

Introduction of the Policies under the Information Technology Act Related to Intermediaries

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Abstract: *The following paper will be covering the aspects of Information Technology act, 2000 and its new rule for intermediaries which is Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021. The main aim of the intermediary rules are two fold one increasing the accountability of social media platforms such as Facebook, twitter, Instagram and second is empowering the users of social media by making a three-tier redressal mechanism for efficient grievance resolution. The paper will cover the background of Information Technology act, who is intermediary under the act and the earlier intermediary guidelines rules of 2011. Classification will be covered how categories have been formed under the new rules, due diligence of the intermediaries, grievance redressal mechanism, online safety, rules for news publishers, over the top (OTT) platform and digital media. Safe harbour provision will be discussed as given in section 79 of the IT act. It will be also discussing the need for regulating the social media platforms and digital media platforms.*

The important features of the intermediary guidelines will be discussed in detailed so that one comes to know the grave importance of the rules framed for the benefits of both, the consumer and as well as the makers or owners of such platform's. This intermediary code has also made an attempt to regulate the classification of films and other entertainment programs including web series on the basis of the nature of content. A light will be also thrown on the arguments against the code as its been criticised as it's restrict freedom of speech on the platform's. It will be tough task to implement the code in the coming years. But Government of India went through the models prevailing of various Countries like Singapore, Australia, European union and United Kingdom so the implementation will be chalked out so that it is followed by the intermediaries without any hussel or tussel In the coming years.

Keywords: Information Technology Act 2000, Intermediary Guidelines and Digital Media Ethics Code Rules 2021, Redressal mechanism, Accountability of platforms, over the top (OTT), safe harbour, Digital media ethics.

I. INTRODUCTION

Many years of talking and brainstorming the Ministry of Electronics and Information Technology, Government of India has brought new rules under the Information Technology Act, 2000 ("IT Act") for looking social media digital media platforms. The new rules, "Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021" ("Intermediary Guidelines").

If we look into the background of intermediary guidelines we will come to know that this media ethics are more broader This variant is essentially more extensive than the draft rules distributed by the service in 2019 for public discussion since it covers the risk of web mediators as well as makes an administrative system for computerized media.¹ In India, the guideline of intermediaries are joined in different laws and sub-enactments. Further, there has been a spate of cases in India and the Indian courts have been proactive in arbitrating on these issues.

Under the IT 2000 Act, in start only network service providers were protected "for any outsider data or information made accessible by him in the event that he demonstrates that the offense or negation was submitted without his insight

¹ The WIRE, "Opinion New IT Rules: The Great Stretching of 'Due Diligence' Requirements Under Section 79 ", Tech Wire

or that he had practiced all due ingenuity to forestall the commission of such offense or repudiation.” Thus, the original IT Act provided little or no safe harbour protection to intermediaries.

One must understand The term “intermediary” has been defined under the Information Technology Act, 2002²(“IT Act”) , "with respect to any particular electronic message and means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message". This list is non-exhaustive and includes Internet Service providers (“ISPs”) as well as any website that provides user-generated content. Intermediary liability, is based on the principle of vicarious liability, meaning that the providers shall be held for any illegal act of the user on their platform. As Rebecca MacKinnon has said, "Intermediary liability means that the intermediary, a service that acts as ‘intermediate’ conduit for the transmission or publication of information, is held liable or legally responsible for everything its users do.

