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INSTITUTION OF EMINENCE DEEMED TO BE
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CYRIL SHROFF
CENTRE FOR AI,
LAW & REGULATION
O.P. JINDAL GLOBAL UNIVERSITY



Jindal Global Law School
India's First Global Law School

Comments on _____
the Information Technology
(Intermediary Guidelines
and Digital Media Ethics Code)
Second Amendment Rules, 2026





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1. Background

The Ministry of Electronics and Information Technology (“MeitY/Ministry”) has recently released the draft Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules, 2026 (“Second Amendment Rules”) to amend the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“2021 Rules”) across four substantive areas:

- (a) data retention obligations under Rules 3(1)(g) and 3(1)(h);
- (b) the labelling standard for synthetically generated information under Rule 3(3)(a)(ii);
- (c) the creation of a new tier of executive compliance instruments under Rule 3(4); and
- (d) the reconstitution of the Inter-Departmental Committee's jurisdiction under Rules 14(2) and 14(5). Each of these amendments engages significant constitutional, statutory, and structural questions that merit careful consideration before these Rules are finalised.

MeitY has invited comments from stakeholders on the Second Amendment Rules.

2. About CSCAILR

The Cyril Shroff Centre for AI, Law and Regulation (“Centre”/“CSCAILR”) at Jindal Global Law School, O.P. Jindal Global University, focuses on world-class research, knowledge creation, training, and capacity building, while engaging closely with government bodies, intergovernmental organisations, corporates, think tanks, legal institutions, and academia to shape AI governance and regulation for India and the world. The Centre connects scholarship with real policy implementation, produces high-quality research and actionable recommendations, and works directly with policymakers to support responsible AI innovation and the development of state-of-the-art regulatory frameworks, grounded in law and societal needs.

The Centre has been closely engaged with the intersection of AI governance, data regulation, and intermediary liability as part of its broader research mandate. Our prior submissions to MeitY on the draft 2025 Amendment Rules, and our policy work on the Digital Personal Data Protection Act, 2023 and open data governance, have equipped the Centre with a grounded understanding of the regulatory landscape within which these amendments sit. The Centre accordingly considers it a privilege to contribute its comments on the Second Amendment Rules, with a view to assisting the Ministry in developing a framework that is constitutionally sound and aligned with international best practices.

3. Executive Summary of Comments

At the outset, the Centre records its appreciation of the Ministry's continued and timely engagement with a digital information environment whose pace of change places real demands on the regulatory framework. The Second Amendment Rules respond to genuine and pressing concerns: closing circumvention pathways in the labelling of synthetically generated information, equipping the Ministry to address fast-moving compliance issues as they emerge, and refining the functioning of the Inter-Departmental Committee. The objectives that animate these amendments are legitimate, and the Centre's submissions that follow do not question them. The comments are offered, rather, with a view to assisting the Ministry in calibrating the proposed mechanisms so that they remain defensibly within the authority conferred by the parent Act and the Supreme Court's settled jurisprudence on safe harbour and expressive freedom, preserve proportionality between regulatory intent and the impact on lawful creative and satirical expression, and maintain the structural separations that lend constitutional durability to the framework. The principal observations and recommendations are summarised below:

