

**COMMITTEE ON SUBORDINATE
LEGISLATION
(2013-2014)
(FIFTEENTH LOK SABHA)
FORTIETH REPORT**

[Action Taken by the Government on the Observations/Recommendations Contained In the Thirty-first Report of the Committee on Subordinate Legislation (Fifteenth Lok Sabha)]

(Presented to Lok Sabha on 19.2.2014)

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**LOK SABHA SECRETARIAT
NEW DELHI**

February, 2014/Magha, 1934 (Saka)

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2013-2014)

1. Shri P. Karunakaran Chairman

MEMBERS

2. Shri Anandrao Adsul
3. Shri Praveen Singh Aron
4. Dr. Baliram
5. Shri Kalyan Banerjee
6. Shri Sansuma Khunggur Bwiswmuthiary
7. Shri Ramen Deka
8. Shri K. Jayaprakash Hegde
9. Dr. Mahesh Joshi
10. Shri Virender Kashyap
11. Dr. Thokchom Meinya
12. Shri Gajendra Singh Rajukhedi
13. Dr. Bholu Singh
14. Shri Yashvir Singh
15. Vacant

SECRETARIAT

1. Shri R.S. Kambo - Joint Secretary
2. Shri S.C. Chaudhary - Director
3. Smt Jagriti Tawatia - Deputy Secretary
4. Mohit Rajan - Committee Officer

INTRODUCTION

I, the Chairman, Committee on Subordinate Legislation having been authorised by the Committee to present the Report on their behalf, present this Fortieth Report of the Committee on action taken by the Government on the observations/recommendations contained in their Thirty-first Report (Fifteenth Lok Sabha) on the subject.

2. The Thirty-first Report was presented to Lok Sabha on 21.03.2013. The Ministry of Communications and Information Technology (Department of Electronics and Information Technology (DeitY) furnished their action taken replies on the recommendations contained in the Thirty-first Report (Fifteenth Lok Sabha) on 30.10.2013.

3. The Committee on Subordinate Legislation considered and adopted the draft Fortieth Report at their sitting held on 18 February, 2014 (Annexure-IV).

4. An analysis of action taken by the Government on the recommendations contained in the Thirty First Report of Committee on Subordinate Legislation (Fifteenth Lok Sabha) is given in Annexure - V.

New Delhi;
18 February, 2014
29 Magha, 1934 (Saka)

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

REPORT

CHAPTER-I

This Report of the Committee on Subordinate Legislation deals with the action taken by Government on the observations/recommendations contained in their Thirty-first Report (Fifteenth Lok Sabha) which was presented to Lok Sabha on 21.3.2013.

2. The Thirty-first Report mainly contained recommendations pertaining to issues as mentioned under the following Rules which were framed under the Information Technology Act, 2000 as amended in 2008 and notified in April, 2011:

A The Information Technology (Intermediaries Guidelines) Rules, 2011

- I Definitions of terms.
- II Disablement of Information by the intermediaries.
- III Exceeding the Delegated Authority.
- IV Cost of Operations and Sustainability of Small Companies.

B The Information Technology (Guidelines for Cyber Cafe) Rules, 2011

- V Need for amending the rule for protecting the Privacy of the net users in cyber cafes.
- VI Constitution of Cyber Regulations Advisory Committee (CRAC)
- VII Delay in framing of Rules

3. Action Taken Replies in respect of all the observations/recommendations contained in the report have been received from the Ministry of Communications and Information Technology (Department of Electronics & Information Technology) on 30.10.2013.

4. Replies to the observations/recommendations contained in the Report have broadly been categorized as follows:-

- (i) Observations/Recommendations which have been accepted by the Government

Sl. No. 3 & 6 (Para Nos. 67 and 80)	Total 2 Chapter II
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- (ii) Observations/Recommendations which the Committee do not desire to pursue in view of the Government's reply:

Sl.No. 2 & 4 (Para Nos. 49, 50 and 72)	Total 3 Chapter III
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(iii)	Observations/Recommendations in respect of which replies of the Government have not been accepted by the Committee: Sl. No. 5 & 7 (Para Nos. 79 & 82)	Total 2 Chapter IV
(iv)	Observations/Recommendations in respect of which final replies of the Government are still awaited: Sl. No. 1 (Para Nos. 25, 26)	Total 2 Chapter V

5. **The Committee note with satisfaction that the Ministry of Communications and Information Technology (Department of Electronics & Information Technology) have accepted 2 recommendations (nos. 67 and 80) and have furnished satisfactory reply in response to 3 recommendations (nos. 49, 50 and 72) out of total nine recommendations. In response to recommendations no. 25 & 26 made by the Committee, the Ministry of Communications and Information Technology (Department of Electronics & Information Technology) in their action taken reply have informed that the matter with regard to the Information Technology (Intermediaries Guidelines) Rules, 2011 is sub-judice and the Department of Electronics & Information Technology would await the decision of the Hon'ble Courts to determine the way forward. The Committee desire that the final reply in respect of these recommendations for which only interim reply has been given by the Government should be expedited and the Committee may be apprised of the final outcome.**

