



Safeguarding Intermediary rights critical for digital services: IAMA

New Delhi, 8 August 2019: A multi-stakeholder Roundtable discussion hosted by the Internet and Mobile Association of India [IAMA] to discuss the intermediary liabilities and safe harbor provisions highlighted that the restrictions on safe harbor provisions of digital intermediaries risks derailing the growth of the digital services in India. The roundtable discussion was attended by over 50 participants from digital service providers, lawyers, civil society, academicians and other stakeholder, and discussed at length the various issues related to digital intermediaries.

Intermediary rights or safe harbor provisions, as recognized under Section 79 of the IT Act is a special clause for digital service providers who are recognized as Intermediaries. Intermediaries, who are essentially technology platform providers for third party content hosting, are the mainstay of most of the popular digital services we use. E-commerce marketplaces, social media platforms, digital messaging and VOIP services, some audio/video streaming services, are all essentially intermediary services. Even a service which provides a platform for users to provide comments (e.g. news portals) would also be covered under the proposed draft rules. Thus, any regulation for intermediaries will impact a very broad set of services across different sectors of the economy. Hence, the government must exercise caution in framing the final rules. Onus of the content hosted on such platforms necessarily lies with the party hosting the content and cannot be imposed on the services that merely provide a digital platform for the same.

The intermediary rights have been read as exception provided to certain special kind of service providers under the IT Act, and this was highlighted in the Shreya Singhal Case by the Supreme Court. However, there have been numerous cases before various courts that have challenged the safe harbor provisions of these platforms. With the popularity of these services, challenges like hate speech, fake news, online piracy, counterfeit products have also emerged. The participants unanimously agreed that these are real challenges that cannot be ignored. However, they emphasized that any policy solution should not undermine the importance of free speech, innovation, trade & investments and ease of doing business. It should not create an environment where intermediaries are coerced to excessively take down content leading to censorship.

It was felt that regulators suggest proactive monitoring by the platforms of content hosted on their platform, which is a direct violation of the conditions for being an intermediary. Participants also highlighted that multiple regulators with their own set of rules are creating compliance burdens for businesses.

The discussion veered around law enforcement agencies requests not being forwarded in proper format, which in turn affects time taken for appropriate action. Participants suggested a co-operative approach between regulators and platforms to address the challenges.

The roundtable was an attempt to allow free-flow discussion to share and acknowledge the different perspectives regarding intermediary roles and safe harbor rights. The association is attempting to evolve

a holistic perspective that will help address the genuine concerns without compromising the safe harbor provisions for intermediaries.

About IAMAI

The Internet and Mobile Association of India [IAMAI] is a young and vibrant association with ambitions of representing the entire gamut of digital businesses in India. It was established in 2004 by the leading online publishers, and in the last 15 years has come to effectively address the challenges facing the digital and online industry including mobile content and services, online publishing, mobile advertising, online advertising, ecommerce and mobile & digital payments among others.

Fifteen years after its establishment, the association is still the only professional industry body representing the online industry in India. The association is registered under the Societies Act and is a recognized charity in Maharashtra. With a membership of nearly 300 Indian and overseas companies, and with offices in Delhi, Mumbai, Bengaluru and Kolkata, the association is well placed to work towards charting a growth path for the digital industry in India.

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