

**Asia Internet Coalition (AIC) Industry Submission on MEITY's Proposed Amendments to the IT Rules in relation to fake / false content**

---

6 March 2023

**To**  
**Shri Ashwini Vaishnaw**  
**Hon'ble Minister Communications; and**  
**Electronics and Information Technology**  
**Government of India**

I am writing on behalf of the [Asia Internet Coalition](#) (AIC). We are an industry association comprising leading internet and technology companies. We seek to promote technology and policy issues in the Asian region, and we are fully committed to the cause of a safe and open internet.

We express our gratitude to the Ministry of Electronics and Information Technology (MEITY) for giving us this opportunity to express our views on the [newly proposed amendments](#) to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (**2023 Amendments**), which seek to curb the spread of fake and false information on intermediary platforms. We have highlighted certain concerns we have with the 2023 Amendments in the table below. While we hope to discuss the 2023 Amendments with MEITY at the earliest, in light of our concerns below, we request MEITY to consider withdrawing the same.

#	2023 Amendments	AIC's Comments and Recommendations
1.	<b>Independence of the Government:</b> <ul style="list-style-type: none"> <li>The 2023 Amendments obligate intermediaries to takedown content which is identified as fake or false by the fact-check unit at the Press Information Bureau (PIB) (or any designated Government agency or department authorised to carry out the business of the Central Government, as per the Allocation of Business Rules, 1961).</li> </ul>	<b>Issue:</b> <ul style="list-style-type: none"> <li>Any given fact-checking entity should be transparent, independent and non-partisan.</li> </ul> <b>Comments:</b> <ul style="list-style-type: none"> <li>A Government department and / or agency, such as the PIB, may not be best positioned to act as an independent body to fact-check information on the internet, especially when such information concerns the Government or impacts its electoral interests. Fact-checking units of Government departments and / or agencies, invariably, act in line with the political agenda and objectives of the State. Accordingly, we are concerned that such entities are unlikely to carry out fact checking-operations in a non-biased manner.</li> <li>In particular, we have been given to understand that the PIB's mandate is limited to evaluating the accuracy of content / information relating to the</li> </ul>

#	2023 Amendments	AIC's Comments and Recommendations
		<p>Central Government, its ministries and organizations. While the 2023 Amendments do not expressly clarify the scope of the PIB's fact checking operations, if the status quo continues, we believe that the same may have an adverse impact on the ability of internet users / news outlets to disseminate information online in a free and fair manner, especially information which is critical of the Government or which relates to matters of public importance. This will likely impact the freedom of speech and expression in the country.</p> <ul style="list-style-type: none"> <li>• Further, the absence of information vis-à-vis the process followed by a Government agency, such as the PIB, in carrying out fact-checking of information, and the general lack of clarity on the standards deployed for identifying content as false / fake - may lead to information being labelled as false / fake on account of subjective standards. This, coupled with a lack of procedural safeguards to bolster such fact-checking operations, may, once again, hamper free speech in the country and violate established judicial principles in this regard.<sup>1</sup></li> </ul>
2.	<p><b>Impact on fundamental rights, such as free speech</b></p> <ul style="list-style-type: none"> <li>• The 2023 Amendments expand on the Government's mandate to regulate content on the internet by way of identifying content as fake / false (with both terms remaining undefined).</li> </ul>	<p><b>Issue:</b></p> <ul style="list-style-type: none"> <li>• In addition to the free speech concerns discussed above, the possibility of the Government overly regulating information (whether directly or indirectly) will, once again, affect the fundamental right to freedom of expression, along with the freedom of the press in India.</li> </ul> <p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>• Any speech-based restrictions arising out of mislabelling content (a possibility, which, as noted above, may arise on account of bias and non-transparency in fact-checking procedures) as fake / false will have a direct impact on the freedom of speech and expression in the country. This may also lead to increased litigation against the State for violation of this fundamental right.</li> <li>• In addition to this, the 2023 Amendments also, in effect, expand the mandate to regulate or oversee</li> </ul>

<sup>1</sup>That is, the principles laid down in *Shreya Singhal v. Union of India* (Writ Petition (Criminal) No. 167 of 2012).

