



THE RECAP

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

VOLUME 15: JUNE - JULY 2023

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INTRODUCTION

The great Greek philosopher, Heraclitus, often said, that if it were not for injustice, man would not know of justice. In the words of Alexandre Dumas '*Justice is a powerful and unrelenting force*';¹ and indeed, the profound last arrow in the quiver of remedies an aggrieved individual has a right to seek. On that note, we present to you, The Recap, capturing the media, entertainment, and gaming updates for the months of June & July 2023, with a special focus

on cases in multiple courts which were of significance for the media & entertainment and gaming industries. Ranging from copyright infringement suits and pleas for judicial intervention, to arguments for and against recent gaming laws, we discuss how the courts have responded to these varied petitions.

We hope you enjoy reading this edition of The Recap as much as we enjoyed putting it together for you!



Bombay HC refuses to direct Netflix to take down web series 'Scoop'

The Bombay High Court ("**Bombay HC**") recently refused to direct the over-the-top ("**OTT**") platform 'Netflix' to take down the web series 'Scoop' ("**Web Series**") from its platform. The petition was filed by Rajendra Sadashiv Nikalje (alias "**Chhota Rajan**") against the makers of the Web Series, which is based on the biographical book 'Behind the Bars in Byculla: My Days in Prison' by journalist Jigna Vora who was accused of murdering a fellow journalist, Jyotirmoy Dey on July 11, 2011.²

The petitioner, Chhota Rajan, had contended that the trailer of the Web Series made various references to his name, image and voice, and portrayed him as the main conspirator of a character's murder. He further claimed that the contents of the impugned trailer were false, misleading, and deceptive, made with the intention to sensationalize the Web Series and obtain profits by using his personality. He prayed to the court to i) remove the trailer of the Web Series from Netflix and all other platforms; ii) restrain the defendants from exploiting his name, image, and personality in the Web Series or make any reference to him; and iii) restrain the defendants from publishing the Web Series and its trailers on Netflix, in theatres, or on any other platform. However, on the submission of the defendant that the suit was not maintainable and that the Web Series should first be viewed by Chhota Rajan, Chhota Rajan sought leave to amend his plaint.

The Bombay HC did not grant an interim injunction, and provided leave to Chhota Rajan to amend his plaint, and the defendants time to file their written statement.

You may access the order passed by the Bombay HC [here](#) and [here](#).

Delhi HC restrains rogue websites from streaming "Spider-Man: Across the Spider-Verse" and "Spider-Man: Into the Spider-Verse"

The Delhi High Court ("**Delhi HC**") has granted interim relief to Sony Pictures Animation Inc. ("**Sony**"), and restrained 100+ rogue websites from posting and streaming the films "Spider-Man: Across the Spider-Verse" and "Spider-Man: Into the Spider-Verse" (collectively "**Films**"). This order was passed by the Delhi HC in a petition filed by Sony against various websites for infringing its copyright in the Films.³

In its petition, Sony contended that it was the sole copyright holder in the Films and had not licensed to anyone, the right to broadcast or communicate the Films to the public, through any medium. It claimed that several of the impugned websites had also advertised the then impending broadcast of the newly released Film, "Spider-Man: Across the Spider-Verse" on their platforms. Through the petitions, Sony sought a direction from the court to permanently restrain the 100+ identified rouge websites, as well as any mirror/redirect/alphabetic website associated with them, from posting, streaming, distributing the Films, or making them available to the public. It prayed to the court to direct the identified internet service providers ("**ISPs**") to block access to these rouge websites, and to direct the Department of Telecommunications ("**DoT**") and the Ministry of Electronics and Information Technology ("**MeitY**") to issue a notification to all internet and telecom service providers, mandating them to block user access to such rouge websites.

Acknowledging that the impugned websites were, in fact, "rogue websites" as defined by the court in the case of *UTV Software Communication Ltd. v. 1337X.To*,⁴ the Delhi HC observed that Sony was entitled to an *ex-parte* interim relief in the present case. The Delhi HC thereafter passed an order - i) restraining the 100+ rogue websites as well as all others acting on their behalf, from posting, streaming, reproducing, distributing or making available to the public, on their websites, or through the internet, in any manner whatsoever, any cinematograph work/content/program in which Sony has copyright, including the Films; ii) directing the ISPs to block access to the rogue websites as well as mirror / redirect/ alphanumeric websites which appear to be associated with any of the said websites; and iii) directing the DoT and MeitY to issue a notification calling on all internet and telecom service providers to block the access to the rogue websites. The court posted the matter for hearing on September 4, 2023.

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

Makers of biopic move to Bombay HC for censor clearance

The makers of a biopic based on the life of Jaswant Singh Khalra (a prominent human rights activist) ("**Biopic**") have approached the Bombay HC, seeking the court's assistance in directing the Central Board of Film Certification ("**CBFC**") to clear the Biopic's pending censor certificate. Given that

the Biopic was facing delays and could not be released prior to obtaining certification, the makers approached the Bombay HC to intervene in the matter. Reportedly, the censor certificate had been applied for in December 2022, which was sent ahead to the review committee, but to no avail.

The Biopic captures the life of Jaswant Singh Khalra, an integral figure in the Operation Blue Star investigation. Following Operation Blue Star in 1984, the police were empowered to detain anyone as suspected terrorists. During that time, Jaswant Singh Khalra, who was the director of a bank in Amritsar, found evidence of abduction, elimination and cremation of thousands of unidentified bodies by the police. The investigation undertaken by him sparked worldwide protests and led the Central Bureau of Investigation to conclude that the Punjab police had unlawfully cremated several people. The Supreme Court of India ("**Supreme Court**") and the National Human Rights Commission had also certified the validity of his findings.