6. The Committee will now deal with the action taken by the Government on some of their recommendations.

A. Constitution of Cyber Regulations Advisory Committee (CRAC)

Recommendation (Sl No.5; Para no. 79)

7. The Committee in their original Report (31st Report) were distressed to note that though the Cyber Regulation Advisory Committee (CRAC) was constituted when the IT Act was enacted in the year 2000, it met only twice, once in the year 2000 and then in 2001 and thereafter, no meeting was held. The CRAC has since been reconstituted after the matter has been taken up by the Committee. The Committee also impressed upon the Ministry of Information Technology (Department of Electronics & Information Technology) to make the CRAC functional and benefit from its advice particularly in the context of having a fresh look at the rules and amendment of rules recommended in this report.

8. The Ministry of Communications and Information Technology (Department of Electronics & Information Technology) in their action taken reply submitted that the reconstituted Cyber Regulation Advisory Committee (CRAC) is functional and its last meeting was held on 29.11.2012. In the said meeting, CRAC has discussed the Rules notified under the Information Technology Act, 2000 and has given useful advice in this regard. Copy of the record of discussions of the CRAC meeting of 29.11.12 is enclosed at Annexure-II.

9. The Committee note that after the matter was seized by the Committee, the Ministry of Communications and Information Technology (Department of Electronics & Information Technology) had notified reconstitution of Cyber Regulation Advisory Committee (CRAC) vide GSR No. 827-E dated 16 November, 2012. The Committee, further note from the Action Taken Replies furnished by the Ministry vide their OM dated 30 October, 2013, that the CRAC had held only one meeting on 29 November, 2012 in almost one year's time i.e from the date of notification (i.e. 16 November, 2012) till the date action taken replies were furnished (i.e. 30 October, 2013). The Committee feel that by holding meetings at regular intervals it would enable CRAC to get feedback on decisions / suggestions taken by them during previous meeting(s). As a result thereof an analysis and evaluation of such decisions / suggestions would help in bringing more positive and fruitful amendment to the existing rules under the Act. The Committee, are of the view that in the absence of holding any meeting, the very purpose of constituting of CRAC is thus being defeated. The Committee would therefore, like to reiterate its earlier recommendation whereby it had expressed its distress over the fact that, CRAC is not holding frequent meetings and impress upon the Ministry of Communications and Information Technology (Department of Electronics & Information Technology) to make the CRAC more active functionally by holding meetings at regular intervals atleast twice a year and make best use of its advise.

10. The Committee further observe that GSR No. 827-E published on 16 November, 2012 has not been laid before the House till date, whereas the Ministry was required to lay within 15 days after the publication in the Gazette, if the House is in session or soon after the commencement of the following session. The Committee, desire that the Ministry of Communications and Information Technology (Department of Electronics & Information Technology) should lay the said notification GSR No. 827-E published on 16.11.2012 before the House without any further delay.

B. Delay in framing of Rules

(Recommendation (Sl. No. 7; Para No. 82)

11. The Committee had noted that the rules required to be framed under sections 70 A(3) and 70 B(3) of the Information Technology Act, 2000 regarding the manner of performing functions and duties of 'Critical Information Infrastructure Protection Agency' and terms and conditions of employees of 'Indian Computer Emergency Response Team' have not been framed even three and half years after notification of the Act in February, 2009. The Committee required the Ministry of Communications and Information Technology (Department of Electronics & Information Technology) to take urgent steps to ensure that rules in this regard be finalized and notified without any further delay.

12. Regarding the delay in framing Rules, the Ministry of Communications and Information Technology (Department of Electronics & Information Technology) have stated in their action taken reply that in line with the decision taken by the Cabinet while approving the Official Amendments to Information Technology Bill, 2006, DeitY has submitted a note for the Cabinet

Committee on Security to seek its approval for notification of Rules under Section 70A(3) and 70B(5) of Information Technology Act, 2000.

