

TECHNOLOGY INSIGHT

1% TDS on VDA Transactions

RBI Credit Policy: Credit Card Integration with UPI

Guidelines on Misleading Advertisements and Endorsements

Proposed Amendments to IT Intermediary Guidelines

National Data Governance Framework Policy



Crypto Developments

1% TDS charges on VDA Transactions

Starting July 1, 2022, a 1% TDS charge shall be applicable on all transactions pertaining to VDA worth Rs. 10,000/- and above. Section 47A of the Income Tax Act defines a Virtual Digital Asset (VDA) as any information, code, number or token, except Indian or any other foreign currency, that is generated through cryptographic or other means., including Non- Fungible or any other similar tokens.

As per a clarification issued by the Central Board of Direct Taxes, deduction of the TDS from the transaction amount shall be the liability of the person making the payment. Accordingly, 1% deduction shall be made from all payments in respect of any VDA transactions of Rs. 10,000/- or above.

Electronic Payments

UPI to Link with Credit Cards

The Reserve Bank of India announced its credit policy to allow integration of credit cards with UPI payment gateways. The announcement came in recognition of the success and wide spread use of UPI as a mode of payment. The proposal has been announced with a view to give users more flexibility on payment options.

RBI has presently allowed integration of UPI with RuPay Credit Cards with such integration to be extended to other credit cards as requisite infrastructure and policies for the same are established.

Legislative Developments

Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022

The Central Consumer Protection Authority (CCPA) under the Department of Consumer Affairs has notified the Guidelines for Prevention of Misleading Advertisements and Endorsement of Misleading Advertisements, 2022. The Guidelines aim to protect the consumers against unsubstantiated claims, exaggerated promises, misinformation and false claims. The Guidelines also lay down preventive and preemptive measures on advertisements targeting children.

The Guidelines not only prescribe what constitutes a false and misleading advertisement but also lays down a comprehensive scheme governing the following:

1. Bait advertisements (advertisements where goods and services are offered for sale at a lower price to attract consumers);
2. Free claim advertisements (where goods or services are offered without charge);
3. Advertisements targeting children;
4. Advertisements prohibited by law.

The Guidelines also prohibit 'surrogate advertisements' which are indirect advertisement of goods and services the advertising of which is otherwise prohibited by law. Such forms of advertisements are more commonly used in India for advertisement of alcoholic beverages.

Additionally, the Guidelines fasten specific responsibilities upon manufacturers, service providers, advertisers, advertising agencies and celebrities endorsing goods and services. Celebrities will now have to disclose their stake in brands they are endorsing and undertake reasonable due diligence based on information and experience with the product being endorsed.

Lastly, the Guidelines also lay down the pre-requisites and qualifications for a valid disclaimer.

Proposed amendments to IT Intermediary Guidelines and Digital Media Ethics Rules

MeitY had, in early June, published the draft amendments to the Information Technology (Intermediary guidelines and Digital Media Ethics) Rules, 2021 by way of pre-legislative consultation process for public feedback and input.

The draft amendments proposed that the intermediaries shall:

- Comply with the provisions of the Rules, more specifically Rule 3(1)(a) and 3(1)(b);
- Respect the principles of the Constitution of India;
- Address complaints of removal of content under Rule 3(1)(b) within 72 hours of receipt of complaint;
- Be permitted to put in place necessary safeguards to prevent abuse of grievance redressal mechanism;

The draft amendments also proposed establishment of a 'Grievance Appellate Committee' with the authority to adjudicate appeals from the decisions of the grievance redressal process of the intermediaries.

National Data Governance Framework Policy

The Ministry of Electronics and Information Technology also published its Draft National Data Governance Framework Policy for public feedback and review.

The policy broadly aims to (a) accelerate data governance; (b) standardise data management, security standards, API's and other tech standards; (c) to promote transparency, accountability and ownership of non-personal data and database access; and (d) to ensure citizen awareness, participation and engagement.

The policy seeks to establish an 'India Data Management Office' (IDMO) which shall:

- Frame, manage, review and revise the policy;
- Develop rules, standards and guidelines under the policy for data storage and retention, data anonymisation, data quality and data access and availability;
- Design, identify and manage India dataset platforms; and
- Encourage AI based research and start-up ecosystem.

Law in Action

Privacy & Data Protection

The Madras High Court in the matter of State v. A Duraimurugan Pandian Satta [Crl. MP (MD) No. 9457 of 2021] has observed that there is a contract between intermediaries and the channels. In case of any violation of the conditions, it is the duty of the intermediaries to remove or block the channel as per the terms of their agreement. The intermediaries are not expected to insist for FIR or any Court orders to remove content which are in violation of the Guidelines. If content liable to be blocked under law, is not blocked or removed after it was brought to their knowledge, the intermediaries are committing the offence under Section 69A(3) of the Information Technology Act.

Media Laws

The Nagpur Bench of Bombay High Court has observed in the matter of Vijay Dadra & Anr. v. Ravindra Gupta [Crl. Application No. 393 of 2022] that the Media has the right to report on the registration of first information reports (FIRs) and on cases filed in Courts and defamation action cannot lie on the basis of such reports.

Intellectual Property Rights

The Delhi High Court has observed in the matter of European Union vs. Union of India [WP(C) IPD - 5 of 2022] that the High Court can grant extension in time for filing of response to a First Examination Report (FER) provided that the

applicant did not have the intention to abandon its patent application.

The Gujarat High Court has, in the matter of Crazy Concepts and Mazes Pvt. Ltd. v. N. Venkata Yayadri Rao [C/AO/197/2017], reiterated the term of copyright and observed copyright in a work subsists in the author during his lifetime and for a further period of 60 - years from the beginning of the calendar year following the year of the demise of the author.



E 10 SF Defence Colony
New Delhi - 110024



asp@sintahpartners.com
www.sinthpartners.com



+91 11 41 046 911
+91 11 40 536 008