You may access the update as reported by *The National Herald* [here](#).

You may access additional information on *Operation Blue Star* [here](#).

Multiple petitions filed in relation to the film 'Adipurush'

A slew of petitions have been filed against the makers of the Saif Ali Khan starrer, 'Adipurush' ("**Film**") before various courts in India. The Film was eagerly awaited in light of its high-profile marketing and the overall religious significance attached to the Hindu epic, "Ramayana". The Film was instead met with objections and controversy from the public due to the Film's portrayal of Hindu deities which has been claimed to be in "bad taste". The outrage involved the atypical portrayal of characters, their appearances not conforming with traditional depictions, colloquial dialogue and poor VFX. Some even claimed that the portrayal of the wife of Vibhishana was obscene.

Delhi HC

The Hindu Sena filed a petition against the producers of the Film before the Delhi HC, contending that that Hindus have a particular view of the image of Lord Rama, Sita, & Hanuman, and any change or tampering of their image by the producers, director or actors of the Film would be a violation of their fundamental rights. They contended that some scenes in the Film show the religious characters in bad taste and were an "absolute insult" to the Hindu community and Hindu religious figures. Hindu Sena sought to advance the hearing of the petition and prayed for the removal of the alleged objectionable scenes in the Film.

Observing that the Film has already been released in cinemas, the Delhi HC stated that there was no merit in seeking a restraint against the makers of the Film at this juncture. The court stated that the release dates are known well in advance, and the petitioners should have approached the court earlier.

You may access the update as reported by *The Hindu* [here](#).

Bombay HC

Trishul Media Entertainment ("**Trishul**"), a VFX studio, filed a petition against the producers of the Film before the Bombay HC, claiming that it was entitled to receive credits for the Film. Through an interim application, Trishul sought urgent ad-interim relief on the ground that the Film was slated to be released the next day in theatres across the country. Trishul claimed that it had entered into VFX services agreements with Retrophiles Private Limited ("**Retrophiles**"), i.e., the Film's producer, and alleged that Retrophiles has refused to give Trishul any credit in the Film, while also expressing concern that the production company had been established solely for the Film and might likely dissolve after its release.

In the course of the hearing, the Bombay HC was informed that Super Cassettes Pvt. Ltd., i.e., 'T-Series', which was a co-producer in the Film, had not been included as a party to the suit. Subsequently, Trishul sought leave from the court to amend its plaint for including T-Series in the same.

The Bombay HC granted leave to Trishul to carry out the amendment within a period of 1 (one) week from the date of the order and directed the defendant to file the reply within a period of 3 (three) weeks.⁵

You may access the order passed by the Bombay HC [here](#).

Allahabad HC

In December 2022, two social activists, Kuldeep Tiwari and Bandana Kumar had filed a Public Interest Litigation ("**PIL**") against the Film contending that the Film cast an aspersion on the characters of Ramayana and tarnished the image of the cultural heritage of Ayodhya and the Hindu religion in general. However, post the release of the Film in June 2023, the petitioners filed an amendment application in relation to the PIL, which claimed that the portrayal of characters such as Ravana and Lord Hanuman in the Film was "*completely divorced from the Indian Civilisation*". The petitioners also objected to the dialogues in the Film, terming them to be 'ridiculous', 'filthy' and 'against the glory of Ramayan yug' and sought an impleadment of the dialogue writer as a respondent in the pending PIL. Additionally, they claimed that any variation with the hairstyle, beard, moustache and dressing manner including appearances of the Hindu religious characters as per Ramayana hurts the sentiments of worshippers, devotees and religious believers. In this regard,

the amendment application prayed to the Allahabad High Court (“**Allahabad HC**”) to direct the makers of the Film to remove the objectionable dialogues and scenes from the Film which depict the religious characters in an ugly manner.⁶

The Allahabad HC observed that religious scriptures, towards which people are sensitive, should not be touched or encroached upon, and acknowledged that the petition was concerned with a genuine issue. When informed by the Deputy Solicitor General of India that certain objectionable dialogues of the Film have been changed, the court stated that that alone, would not work, and directed the Deputy Solicitor General of India to seek instructions for the objectionable scenes. Additionally, the court allowed the application seeking to implead the dialogue writer of the Film, Manoj Muntashir Shukla, as a respondent in the PIL, and directed for the issuance of notice to him. In the latest hearing, the court directed the Ministry of Information and Broadcasting (“**MIB**”) and the CBFC to submit their personal affidavits in relation to the PIL filed, while observing that certifying the Film was a blunder and that it had hurt the sentiments of the people at large.

You may access the order passed by the Allahabad HC [here](#).

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

Supreme Court

A petition has been filed against the Film in the Supreme Court, seeking an exhibition ban on the Film for allegedly hurting the sentiments of Hindus by “*destroying their fundamental values and characters*” and modifying the ‘basic structure’ of Valmiki’s Ramayana. The petitioner has also strongly objected to some dialogues in the Film, calling it ‘derogatory’ in nature. The plea filed by one Mamta Rani, contends that a) the censor certificate granted by the CBFC to the Film should be revoked on the ground that it is violative of the statutory provisions in Section 5B of the Cinematograph Act, 1952; b) the “*sacred fundamental texts and manuscripts are the basic spiritual and physical tenets of a cultured and civilized society which a common man of such a society relies [on] and lives [by]*”; c) the Film consists of ‘misleading’ statements, and the depiction of the physical features and communication styles of Hindu gods – Rama and Hanuman – are complete distortions of “*not only the characters but also the very fundamental values for which they are worshipped*”; d) the Film, as released on June 16, 2023 has been continuously altered and modified after its certification and release. Such post-release alteration and modification is violative of Section 7 of the Cinematograph Act, 1952, and should be subject to the penalty of 3 (three) years of imprisonment. However, no action has been taken by the CBFC for this violation till date. The Supreme Court is yet to hear the matter.

