



## **THE RECAP**

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

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## INTRODUCTION

'Necessity is the mother of invention', a widely used English proverb is not just an encapsulation of age-old wisdom but also a modern-day adaption of the profound teachings of the ancient Greek philosopher, Plato, who once wrote 'our need will be the real creator'. While this is true, Mark Wahlberg's wise words – '...somethings should never be invented' from the classic, 'Transformers: Age of Extinction' strikes a chord equally. Perhaps somewhere between the proverb and the dialogue is where we stand today, trying to draw a balance between the need to innovate on one hand and to curb the ill effects of evolving technology, on the other. Case in point - the growing use of Artificial Intelligence ("AI") and the dichotomy between digital replicas and deepfakes.

With new policies, directives and initiatives in place, November 2023 has been a critical month which has seen

sincere and proactive measures being taken by Ministry of Electronics and Information Technology ("MeitY") to curb the menace of deepfakes in India. Additionally, the month has also witnessed changes in the Goods and Services Tax ("GST") regime all of which social media intermediaries and gaming intermediaries have had to imminently deal with respectively.

At the bottom of each of the measures and orders lies an underlying belief or rather a fact that the world is changing, and perhaps too rapidly for us to catch up on. Whether it's a race against humanity or a long run marathon, is a mystery for time to unravel.

With this thought, we bring to you the nineteenth edition of the Recap, outlining some insightful developments in the media and gaming space from November 01, 2023, to November 30, 2023.



### Government takes initiatives to combat deepfake content on social media platforms

The MeitY on November 7, 2023, issued an advisory to significant social media and internet intermediaries, urging them to take stringent actions against deepfake content under the Information Technology Act, 2000 (“IT Act”) and the IT (Intermediary Guidelines & Digital Media Ethics Code) Rules, 2021 (“IT Rules”).

The advisory urged the intermediaries to exercise due diligence and undertake reasonable efforts to identify any misinformation or deepfakes. Under the IT Rules, intermediaries are required to proactively prevent users from hosting prohibited content and ensure its swift removal within the stipulated timeframe of 36 (thirty-six) hours, upon receipt of a report in this regard. The advisory also sets out that any non-compliance with these requirements will trigger the applicability of Rule 7 of the IT Rules, where the intermediary may end up losing its safe harbor protection under Section 79 of the IT Act.

Following the advisory, the MeitY held a meeting later in November, with the representatives of the internet intermediaries to deliberate upon potential solutions to tackle the concerns around AI and deepfakes, in particular. In the same meeting, MeitY identified four pillars around ‘detection’, ‘prevention’, ‘reporting’ and ‘awareness’, and urged the intermediaries to identify actionable items in relation to these pillars for further deliberation with MeitY in a follow-up meeting, which is yet to be held.

During this meeting, MeitY also committed to commence immediate work on drafting the necessary regulations to effectively curb deepfakes. Though no Standard Operating Procedures (“SOPs”) were established in the said meeting contrary to expectations, some tentative guidelines are expected to be issued for interim regulation till such time that a framework is laid down for this purpose.

The Minister of State for Electronics & IT, Rajeev Chandrasekhar, also took note of non-compliance with the IT Rules by certain intermediaries and advised them to enhance awareness by issuing repeated reminders to the users against posting of deepfakes and also provided 7 (seven) days to intermediaries to align their terms of use with the requirements under the IT Rules. Reportedly, the government has further expressed its willingness to come up with new regulations having penalties for both creators and platforms hosting such deepfakes with a specific focus on measures such as watermarking generative AI content, detection of deepfakes, regulation of data bias, among others.

Furthermore, MeitY has also decided to take other measures to combat the rising instances of deepfakes, such as assisting victims of deepfakes in filing FIRs for violations under the IT Act and establishing a platform intimating the users of any violations of IT Rules by intermediaries.

The measures adopted by MeitY followed the viral circulation of a deepfake video involving actor, Rashmika Mandanna, drawing concern from bollywood actors. The advisory underscores the Government’s push for proactive measures to combat deepfake content proliferation while highlighting legal repercussions and the need for stringent compliance measures.

