



**THE RECAP**  
A ROUND-UP OF MEDIA,  
ENTERTAINMENT & GAMING  
INDUSTRIES' LEGAL UPDATES

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## INTRODUCTION

“There is more than one way to burn a book. And the world is full of people running about with lit matches.”<sup>1</sup>

- *Ray Douglas Bradbury*

Burning books, or rather its 21st century equivalent – banning content (whether justified or otherwise) seems to be the general theme of recent times. There seem to

be no dearth of lit matches as we bring to you the tenth edition of the Recap. We say so because this edition of the Recap covers the blocking of documentaries, discussions on banning of television channels, a proposed censorship body for non-film content and the banning of applications among other things.

This edition looks back at the recent developments in the media and gaming sectors over the month of February 2023.

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1. Bradbury was an American fiction novelist, the quote is an extract from his 1953 book “Fahrenheit 451.”



### A separate regulatory body for censoring non-film content? – Delhi High Court disagrees

The Delhi High Court (“**Delhi HC**”) recently dismissed a public interest litigation (“**PIL**”) filed against the Ministry of Information and Broadcasting (“**MIB**”), in which the petitioner had sought the establishment of a regulatory or censor board which would review and censor non-film content such as songs which are released on the internet<sup>2</sup>.

Dismissing the PIL, the Delhi HC observed that the Cable Television Networks (Regulation) Act, 1995 (“**Cable TV Act**”) and the Cinematograph Act, 1952 covers regulation of content in films and television, and does not cover content released on the internet. That said, the Delhi HC also noted that the appointment of a regulatory or censor board for non-film content would require legislative action and that the judiciary has no role to play in the same. Further, the Delhi HC also brought the Information Technology (Intermediary Guidelines and Digital Media Ethics Code), 2021 (“**Intermediary Guidelines**”) to the attention of the petitioner with specific emphasis on Rule 3 and Rule 4 which lays down the content that ‘intermediaries’ and ‘social media intermediaries’ are required to prohibit on their respective platforms. Accordingly, the Delhi HC disagreed with the concern raised by the petitioner that there is no regulatory mechanism for review of non-film songs and other content released on the internet.

You may access the Delhi HC order [here](#).

### MIB blocks BBC documentary

The MIB, in exercise of the emergency powers under Rule 16 of the Intermediary Guidelines read with Section 69A of the Information Technology Act, 2000 (“**IT Act**”) blocked the documentary of the British Broadcasting Corporation (“**BBC**”) on the 2002 Gujarat communal riots (“**Documentary**”). Reportedly, the Documentary was aimed at creating apprehensions on the authority of the Supreme Court of India (“**Supreme Court**”) and sowing divisions among various communities. The aforesaid action of the MIB has received wide criticism both within India and abroad.

In light of uproar created by the Documentary, and its subsequent ban thereof, the Supreme Court heard and dismissed a public interest litigation seeking the ban of BBC in India. While dismissing the plea of the petitioner, the Supreme Court observed that the petition was completely misconceived and meritless.

You may access this update as reported by the Indian Express and the Hindustan Times [here](#) and [here](#).

### MIB rejects the constitution of a media council

The MIB, through an office memorandum dated February 21, 2023, has responded to the recommendations provided by the Parliamentary Standing Committee on Communication and Information Technology (“**Standing Committee**”) in its report on ‘Ethical Standards in Media Coverage.’

One of the recommendations by the Standing Committee is that a unified media council should be constituted to govern all types of media including electronic and digital media. To this recommendation, the MIB responded by stating that the statutory provisions under the Press Council Act, 1978 (“**PCI Act**”), the Cable TV Act and the IT Act already provide adequate mechanism for governing all forms of media. Further, the MIB stated that given the distinctive nature of each form of media, it is not desirable to have a unified media council, as suggested by the Standing Committee.

You may access the report of the Standing Committee on ‘Ethical Standards in Media Coverage’ and the replies given by the MIB [here](#).

### Advisory on obligation of public service broadcasting

The MIB issued the Guidelines for Uplinking and Downlinking of Television Channels in India, 2022 (“**Guidelines**”) in November, 2022. The Guidelines deal with various aspects including the process for getting permission for uplinking and downlinking of television channels and news agencies, purchase and use of satellite broadcasting equipment, and obligations for public service broadcasting.

