

No. DM/30/2021-DM
Government of India
Ministry of Information & Broadcasting
Digital Media Division

Shastri Bhawan, New Delhi
Dated: 10th June, 2021

To,

1. Digital news publishers
2. Publishers of online curated content (OTT platforms)
3. Associations of digital media publishers

Subject: Representations regarding implementation of IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

Madam/Sir,

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereinafter called Digital Media Rules, 2021) was notified by the Central Government on 25.02.2021. Part III of the Rules relating to Digital News Publishers and Online Curated Content Providers (OTT Platforms) are administered by the Ministry of Information and Broadcasting.

2. Since the notification of these Rules, several developments have taken place for its implementation, including communication sent to over 500 entities in March 2021 regarding the Rules and its compliance, interactions held in March 2021 by the Hon'ble Minister for Information and Broadcasting with digital news publishers and OTT platforms, issue of FAQs and various press releases relating to implementation of these Rules (all of which are placed on the Ministry's website), and conducting webinars with the various stakeholders. The formats for furnishing information by the eligible entities were also sent by email and placed on the Ministry's website on 26th May, 2021. More than 500 publishers have already submitted details in the requisite format. Reminders have been sent to the publishers who have not yet submitted the information. Further, several associations/organizations have informed the Ministry regarding setting up of self-regulating bodies which constitute Level II of the Grievance Redressal Mechanism under the Rules.

3. With regard to the implementation of the Rules, the Ministry has received representations from various associations/organizations. One category of the representations received is that the digital arm of the traditional media entities (Print and TV) be excluded/exempted from the applicability of the Rules. In this regard, various arguments have been advanced, including the following:-

- i. The news organizations have the same or common newsroom for the Print, TV and Digital journalists and the content created by them is already subjected to

several uniform set of guidelines/standards including the Norms of Journalistic Conduct framed by the Press Council of India (PCI), the Programme and Advertising Codes under the Cable Television Networks (Regulation) Act, 1995 and the Rules framed there under;

- ii. The newspaper websites follow self-regulation guidelines of a newspaper as the website is an extension of the newspaper in all respects except for the time scale of frequency of publication, and the newspapers follow stringent self-regulation guidelines and strictly adhere to the Norms of Journalistic Conduct of the Press Council of India.
- iii. The electronic news media is no different from print media and majority of the content posted on the digital platforms is already a part of the TV broadcast, which is subject to government regulations.
- iv. The digital platforms while hosting news feed on OTT platforms are being burdened to adhere and comply with the self-regulatory/oversight mechanism which are resulting in discouraging these platforms from hosting digital news feed of the TV news broadcasters; further the OTT platforms believe that by hosting the news feed of the TV news broadcasters on their platforms, they may be made liable for the content carried under the Digital Media Rules, 2021. Hence, there is a threat to the news feed from being removed from the OTT platforms.

4. The aforementioned representations have been examined in the Ministry in the light of the Digital Media Rules, 2021, the existing statutes, mainly the Cable Television Networks (Regulation) Act, 1995, the Press and Registration of Books Act, 1867, the Press Council Act, 1978, the Programme Code under the Cable Television Network Rules, 1994, Norms of Journalistic Conduct under the Press Council Act, the Uplinking & Downlinking Guidelines of 2011 for private TV channels, etc. In the light of these it is contended as under:-

(i) The Code of Ethics laid down under the Digital Media Rules, 2021 provide that the digital news publishers shall adhere to the codes which has three elements -- (a) the Programme Code under the Cable Television Networks (Regulation) Act; (b) the Norms of Journalistic Conduct under the Press Council Act; and (c) that content which is prohibited under any law for the time being in force be not published. The traditional media publishers (TV and Print) are already regulated by these norms. Accordingly, extending these norms to the digital news platforms of the organizations which are in the business of traditional news (TV and Print) is no new or additional compliance.

(ii) While the Press Council Act covers newspapers (including replica e-version of a newspaper), the news portals/websites (.coms, .ins, etc.) are not covered under that Act. Content also differs across the traditional and digital platforms. Accordingly, news portals/websites even of the organizations having traditional newspapers will be covered under the said Rules.

(iii) Similarly, with regard to traditional TV news entities, while content appearing on a traditional TV channel is covered under the content regulations framed under the Cable Television Networks (Regulation) Act (Programme Code, etc) read along with the Uplinking and Downlinking Guidelines for private TV channels (2011), the digital news portals/websites of these traditional TV organizations are not covered under that Act/Guidelines. Further, the content may be different between the traditional and digital platforms. As a case in point, in a recent decision, the News Broadcasters Standards Authority (NBSA) held that a news which appears only on the website (.com/.in) of an organization but not its traditional TV platform would be outside the scope of its jurisdiction.

(iv) While newspapers are regulated by RNI under the Press & Registration of Books Act, 1867 and satellite TV channels are granted permission under the Uplinking and Downlinking Guidelines, 2011, the digital news portals/websites are not covered under these laws/guidelines.

5. Having regard to the above, the rationale for including the digital news portals/websites of the organizations having traditional news platforms under the ambit of the Digital Media Rules, 2021 is well reasoned. Making any exception of the nature proposed will be discriminatory to the digital news publishers who do not have a traditional TV/print platform. As already mentioned, since the Code of Ethics requires such digital platforms to follow the existing norms/content regulations which are in vogue for the traditional print and TV media, there is no additional regulatory burden for such entities. Accordingly, the request for exempting the digital news content of such organizations from the ambit of the Digital Media Rules, 2021, cannot be acceded to.

