

RULE AND REQUIREMENT	COMPLIANCE CHECKPOINT	IMPLICATION	WHAT YOU SHOULD DO NOW
Applicable to all intermediaries, w.e.f. February 25, 2021			
Basic Due Diligence 3 (1)(a),(b)	Intermediary to publish on its website and/or mobile application, rules and regulations, privacy policy and user agreement for access or usage of computer resources. These terms should inform the user not to host, display, modify, publish, update or share any information that violates applicable law, etc.	This process is largely similar to that required under the Old Rules.	Continue complying with the requirement as is.
Content Take Down 3 (1)(d), 3(2)(b), (c)	Upon receiving actual knowledge of a violation in form of court orders/ a government notification, access to unlawful content should be disabled within 36 hours by the intermediary. Content which exposes the private area of an individual or impersonates them, etc., must be taken down within 24 hours of receiving a complaint.	This process is largely similar to that required under the Old Rules. The requirement to respond in a time-bound manner in case of sexually explicit content is new and may require organisational processes to be introduced to avoid delays.	Update existing technical processes to ensure compliance. Create organisational SOPs on how content will be reviewed (particularly sexually explicit content) in case of any non-compliance, who should be involved in its removal, etc.
Data Retention 3(1)(g),(h)	User registration information shall be retained for 180 days after cancellation or withdrawal of registration.	The general limitation period for making claims under Indian law is 3 years. This is likely not a retention time ceiling, and data can be retained for longer.	Determine if your organisation has any data retention requirements in addition to those prescribed under this rule.
Government Surveillance 3(1)(j)	Intermediary to furnish information, as per a lawful order issued by a government agency for identity verification or prevention/ detection/ investigation/ prosecution of offences or cyber-security incidents, within 72 hours of its receipt.	This process is largely similar to that required under the Old Rules. The requirement to respond in a time-bound manner is new and may require organisational processes to be introduced to avoid delays.	Update existing processes to ensure compliance. Create SOPs on how queries should be responded to, who should be involved in addressing them, etc.
Technical Configuration 3(1)(k)	Intermediary to not knowingly deploy or install or modify the technical configuration of a computer resource to other than what it is supposed to perform thereby circumventing any law.	The New Rules do not prescribe what would be considered a lawful modification of computer resources. It is not clear what changes would be considered to be a circumvention of the law.	Track market practice about this new requirement. Analyse if there is any precedent for a feature being used to avoid Indian laws (e.g., ID masking, or financial details masking).

RULE AND REQUIREMENT	COMPLIANCE CHECKPOINT	IMPLICATION	WHAT YOU SHOULD DO NOW
Applicable to all significant social media intermediaries¹, w.e.f. May 25, 2021			
<p>Local Presence</p> <p>4(1)(a) 4(1)(b) 4(1)(c)</p>	<p>Appoint a Chief Compliance Officer responsible for compliance with the New Rules and liable for any non-compliance with its requirements. The appointed officer should be (i) a key managerial personnel or a senior employee; and (ii) resident in India.</p> <hr/> <p>Appoint a Nodal Contact Person for 24x7 coordination with law enforcement agencies and to ensure compliance with their orders. The appointed officer should be (i) an employee, other than the Chief Compliance Officer; and (ii) resident in India.</p> <hr/> <p>Appoint a Resident Grievance Officer for grievance redressal functions, i.e., address complaints, acknowledge any order/direction issued from authorities, etc. The appointed officer should be an employee; and (ii) resident in India.</p> <hr/> <p>Publish a physical contact address in India on their website and/or mobile application to receive communications.</p>	<p>Appointing a Chief Compliance Officer in India may have implications under Indian tax and foreign exchange laws, if the publisher may be seen as operating a 'permanent establishment'. Also, this person may be at risk of being subject to regulatory inquiries and (in the worst case) arrest for non-compliance.</p> <hr/> <p>Same implication as appointing a Chief Compliance Officer.</p> <hr/> <p>Same implication as appointing a Chief Compliance Officer.</p> <hr/> <p>Establishing local operations can be a time-consuming and costly process. It may trigger compliance under corporate, tax, employment, foreign exchange, etc. regulations.</p>	<p>Speak to your legal and tax advisors about the impact of the New Rules on your business.</p> <hr/> <p>Same as appointing a Chief Compliance Officer.</p> <hr/> <p>Same as appointing a Chief Compliance Officer.</p> <hr/> <p>Speak to your legal and tax advisors about the impact of the New Rules on your business.</p>
<p>Identify First Originator of Content</p> <p>4(2)</p>	<p>Intermediary to identify the 'first originator' of a message or content when required to do so by a court order. Such order may be passed only where the offence relates to the security of the state, rape, etc.</p>	<p>Consider if content may be encrypted/ anonymised/ pseudonymised making it difficult to identify 'first originator'. Content located on servers abroad is typically obtained under multi-lateral treaties, and may be difficult to procure.</p>	<p>Consider if this is technically feasible to accomplish for your platform. Speak to your legal advisors about the impact of this Rule on your business.</p>