In the context of the obligation for public service broadcasting under paragraph number 35 of the Guidelines, the MIB has issued an advisory dated January 30, 2023 (the “**Advisory**”) wherein the manner in which private satellite television channels can fulfil such obligation has been laid out in detail.

The Guidelines state that companies and limited liability partnerships which have permission for uplinking a channel and its downlinking in India shall undertake public service broadcasting for a minimum period of 30 (*thirty*) minutes in a day on themes of national importance and social relevance such as education, agriculture and rural development, and science and technology.

2. *Neha Kapoor & Anr. v. Ministry of Information and Broadcasting*, 2023/ DHC/000558.

The Advisory has clarified, among other things, that (i) the list of themes provided in the Guidelines are indicative in nature and that broadcasters are at liberty to modulate their content; (ii) the content used for the purpose of public service broadcasting may be shared between broadcasters and could be repeat telecast on one or more television channels; (iii) content which is broadcast as a public service need not be 30 (*thirty*) minutes at a stretch and that the same may be broadcasted over smaller time frames; (iv) the time for which public service broadcasting content is telecast would not fall under the 12 (*twelve*) minute limit for commercial breaks; and (v) content which is broadcast between 12 AM and 6 AM would not be considered public service broadcasting.

The Advisory also requires voluntary compliance by broadcasters wherein a monthly report is to be submitted to the MIB through the broadcast seva portal along with the submission of a self-certified compliance certificate annually. It is to be noted that channels that predominantly broadcast sports and devotional or spiritual content have been exempted from the aforesaid monthly reporting requirement.

You may access the Advisory [here](#).

You may access the Guidelines [here](#).

### The Delhi HC rejects stay of the film "Faraaz."

A division bench of the Delhi HC recently rejected a plea seeking the stay of release for the film 'Faraaz' ("**Film**") directed by Hansal Mehta<sup>3</sup>. The Film is said to be inspired by the events of the Holey Artisan Bakery attack that took place in Dhaka.

The aforesaid plea arose as an appeal from the judgement of a single judge bench of the Delhi HC which had held that the petitioners (*i.e.*, the family of the victims of the attack) could not enforce the right to privacy of the deceased victims.

While rejecting the plea for a stay, the Delhi HC directed the makers of the Film to scrupulously adhere to the disclaimer provided in the Film, stating, among other things, that '*no identification of any actual persons is intended or should be inferred*'. The final order on the appeal against the decision of the single judge bench is still awaited.

You may access the Delhi HC order of the single judge bench [here](#).

You may access this update as reported by the Indian Express [here](#).