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

Punjab, Haryana, and Rajasthan HCs

Similar petitions have been filed against the makers of the Film in the Punjab and Haryana High Court, as well as the Rajasthan High Court.⁷

You may access the update as reported by Live Law [here](#) and [here](#).

A civil proceeding under the Copyright Act does not by default halt a criminal proceeding: Karnataka HC

The Karnataka High Court (“**Karnataka HC**”) has observed that merely because there is an ongoing civil dispute between the parties under the Copyright Act, 1957 (“**Act**”), criminal proceedings cannot be halted, since the Act provides for both civil remedies as well as criminal prosecution. The court was hearing a petition filed by M/s Mangalore New Sultan Beedi Works (“**New Sultan**”).⁸

New Sultan had approached the Karnataka HC alleging that the police had pushed the probe in the First Information Report (“**FIR**”) filed by it to ‘cold storage’, presumably because of the pendency of a civil suit in the same matter, wherein an order of temporary injunction had been passed against the accused by the court. In the present suit, New Sultan contended that the charging provision of the Act, i.e., Section 63, is structured in such a way that the same factual matrix may give rise to a cause of action for both, a civil suit and a criminal proceeding. However, the respondent, i.e., the government, claimed that ordinarily where there is a civil dispute, the police are advised against interfering in the same, and this was consistent with a catena of decisions of the Karnataka HC and the Supreme Court.

Disposing the case, the Karnataka HC observed that the infringement of a copyright gives rise to a cause of action on which a civil proceeding can be structured and can also give rise to a cause of action for the institution of a criminal proceeding. It stated that in the former, it is a preventive, remedial, or compensatory measure, whereas, in the latter, it is primarily punitive. The object, nature and outcome of these proceedings, thus, are not the same. The Karnataka HC observed that “*merely because a civil dispute is being fought between the parties, the criminal proceedings cannot be halted, per se, on this ground.*” Acknowledging that the reluctance of the police to process the FIR may not be correct, the court directed it to undertake & accomplish the investigation in the subject offence within an outer limit of 3 (three) months.

You may access the order as reported by Indian Kanoon [here](#).

NCPCR releases guidelines for child and adolescent participation in the entertainment industry

In view of the powers granted to it under Section 13 of the Commissions for Protection of Child Rights Act, 2005, and with the intention of protecting child actors from being taken advantage of in the entertainment industry, the National Commission for Protection of Child Rights (“NCPCR”) released the ‘Guidelines for Child and Adolescent Participation in the Entertainment Industry and any Commercial Entertainment Activity’ (“Guidelines”).

The preamble of the Guidelines captures the purpose behind its release and states that children have been involved with the entertainment industry since the beginning, and through the years they have been exploited for their innocence and the lack of adequate regulations protecting them.

The Guidelines, inter alia, provide for the following:

- **Applicability:** The Guidelines extend to content on reality shows, TV serials, news and informative media, movies, OTT platforms, social media platforms, performing arts, advertising and any other kind of involvement of children in commercial entertainment activities. They are applicable to any relevant institution which is involved in the production and broadcasting of such content, along with the concerned Central and State Government authorities.
- **General Principles:** The Guidelines mandate that any institution employing children for commercial entertainment, shall be guided by the standards laid down in the Juvenile Justice Act, 2015, including the principles of, inter alia, dignity and worth, participation, best interests, family responsibility, safety, and privacy.
- **Registration of the Child with the District Magistrate:** Any production or media house can involve a child only after taking due permission from the District Magistrate, and the permit will only be granted for 6 (six) months.
- **Content Categories on Social Media:** The content has to be bifurcated into a) content created by production houses or other organization and b) content created by the child/adolescent or his/her parent/guardian/family. The content created by the child or his/her family/guardian which is created for economic gains will be treated as children working in a family enterprise as provided under Section 3(2)(a) of the Child Labour and Adolescent Labour Act, 1986.
- **Work Conditions for Children/Adolescents involved in the content creation for social media platforms** The Guidelines stipulate that children/adolescents a) shall not perform any tasks during school hours and between 7 p.m. and 8 a.m.; b) shall not be engaged in such tasks of helping which hinders or interferes with

the right to education of the child, or his/her attendance in the school, or which may adversely affect his/her education including activities which are inseparably associated to complete education such as homework or any extracurricular activity assigned to him by the school; c) shall not be engaged in any task continuously without rest which may make him/her tired and shall be allowed to take rest to refresh his/her health and mind; and iv) shall not help for more than 3 (three) hours excluding the period of rest in a day.