You can read more about the development as reported by the Press Information Bureau [here](#), [here](#) and [here](#).

You can also read more about the developments as reported by National Herald [here](#), the Economic times [here](#), by Livemint [here](#), and the Times of India [here](#).

### MIB releases Draft Broadcasting Services (Regulation) Bill, 2023

With the objective of modernizing the regulatory framework in the broadcasting sector, the Ministry of Information and Broadcasting (“MIB”) issued a press release introducing the Draft Broadcasting Services (Regulation) Bill, 2023 (“Bill”) on November 10, 2023. This Bill seeks to replace the outdated Cable Television Networks (Regulation) Act, 1995, with a unified and forward-looking approach.

The Bill offers thorough explanations of modern broadcasting terminologies and integrates clauses addressing emerging technologies in the broadcasting domain. In an attempt to boost self-regulation within the sector, the Bill creates ‘content evaluation committees’ and makes the current inter-departmental committee under the IT Rules into a more inclusive ‘broadcast advisory council’. Another key highlight of the Bill is the attempt to facilitate infrastructure sharing among broadcasting network operators and introduces supportive measures for individuals with disabilities.

In addition to monetary penalties, the Bill also introduces statutory penalties including warning, advisory or censure. Most importantly, the Bill builds in equitable penalties by linking financial capacity of entities to ensure fairness and equity. The MIB has also extended an invitation for feedback and comments on the aforementioned Bill from a diverse array of stakeholders, encompassing domain experts, providers of broadcasting services, and the general public by January 15, 2024.

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You can access the Draft Broadcasting Services (Regulation) Bill, 2023 [here](#).

You can read more on the development and key highlights of the Bill as reported by The Press Information Bureau [here](#).

## MIB appoints nodal officers under the Cinematograph Act to look into film piracy

The Cinematograph Amendment Act, 2023 ("**Cinematograph Amendment Act**"), was enacted in the monsoon session (which amended the Cinematograph Act, 1952), addressing film certification issues, unauthorized recording, and film piracy through internet transmission of unauthorized copies, which were aligned with existing laws, including the Copyright Act, 1957 ("**Copyright Act**") and the IT Act.

The newly introduced Section 6AB of the Cinematograph Amendment Act, prohibits the use or facilitation of infringing copies for public exhibition for profit at unlicensed venues, or in any manner constituting infringement under the Copyright Act or any other applicable laws.

Additionally, Section 7(1B)(ii) of Cinematograph Amendment Act, empowers the government to take action against the exhibition or hosting of infringing copies on intermediary platforms in violation of aforesaid Section 6AB of Cinematograph Amendment Act. Pursuant to the power enshrined in Section 7(1B)(ii) of the Cinematograph Amendment Act, the MIB has appointed 12 (twelve) nodal officers to curb online film piracy. It is expected that through such nodal officers, MIB can promptly respond to piracy and provide relief to the industry in a swifter manner.

In this regard, the original copyright holders or their authorized representatives can apply to the nodal officers for takedown requests and upon issuance of directions from the nodal officers, the digital platforms must remove the pirated content within 36 (thirty-six) hours of receipt of such directives. To expedite the process, the copyright holder must include supporting evidence, such as the certificate issued by the Central Board of Film Certification, when filing a complaint.

Further, the Union Minister, Anurag Thakur, has highlighted the significant impact of piracy on the film industry, which led to the passing of the Cinematograph Amendment Act. The Cinematograph Amendment Act includes strict penalties for piracy, with imprisonment of months extendable up to 3 (three) years, along with a fine of INR 3,00,000 (Indian Rupees three lakhs), which may go up to 5% (five percent) of the audited gross production cost.

You can read more on the development as issued by the MIB [here](#).

You can read more on the development as reported by the Livemint [here](#) and Press Information Bureau [here](#).

