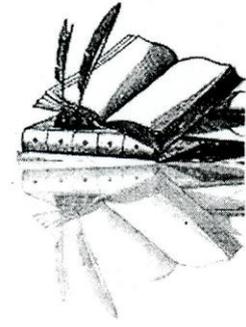
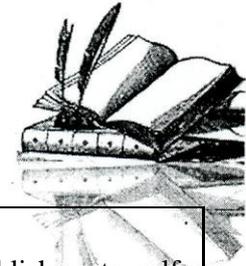
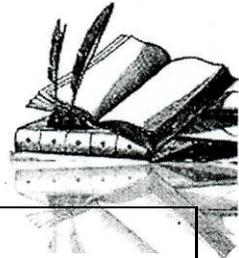


TABLE CONTAINING COMMENTS ON EACH RULE OF INFORMATION TECHNOLOGY RULES, 2021

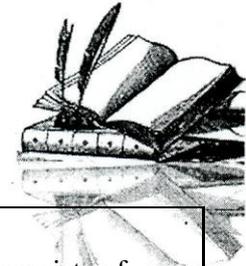
RULE	PROVISION	COMMENTS
Part I - Preliminary		
2(m)	To regulate digital news media, “ news and current affairs content ” has been defined as newly received or noteworthy content, including analysis, especially about recent events primarily of socio-political, economic or cultural nature, made available over the internet or computer networks.	Unlike social media intermediaries, the rules do not make a distinction within publishers of news and current affairs content based on size, scale, reach, resources or readership. This will lead to small publishers of news content being affected disproportionately.
Part III - Code of Ethics and Procedure and Safeguards in Relation to Digital Media		
8	Rule 8 makes Part III of the Intermediary Rules applicable to digital news media and publishers of online curated content (i.e., OTT platforms) that operate or make their content available in India. The Ministry of Information & Broadcasting is empowered to administer the rules in Part III.	As per Government of India (Allocation of Business) Rules, 1961, Ministry of Electronics and Information Technology is responsible for administering the Information Technology Act, 2000. However, the Ministry of Electronics and Information Technology has sub-delegated the power to administer Part III of the Intermediary Rules to the Ministry of Information & Broadcasting.



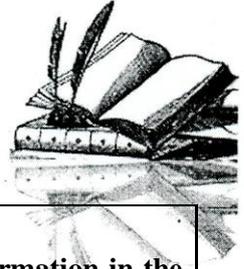
<p>9</p>	<p>Digital news media and OTT platforms must adhere to the Code of Ethics annexed to the Rules. The Code of Ethics will be enforced by a three tier structure</p> <p>A. Level I - Self-regulation by publishers B. Level II - Self-regulation by a self-regulating body of the publishers. C. Level III - Central Government oversight</p>	<p>Such a structure compels publishers to self-censor in response to grievances rather than be involved in a long drawn struggle at Level II and Level III. The self-regulatory body of tier-II and the Inter-Departmental Committee of level-III have been provided wide-ranging punitive powers over digital news media and OTT platforms, including the power to empowered to warn, censure, admonish or reprimand 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. EGI urges the Ministry to withdraw such a regressive regulatory mechanism and to initiate consultations for a more equitable and fair approach</p>
<p>10</p>	<p>Any person can file a grievance under this 3-tier structure, and the publisher will have to respond within 15 days of receiving such grievance. If the complainant does not receive a satisfactory response within 15 days, they may appeal to Level II, i.e., the self-regulating body. If the complainant is not satisfied with the decision of the self-regulating body (due within 15 days), they may prefer an appeal to the Central Government.</p>	<p>Compelling publishers to respond to each and every complainant within a period as short as 15 days is onerous. This again will be adverse to press freedom. The rules should have been accompanied with a form containing the details which the complainant should be obligated to furnish, to lodge a complaint. As of now, the publishers may have to spend resources to respond to incomplete, ill intentioned and even anonymous complaints.</p>
<p>11</p>	<p>At the first level, as mandated for intermediaries in Rule 3, digital news media must establish a grievance redressal mechanism and appoint a Grievance Officer who is a resident of India. The Grievance Officer is required to decide on every grievance they received, within 15 days.</p>	<p>While publishers may be willing to appoint a grievance officer, this obligation is not contemplated in the Information Technology Act, 2000 under which these Rules have been notified. Further, it will not be possible for the Grievance Officer to respond to every grievance within a time period as short as 15 days.</p>



