

24 June 2024

Honourable Minister Shri Ashwini Vaishnaw;
Ministry of Information and Broadcasting,
Dr Rajendra Prasad Rd,
Shastri Bhavan,
New Delhi, Delhi 110001,
India

Dear Minister Shri Ashwini Vaishnaw,

Subject: Asia Internet Coalition (AIC)'s Industry Concerns Regarding the Recent Directive on Self-Certification of Advertisements

The Asia Internet Coalition (AIC) is a leading industry association of Internet and technology companies that promotes the understanding and resolution of Internet policy issues in the Asia Pacific region. Our mission is to represent the Internet industry and participate in and promote stakeholder dialogue between the public and private sectors, sharing best practices and ideas on Internet technology and the digital economy.

We write to you to express our concerns regarding the recent directive mandating self-certification of advertisements. While we appreciate the objective of ensuring that advertisements comply with relevant laws and regulations, we believe the current framework poses significant challenges that need to be addressed to avoid unintended adverse impacts on businesses and the digital advertising ecosystem. AIC's key concerns include the following:

1. **Scope of the Law:** The self-certification framework is overbroad and imposes obligations on all advertisers, regardless of the risk posed by the ad¹. This approach is disproportionate and extends beyond the initial intent of addressing ads related to food, drugs, and cosmetics that pose risks to public health.
2. **Benefits of Self-Certification:** The self-certification process does not provide any incremental benefits in terms of preventing false or misleading advertisements. It merely serves as an affirmative statement to comply with existing laws, which can be easily circumvented by bad actors.
3. **Unmanageable Volumes and Impact on Businesses:** The requirement to self-certify each advertisement will result in unmanageable volumes, especially for digital advertisers. With an

¹ Ministry of Information & Broadcasting, Advisory Self-certification (June, 2024)
<<https://pib.gov.in/PressReleaseFramePage.aspx?PRID=2022649#:~:text=The%20Self%2D%20Declaration%20Certificate%20is,after%2018th%20June%2C%202024.>> accessed 6th June, 2024; Ministry of Information & Broadcasting, "Guidelines for using Broadcast Seva Portal/Press Council of India portal by Advertisers/Advertising Agencies for uploading Self-declaration Certificate" (June, 2024)
https://cbcindia.gov.in/cbc/uploads/mandate/Self_Declaration_Portal_Guidelines.pdf

estimated 34 crore digital ads published in 2023², and projections of this number increasing significantly, the compliance burden will be enormous. This will particularly affect Micro, Small, and Medium Enterprises (MSMEs) and smaller advertisers, including influencers, who rely heavily on digital advertising for their business operations.

4. **Capacity and Administrative Limitations:** In addition to the above, we also anticipate that the Ministry will face significant capacity and administrative challenges in managing and storing the vast number of self-certifications. This burden will only grow as the digital advertising market expands. Without adequate infrastructure and resources, the system may become inefficient and cumbersome.
5. **Potential Delays:** The directive may cause delays in the publication and broadcast of ads, especially if the government portals face technical issues or become inaccessible. This could disrupt the timely release of critical advertisements, including public service announcements and urgent product recalls.
6. **Impact on Business Confidentiality:** The requirement to upload self-certifications could compromise business confidentiality, as sensitive information about advertising strategies and content may be exposed. This could have detrimental effects on competitive positioning and innovation within the industry.
7. **Impact on the Viability of the Digital Ads Ecosystem:** The directive could stifle the dynamic and fast-paced nature of digital advertising, particularly programmatic and dynamic ads, which are tailored in real-time based on user interactions. The inability to pre-certify such ads will hinder their effectiveness and viability, impacting the overall digital advertising ecosystem.

As highlighted above, the self-certification framework raises significant concerns. Implementing such a burdensome framework could have detrimental effects on the thriving digital media ecosystem and the businesses that depend on it, including MSMEs. This trade-off is unlikely to achieve the intended goal of addressing misleading advertisements.

In addition to this, the AIC wishes to highlight that the primary issue identified by the Supreme Court in the Patanjali case was the inadequate enforcement of the current legal framework governing advertisements, rather than deficiencies in the framework itself. We acknowledge the importance of considering the proposed self-certification option, but we are concerned that the Advertising Industry, a key stakeholder, has not had the opportunity to present its case. Therefore, we earnestly request that the Ministry engage in a comprehensive dialogue with industry bodies, including the AIC, to allow us to express our views before finalizing the draft mechanism. Moving forward, we humbly request for the Ministry to consider the following:

1. Keep the enforcement of the self-certification mandate in abeyance until the Supreme Court has had an opportunity to fully appreciate the implications of their directive on the totality of the advertising ecosystem. We firmly believe it is imperative to provide the industry with an

² <https://adex.tamindia.com/default.aspx>

opportunity to inform the Hon'ble Supreme Court of the proactive measures undertaken to adhere to responsible advertising norms in the country; and

2. Conduct widespread consultations with all stakeholders including advertisers, advertising agencies, publications and broadcasters, digital advertising platforms, ad exchanges and others to arrive at a workable solution. This collaborative approach will be instrumental in formulating a balanced solution aligned with the directives of the Honorable Supreme Court while ensuring its practical and sustainable implementation.

We urge the Ministry to consider these concerns and recommendations to ensure that the directive achieves its objectives without imposing unmanageable burdens on businesses and the digital advertising ecosystem. Additionally, we kindly ask the Ministry to convey our concerns to the Honorable Supreme Court to enable the industry to make its submissions to the Court.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at Secretariat@aicasia.org or at +65 8739 1490. Furthermore, we would also be happy to offer our inputs and insights on industry best practices, directly through discussions and help shape the dialogue for the advancement of India's digital economy.

Thank you
Sincerely,



Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

CC:

- *Ministry of Broadcasting and Information Secretary, Mr. Sanjay Jaju*