## DMCRC issues an advisory to OTT platforms

The Indian Broadcasting and Digital Media Foundation's Digital Media Content Regulatory Council ("**DMCRC**"), a self-regulatory body, has issued an advisory to the OTT platforms urging them to exercise due caution and constraint in the process of content creation. The DMCRC has also asked the OTT platforms to avoid depiction of vulgarity or abusive content without any justification. The advisory follows the concern reportedly shared by the MIB over the projection of excessive vulgarity, obscenity, and profanity by OTT platforms in the content hosted by them.

Reminding the OTT platforms of their social responsibility, the DMCRC, through the aforesaid advisory, reportedly instructed the platforms to inter alia observe the following:

- exercise restraint and responsibility while producing content;
- avoid vulgarity and obscenity to the extent possible;
- build an accessible system for lodging content specific grievances;
- strengthen the framework and the functioning of OTT platforms;
- comply with the self-regulation framework including the code of ethics.

You can read more on the development as reported by Exchange4media [here](#), Live Mint [here](#) and the Economic Times [here](#).

## Search or seizure of devices of journalists highly problematic per the apex court

Remarking the search and seizure of devices of individuals, especially media professionals as a serious issue, the Hon'ble Supreme Court of India ("**Supreme Court**") has flagged concerns over such arbitrary seizures and highlighted the need for better guidelines to protect the affected individuals' interests.

During a hearing of a public interest litigation ("**PIL**") filed by the Foundation for Media Professionals, the bench comprising Justices Sanjay Kishan Kaul and Sudhanshu Dhulia discussed the lack of safeguards against unreasonable interference by law enforcement agencies and emphasized on the importance and need for crafting comprehensive guidelines for the search and seizure of digital devices of media professionals.

The PIL raised significant issues related to the threats posed by unmitigated search which paved way for an 'unsettling trend' of intrusive searches by the law enforcement agencies. The petitioner's counsel emphasized concerns regarding the lack of clear guidelines delineating the circumstances under which seizures may occur, defining the permissible scope of information access, and establishing rules to safeguard sensitive data stored on personal digital devices.

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On the contrary, the additional solicitor-general reportedly argued that there were existing provisions allowing individuals whose digital devices were seized to back up their data. However, the learned bench insisted on better guidelines to prevent misuse of the powers of such agencies. The bench also acknowledged the importance of a balanced approach and requested the additional solicitor-general to create guidelines to protect the interests of media professionals in view of privacy being held as a fundamental right.

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

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

## The Delhi High Court bats for mandatory guidelines by the centre on making films accessible to the disabled

While hearing a petition filed under the Rights of Persons with Disabilities Act, 2016, ("**PWD Act**") the Delhi High Court ("**Delhi HC**") has asked the Central Government to make draft guidelines in relation to enhancing the film watching experience for individuals with disabilities, such as visual and hearing impairments, available in public domain. The Delhi HC had also sought a status report on such draft guidelines.

The petition, filed by 4 (four) individuals who suffered from visual and hearing impairments, sought directions from the Delhi HC to make the film 'Pathaan' accessible to them. The petitioners cited the responsibility of the Central Government to undertake measures to ensure access to content to a person under Section 42 of the PWD Act.<sup>1</sup>

In response to the status report sought, the Central Government apprised the Delhi HC of the concerns raised by numerous film producers in relation to mandatory captioning, hefty expenditures and non-availability of technology. The Delhi HC, however, disseminated the argument with respect to the expenditures and technology, particularly for films with high budgets.

During the hearing, the petitioners' counsel also raised concerns over the possible lack of accessibility features in upcoming films until the implementation of the mandatory

guidelines. To this end, the Delhi HC provided the petitioner with the liberty to write to the film producers directly and reach out to the Delhi HC in the absence of a positive response. The matter has been listed for further hearing on January 31, 2024.

You can access the Delhi HC's order dated November 02, 2023 [here](#).

You can read more about the development as reported by The Week [here](#).

## Digital Advertising Policy gets the nod from MIB

The Digital Advertising Policy, 2023 ("**Policy**"), has received an approval from the MIB. This Policy grants authority to the Central Bureau of Communication ("**CBC**"), the advertising arm of the Central Government, to conduct digital media campaigns.