- **Duties of News, Media and Production Houses:** The Guidelines impose certain duties on news and media houses in relation to the protection of children and adolescents. For example, these entities are required to ensure anonymity, not sensationalize issues or stories, especially those relating to children, and should be conscious of the harmful consequences of disclosing/highlighting information in a sensational form and the harm it may cause to children.
- **Advertisements:** The Guidelines also provide for restrictions on the use of children or adolescents in advertisements, for service providers, manufacturers traders, producers, and advertising agencies.
- **Penalties and Offences:** Differing penalties in connection with violation of provisions of the Child and Adolescent Labour Act, 1986, the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Protection of Children from Sexual Offences Act, 2012 have been provided for in the Guidelines.

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

MIB issues advisory to adhere to Programme Code under the Cable TV Act

On 8 June 2023, the MIB issued an advisory for the ‘Adherence to Programme Code prescribed under the Cable Television Networks (Regulation) Act, 1995’, directed to all private satellite TV channels (“Advisory”).

According to the Advisory, the reason behind its issuance was the recently raised concerns about the wrongful portrayal of an incident by the media involving His Holiness Dalai Lama, and a child. The National Commission for Minorities (“NCM”) objected the manner in which the matter was represented by TV channels and strongly condemned the disrespectful and derogatory content published by the media.

In this light, the Advisory directed all private satellite TV channels broadcasting programmes to adhere to the Programme Code prescribed under the Cable Television Networks (Regulation) Act, 1995 (“Cable TV Act”) and the rules framed thereunder. In particular, the Advisory calls out the specific provision of the Programme Code, which states

that “No programme should be carried in the cable service which, inter alia,

- contains attack on religions or communities or Visuals or words Contemptuous of religious groups or which promote communal attitudes;
- contains anything obscene, defamatory, deliberate, false and suggestive innuendos and half-truths; or

- criticises, maligns or slanders any individual in person or certain groups, segments of social, public and moral life of the country.”

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

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Films & TV in courts: A round-up

Adipurush

In two separate orders, the Supreme Court on July 21, 2023 rejected a PIL against the movie “Adipurush” and stayed proceedings against the makers of the film before various High Courts. The dismissed PIL had sought revocation of CBFC certificate for the film as the film allegedly hurt Hindu sentiments and distorted sacred texts. The Supreme Court observed that there is a “little play” in cinematic representations, and they may not be an exact replica of the text. The Supreme Court emphasized that it cannot intervene in individual sensitivities under a writ petition and that the appropriate authority (i.e., the CBFC) should address the allowed extent of alterations to the original material in cinematographic depictions.

The Supreme Court order can be accessed [here](#).

Nyay: The Justice

The Delhi HC dismissed a plea by the late actor Sushant Singh Rajput’s father seeking a permanent injunction against the movie “Nyay: The Justice” which the petitioner claimed was based on the death of Sushant Singh Rajput and the surrounding circumstances.

The Delhi HC’s analysis was two-fold, viz., (1) whether the movie was based on real-life events in light of a disclaimer that the movie was not based on real-life events and (2) whether the depiction of the events violated the petitioner’s privacy, publicity and personality rights.

Answering the first question, the Delhi HC observed that the movie was a celluloid retelling of the actor’s life despite the disclaimers suggesting otherwise. The Delhi HC held that relationship between characters and events depicted in the film and real-life persons must be decided by a comparison of the film with knowledge of real-life events, and not by reference to any misleading disclaimer which may be inserted in the film.

The Delhi HC looking into the second question referred to a catena of judgments to conclude that; (a) the unauthorized

use of a person’s name or likeness violates their privacy rights, leading to a claim for damages rather than an injunction against publication, (b) publications based on public records or information available in the public domain do not invade privacy, (c) public officials or figures cannot claim damages for an untrue publication unless it is made with a reckless disregard for truth, (d) publishing rights, even in a movie, are constitutionally protected, (e) publicity rights protect commercial interests in a person’s public reputation, but these rights are not inheritable.

The Delhi HC judgment may be accessed [here](#).

Tandav

The Supreme Court has postponed the hearing in a series of petitions filed by the creators of the web series ‘Tandav’ (streaming on Amazon Prime Video) to the first week of August. The petitions seek the clubbing and transfer of FIRs registered against them in six cities, alleging the show has hurt religious sentiments. A division bench of the Supreme Court comprising Justices BR Gavai and JB Pardiwala ordered the official respondents to submit a report on the status of the FIRs against director Ali Abbas Zafar, producer Himanshu Mehra, writer Gaurav Solanki, actor Mohammed Zeeshan Ayyub, and Amazon Prime Video India Originals Head Aparna Purohit. The bench finally directed that the matter be listed after four weeks.

The FIRs against the creators were filed due to a scene where actor Mohd Zeeshan Ayyub is seen playing Lord Shiva in a stage play where they talk about Lord Shiva’s social media following, comparing it with Lord Rama and the character utters a phrase leading up to a popular profanity. This scene hurt the religious sentiments of people. Subsequently when controversy erupted, the creators of the series censored the contentious scenes. FIRs were filed against the creators and actors in various states under, inter alia, Section 295-A (deliberate and malicious acts, intended to outrage religious feelings), Section 298 (utters any word or makes any sound with deliberate intent to wound the religious feelings of any person) and Section 153 A (wanton vilification or attacks upon the religion, race, place of birth, residence, language, etc) of the Indian Penal Code (“IPC”).

