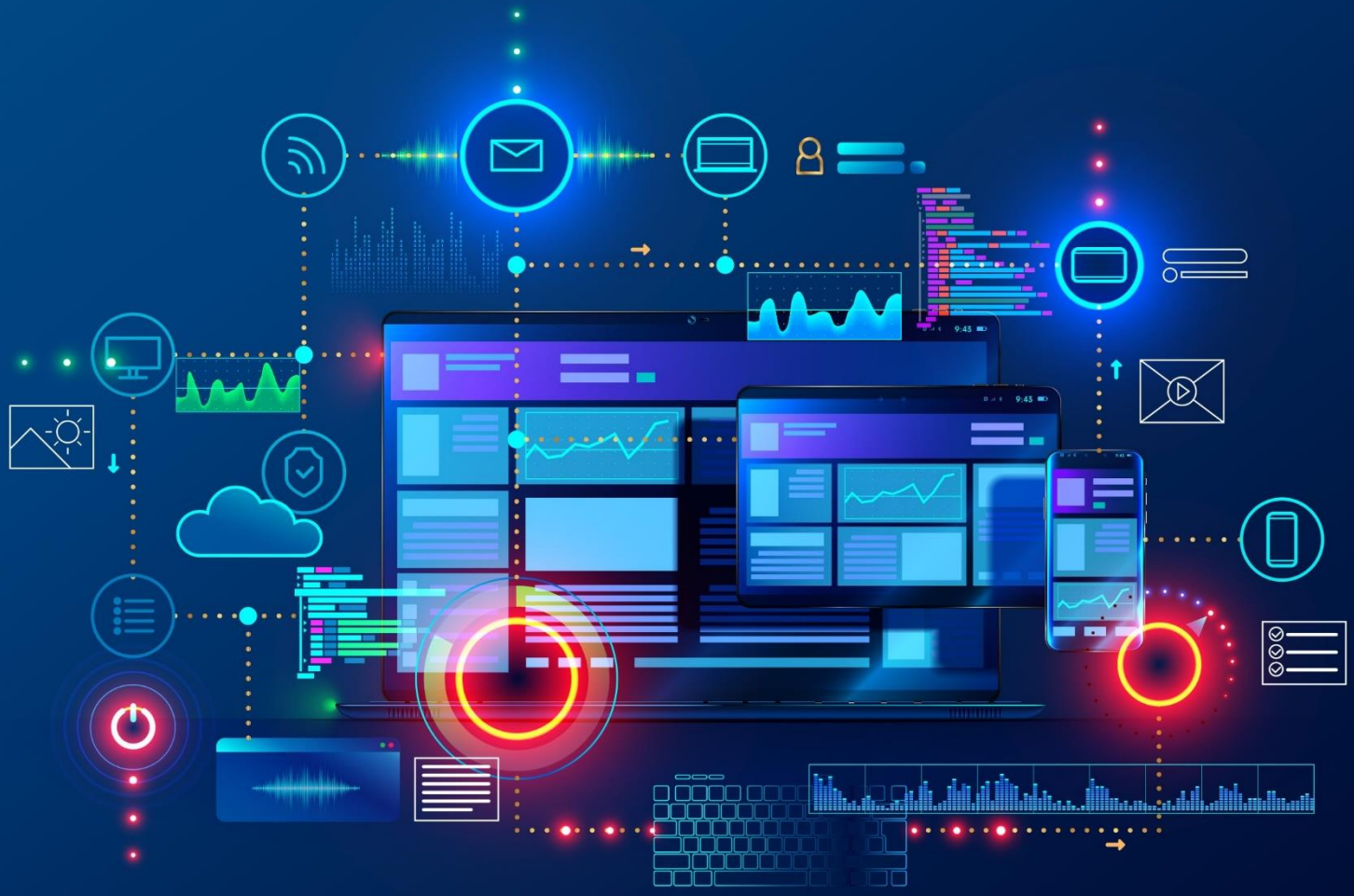
CHASE INDIA

PROPOSED CLASSIFICATION OF INTERMEDIARIES UNDER THE UPCOMING DIGITAL INDIA BILL

Understanding Roles & Regulatory Considerations

OCTOBER 2023



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Executive Summary

As India's digital economy grows, the roles of intermediaries are expanding. The current concept of intermediaries no longer fits today's landscape due to the diversification of digital services and multifaceted roles they play, thus necessitating updated regulatory frameworks and definitions. Therefore, there is a need for a nuanced intermediary classification and corresponding regulatory framework, tailored specifically for this context – frameworks that strike a balance between user rights, national security interests, innovation, and societal wellbeing. Clarity in classification will enhance accountability and ensure a safe online environment for *Digital Nagriks*.

The main objective of the proposed Digital India Bill is to enable an open, safe, trusted, and accountable internet. This paper explores the evolution of classification of intermediaries in India – from the Information Technology Act of 2000 to the Intermediary Guidelines Rules of 2011 and the recent Information Technology Rules of 2021. It goes on to propose a mechanism which categorizes intermediaries into three areas: Infrastructure-centric, content-centric, and service-centric.

The proposed intermediary classification mechanism introduces a comprehensive framework for classifying intermediaries and defining their corresponding obligations. This framework is based on the nature/ centricity of intermediaries' functions.