Furthermore, the Policy enables CBC to enlist digital media agencies and organizations in the OTT and video-on-demand space. Notably, it permits the CBC to disseminate its public service campaign messages through mobile-based applications.

In light of the ongoing shift towards digital content consumption, the Policy reflects the Central Government's recognition of the evolving media landscape. It is expected to empower the Central Government to manage its communication efforts in a cost-effective and timely manner.

You can read more on the development as reported by the Press Information Bureau of India [here](#) and can find the Policy [here](#).

You can read more on the development as reported by Inc42 [here](#).

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1. Section 42 of the PWD provides: 'Access to information and communication technology

The appropriate Government shall take measures to ensure that,—

(i) all contents available in audio, print and electronic media are in accessible format;

(ii) persons with disabilities have access to electronic media by providing audio description, sign language interpretation and close captioning;

(iii) electronic goods and equipment which are meant for every day use are available in universal design'.

## Central Government responds to the Delhi HC in the case against the validity of IT Rules

The Delhi HC has received the Central Government's response in the case initiated by the Social Organization for Creating Humanity ("SOCH"). SOCH, an NGO, had contested the constitutionality and legislative validity of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 ("**IT Amendment Rules**"), designed to regulate online gaming.

In a robust defense of its legislative authority, the Central Government referenced the Constitution of India ("**Indian Constitution**"), asserting its power under Entry 31 of List I (Union List) and Entry 97 (residual powers) to regulate online gaming, and stated that online gaming is virtual, boundaryless and part of the internet ecosystem and therefore, it has the power to regulate it.

The Central Government's reply follows SOCH's claim that the IT Amendment Rules surpass the Central Government's legislative authority, resulting in regulatory confusion. This legal dispute has prompted scrutiny of the jurisdictional boundaries between the Central and State Governments in the context of online gaming legislations. Dismissing the plea as a proxy litigation, the Central Government's response argued that SOCH lacked the necessary legal standing to challenge the IT Amendment Rules. On behalf of the Central Government, the MeitY also underscored that the IT Amendment Rules were formulated after extensive consultations with stakeholders, and MeitY had invited public commentary on the draft rules, a stage in which SOCH did not participate.

The Central Government also refuted the NGO's assertion of outsourcing regulatory responsibilities, clarifying that the establishment of self-regulatory bodies is part of a broader framework aimed at fortifying the safety and integrity of online gaming platforms.

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

## MeitY issues blocking orders against 22 illegal betting apps and websites on request of Enforcement Directorate

On November 5, 2023, the MeitY issued orders to block 22 (twenty-two) illegal betting apps and websites including, Mahadev Book and Reddyannaprestopro. The unlawful operations of the betting app syndicate were brought to light through investigations carried out by the Enforcement Directorate ("**ED**"), which were followed by subsequent raids on Mahadev Book in Chhattisgarh.

In this regard, various individuals including a constable from Chhattisgarh Police are currently in custody, having been apprehended under Section 19 of the Prevention of Money Laundering Act, 2002 ("**PMLA**") for the commission of money laundering offenses under Section 3,<sup>2</sup> punishable under Section 4 of PMLA.

The press release issued by MeitY to this end states that despite the State Government having powers to request for the blocking of illegal websites under Section 69A of the IT Act, no action was taken in this regard against the delinquent apps and websites. Through this blocking order, MeitY has expressed its strong affirmation towards curbing such activities at its core.

You can read the press release on this [here](#).

You can read more on the development as reported by Economic Times [here](#).