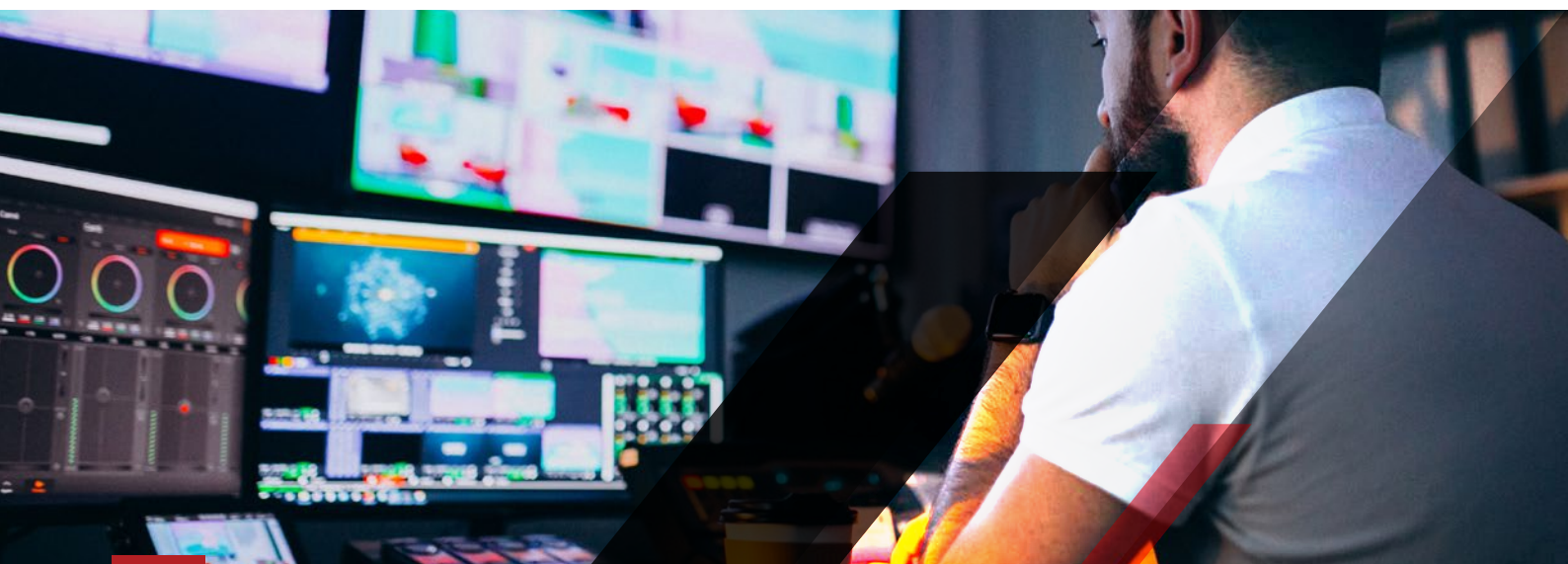
### MeitY seeks removal of deepfakes from social media platforms

The Ministry of Electronics and Information Technology ("**MeitY**") has reportedly sought major social media platforms to take reasonable measures to remove or disable 'deepfake' imagery on their respective platforms. Deepfake imagery refers to images created using artificial intelligence to replace the likeness of one person with another. In light of the aforesaid communication, it is relevant to note that the Intermediary Guidelines under Rule 3 (1)(b)(vii) classify content which impersonates another person as one of the categories of content that are considered unlawful for display, transmission, or publication.

Further, the foregoing instruction by MeitY is in line with Rule 3(2)(b) of the Intermediary Guidelines which requires intermediaries to take all reasonable and practicable measures to remove or disable access to content which prima facie is in the nature of impersonation in an electronic form including artificially morphed images within 24 (*twenty-four*) hours of receipt of a complaint from an individual.

You may access this update as reported by Inc42 [here](#).

3. Ruba Ahmed & Ors. v. Hansal Mehta and Ors. (2022/DHC/004263).



### Budget Session 2023: Questions on Media and Entertainment

During the ongoing Budget Session of the Parliament, the following questions were posed to the central government on media and entertainment related issues:

- (i). **Question:** The MIB was asked if it has taken initiatives to fact-check the content being circulated on various platforms, if the government has set up a fact-checking cell and if any action has been taken against news organisations/content gathering platforms for circulating fake news/misleading information.

**Response:** The Minister for Information and Broadcasting, Anurag Singh Thakur responded (“**IB Minister**”) stating that the PCI Act, the Cable TV Act and the Intermediary Guidelines each regulate print media, electronic media and digital media respectively. The ‘Norms of Journalistic Conduct’ set up under the PCI Act along with the ‘Programme Code’ under the Cable TV Act and the Digital Media Ethics Code under the Intermediary Guidelines regulate dissemination/publication of false news. The minister further stated that a fact check unit has been set up under the Press Information Bureau which takes cognizance of fake news, both *suo-motu* and by way of queries sent by citizens, and responds to the relevant queries with correct information. Furthermore, the IB Minister stated that appropriate action has been taken in cases of violations of the aforesaid norms, codes and statutes.

*The question raised in the Parliament and the answer from the MIB can be accessed [here](#).*

- (ii). **Question:** MeitY was, *inter alia*, asked to provide the number of orders it had issued to block access to online content during the last five financial years including the provisional data for the current year along with the total number of websites, social media handles and apps blocked under Section 69A of the IT Act.

**Response:** The Minister for MeitY, Ashwini Vaishnav (“**MeitY Minister**”), responded by stating that MeitY has issued directions to various intermediaries and government agencies to block access of information by public. Such directions are issued for blocking a total of 2799, 3635, 9849, 6096 and 6775 URLs during the year 2018, 2019, 2020, 2021 and 2022 respectively.