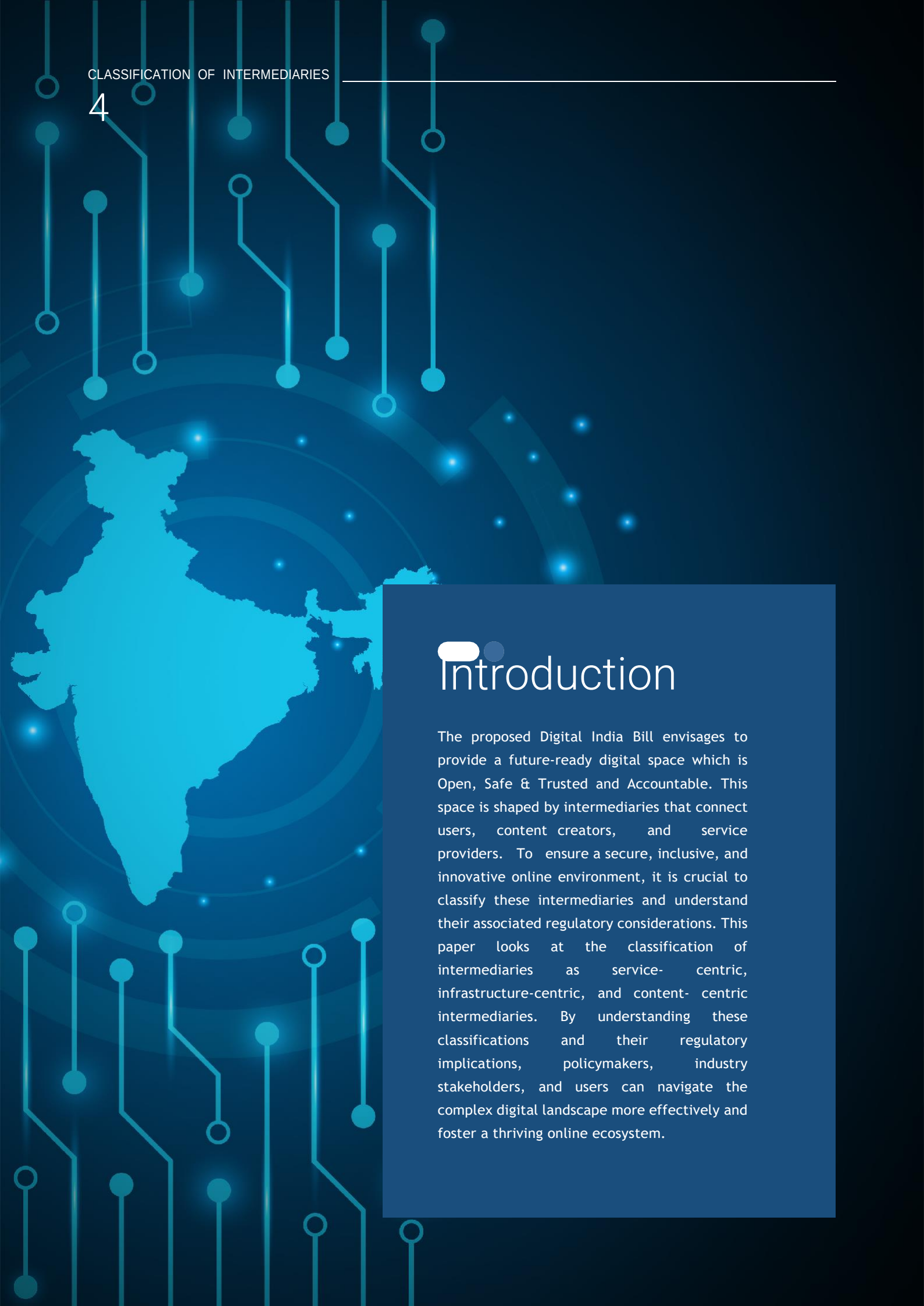
Infrastructure-centric intermediaries, vital for internet connectivity and functionality, are primarily concerned with the provision of digital infrastructure. These intermediaries shall ensure non-discriminatory access and adherence to technical standards. They shall be protected from third-party content provided they adhere to their due diligence obligations.

Content-centric intermediaries, facilitating content creation and sharing, shall prioritize user safety and content moderation, ensure transparency in algorithmic processes, and enable identification of the first originator. They are required to publish compliance reports and promptly take down illegal content.

Service-centric intermediaries, connecting users with services, shall maintain transparency in algorithmic processes, takedown illegal content, and enable user verification for accountability.

Content-centric and service-centric are further designated as either Significant or Non-Significant based on the number of users hosted by the platform, among other considerations. Additionally, Significant content-centric and service-centric intermediaries are required to appoint a Regulatory Liaison Officer, have a physical contact in India, and enable voluntary account verification.

In conclusion, the proposed Intermediary classification mechanism offers a nuanced and comprehensive approach to regulating intermediaries in the digital landscape, by acknowledging the diverse roles and responsibilities they hold. It establishes tailored obligations, fostering user safety, accountability, transparency, and compliance, while safeguarding innovation. This holistic approach strikes a balance between effective governance and the dynamic evolution of the digital ecosystem.



Introduction

The proposed Digital India Bill envisages to provide a future-ready digital space which is Open, Safe & Trusted and Accountable. This space is shaped by intermediaries that connect users, content creators, and service providers. To ensure a secure, inclusive, and innovative online environment, it is crucial to classify these intermediaries and understand their associated regulatory considerations. This paper looks at the classification of intermediaries as service- centric, infrastructure-centric, and content- centric intermediaries. By understanding these classifications and their regulatory implications, policymakers, industry stakeholders, and users can navigate the complex digital landscape more effectively and foster a thriving online ecosystem.