## Madras High Court upholds TN Online Games Act but says its prohibitions cannot apply to rummy, poker, other games of skill

On November 09, 2023, the Madras High Court ("**Madras HC**") gave its verdict in relation to a number of pleas which were filed earlier this year challenging the validity of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022 ("**TN Online Games Act**"). Chief Justice SV Gangapurwala and Justice PD Audikesavalu declined the plea to declare the TN Online Games Act as unconstitutional. However, it held that both online 'rummy'

2. Section 3 of PMLA provides: Offence of money-laundering.—Whoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

[Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely—

- (a) concealment; or
- (b) possession; or
- (c) acquisition; or
- (d) use; or
- (e) projecting as untainted property; or
- (f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]'

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and 'poker', on account of being games of skill, could not be subjected to the prohibitions which the TN Online Games Act sought to impose.

The TN Online Games Act came into effect from April 21, 2023, and had classified online 'rummy' and 'poker' as 'online games of chance'. Subsequently, various industry associations including All India Gaming Federation and individual online rummy and poker operators had challenged the said classification claiming the TN Online Games Act as ultra vires. It was also contended that games such as poker and rummy were judicially recognised as games of skill and hence the classification cannot be eliminated through a deeming function of the law. The State Government, on

the other hand, *inter alia*, claimed that it had the legislative competence to enact the TN Online Games Act and 'poker' and 'rummy' fell within the ambit of 'betting and gambling' entry under the State List (Entry 34) as provided under the Seventh Schedule to the Indian Constitution.

The Schedule under Section 23 of the TN Online Games Act that categorised online 'poker' and 'rummy' as a game of chance was also struck down by the Madras HC.

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

You can read more about the development as reported by the Indian Express [here](#).



## GST SPECIFIC UPDATES

### Central Government might request the Supreme Court to combine all GST-related online gaming cases

A senior official from the finance ministry revealed plans to consolidate all pending GST related online gaming cases before the Supreme Court. This would also include writ petitions filed by major gaming companies such as Gameskraft, Dream Sports and Delta Corp. The move aims to streamline multiple cases into a single litigation, addressing taxability issues surrounding online gaming. This strategy seeks to avoid conflicting interpretations of the law and expedite a definitive decision by the Supreme Court.

The proposal, is being viewed as a practical measure, owing to various writ petitions filed by multiple gaming entities on similar concerns, reportedly amounting to INR 1.5 lakh crore (Indian Rupees one lakh fifty thousand crores), and aims to save time as well as resources for the Central Board of Indirect Taxes and Customs and all stakeholders involved.

You can read more about the issue [here](#).

### Deltatech Gaming challenge tax notice before Calcutta High Court

Deltatech Gaming reportedly moved to the Calcutta High Court challenging the INR 6,384 crore (Indian Rupees six thousand and three hundred eighty-four crore) tax notice issued by authorities, linked to the GST Council's online gaming tax hike from 18% (eighteen percent) to 28% (twenty-eight percent) as it claimed the same as 'arbitrary' and 'legally unsound'.

The tax demands on gross bet value remains an industry issue, prompting representations to the government.

You can read more about issue [here](#).

### Bihar introduces GST Bill to replace ordinance for levying 28% GST on online gaming

The Bihar government has presented the Bihar Goods and Services Tax (Second Amendment) Bill, 2023 ("**GST Bill**") in the assembly during the winter session, seeking to replace the ordinance with a Bill to facilitate the imposition of 28% (twenty-eight percent) GST on online gaming, racecourses, and casinos in the state.

You can read more on the development as reported by Deccan Herald [here](#).

### Gujarat High Court halts show cause notice to Vision11 and Twelfth Man Fantasy amidst gambling allegations

The Gujarat High Court ("**Gujarat HC**") intervened by issuing an order to temporarily halt the enforcement of a show cause notice directed at fantasy sports operator, Vision11 and Twelfth Man Fantasy which challenged the constitutionality of Rule 31A of the Central Goods and Services Tax Rules, 2017, pertaining to the value of supply in lottery, betting, gambling, and horse racing, which requires issuance of an invoice.

Following arguments from both sides, the Gujarat HC, stayed the enforcement of the show cause notice and temporarily halted further legal proceedings in the case, scheduling a revaluation for January 17, 2024.

You can read more on the development as reported by BQ Prime [here](#).

You can read the order of the Gujarat HC [here](#).



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