13. The Committee are dismayed to note that despite Committee's recommendation the Rules under Section 70A(3) and 70B(3) of Information Technology Act have not been framed even after a lapse of more than four and half years, while these rules should have been framed under an Act as soon as possible after the commencement of the Act and in no case this period should exceed six months. However, in case, any Ministry/Department finds that for any unavoidable reason it is not possible to adhere to time limit of six months to frame the rules, they should seek a specific extension of time from the Committee. The Ministry of Communications and Information Technology (Department of Electronics & Information Technology) have, however, failed in complying with the laid down procedure in implementing the provisions of the Information Technology Act, 2000. The Committee express their unhappiness over the lackadaisical attitude of the Ministry towards the issue because they have neither framed the Rules under the Act within stipulated time frame of 6 months, nor they have sought any extension of time from the Committee by citing reasons for the delay. This proves beyond doubt that the Ministry's approach is very casual and it has not paid any serious attention for framing the rules expeditiously in this regard. The Committee, find the action taken reply furnished by the Ministry is hardly convincing and untenable wherein it stated that, DeitY has submitted a note for the Cabinet Committee on Security to seek its approval for notification of Rules, under Section 70A(3) and 70B(3) of Information Technology Act, 2000. The Committee, therefore, reiterate its recommendation made in the original report and direct the Ministry to take urgent steps to frame rules under the Act within a fixed time frame so as to ensure that rules in this regard are finalized and notified without any further delay. The Committee would also like the Ministry to furnish a copy of the notification, notifying the Rules under Section 70A(3) & 70B(3) of Information Technology Act, 2000.

CHAPTER II

RECOMMENDATIONS/OBSERVATIONS WHICH HAVE BEEN ACCEPTED BY THE GOVERNMENT

Cost of Operations and Sustainability of Small companies

Recommendation (Sl.No. 3 Para No. 67)

The Committee are of the view that cost involved in complying with the aforementioned rules for maintenance of log register, keeping record of user identification documents, maintenance of record of staff for a year, installation of web camera is bare minimum to have any adverse impact on the penetration of internet especially in rural areas in the country. The Committee agree with the Government that these rules balance the interests of stakeholders - law enforcement agencies, internet users and Cyber Cafes.

Reply of the Government

The Committee has agreed with the Government's view that the Rules balance the interests of stakeholders, law-enforcement agencies, Internet users and cyber cafes.

Recommendation (Sl.No. 6 Para Nos. 80)

The CRAC reportedly consists of the Minister of Communications and Information Technology, members drawn from the Industry Associations and key Ministries of the Government. It is not clear from the information furnished by the Department whether, in the reconstituted CRAC, there are members representing the interests of principally affected or having special knowledge of the subject matter as expressly stipulated in Section 88(2) of the IT Act. The Committee hope that this requirement has been met in the composition of the CRAC. The Committee would like to be informed of the position in this regard.

Reply of the Government

The reconstituted Cyber Regulation Advisory Committee (CRAC) has members from Government including Law-enforcement agencies, academia (IITs), Industry Associations (NASSCOM, ISPAI, FICCI, ASSOCHAM) and user Association (Computer Society of India). The CRAC has members representing interests of all stakeholders and subject experts. A copy of CRAC notification is at Annexure-III.

**[Ministry of Communications and Information Technology
(Department of Electronics & Information Technology)
OM No. 9(4)/2013-Parl. Dated 30.10.2013]**

CHAPTER – III

RECOMMENDATIONS/OBSERATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN VIEW OF THE GOVERNMENT'S REPLY

Disablement of Information by the Intermediaries

Recommendation (Sl.No. 2, Para No. 49)

The Information Technology (Intermediaries Guidelines, Rule 3) provides a framework for the due diligence to be observed by the Intermediaries. However, as far as the legal enforceability of these guidelines is concerned, replies of the Department of Electronics and Information Technology present a conflicting picture. In response to a query as to whether the rule 3 (2) exceeds the mandate of the IT Act, the Ministry of Communications and Information Technology have stated that these guidelines are related to due diligence and safeguards and are only of advisory nature and self regulation. Reiterating the same stance in the context of censorship, the Ministry have replied that as it is not mandatory for the Intermediary to disable the information, the rule does not lead to any kind of censorship. Responding to yet another query about disabling of the said information within 36 hours, the Ministry have stated that the rule clearly says that the Intermediary “shall act” and the meaning of the ‘act’ is to initiate the action and decide the course of action within 36 hours. Hence, it could be seen that it is mandatory on the part of the Intermediary to disable the information, which in Intermediary’s view contravenes the laid down rules/regulations. The Committee feel that there is need for clarity on the aforesaid contradictions and if need be, the position may be clarified in the rules particularly on the process for take down of content and there should be safeguards to protect against any abuse during such process

Reply of the Government

In line with the views expressed by the Committee, Department of Electronics & Information Technology has already issued a clarification on 18.3.2013 in this regard. According to the clarification, the intended meaning of the words “....shall act within thirty six hours....”, as mentioned in sub-rule (4) of Rule (3) is that the intermediary shall respond or acknowledge to the complainants within 36 hours of receiving the complaints/grievances about any such information as mentioned in sub-rule (2) of Rule (3) and initiate appropriate action as per law. A copy of the clarification, as above, is at Annexure-I.