Intermediary classification in the Indian context

Over the past two decades, the classification of intermediaries in India has evolved in response to the changing technological landscape and regulatory needs. The Information Technology Act 2000[1] (IT Act, 2000) was a pivotal development in recognizing and defining intermediaries in India. It provides an inclusive definition of 'Intermediary'[2], encompassing Telecom Service Providers ("TSPs"), network service providers, Internet Service Providers ("ISPs"), web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places, and cyber cafes.

The legislative foundation for subsequent regulatory frameworks was established through this Act, the Information Technology (Intermediary guidelines) Rules, 2011[3] being one of them. The origins of these guidelines go back to a significant legal event in 2004 involving the online platform Bazee.com (now eBay)[4]. This case raised profound questions regarding the legal framework applicable to online platforms and the extent of their responsibility concerning user-generated content. The incident served as a catalyst for the government formulate to lay down the obligations and liabilities of online intermediaries, through these rules.

A revised framework for intermediaries was introduced in 2021, by the Ministry of Electronics & Information Technology (MeitY), Government of India, i.e., the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules 2021) which initiated intermediary classification by differentiating social media intermediaries into Social Media Intermediaries (SMIs)[5] and Significant Social Media Intermediaries (SSMIs)[6], i.e., those having a higher threshold of registered users (50,00,000) in India.[7] While SMIs are expected to fulfill certain baseline obligations, SSMIs are subjected to stricter obligations which inter-alia include appointing a Chief Compliance Officer,[8] publishing monthly periodic compliance reports,[9] among others.

1. The Information Technology Act, 2000. Accessed from https://www.indiacode.nic.in/bitstream/123456789/1999/1/a2000-21.pdf
2. Section 2(1) (w), Information Technology Act, 2000 defines intermediary as any person who on behalf of another person receives, stores or transmits an electronic record or provides any service with respect to that record.
3. Information Technology (Intermediaries guidelines) Rules, 2011. Accessed from https://upload.indiacode.nic.in/showfile?actid=AC_CEN_45_76_00001_200021_1517807324077&type=rule&filename=Information%20Technology%20(Intermediaries%20Guidelines)%20Rules,%202011.pdf
4. Avnish Bajaj vs. State. Accessed from https://indiankanoon.org/doc/309722/
5. Section 2 (w), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.
6. Section 2 (v), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.
7. Accessed from https://www.meity.gov.in/writereaddata/files/Gazette%20Significant%20social%20media%20threshold.pdf
8. Section 4 (1) (a), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.
9. Section 4 (1) (d), Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

Need for revisiting existing classification

A study conducted by MeitY in 2019 estimated that India's digital economy potential to reach U$1 trillion by 2025 as long as India's 'business as usual' scenario continues.[10] This could unlock significant growth potential of digital intermediaries, making them more prominent and impactful with respect to various aspects of the economy, society, and individual users.

In the digital realm, intermediaries often perform multiple roles and functions, making it challenging to determine their legal status and associated responsibilities and liabilities. The classification of intermediaries is important for a variety of reasons – first, it helps establish the legal liability of intermediaries for the content and services facilitated through their platforms. Second, different categories of intermediaries may warrant different regulatory considerations. This ensures that regulations are proportionate and effective in addressing potential harm or violations within each classification. Therefore, it becomes imperative to classify intermediaries and identify the regulatory considerations associated with their operations.

Additionally, in recent times, the safe harbor principle outlined in Section 79 of the Information Technology Act, 2000 has become less effective due to the evolving landscape of online intermediaries. The emergence of various types of intermediaries with distinct functions has created the need for separate regulatory requirements for each, as they no longer fit into traditional definitions.

It is important to understand that intermediaries in India provide services across various industries and sectors and host different sizes of user base on their platforms. Since intermediaries also perform overlapping functions, it is necessary to develop a mechanism that does not aim towards a one-size-fits-all approach but instead one that transcends sector-specific regulations and maximizes online user safety. As a result, the concept of a classical intermediary has become outdated. New regulatory frameworks need to be developed to address these changing dynamics. Moreover, a classification of this sort would enable effective governance, addressing the challenges posed by overlapping functions and fostering a balanced and transparent regulatory environment.

The more important question now is to understand the basis behind distinguishing intermediaries to enhance accountability and make the internet safer.

10. Accessed from https://www.meity.gov.in/writereaddata/files/india_trillion-dollar_digital_opportunity.pdf
11. Thathoo, C. (2022). Digital India Act: Govt Plans Category-Wise Regulations for Online Intermediaries. Inc42. Accessed from https://inc42.com/buzz/digital-india-act-govt-plans-category-wise-regulations-for-online-intermediaries/

Mandatory due diligence obligations

Since the digital ecosystem is characterized by its diverse range of participants, services, and content, common obligations establish a baseline for all participants. These obligations ensure a minimum standard of responsible conduct for all intermediaries, fostering trust, fairness, and accountability. Graded obligations, on the other hand entail tailoring regulatory requirements based on the specific characteristics and functions of intermediaries.

Below are specific mandatory due diligences, incorporating some elements from the IT Rules, 2021, which shall be applicable to all intermediaries.

Publication of details

The intermediary is required to prominently publish the rules, regulations, and user agreement for accessing or using its computer resources on its website, mobile-based application, or both. It shall inform users in English, or any appropriate language, allowing them to choose the language in which they wish to access computer resources.