6. However, the Ministry does recognize that entities having traditional TV and print media are already registered/enrolled with the Government of India either under the Press and Registration of Books Act (by the Registrar of Newspapers for India) or under the Uplinking and Downlinking Guidelines of 2011 of Ministry of Information and Broadcasting. Accordingly, while notifying the forms for furnishing information by the digital news publishers, a distinction has been made between organizations having traditional news media and other digital news publishers, and for the former, the information sought is bare minimum. As claimed by the aforementioned entities, the digital version/digital publication of the organizations having traditional news platforms (TV and Print) may be following internal guidelines of the self-regulating bodies. Accordingly, if the organizations so desire, they can request the same self-regulatory bodies to serve as the Level II of the self-regulatory mechanism, after ensuring consistency with the Digital Media Rules, 2021.

7. An apprehension has been raised relating to perceived reluctance of OTT platforms in hosting news feed of digital news publishers on their platform on the pretext that the content contained therein would be the regulatory responsibility of the hosting OTT platform under the Digital Media Rules, 2021. In this regard two points need to be clarified. First and foremost

“online curated content” is defined under clause (q) of rule 2 of the Digital Media Rules, 2021 which specifically excludes “news and current affairs content”. When any news and current affairs content of a digital news publisher is transmitted on an OTT platform, such content would be outside the regulatory responsibility of that platform. However, if any OTT platform receives a grievance related to such news and current affairs content, it may transfer the same to the concerned publisher of that content. Accordingly, there should not be any apprehension on this count either to the digital news publishers or to the OTT platforms.

8. The second set of representations received by the Ministry are regarding certain concerns relating to increased compliance burden on publishers, excessive Governmental control by way of emergency powers (under Rule 16), the oversight mechanism (under Rule 13) through the Inter-Departmental Committee, and the prescription relating to the composition of the self-regulating body and its registration by the Government.

9. At the outset, it may be mentioned that the Rules have been framed under the Information Technology Act, 2000, taking into account the various legal aspects and are consistent with the provisions of the Act. On the issue of increased compliance burden due to the stipulation of a 3-Tier regulatory mechanism, it may be mentioned that Level I requires a simple mechanism for a digital publisher to redress the grievances relating to the Code of Ethics within a certain time frame. This is considered appropriate from the view point of providing a forum for citizens who may have certain grievances relating to Code of Ethics. However, the publisher can at its level decide whether or not such grievance is in fact a violation of Code of Ethics and convey the same to the complainant. It may also be made clear that rules explicitly mention that only grievances on content relating to Code of Ethics (and not of any other nature) need be addressed. On the issue of excessive compliance burden for attending to a large number of grievances within a timeframe of 15 days especially for the small and medium size publishes, till date the Government has not received any representation from any particular digital news publisher citing the exact number of grievances received by it relating to the Code of Ethics and the difficulty faced by it in the redressal of grievances. In case such a representation is brought before the Ministry, the matter would be considered appropriately.

10. With regard to Level II viz. the self-regulatory mechanism provided for in the Digital Media Rules 2021, already the traditional TV media organizations have formed various associations to adjudicate grievances relating to violation of Programme Code under the Cable Television Network Act, 1995 and their internal codes/guidelines. Hence there is a prevalent system of self-regulation for the traditional news platforms. The requirement of the Level II under the Digital Media Rules, 2021 is only an extension of an existing institutional practice. Further, the composition of the self-regulating body would be decided entirely by the publishers and the Government has no role to play. The requirement of registration of such bodies with the Government is only to ensure that the composition is in accordance with the Rules and the body undertakes to perform the functions laid down under the Rules. It is neither stipulated nor intended for the Government to either interfere or obstruct the formation of the self-regulating body including its composition.

11. With regard to the Oversight Mechanism and the role of the Central Government, some concerns have been expressed including excessive Government control through this level over the functioning of the digital news publishers and OTT platforms. In this regard it may be mentioned that even at present, in respect of traditional TV channels, there is an oversight mechanism in the Government by way of an Inter-Ministerial Committee (IMC) which looks at certain grievances relating to the violation of the Programme Code, a mechanism which is in existence since 2005. Over the last over 15 years, the IMC has given recommendations by way of Advisories, Warnings, etc in respect of a large number of cases involving content of both news and non-news channels in relation to the Programme Codes and in almost every such case, the TV channels have accepted the recommendations of this Committee. The IMC mechanism has stood the test of time. The concept of Inter Departmental Committee (IDC) is similar. It may be mentioned that the Inter-Departmental Committee (IDC) under the Rules would consist of, apart from representatives from various Departments, persons with domain expertise from other organizations also. Further, Level III is visualized as a residual level, insofar as the grievances which do not get redressed at the first and second levels would go to the IDC. Accordingly, the apprehension of excessive Governmental control through these mechanisms is misplaced.

12. On the issue of the Government having emergency powers under Rule 16 of the Digital Media Rules, this matter has already been clarified by this Ministry's communication dated 27.02.2021 (copy placed on the Ministry's website) wherein it has been mentioned that such a provision already existed since 2009 under the Information Technology Act, 2000.

13. In the overall context, the Digital Media Rules, 2021 may be complied with by the digital news publishers and OTT platforms without any misapprehensions. The publishers may furnish the requisite information in the prescribed format immediately, take urgent steps for appointing a Grievance Officer (if not already done) and place all relevant details on public domain, and constitute self-regulatory bodies through mutual consultation so that the grievances are addressed at the level of publishers (or their self-regulating bodies) themselves.

14. This issues with the approval of the competent authority.

Yours faithfully,

10/06/2021

(Kshitij Aggarwal)
Assistant Director (DM)