

CUTS Comments

on the Draft Amendments to The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 relating to Online Gaming

Background

Consumer Unity & Trust Society (CUTS) expresses its gratitude to the Ministry of Electronics and Information Technology (MeitY) for inviting comments and suggestions on the draft amendments to The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

About CUTS

In its 39 years, CUTS has come a long way from being a grassroots consumer-centric organisation based in Jaipur to opening overseas Resource Centres in Africa,¹ Switzerland,² Vietnam,³ and most recently in the United States of America.⁴ It continues to remain an independent, nonpartisan, and non-profit economic policy think tank while opening various programme centres, namely: Centre for International Trade, Economics & Environment (CITEE);⁵ Centre for Consumer Action, Research & Training (CART);⁶ Centre for Human Development (CHD);⁷ and Centre for Competition, Investment & Economic Regulation (CCIER).⁸ It has been working towards enhancing the regulatory environment through evidence-based policy and governance-related interventions across various sectors and national boundaries. Further details about CUTS are available [here](#).

Having conducted various studies in area of inclusive digital economy⁹ on issues pertaining to data protection,¹⁰ data localisation,¹¹ children's data protection,¹² and encryption.¹³ Further,

¹ <http://www.cuts-international.org/ARC/>

² <http://www.cuts-geneva.org/>

³ <http://www.cuts-hrc.org/>

⁴ <http://www.cuts-wdc.org/>

⁵ <https://cuts-citee.org/>

⁶ <https://cuts-cart.org/>

⁷ <https://cuts-chd.org/>

⁸ <https://cuts-ccier.org/>

⁹ <https://cuts-ccier.org/digital-economy/>

¹⁰ <https://cuts-ccier.org/cdpp/>

¹¹ <https://cuts-ccier.org/understanding-impact-of-data-localization-on-digital-trade/>

¹² <https://cuts-ccier.org/highlighting-inclusive-and-practical-mechanisms-to-protect-childrens-data/>

¹³ <https://cuts-ccier.org/understanding-consumers-perspective-on-encryption/>

CUTS in its children's data protection study examined the need for having different age thresholds for use of data driven services.¹⁴

Further, CUTS has also been actively representing consumers' interest before different state governments and central government ministries. CUTS keeps a close watch on concerns relating to the digital economy including online gaming¹⁵ CUTS had organised a virtual panel discussion which discussed the issues of gamer protection, where Mr. Rakesh Maheshwari, Scientist G and Group Coordinator, MeitY delivered a special address.¹⁶ The event discussed the need for awareness generation and capacity building among consumers.¹⁷

CUTS had submitted comments on the draft Rajasthan Virtual Online Sports (Regulation) Bill, 2022,¹⁸ Niti Aayog's Draft Guiding Principle for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India,¹⁹ made submission to the MeitY²⁰ and the state of Tamil Nadu²¹ highlighting the regulatory uncertainty persisting in the online gaming sector. CUTS has observed a few critical issues in the draft rules. These have been discussed in subsequent sections, along with a few recommendations to address them. We have also engaged with different consumer groups on key issues arising out of the draft amendments.²²

Preliminary Comments

CUTS welcomes the **draft amendments** to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules).²³ The agility that MeitY has shown in releasing the draft amendments after being notified as the nodal ministry for online gaming is promising for the growth and development of the industry and the government's commitment to this growth. However, there is a need for all stakeholders to come together and act with a singular goal in mind which is consumer interest, empowerment, and protection to ensure optimal benefits and reduced harms. MeitY had recently organised a stakeholder consultation with consumers, teachers, medical experts etc. Also, a week later another consultation was held with representatives of industry bodies, policy advocacy groups

¹⁴ Prince Gupta, 'Global Technological Developments in Age Verification and Age Estimation', December 2021, available at <https://cuts-ccier.org/pdf/bp-global-technological-developments-in-age-verification-and-age-estimation.pdf>

¹⁵ [CUTS work on Digital Economy](#)

¹⁶ [Power-Up' to the Gamers Empowering Consumers in the Online Gaming World | Ccier \(cuts-ccier.org\)](#)

¹⁷ [Light touch regulation the way forward for online gaming: Rakesh Maheshwari, MeitY](#)

¹⁸ [CUTS Comments on Rajasthan Virtual Online Sports \(Regulation\) Bill, 2022](#)

¹⁹ [Response to Niti Aayog's Draft Guiding Principle for the Uniform National-Level Regulation of Online Fantasy Sports Platforms](#)

²⁰ [CUTS Discussion Paper Impact of Regulatory Uncertainty on Ease of Doing Digital Business.](#)

²¹ [CUTS Submission to Government of Tamil Nadu on Online Gaming Regulations](#)

²² Some of the Consumer organisations and groups with whom we have engaged include Consumer Education and Research Centre (CERC), Consumer Help Society, Citizen Consumer and Civic Action Group (CAG), Consumer Rights, Education and Awareness Trust (CREAT), Cashless Consumer, Consumer VOICE, Bhartiya Manav Kalyan Samiti, Consumer Guild, Helpage Social Welfare Society, Consumer Care Society.

