

Summary of DSCI's submissions on the draft Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Second Amendment Rules, 2021

The Data Security Council of India (DSCI) has provided feedback on the draft amendment to the [Information Technology \(Intermediary Guidelines and Digital Media Ethics Code\) Rules, 2021](#) (Draft Amendment). While DSCI broadly supports the underlying intent, it has offered observations on how the proposed changes may create unintended challenges that warrant consideration before the rules are finalized.

Rule-by-Rule Feedback

Overall compliance burden and safe harbor

Concern: The Draft Amendment introduces enhanced obligations on data retention, due diligence, and synthetically generated information, but the interaction between these obligations and the safe-harbor framework under Section 79 of the Information Technology Act, 2000 (IT Act) is unclear, particularly for technical, inadvertent, or good-faith non-compliance. Absent clear standards on materiality and proportionality, intermediaries may over-comply by preemptively removing lawful content, disproportionately affecting smaller platforms.

Recommendation: Issue guidelines identifying which categories of non-compliance may result in loss of safe harbor, while recognizing good-faith efforts in cases of minor or technical deviations, so that stakeholders can continue operating in India without disrupting digitization.

Rule 3(1)(g): Data preservation and retention in actual-knowledge compliance

Concern: The 180-day retention requirement should be read consistently with the Digital Personal Data Protection Act, 2023 (DPDP Act), which requires erasure of personal data once its purpose is fulfilled. Clarity is needed on when retention beyond 180 days is a "lawful purpose," on which categories of data must be retained (understood to be logging, monitoring, and security-related data), and on whether safeguards such as encryption, masking, and tokenization must apply throughout the retention lifecycle, given that extended retention increases breach exposure.

Recommendation: Clarify that the phrase "without prejudice" in Rules 3(1)(g) and 3(1)(h) of the Draft Amendment applies to existing obligations, including the DPDP Act, so retention periods are not extended through advisories under proposed Rule 3(4) of the Draft Amendment. Better align the retention frameworks across the IT Act and DPDP Act and clarify the hierarchy and intersection between the two laws to enable consistent implementation.

Rule 3(1)(h): Data preservation and retention in user registration data collection

Concern: The same concerns apply as under Rule 3(1)(g) of the Draft Amendment, namely tension with the DPDP Act's purpose-limitation and data-minimization principles, the absence of a clearly defined lawful basis for retention beyond 180 days, uncertainty over the categories of

data covered, and the lack of an explicit mandate to apply security safeguards throughout the retention period.

Recommendation: As with Rule 3(1)(g) of the Draft Amendment, clarify the "without prejudice" language against existing legal obligations, avoid extension of retention through advisories under Rule 3(4), and align the IT Act and DPDP Act retention frameworks with clearer guidance for intermediaries.

Rule 3(4): Compliance with advisories, SPs, codes of practice, and guidelines issued by MeitY

Concern: The provision would benefit from a clear distinction between binding directions under the IT Act and non-binding advisories and SOPs, to prevent both under-compliance and unnecessary over-moderation. Further clarity is needed on the statutory basis and scope of authority for such instruments, on safeguards including transparency and review, and on proportionate, phased implementation timelines, particularly for smaller entities and AI developers making architectural changes.

Recommendation: Strengthen advisory-compliance mechanisms through formal amendment to the IT Act rather than delegated instruments, limiting legal consequences to formally notified, statute-grounded instruments. Binding instruments should follow a structured consultation process with publication and stakeholder input, provide a minimum pre-enforcement window of at least 30 days (consistent with the Pre-Legislative Consultation Policy, 2014), define each instrument's legal status, and be maintained in a centralized public repository, aligning with global practice such as the EU Digital Services Act and the UK Online Safety Act.

Proviso to Rule 8(1): Extension of Rules 14–16 to intermediaries and non-publisher news and current-affairs content

Concern: The Draft Amendment expands Part III of the IT Rules while aspects of that framework remain under judicial consideration. The definition of "news and current affairs content" is broad and may blur the distinction between individual users and professional publishers, with implications for how intermediaries operationalize obligations under Section 79 of the IT Act and a risk to legitimate expression, particularly by smaller and independent creators.

Recommendation: Adopt a calibrated threshold, subject to pending constitutional challenges, applying Part III only to non-publisher accounts meeting defined criteria of reach, scale, influence, or organized activity, similar to Significant Social Media Intermediaries. Incorporate an express exclusion framework in the proviso to Rule 8(1) for categories such as educational material, parody and satire, and personal opinion that does not amount to professional journalism.

Rules 14(2) and 14(5): Expansion of the scope of the Inter-Departmental Committee (IDC)

Concern: DSCI welcomes efforts to strengthen the IDC but seeks clarity on the operative timeline for its expanded jurisdiction in light of ongoing proceedings on Part III, on the categories of "matters" that may be referred beyond individual grievances, on how the proposed data-access

mechanism interacts with the existing 72-hour requirement under Rule 3(1)(j), and on procedural aspects such as notice, response timelines, evidentiary standards, and review.

Recommendation: Defer the proposed amendments to Rule 14 pending judicial determination of the constitutional validity of Part III. Clarify what constitutes a "matter," and keep the IDC as a complaint-based body focused on grievances against publishers rather than on broader enforcement. Grievance mechanisms addressing SGI harms should incorporate a priority pathway for serious cases such as non-consensual synthetic intimate imagery and harmful impersonation, with accessible escalation channels and human review in high-impact cases.