

Mr Ravi Shankar Prasad
Minister of Electronics and Information Technology
Government of India

January 31, 2019

To the Hon'ble Minister Prasad,

We are a group of global internet organizations that provide services to tens of millions of Indians today and are committed to promoting the sharing of knowledge, software code, and innovation for the benefit of all Indians. We write to you with deep concern about your Ministry's latest proposals on intermediary liability. We support the consideration of measures to make the internet a safer experience for everyone, including by holding internet platforms to higher standards of responsibility. However, the current proposal takes an unprecedented step towards the transformation of the internet from an open platform for creation, collaboration, access to knowledge, and innovation to a tool of automated censorship and surveillance of its users.

The proposed changes to the intermediary liability rules raise several serious concerns:

First, under the new rules, all online intermediaries are required to “proactively” purge their platforms of “unlawful” content or else potentially face liability for the actions and postings of their users. This would upend the careful balance set out in the existing law which places liability on the bad actors who engage in illegal activities, and only holds companies accountable when they know of such acts.

These liability protections have been fundamental to the growth of the internet as an open and secure medium of communication, commerce, and innovation. They have allowed anyone to host platforms for speech, innovation, and discourse without fear that they would be crushed by a failure to police every action of their users. Imposing the obligations proposed in these new rules would place a tremendous and in many cases fatal burden on many online intermediaries, especially new organizations and companies. A new community’s or a startup’s first move should not be to build expensive filtering infrastructure and hire an army of lawyers. Meanwhile, those large platforms that are able to comply, will be incentivised to over-censor and take down lawful content in order to avoid the threat of liability and litigation. There is no system of proactive management that can remove unlawful content without making mistakes. This kind of filtering hampers the diversity of online discourse and chills free expression, eventually hurting the users who rely on these platforms most of all.

Second, this proposal would significantly expand surveillance requirements on internet services. This is both through the requirement to monitor the postings of all users as well as the specific direction to handover information about “senders and receivers” of content to the government. We believe that strong protections of user privacy are necessary to foster a healthy discourse and access to knowledge on the internet. At a time where your own Ministry is seeking to enshrine the principle of “data minimization” in law, this proposal threatens to take several steps back on user privacy.

Third, the term "intermediaries" is defined in an extraordinarily broad way that is likely to cause unintended harm. These rules apply indiscriminately to all intermediaries, sweeping up online repositories of knowledge, browsers, operating systems, and countless other kinds of internet companies and organizations into its scope. Importantly, we do not believe this broad range of services are the intended targets of this regulation. While the Government may intend for enforcement to be selective, the legal risk applies to virtually all internet services.

Fourth, the proposed rules put a blunt requirement on any service with more than 5 million users in India to incorporate in the country. This is a major operational obligation being imposed on a substantial number of global businesses and websites, without justification for this standard, and without a time period for compliance. This raises fears of international companies, services, and nonprofits being forced to close themselves off to Indian users, while also deterring potential market expansion of new players into India. Less diversity of services means less choices for users, harming the vibrancy of the Indian digital ecosystem.

As an open source browser, a crowd-sourced encyclopedia, and an open repository of code, we are all online intermediaries that are supported by and freely available to tens of millions of active Indian users and volunteers. We are committed to privacy, freedom of speech, access to knowledge, and open collaboration, but these rules would push us to surveil and censor content to the point of embedding automated infrastructure for surveillance and censorship of Indian users into our networks. As currently drafted, these rules would undermine Indian users' access to myriad sites and services, putting them at a considerable disadvantage compared to users, developers, and organizations in other countries.

We support the consideration of measures to make the internet a safer place and acknowledge that building a rights-protective framework for tackling illegal content on the internet is a challenging task. But we cannot support the current draft of the rules put forward by the Ministry. For the sake of the internet's future and Indian users, we urge you to abandon these proposed rules and begin afresh with public consultations on the appropriate way to counter harmful speech online. We are committed to engaging with your Ministry as you continue to work toward a more balanced solution to the problem of illegal content on the internet.

Signed,