Intermediaries are required to refrain from hosting, displaying, uploading, modifying, publishing, transmitting, storing, updating, or sharing any information of an illegal nature. It is also obligated to take reasonable measures, both on its own and by encouraging its computer resource users, to prevent the hosting, displaying, uploading, modifying, publishing, transmitting, storing, updating, or sharing of any information that:

i. Belongs to another person and to which the user does not have any right, if it infringes any patent, trademark, copyright or other proprietary rights;
ii. Is obscene, pornographic, pedophilic, invasive of another's privacy including bodily privacy, insulting or harassing on the basis of gender, racially or ethnically objectionable;
iii. Relating to or encouraging money laundering or gambling, or is in the nature of an online game that is not verified as a permissible or is in the nature of advertisement or surrogate advertisement or promotion of an online game that is not a permissible online game, or of any online gaming intermediary offering such an online game;
iv. Promoting enmity between different groups on the grounds of religion or caste with the intent to incite violence;
v. Is harmful to children;
vi. Deceives or misleads the addressee about the origin of the message or knowingly and intentionally communicates any misinformation or information which is false and untrue or misleading in nature [or, in respect of any business of the Central Government, is identified as fake or false or misleading by such fact check unit of the Central Government as the Ministry may, by notification published in the Official Gazette, specify];
vii. Impersonates another person;
viii. Threatens the unity, integrity, defense, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognizable offence, or prevents investigation of any offence, or is insulting another nation;
ix. Contains software virus or any other computer code, file or program designed to interrupt, destroy or limit the functionality of any computer resource;
x. Violates any law for the time of being in force;

Periodic reminders

The intermediary shall periodically inform its users, at least once every year, about any change in the rules and regulations, or user agreement, as the case may be. In case of non-compliance with rules and regulations of such intermediary, it has the right to terminate the access or usage rights of the users to the computer resource immediately or remove non-compliant information or both.

For intermediaries that do not primarily deal with content creation or dissemination, it is crucial to emphasize the fact that any actions involving the termination of user access, or the removal of content will be carried out exclusively in adherence to a formal notification issued by a government authority or a legally binding court order mandating the intermediary to such effect.

Security measures

The intermediary shall take all reasonable measures to secure its computer resources and the information contained therein, and shall not knowingly deploy or install or modify technical configuration of computer resource or become party to any act that may change or has the potential to change the normal course of operation of the computer resource than what it is supposed to perform thereby circumventing any law for the time being in force.

Report incidents to CERT-In

The intermediary shall report cyber security incidents and share related information with the Indian Computer Emergency Response Team in accordance with the policies and procedures mentioned in the Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013.

Retainment of user's information

Where upon receiving actual knowledge, or on a voluntary basis (in case of content-centric intermediaries), or on the basis of grievances received (in case of content-centric intermediaries), any information has been removed or access to which has been disabled, the intermediary shall, without vitiating the evidence in any manner, preserve such information and associated records for 180 days for investigation purposes, or for a longer period as may be required by the court or by Government agencies who are lawfully authorized. Where an intermediary collects information from a user for registration on the computer resource, it shall retain his information for a period of 180 days after any cancellation or withdrawal of his registration.

Grievance redressal mechanism of intermediary

The intermediary shall prominently publish on its website, mobile based application, or both, as the case may be, the name of the Grievance Officer and his contact details as well as mechanism by which a user may make a complaint against violation of the provisions of this rule. The Grievance Officer shall -