Similarly if we look into the The Information Technology (Intermediaries Guidelines) Rules, 2011 (“Intermediary Guidelines”) (2011)³ After the change to the IT Act in 2008, the Government of India presented the Intermediary Guidelines, which were required for all middle people to follow for asserting safe harbor assurance. These are to be perused in consonance with the IT Act and the due steadiness prerequisites that should be seen by delegates, given under Rule 3, are:

- A. Mediators to distribute rules and guidelines, security strategy and client arrangement;
- B. Rules and guidelines, agreements or client arrangement will determine every single disallowed act, for example having a place with different people, horribly unsafe, pestering or unlawful, hurts minors, encroaches any protected innovation rights, disregards any law, is misdirecting or deluding, mimics any individual, contains infection, compromises India and so on and the go-between ought to advise clients that infringement of same will prompt end of access,
- C. Intermediaries to not purposely have or distribute data as determined in sub-rule (2),
- D. Intermediaries to incapacitate such data inside a day and a half and capacity of same for 90 days for examination purposes,
- E. Intermediaries to give help to approved government offices,
- F. Intermediaries to take all sensible means to get its computer asset,
- G. Intermediaries to report digital protection episodes to the Indian Computer Emergency Response Team and
- H. Delegates to arrangement and distribute the subtleties of a Grievance Officer on its site.

In any case, the IT Act and the Intermediary Guidelines were immersed by different issues like equivocalness in denied content and constrained choice by go-betweens. Further, any individual could demand the mediators to bring down the unlawful substance.

Subsequently the draft of Draft Information Technology [Intermediaries Guidelines (Amendment) Rules], 2018, (“Draft Rules”) (2018)⁴ On December 24, 2018, Ministry of Electronics and Information Technology delivered the Draft Rules for correcting the current Intermediaries Guidelines to check the "Abuse of Social Media and getting out Fake news". These Draft Rules place a few commitments on the delegates, some of which are empowering detectability to decide the originator of the data for help to law authorization, proactive checking of content transferred on its foundation by conveying mechanized apparatuses, takedown of illicit substance inside 24 hours, and compulsory fuse of organizations

² Section 2 (1)(w) of Information Technology Act reads as :

In this Act, unless the context otherwise requires - "intermediary", with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.

³ The Intermediaries Guidelines Rules, https://meity.gov.in/writereaddata/files/GSR314E_10511%281%29_0.pdf

⁴ https://meity.gov.in/writereaddata/files/Draft_Intermediary_%20Amendment_24122018.pdf

having in excess of 5 million clients in India. This shows the long distance travelled by the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 for its implementation in full fledged form in the current scenario.⁵

Need for Regulating the Social Media Platforms and Digital Media Platforms

India is claimed to be the world's "largest open Internet society" and attracts many social media companies to do business in India. However, there are a growing number of instances where social media is being used as a tool for violating the dignity of women, settling 'out-of-office' corporate rivalries, inciting malicious or anti-national 'fake news', inciting communal riots through disrespect to religious sentiments, mass circulation of obscene content, financial frauds and recruitment of youth by terrorist organizations. This abuse of social media is compounded due to lack of a robust complaint and redressal mechanism which is inaccessible to the ordinary social/digital media users. It was therefore considered to set in motion a mechanism for consumer complaints and redressal powers in the form of Intermediary Guidelines. The Intermediary Guidelines are intended to be integrated into the existing information technology laws and regulate the social media and digital media platforms within India.

The Intermediary Guidelines are being contended to be "reformist, liberal and contemporaneous"⁶ and are proposed to adjust the bunch worries of the public identified with absence of straightforwardness, responsibility and privileges of clients with the misunderstanding identifying with checking the sacred right to speak freely and articulation. The reasoning behind the Intermediary Guidelines originates from a plenty of various orders and reports remembering the Calling Attention Motion for 'Abuse of Social Media stages and spreading of fake news' conceded in the Rajya Sabha on July 26, 2018, the Hon'ble Supreme Court's organization dated December 11, 2018 which saw that the Government of India should outline important rules to dispose of child porn, assault and so on for content facilitating stages and different applications; the Hon'ble Supreme Court request dated September 24, 2019 coordinating the Ministry of Electronics and Information Technology to advise the course of events in regard about finishing the way toward telling the new standards, and in conclusion, the report of the Ad-hoc council of the Rajya Sabha dated February 3, 2020 identifying with the disturbing issue of porn via web-based media and its impact on children and society as whole.