- **Rule 3(3)(a)(ii) on Labelling and Continuous Display:** The substitution of “prominent visibility” with a requirement of continuous display throughout the duration of content raises two interrelated concerns: duration-agnosticism (the same standard applies identically to a five-second clip and a feature-length film); and disproportionate restriction on creative and satirical expression protected under Article 19(1)(a). The Centre recommends a calibrated standard that prescribes a proportionate duration of display of the label for works of different lengths, and a narrowly drawn carve-out for evidently artistic, creative, or satirical works, on the lines of Article 50(4) of the EU AI Act.
- **Rule 3(4) on Executive Instruments and Safe Harbour Conditions:** Rule 3(4) empowers the Ministry to issue executive instruments (clarifications, advisories, directions) under the IT Rules, non-compliance with which leads to non-availability of the safe harbour under Section 79 of the IT Act. The Centre acknowledges the regulatory rationale for a dynamic enforcement mechanism, but is of the view that the power as framed is susceptible to being adjudged ultra vires the IT Act on two grounds: first, Section 79(3) exhaustively specifies the conditions under which safe harbour is lost, and Rule 3(4) introduces a further ground — non-compliance with ministerial instruments — that Parliament did not provide for; second, Section 79(2)(c) conditions safe harbour availability on guidelines prescribed through the Section 87 rule-making process, and the executive instruments contemplated under Rule 3(4) are not made through that process. The Centre recommends that Rule 3(4) be reconsidered in its present form, and that any guidance the Ministry seeks to issue on the implementation of existing Rules be expressly non-binding and kept outside the due diligence framework for the purposes of Section 79.
- **Rules 14(2) and 14(5) on IDC Jurisdiction and Structural Independence:** Currently, Rule 14(2) permits the Inter-Departmental Committee (“IDC”) not only to act as the third tier in a three-tier grievance redressal mechanism for alleged violation of the Code of Ethics, but also as a body which in the first instance hears Ministry-referred matters relating to such potential violations. This creates structural circularity because the Ministry/MeitY not only identifies and refers the potential violation but also constitutes and controls the recommending body (i.e. the IDC) and eventually considers and acts based on the recommendation. There is no impartial review of the alleged violation in Ministry-referred matters, unlike other matters, which proceed through Level I and II of the grievance redressal mechanism under Rules 11 and 12 of the 2021 Rules. The proposed amendment is an apt opportunity to change this. The Centre recommends that structural separation between the referring authority and the IDC be ensured through an independent admissibility determination. This can be limited to Ministry-referred matters pertaining to potential violation of the Code of Ethics, and admissibility may be conditioned upon a finding of *prima facie* violation by an independent body, such as the self-regulating body constituted under Rule 12 of the 2021 Rules.

4. Detailed Comments

S. No.	Rule No.	Comments/Suggestions/ Feedback	Detailed Rationale	Comparative Framework
1.	Rule 3(3)(a)(ii)	<p>The amendment substitutes the qualitative standard of “prominent visibility” with a temporally persistent standard requiring “continuous and clearly visible display of such label throughout the duration of the content, in a visual display.”</p> <p>We welcome the Ministry's evident intent here to close the circumvention pathway under which a fleeting opening-frame disclosure could pass as compliance under the original formulation.</p> <p>However, the substituted language raises certain concerns that merit reconsideration before finalisation.</p> <p>The Centre recommends that the rule be revised to:</p> <p>(a) replace the “throughout the duration” formulation with a calibrated standard, e.g., “displayed in a manner that ensures the label remains clearly perceptible to a reasonable viewer for the necessary duration of the content, having regard to the nature and overall duration of the content”;</p>	<p>Rule 3(3)(a)(ii) gives clearer operative content to the synthetically generated information (SGI) labelling regime introduced by the amendment in February 2026. The original phrase “prominent visibility in the visual display” admitted of an interpretive range within which a label of sufficient size, contrast and placement on a relevant frame could plausibly satisfy the standard. The substituted phrase limits that range to a certain extent by introducing a temporally persistent requirement.</p> <p>Duration-blindness and proportionality: Proportionality in regulatory design requires that a particular obligation must be commensurate with the harm it addresses. The “throughout the duration” formulation potentially does not satisfy this by mandating identical compliance for a five-second clip and a feature-length film. For very short content, the requirement would largely have been met with the original prominent-visibility standard; for longer content, particularly creative, satirical or fictional works in which the synthetic character is intrinsic to the artistic message, a persistent on-screen label for the entire duration may operate as a disproportionate restriction on expressive freedom under Article 19(1)(a). The proportionality framework</p>	<p>European Union: Articles 50(2) and 50(4) of the EU AI Act (Regulation (EU) 2024/1689) require providers of generative AI systems and deployers of systems producing deepfakes to disclose the artificial nature of the content. Crucially, Article 50(4) provides that where the content forms part of “an evidently artistic, creative, satirical, fictional or analogous work or programme,” the disclosure obligation is “limited to disclosure of the existence of such generated or manipulated content in an appropriate manner that does not hamper the display or enjoyment of the work.” This calibrated formulation explicitly preserves space for expressive freedom while maintaining the regulatory aim of viewer awareness.</p> <p>People's Republic of China: The Provisions on the Administration of Deep Synthesis Internet Information Services, issued in 2022 and in force from 2023, impose labelling obligations on deep synthesis service providers. Article 16 requires providers to take technical measures to add labels to content generated or edited through their services in a manner that does not affect its use. Article 17 further requires, for specified deep synthesis services that may cause public confusion or misrecognition, that generated or edited content be prominently labelled in a reasonable position or area so as to alert the public to its deep synthesis status. This standard is qualitatively similar to the original Indian formulation of “prominent visibility”, but the 2022 Provisions do not impose a continuous-display requirement. Even in China's later 2025 AI-generated content labelling measures, the requirements are framed around appropriate placement, including video start screens or playback areas, rather than a general obligation of temporal persistence.</p>

