



THE RECAP

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

VOLUME 16: AUGUST 2023

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INTRODUCTION

"Change is the only constant."

This quote by Heraclitus, the Greek philosopher, is a timeless reminder that evolution is permanent. The adage remains profoundly relevant in our ever-shifting world, particularly in light of the recent developments in India's media, entertainment and gaming sector. Some of the recent changes impacting the media and entertainment industry includes the release of new guidelines by the Department of Consumer Affairs, for health celebrities and influencers, as well as steps being taken by the online curated content platforms to comply with the Information

Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**IT Rules, 2021**").

In parallel, the gaming sector, too, witnessed a significant shift with the Central Government imposing a 28% (twenty-eight per cent) Goods and Services Tax ("**GST**") on deposits made in real money games, sending shockwaves through the entire gaming industry.

We have captured more of such happenings in the media, entertainment and gaming sectors over the month of August, 2023 in our sixteenth edition of The Recap.



T-Series copyright infringement case: Delhi HC restrains Goldmines Telefilms from uploading songs of 14 movies

The Delhi High Court (“**Delhi HC**”), responding to a copyright dispute between T-Series and Goldmines Telefilms, has directed Goldmines Telefilms to halt the uploading of songs from 14 (fourteen) Hindi movies on YouTube after T-Series claimed copyright ownership over the songs. T-Series alleged that Goldmines Telefilms uploaded these songs without permission. The court framed key questions regarding the extent of T-Series’ rights to the songs and whether Goldmines Telefilms had the right to independently use the audio-visual songs on platforms like YouTube. In an order by Justice Prathiba Singh on August 01, 2023, Goldmines Telefilms was directed not to upload additional audio or audio-visual content from the movies beyond what was already uploaded on YouTube until the next hearing, maintaining the status quo until the injunction application is resolved. The court noted that analyzing assignment deeds and considering both sides’ arguments would be crucial in resolving the complex issues. The next hearing of the case was scheduled for September 11, 2023.

You may access the Delhi HC order as available on Livelaw website [here](#).

Delhi HC restrains 22 ‘Rogue Websites’ ahead of Asia Cup

The Delhi HC, in its order dated August 02, 2023, has temporarily restrained 22 (twenty-two) “rogue websites” from broadcasting or sharing content related to the ongoing Asia Cup cricket matches. The Delhi HC’s order is pursuant to an interim application filed by Star India and Novi Digital Entertainment seeking relief against unauthorized dissemination of the tournament’s matches. The court’s order emphasises the financial impact of unauthorised broadcasting on the plaintiffs. Domain name registrars have been directed to block the domains and reveal necessary site details. The Ministry of Electronics and Information Technology (“**MeitY**”), the Department of Technology (“**DoT**”), and Internet Service Providers (“**ISPs**”) were also directed to block the sites within 24 (twenty-four) hours. The plaintiffs have also been allowed to identify additional rogue sites for immediate blocking upon notification. The main lawsuit involves summons to the defendants with a 30 (thirty) day window for a response, with the case scheduled for December 19, 2023.

You may access the Delhi HC order as available on the Bar and Bench website [here](#).

Strengthening self-regulation and content ethics for over-the-top Platforms

The Indian Digital Media Industry Foundation (“**IDMIF**”) and the Internet and Mobile Association of India (“**IAMAI**”), two significant organizations in the Indian Over-the-Top (“**OTT**”) ecosystem, have reportedly through separate but similar letters, communicated to the Ministry of Information and Broadcasting (“**MIB**”) that OTT platforms are actively ensuring compliance with the IT Rules 2021. The letters come in response to MIB’s discussion with several online curated content platforms (“**OCCPs**”) about the use of vulgarity, harsh language, and violence in OTT content. Both IDMIF and IAMAI in their letters have emphasized how OTT platforms are committed to adhering to the code of ethics outlined in the IT Rules 2021. The OCCPs are reportedly taking precautions to prevent their content from adversely affecting India’s sovereignty, integrity, or security, and are also being cautious in portraying sensitive subjects. The OCCPs are also taking steps to ensure ethical content creation, including acquainting creators with the code of ethics under the IT Rules 2021 and consulting experts for addressing sensitive topics. IDMIF and IAMAI have additionally promised to strengthen the self-regulatory mechanisms by educating members regarding their duties as OCCPs, advising on age ratings, increasing awareness of access controls, running awareness campaigns, and supervising review procedures.