**[Ministry of Communications and Information Technology
(Department of Electronics & Information Technology)
OM No. 9(4)/2013-Parl. Dated 30.10.2013]**

Recommendation (Sl.No. 2, Para No. 50)

The Ministry of Communications and Information Technology (Department of Electronic & Information Technology) have stated that the foreign intermediaries, on whose server infringing information is posted, do not cooperate with the Govt. of India to share the information related to user posting such content. The foreign websites repeatedly refused to honour our laws and with the result, the malicious content posted on their websites is not removed on the pretext that it does not violate the law of their country . The Committee do not expect an expression of helplessness from the Government in this regard and urge the Ministry of Communications and Information Technology to take such steps as deemed necessary to enlist their co-operation.

Reply of the Government

With regard to the issue of removal of malicious content on the websites hosted outside the country, wherever the requisite cooperation is not forthcoming from the foreign intermediaries, Government has provision under Section 69A of the Information Technology Act, 2000 to block the access to such objectionable content. As far as the issue of securing cooperation from foreign intermediaries in sharing the information related to the user hosting objectionable contents on their websites, Government has initiated steps to enhance international cooperation to effectively deal with the issues of cyber crimes and cyber security. In this direction, India is actively participating and deliberating at the level of United Nations, such as United Nations Group of Governmental Experts (UNGGE) which is focusing on establishing acceptable norms of behavior in cyber space and cooperation between National States. In addition, the issue of cooperation in the area of cyber security and cyber crime is also being pursued bilaterally with many like-minded countries to secure necessary cooperation in this regard.

**[Ministry of Communications and Information Technology
(Department of Electronics & Information Technology)
OM No. 9(4)/2013-Parl. Dated 30.10.2013]**

Need for amending the rule for protecting the Privacy of the net users in Cyber Cafes

(Recommendation Sl. No. 4 Para No. 72)

According to sub rule (2) of Rule 6 of Information Technology (Guidelines for Cyber Café) Rules, 2011, screens of the computers installed other than in partitions and cubicles should face open space of the cyber café. Such an arrangement would obviously allow every computer screen to be seen by bystander thereby invading privacy and security of every user. The Committee, would suggest that the sub-rule (2) of Rule 6 be modified suitably to ensure that privacy of the users is not intruded for legitimate purposes.

Reply of the Government

Sub-Rule (2) of Rule (6) of Information Technology (Guidelines for cyber café) Rule, 2011 provides for open & partitioned cubicles which serve as an appropriate deterrent to prevent viewing of objectionable content such as pornography and at the same time cater to the privacy needs of legitimate users.

**[Ministry of Communications and Information Technology
(Department of Electronics & Information Technology)
OM No. 9(4)/2013-Parl. Dated 30.10.2013]**

CHAPTER – IV

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH REPLIES OF THE GOVERNMENT HAVE NOT BEEN ACCEPTED BY THE COMMITTEE

Constitution of Cyber Regulations Advisory Committee (CRAC) Recommendation (Sl.No. 5 Para No. 79)

Section 88 (1) of the Information Technology Act requires constitution of Cyber Regulations Advisory Committee (CRAC) to advise the Central Government either generally as regards any rules or for any other purpose connected with the Act. The Committee are distressed to note that though the Cyber Regulation Advisory Committee (CRAC) was constituted when the IT Act was enacted in the year 2000, it met only twice, once in the year 2000 and then in 2001 and thereafter, no meeting was held. The CRAC has since been reconstituted after the matter has been taken up by this Committee. The Committee would impress upon the Ministry of Information Technology (Department of Electronics & Information Technology) to make the CRAC functional and benefit from its advice particularly in the context of having a fresh look at the rules and amendment of rules recommended in this report.

Reply of the Government

The reconstituted Cyber Regulation Advisory Committee (CRAC) is functional and its last meeting was held on 29.11.12. In the said meeting, CRAC has discussed the Rules notified under the Information Technology Act, 2000 and has given useful advice in this regard. Copy of the record of discussions of the CRAC meeting of 29.11.12 is enclosed at Annexure-II

**[Ministry of Communications and Information Technology
(Department of Electronics & Information Technology)
OM No. 9(4)/2013-Parl. Dated 30.10.2013]**

Observation of the Committee on the reply furnished by the Ministry of Communications and Information Technology (Department of Electronics & Information Technology) to recommendation of the Committee at Sl. No. 5 Para No. 79 of 31st Report may be seen at Para No. 9 & 10 of Chapter 1.