²³ [Draft Notification and Amendments to the Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules, 2021](#)

and industry stakeholders.²⁴ We appreciate the process undertaken by MeitY and to this end submit our comments below:

a. Adherence to a robust public consultation and feedback

The policy making process should adhere to robust public consultation and feedback mechanisms. The draft amendments were released in the public domain on January 2, 2023 and invited the general public to share suggestions and comments until January 25, 2023. Further, additional rules have been proposed along with the draft amendments on January 17, 2023 which was the deadline to submit comments originally.

This is not adequate time for the public consultation process; as the Pre-Legislative Consultation Policy (PLCP) requires for a minimum of thirty days for the draft legislation to be kept in public domain for an effective consultation process.²⁵ The PLCP applies to principal and subordinate legislations. As the rules impact various stakeholders, sufficient time for deliberation should be provided and therefore the draft amendments should be open for public comments for at least a period of 30 days, if not more. It is important to note that Member of Parliament Supriya Sule had introduced the Pre-Legislative Consultation Bill, 2019²⁶ in the Lok Sabha as a private members bill. The bill aimed to promote community participation and transparency in law making. For this the bill provided for a mandatory pre-consultation mechanism within all ministries and departments in the central government. This should be adopted as a good practice in the law.²⁷

The public consultation process must also take into account views of government institutions. In this context, the law commission has asked MeitY officials to put the online gaming policy on hold until it releases a comprehensive report on the matter. The law commission is conducting an in-depth study and analysis of the draft amendments and will release a report.²⁸ This should be taken into account by MeitY.

b. Adoption of Regulatory Impact Assessment (RIA) Mechanisms

The draft amendments aim to protect gamers and citizens from harms associated with online gaming. Gaming industry has varied harms and benefits for consumers and it requires a nuanced and evidence-based approach, to avoid regulatory overreach and prevent under regulation. To realise this goal, conducting a Regulatory Impact Assessment (RIA) through mechanisms like Cost-Benefit Analysis (CBA) before bringing the draft amendments into

²⁴ [MeitY calls another consultation on online gaming policy on Tuesday | Business Standard News](#)

²⁵ [Pre-legislative Consultation Policy \(PLCP\)](#)

²⁶ [THE PRE-LEGISLATIVE CONSULTATION BILL, 2019](#)

²⁷ Vasudev, Antara and Manish, Mayank, 'How Mandatory Public Consultations Can Help Draft Nuanced, More Transparent Laws', 21 December 2021, The Quint, *available at* [How Mandatory Public Consultations Can Help Draft Nuanced, More Transparent Laws](#)

²⁸ Lele, Sourabh, 'Put online gaming policy on hold: Law commission to MeitY officials', 23 January 2023, Business Standard, *available at* [Put online gaming policy on hold: Law commission to MeitY officials | Business Standard News](#)

effect is necessary.

Regulatory instruments have widespread impacts, and affect multiple stakeholder groups in different ways. Sub-optimal regulations have the potential to impose unintended cost of administration and compliance, leading to adverse outcomes, thereby reducing the likelihood of achievement of its objectives. It is therefore important to understand the impacts of any proposed regulation, to achieve favourable outcomes. RIA systematically identifies and assesses regulatory proposals' direct and indirect impacts using consistent analytical methods. To this end, CUTS has developed an RIA toolkit²⁹ as RIA involves a participatory approach via a public consultation to assess such impact, determine costs and benefits, and select the most appropriate regulatory proposal. It also helps put checks and balances on the government while exercising its exclusive privilege to do things necessary to protect consumers from the harms of online games. It is, therefore, recommended that the government engages with organisations experienced in conducting RIA before finalising provisions of the new law. Conducting adequate stakeholder consultations would also be helpful in this regard.