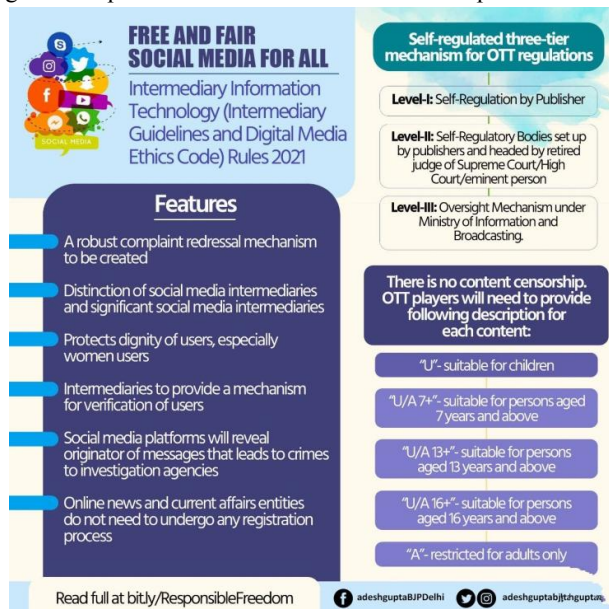


Image credit: Twitter

⁵ Chadha & chadha IP Firm, " Tracing the development of "intermediary liability" in India", April 03 , 2020.

⁶ Press Release dated February 25, 2021 available at <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1700749>

Key Features of the Intermediary Guidelines

An intermediary including an online media middle person needs to notice the recommended due ingenuity measures throughout releasing its obligations. These due determination gauges bury alia include:

noticeably distributing on the site, portable based application or both, the principles and guidelines, protection strategy and client arrangement for access or use of its computer asset by any individual.

the guidelines and guidelines, security strategy and the client arrangement ought to illuminate the client regarding its computer asset not to have, show, transfer, adjust, distribute, communicate, store, update or offer any data that bury alia:

has a place with someone else and to which the client doesn't have a right;

is slanderous, vulgar, obscene, pedophilic, obtrusive of another's security, including substantially protection, annoying or badgering based on sex, derogatory, racially or ethnically questionable, relating or empowering tax evasion or betting or in any case conflicting with or in opposition to the laws in power;

is hurtful to the children

encroaches any patent, brand name, copyright or other restrictive rights;

tricks or deludes the recipient about the beginning of the message or purposely and deliberately imparts any data which is plainly bogus or deceiving in nature however may sensibly be seen as a reality; and

compromises the solidarity, honesty, guard, security or sway of India, cordial relations with unfamiliar States, or public request, or makes affectation the commission of any cognizable offense or forestalls examination of any offense or in offending another country.

a middle person, after getting genuine information as a court request or after being advised by the suitable government or office under the IT Act, will not host, store or distribute any unlawful data which is restricted under any law for the time being in power corresponding to the interest of the sway and uprightness of India, security of the state, amicable relations with unfamiliar states, public request, conventionality or ethical quality, comparable to scorn of court, slander, affectation to an offense identifying with the abovementioned or any data which is precluded under any law for the time being in power.

where a delegate gathers data from a client for enrollment on the computer asset, it will hold the data for a time of 180 days after any retraction or withdrawal of the enlistment, by and large.

the mediator will, promptly yet not later than 72 hours of the receipt of a request, give data under its influence or ownership, or help to the Government organization which is legitimately approved for insightful or defensive or network protection exercises, for the motivations behind check of character, or for the avoidance, identification, examination or indictment, of offenses under any law for the time being in power, or for network safety episodes.

the intermediaries will report network protection episodes and offer related data with the Indian Computer Emergency Response Team as per the strategies and systems as recommended under the Information Technology (The Indian Computer Emergency Response Team and Manner of Performing Functions and Duties) Rules, 2013.