Delay in framing of Rules

(Recommendation Sl. No. 7 Para No. 82)

The Committee are constrained to note that the rules required to be framed under sections 70A (3) and 70 B (3) of the IT Act regarding the manner of performing functions and duties of “Critical Information Infrastructure Protection Agency” and terms and conditions of employees of “Indian Computer Emergency Response Team” have not been framed even three and half years after notification of the Act in February, 2009. The Committee have emphasized time and again that rules should invariably be notified within six months after the notification of the Act. The delay by the Department of Electronics and Information Technology in notification

of the Rules even after lapse of such long period reflects lack of seriousness of the Ministry in fully implementing all provisions of the IT Act. The Committee require the Ministry of Information Technology to take urgent steps to ensure that rules in this regard are finalized and notified without any further delay.

Reply of the Government

In line with the decision taken by the Cabinet while approving the Official Amendments to Information Technology Bill, 2006, DeitY has submitted a note for the Cabinet Committee on Security to seek its approval for notification of Rules under Section 70A(3) and 70B(5) of Information Technology Act, 2000.

**[Ministry of Communications and Information Technology
(Department of Electronics & Information Technology)
OM No. 9(4)/2013-Parl. Dated 30.10.2013]**

Observation of the Committee on the reply furnished by the Ministry of Communications and Information Technology (Department of Electronics & Information Technology) to recommendation of the Committee at Sl. Nos. 7 Para No. 82 of 31st Report may be seen at Para No. 13 of Chapter 1.

CHAPTER – V

RECOMMENDATIONS/OBSERVATIONS IN RESPECT OF WHICH FINAL REPLIES OF THE GOVERNMENT ARE STILL AWAITED

Definitions of terms

Recommendation (Sl. No. 1 Para No. 25 & 26)

The Committee note that Rule 3 of the Information Technology (Intermediaries Guidelines) Rules, 2011 requires intermediary to publish rules and regulation etc. for access of the intermediary's computer resource by any person and that such rules should inform the users of the computer resource not to host, display, upload, modify, publish, transmit or share any information that is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, pedophilic, libelous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, or otherwise unlawful in any manner whatsoever. These terms have, however, not been defined either in the Rules or in the Information Technology Act, 2000. In the representations made to the Committee, some non-governmental organizations pointed out this and other shortcomings. According to the Ministry of Communications and Information Technology (Deptt. of Electronics & Information Technology) these words / terms are dealt within the Indian constitution and also defined in relevant Indian laws such as Indian Penal Code, Cr. PC, Prevention of Money Laundering Act, etc. It has also been stated that these words have been interpreted by Hon'ble Supreme Court and High Courts in their various judgements. The Committee would draw the attention of the Ministry of Communications and Information Technology (Deptt. of Electronics & Information Technology) to the recent instances of reported misuse of Section 66A of the IT Act due to absence of precise definitions of terms used in the Section. The Committee would suggest that in order to remove ambiguity/misgivings in the minds of the people, the definition of those terms used in different laws should be incorporated at one place in the aforesaid rules for convenience of reference by the intermediaries and general public. In regard to those terms which are not defined in any other statute, these should be defined and incorporated in the rules to ensure that no new category of crimes or offences is created in the process of delegated legislation.

As conveyed by the Secretary, Deptt. of Electronics and Information Technology, there is room for improvement of the intermediary guidelines so that there is no ambiguity. The Committee expect the Ministry of Communications and Information Technology to have a fresh look at the Information Technology (Intermediary Guidelines) Rules, 2011 and make such amendments as necessary to ensure that there is no ambiguity in any of the provisions of the said rules.

Reply of the Government on Recommendation

The matter with regard to the Information Technology (Intermediary Guidelines) Rules, 2011 is sub-judice. Department of Electronics and Information Technology would await the decisions of the Hon'ble Courts to determine the way forward.

Observation of the Committee on the reply furnished by the Ministry of Communications and Information Technology (Department of Electronics & Information Technology) to recommendation of the Committee at Sl. Nos. 1 Para No. 25 & 26 of 31st Report may be seen at Para No. 5 of Chapter 1.

[Ministry of Communications and Information Technology
(Department of Electronics & Information Technology)
OM No. 9(4)/2013-Parl. Dated 30.10.2013]

New Delhi;
February , 2014
Magha, 1935 (Saka)

P. KARUNAKARAN
Chairman,
Committee on Subordinate Legislation

ANNEXURE I

Government of India
Ministry of Communications and Information Technology
Department of Electronics & Information Technology

Date : 18.03.2013

Clarification on The Information Technology (Intermediary Guidelines) Rules, 2011 under section 79 of the Information Technology Act, 2000

The Department of Electronics and Information Technology had notified Information Technology (Intermediary Guidelines) Rules, 2011 under section 79 of the Information Technology Act, 2000 on 11.4.2011 vide notification no. G.S.R. 314(E).

These Rules provide a due diligence framework to be observed by intermediary while discharging his duties. Sub-rule (4) of Rule 3 provides that the intermediary upon obtaining knowledge by itself or been brought to actual knowledge by an affected person in writing or through email signed with electronic signature about any such information as mentioned in sub-rule (2), shall act within thirty six hours and where applicable, work with user or owner of such information to disable such information that is in contravention of sub-rule (2).