c. Support Consumer Interest Groups

The draft amendments provide for a three-step grievance redressal mechanism where the consumers are burdened with accessing all three steps on their own. In the area of grievance redressal, a three-step mechanism is typically visible in other sectors as well but more importance on access and ease of usage, awareness, and reducing information asymmetry needs to be placed. This can be ensured by provisions prescribing for effective resolution, prescribed time limits and escalation of grievances in case of non-resolution at any level. Further, the model of grievance redressal incorporated in the law needs to be strengthened with exercises that raise awareness and the capacity of consumers to enforce their rights. For this purpose, groups that work in favour of consumer interest should be involved in the awareness and capacity building process.

d. Separate Sectors Need Separate Regulations

Currently, the IT Rules apply on all technology sectors and further sub-categories have been made in rules, including social media intermediaries, significant social media intermediaries, publishers of news and current affairs content, publishers of online curated content etc. Now the addition of online gaming to the IT rules has led to complexities and inconsistencies. For instance, the timelines for OGIs and other intermediaries to provide information on receipt of an order under Rule 3(1) (j) vary between 72 and 24 hours. The rules already provided for appointments of Chief Compliance Officer (CCO), Nodal Officer and Grievance Officer while dealing with the other intermediaries. It has now been proposed that similar provisions be added for online gaming intermediaries. Such reiteration of requirements for every additional category of intermediary might not be advisable. It is prudent and in the best interest of the

²⁹ [REGULATORY IMPACT ASSESSMENT TOOLKIT](#)

general public that the IT Rules are kept general in nature, with guiding principles for different entities. and specifics for sectors such as online gaming and possible future sectors such as education technology (EdTech) be separated. For this, dedicated schedules with additional obligations, responsibilities etc. for specific sectors can be encapsulated. Alternatively, dedicated sector specific rules could be designed. This will prevent inconsistencies while keeping the law intelligible, consistent, and comprehensible.

e. Pro-active engagement between Centre and States

Given that gambling is a state subject, different state governments had proposed varied approaches towards prevention of online gambling, while regulating online gaming. Some had also proposed prohibiting online gaming.³⁰ Courts had also pronounced judgments differentiating games of skill from games of chance. There is a concern that the draft amendments, by categorising online games as intermediaries, are leading to regulation of a state subject by the centre.

To deal with such concerns, it would be essential for the central government to engage with states, understand their perspectives, and design a mutually acceptable framework for regulating online gaming. In absence of such an approach, states may be within their powers to adopt separate regulations which may not necessarily be consistent with the proposed amendments but may impact the online gaming ecosystem, and particularly the gamers. Such scenarios should be avoided.

f. Active adoption of Good Regulatory Practices

For effective regulation of any industry, it is important for good regulatory practices to be adopted in legislation actively. These include inclusion of sunset clauses and requirement of regulatory sandboxes among others. In the draft amendments the Self-Regulatory Body (SRB) has been given the power to create various frameworks such as for harms, promotion, awareness etc. Additionally, for registration of SRB with MeitY, certain criteria will be observed and evaluated. While the performance of the proposed co-regulatory framework will only be visible with time, it might be useful to institutionalise mechanisms towards constant examination of progress made and impact of such framework. Thus, these rules and other provisions should also be subject to periodic review and this need should be mandated through the IT rules with the inclusion of sunset clauses. Similar provisions have been adopted in the recently promulgated regulatory framework for drones.

Additionally, the dynamic nature of the online gaming industry must not be subjected to frameworks without adequate testing of the same. In the case of online gaming, SRB can make use of the same by creating structured safe-zones for testing new frameworks, models of online games and methods of delivery of the same. Such practices have helped consumers benefit from

³⁰ [Only online gambling banned, clarifies Tamil Nadu government | Cities News, The Indian Express](#)

innovation in areas like digital credit and peer-to-peer technology,³¹ and can prove useful in online gaming as well.

Given the pervasive nature of online gaming, it will be essential to design an effective coordination mechanism between different regulatory agencies of areas related to information technology, consumer affairs, finance, women and child welfare, among others.

CUTS Submission on Draft Amendments

a. Definitions Added

The draft amendments have added two specific definitions to the pre-existing IT Rules under the section 2 (1). The draft amendments add the definition of ‘online games’ to Section 2(1) (qa). Under the explanation to this amendment, deposit means deposit made or committed to, in cash or kind, by the user for participating in an online game. And winnings mean any prize, in cash or kind, that is distributed or intended to be distributed to a user of an online game based on the performance of the user and in accordance with rules of such online game.

Also, the use of *cash or kind* is vague and outdated in the times where global companies have begun to offer play to earn gaming formats where players earn as they play in the form of non-fungible tokens which can be later converted into crypto assets and other currencies. Spain and Netherlands³² have banned loot boxes due to their influence on pathological behaviour³³ and have forced game developers to be transparent about how they reward or pay out their players. Additionally, the deposits and winnings include commitment to make deposits and intention to distribute winnings. With no mandatory timeframes such broad scope may create confusions and ambiguities in the minds of gamers, leaving the field open for suspicious, fraudulent and exploitative entities.

