

Reporters Without Borders

<http://www.rsf.org/india-courts-force-web-firms-to-remove-09-02-2012,41835.html>

Asia - India

Judicial persecution

Indian court to rule on Internet firms' responsibility for third-party content

16 February 2012

The defendants in the criminal trial of 21 Internet firms accused of hosting offensive content raised several irregularities and points of concern in court this week.

They said the process under the IT Rules known as "notice and take down", under which the hosting company must remove the content as soon as it is notified by the authorities, had not been applied. The websites concerned said they received no requests from the authorities for content to be removed and the complainant, journalist Vinay Rai, had taken the matter directly to court.

Lawyers for the companies said they were not responsible for material posted on their servers by third parties, invoking section 79 of the IT Rules which specifies that no network provider can be held responsible for objectionable content posted on its services by third parties if he can show he had no knowledge of it, or that he has taken the necessary steps to prevent a breach of the rules.

A lawyer representing the New Delhi police said, however, that the companies had been informed by the government's Department of Information Technology that content on their servers was offensive and that consequently the exemption under section 79 did not apply.

The judge called on the department to provide documentary proof of this allegation. The next hearing is scheduled for 18 February.

Lawyers for Google and Facebook objected to the fact that the Indian government is a civil party in litigation between private parties.

Reporters Without Borders is also concerned about the consequences of such an intrusion by the state into legal proceedings, which threatens the independence of the courts.

The press freedom organization calls on the court to return a moderate verdict which respects freedom of expression as guaranteed under the constitution, and not to place responsibility for content published by third parties on the shoulders of service providers, who currently appear to be the target of a persecution campaign by the authorities.

The [Wall Street Journal](#) reported on 13 February that an investigation had been launched into whether the Indian affiliates of Google and Yahoo! had broken the government's foreign exchange laws.

The [statement](#) by the information technology minister, Kapil Sibal, at an information technology meeting in Mumbai two days ago that "no government in India will ever censor social media" must not fall on deaf ears.

Court forces Web firms to remove "objectionable" content 9 February 2012

Several Internet companies, including the Indian subsidiaries of Google and Facebook, announced on 6 February that they had complied with Indian court directives to remove from their sites content deemed objectionable.

At a hearing in New Delhi civil court on that day, a judge ordered 22 firms to provide a detailed report within two weeks on the steps they were taking to remove "offensive" content. The firms, including Google, Yahoo, Facebook, YouTube, Blogspot, the Orkut social network and the forum eXBii, had been given until 6 February to [remove all offensive material](#).

A judge last month judge asked Web firms to develop mechanisms to check and remove offensive and objectionable material and threatened to block all such websites "like China".

"The escalation of "cleansing" and monitoring of the Internet in India continues apace," Reporters Without Borders said.

"We call on the Indian courts to refrain from excessive directives such as the order to Web firms to remove objectionable content. They must stop forcing these collaborative sites to set up a filtering system and, as in the case of content deemed offensive, to take steps that would be harmful to online freedom of expression.

"The most recent legislation on the subject, the "IT Rules", must be amended so that they do not become an instrument of censorship and repression."

A spokesman for Google India announced on 6 February that some offensive content had been taken down from its Indian search engine and removed from the Indian servers of YouTube, Blogger and Orkut.

The nature of the content was not specified, although it was believed to be images that were offensive to some religious groups. Reports Without Borders calls on the company to give details of the content concerned in the [Google Transparency Report](#), where it lists content that has been removed at the request of a government

The parent company of Facebook, for its part, said it could not comply with the demands of the Indian courts since its servers were located in the United States. Yahoo, Microsoft and Google have asked for the allegations against their sites to be withdrawn since they are not responsible for content hosted on their Indian servers.

In parallel with the civil case, criminal proceedings were launched against the same Internet companies by a Hindu journalist, Vinay Rai, also on the grounds that they are hosting objectionable content.

Google India notified the Delhi High Court on 23 December that it would appeal. Reporters Without Borders calls on the court not to force Web firms to assume responsibility for content posted on sites by third parties and to drop the criminal case. A hearing is scheduled for 14 February.

The authorities are stepping up their control of information on the pretext of cleansing India's Internet of content that might fan religious or social tension. According the [IT Rules established last year](#), Internet companies must remove all banned content within 36 hours following notification by the authorities, without a prior court decision as would normally be required.

India fell nine places to 131st of 178 countries in the [2011-2012 world press freedom index](#) compiled by Reporters Without Borders.

Photo credentials: AFP

You can download those documents on our website :

- , (JPEG - 125.1 kb)
-