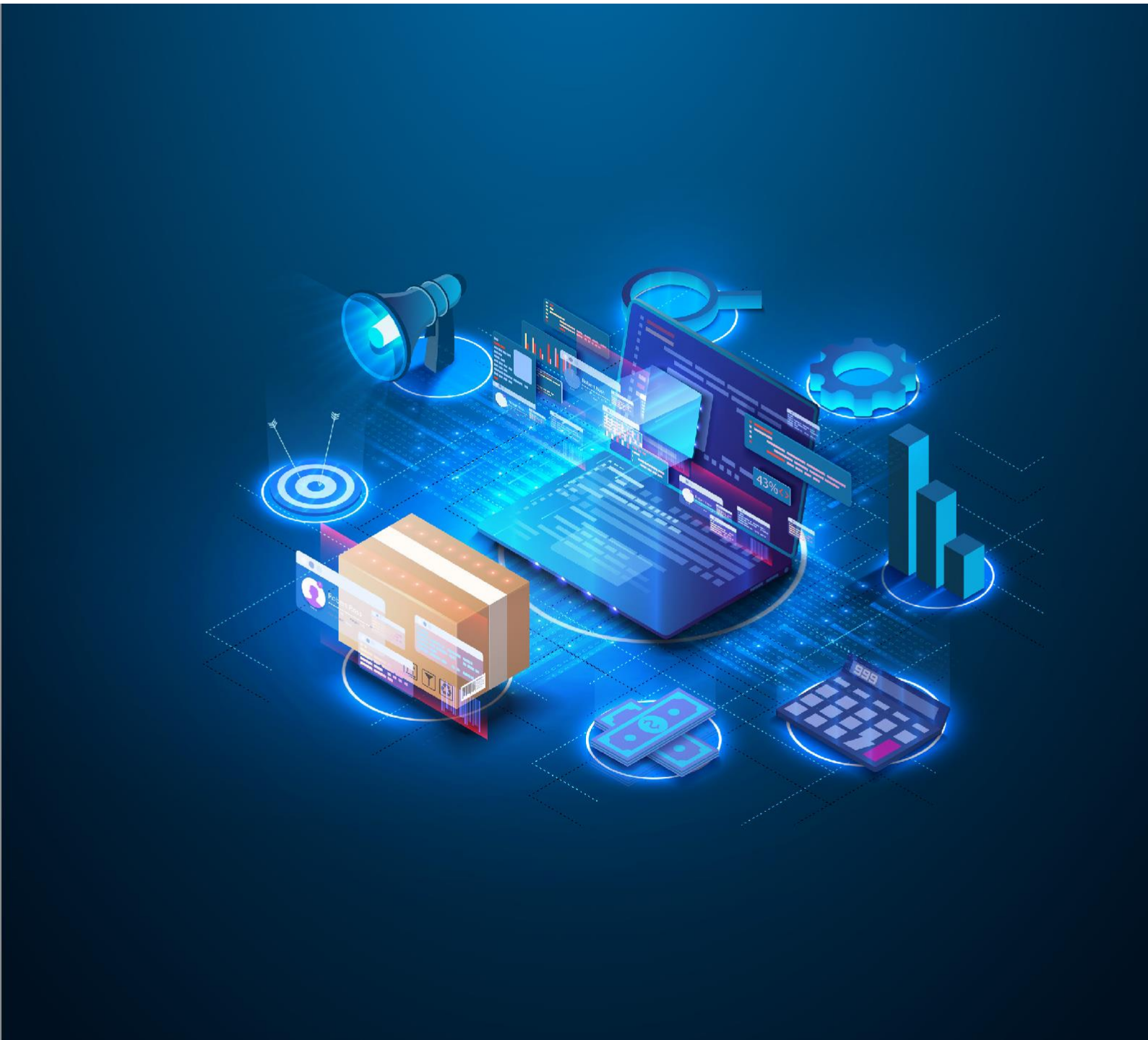
i. Acknowledge the complaint within 24 hours and dispose of such complaint within a period of 15 days from the date of its receipt. In instances where the complaints extend beyond the scope of intermediaries not directly involved in content creation, the Grievance Officer may guide complainants towards the most appropriate avenue for resolution. This guidance might encompass directing complainants to the relevant authority tasked with addressing concerns related to their specific complaint category.
ii. Receive and acknowledge any order, notice or direction issued by the appropriate Government, any competent authority, or a court of competent jurisdiction.

Compliance with Applicable Laws and Regulations

The intermediary shall adhere to applicable legal frameworks and regulations, such as consumer protection laws, intellectual property rights, data protection laws, among others.

Cooperate with the Govt.

The intermediary shall, as soon as possible, but not later than 72 hours of the receipt of an order, provide information under its control or possession, or assistance to the Government agency which is lawfully authorized for investigative or protective or cyber security activities, for the purposes of verification of identity, or for the prevention, detection, investigation, or prosecution, of offences under any law for the time being in force, or for cyber security incidents.



Proposed Intermediary Classification Mechanism

The possible classification of intermediaries and their subsequent obligations have been tabulated below:

Obligations	Content - centric		Service - centric		Infrastructure - centric
	Significant	Non-significant	Significant	Non-significant	
Publications of details	✓	✓	✓	✓	✓
Periodic reminders	✓	✓	✓	✓	✓
Security measures	✓	✓	✓	✓	✓
Report incidents to CERT-In	✓	✓	✓	✓	✓
Retainment of users' information	✓	✓	✓	✓	✓
Grievance redress	✓	✓	✓	✓	✓
Compliance with applicable law	✓	✓	✓	✓	✓
Cooperate with government agency	✓	✓	✓	✓	✓
User safety & content moderation	✓	✓			
Accessibility & inclusive design	✓	✓			
Enable identification of first originator	✓	✓			
Technology based measures	✓	✓			
Publish periodic compliance reports	✓	✓			
Prior intimation to users	✓	✓			
Transparency regarding algorithmic processes	✓	✓	✓	✓	
Take down illegal content	✓	✓	✓	✓	
Appoint a Chief Compliance Officer	✓		✓		
Appoint a Nodal Contact Person	✓		✓		
Appoint a Resident Grievance Officer	✓		✓		
Physical contact in India	✓		✓		
Appropriate grievance mechanism	✓		✓		
Voluntary verification of accounts	✓		✓		
Non-discriminatory access & equal treatment					✓
Compliance with technical standards & protocol					✓

i. Infrastructure-Centric Intermediaries

Infrastructure-centric intermediaries provide essential services that form the foundation of the internet and enable online connectivity and functionality[11][12]. They are a category of entities that occupy a crucial position in the digital ecosystem by providing and managing the fundamental technological and physical infrastructure that underpins the internet and enables online connectivity and functionality for end users. They play a pivotal role in building, operating, and maintaining the backbone of the internet, encompassing a diverse range of services and components that are essential for seamless online communication, data transfer, and access to web-based resources.

They include Internet Service Providers (ISPs), Domain Name System (DNS), Operating System Providers (OSPs), Network Service Providers (NSP), Cloud Service Providers (CSPs), and Content Delivery Network (CDNs). These intermediaries enable internet connectivity, domain registration, website hosting, and content distribution.

These intermediaries also include internet exchange points, and certificate authorities. However, the current regulatory challenges faced by this class of intermediaries stem from the general definition of "intermediary" as outlined in the IT Act, 2000. The definition poses challenges as it subjects infrastructure-centric intermediaries to the same regulatory requirements, liabilities, and obligations as other types of intermediaries like social media platforms or E-commerce platforms.