The Indian intermediaries have implemented these Rules. However some Industry Associations have requested for a clarification on the words "*...shall act within thirty-six hours...*" as mentioned in sub-rule (4) of Rule 3. It is clarified that the intended meaning of the said words is that the intermediary shall respond or acknowledge to the complainant within thirty six hours of receiving the complaint/grievances about any such information as mentioned in sub-rule (2) of Rule 3 and initiate appropriate action as per law. Further, the Grievance Officer of the intermediary shall redress such complaints promptly but in any case within one month from the date of receipt of complaint in accordance with sub-rule (11) of Rule 3. The intermediary should have a publicly accessible and published grievance redressal process by which complaints can be lodged.

Subject:- Meeting of the Cyber Regulation Advisory Committee - Record of Discussions.

A meeting of the Cyber Regulation Advisory Committee was held on 29.11.2012 under the Chairmanship of Shri Kapil Sibal, Hon'ble Union Minister of Communication & Information Technology, to discuss the issues related to the Information Technology Act 2000. The list of attendees is at Annexure-1.

(i) Hon'ble MCIT opened the meeting and invited the participants to express their views and suggestions with regard to proper implementation of the provisions of the Information Technology Act 2000.

(ii) Dr. Gulshan Rai, Group Coordinator, Department of Electronics & Information Technology (DeitY), made a brief presentation during the meeting and provided a overview of the issues. The presentation highlighted the fact that same words as used in Section 66A and Section 79 of the Information Technology Act 2000, have been used in the Acts of other countries as well. The provisions made in Sections 127 of UK Communication Act, 2003 and Section 502 of Telecommunication Act, USA were presented. It was brought out that these Acts use identical words and many more such words. It was also indicated that while drafting the provisions of Section 79 of the IT Act, the approach papers presented by CII and all Industry Associations were taken into account. The Google Transparency Report was also highlighted to underline the fact that "take down" requests on objectionable content have been made by many countries around the world and in India, only around 16% of the 3467 requests were from the Department of Electronics & Information Technology.

(iii) Shri S. Ray together with Ms. Ankhi Das, Facebook stated that Rules under Section 79 provide for designating a Grievance Officer. They also stated that all Intermediaries operate on 24/7 basis and therefore, designating one Grievance Officer is not practical instead they requested that a particular email address may be notified to enable aggrieved persons to post their grievances. This practice is followed by Intermediaries worldwide. Dr. Gulshan Rai mentioned that such a practice of designating email address for posting grievance did not work in the recent past. The Government posted the grievances and the request for disabling such an information on the email address designated by one of the international Intermediaries namely Twitter. However, neither any response was received nor any action was taken on the request made by the Government under the law. In fact, later on Twitter contended that they could not locate the said request made from the Government to the designated email account. It was brought out that all ISPs in India have implemented the provisions of the Rules and designated the Grievance Officer. The Intermediaries, located abroad are not complying with the provisions of the Rule. MCIT stated that this issue may be discussed with the Intermediaries for appropriate solutions.

(iv) Shri Kiran Karnik, representing CII stated that the law as such is quite appropriate but enough care needs to be taken to prevent the possibilities of its misuse.

Anja Kovacs mentioned issues relating to implementation of Rules notified under Section 79 of the Act. The Hon'ble Minister stated that the words used in Section 79 and 66A of the Act are the same as provided in the Acts of many other countries. These words are also being used by the Intermediaries in their user agreements.

(ix) Ms. Gitanjali Duggal representing Google stated that they are receiving large number of requests from different persons/organisations including Law Enforcement Agencies in the Government for blocking of information. It will be desirable to have some nodal point for channelizing the requests. The Hon'ble Minister agreed to consider the suggestion. She, supported by Shri Pranesh Prakash, Ms. Mishri Choudhary and Dr.(Ms) Anja Kovacs suggested for creating a provision in the Rules under Section 79 of the Act for consultation with the poster of the information before acting on the request for removal of the content. The Hon'ble Minister supported by Secretary, DeitY stated that such a provision already exists in the Rule 3(4) under the Section 79 of the Act. There is no further clarification or any action needed from the Government in this regard. Intermediaries may have their own process for consultation and informing the person who posted the information. The Government or any aggrieved person may not have the information pertaining to the persons who posted the information and in most of the cases the Intermediaries are not providing such information. Therefore, there is no way that an aggrieved person or the Government may directly contact the poster of the information before sending a request for removal of information. It is a practice in the Government to contact the poster of the information, wherever such details are readily available. The Hon'ble Minister also stated that the Intermediaries can act on the request made by the aggrieved person according to their interpretation and understanding. If at any point of time the courts rule that any information removed by the Intermediary is not objectionable and does not infringe the laws, the Intermediaries may repost the information on their website.