A web-based media middle person (i.e., intermediary which fundamentally or exclusively empower online collaboration between at least two clients) is needed to consent to certain extra due steadiness measure, which entomb alia include:

designating a central consistence official who will be answerable for guaranteeing consistence with the arrangements of the IT Act and rules outlined thereunder and will likewise be obligated in any procedures identifying with any pertinent outsider data, information or correspondence interface made accessible or facilitated by the go-between where the official neglects to guarantee that such delegate sees due tirelessness while releasing its obligations under the IT Act and rules outlined thereunder.

arrangement of a nodal contact individual for 24x7 coordination with law authorization offices and officials to guarantee consistence with their orders or demands.

distributing a consistence report each month referencing the subtleties of grievances got and activity taken subsequently, and the quantity of explicit correspondence connections or portions of data that the mediator has taken out or debilitated admittance to in compatibility of any proactive checking led by utilizing computerized apparatuses or some other important data, as might be indicated.

A huge web-based media delegate (i.e., a middle person having enlisted clients in India better than limit as told by the Central Government) will entomb alia attempt to convey innovation based measures, including mechanized instruments or different systems to proactively distinguish data that portrays any demonstration or reenactment in any structure portraying assault, kid sexual maltreatment or lead, regardless of whether express or certain, or any data which has been incapacitated on the PC asset of such go-between.

A huge online media mediator is needed to have an actual contact address in India distributed on its site, portable based application or both, for the reasons for getting the interchanges addressed to it.

A web-based media intermediary is needed to empower the client who register for the administrations from India, or utilize the administrations in India, to intentionally check their records by utilizing any fitting system, including the dynamic Indian versatile number of such clients and where any client willfully confirms the record, such client will be furnished with a self evident and noticeable characteristic of confirmation, which will be apparent to all clients of the assistance.

A distributor of new and current issues substance is needed to follow with the arrangement of the Code of Ethics, added with the Intermediary Guidelines. For the motivations behind guaranteeing recognition and adherence with the recommended Code of Ethics by distributors and for tending to the complaints against the distributors, a three-level complaint redressal structure has been endorsed, as underneath:

Level I is the self Regulating Mechanism which bury alia names a complaint official who will be answerable for the redressal of complaints got by him;

Level II is the self Regulating body, i.e., there will be at least one autonomous automatic assemblages of distributors, which bodies will bury alia be capable to administer and guarantee the arrangement and adherence with the Code of Ethics, address complaints which have not been settled by the distributors inside the fifteen days' predetermined period and so on; and

Level III is the oversight mechanism, i.e., the Ministry of Electronics and Information Technology will organize and work with the adherence with the recommended Code of Ethics by distributors and automatic bodies, create and oversight system for playing out the endorsed capacities which bury alia incorporate distributing a contract for automatic bodies including Code of Practices for such bodies, setting up an Inter-Departmental Committee for hearing complaints, giving suitable direction and warnings to distributors and so forth

A distributor and automatic body are additionally needed to make valid and complete honesty of all complaints got by it, the way wherein complaints are discarded, the activity taken on the complaint, answer shipped off the complainant and so forth

In case of non-recognition of the principles of Intermediary Guidelines by a delegate, the arrangements of sub-section (1) of 79 of the IT Act won't be appropriate to such middle person and the intermediary will be responsible for discipline under any law for the time being in power remembering for agreement with the arrangements of the IT Act and the Indian Penal Code.⁷

Social media and safe harbour

The new standards for online media stages and advanced media sources, called the Intermediary Guidelines and Digital Media Ethics Code.

The rules, reported in February, had asked all web-based media stages to set up a complaints redressal and consistence instrument, which included delegating an occupant complaint official, boss consistence official and a nodal contact individual. The Ministry of Electronics and Information Technology had likewise requested that these stages submit month to month investigates grumblings got from clients and activity taken. A third necessity was for texting applications was to make arrangements for following the main originator of a message.