Velaiyilla Pattathari

On July 10, the Madras High Court (“**Madras HC**”) quashed criminal proceedings initiated against actor Dhanush, director Aishwarya Rajnikanth, and a few others under Section 5 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act 2003 (“**COTPA**”). The complaint was filed against the posters of the movie ‘*Velaiyilla Pattathari*,’ in which the actor is shown smoking a cigarette. The Madras HC noted that the display was not conducted by individuals involved in producing, supplying, or distributing tobacco products, and the actor depicted was not under any contract with such entities or promoting their products and hence the complaint could not be brought within the scope of Section 5 of COTPA. The Madras HC emphasized that if the facts do not establish an offense, the court cannot attempt to broaden the scope of the provision by considering the potential adverse impact of tobacco or tobacco products on society, especially the younger generation.

The Madras HC order may be accessed [here](#).

Ajmer ‘92

A representative body of the Khadims of the Ajmer Sharif Dargah filed a writ petition to ban the film ‘Ajmer 92’ from theatres and OTT platforms. The film directed by Pushpendra Singh, depicts certain events from Ajmer in 1992 involving sexual assault and blackmail of hundreds of college girls by individuals who allegedly had ties with the Sufi Dargah in Ajmer. The Rajasthan High Court dismissed the writ petition on the grounds that the petitioner had an alternative remedy viz. revision petition before the Central Government under Section 6 of the Cinematograph Act, 1952.

Ram Siya Ke Luv Kush

The Punjab and Haryana High Court (“**P&H HC**”) on July 5, 2023 quashed an FIR lodged in 2019 against TV serial ‘Ram Siya Ke Luv Kush’ broadcasted on Colors TV. The complainant had no further objections in light of the corrective actions undertaken. Additionally, the P&H HC also quashed all other proceedings dealing with the suspension of the TV serial.

The matter dates back to 2019 when the District Magistrates of three districts in Punjab suspended the exhibition of the TV serial ‘Ram Siya Ke Luv Kush’ broadcasted on Colors TV television channel for the alleged portrayal of Saint Valmiki and for hurting the sentiments of the Valmiki community. The exhibition of the TV serial was suspended under the Cable Television Network (Regulations) Act, 1995 which empowers an authorised officer to prohibit any cable operator from transmitting or re-transmitting any programme or channel if it is likely to promote disharmony, enmity, ill-will on grounds of religion, race, caste or community or if it is likely to disturb public tranquillity. Further, an FIR under Section

295-A (*deliberate and malicious acts, intended to outrage religious feelings*) and Section 34 (*acts done in furtherance of common intention*) of the Indian Penal Code 1860 was also filed against the creators and actors of the show.

The P&H HC considered a prior order issued on October 17, 2019, which established a committee of experts comprising representatives from the Valmiki community and other relevant stakeholders (“**Committee**”) to examine the matter and make recommendations. The Committee recommended the deletion of certain scenes, proposed corrections relating to previous episodes, and issued guidelines for future portrayals in the TV serial. The petitioner complied with these recommendations of the Committee and requirements for the future as proposed.

The P&H HC order may be accessed [here](#).

Regulatory developments & amendments

Amendments to Govt. of India (Allocation of Business Rules), 1961 enlarge MIB’s remit in the online medium

The Hon’ble President of India vide a Gazette Notification published on July 31, 2023 amended the Government of India (Allocation of Business) Rules 1961 to broaden the regulatory purview of the MIB over matters in the online medium. The amendment extends the regulatory purview of the MIB to (i) any audio-visual “content” made available by not only online content providers but also online “publishers” and (ii) online advertisements.

The Gazette Notification can be viewed [here](#).

MIB suggests independent content checks for OTT streaming platforms

As per news reports, in a meeting between MIB and some OTT streaming platforms, MIB suggested that OTTs get their content independently reviewed for explicit or violent material before making it available to the public, in addition to the mechanism under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. MIB cited concerns raised by Members of Parliament, citizen groups and the general public regarding obscene and vulgar content available on these platforms. However, as per sources, the OTT platforms objected to the same and no decision was reached.

OTT platforms in India are not subject to any prior review of content by a censor body such as the CBFC for cinematograph films. OTT platforms currently observe a “Code of Ethics” under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. These platforms largely self-regulate and have even adopted a voluntary self-regulation code known as the Universal Self-Regulation Code for Online Curated Content Providers. MIB’s suggestion calling for an “independent

review” is not entirely clear in its scope at this stage. The OTT platforms perhaps are not agreeable to the government’s proposal as it effectively amounts to self-censorship.

The news report can be accessed [here](#).

DPIIT reiterates that use of music for marriages, religious ceremonies does not lead to copyright infringement

Amid complaints from the public regarding alleged demand for royalties by copyright societies, the Department of Promotion of Industry and Internal Trade (“DPIIT”) issued a public notice on July 24, 2023 clarifying the scope of Section 52(1)(za) of the Copyright Act 1957, which constitutes an exception to infringement of copyright. Under the said provision, the performance of a literary, dramatic or musical work or communicating such work to the public (including by way of a sound recording) does not constitute infringement if done in the course of any *bona fide* ‘religious ceremony’ or an official ceremony held by the Central Government or the State Government or any local authority. The provision also clarifies that a ‘religious ceremony’ includes a marriage procession and other social festivities associated with marriage.

The DPIIT public notice can be accessed [here](#).

A person forwarding a message on social media is liable for its contents, rules Madras HC

The Madras HC, while refusing to quash criminal proceedings initiated against a Bharatiya Janata Party (BJP) politician in Tamil Nadu, held that a person forwarding a message on social media is liable for its contents. The accused had forwarded an abusive, derogatory and vulgar comment against women journalists through his Facebook account in April 2018. Subsequently, an FIR was lodged against the politician under Section 504 (*intentional insult with intent to provoke breach of the peace*), Section 505 (*statements conducing to public mischief*) and Section 509 (*insulting the modesty of a woman*) of the IPC.