(x) MCIT stated that this is a matter of best practice to be followed by intermediaries and as such Government does not have a role in this matter. However, he said the intermediaries must have such guideline as a matter of good practice. MCIT also clarified that in some instances if LEAs ask for the intermediaries not to intimate the poster of Information, the intermediaries should consider such requests, as it might be needed in the interest of proper investigation. MCIT wanted the intermediaries to understand the context of request from LEAs and proceed reasonably. He suggested evaluating the processes with reference to the ground realities and review them as we move forward.

(xi) Capturing the essence of the discussions during the meeting, MCIT read out the draft text formulation with regard to the guidelines proposed to be issued by the Government to minimize misinterpretation of provision of Section 66A and to assist uniform implementation of the provisions of the Information Technology Act.

(xii) On the issue of explaining the word "unlawful" and suggestion of categorisation of the acts as unlawful under Section 79, MCIT requested the members to provide the draft text to enable the Government to minimize misinterpretation of provision of Section 66A and issue appropriate clarifications as needed.

(xiii) On the issue of public internet kiosk/cyber cafe, there was a suggestion from a member to look at this segment differently because of the difficulties in implementation of provision of Section 79. MCIT stated that rules in this regard would be discussed later and concrete suggestions in this regard may be provided to the Government.

(xiv) Secretary, DettY informed Hon'ble Minister that framing of Regulations for recognition of Foreign CAs has been mandated in section 19 of the IT Act. Draft notifications covering two different scenarios have been prepared and taken through a public review process. Following the 'in-principle' approval of the Cyber Regulation Advisory Committee (CRAC), the matter will be taken up for notification of these Regulations which are required to facilitate electronic trading internationally. Hon'ble Minister of Communication & IT agreed to the proposal.

(xv) In conclusion, it was unanimously agreed that all concerned would work together to minimize the unintended consequences and evolve the processes through clarifications and guidelines which could be revisited as necessary in the light of newer developments and ground realities of implementation.

The meeting ended with the thanks to the chair.

Meeting of Cyber Regulations Advisory Committee (CRAC) held on 29.11.2012
at Department of Telecommunications, Sanchar Bhavan, New Delhi. - List of
attendees

The Cyber Regulations Advisory Committee (CRAC) Meeting was held on 29.11.2012 at Sanchar Bhavan under the Chairmanship of Shri Kapil Sibbal, Hon'ble Minister of Communications & IT. Other members who attended the meeting are:

1. Shri R. Chandrashekhar, Secretary, Department of Telecommunications.
2. Shri J. Satyanarayana, Secretary, DeitY
3. Dr. B.A. Agrawal, Secretary, D/o Legal Affairs
4. Shri Ajay Chadha, Spl. Secretary. (IS), MHA
5. Shri Shankar Aggarwal, Addl. Secretary, MOD
6. Shri J.S. Deepak, Addl. Secretary, Deptt. Of Commerce
7. Dr. Gulshan Rai, GC, Cyber Law Division, DeitY
8. Shri G.P. Galhotra, Joint Director, CBI, New Delhi
9. Shri Amitesh Kumar, Addl. Commissioner of Police, Anti Terrorist Squad, Mumbai
10. Shri T.A. Khan, CCA, DeitY
11. Smt. Debjani Nag, Office of CCA, DeitY
12. Shri Virat Bhatia, Chairman, FICCI (Digital Eco Committee)
13. Shri Subho Ray, IAMA
14. Shri Amitabh Lal Das, Yahoo India / ASSOCHAM
15. Shri Kirit Joshi, Sr. V.P., Sai Info System Ltd., Ahmedabad
16. Shri Ajay Sharma, Sr. Director, ASSOCHAM
17. Ms. Sarika, Joint Director, FICCI
18. Prof. Ranjan Bose, Professor, IIT, Delhi
19. Shri Pranesh Prakash, Centre for Internet Society
20. Ms. Gitanjali Duggal, Google India Pvt. Ltd.
21. Ms. Mishi Choudhary, Software Freedom Law Centre, Delhi
22. Dr. (Ms) Anja Kovacs, Internet Democracy Project
23. Ms. Seema Sharma, Advocate
24. Shri Kiran Karnik, Representative, CII
25. Ms. Ankhi Das, Facebook India
26. Dr. Kamlesh Bajaj, CEO, DSCI, NASSCOM.
27. Shri S.C. Saxena, Director, ACTO
28. Shri Sushil Kumar, ASSOCHAM
29. Shri Rohan Mitra, Manager, Yahoo India
30. Shri Raman Chima, Senior Policy Analyst, Google India
31. Shri Lizum Misra, Director, Public Policy Amazon
32. Shri Mahesh Uppal, Com First
33. Shri Naresh Ajwanti, President, CCAOI,
34. Ms. Mamta Verma, Director (Media), PIB
35. Shri Rajesh Chharia, President, ISPAI