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		<p>(b) provide a narrowly drawn carve-out for content that is evidently artistic, creative, satirical, fictional or analogous, where the labelling obligation is satisfied by disclosure that does not hamper the display or enjoyment of the work.</p>	<p>articulated inter alia in <i>Modern Dental College & Research Centre v. State of M.P.</i> (2016) 7 SCC 353 and <i>Anuradha Bhasin v. Union of India</i> (2020) 3 SCC 637 requires that the State adopt the least restrictive means available to achieve the legitimate aim. Since a duration-calibrated and content-calibrated standard is available, it may be difficult to justify the current formulation against it.</p>	<p>United States: Federal labelling standards for synthetic content remain limited. State-level enactments such as California Assembly Bill 730 (election-period deepfakes) and Texas Senate Bill 751 are uniformly drafted around qualitative disclosure standards rather than continuous on-screen labels. The federal TAKE IT DOWN Act 2025 likewise focuses on takedown mechanics for non-consensual intimate imagery rather than persistent labelling of synthetic content generally.</p> <p>Thus, the comparative picture suggests that the international trend favours calibrated labelling obligations. A continuous-display standard of the kind introduced by the present amendment is, to our knowledge, without close precedent in any major regulatory jurisdiction.</p>

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2.	Rule 3(4)	<p>The Centre acknowledges that regulation of digital content in the current environment requires a dynamic approach by the government. This is especially true considering the speed and scale with which digital content can be generated and distributed through emerging technologies. Effectively, this rule empowers the Ministry to dynamically issue executive instruments (clarifications, advisories, directions) under the IT Rules to regulate digital content whereby non-compliance with these instruments will lead to non-availability of the safe harbour for the intermediaries under Section 79 of the IT Act. This creates a strong incentive and enforcement model for intermediaries to comply with the executive instruments issued by the Ministry. The Centre notes that while these executive instruments do provide a strong and dynamic mechanism to regulate content, the Ministry should be cognisant that the power to issue them may not withstand scrutiny in judicial review.</p> <p>Specifically, the power conferred on the Ministry under Rule 3(4) to issue instruments whereby any non-compliance may lead to denial of the safe harbour is susceptible to being adjudged ultra vires the IT Act on two grounds:</p> <ul style="list-style-type: none"> ● Creation of a new ground for safe harbour loss: Section 79(3) of the IT Act exhaustively specifies the conditions under which the safe harbour is lost. These conditions are, namely, active participation in an unlawful act, and failure to act upon actual knowledge or government notification. This proposed rule effectively 	<p>The IT Rules derive their authority from Section 87(2)(zg) of the IT Act, which empowers the Central Government to frame 'guidelines to be observed by intermediaries under sub-section (2) of Section 79.' The proposed Rule 3(4) creates a further tier below the Rules themselves, authorising the Ministry to issue executive instruments whereby any non-compliance with such instruments is made part of an intermediary's due diligence under Section 79. This arrangement is susceptible to challenge on two grounds.</p> <p><i>First</i>, Section 79(3) of the IT Act exhaustively enumerates the circumstances under which the safe harbour under Section 79(1) ceases to be available. These are: active participation in the commission of an unlawful act under Section 79(3)(a); and failure to act expeditiously upon receiving actual knowledge or government notification under Section 79(3)(b). It is a settled principle of administrative law that subordinate legislation cannot travel beyond the parent Act. It cannot create rights, obligations, or consequences that the parent Act does not contemplate. This proposed rule introduces non-compliance with ministerial executive instruments as an additional circumstance in which safe harbour is effectively lost. This consequence finds no basis in Section 79(3) and accordingly exceeds what the parent Act permits.</p> <p><i>Second</i>, Section 79(2)(c) conditions the availability of the safe harbour on intermediaries observing "such other guidelines as the Central Government may prescribe in this behalf." The Central Government's power to prescribe such guidelines flows exclusively</p>	<p>Under the EU Digital Services Act (DSA) (Regulation (EU) 2022/2065), the European Commission retains power to issue formal decisions and adopt codes of conduct applicable to Very Large Online Platforms. These instruments carry binding effect only where formally adopted through defined procedures — including publication in the Official Journal, stakeholder consultation, and judicial reviewability before the Court of Justice of the EU. Informal Commission guidance and communications are expressly non-binding and do not affect a platform's liability status under Article 6 of the DSA, which is governed exclusively by primary legislation. The distinction between binding and non-binding executive instruments is maintained explicitly and structurally, and the conditions of safe harbour are insulated from administrative modification. This model provides a principled comparator for the concerns raised by Rule 3(4).</p>

