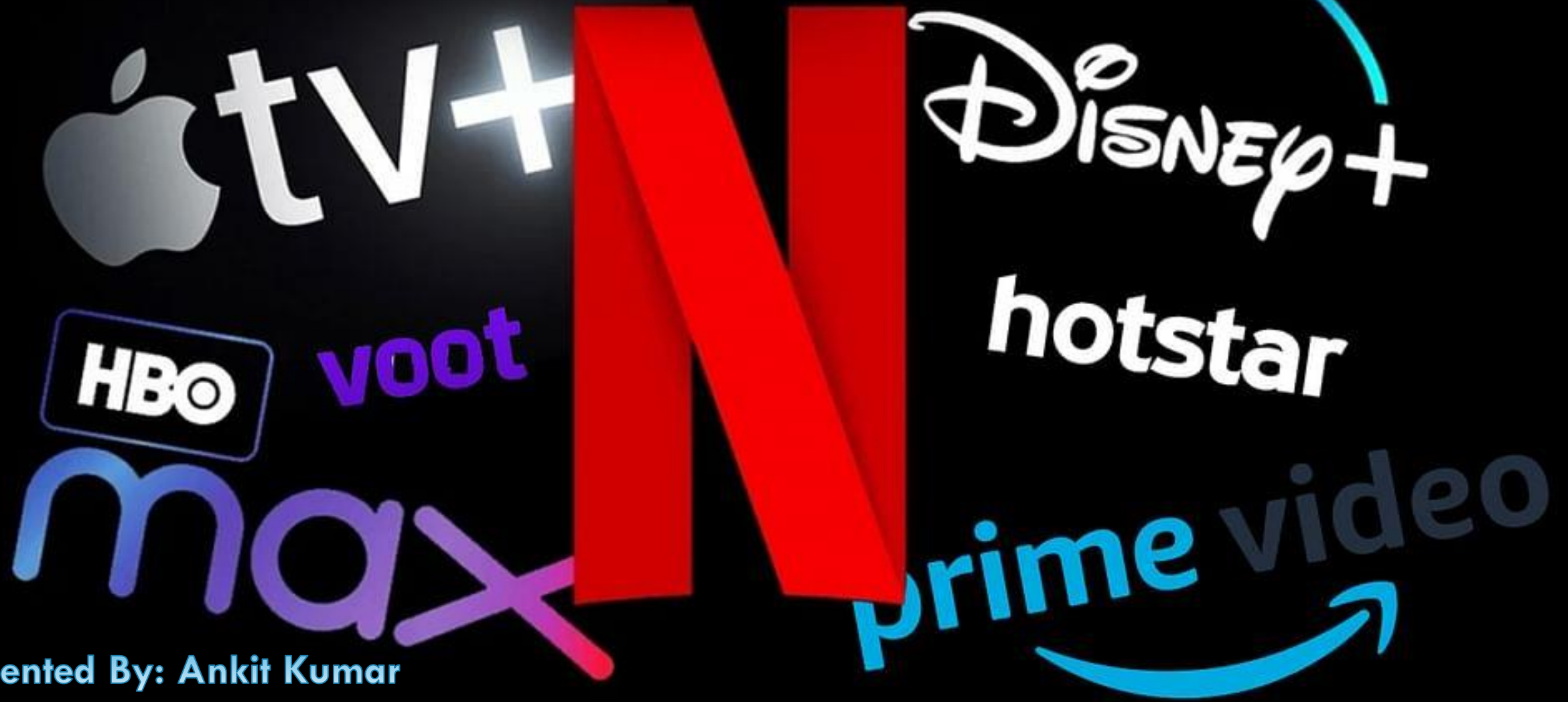


# New IT Rules and its implication



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# **Introduction:**

Recently, the government has notified **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021**

These new rules broadly deal with social media and over-the-top (OTT) platforms.

These rules have been framed in exercise of powers under section 87 (2) of the Information Technology (IT) Act, 2000 and in supersession of the earlier **Information Technology (Intermediary Guidelines) Rules 2011**.

## Background Rules:

**2018:**

The Supreme Court (SC) had observed that the Government of India may **frame necessary guidelines** to eliminate child pornography, rape and gangrape imageries, videos and sites in content hosting platforms and other applications.

**2020:**

An Ad-hoc committee of the Rajya Sabha laid its report after studying **the alarming issue of pornography on social media** and its effect on children and society as a whole and recommended for enabling identification of the first originator of such contents.

The government brought video streaming over-the-top (OTT) platforms under the ambit of the Ministry of Information and Broadcasting.