Inability to agree with any of these necessities would remove the repayment gave to web-based media go-betweens under Section 79 of the Information Technology Act.

⁷ Dhruv Manchanda, " The Information Technology (Intermediary Guidelines And Digital Media Ethics Code) Rules, 2021" The Mondaq , April 29 2021.

What is Section 79⁸ of the IT Act?

Section 79 says any mediator will not be expected legitimately or in any case to take responsibility for any outsider data, information, or correspondence connect made accessible or facilitated on its foundation. This insurance, the Act says, will be relevant if the said intermediary doesn't in any capacity, start the transmission of the message being referred to, select the recipient of the communicated message and doesn't change any data contained in the transmission.

This implies that up to a stage acts similarly as the courier conveying a message from guide A toward point B, without meddling in any way, it will be protected from any legitimate indictment brought upon because of the message being sent.

The security agreed under Section 79, in any case, isn't conceded if the middle person, in spite of being educated or advised by the public authority or its offices, doesn't quickly debilitate admittance to the material under question. The

⁸ Section 79 of Information Technology Act reads as :

Exemption from liability of intermediary in certain cases. -

(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections

(2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available

or hosted by him.

(2) The provisions of sub-section (1) shall apply if-

(a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or

(b) the intermediary does not-

(i) initiate the transmission,

(ii) select the receiver of the transmission, and

(iii) select or modify the information contained in the transmission;

(c) the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

(3) The provisions of sub-section (1) shall not apply if-

(a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;

(b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource, controlled by the intermediary is

being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

Explanation. -For the purpose of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary.

delegate should not mess with any proof of these messages or content present on its foundation, bombing which it lose its insurance under the Act.

For what reason were these arrangements for security presented?

The need to give security to middle people from activities of outsiders came into center after a police case in 2004. In November 2004, an IIT understudy posted a profane video cut available to be purchased on baze.com, a bartering site. Alongside the understudy, the Crime Branch of Delhi Police additionally captured the then CEO of the site, Avnish Bajaj, and a then director, Sharat Digumarti.

Bajaj went through four days in Tihar prison before he was delivered, following which he documented a case looking for subduing of the criminal grumbling recorded by Delhi Police against him and his partner. He contended that the exchange was straightforwardly between the purchaser and the dealer, with no mediation from the site.

In 2005, the Delhi High Court held that by all appearances, a body of evidence was made out against Bajaj and his site. The argument against the site was made out for posting of the video clasp and its substance, which were obscene in nature, while Bajaj was held obligated under Section 85⁹ of the IT Act. This Section says that when an organization submits an offense under the IT Act, all chiefs in-control around then ought to be expected to take responsibility and continued against.

This choice was toppled in 2012 by the Supreme Court, which held that Bajaj or the site couldn't be considered responsible since they were not straightforwardly engaged with the said exchange. Following the choice, the IT Act was changed to present Section 79.

What occurs if an online media firm is as of now not secured under Section 79?

As of now, nothing changes for the time being. Online media mediators will keep on working as they were, with no hiccups. Individuals can likewise post and offer substance on their pages with no unsettling influence.

Online media middle people, for example, Twitter, Facebook, and Instagram have so far not named an inhabitant complaint official, boss consistence official and a nodal contact individual as needs under the new guidelines reported in February. They have likewise neglected to submit month to month activity taken reports on complaints and grievances submitted to them by clients. Consequently, assurance under Section 79 of the IT Act will not hold for them.

⁹ Section 85 in The Information Technology Act, 2000 reads as :

Offences by companies.-

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of business of the company as well as the company, shall be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.
Explanation.-For the purposes of this section,-

(i) "company" means any body corporate and includes a firm or other association of individuals; and

(ii) "director", in relation to a firm, means a partner in the firm.

Further, Rule 4(a) of the IT Rules, which commands that critical web-based media middle people should delegate a main consistence official (CCO) who might be held responsible in the event that the mediator neglects to notice the due determination prerequisites, additionally sabotages the protected harbor insurances.