Due to their unique role as providers of fundamental internet infrastructure, infrastructure-centric intermediaries may have distinct operational characteristics, technical considerations, and responsibilities compared to other intermediaries. Applying a one-size-fits-all regulatory approach is not advisable.

Regulatory Considerations for Infrastructure-Centric Intermediaries

a. Non-Discriminatory Access and Equal Treatment

Non-discriminatory access refers to the principle that all internet traffic shall be treated equally, without discrimination or favoritism based on the content, application, source, or destination of the data. Equal treatment means that all users and data packets shall receive the same level of service and access to the network. Infrastructure-centric intermediaries shall ensure equal treatment of all internet traffic without discrimination or preference. An open and level playing field is crucial to foster innovation, competition, and user choice.[13]

b. Compliance with Technical Standards and Protocols

Interoperability and adherence to technical standards are essential for seamless internet connectivity. Infrastructure-centric intermediaries shall comply with the technical standards and established protocols, enhancing user experience and system integrity. This ensures interconnectedness and interoperability.

11. Constantinides, P., Henfridsson, O., and Parker, G.G. (2018). Digital Infrastructure and Platforms. Platforms and infrastructure in the Digital Age. Massachusetts Institute of Technology. Accessed from https://ide.mit.edu/sites/default/files/publications/ISR%202018%20Constantinides%20Henfridsson%20Parker%20Editorial.pdf
12. Warbo, Z. (2022). Net Neutrality: Defending the Internet "As we know it" is not enough. Open Future. Accessed from https://openfuture.eu/blog/net-neutrality-defending-the-internet-as-we-know-it-is-not-enough/

Safe Harbor provision in case of infrastructure-centric intermediaries

1. An infrastructure-centric intermediary shall not be held liable for any third-party content, data, or communication link made available or hosted by it if they observe due diligence.
2. This provision universally applies to all infrastructure-centric intermediaries, regardless of the nature or extent of the intermediary's function. This provision of complete impunity for infrastructure-centric intermediaries ensures absolute exemption from any form of liability, responsibility, or consequences for third-party content or activities facilitated through their platforms, unless they fail to meet the mandatory due diligence obligations listed in the previous section.

ii. Content-Centric Intermediaries

Content centric intermediaries primarily focus on allowing content creation, as well as content hosting and dissemination. They provide platforms or spaces where users can create, share, and consume content. They often employ algorithms, manual curation, or a combination of both to ensure that the content they showcase aligns with the interests and preferences of their target audience. These intermediaries also serve as platforms for content creators to publish and share their work, thereby fostering community engagement. To be designated as either significant or non-significant content-centric intermediaries, all the specified criteria shall be met.

- **Number of users:**

  This criterion is a fundamental aspect for evaluating and designating content-centric intermediaries as significant and non-significant content-centric intermediaries. It focuses on assessing the size of the platform's user base. This criterion recognizes that platforms with a larger user base (50,00,000) often wield greater influence over content dissemination, user engagement, and societal impact and, therefore, shall be subjected to stricter regulatory considerations.

- **Nature & number of Grievances registered and resolved:**

  This criterion emphasizes the platform's adherence to established grievance redressal mechanisms, with a particular focus on the volume of user complaints and their efficient resolution. It is crucial to assess the platform's responsiveness to grievances and its ability to resolve issues effectively. However, it is equally important to consider the nature and severity of grievances alongside the sheer number of complaints before classifying content-centric intermediaries as significant or non-significant.

- **Virality of Content:**

  The virality of content refers to the speed and extent at which a piece of content spreads across a platform, often driven by user engagement, sharing, and interactions. Content-centric intermediaries can be differentiated into high-virality platforms which refers to those platforms that have a high propensity to amplify and spread content quickly where content can go viral within a short span due to user sharing and engagement and low-virality platforms which refers to those platforms that have a limited potential for content to go viral.

Regulatory Considerations for Content-Centric Intermediaries

a. User Safety & Content Moderation:

Given the vast volume of user-generated content, content-centric intermediaries shall establish robust content moderation mechanisms to address issues such as hate speech, misinformation, and harmful content and promote user safety by preventing the dissemination of harmful content, including explicit or violent material, cyberbullying, or harassment. Transparency, consistency, and accountability in content moderation policies are critical [14].

- Technology-based measures: Content-centric intermediaries shall endeavor to deploy technology-based measures, including automated tools or other mechanisms to proactively identify information that depicts any act or simulation in any form depicting rape, child sexual abuse or conduct, whether explicit or implicit, or any information which is exactly identical in content to information that has previously been removed or access to which has been disabled on the computer resource of such intermediary.

b. Transparency regarding algorithmic processes:

Content-centric Intermediaries shall be transparent about their algorithmic processes and provide explanations for how content is prioritized, promoted, or demoted. This helps prevent undue influence, biases, and manipulation of user experiences and allows for external scrutiny and accountability. When intermediaries manufacture their own content and use algorithms, transparency ensures that there are checks and balances in place.[15]

c. Accessibility and Inclusive Design:

Content-centric intermediaries should strive to provide inclusive platforms that are accessible to users with disabilities. Ensuring compliance with accessibility standards and facilitating inclusive design principles helps create an online environment that is accessible to all users.[16]

d. Enable the identification of the first originator:

Content-centric intermediaries providing services primarily in the nature of messaging shall enable the identification of the first originator of the information on its computer resource as may be required by a judicial order passed by a court.

e. Publish periodic compliance report every month:

It would include the details of complaints received, and action taken, and the number of specific communication links or parts of information that the intermediary has removed or disabled access to in pursuance of any proactive monitoring conducted by using automated tools or any other relevant information as may be specified.