## New IT Rules:

### New Guidelines for Social Media/Intermediaries:

#### **Categories of Social Media Intermediaries:**

Based on the number of users, on the social media platform intermediaries have been divided in two groups:

**Social media intermediaries.**

**Significant social media intermediaries.**

#### **Due Diligence to be Followed by Intermediaries:**

In case, due diligence is not followed by the intermediary, safe harbour provisions will not apply to them.

The safe harbour provisions have been defined under **Section 79 of the IT Act**, and protect social media intermediaries by giving them immunity from legal prosecution for any content posted on their platforms.



Grievance Officer shall acknowledge the complaint within **twenty four hours and resolve it within fifteen days from its receipt.**

### ● **Ensuring Online Safety and Dignity of Users:**

Intermediaries shall **remove or disable access within 24 hours of receipt of complaints** of contents that exposes the private areas of individuals, show such individuals in full or partial nudity or in sexual act or is in the nature of impersonation including morphed images etc.

Such a complaint can be **filed** either **by the individual** or by **any other person on his/her behalf.**

### **Additional Due Diligence for the Significant Social Media Intermediaries:**

**Appointments:** Need to appoint **Chief Compliance Officer, a Nodal Contact Person** and a **Resident Grievance Officer**, all of whom should be **resident in India.**

**Compliance Report:** Need to publish a **monthly compliance report** mentioning the **details of complaints received and action taken** on the complaints as well as details of contents removed proactively.

# Rules for News Publishers and OTT Platforms and Digital Media:

## For OTT:

### **Self-Classification of Content:**

The OTT platforms, called as the publishers of online curated content in the rules, would self-classify the content into five age based **categories- U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult).**

### **Parental Lock:**

Platforms would be required to implement parental locks for content classified as U/A 13+ or higher, and reliable age verification mechanisms for content classified as “A”.

### **Display Rating:**

Shall prominently display the classification rating specific to each content or programme together with a content descriptor informing the user about the nature of the content, and advising on viewer description (if applicable) at the beginning of every programme enabling the user to make an informed decision, prior to watching the programme.

## **For Publishers of News on Digital Media :**

They would be required to observe Norms of **Journalistic Conduct of the Press Council of India** and the Programme Code under the **Cable Television Networks Regulation Act 1995** thereby providing a level playing field between the offline (Print, TV) and digital media.

### **Grievance Redressal Mechanism:**

A three-level grievance redressal mechanism has been established under the rules with different levels of self-regulation.

**Level-I:** Self-regulation by the publishers;

**Level-II:** Self-regulation by the self-regulating bodies of the publishers;

**Level-III:** Oversight mechanism.

### **Self-regulation by the Publisher:**

Publisher shall appoint a Grievance Redressal Officer based in India who shall be responsible for the redressal of grievances received by it.

The officer shall take decision on every grievance received by it **within 15 days.**



## SOCIAL MEDIA

### Rules Seek To Empower Users Of Digital Platforms & Ensure Accountability

**1]** Tighter timelines to take down unlawful content, assist law enforcement

**2]** Identify first originator of a message that causes identified offence

**3]** Stricter rules for bigger platforms, including local presence

**4]** Voluntary user verification mechanism



## DIGITAL MEDIA & OTT PLATFORMS

### Seek to address concerns over digital content through....

**1]** Self regulation & self-classification of content – universal, adult etc

**2]** Code of ethics – To follow prescribed guidelines

**3]** Three-tier grievance redressal mechanism

**4]** Subjects digital news media to same laws as traditional media



### IN CASE OF NON COMPLIANCE...

**Intermediary will** lose its safe harbour from user content

**Liable to** punishment under IT Act or IPC





Safeguarding Users' Rights,  
Ensuring Responsible Internet  
Freedom

# Govt Notifies IT Rules, 2021

(Intermediary Guidelines &  
Digital Media Ethics Code)



Social media platforms have empowered ordinary users but they need accountability against its misuse and abuse

The new Rules empower ordinary users of social media, with a mechanism for redressal & timely resolution of their grievance

Rules about digital media & online curated content publishers focuses more on in house & self-regulation mechanism

- ▶ The new Rules provide robust grievance redressal mechanism while upholding journalistic and creative freedom

## **Implications of IT Intermediary Guidelines, 2021**

The Ministry of Electronics and Information Technology (MEITY) and the Ministry of Information and Broadcasting (MIB) on 25.02.2021, notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Following are the implications of these new guidelines

On 25th February, 2021, The Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules of 2021 (hereinafter referred to as "the Rules") were enacted by the Central Government under the powers conferred on it by Sections 69A(2), 79(2)(c) and 87 of the Information Technology Act, in close collaboration with the Ministry of Electronics and Information Technology and the Ministry of Information Technology. These Rules were developed in response to abuse of the government on social media platforms, while still recognizing the right to criticize and disagree as a required component of democracy. It aims to provide a comprehensive complaint process for users of social media and OTT platforms to resolve their complaints, which was previously unavailable.

