India plans US model cyber law

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NEW DELHI: The MMS porn case has jolted the authorities to move to remove the ambiguities in the existing cyber laws.

In the wake of arrest of baazee.com CEO allegedly for selling MMS clips involving school children on its website, government is planning a special law for fixing the responsibility of the provider of online services or network access or operator of these facilities in such situations.

Based on the Digital Millennium Copyright Act of US, the new law would make a online service provider liable for putting out copyright infringing material on the web. At the same time, every service provider would have to put in place a "responsible person" who could be pointsman to deal with cases of copyright infringing material being posted on the web.

Explaining the rationale for such a law, a senior government official said, "In the MMS case the objectionable clip was put on the website by someone who had access to it and not necessarily the person behind it. It was an infringement of the copyright. Moreover, despite the incident becoming a public knowledge the clip was not removed."

The new law, he says, would put a set of standard procedures for the service providers to be followed in course of their various functions. "Copyright infringement can be anything ranging from an academic work to a porn clip. As long as persons responsible for their work do not give consent it is infringement. Even in US the law came as late as 1998. With MMS incident it has become a must" he says. According to the official, the proposed law would also limit the liability of a service provider in case it has followed the procedures.

Like the US law, the new Indian law would deal with four categories of functions by a service provider: transitory communications, system caching, storage of information on systems or networks and information location tools.

In case of transitory communication, a service provider would have no liability if it has met the following conditions. Transmission must be initiated by a person other than the provider; transmission, routing, provision of connection, or copying be done by automatic technical process without selection of material by the service provider; the service provider must not determine the recipients of the material; the material must be transmitted with no modification to its content.

With regard to system cacheing (i.e making copy for later use) a service provider would have no liability if it does not have actual knowledge of the infringement, is not aware of facts or circumstances of an apparent infringing activity and after becoming aware of such an infringement has responded immediately by taking down the material or blocking access to it. A set of procedures and would be in place which includes a notice from the copyright owner to the service provider's "pointsman" to pull down the infringing material, failing which action could follow.

Service providers would have to adhere to a set of procedures in case it wants to limit its liability about hyperlinks, online directories and search engines on its site. The content of the retained material must not be modified, provider must limit users access to the material in accordance with conditions on access imposed by the copyright owner.

NEW DELHI: Avnish Bajaj was asked to surrender his passport while the schoolboy, who allegedly prepared the MMS clip, was sent to Prayas observation home.

NEW DELHI: India would hate to admit it, but the Avnish Bajaj case could turn into a diplomatic row with US mounting pressure on the issue.