This, lawful specialists said, implies that if a tweet, a Facebook post or a post on Instagram abuses the neighborhood laws, the law authorization organization would be in good place to book the individual sharing the substance, however the chiefs of these organizations too.

"Perusing the arrangements of the IT Rules in consonance with Section 69(a)¹⁰ of the IT Act recommends that this risk can even be criminal in nature where the CCO can be made to serve a jail term of as long as 7 years," said Kazim Rizvi, originator of public strategy think-tank The Dialog.

The shortfall of the umbrella assurance of Section 79 could likewise prompt circumstances where representatives of the stage might be expected to take responsibility for no deficiency on their part, said Prasanth Sugathan, Legal Director at SFLC.in. "This could prompt a circumstance where workers of online media goliaths could be expected by and by to take responsibility for neglecting to guarantee that their manager followed the legal arrangements. The workers could likewise be expected to take responsibility for no flaw on their part," he said.

What are the worldwide standards on safe harbor assurance for online media delegates?

As the greater part of the greater web-based media middle people have their base camp in the US, the most distinctly watched is Section 230¹¹ of the 1996 Communications Decency Act, which gives Internet organizations a protected harbor from any substance clients post of these stages. Specialists trust it is this arrangement in the US law that empowered organizations like Facebook, Twitter, and Google to become worldwide combinations.

Like Section 79 of India's IT Act, Section 230 of the Communications Decency Act expresses that "no supplier or client of an intelligent computer administration will be treated as the distributor or speaker of any data given by another data content supplier".

This adequately implies that the mediator will just resemble a book shop proprietor who can't be considered responsible for the books in the store, except if it is demonstrated that there is an association between the essayist or distributor of the book and the book shop proprietor.¹²

¹⁰ Section 69A in The Information Technology Act, 2000 read as : Power to issue directions for blocking for public access of any information through any computer resource. -

(1) Where the Central Government or any of its officer specially authorised by it in this behalf is satisfied that it is necessary or expedient so to do, in the interest of sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any cognizable offence relating to above, it may subject to the provisions of sub-section (2) for reasons to be recorded in writing, by order, direct any agency of the Government or intermediary to block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource.

(2) The procedure and safeguards subject to which such blocking for access by the public may be carried out, shall be such as may be prescribed.

(3) The intermediary who fails to comply with the direction issued under sub-section (1) shall be punished with an imprisonment for a term which may extend to seven years and shall also be liable to fine

¹¹ Section 230 of the Communications Decency Act, which was passed in 1996, says an "interactive computer service" can't be treated as the publisher or speaker of third-party content. This protects websites from lawsuits if a user posts something illegal, although there are exceptions for copyright violations, sex work-related material, and violations of federal criminal law.

¹² Aashish Aryan, " Social Media & safe harbour ", The Indian express, June 02 , 2021

The following safe harbour provision was a shield but now non compliance of it would result in penal provision of the intermediaries.

II. CONCLUSION

The Government of India has noticed the models winning in various nations, for example, Singapore, Australia, European Union and the United Kingdom while examining the degree and nature of the proposed system for managing web-based media and computerized media stages in India. The improvement of the Intermediary Guidelines is basically an endeavor to foster a quintessential delicate touch, self-administrative design joined with a three-level complaint redressal component for advanced media stages working in India. Through the Code of Ethics endorsed under the Intermediary Guidelines, an endeavor is additionally made to manage the arrangement of movies and other diversion programs including web series based on the idea of content.

Nonetheless, consistence with the arrangements of the Intermediary Guidelines is probably going to be a troublesome undertaking for the online media and computerized media stages and is likewise being contended as an endeavor to limit the ability to speak freely and articulation. A tightrope equilibrium would be expected to resolve the issues of insurance and defending of privileges of casualties of web-based media versus the individual opportunity of articulation.

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