These include block order for content on social media URLs, accounts, channels, pages, apps, webpages, websites etc.

*The question raised in the Parliament and the answer from MeitY Minister can be accessed [here](#).*

- (iii). **Question:** The MIB was asked if it was aware of increased instances of objectionable, obscene, unauthorised content, messages, advertisement or communication, transmitted on various Over The Top (“**OTT**”) channels that are inconsistent with the laws of the country, if so, whether the government has taken/proposed to take stringent corrective measures.

**Response:** The IB Minister responded by stating that the Intermediary Guidelines have been enacted on February, 25 2021. Part III of the Intermediary Guidelines *inter alia* provides for adherence to Code of Ethics by publishers of news and current affairs on digital media platforms and publishers of online curated content including OTT platforms. The Code of Ethics prohibits OTT platforms from transmitting any content which is prohibited by law and undertake age-based self-classification of content, based on general guidelines provided in the schedule to the Intermediary Guidelines, along with adequate safeguards for restricting age-inappropriate content for children, along with adequate access control measures. The IB Minister further stated that the Intermediary Guidelines also provide for a three-tire grievance redressal mechanism to address complaints/grievances relating to violation of the aforesaid code of ethics.

*The question raised in the Parliament and the answer from MeitY Minister can be accessed [here](#).*

### Budget Session 2023: Questions on online gaming

During the ongoing Budget Session of Parliament, the following questions were posed to the central government on online gaming:

- (i). **Question:** MeitY was asked if they intend to provide any incentives for the promotion of gaming start-ups in India and whether the proposed rules on online gaming will supersede state level regulation.

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**Response:** The MeitY Minister, responded by stating that the government through various initiatives is promoting online gaming like Technology Incubation and Development of Entrepreneurs (TIDE 2.0) Scheme, a Centre of Excellence on Gaming, VFX, Computer Vision & AI launched by MeitY in Hyderabad which is being implemented by Software Technology Parks of India (STPI) with the government of Telangana, Start-up Accelerator Programme of MeitY for Product Innovation, Development and Growth (SAMRIDH), Next Generation Incubation Scheme (NGIS) and GENESIS (Gen-Next Support for Innovative Startups).

On the second part of the question, the MeitY Minister stated that Entry 34 under List II of the Seventh Schedule to the Constitution allows states to legislate on matters related to betting and gambling. The IT Act was enacted for matters enumerated under Entry 31 (telephones, wireless, broadcasting and other like forms of communication), 42 (Inter-State trade and commerce) and 97 (Any other matter not enumerated in List II or List III) under List I of the Seventh Schedule to the Constitution.

*The question raised in the Parliament and the answer from MeitY Minister can be accessed [here](#).*



## Online rummy game of skill or chance?: AP High Court directs State to form committee to submit report

The Andhra Pradesh High Court (“**AP High Court**”) was hearing a batch of writ petitions filed by gaming operators challenging the amendments made in 2020 to the Andhra Pradesh Gaming Act 1974 (“**AP Gaming Act**”).

The 2020 amendments to the AP Gaming Act effectively removed the skill gaming exemption from the purview of the AP Gaming Act, equating real-money games of skill with the offence of gambling in the State of Andhra Pradesh.

Vide its order, the AP High Court acknowledged that games of skill and games of chance are distinct concepts, with the former being a constitutionally protected activity under Article 19(1)(g) of the Constitution of India, 1950. The AP High Court also held that rummy, when played physically, is a game of skill, but observed that when it came to the online version, no material is available to say whether online rummy is a game of skill or a game of chance.

The AP High Court thereafter directed the Andhra Pradesh government to constitute a committee consisting of a judicial member, independent technical and non-technical members, two persons representing platform operators, one police officer of the rank of Director General who is well-versed in information technology, and any other member representing the State government. The court directed the committee to examine whether online rummy is a game of skill or a game of chance and submit a report on the manner in which the online rummy is played, within a period of four weeks from the date of receipt of a copy of the order.

You may access a copy of the AP Gaming Act [here](#).

