

**Event Report**  
**Roundtable discussion on**  
**Evolving Role of Online Intermediaries: Retaining Trust, Re-imagining Safety**  
**12 February 2019 | Hotel Royal Plaza, New Delhi**

**Introduction**

Consumer Unity and Trust Society (CUTS), along with CUTS Institute for Regulation and Competition (CIRC), organised a roundtable discussion titled ‘*Evolving Role of Online Intermediaries: Retaining Trust, Re-imagining Safety*’, on the proposed amendments to the Information Technology (Intermediary Guidelines) Rules<sup>1</sup> by Ministry of Electronics and Information Technology (MeitY). (For Agenda, [click here](#)). Several stakeholders participated in the discussion, including policy influencers, industry representatives, academia, civil society, think tanks, media, among others (For list of Participants, [click here](#)). Discussions revolved around select key issues in the guidelines:

- Rule 3(5)<sup>2</sup> [Tracking of originators] & Rule 3(9)<sup>3</sup> [Deploying automated tools]; &
- Rule 3(2)<sup>4</sup> [Inform users through Privacy Policy]

CUTS presented the relevant findings from its Consumer Perception Survey titled ‘Data Privacy and User Welfare in India’<sup>5</sup>, which covered 2,160 internet users across six states in India. These pertained to user perceptions, expectations and experience in the online economy, across varying geographic and demographic settings, which were likely to be impacted from the guidelines (For Presentation slides, [click here](#)). These acted as a precursor for the debate.

**Setting the Context**

The amendments to the guidelines were on account of growing concerns over ‘*misuse of Social Media platforms and spreading of fake news*’. However, participants generally opined that the corresponding ‘*resolve of the Government to strengthen the legal framework and make the social media platforms (intermediaries) accountable under the law*’, does not seem to be an effective solution to this problem. The possibility of unintended consequences emanating from the amendments were also discussed. These pertained to curbing the open nature of the online economy, leading to a chilling effect on intermediaries, as well as reducing consumer welfare, by denting their trust on intermediaries. It was further suggested, that focus must instead be placed on designing an optimal framework, and well capacitated state machinery to tackle the ‘impact’ of the fake news in the offline ecosystem.

---

<sup>1</sup>Draft Intermediary Guidelines, 2018 can be accessed at [https://meity.gov.in/writereaddata/files/Draft\\_Intermediary\\_Amendment\\_24122018.pdf](https://meity.gov.in/writereaddata/files/Draft_Intermediary_Amendment_24122018.pdf)

<sup>2</sup> *The intermediary shall enable tracing out of such originator of information on its platform as may be required by government agencies who are legally authorised.*

<sup>3</sup> *The Intermediary shall deploy technology based automated tools or appropriate mechanisms, with appropriate controls, for proactively identifying and removing or disabling public access to unlawful information or content*

<sup>4</sup> *Such rules and regulations, privacy policy terms and conditions or user agreement shall inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information which is explicitly prohibited.*

<sup>5</sup>[Data Privacy and User Welfare in India: User Perception Analysis](http://www.cuts-ccier.org/cdpp/) accessible at <http://www.cuts-ccier.org/cdpp/>

## **Issue 1: Rule 3(5) [Tracking of originators] & Rule 3(9) [Deploying automated tools]**

### Findings from the survey

CUTS survey found that, users had perceived to have received various benefits from digital technologies. Although they were broadly comfortable in sharing their data with service providers, levels of discomfort were seen in sharing data pertaining to their location and e-mail ids. Also, in the last three years, more female, and young users had begun using digital technologies, especially in rural areas. The perceptions of such inexperienced users must be kept in mind while framing rules, especially with respect to factors building their confidence on digital platforms, such as data anonymisation and reputation of service provider. This may signify their discomfort in identification and / or traceability.

### Participant Discussions

It was opined, that any attempt of using consumer data for tracking purposes, or to proactively monitor content they post (without following due judicial process), may breach consumers trust and confidence on intermediaries.