The court observed that “A person, who forwards the message, must be construed to acknowledge the contents of the message and that is the main reason as to why he forwards that message to others”. The court held that such a sender who “wants others also to know about that message...must also be equally prepared to face the consequence, if that message has a derogatory content”.

The judgement can be viewed [here](#)



Tamil Nadu's online gaming law still under challenge

Tamil Nadu on April 21, 2023 had notified the coming into effect of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022 ("**TN Gaming Act**") and the rules framed thereunder, that is, the Tamil Nadu Online Gaming Authority and Regulation of Online Games Rules, 2023 ("**TN Gaming Rules**") (collectively referred to as "**TN Gaming Law**").⁹ Prohibiting "online gambling" which includes a prohibition on "playing of any online game of chance with money or other stakes, in any manner".

Activities such as indulging in online gambling or a real-money online game of chance or offering it to residents of Tamil Nadu have been made punishable as criminal offences. As of now, online real-money poker and rummy have been designated as online games of chance and hence stand prohibited in Tamil Nadu.

Upon coming into effect, writ petitions were filed (including by the skill gaming industry body All India Gaming Federation) before the Madras HC challenging the constitutional validity of the TN Gaming Law.

The Madras HC refused to grant any interim stay on the operation of the TN Gaming Laws, until both the parties are heard. Subsequent hearings were conducted and on June 9, 2023, the Madras HC gave the Tamil Nadu state government a further period of 20 (twenty) days to respond to the abovementioned petitions. The matter is currently being regularly heard by the Madras HC.

Our detailed update on the TN Gaming Law, has been captured as part of our Recap available [here](#).

The TN Online Gaming Act can be viewed [here](#).

The notification of coming into effect of the TN Online Gaming Act can be accessed [here](#).

The TN Online Gaming Rules can be viewed [here](#).

The Order of the Madras HC is available [here](#).

P&H HC to the rescue of Probo

P&H HC recently granted relief to Probo Media Technologies Private Limited ("**Probo**") which owns and manages an opinion trading platform which allows players to place their opinions on various topics using their knowledge; experience; and analysis.¹⁰

The Haryana GST Intelligence Unit ("**Haryana GST Unit**") had demanded GST at 28% on the entire bet value from the company, which had instead, paid GST at 18% on the total turnover in 2 (two) years. In view of the statement by the Haryana GST Unit in court that it would not initiate any coercive step against the company, the P&H HC has ordered against any coercive action from being taken.

Further, 50% of the amounts present in Probo's bank accounts, which were previously provisionally attached and frozen, were ordered to be released. The matter has been listed for further hearing on August 17, 2023.

The Order of the P&H HC is available [here](#).

GST Council recommends 28% GST for online gaming

The Goods and Services Tax ("**GST**") Council on July 11, 2023 in its 50th meeting recommended to levy GST at the rate of 28% for the supply of actionable claims in online gaming, horse racing, and casinos. The GST Council has, in a way, eliminated the distinction between games of skill and chance as regards the indirect tax regime.

The impact of this steep increase can be better understood through an illustration. If an operator used to charge INR 100 to allow participants to play the game and charged 8%

of it as platform fee, the existing framework would have charged 18% GST on INR 8, amounting to INR 1.44 in taxes. However, under the new framework, 28% GST would be charged on the entire face value of the deposit i.e., INR 100, amounting to INR 28 in taxes. This tax, coupled with the recent implementation of 30% Tax Deducted at Source (TDS) on net winnings, will substantially reduce the final winnings received by a player and the industry anticipates that this may have a potential of reducing engagement with the players for online gaming.

A Group of Ministers ("**GoM**") was first constituted by the GST Council in May 2021 and then re-constituted in

February 2022 to examine the taxation on casinos, race-courses and online gaming. The first report of the GoM was placed before the GST Council for its consideration in June 2022. However, the GST Council did not arrive at a final decision at the time and deferred the matter back to the GoM to further deliberate and submit an amended report to the GST Council. Multiple deliberations with industry stakeholders, representations and discussions over the next 12 months have now culminated in the 28% tax. Immediately after the 50th GST Council meeting, the skill gaming industry wrote an open letter to the Central Government requesting for a reconsideration of the GST Council's decision, citing the move's adverse implications on the industry as a whole.

Following this, the GST Council in its 51st meeting on August 2, 2023 provided its recommendations on the amendments required to implement the 28% GST regime and clarified that for casinos and online gaming, the GST will be charged on the amount deposited with the supplier and not on the total value of each bet placed. The GST Council has set October 1, 2023 as the implementation date and has agreed to review its recommendations in six months' time.

You can read more on this development as reported by the *Business Standard* and *MoneyControl* [here](#) and [here](#).

You can read the open letter sent by online gaming operators [here](#).

PIL filed before the Delhi HC challenging the online gaming amendments to the IT Rules 2021

On July 7, 2023, a PIL was filed by a Noida-based NGO named 'Social Organization for Creating Humanity' (SOCH) before a Division Bench of the Delhi HC,¹¹ challenging the constitutional validity of the amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 pertaining to online gaming ("**Amendment Rules**").

As per news reports, some of the arguments raised by the petitioner are:

- The Amendment Rules are beyond the legislative competence of the Central Government as states have been given the exclusive right to legislate on matters pertaining to "betting and gambling" under Entry 34 of List II of the Seventh Schedule to the Constitution of India ("**Constitution**").
- The Amendment Rules cause regulatory confusion due to the existence of state laws on this subject matter, leaving industry stakeholders uncertain on the relevant regulations to follow.

