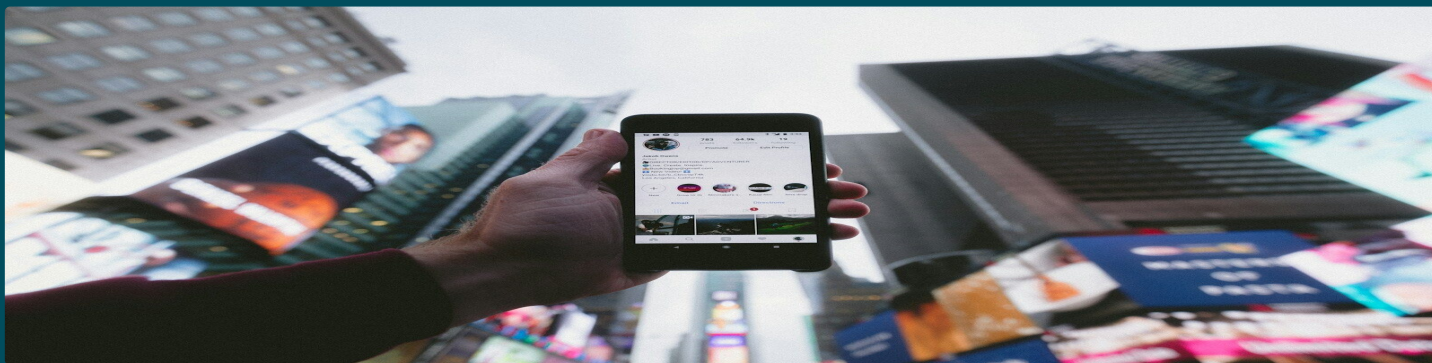




CYBER LAW

Tightening the Safe Harbour: Legal Implications of the 2026 Amendments to India's Intermediary Guidelines

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The digital regulatory framework in India continues to undergo rapid legislative evolution to address the complex dynamics of the contemporary internet ecosystem. Promulgated by the Ministry of Electronics and Information Technology (MeitY) under the statutory authority of Section 87 of the Information Technology Act, 2000, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules, 2026, represent a pivotal shift in intermediary liability. The principal rules, originally notified in February 2021, established the foundational due diligence and grievance redressal architecture for intermediaries and digital media platforms. Following sequential amendments in 2022, 2023, 2025, and early 2026, this latest regulatory intervention seeks to further tighten compliance strictures, enhance content labeling mandates, and explicitly expand the administrative oversight of the Central Government.

Commencing with the substantive modifications to intermediary due diligence, the newly introduced rules amend sub-rule (1) of Rule 3 to fortify data preservation obligations. By inserting specific statutory language into clauses (g) and (h), the amendment clarifies that an intermediary's action to remove content upon receiving actual knowledge, or its collection of user information for registration purposes, shall not prejudice any overarching legal requirements regarding data retention. This ensures that compliance with content takedown notices does not inadvertently absolve platforms of their concurrent statutory duties to preserve evidentiary data for law enforcement agencies under applicable laws.

Further augmenting the regulation of digital content, the amendment introduces a stringent modification to the labelling requirements under sub-rule (3) of Rule 3. The erstwhile standard, which merely required a label to ensure prominent visibility in the visual display, has been superseded. The revised statutory language now mandates a continuous and clearly visible display of such labels throughout the entire duration of the content. This modification eliminates the regulatory loophole of transient or momentary disclaimers, imposing a continuous compliance burden on platforms hosting specified or manipulated digital media.

Arguably the most consequential alteration within the 2026 framework is the insertion of sub-rule (4) under Rule 3, which fundamentally alters the operational dynamics of the Section 79 safe harbour protection. This new provision legally binds intermediaries to comply with and give effect to any clarification, advisory, order, direction, standard operating procedure, or guideline issued in writing by the Ministry. While the rules stipulate that such directives must specify their legal basis and remain consistent with the parent Act, the critical implication is that strict adherence to these executive issuances is now a mandatory component of an intermediary's due diligence obligations. Consequently, non-compliance with a Ministry advisory could summarily strip an intermediary of its legal immunity against third-party content.

The regulatory purview of the digital media ethics code has also been significantly expanded through an amendment to the proviso of Rule 8(1). The modification explicitly broadens the applicability of the grievance redressal mechanisms outlined in Rules 14, 15, and 16. These provisions now expressly govern designated intermediaries and news and current affairs content that is hosted, published, or transmitted on intermediary platforms by users who are not formally classified as publishers. This legislative expansion effectively brings independent citizen journalists and user-generated news content within the stringent oversight mechanism previously reserved for institutional digital news publishers.

Complementing this expanded scope, the amendment restructures the adjudicatory authority of the Inter-Departmental Committee under Rule 14. The revised sub-rule (2) grants the Committee the explicit mandate to hear matters directly referred to it by the Ministry, bypassing the traditional tiered grievance redressal protocol if deemed necessary. Furthermore, the phrasing in sub-rule (5) has been broadened, empowering the Committee to deliberate on the matter in its entirety rather than being strictly confined to specific complaints or grievances. This grants the Central Government greater agility and direct intervention capabilities in resolving complex digital media disputes.

In summation, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules, 2026, signify a strong centralization of regulatory authority and a contraction of unconditional safe harbour protections. By institutionalizing Ministry directives as mandatory due diligence, mandating continuous content labeling, and extending the ethics code to user-generated news, the legislative intent is clearly directed toward establishing a highly accountable and tightly monitored digital ecosystem. Legal practitioners and intermediaries must closely analyze these raised compliance thresholds, as the margin for regulatory leniency in India's digital jurisprudence continues to narrow.

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