The draft amendments also add definition of online gaming intermediary (OGI) to the IT Rules where it is unclear whether gaming companies offering games of their own making will be regarded as OGI or app stores that provide access to online games will be regarded as OGI or both.³⁴ This lack of clarity in the definitions will lead to unintended consequences where some legitimate industry players will be over regulated. And another consequence would be that some harmful players might slip through the cracks, leading to further consumer exploitation.

³¹ [digital payments: Level the playing field to leverage the potential](#)

³² Chalk, Andy, ‘The Netherlands moves toward an outright loot box ban’, 5 July 2022, available at [The Netherlands moves toward an outright loot box ban | PC Gamer](#)

³³ Pinnedpo, Emma, ‘Spain to crack down on video game 'loot boxes' blamed for pathological behaviour’, 1 June 2022, Reuters, available at [Spain to crack down on videogame 'loot boxes' blamed for pathological behaviour | Reuters](#)

³⁴ Panjiar, Tejasi et. al, ‘Centre's Recent Move to Regulate Online Gaming Will Further the 'Illegals' of IT Rules’, 4 January 2023, The Wire, available at [Centre's Recent Move to Regulate Online Gaming Will Further the 'Illegals' of IT Rules](#)

It is recommended that the definition clause be clarified and detailed, where *cash or kind* be expanded into various meanings of *in kind*. These can include play to earn, tokens, game points, loot boxes, game accessories/character upgrades, and level ups. Further, the definitions of OGI should be clarified with an evolving list of which companies are OGI and the same should be publicly available on the MeitY website.

Also, the definition of online game covers pay-to-play games and real money games only while making no mention of free-to-play games which provide consumers with in-app purchases. It is to be noted that many games that are popular with youth and under 18 players are free-to-play with added premium features.³⁵ There are various games where deposits or commitment of deposit is made without an expectation of earning winnings out of the deposits or where earnings are distributed. These games involve picking cards, boxes etc. to get better gaming characters, level up their characters skill or getting through a difficult level by means of deposits. The definition also does not take into account any game that might be addictive without being a real money or pay to play game. For instance, With ‘PUBG Mobile’, it was the free-to-play nature, the ease of accessibility (available on most smartphones), and the ability to socialise and play with one’s friends that made it addictive.

There are privacy, data extraction, addiction concerns, among other things, in almost all kinds/genres of games. Therefore, it might be useful to think about how such concerns in online games, not regulated through the draft amendments, can be addressed.

b. Additional Due Diligence Requirements for OGIs

In the newly added Rule 4A, diligence over and above the due diligences under Rule 3 have been provided. These include the requirement of displaying a demonstrable and visible mark of registration on all online games registered by the SRB, which is appreciable. This will allow consumers to distinguish between legitimate games and potentially suspicious games.

Rule 4A (1) (b) requires the OGI to provide the consumers with information about all games offered by the OGI. This information includes policies for withdrawal, refund, manner of determination and distribution of winnings and fees with other charges applicable. Further information about risk of financial loss and addiction, Know-your-customer (KYC) procedure followed, and measures of protection of deposit, the framework of the SRB of which the OGI is member of, among others also must be provided. For this, the OGI can use their rules and regulations, privacy policy, terms of service and user agreements.

The provision makes a biased assumption of consumers’ capacity and consciousness for reading and understanding the language of these documents which is usually filled with legalese. CUTS’ user perception survey on privacy and data protection pointed out that most

³⁵ Sheirs, Jason, ‘Expert advice on gaming addiction in young people and children’, 6 January 2020, Internet Matters, available at [Expert advice on gaming addiction in young people and children](#)

people don't read privacy policies (notices), mostly due to their exhaustive length.³⁶ There have been studies around consent fatigue where the number of services availed by the consumers is high. Consumers frequently switch between various services and applications, this leads to consumers accepting the terms of privacy policy, agreements etc. without actually comprehending them.

Further, online gaming is now being used as a means of inclusion. Developers have started to add special additions to games so that they become accessible for the visually impaired.³⁷ The use of policies and agreements might not be the best way to take this inclusivity further.

