

# Multimedia Training Kit

---

## Group Discussions and Case Studies

### Human Right, ICTs and the Internet

Collection of Cases specific to India

### Contents

Scenario 1 – Regulation of content by the Government of India on Google, Facebook, Twitter and other platforms .....	2
Additional information.....	3
Questions for Discussion .....	3
Scenario 2 – Blocking based on obscenity.....	4
Additional information.....	4
Questions for Discussion .....	4
Scenario 3 – Government orders ISPs to block 32 websites.....	4
Additional information.....	5
Questions for Discussion .....	5

## Scenario 1 – Regulation of content by the Government of India on Google, Facebook, Twitter and other platforms

Section 69A of the Information Technology Act (IT Act) 2011, gives the Central Government the power to issue orders to intermediaries to block information for public access when it deems it necessary in the interest of national security, sovereignty and integrity; to maintain friendly relations with foreign states or public order, or to prevent “incitement to the commission of any cognizable offence”.

The Information Technology (Intermediaries Guidelines) Rules, 2011 places the responsibility on these intermediaries to inform users not to host, display, upload, modify, publish, transmit, update or share any information” that:

- Infringes upon personal privacy of the users
- Harms minors
- Content that is grossly offensive, defamatory, obscene, libelous, hateful, or racially or ethnically objectionable;
- Relates to money laundering
- Infringes upon patent, copyright, trademark or other proprietary rights
- Threatens national security or integrity of India
- Contains viruses, files or codes that has the potential to harm computers and systems

Intermediaries like Facebook, Twitter and Google have argued that since they deal with large amounts of content and data; any move towards monitoring content and data by the intermediaries themselves would be extremely difficult and unsustainable.

Section 79 of the IT Act places certain exemptions through which intermediaries would not be liable for any content that contravenes the provisions in Section 69A and the Intermediary Guidelines. These exemptions provide respite for intermediaries against liability on content on their websites.

However, these exemptions are deemed void in case an intermediary is shown to have any part to play in;

- a) Ownership – initiating the transmission (of infringing content),
- b) Select the receiver of the transmission and
- c) Editorial acts – (selecting or modifying information in the transmission)

The Indian Government sends take down/ removal requests to intermediaries. Google, Facebook and Twitter publish transparency reports that deal with the number of removal requests.

The numbers of content blocking/ removal requests received by the three biggest intermediaries are:

<b>Removal Requests Received (for the period of July – December 2013)</b>	
<b>Intermediary Name</b>	<b>Details</b>
Google	154 requests (540 items)
Facebook	4765 items
Twitter	8 items

### **Additional information**

- <http://indiankanoon.org/doc/1965344/>
- <http://www.google.com/transparencyreport/removals/government/IN/?hl=en>.
- <https://transparency.twitter.com/removal-requests/2014/jul-dec>
- <https://govtrequests.facebook.com/country/India/2013-H2/>

### **Questions for Discussion**

1. In your opinion, can the removal of content by intermediaries at the request of the government be rationalised in light of the tenets of human rights as laid down in the Constitution of India and the UN Declaration on Human Rights?
2. Given the evolution of the internet in India and the rising number of internet users; will the Indian government be able to continue with the practice of takedown/removal notices?

## Scenario 2 – Blocking based on obscenity

Pornography in India has a rocky relationship with the legal framework. Section 292 of the Indian Penal Code (IPC) prohibits the production and distribution of any material that is deemed obscene. Sections 67 and 67A of the Information Technology Act, 2000 (IT Act) extend the provisions of Section 292 of the IPC to electronic forms of production and distribution.

The Protection of Children From Sexual Offences Act (2012) heavily penalises the production, distribution and viewership of child pornography.

Further, the Indecent Representation Of Women (Prohibition) Act, 1986 (IRWPA) prohibits the production and distribution of material, where women are depicted in an indecent manner. The IRWPA defines indecent as “depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals”.

Despite all these laws, there is no law that makes the watching of pornography in private illegal.