- The Amendment Rules wrongly classify online gaming operators as "intermediaries"¹² going beyond the scope of the Information Technology Act 2000 ("**IT Act 2000**"). The platforms actively decide the content i.e., the games accessible on the platform, the content, and the kind of users to compete with one another, and thus cannot be treated as intermediaries under the IT Act 2000.
- In the absence of the term 'online gaming' in the IT Act 2000, online gaming platforms were never envisioned to be regulated thereunder.
- The Self-Regulatory Bodies ("**SRBs**") set-up under the Amendment Rules attempt to outsource regulatory powers from the states to the SRBs. Further, these SRBs are funded by online gaming operators who have a vested interest in regulating this sector making the entire framework arbitrary, irrational, and violative of the Constitution.¹³

The matter was heard on July 13, 2023 by a Division Bench of the Delhi HC. The Additional Solicitor General Chetan Sharma appearing on behalf of the Central Government reportedly questioned the intention of the petitioners to file the PIL, alleging it to be a proxy litigation with vested interests and urged the Delhi HC to dismiss the case. The Delhi HC ordered the centre to demonstrate its legislative competence in notifying the Amendment Rules and provide evidence of the formulation of a committee that introduced the Amendment Rules. The matter has been listed for further hearing on September 21, 2023.

You can access the amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 [here](#).

You can read more on this development as reported by *MoneyControl* [here](#).

Madras HC proceedings continue in the matter of the challenges to the new state online gaming law

In the matter of the petitions¹⁴ challenging the vires of the TN Gaming Act, the arguments by all the petitioners concluded on July 18, 2023. Senior Advocate Kapil Sibal will appear on behalf of the State of Tamil Nadu and present his arguments on August 7, 2023. The Madras HC vide its order dated July 3, 2023 had refused to grant an interim relief in favour of the online gaming companies.

Some of the arguments raised by the petitioners are:

- There is a watershed distinction between games of skill and chance which cannot be abolished by a deeming function of the state.

- The offering of online games of skill has caused no adverse implications on the maintenance of public order and the said ground cannot necessitate a ban.
- Skill games are a constitutionally protected business activity under Article 19(1)(g) of the Constitution.

The Central Government also put forth its submissions (a few petitioners had added the Union of India as one of the respondents) through the Additional Solicitor General and stated that the State has no legislative competence to enact the impugned law and that the Central Government has recently created a framework for online gaming in India.

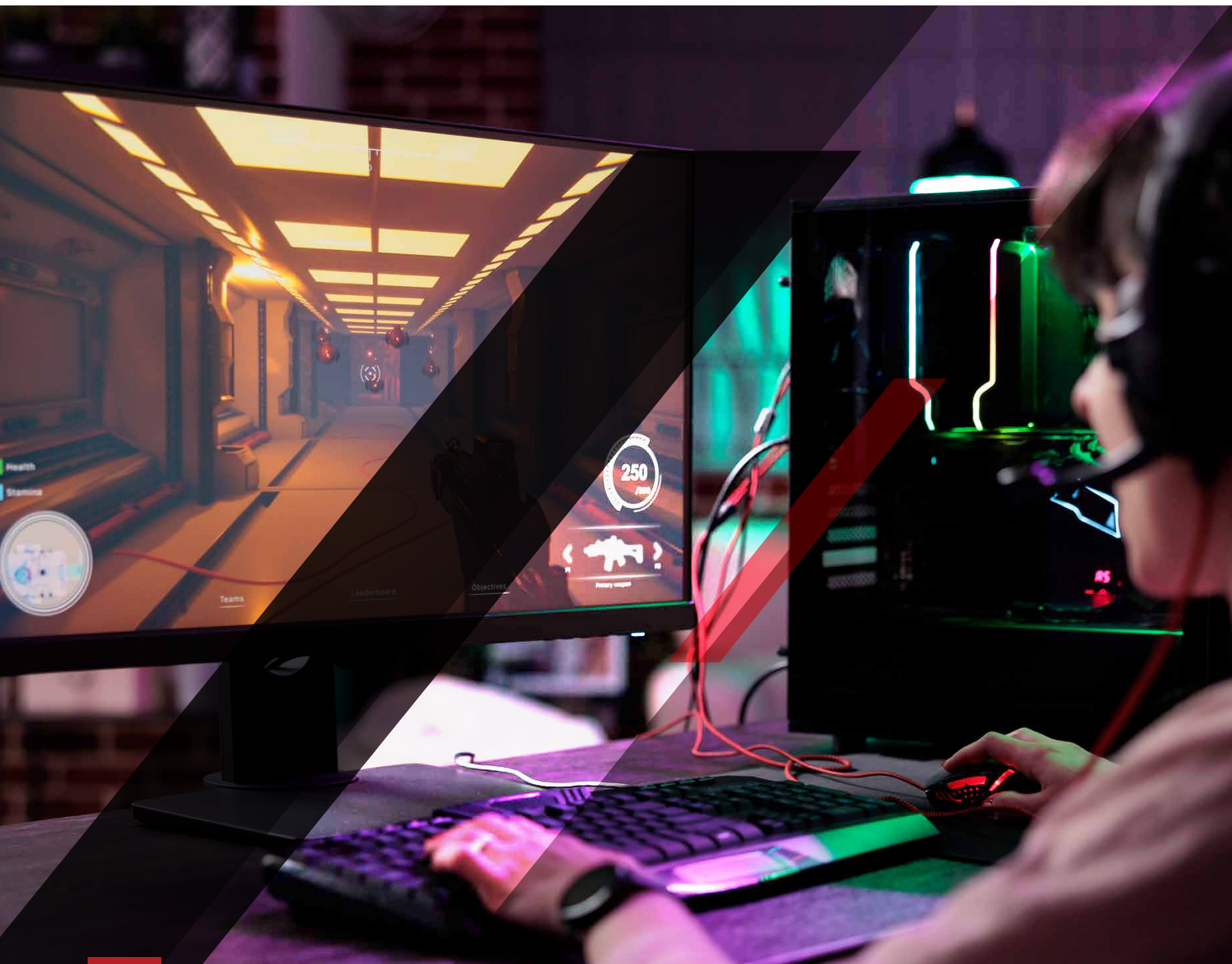
You can access an official copy of the TN Online Gaming Act and the Rules framed thereunder [here](#) and [here](#).