It is recommended that as the goal of the provisions is transparency, OGI's can provide the information to consumers through innovative dashboards, flash messages, periodic emails and whatsapp messages which can either be read or heard. Another possible option can be consumers being incentivised in the game to read such documents and respond to periodic surveys where level of accuracy can determine the advantage. For this, the SRB can come up with inclusivity frameworks for OGI's to use. To this end, Rule 4A (1) (b) should require OGI's to follow and innovate on the inclusivity frameworks that will be developed by the SRB. Further, the rule can require OGI's to have their policy documents in regional, easy to understand language which should be mandatorily available in written, spoken and visual format.

Rule 4A(1)(c) provides an option to the OGI to publish a random generation certificate and no bot certificate on website **OR** mobile application. This is a positive step that will ensure consumers' trust in the industry; thus, it should be mandatorily published on both platforms of the OGI.

Rule 4A (1) (d) states that at the time of commencement of a *user account-based relationship* for an online game, the OGI shall identify and verify the identity of the consumer similar to be the procedure required to be followed by an entity regulated by the Reserve Bank of India (RBI) for identification and verification of a customer at the commencement of an account-based relationship. It is possible that this has unintended consequences, where genuine potential gamers are restricted from participating in online games. We recommend that the best practices of RBI of using a graded approach for customer verification are utilised, where the requirements of KYC should be minimum for onboarding the consumers. This can be done via one-time-password through mobile number login. RBI already has a robust KYC mechanism, including one time password-based e-KYC in the non-face-to-face mode for low-value accounts, for specified duration. Similar practice can be adopted for online gaming as well. Further at the time of deposit, the KYC requirements can be upgraded (unless the deposit is done through an account which has already been verified or compliant with KYC requirements) by one level. Whereas at the time of withdrawal higher KYC requirements can be implemented (unless the

³⁶ Kulkarni, Amol and Swati Punia, "Users' Perspectives on Privacy and Data Protection" (C-CIER, CUTS International, n.d.). Available at: <https://cuts-ccier.org/cdpp/>

³⁷ [New tech lets blind, visually impaired people play Trackmania | PC Gamer](#)

withdrawal is done through transfer to an account which has already been verified or compliant with KYC requirements). RBI has also launched a Central KYC Records Registry, to enable consumers' open multiple account-based relationships through KYC identifiers, without unnecessary repeated submission and sharing of sensitive customer information. The Rules can enable OIGs to utilise such KYC identifiers, for customer verification.

Rule 4A (1) (e) provides for OIGs to enable for their consumers voluntary verification mechanism using any appropriate mechanism including mobile number where such consumers will have a demonstrable and visible mark of verification on their accounts. The information shared for this purpose shall not be used for any other purpose unless express consent of the consumer is taken. This is a good step as verified accounts can also mean ease of recognition for regular consumers and elimination of doubts of an account being a suspicious account. However, there is a need to ensure consistency between provisions relating to customer verification, and voluntary display of verification marks, visible to others. Users having gone through sufficient KYC check should be automatically given an option for display of verified mark, without the need to comply with additional requirements. The voluntary verification should neither be incentivised nor disincentive for any consumer so that consumers can make a free choice. There is an understanding that mobile based verification or login might hamper exploration by certain consumer groups who might not possess devices and capacity for reading text messages.³⁸ It is recommended that consumers be made sufficiently aware that verification of accounts is a voluntary exercise and no information asymmetry should be there in this context. To this end, the Rule 4A (1) (e) can be amended with an addition of a second proviso clause. This proviso can be read as follows: provided that OGI will mandatorily ensure that consumers will be made sufficiently aware periodically that the verification is a voluntary exercise and shall not use the same to incentivise or disincentivise the consumers.

Rule 4A (1) (j) through the proviso clause, provides discretion to OGI in choosing to provide reasons for their action or inaction. This is against the principles of natural justice. OGI should mandatorily provide actions for their action/inaction to the complainant without it being restricted by reasonableness. Proviso for Rule 4A (1) (j) should be amended to remove 'to the extent reasonable' and replace the same with 'shall be required'.

c. Rules Regarding Self-Regulatory Body (SRB)

While providing for safeguards for OIGs in case of directions under Section 69A of the Information Technology Act, 2000, the draft amendments also provide for SRB's formulation, role, and responsibilities.

Under **Rule 4B (2)**, the draft amendments state that SRBs should be registered with MeitY; the requirements for the same are provided under Rule 4B (3) and SRB can be one or more. Under **Rule 4B (3)**, at the time of registration of SRB MeitY shall consider specific criteria including

³⁸ [National Family Health Survey \(NFHS - 5\), 2019–21](#)

but not limited to their track record in promoting responsible online gaming, number of member OGIS etc. It is recommended that the procedure of SRBs registration be kept transparent and the decision of MeitY to register or decline registration be supported with reasons recorded in writing and made publicly available.