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		<p>introduces a third ground for safe harbour loss: non-compliance with ministerial executive instruments. Parliament did not provide for such a ground in Section 79(3). Accordingly, this proposed rule in a subordinate legislation is creating a framework not recognised or sanctioned in the parent legislation, making it susceptible to being held ultra vires the IT Act.</p> <ul style="list-style-type: none"> Bypass of Section 87: Section 79(2)(c) conditions the availability of the safe harbour on intermediaries observing guidelines as the Central Government may prescribe. The Central Government's power to prescribe such guidelines flows through Section 87, which requires the prescribed rule-making process to be followed, including parliamentary scrutiny to the extent that the rules need to be laid before Parliament. The executive instruments that may be issued under this proposed rule are not required to be made through this process and are accordingly not "guidelines prescribed by the Central Government" within the meaning of Section 79(2) (c). Their incorporation into the due diligence framework therefore bypasses the only route Parliament authorised for conditioning the safe harbour, again making the proposed rule susceptible to being held ultra vires the IT Act. 	<p>through Section 87, which requires the rules to be laid before Parliament. The executive instruments contemplated under Rule 3(4) are not prescribed through this process, and therefore, do not constitute "guidelines as the Central Government may prescribe" within the meaning of Section 79(2)(c). Their incorporation into the due diligence framework bypasses the only legislative channel through which Parliament authorised the conditioning of the safe harbour. In a prior analysis, we have argued that parliamentary engagement vindicates the values of representative democracy and separation of powers, enables effective regulation, builds citizen and business confidence, and is the foundation of sound judicial decision-making. A bypass through delegated legislation is a bypass to those values.</p> <p>Apart from the above arguments on the vires, there is scope for potential misuse of Rule 3(4) as well: in <i>Shreya Singhal v. Union of India</i> (2015) 5 SCC 1, the Supreme Court read down Section 79(3)(b) of the IT Act to hold that 'actual knowledge' triggering an intermediary's due diligence obligation must derive from a court order or a government notification, i.e., instruments that carry defined procedural legitimacy. The proposed Rule 3(4) places advisories and directions on the same footing as formal notifications for the purposes of due diligence compliance, without those instruments having undergone any equivalent process. Delegated legislation cannot override a Supreme Court interpretation of primary legislation; to the extent Rule 3(4) purports to lower the <i>Shreya Singhal</i> threshold for what constitutes a valid knowledge trigger, it is on</p>	