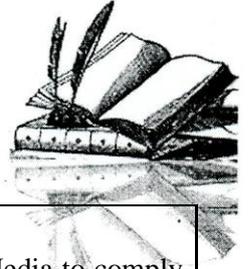
<p>12</p>	<p>At the second level, the “self-regulating” body is supposed to be an independent body constituted by publishers or their associations, and headed by a retired judge of the Supreme Court, a High Court, or an independent eminent person from media, broadcasting, entertainment, child rights, human rights or other relevant fields. The body will comprise up to 6 members, chosen among experts in media, broadcasting, entertainment, child rights, human rights and such other relevant fields.</p> <p>This body must be registered with the MI&B, and the MI&B will “satisfy itself” that the self-regulating body has been constituted properly.</p> <p>The self-regulating body is empowered to warn/censure/admonish/reprimand the publisher, require an apology, reclassify ratings, or even censor the content as it deems fit.</p> <p>If the publisher fails to comply with self-regulating body's directions, the body may refer the matter to the Central Government.</p>	<p>While level II of the 3-tier mechanism is framed as the second layer of self-regulation, it is in fact the first layer of government control. The Chairman of the self-regulatory body is suggested to be a retired Judge of the High Court or Supreme Court, and even though the body is ostensibly expected to be appointed/elected by the media community, the MI&B retains approval power over the composition of the body.</p>
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<p>13-14</p>	<p>Level III is an oversight mechanism for regulation by digital news media and OTT platforms.</p> <p>The oversight mechanism is by an “Inter-Departmental Committee”, consisting of representatives from the Ministry of Information and Broadcasting, Ministry of Women and Child Development, Ministry of Law and Justice, Ministry of Home Affairs, Ministry of Electronics and Information Technology, Ministry of External Affairs, Ministry of Defence, and such other Ministries and Organisations chosen by Ministry of Information and Broadcasting. The Chairman of the Inter-Departmental Committee will be a Joint Secretary of the Ministry of Information and Broadcasting.</p> <p>This Committee will hear complaints regarding decisions taken at Levels I and II or complaints referred to by the Ministry of Information and Broadcasting.</p>	<p>This Committee does not consist of any judicial member, or any experts or members from the news media industry. Moreover, such an oversight body is not contemplated under the Information Technology Act, 2000 under which the Central Government has notified these rules.</p> <p>Further, the ability of such a body to block/remove content is detrimental to the Fundamental right of speech and expression guaranteed by the Constitution to news publishers.</p> <p>EGI is of the view that any regulation should be in the spirit of self-regulation, and an oversight by “Inter-Departmental Committee” will create a regressive and draconian structure with excessive powers to curb media freedom by the Executive. We therefore urge the ministry to revoke this structure and initiate fresh consultations</p>
<p>15</p>	<p>The Authorised Officer shall place a proposal to censor content under Rule 14 before the Secretary, Ministry of Information and Broadcasting for their approval. Such a direction may only be issued in respect of a specific content, and not require any entity to cease its operations.</p>	<p>By virtue of this Rule, the Authorised Officer, with the approval of the Secretary (Ministry of Information and Broadcasting) can issue directions to publishers to block, modify and delete content. However, Section 69A of the Information Technology Act, 2000, under which these rules have been notified, does not contemplate issuance of directions to publishers.</p> <p>Further, action under this Rule is detrimental to the Fundamental right of speech and expression guaranteed by the Constitution.</p>



<p>16-17</p>	<p>Rule 16 provides emergency powers to the Ministry of Information and Broadcasting in cases where “no delay is acceptable”. The Secretary may, if she/he is satisfied that it is necessary or expedient and justifiable issue directions for blocking of online content to persons, publishers or intermediary in control of hosting such information, without giving them an opportunity of hearing.</p> <p>A Review Committee has to meet once every two months to determine if the direction issued under Rule 16 is in accordance with Section 69(1) of the Information Technology Act, 2000.</p>	<p>The power to block any information in the manner specified in this rule is excessive and completely against press freedom.</p> <p>Further, the fact that the Review Committee has to meet only once in every two months does provide sufficient and effective review of a decision to block online content. The Review Committee ought to meet within a week of the date of the order in order to guarantee that due process is followed.</p>
<p>18</p>	<p>Digital News Media and OTT platforms will have to furnish ‘details of its entity’, as may be specified, to the Ministry of Information and Broadcasting.</p>	<p><i>Firstly</i>, the Rules do not provide any guidance on the nature of information which publishers will have to furnish to the Ministry of Information and Broadcasting. And <i>secondly</i>, the obligation on every publisher to furnish details, regardless of their size, is onerous.</p>



<p>Appendix - Code of Ethics</p>	<p>Digital news media to be subject to the Norms of Journalistic Conduct of the Press Council of India under the Press Council Act, 1978 and Programme Code under section 5 of the Cable Television Networks Regulation) Act, 1995</p> <p>Publishers shall exercise due caution when providing content:</p> <p>(i) which affects the sovereignty and integrity of India;</p> <p>(ii) which threatens, endangers or jeopardises the security of the State;</p> <p>(iii) which is detrimental to India's friendly relations with foreign countries;</p> <p>(iv) which is likely to incite violence or disturb the maintenance of public order; and/or</p> <p>(v) featuring the activities, beliefs, practices, or views of any racial or religious group.</p>	<p>By mandating Digital News Media to comply with Norms of Journalistic Conduct of the Press Council of India under the Press Council Act, 1978 and Programme Code under section 5 of the Cable Television Networks Regulation) Act, 1995, the Central Government has effectively expanded the scope of those legislations without the Parliament amending them. This is against the principle of separation of powers as the Executive has exercised powers reserved for the Parliament.</p>
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