Further, the composition of the SRB has been kept independent and representative of different stakeholders which is a positive step. It is appreciated that the draft amendments provide essential structural independence however, this may not necessarily be sufficient. There is a need to ensure SRBs functional and financial independence as well. As the SRB will be funded by membership fee, the default presumption around conflict of interest and them having a biased attitude in favour of OGIS shall remain. SRBs should be required to make active efforts to show such bias does not exist in their functioning. The draft amendments also require SRBs to function at an arm's length from the OGIS. To successfully implement the same, SRB's actions could include ensuring publicly available minutes of meetings, financial statements of SRB, and periodic reports of their functioning. Further, there should be a mandatory cooling off period for board members to join an OGI, reasoned and publicly available orders along with disclosure of interests of board. SRB must also have a functional ethics committee, an adequate representation of women on the board. It should incorporate within its roles and framework, a repository of information with anybody having an opportunity to ask for more information and raising a complaint/ grievance against functioning of SRB, among other things.

Various experts have observed that a balance between the number of SRBs and the criteria that MeitY will consider for SRB registration needs to be established. This is required so that a large number of SRBs does not result in forum shopping by the OGIS and neither does a smaller number of SRBs lead to lack of choice for OGIS.³⁹ Regardless of the number of SRBs, it is important that there is a standardised procedure that is followed by all SRBs in registration and frameworks for OGIS.

Rule 4B (5) (b) is one of the three criteria which SRBs shall consider for registration of OGIS. *It states that SRB will consider that online game should not contain anything which is not in interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order, or incites the commission of any cognizable offence relating to the aforesaid.*

These criteria are used in all laws and are not altered to suitably connect with the sector that is being regulated. Further, these are broad criteria which are susceptible to misuse and need to be re-evaluated. CUTS in its submission on the recent draft Digital Personal Data Protection Bill, 2022, recommended that these criteria should be invoked only on the condition when there is a substantial risk to these criteria in general public interest. The law should look towards public

³⁹ Aarathi Ganesan, 'How Will A Caged Parrot Hold Its Masters Accountable?': Self-Regulation In India's Gaming Industry' 20 January 2023, available at "[How Will A Caged Parrot Hold Its Masters Accountable?': Self-regulation in India's Gaming Industry #NAMA](#)"

interest as something not generic but special in nature which is invoked after procedural safeguards for prevention of harm have already been exhausted.⁴⁰ We recommend that ‘or’ be substituted with ‘and’ so that the broad terms are read down in relation with incites the commission of any cognizable offence.

Rule 4B (6) requires SRBs to evolve a framework to secure interests in the preceding sub-rule. The framework may include suitable criteria regarding:

- a. *the content of an online game registered or to be registered with such body, with a view to safeguard users against harm, including self-harm;*
- b. *appropriate measures to be undertaken to safeguard children;*
- c. *measures to safeguard users against the risk of gaming addiction and financial loss, including repeated warning messages at higher frequency beyond a reasonable duration for a gaming session, provision to enable a user to exclude himself upon user-defined limits for time and money spent; and*
- d. *measures to safeguard against the risk of financial frauds.*

As the SRB will be making frameworks for harms including self-harm and the draft amendments have not included the definition of harm in the IT Rules, it will be useful to have some guiding principles in place. These guiding principles will provide a clear ambit for SRBs frameworks while also acting as a shield for SRB against government action. Harms may keep evolving based upon consumer’s profiles, social- economic considerations, and prevalent social practices.⁴¹ It will be useful to have the guiding principles take a risk-based approach to harm to prevent over-classification and under-reach.

Further, to ensure accountability of SRB, public, civil society bodies and consumer groups should be able to challenge the adequacy of these frameworks. In addition to this, SRB should be able to hold OGIS responsible for allowing fraudulent actors to make use of the OGI to inflict harm and frauds. This can be done by means of naming and shaming, use of strike method where number of such instances be limited before stricter action is taken and displaying such details on its online platforms.