You can read more on this development as reported by Live Law [here](#).

Bihar Police approaches MeitY for banning over a hundred online gaming and digital lending applications

The Economic Offences Unit (“**EOU**”) of the Bihar Police has reportedly approached MeitY to block access to over a 100 online gaming and loan lending applications for allegedly engaging in money-laundering and other illegal activities, thereby posing a threat to the financial and economic security of India. The EOU has approached MeitY requesting it to exercise its powers under Section 69A of the IT Act 2000, which allows MeitY to block access to any information on a computer resource that is *inter alia* prejudicial to the sovereignty and integrity of India and security of India, which according to the Bihar Police includes economic security of India.

You can read more on this development as reported by the Business Standard [here](#).



Cinematograph (Amendment) Bill, 2023 passed by Parliament

The Cinematograph (Amendment) Bill 2023 was passed by Parliament during the Monsoon Session and introduces some vital changes to the Cinematograph Act 1952, some of which are:

- The UA age category has been sub-divided into three age-based categories UA 7+, UA 13+ and UA 16+.
- Previously, a certificate granted to a film by the CBFC was only valid for a 10-year period. The certificate will now be valid in perpetuity.
- Pursuant to Section 6(1) of the Cinematograph Act (which provides revisional powers to the Central Government) having been declared unconstitutional by the Supreme Court, the same has been omitted.
- Most importantly, stricter punishments have now been introduced to curb film piracy. Newly inserted Section 6AA prohibits the use of any recording device with the intention of making or transmitting an infringing copy of a film whereas Section 6AB prohibits the use (and abetting the use) of an infringing copy of a film for exhibiting to the public for a profit at a place not licensed to exhibit films. The contravention of these provisions carries a fine of up to 5% of the audited gross production cost of the film and imprisonment of up to 3 years.

The Amendment bill can be accessed [here](#).

Some noteworthy responses to questions asked in the Monsoon Session

Obscene content on TV channels

Responding to a query in the Lok Sabha, Minister for Information & Broadcasting Shri Anurag Thakur stated that the Government takes appropriate action in case of violation of the Program and Advertising Codes through issuance of advisories, warnings, directing channels to run apology scroll, taking the channels off air, etc. and that during the last three years and the current year such action has been taken in 142 cases.

Blocking of websites and apps under the IT Rules 2021

Responding to a query in the Rajya Sabha, Minister for Information & Broadcasting Shri Anurag Thakur stated that under the provisions of Part III of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, the Ministry of Information and Broadcasting has since December, 2021 issued directions for blocking 635 URLs, including 10 websites and 05 apps.

Regulation of artificial intelligence

Responding to a query in the Rajya Sabha, Minister of State for Electronics and Information Technology, Shri Rajeev Chandrasekhar stated that government is aware that the use of AI raises ethical concerns and risks and the government is currently studying the requirement of a regulatory framework.



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1. 'The Count of Monte Cristo' by Alexandre Dumas.
 2. Rajendra Sadashiv Nikalje Alias Chhota Rajan v. Matchbox Shots LLP, Commercial Intellectual Property Rights Suits (St) No. 14629/2023.
 3. Sony Pictures Animation Inc v. Flixhd.Cc/ & Ors., Civil Suit (COMM) No. 366/2023.
 4. CS(COMM) 724/2017 & I.As. 12269/2017, 12271/2017, 6985/2018, 8949/2018 AND 16781/2018.
 5. Trishul Media Entertainment v. Retrophiles Pvt. Ltd., Commercial IP Suit (L) No. 15922/2023.
 6. Kuldeep Tiwari And Another v. Union Of India, Public Interest Litigation No. 728/2022.
 7. Balmukundacharya Sharma v. Ministry of Information and Broadcasting & Ors., CW No. 615/2023.
 8. M/s Mangalore New Sultan Beedi Works v. State of Karnataka & Others, Writ Petition No. 10870/2023.
 9. All India Gaming Federation v. State of Tamil Nadu, WP. Nos. 13203, 13593, 13720, 13722 and 14704 of 2023.
 10. Probo Media Technologies Private Limited v. Union of India and Ors, CWP-11446-2023.
 11. Social Organization for Creating Humanity v. Union of India, WP (C) 8946/2023.
 12. Section 2(w) of the IT Act, 2000, "(w) 'intermediary' with respect to any particular electronic message means any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message".
 13. Constitution of India, Article 14.
 14. All India Gaming Federation v. State of Tamil Nadu and Others, WP 13203 of 2023.

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