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

Supreme Court highlights the need for stronger self-regulation code for TV Channels

The Supreme Court (“**SC**”) has asserted the inadequacy of self-regulation within television channels during the hearing of an appeal filed by the News Broadcasters Association (“**NBA**”). The appeal was in respect of a Bombay High Court ruling which contained adverse remarks against the NBA for lacking appropriate deterrents in its self-regulation model for television channels. The bench comprising of Chief Justice of India DY Chandrachud and Justices PS Narasimha and Manoj Misra, has underscored the necessity for stringent rules, noting that the current penalties fail to have a deterrent effect on the TV channels. The court’s concern was evident as it questioned the effectiveness of a meagre INR 1 lakh (one lakh) (approximately USD 1,340) penalty, especially considering the significantly higher earnings of the channels. In light of these issues, the court intends to bolster the regulatory framework, seeking suggestions on the existing penalty for news channels found in violation of NBA guidelines. The court has acknowledged

the submission made by Senior Counsel Arvind Datar, representing NBA, to gather recommendations on self-regulation from former SC judge, Justice AK Sikri, who presently chairs the self-regulatory mechanism.

You may access the SC order and the update as reported by the Economic Times [here](#) and [here](#).

Department of Consumer Affairs releases additional guidelines for health celebrities and Influencers

Department of Consumer Affairs (“**DoCA**”) has recently issued the additional influencer guidelines for health and wellness celebrities, influencers, and virtual influencers (“**Additional Guidelines**”). These Additional Guidelines build on previous regulations to ensure transparency in health-related endorsements. Certified medical practitioners and health experts must disclose that they are certified health/fitness expert and medical practitioner while sharing information, promoting products or services or making any health-related claims. Celebrities, influencers and virtual influencers on the other hand, while presenting themselves or medical practitioners or health experts must provide clear disclaimers that their endorsements aren’t substitutes for professional medical advice, diagnosis or treatment. General wellness and health advice not associated with specific products or services or not targeting specific health conditions or outcomes is exempted from the ambit of Additional Guidelines. Violations of these Additional Guidelines will attract penalties under the Consumer Protection Act, 2019 (“**Consumer Act**”). The Additional Guidelines aim to safeguard consumers and promote transparency in the digital space.

Some key highlights of the Additional Guidelines are mentioned below:

- **Disclosure & Disclaimer:** It is essential for endorsers, such as celebrities, influencers, and virtual influencers, to provide clear and conspicuous disclosures and disclaimers. These are particularly crucial for health claims, endorsements, and promotions.
- **Substantiate Claims:** Endorsers should verify the claims they are endorsing and preferably have prior experience with the product or service.
- **Fact-Based Info:** Information shared should be based on verified facts and any misleading claims should be avoided.
- **Professional Advice Disclaimer:** There should be clear disclaimers stating that the endorsements should not be seen as a substitute for medical advice. Major health-related changes should be consulted with professionals.

- **Clear Positioning:** Endorsers should use qualifications when making endorsements and ensure that disclaimers are both clear and creative.
- **Visible in Ads:** Disclaimers should be prominently displayed in advertisements.
- **Exemptions:** General health advice is exempt from these guidelines. Experts should distinguish between personal views and factual information.
- **Consultation Encouragement:** Endorsers must encourage the audience to consult professionals for complete information.
- **Prohibited Usage Warning:** Endorsers should avoid implying prohibited health uses of products.
- **Cooperate in Investigations:** Endorsers are expected to cooperate in investigations to verify the authenticity of claims. Non-compliance may lead to penalties as per the Consumer Act.

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

Petitions filed in High Courts of Madras and Delhi against the film ‘Jailer’

Madras High Court (“**Madras HC**”)

A public interest litigation (“**PIL**”) has been filed in the Madras HC seeking a direction to the Central Board of Film Certification (“**CBFC**”) to revoke the ‘UA’ certificate (permitting children aged below the age of 12 (twelve) to watch a movie with parental guidance) issued by the CBFC to the Rajinikanth-starrer ‘Jailer’ (“**Film**”). The petitioner argued that the Film’s violent scenes, including beheadings and head smashing, are unsuitable for children under the age of 12 (twelve). The same Film has received an ‘A’ (adults only) certificate in the United States and the United Kingdom. The petitioner prayed to the court for an interim order staying the exhibition of the Film in theatres until his plea to revoke the ‘UA’ certification was considered by the court. The CBFC chairman, the censor board’s regional officer, the Film’s producer, and the director were listed as respondents. During the hearing, the division bench observed that the PIL was misplaced and bereft of public interest and dismissed the same.

Delhi HC

The Delhi HC has directed the creators of the Film, Jailer, to modify a scene that features the jersey of the Indian Premier League team Royal Challengers Bangalore (“**RCB**”). This decision followed a complaint by RCB’s legal representatives, who noticed that a scene depicted a murderer wearing the RCB team jersey. RCB’s lawyers argued that the scene had been included without the team’s permission and could potentially harm their brand.