In addition to above, SRBs should also evolve frameworks for providing support to family and guardians of those suffering from harms of online gaming. Various support groups provide counselling, education and therapy to the victims and their dear ones to effectively deal with the circumstances. Consumer support groups such as CUTS also work grievance helplines focussed towards child harm and abuse, also called Childline.⁴² These services are easily accessible to consumers through phones by dialling 1098. Such services are equipped with

⁴⁰ Neelanjana Sharma, Prince Gupta and Asheef Iqubbal, ‘CUTS Comments on the draft Digital Personal Data Protection Bill, 2022’ available at https://cuts-ccier.org/pdf/cuts_comments_on_the_digital_personal_data_protection_bill-2022.pdf

⁴¹ Pradeep S. Mehta and Neelanjana Sharma, ‘IT Rules need a relook’, 24 January 2023, Financial Express, available at [IT Rules changes need a careful relook | The Financial Express](https://www.financialexpress.com/it-rules-changes-need-a-careful-relook/)

⁴² <https://www.childlineindia.org/>

counsellors, mental health support and legal expertise to deal specifically with child harms, which might be useful in online gaming and its impact on children. Through its framework, SRB should ensure collaboration with such support groups or cyber wellness centres.⁴³

Additionally, SRBs are required to promote responsible play and also develop frameworks for the same. For this, tools such as self-exclusion similar to the frameworks developed by the United Kingdom's Gambling Commission should be utilised and provided to consumers. When under an activated self-exclusion rule, gambling companies are restricted from contacting the consumer through advertisements, offers and phone services. Also, when a consumer tries to stop self-exclusion before the period chosen by him/her is over the gambling companies must take reasonable steps to stop consumers from doing so.⁴⁴ Similar avenues for those affected with addiction or consumers who do not wish to indulge in excessive online gaming should be explored. Further, the Over-the-top (OTT) media services have, in addition to certification of content, started to incorporate trigger warnings with helpline numbers in cases of violence, abuse, suicide or gore before and during the content. Additionally, in content where actors smoke, statutory warnings have been mandatorily incorporated in both OTT and motion pictures. These are good practices that should be incorporated within the online gaming industry.

Rule 4B (7) states that SRB shall be recognising online games and providing the report to MeitY of such recognition. The basis for such recognition needs to be included in the report. This rule seems to provide discretion to SRB for determining whether a game is that of skill or chance. It might not be prudent to provide such discretion to SRB without any principles. To address this issue, the rules can mandate that recognition or rejection request of recognition be done within the ambit of the law in force at the time and any judicial decisions and precedents. These reports of SRB should be available publicly and any party should be able to challenge the same.

Rule 4B (8) requires an SRB to establish a grievance redressal mechanism for complaints unresolved by the OIGs. This is a well-intentioned clause; however, it is unclear if the framework making arm and grievance redressal arm of the SRB will be separate from each other or not. The grievance redressal and adjudicatory arm should be kept separate from the framework making arm so that no conflict of interest arises. The separate grievance redress arm should have adequate stakeholder representation including but not limited to legal and judicial experts, consumer groups representatives among others. This is in line with the practice of regulators having separate arms of adjudication and rulemaking. To this end, Rule 4B (8) should have a proviso added to it stating that the grievance redressal mechanism of SRB shall be separate from the framework making arms of the SRB. The members of grievance redressal mechanism should not be the same as framework making members, members of any OIGs or

⁴³ <https://www.responsiblebetting.org/>

⁴⁴ [Self-exclusion - Gambling Commission](#)

online games. The members must include persons of legal expertise, judicial experience and subject-matter expertise with adequate representation from women.

Rule 4B (10) provides that if MeitY after undertaking the process of notice and hearing under Rule 4B (9) can suspend or revoke the registration of the SRB by recording its reasons in writing. The rule also provides that MeitY in the interest of the consumers registered with online games provide directions as it may deem necessary.

CUTS recommends that these directions should provide relief to consumers, where any and all deposits made or winnings with the online game should be reversed in consumers' account through the original mode of payment. This should be mandated to precede all other pending dues of OGI through directions issued by MeitY in this regard. Consequently, the directions issued by MeitY should provide adequate time to comply/respond to the SRBs and the directions and responses should be publicly available. Further, in the Rule 4B (10), it should be provided that, in cases where reasons of revocation of registration fall under unlawful intent or illegal/wrongful conduct by OGIs, affected parties should be able to seek the remedy of disgorgement of such ill-gotten gains.

d. Grievance Redressal Mechanism

The draft amendments outline a three-step grievance redressal mechanism consisting of OGI, SRB and Grievance Appellate Committee (GAC). We have already highlighted our issues with the GAC's operationalisation, constitution, and independence in our submissions to the 2022 amendment of IT Rules 2021.⁴⁵ In our understanding, there are still questions on operationalisation of GAC and that there might be disproportionate representation of one stakeholder group. There are concerns around enforceability of GAC orders and appellate mechanisms of the same. These should be adequately addressed in IT Rules. Additionally, as there can be more than one GACs, a distinct GAC for online gaming should be created with adequate representations from all stakeholders who have the subject matter expertise in Online gaming in relation with their field of work.