¹A social media intermediary, i.e., an intermediary which primarily or solely enables online interaction between two or more users and allows them to create, upload, share, disseminate, modify or access information using its services, having at least five million registered users in India.

RULE AND REQUIREMENT	COMPLIANCE CHECKPOINT	IMPLICATION	WHAT YOU SHOULD DO NOW
<p>Applicable to all publishers of (i) news and current affairs content², and (ii) online curated content³, w.e.f. February 25, 2021</p>			
<p>Proactively Identify Content</p> <p>4(4)</p>	<p>Deploy technologies to proactively identify information depicting rape, child sexual abuse or replications of previously taken down content.</p>	<p>This is not entirely a new requirement. Removal of content that violates applicable law is covered under the due-diligence requirements.</p>	<p>Significant social media intermediaries will have to start investing in such technology, if they do not do so already.</p>
<p>Code of Conduct</p> <p>9, 13, 14</p>	<p>Publisher is required to adhere to the code of ethics attached to the New Rules. The code specifies standards applicable to news and online curated content, content classification, measures for improving access for disabled persons, etc. Publisher must comply with directions issued by industry self-regulating bodies and Ministry of Information and Broadcasting (“MIB”) in appeals arising from violations of the code of ethics.</p>	<p>The compliance structure for publishers, is not ‘self-regulatory’ in spirit. Non-compliance with the code of ethics could lead to the Ministry of Information and Broadcasting getting involved and issuing official directions (for content removal/ modification, etc.) being issued to the Publisher .</p>	<p>Validate the content you host or carry with these Rules. Speak to your legal advisors about the impact of this Rule on your business.</p>
<p>Local Presence</p> <p>10 (1), 11 (a), (c), 19</p>	<p>Publisher to establish a grievance redressal mechanism and appoint a grievance officer based in India to redress comments regarding content published by a publisher. Publisher to publicly make true and full disclosure of all grievances received by it, manner in which the grievances are disposed, action taken on a grievance, reply sent to the complainant, orders or directions received by it under the New Rules and action taken on such orders or directions.</p>	<p>Same implication as appointing a Chief Compliance Officer.</p>	<p>Same as appointing a Chief Compliance Officer.</p>
<p>Furnish Details</p> <p>18</p>	<p>To enable communication and coordination, the publisher operating in India, should inform the MIB about details of its entity by furnishing specified information and documents within 30 days.</p>	<p>The New Rules can be amended at any time. It is not clear whether such registration could result in the MIB introducing new regulations in the future to control entities registered with it.</p>	<p>Determine if this Rule applies to your business, and compliance with this.</p>

²An online paper, news portal, news aggregator, news agency and such other entity called by whatever name, which is functionally similar to publishers of news and current affairs content but shall not include newspapers, replica e-papers of the newspaper and any individual or user who is not transmitting content in the course of systematic business, professional or commercial activity.

³A publisher who, performing a significant role in determining the online curated content being made available, makes available to users a computer resource that enables such users to access online curated content over the internet or computer networks, and such other entity called by whatever name, which is functionally similar to publishers of online curated content but does not include any individual or user who is not transmitting online curated content in the course of systematic business, professional or commercial activity.