You may access the AP High Court order [here](#).

## Budget Speech: Income Tax for online gaming

The announcement of the 2023 Budget by the Union Finance Minister Nirmala Sitharaman, brought changes to the taxation regime for online gaming.

From July 1, 2023, a new provision (Section 194BA) is proposed to be inserted under the *Income Tax Act, 1961*, which will cover winnings from any online game. Section 194BA of the IT Act provides that the Tax Deducted at Source (“**TDS**”) is to be deducted at the end of the financial year, assuming no withdrawals are made during the year by the user of the online game, subject to the computation mechanism. For withdrawals during the year, TDS will be at the time of such withdrawal on the net winnings comprised in such withdrawal, while the TDS on the remaining amount

of net winnings in the user account, is to be computed as per prescribed mechanism.

Income by way of winnings from any lottery, crossword puzzle, card games or “other games of any sort” are subjected to income tax at 30% under Section 115BB of the IT Act. The new Section 115BBJ relates to tax on winnings from online games. This proposal seeks to levy tax on “net winnings” from online games at the rate of 30%, which will be computed in a manner as prescribed under the rules. This proposal also seeks to define the term online games as a “game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device”. In view of the insertion of the proposed Section 115BBJ, Section 115BB is proposed to be amended to exclude from its ambit winnings from any “online games” as defined in Section 115BBJ. This amendment is proposed to come into effect from 1 April 2024 and accordingly would apply in relation to AY 2024-25 and thereafter.

You may access the Budget Speech of 2023 [here](#).

## Delhi HC: Google’s warning for third-party APK files is an industry practice and doesn’t infringe trademark.

In an interim plea by WinZO Games seeking to restrain Google LLC (“**Google**”) from displaying a warning against the use of the WinZO Games application, the Delhi HC held that the issuance of a warning prior to the download of an application is in the nature of a disclaimer and does not result in trademark infringement.

WinZO is a digital gaming and technology company, that owns and operates a website through which users can download the WinZO gaming application. In November 2021, Google and other search engines started displaying a warning to users upon an attempted download of the WinZO gaming application, which read as “*This type of file may harm your device. Do you want to keep WinZO.apk anyway?*” WinZO has therefore approached the Delhi HC seeking a permanent injunction against this action by Google.

On hearing the plea, the Delhi HC observed that the warning by Google and other search engines is in the nature of a disclaimer, a caution to its users, and does not prohibit or block the download of the WinZO gaming application. Users can continue to download and install the Android Application Package (“**APK**”) file of the gaming application by clicking on the option to “download anyway”. The Delhi HC also acknowledged and agreed with the submission by Google that issuing such warnings when users download

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third-party APK files from their websites was a practice undertaken by several search engines and browsers, and is a standard 'industry practice'.

On the contention of trademark infringement by Google, the Delhi HC observed that since Google was not providing goods or services using WinZO's trademark, the alleged use of WinZO's trademark by Google is not barred by any of the provisions of the Trademark Act, and that a perusal of the warning would show that the reference to the name of the APK file 'WinZO' is only for identifying the file being downloaded for the purpose of the warning. While dismissing the interim application for injunction the Delhi HC said that its observations will not have a bearing on the final outcome of WinZO's lawsuit.

You may access the Delhi HC order [here](#).

### MeitY blocks several apps under section 69A of the Information Technology Act.

MeitY reportedly blocked over two hundred mobile applications for having alleged links with China or with

betting, gambling and money laundering. From a reported two hundred and thirty two apps, one hundred and thirty eight of such apps were related to betting and gambling, with the remaining ninety four being loan-lending apps. In order to prevent these apps from being blocked, MeitY also reportedly gave them forty eight hours to prove their legitimacy and genuineness of business operations.

The apps were banned by MeitY by invoking Section 69A of the IT Act and the emergency blocking provisions of the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009. These provisions empower the central government to issue blocking orders on any information which the centre feels are against the interest of sovereignty, integrity, defence of India and to protect national security. This is not the first time MeitY has exercised its powers of blocking apps, with over 300 apps being reportedly removed from various app stores in India in the past few years.

You may access the update as reported by the Indian Express and Telegraph India [here](#) and [here](#).





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