The grievance redressal mechanism needs to be simplified and easily accessible for the aggrieved consumers, residing across locations of the country.

Further, the draft amendments are silent on the method of raising grievances against functioning of SRB and GAC. Any person should be able to raise grievances or complaints at any time on the actions/omissions of OGIs, SRBs and GAC with an option of automatic escalation in case of non-resolution, subject to the complainant's consent. To solve real time grievances and provide clarifications, OGIs and SRBs can also explore live chat boxes and assistants, akin to those used by food-delivery apps where consumer wait time is only a few minutes. In addition

⁴⁵ Neelanjana Sharma and Asheef Iqqubal, 'CUTS Comments on the Proposed Amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021', available at <https://cuts-ccier.org/pdf/comments-to-meity-intermediary-rules-2021-amendments.pdf>

to the same, the use of social media has exponentially increased and now organisations are taking actions on consumer grievances posted on social media websites. Frameworks can be cognizant of the same in order to make grievance redressal simpler and convenient for consumers, such that regardless of the medium of grievance it should be resolved. To this end, OGI, and SRBs should be made reasonably responsible to take cognizance of the grievances raised through social media. Further, to remove information asymmetry, all three levels should be required to undertake awareness generation and capacity building activities. In addition to this, periodic reports regarding number, nature and status of grievances received, resolved, and appealed should be released by all three-levels to promote transparency and accountability.

In addition to this, there should be consumer assistance centres in each district, tasked with raising awareness, building capacity and facilitating processes for grievance redressal of consumers. Grahak Sahayata Kendra (Consumer Support Centre) of Consumer Unity & Trust Society can be a good example in creating consumer assistance centres across districts.⁴⁶ The National Consumer Disputes Redressal Commission can also serve as an example in developing GAC with respect to setting up quasi-judicial committee(s) at district, state and central level.⁴⁷ As above, more collaboration is needed with organisations that specialise with grievances of children and possess expertise in those areas.

e. Miscellaneous Recommendations

Under newly added **Rule 6A**, MeitY can notify any game accessible through the internet to be an online game if it is satisfied on certain criteria of risk of harm on account of causing addiction or other harm among children. The criteria given are *sovereignty and integrity of India or security of the State or friendly relations with foreign States or public order*. These criteria are unnecessary, broad and vague. Further, these terms will need to be read down in the relation with ‘on account of causing addiction or other harm among children.’ Thus, it recommended that these criteria either be made to read in relation with the later part or be removed from the draft amendments.

Amendments to the **Rule 3 (1) (b) (v)** apply to all intermediaries and thereby has expanded the scope of the draft amendments beyond the online gaming industry. The draft amendment aims to tackle the issue of fake or false online content. This issue can be found in the online gaming industry such as messages claiming addition of rupees in certain card game accounts among others. One can also witness fake and false content in some misleading links in the form of comments in certain games. These are important issues which directly impact consumers, however the proposed method of vetting of content via government and its agencies might not be the best approach. This might lead OGI and other intermediaries to pre-emptively censor

⁴⁶ Consumer Support Centre (Grahak Sahayta Kendra), available at

<https://Cuts-Cart.Org/Consumer-Support-Centre-Grahak-Sahayta-Kendra/>

⁴⁷ The Consumer Protection Act, 2019, available at <https://egazette.nic.in/WriteReadData/2019/210422.pdf>

content. From consumers and potentially violate Article 19(1) (a) of the Indian Constitution. The proposed design may also result in the government becoming a judge in its own cause.

Herein, the concept of community moderators should be explored, where trustworthy individuals within the viewing/playing community can flag such comments/content to the OGI and other intermediaries, in line with the trusted flaggers model provided under the Digital Markets Act of the EU. Then the OGI and other intermediaries can check the veracity of such flagging on an urgent basis and with reasoned responses take actions of retaining or taking down the content. This mechanism is in use by all social media intermediaries and similar frameworks can be explored by OGI.

Additionally, the rules will benefit from introducing provisions that direct SRBs to maintain and display on their websites OGI and online games which are actively complying with the requirements placed on them. Furthermore, consumer feedback and reviews should become a part of the periodic review process of OGI and SRBs.

Consumer Unity & Trust Society (CUTS) expresses gratitude to MeitY for inviting comments and suggestions on draft amendments to The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 relating to Online Gaming. CUTS looks forward to MeitY accepting the above suggestions and assisting in its efforts to empower consumers and lead to effective and optimum regulation- making. We would be glad to make an in-person presentation of our submission before MeitY.

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