However, in 2009, the Department of Telecommunications (DoT) blocked the online pornographic cartoon-strip, Savita Bhabhi. In 2013, the DoT sent a circular to internet service providers (ISPs) in India with a list of 39 websites that contained pornographic content, with orders to block the sites listed. The ISPs followed the orders and promptly blocked access to the websites.

In 2014, The Cyber Regulation Advisory Committee invited the Internet and Mobile Association of India (IAMAI) to create a list of porn sites from various sources and turn this list over to the Department of Electronics and Information Technology (DeITy), who would then move forward on blocking them.

### Additional information

- <http://indiankanoon.org/doc/1704109/>
- <http://indiankanoon.org/doc/1318767/>
- <http://www.lawsonline.com/bareacts/information-technology-act/section67A-information-technology-act.htm>
- <http://wcd.nic.in/childact/childprotection31072012.pdf>
- <http://wcd.nic.in/irwp.htm>
- <http://www.cuttingthechai.com/2011/02/4828/savita-bhabhi-blocked-again-in-india-also-typepad-and-mobango/>
- <http://archives.scroll.in/article/703746/blocking-online-porn-who-should-make-constitutional-decisions-about-freedom-of-speech>
- <http://www.gizbot.com/tech-biz/indian-government-bans-32-porn-websites-012726.html>

### Questions for Discussion

1. Given the information on the legality of pornography, do you think the government was right in ordering ISPs to block the websites?
2. Do you believe that the blocking of these sites affected legitimate expression on the internet?
3. Do you think that blocking is an effective deterrent to accessing pornographic content?

## Scenario 3 – Government orders ISPs to block 32 websites

In mid-December 2014, the Government of India, through the Department of Telecommunications (DoT) sent a circular to ISPs ordering the blocking of 32 websites. A detail of some major websites and the traffic generated from India is below:

<b>Major websites block in DoT Circular in December 2014</b>		
<b>Website (Type)</b>	<b>Global Rank on Alexa.com</b>	<b>Traffic Generated from India (Percentage)</b>
Dailymotion.com (Video)	86	10.4%
Vimeo.com (Video)	170	5%
Github.com (Code Sharing)	97	15.7%
Weebly.com (Web Hosting)	263	17.3%

The Government of India later revealed that the websites were blocked because they contained information and recruitment propaganda from the extremist terrorist group Islamic State of Iraq and the Levant (ISIS/ISIL). Additionally, they contained posts from certain people who were arrested by the police in connection to activities of ISIS.

While certain URLs in the circular were to specific webpages, most of the URLs listed were of entire websites. This was seen as an extreme measure undertaken by the government.

Historically, in cases of website blocking, the government does not release the reasons behind the block. However, in this situation, a representative of the ruling political party (BJP) tweeted:

*“The websites that have been blocked were based on an advisory by Anti-Terrorism Squad, and were carrying Anti India content from ISIS. The sites that have removed objectionable content and/or cooperated with the on-going investigations, are being unblocked.”*

On the 31<sup>st</sup> of December, the Ministry of Communications & Information Technology released a press release stating that they had contacted the administrators of the websites in the table above and the admins has instituted measures to block propaganda information from their websites.

Subject to this move by the website administrators, the government issued notices to unblock the sites.

### **Additional information**

- <https://www.techdirt.com/articles/20141231/02075529554/indian-government-orders-32-web-sites-blocked-including-github-archiveorg-pastebin-dailymotion-vimeo.shtml>
- <http://thenextweb.com/in/2014/12/31/vimeo-github-30-sites-blocked-india-content-isis/>
- <https://i.imgur.com/81vaZbP.png> - Circular ordering the block
- <http://pib.nic.in/newsite/mbErel.aspx?relid=114259>

### **Questions for Discussion**

1. Do you think the blanket banning of websites was an effective way of dealing with the infringing content?
2. Is the Government’s silence on the reasons for blocking a website acceptable?