14. Content Moderation. Council of Europe. Accessed from https://rm.coe.int/content-moderation-en/1680a2cc18
15. Transparency on algorithms needs to be conscious step for social media platforms: Koo co-founder. The Economic Times. Accessed from https://economictimes.indiatimes.com/news/india/transparency-on-algorithms-needs-to-be-conscious-step-for-social-media-platforms-koo-co-founder/articleshow/87829709.cms?from=mdr
16. Digital Accessibility Guidelines. Internet Society. Accessed from https://www.internetsociety.org/wp-content/uploads/2018/08/APAC_Digital-Accessibility_Guidelines-1.pdf

f. Take down illegal content:

An content-centric intermediary, on whose computer resource the information is stored, hosted or published, upon receiving actual knowledge in the form of an order by a court of competent jurisdiction or on being notified by the appropriate Government or its agency shall not host, store or publish any unlawful information, which is prohibited under any law for the time being in force in relation to the interest of the sovereignty and integrity of India; security of the State; friendly relations with foreign States; public order; decency or morality; in relation to contempt of court; defamation; incitement to an offence relating to the above, or any information which is prohibited under any law for the time being in force:

- Disable access to offensive content: The content-centric intermediary shall, within 24 hours from the receipt by the concerned individual in relation to any content which is prima facie in the nature of any material which exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct, or is in the nature of impersonation in an electronic form, including artificially morphed images of such individual, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it.

g. Prior intimation to the user:

Where the intermediary removes or disables access to any information, data or communication link, on its own accord, such intermediary shall:

- Ensure that it has provided the user who has created, uploaded, shared, disseminated, or modified information, data or communication link using its services with a notification explaining the action being taken and the grounds or reasons for this.
- Ensure that the user who has created, uploaded, shared, disseminated, or modified information using its services is provided with an adequate and reasonable opportunity to dispute the action being taken by such intermediary and request for the reinstatement of access to such information, data, or communication link, which may be decided within a reasonable time.
- Ensure that the Resident Grievance Officer (in case of a significant social media intermediary) of such intermediary maintains appropriate oversight over the mechanism for resolution of any disputes raised by the user under clause (b).

Safe Harbor provision in case of content-centric intermediaries

1. A content-centric intermediary shall not be held liable for any third-party content, data, or communication link made available or hosted by it, if:

- The intermediary observes due diligence while discharging its duties.
- The intermediary refrains from altering user-generated content, except in cases where platform technologies are utilized solely for the purpose of removing infringing content. For instance, if a user shares a video with copyrighted scenes, the platform notifies the user about the violation, allowing them to edit or contest it before automated tech removes the infringing part.

III. Service-Centric Intermediaries

Service-centric intermediaries primarily facilitate the provision of digital services between service providers and end-users. They act as platforms or entities that connect users with a wide range of services, enabling transactions, communication, or other interactions, creating a digital marketplace for various activities. However, when it comes to service-centric intermediaries and their potential connection to "content," the definition of content might extend beyond traditional textual or media-based materials. In this context, "content" for service-centric intermediaries could encompass the digital offerings, information, resources, or experiences that service providers offer to users through the intermediary's platform. Therefore, in the realm of service-centric intermediaries, "content" expands to encapsulate the digital services and experiences that are facilitated through their platforms. The following is the criteria based on which service-centric intermediaries ought to be designated as significant and non-significant:

Number of users: This criterion is a fundamental aspect for evaluating and designating service-centric intermediaries as significant and non-significant. It focuses on assessing the size of the platform's user base, which can range from a relatively small community to a massive and influential audience. This criterion recognizes that platforms with a larger user base (50,00,000) often wield greater influence over content dissemination, user engagement, and societal impact, and therefore be subjected to stricter regulatory considerations.

The following is the broad category of service-centric intermediaries:

1. **Transactional Intermediaries:** Transactional intermediaries primarily facilitate financial transactions and related activities between users and service providers. They provide platforms or services that enable secure payment processing, money transfers, and other financial interactions. The broad category of intermediaries under this sub-set includes the following:
    a. Digital Wallets: Digital wallets, also known as e-wallets or mobile wallets, are virtual platforms that allow users to store their payment information securely and make digital transactions conveniently.
    b. Peer-to-Peer Payment Gateways: Peer-to-peer (P2P) payment gateways enable individuals to transfer funds directly to one another without the need for traditional intermediaries like banks.
    c. Insurance Aggregators: Insurance aggregators are digital platforms or intermediaries that enable users to compare and purchase insurance products from multiple providers.
    d. Virtual asset service providers: Platforms or intermediaries that enable users to buy, sell, and trade in listed virtual digital assets for fiat, or other virtual digital assets.

2. **Shared economy platforms**: Shared economy platforms are those that facilitate the provision of goods or services, based on user demand. Shared economy platforms are digital platforms that facilitate the sharing or exchange of goods, services, or resources among individuals or businesses. These create a marketplace where users can access and utilize resources owned or provided by others, promoting efficiency, convenience, and collaboration. Examples include food delivery platforms, ride- hailing platforms and E-commerce platforms.