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		<p>Since Rule 3(4) both exceeds the grounds for safe harbour loss that Parliament specified and operates outside the rule-making channel that Parliament prescribed, it is liable to be adjudged ultra vires the IT Act. The Centre accordingly recommends that the proposed Rule 3(4) be reconsidered in its present form. If the Ministry seeks to issue guidance on the implementation of existing rules, such instruments must be expressly non-binding and must not form part of the due diligence framework for the purposes of Section 79.</p>	<p>its face inconsistent with the parent Act as authoritatively construed by the Supreme Court.</p>	

S. No.	Rule No.	Comments/Suggestions/ Feedback	Detailed Rationale	Comparative Framework
3.	Rules 14(2) and 14(5)	<p>While the proposed amendments to Rules 14(2) and 14(5) effectively enlarge the scope of matters that can be considered by the IDC, the amendment is an opportunity to ensure independence and impartiality on the part of the IDC whilst dealing with Ministry-referred instances of potential violation of the Code of Ethics. Currently, there exists structural circularity as the Ministry plays an overarching role in the whole process—it constitutes the IDC, refers instances of potential violation of the Code of Ethics to it, considers the recommendations, and also takes action on the recommendations. An impartial review of the matter is lacking.</p> <p>The Centre recommends that Ministry-referred matters relating to violation of the Code of Ethics be considered by the IDC only after a <i>prima facie</i> finding of such violation by an independent body, such as the self-regulating body constituted under Rule 12. The matter may then proceed to the IDC for more detailed consideration. This will ensure structural separation between the referring authority and the adjudicating/recommending body.</p>	<p>The IDC was primarily designed as the third tier of a three-tier appellate mechanism for Code of Ethics grievances reached only on escalation from Level I and Level II. However, the Ministry's power to refer potential violations of the Code of Ethics directly to the IDC creates structural circularity insofar as the Ministry simultaneously serves as the initiating authority, the notifying authority under Rule 14(4), and the recipient of the Committee's recommendations under Rule 14(6) — with the Secretary, Ministry of Information and Broadcasting, required to approve any resulting order.</p> <p>The natural justice principle that an adjudicating body must be independent of the party initiating the proceedings is of particular importance here, especially since the matters likely to be addressed by the IDC, such as content restrictions and blocking recommendations, may touch upon freedom of speech and expression, and other constitutionally protected rights and values. The concern is structural rather than a question of intent: even where the Ministry exercises its powers in good faith, the absence of structural independence between the referring authority and the adjudicating body may raise constitutional concerns under judicial review.</p>	<p>The UK's Online Safety Act 2023 empowers Office of Communications (Ofcom) to exercise oversight over regulated services and to initiate investigations. Ofcom is a statutory body independent of the Secretary of State; the Ministry does not refer matters to Ofcom and simultaneously receive its recommendations. The independence of the regulator from the initiating authority is architecturally guaranteed through Ofcom's statutory framework. Under the Digital Services Act, the Digital Services Coordinator and the European Board for Digital Services similarly operate independently of the Commission on operational content matters. In both frameworks, structural separation between the executive initiating authority and the adjudicating body is treated as a foundational design requirement, not a discretionary procedural safeguard.</p>

5. Conclusion

The Centre's comments reflect its commitment to constructive, text-grounded engagement with the regulatory process. Each of the amendment areas examined in this submission poses a distinct but related challenge: ensuring that compliance obligations are proportionate and that the structural integrity of India's intermediary liability framework is preserved against executive modification through subordinate instruments.

The Centre is mindful that intermediary liability and the governance of synthetically generated content remain rapidly evolving areas, and that a settled and durable framework may emerge in an evolutionary manner. However, we are confident that it will best emerge from sustained and broad-based stakeholder consultation across industry, academia, civil society, and the legal community, as is currently being undertaken for the proposed amendment.

The Centre remains committed to supporting the Ministry in developing a regulatory framework that is constitutionally robust, technically coherent, and aligned with international best practices. We would welcome the opportunity to discuss any of the comments above in further detail and remain available at csailr@jgu.edu.in.





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Sonipat-131001, (Delhi NCR), Haryana, India



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