



US Internet Service Provider Association

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The Honorable Michael D. Gallagher
Assistant Secretary for Communications & Information
National Telecommunications & Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

The United States Internet Service Provider Association (US ISPA) is a national trade association that represents the common policy and legal concerns of the nation's major Internet service providers (ISPs) and network companies.

American technology companies continue to grow their workforces abroad, notably in India, where there is a high availability of skilled workers and a large population of English-speaking citizens. The Indian-American partnership has been mutually beneficial and has fueled economic growth in both countries. U.S. businesses in particular have benefited from access to the Indian market and its extremely talented workforce. Many U.S. service providers have developed customer service and software development operations in India.

Even as U.S. firms continue to expand into the Indian market, American ISPs have some concerns with recent rigid interpretations of Indian telecommunications law regarding third-party liability, especially in the area of obscene material. US ISPA is particularly troubled by the December 2004 arrest of Avnish Bajaj, a U.S. citizen and CEO of eBay subsidiary Baazee.com.

Baazee.com was notified in late November that obscene material in the form of a video clip had been placed on its site. The company promptly took down the offending content and warned the seller of its company policies. More than a week later, Indian authorities contacted the company and launched an investigation. Baazee.com officials complied with law enforcement requests for data on the seller, the buyer, and order forms, among other requests. Company representatives met with police officials and assisted in a detailed investigation at the company's Bombay offices. On December 14, Mr. Bajaj and another executive were requested to appear two days later in New Delhi for further clarification. Within the next 24 hours, the seller – the person responsible for posting the video for auction – was arrested. On December 16, three Baazee executives met with police in New Delhi. Mr. Bajaj was recalled the following day and spent December 17 at the Delhi police offices. That evening, he was arrested and held over the weekend without bail before being released.

US ISPA members are particularly concerned about the long-term implications of this incident. The future impact of the extraordinary decision by the Indian government to jail a U.S. corporate executive and to deny him bail could erode some of the trust between international firms and the

Indian authorities. Concerns surrounding third-party liability may make some wary of investing in India or expanding existing operations in the country.

In India, just as in the United States, service providers operate as mere conduits of data. While ISPs respect the laws of countries in which they have a presence and work to comply with law enforcement requests, American service providers do not monitor or censor Internet content. ISPs simply provide for the transmission of data. It is therefore alarming to think that executives of U.S. companies may be held liable for any and all content traveling over their corporate networks.

US ISPA is asking the U.S. government to help mitigate the risk to American service providers of doing business in India. We hope that American companies and their executives who operate in full compliance with the law will be spared the kind of personal degradation and prosecution that marked the recent Baazee.com incident. We understand that the U.S. government is currently negotiating a bilateral high-tech trade agreement with India and hope that this may be an opportunity to foster greater understanding between American corporations and the Indian authorities.

Respectfully,

The United States Internet Service Provider Association