#	2023 Amendments	AIC's Comments and Recommendations
		<p>content on the internet (a power which currently rests with the MEITY and the Ministry of Information and Broadcasting (<b>MIB</b>)) to other agencies and departments of the Central Government. We believe that this goes against the Allocation of Business Rules, 1961, as per which primarily the MIB and MEITY are empowered to control matters relating to dissemination of information on intermediaries' platforms and other online entities. Further, this may invariably lead to excessive moderation of content by multiple Government agencies or entities who do not come under the aegis of the MEITY or MIB.</p> <ul style="list-style-type: none"> <li>● In addition to the above, the lack of objective standards to identify what will qualify as “fake” / “false” content, will likely lead to an arbitrary system of pursuing the takedown of such content. In fact, we are concerned that this may lead to a scenario where information is being overly censored by intermediaries or identified for takedown by the PIB on subjective and non-transparent grounds. We believe that this goes against the Supreme Court's observations in the Shreya Singhal judgement as per which (i) regulated entities should know the standards required of them so that they can “act accordingly”, and (ii) “precision and guidance” should be ensured to prevent the concerned authorities from acting in an “arbitrary or discriminatory” manner.</li> </ul>
3.	<p><b>Lack of Procedural Safeguards</b></p> <ul style="list-style-type: none"> <li>● As already noted above, the 2023 Amendments, currently, do not comment on the procedural safeguards to be followed by the PIB or any other designated Government department or agency in identifying fake or false content. In addition, we note that the 2023 Amendments also seek to, in effect, increase the takedown powers of the Government, albeit without mandating due process.</li> </ul>	<p><b>Issue:</b></p> <ul style="list-style-type: none"> <li>● The Draft Amendments effectively increase the content takedown orders of the Government under Section 79 of the IT Act read with the IT Rules (i.e., Rule 3(1)(d)), without providing sufficient procedural safeguards to protect fundamental rights of affected individuals.</li> </ul> <p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>● The Supreme Court upheld the Government's blocking powers under the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 (<b>Blocking Rules</b>) in the Shreya Singhal judgement on grounds that the Blocking Rules include the requirement to</li> </ul>

#	2023 Amendments	AIC's Comments and Recommendations
		<p>hear the opposite side, issue a reasoned order, and so on.</p> <ul style="list-style-type: none"> <li>However, the 2023 Amendments do not provide for such safeguards if takedown of content identified as “fake” or “false” is pursued by the Government and its respective agencies or departments. This goes against the standards laid down by the Supreme Court. To reiterate, this may, once again, pose unwarranted risks to freedom of speech and expression in the country.</li> </ul>
4.	<p><b>Utilizing Existing Platforms for Generating Awareness, etc.</b></p> <ul style="list-style-type: none"> <li>The 2023 Amendments do not account for existing mechanisms to curb the spread of fake or false content on the internet.</li> </ul>	<p><b>Issue:</b></p> <ul style="list-style-type: none"> <li>The Government's existing communication channels and platforms with the public can be relied upon and promoted in order to address the spread of misinformation online.</li> <li>The Government may also rely on its powers under Section 69A of the IT Act to regulate misinformation.</li> </ul> <p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>The Government has online platforms in place which can be easily accessed by the general public. These include the PIB's website, Government sent SMSs, and various social media accounts. The Government can disseminate information to counter the spread of misinformation by means of such platforms. Such a measure would not only educate users on any fake / false content circulating on the internet, but also sensitise them against sharing of such content on intermediary platforms, if they deem fit.</li> <li>Separately, the Government can also always rely on its blocking powers under Section 69A in the event any piece of fake / false information directly harms the sovereignty or integrity of India, defense of India, security of the State or any of the other stipulated grounds under this provision.</li> </ul>
5.	<p><b>Key RecommendationS</b></p> <ul style="list-style-type: none"> <li>We request the MEITY to withdraw the 2023 Amendments and instead consider alternate policy solutions.</li> </ul>	<ul style="list-style-type: none"> <li>The MEITY may consider emerging and practical policy solutions, such as the adoption of voluntary / self-regulatory codes of practice. These can be developed in consultation with the industry, academia, civil society, and all other relevant stakeholders. This step would mirror international</li> </ul>

#	2023 Amendments	AIC's Comments and Recommendations
		<p>attempts at curbing the spread of fake / false content, including the <a href="#">European Union Code of Practice on Disinformation</a>, <a href="#">Australian Code of Practice on Disinformation and Misinformation</a> and the <a href="#">New Zealand Code of Practice for Online Safety and Harms</a>.</p> <ul style="list-style-type: none"> <li>• Adopting such an approach would ensure that a multi-faceted and complex issue like misinformation is not addressed with blanket – one size fit all approach within the text of a law. Moreover, it would provide the industry and Government the requisite flexibility to collaborate with one another and adapt to a rapidly changing tech and digital ecosystem and threats that accompany this ecosystem.</li> <li>• Further, a policy framework in the form of codes of practice would not only complement existing laws since they would typically function in parallel, but also serve as a testing ground which could gather evidence to inform future legislations on the subject of misinformation.</li> <li>• Lastly, adoption of codes of practice may also likely enhance the accountability within the tech industry, since such frameworks are typically accompanied by voluntary, and often successful, transparency reporting and evaluation measures.</li> </ul>

As a next step, we look forward to engaging in additional consultations with the MEITY on the issues highlighted by us in the table above. Should you have any questions please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at [Secretariat@aicasia.org](mailto:Secretariat@aicasia.org). Importantly, we look forward to providing our inputs and recommendations on the consultations and contribute to the industry dialogue.

Sincerely,



**Jeff Paine**  
**Managing Director**  
**Asia Internet Coalition (AIC)**