Both parties' lawyers later informed the court that they had agreed to resolve the matter outside of court. The makers of the Film, Sun Pictures, stated that they would alter the impugned scene in the Film and only such altered version would be disseminated through television and OTT platforms. Additionally, from September 01, 2023, the altered version of the Film was depicted in theatres and cinema halls.

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

You may access the Dehi HC update as reported by Business Today [here](#).

Zero Licence Fee for DTH services – recommendation by TRAI

The Telecom Regulatory Authority of India (“**TRAI**”) has recently issued recommendations aimed at refining the license fee and policy aspects of Direct-to-Home (“**DTH**”) services, in line with structural reforms introduced by the DoT. These reforms encompass the redefinition of key terms such as Adjusted Gross Revenue (“**AGR**”) and the quantum of Bank Guarantee (“**BG**”).

Under the existing policy guidelines governing DTH operations, service providers are mandated to pay a quarterly license fee equivalent to 8% (eight per-cent) of their AGR to the MIB. This fee is assessed as compensation for the privilege of conducting licensed activities. The recommendations outline an enhanced definition of Gross Revenue (“**GR**”), encompassing all earnings from operations and diverse sources without offsetting related expenses.

Moreover, TRAI's suggestions introduce the concept of Applicable Gross Revenue (“**ApGR**”), a critical factor in license fee calculations that involves subtracting specific items like revenue from DoT-issued licenses and government reimbursements. AGR computations are also addressed, excluding GST from the ApGR if it's part of the GST component. TRAI further advocates the MIB's adoption of a revised format for revenue and fee reporting with income heads that are indicative and illustrative, facilitating a fully digital submission process. DTH licensees

are proposed to pay an annual license fee equal to 3% (three per cent) of their AGR, with a phased reduction in the license fee culminating in a complete waiver after the 2026-2027 financial year.

The recommendations also detail BG requirements, suggesting an initial bank guarantee for the first two quarters, followed by a comprehensive BG linked to license fee and outstanding dues calculations. The overarching objective is to ensure the alignment of DTH services with DoT's structural reforms, simplifying administrative processes, clarifying revenue-related definitions, and bolstering the sector's growth and competitiveness. Encouragement of electronic BG underscores the drive for streamlined business operations.

You may access the update as reported by PIB [here](#) and the recommendations by TRAI [here](#).

Delhi HC assured by the centre: Policy to Regulate Online Content on Social Media Platforms

The Central Government has provided assurance to the Delhi HC that it will enact essential rules and regulations within its policy framework for social media platforms and intermediaries. The objective is to cultivate an online environment devoid of vulgar language and profanities. This commitment was conveyed through an affidavit submitted by the MeitY, as a response to the Delhi HC's earlier directives. The court had emphasized the urgency of formulating guidelines to govern content on social media and OTT platforms, particularly in light of impact of explicit language on young audience. In an order issued on August 17, 2023, Justice Swarna Kanta Sharma acknowledged MeitY's submission, recognizing it as a policy decision. The court acknowledged that policymaking falls within the jurisdiction of the ministry and the legislature. This affirmation followed the court's prior ruling concerning objectionable language in the TVF web series 'College Romance', highlighting the necessity for comprehensive content regulation in the digital sphere.

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

Union Cabinet approves the bill on imposition of GST on gaming

Lok Sabha passed the Central Goods and Services Tax (Amendment) Bill, 2023 as well as the Integrated Goods and Services Tax (Amendment) Bill, 2023 approving the proposal of levying 28% (twenty-eight per cent) tax on the face value of bets or deposits made by individuals in online gaming platforms, casinos, and horse race clubs. The tax will apply, irrespective of whether it is a game of skill or chance.

The bills have made significant amendments to the Central Goods and Services Tax ("CGST") Act, 2017 including: inclusion of definition of terms "online gaming, online money gaming, specified actionable claim and virtual digital assets" and changes in Schedule III of the act to include online gaming and horse racing taxable actionable claims; whereas, the amendments to the Integrated Goods and Services Tax ("IGST") Act, 2017 imposes liability on supplies of actionable claims in online gaming by non-resident operators and mandates such non-resident operators to procure GST registration in India (this requirement emanates jointly from amendments to both the aforesaid Acts). The amendments require the states to amend their GST laws in line with the changes made to the aforesaid acts by October 1, 2023, which is when the new regime is likely to come into effect.

It is important to note that the proposal of imposing 28% (twenty-eight per cent) tax on online gaming was initially envisaged by the GST Council in its 50th meeting which had recommended that the tax would apply irrespective of whether the game is of skill or game of chance. Subsequently, in the 51st meeting, the GST council recommended certain additional amendments to the law which are now reflected in the provisions of the bills. These changes have placed onerous tax burden on online gaming companies and other players, disproportionately affecting small entities such as startups.