## **General Guidelines for All Intermediaries**

These general guidelines apply to all intermediaries, including major social media intermediaries like Twitter, Facebook, Instagram etc. Those who facilitate commercial or business transactions, provide access to networks, search engines, and other types of intermediaries as described are exempt from the category of social media intermediaries under Rule 2(1)(z).

Due Diligence: Rule 4 outlines an intermediary's due diligence responsibilities, which include publishing its rules and regulations, privacy policy, and user agreements for access to its website and/or application so that its users may access them. The user's duty to not "host, view, upload, alter, publish, distribute, store, update, or exchange" any kind of information must be crystallized in the information so released in a way that it:



# Additional Compliance Measures for Significant Social Media Intermediaries

**Due Diligence:** The Rules have a peculiar feature in that they differentiate between social media intermediaries and major social media intermediaries. The demarcation is based on user size, and once determined via government notification, it will serve as a dividing line between the two. The explanation for this is stated in Rule 5, which imposes additional enforcement criteria for major social media intermediaries due to the large number of users and information they manage. With the exception of the user size requirements, the government may enforce the provisions of Rule 5 on any other intermediary through a notification. Within three months of the publication of these laws, those intermediaries should perform the following due diligence:

1. Appointing of a Chief Compliance Officer, assuming the responsibility to ensure compliance and oversight of the functions of significant intermediaries
2. Appointing of a nodal person of contact, who would act as a link between law enforcement agencies
3. Appointing of a Resident Grievance Officer, whose responsibilities would lay parallel to that of the Officer appointed under Rule 4(1)(n)
4. Publishing the compliance report on a periodical basis of six months, containing the details and contents of complaints handled and information removed or interrupted by intermediaries in pursuit of their monitoring activities

## **Digital/Online Media Procedures and Safeguards**

As specified by Rule 2(1)(k), digital media is any digitised content that can be transmitted over the internet or other networks, and includes the same content that is stored or transmitted by intermediaries, such as news publishers or online curated content. It contains the following items:

- Publishers of news and current events
- allowing the transmission of news and current events by intermediaries
- publishers of curated web material, and
- allowing the transmission of online curated content through intermediaries

which are based in India and conduct business by making content available in India and targeting Indian users However, the following laws, which apply to certain bodies, will not take effect until three months have passed after they were written.



# Grievance Mechanism

As per Rule 9, an Online Grievance Platform, created by the Ministry within three months of the rules' implementation, will serve as the central repository for accepting and resolving grievances related to the Code of Ethics (1). As a consequence, the Rules create a three-tiered grievance procedure, which includes:

Level I: Self-regulation by the applicable entity

Level II: Self-regulation by the self-regulating bodies of the applicable entities

Level III: Oversight mechanism by the Central Government

**Level I:** The relevant agency will be notified of the grievance and encouraged to resolve it on its own, whereas the plaintiff and the Grievance Portal will be kept informed. In order to exercise this authority, the relevant body must nominate a Grievance Redressal Officer who will be bound by the Code of Ethics. According to the Schedule, the relevant agency must identify the online curated content it transmits and issue it with an acceptable certificate. The certification can be based on the content, its effect, the target audience, and other factors, and it must be displayed in a prominent location so that consumers are aware of it before accessing the content

## Criticism

The idea of tracking the first originator, as introduced by Rule 5(2), has been regarded as controversial and troubling. It helps the compliance mechanism to reach the originator of any information through significant social media intermediaries that offer messaging services. This is an effort to prevent the dissemination of fake news and illegal activity via messaging applications. Cyber experts, on the other hand, are concerned that this would potentially lead to the overriding of end-to-end encryption, allowing for the establishment of a surveillance state. This could result in a significant data breach, which most messaging apps proudly display as a badge of honour. The authority to trace the originator may also be used to deter or investigate an offence that undermines the state's sovereignty, dignity, or protection. What the Rules fail to consider is the enormous potential for exploitation of such a large and discretionary power.

## **Conclusions :**

Three technological trends—the ubiquity of information in digital form, the widespread use of computer networks, and the rapid proliferation of the World Wide Web—have profound implications for the way intellectual property (IP) is created, distributed, and accessed by virtually every sector of society. The stakes are high in terms of both ideology and economics. Not surprisingly, much discussion of these issues has occurred in the Congress, among stakeholder groups, and in the press. But the effects of the information infrastructure extend beyond these institutions; as never before there are also important and direct effects on individuals in their daily life