Ethical and moral concerns related to whether intermediaries have the *locus standi* to proactively monitor online content; appropriateness of imposing policing duties on them; were also raised. It was mentioned that the draft rules suffer with excessive delegation of powers and shift the burden of responsibility of identification of unlawful content from a government/ judiciary to intermediaries, who are not capable in making such decisions. Furthermore, the guidelines were noted to lack the much-needed grievance redressal provisions (notification and opportunity to be heard) for consumers, whose content / services had been blocked.

Representatives of various service providers also voiced their concerns over having to break an important privacy tool of End to End Encryption, in order to comply with the guidelines, i.e. in order for them to facilitate proactive monitoring of content. However, questions were also raised regarding the ambit of End to End Encryption, i.e. if it is required only for person to person communication, or also for broadcasting amongst many persons.

The amended guidelines in their current form may result in over-compensating or over-censoring of online content, thereby scuffling the freedom of speech and expression of its users. Upholding the fundamental right to privacy was also asserted, and it was iterated that an attempt must be made by the government, to design less intrusive means to achieve its policy objectives.

Participants also raised doubts with respect to the guidelines violating the principles of vagueness, necessity, and proportionality, as laid down by the hon'ble Supreme Court of India in the landmark judgments of Shreya Singhal<sup>6</sup> and Puttaswamy<sup>7</sup>.

## **Issue 2: Rule 3(2) [Inform users through Privacy Policy]**

### Findings from the survey

---

<sup>6</sup> Shrey Singhal v. Union of India, accessible at <https://indiankanoon.org/doc/110813550/>

<sup>7</sup> Puttaswamy and Anr v. Union of India and Ors, accessible at <https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=2ahUKEwjK0-jnXr3gAhVCpI8KHX2cCLAQFjACegQICxAB&url=https%3A%2F%2Findiankanoon.org%2Fdoc%2F127517806%2F&usq=AOvVaw3hqUCUvIXIXwpOYtUALVCI>

CUTS survey revealed, that few internet users read privacy policies, and just a fraction of them claim to fully understand them. Moreover, vulnerable groups like females, non-urban and inexperienced users were found to be less likely to read privacy policies than their male, urban and experienced counterparts. Prime impediments to this issue were noted to be length, language and legalese. Also, a common reason amongst vulnerable groups for not reading privacy policies was due to their trust in service provider, and they find the exercise unnecessary.

### Participant Discussions

Participants expressed their concern with regard to the objectives envisaged by the government through the fractured mechanism of privacy policies. Moreover, such a mechanism runs antagonistic to consumer welfares as it shifts the responsibility not just upon intermediaries, but in essence to users as they do not read the privacy policies before giving their consent at present.

Alternatives like privacy by design, use of icons or pictures to represent information in a simple and intelligible format was suggested to bridge information asymmetry. It was further emphasized, that synchronization was needed between consumer beliefs, and corresponding policy space and industry designs for establishing long lasting trust.

Issues of notice and consent fatigue were also flagged in this regard. Issues pertaining to other provisions were also briefed discussed, such as vagueness pertaining to Rule 3(2)(j)<sup>8</sup>.

### **Way Forward**

The deliberations during the event, yielded the following suggestions on the way forward.

Engaging in mechanisms and methods must be undertaken between intermediaries and government, which ensure knowledge exchange. The government should look at intermediaries as partners, and not as law enforcement agencies. There is also a need for inducing transparency in the regulation making process.

A graded approach should be explored to regulate information and intermediaries in online economy, depending on the associated risks. For instance, unlawful content should have a graded classification as per variable degree of threat. The government must be sensitized, that intermediaries vary in function, design and utility, and therefore cannot be clubbed under an umbrella provision.

There is a need to institutionalise good regulation making processes like Regulatory Impact Assessment (RIA), which necessitate cost-benefit analysis to prevent such knee-jerk reactions from the government. RIA<sup>9</sup> is a process of systematically identifying and assessing direct and indirect impacts of regulatory proposals and existing regulations, using consistent analytical methods. It involves a participatory approach via public consultation to assess such impact, determination of costs and benefits, and selection the most appropriate regulatory alternative.

---

<sup>8</sup> *promotion of cigarettes or any other tobacco products or consumption of intoxicant including alcohol and Electronic Nicotine Delivery System (ENDS) & like products*

<sup>9</sup> About RIA, accessible at <http://cuts-ccier.org/ria/>