You can access the CGST amendment [here](#) and the IGST amendment [here](#).

You can access the press release of the 51st GST Council [here](#).

Tamil Nadu Gaming Act challenged in Madras HC

In April, 2023, Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022 ("**TN Online Gaming Act**") was enforced by the Tamil Nadu government ("**State**"). The TN Online Gaming Act prohibits "online gambling" and "playing of any online game of chance

with money or other stakes, in any manner". Subsequently, the All-India Gaming Federation along with other gaming operators such as Gameskraft, Games 24/7 and Head Digital Works (collectively the "Petitioners") filed writ petitions in the Madras HC challenging the constitutional validity of the TN Online Gaming Act on several grounds and sought interim stay on its operation. During the proceedings, the court refused to grant an interim relief and began the final hearing from August 13, 2023 onwards. The case is still on going and is in the stage of final hearing.

- The following arguments were advanced on behalf of the State:
 - The primary argument focused on the addictive nature of games such as online rummy and the alleged lack of any element of skill.
 - There were alleged suicides due to loss of money in games such as online rummy and the enactment of the TN Online Gaming Act would protect the interest of people.
 - The online gaming platforms cannot make profits out of games like rummy, even if they are games of skill.
 - The State has the legislative authority under Entry 34 of List II of the Constitution of India, 1949 ("**Constitution**") to enact the TN Online Gaming Act.
- The following arguments were advanced on behalf of the Petitioners:
 - There is a distinction between online games of skill and games of chance, and merely playing a game of skill with stakes does not convert it to gambling.
 - Additionally, distinguishing between online and offline skill-based games such as rummy is violative of Article 14 of the Constitution.
 - The Central Government already provides a regulatory framework for online real money games through the IT Rules, 2021.
 - The SC ruled that rummy is a game of skill and therefore the State's enactment is inconsistent with the decision of the SC.
 - The Chandru committee which was formed to advise the State Government on the regulation of online games, had failed to consult all stakeholders and did not suggest alternative measures instead of a ban.

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

You can read more about this development as reported in the Hindu [here](#).

Union ministry of finance files a special leave petition against Karnataka High Court's judgment

The GST department has filed a special leave petition ("SLP") in the SC against a ruling by a single-judge bench of the Karnataka High Court ("Karnataka HC"). The judgment passed by the Karnataka HC had quashed the GST show-cause notice issued by the Directorate General of Goods and Services Tax Intelligence ("DGGSTI") GST department against Gameskraft Technologies Pvt. Ltd, ("Gameskraft"), alleging tax evasion of INR 210 billion (Indian Rupees Twenty-One Thousand Crores).

The facts of the case revolved around applicable tax rate on online gaming platforms. DGGSTI was of the view that Gameskraft was involved in betting and gambling and was liable to pay GST at the rate of 28% (twenty-eight per cent) on the full value of the amount staked by users between 2017 and June 30, 2022. Gameskraft contested the levy and approached the Karnataka HC for the show-cause notice to be quashed and set-aside, arguing that a tax rate of 18% (eighteen per cent) was applicable for games of skill like rummy. The Karnataka HC quashed the notice after reviewing the legal position and clarified that games played on Gameskraft's platform are games of skill and cannot be taxed in the same manner as betting and gambling. Accordingly, the show-cause notice was found to be illegal and arbitrary and was accordingly quashed.

You can read more about this development as reported in Business Standard [here](#).

You can read a more detailed analysis of the order issued by the Karnataka HC in this edition of Recap [here](#).

SC dismisses SLP filed against Andhra Pradesh High Court order to form committee to determine if online rummy is a game of skill or chance

The SC dismissed the SLP filed by the Andhra Pradesh government against the order of the Andhra Pradesh High Court ("Andhra HC") to form a committee to determine whether online rummy is a game of skill or chance. SC noted that the order passed by the Andhra HC was an interim order and the committee can proceed to give its report. The SC further directed the Andhra HC to take a fresh look at the matter after such report is submitted by the committee as well as in light of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 notified by the Central Government.

The Andhra HC had passed the interim order earlier in 2023 while hearing writ petitions filed by different online gaming companies who had challenged the amendments made to the Andhra Pradesh Gaming Act, 1974. The amendments equated real-money games of skill such as online rummy with the offence of gambling in the State of Andhra Pradesh. The Andhra HC thereafter issued an order for constitution of 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, to determine if online rummy is a game of skill or game of chance.

You can read more about this development as reported in Bar and Bench [here](#).



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