THE GAZETTE OF INDIA EXTRAORDINARY

Part II - Sec. 3(1)

MINISTRY OF COMMUNICATION AND INFORMATION TECHNOLOGY

(Department of Electronics and Information Technology)

NOTIFICATION

New Delhi, the 16th November, 2012

G.S.R. 827(E).—In exercise of the powers conferred Section 88 of the Information Technology Act, 2000 (21 of 2000), and in supersession of the notification of Government of India by Ministry of Communications and Information Technology, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (1), vide number G.S.R. 790(E), dated the 17th October, 2000, except as respects things done or omitted to be done before such supersession, the Central Government hereby constitutes the "Cyber Regulations Advisory Committee", consisting of the following, namely:—

- 1. Minister, Ministry of Communication and Information Technology — Chairman
- 2. Minister of State, Ministry of Communication and Information Technology — Member
- 3. Secretary, Ministry of Communication and Information Technology, Department of Electronics and Information Technology — Member
- 4. Secretary, Department of Telecommunications — Member
- 5. Secretary, Legislative Department — Member
- 6. Secretary, Department of Legal Affairs — Member
- 7. Secretary, Ministry of Commerce — Member
- 8. Secretary, Ministry of Home Affairs — Member

- 9. Secretary, Ministry of Defence — Member
- 10. Deputy Governor, Reserve Bank of India — Member
- 11. Information Technology Secretary from the states by rotation — Member
- 12. Director General of Police from the States by rotation — Member
- 13. Director, IIT from the IITs by rotation — Member
- 14. President, NASSCOM — Member
- 15. President, Internet Service Providers Association of India — Member
- 16. Director, Central Bureau of Investigation — Member
- 17. Controller of Certifying Authority — Member
- 18. Representative of CII — Member
- 19. Representative of FICCI — Member
- 20. Representative of ASSOCHAM — Member
- 21. President, Computer Society of India — Member
- 22. Group Coordinator, Department of Electronic and Information Technology — Member Secretary

2. Travelling allowance and dearness allowance, as per the Central Governmental rules for the non-official members shall be borne by the Department of Electronics and Information Technology.

3. The Committee may co-opt any person as member based on specific meetings.

[No. 11(6)/2012-CLFE]

Dr. ANITA BHATNAGAR JAIN, J. Secy

ANNEXURES V
(Vide Para 3 of the Introduction)

**MINUTES OF THE FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION
(2013-2014)**

—————

The Fourth sitting of the Committee (2013-14) was held on Tuesday, the 18th February, 2014 from 1630 to 1730 hours in Chairman's Chamber, Room No. 143, Parliament House, New Delhi.

PRESENT

1. Shri P. Karunakaran Chairman

MEMBERS

2. Dr. Baliram
3. Shri K. Jayaprakash Hegde
4. Shri Virender Kashyap
5. Dr. Thokchom Meinya
6. Shri Gajendra Singh Rajukhedi
7. Dr. Bholu Singh

SECRETARIAT

1. Shri R.S. Kambo - Joint Secretary
2. Shri S.C. Chaudhary - Director
3. Smt. Jagriti Tewatia - Deputy Secretary

2. At the outset, the Chairman welcomed the members to the sitting of the Committee (2013-14).

3. The Committee, then, considered the draft 'Thirty-ninth Report' and 'Fortieth Action Taken Report' of the Committee and adopted both the Reports with minor modifications in Fortieth Action Taken Report. The Committee also authorized the Chairman to present the report to the House.

The Committee then adjourned.

ANNEXURES V

(Vide Para 4 of the Introduction)

ANALYSIS OF THE ACTION TAKEN BY THE GOVERNMENT ON THE
OBSERVATIONS/RECOMMENDATIONS CONTAINED IN THE
THIRTY FIRST REPORT OF THE COMMITTEE ON
SUBORDINATE LEGISLATION
(FIFTEENTH LOK SABHA)

I	Total number of recommendations:	9
II	Recommendations that have been accepted by the Government [<i>vide</i> recommendations at SI Nos. 3 & 6, Para Nos. 67 & 80.	
	Percentage of total:	20%
III	Recommendations which the Committee do not desire to pursue in view of Government's replies at SI Nos. 2 & 4, Para Nos. 49, 50 & 72.	
	Percentage of total:	40%
IV	Recommendations in respect of which replies of the Government have not been accepted by the Committee at SI Nos. 5 & 7, Para Nos. 79 & 82]	
	Percentage of total:	20%
V	Recommendations in respect of which final replies of the Government are still awaited at SI Nos. 1, Para Nos. 25 & 26	
	Percentage of total:	20%