Regulatory Considerations for Service-Centric Intermediaries:

a. Transparency regarding algorithmic processes:

Service-centric Intermediaries shall be transparent about their algorithmic processes and provide explanations for how content is prioritized, promoted, or demoted. This helps prevent undue influence, biases, and manipulation of user experiences. Transparency allows for external scrutiny and accountability.

b. Take down illegal content:

An intermediary, on whose computer resource the information is stored, hosted or published, upon receiving actual knowledge in the form of an order by a court of competent jurisdiction or on being notified by the appropriate Government or its agency shall not host, store or publish any unlawful information, which is prohibited under any law for the time being in force in relation to the interest of the sovereignty and integrity of India; security of the State; friendly relations with foreign States; public order; decency or morality; in relation to contempt of court; defamation; incitement to an offence relating to the above, or any information which is prohibited under any law for the time being in force:

- Disable access to offensive content: The intermediary shall, within 24 hours from the receipt of a complaint made by an individual or any person on his behalf, in relation to any content which is prima facie in the nature of any material which exposes the private area of such individual, shows such individual in full or partial nudity or shows or depicts such individual in any sexual act or conduct, take all reasonable and practicable measures to remove or disable access to such content which is hosted, stored, published or transmitted by it.

Safe Harbor provision in case of service-centric intermediaries:

1. A service-centric intermediary shall not be held liable for any third-party content, data, or communication link made available or hosted by it, if:

- The intermediary observes due diligence while discharging its duties.
- The intermediary refrains from altering user-generated content, except in cases where platforms technologies are utilized solely for the purpose of removing infringing content. For instance, if a user shares a video with copyrighted scenes, the platform notifies the user about the violation, allowing them to edit or contest it before automated tech removes the infringing part.

Additional due-diligence obligations applicable to Significant content-centric & Significant service-centric intermediaries

Below are additional due diligences, incorporating a few elements from the IT Rules, 2021, which shall be applicable to significant content-centric and service-centric intermediaries:

a. **Regulatory Liaison Officers:** Such officers shall have the following responsibilities:
   i. Ensuring compliance with the Act and rules made thereunder and shall be liable in any proceedings relating to any relevant third-party information, data or communication link made available or hosted by that intermediary where they fail to ensure that such intermediary observes due diligence while discharging its duties under the Act.
   ii. They shall ensure 24x7 coordination with law enforcement agencies and officers to ensure compliance to their orders or requisitions made in accordance with the provisions of law or rules made thereunder.
   iii. They shall be the point of contact between the complainant and the intermediary.

b. **Physical contact in India:** The intermediary shall have a physical contact address in India published on its website, mobile based application or both for the purposes of receiving the communication addressed to it.

c. **Voluntary verification of accounts:** The intermediary shall enable users who register for their services from India, or use their services in India, to voluntarily verify their accounts by using any appropriate mechanism, including the active Indian mobile number of such users. Where any user voluntarily verifies their account, such user shall be provided with a demonstrable and visible mark of verification, which shall be visible to all users of the service.

Concluding Remarks

In conclusion, the classification of intermediaries in the Indian context is an evolving and complex issue that requires careful consideration. Service-centric, infrastructure-centric, and content-centric intermediaries each have distinct roles and regulatory considerations. By understanding these classifications, regulators can develop tailor-made approaches that balance innovation, user protection, and regulatory effectiveness. The rapid evolution of technology and changing user expectations require ongoing dialogue, collaboration, and adaptation in the regulatory framework.

The proposed Digital India Bill aims to establish a digital space that is Open, Safe & Trusted and Accountable, with intermediaries playing a central role in connecting users, content creators, and service providers. As we have explored in this paper, understanding the classification of intermediaries into service-centric, infrastructure-centric, and content-centric categories is essential for addressing regulatory considerations. While India has taken significant steps in this direction with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, there are ongoing challenges, particularly in cases where intermediaries blur the lines between service-centric and content-centric roles. Therefore, it is imperative for policymakers, industry stakeholders, and users to adapt existing legal frameworks to accommodate the unique characteristics of these intermediaries. By doing so, India can better navigate the complexities of the digital landscape and foster a thriving online ecosystem that is secure, inclusive, and innovative, as envisioned in the Digital India Bill.

Ultimately, fostering a secure, inclusive, and innovative online ecosystem requires stakeholders to work together to address emerging challenges and seize the opportunities presented by intermediaries in the digital era[17]. A balanced approach is, therefore, crucial, one that values user rights, and promotes innovation and competition.

17. Advancing Digital Agency: The power of Digital intermediaries. (2022). World Economic Forum. Accessed from https://www3.weforum.org/docs/WEF_Advancing_towards_Digital_Agency_2022.pdf

About Chase India

Founded in 2011, Chase India is a leading public policy research and advisory firm with growing practices in Technology & Fintech, Transport & Infrastructure, Healthcare & Life Sciences, Development and Sustainability. We provide consultancy services to organizations for mitigating business risks through insight-based policy advocacy. Over the years, Chase India has collaboratively worked with multiple stakeholders such as government, parliamentarians, civil society organizations, academia, and corporates on several policy issues of critical importance. Chase India is committed to using its knowledge, high-ethical standards, and result-oriented approach to drive positive action for our partners. Chase India has pan India presence with offices in New Delhi, Mumbai, Pune, Hyderabad, Chennai and Bengaluru and is a part of the WE Communications Group worldwide.

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