



THE RECAP

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ENTERTAINMENT & GAMING
INDUSTRIES' LEGAL UPDATES

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INTRODUCTION

“It is not necessary that the angels and saints of Michael Angelo should be made to wear breeches before they can be viewed.”

- Justice M. Hidayatullah in Ranjit D. Udeshi v. State of Maharashtra¹

In 1964, the Supreme Court of India in the above case held that sellers of the famous D.H. Lawrence novel, *Lady Chatterley’s Lover*, could be prosecuted under the Indian Penal Code 1860 for obscenity. However, the court also observed that courts must apply themselves to consider each work at a time and noted that “condemnation of obscenity depends as much upon the mores of the people as upon the individual”.

Fifty years later, in 2014, the Supreme Court was hearing an appeal² in a case filed against publishers of a magazine which had carried a photo of Boris Becker, the world-renowned tennis player, posing nude with his dark-skinned fiancée Barbara Feltus, a film actress, as a part of an article which discussed racial discrimination. The court quashed the criminal proceedings against the publishers and observed that “while judging as to whether a particular photograph, an article or book is obscene, regard must be had to the

contemporary mores and national standards and not the standard of a group of susceptible or sensitive persons.”

With this food for thought, we present to you Volume XXII of IndusLaw’s The Recap, your round-up of legal updates for the media & entertainment and gaming industries. This edition covers updates from the months of March and April 2024. In line with our discussion in these opening paragraphs, a key theme of the updates for the month of March is the debate and jurisprudence on obscenity – ranging from the Supreme Court’s judgment on the web series ‘College Romance’, to the blocking orders issued by the central government against multiple OTT streaming apps for allegedly obscene content, and the NCPDR’s reservations in relation to the content on the ‘Ullu’ app. The updates from April, on the other hand, are more eclectic developments, comprising *inter alia* of the highly discussed misleading advertisements case against Patanjali; content takedown on the social media platform ‘X’ in light of the ongoing Lok Sabha elections 2024 and WhatsApp’s submissions to the Delhi HC in the “first originator” case.

1. AIR 1965 SC 881.

2. *Aveek Sarkar & Anr. v. State of West Bengal*, AIR 2014 SC 1495.



Supreme Court quashes obscenity case against web series 'College Romance'

The Supreme Court ("SC") on March 19, 2024 quashed the criminal case filed against popular Indian web content company 'The Viral Fever' ("TVF") and some actors in relation to alleged obscene content in the web series, "College Romance". TVF and the actors of the said web series had approached the SC in appeal against a Delhi High Court ("Delhi HC") decision of March 2023 which had directed registration of FIR against them under Sections 67 and 67A of the Information Technology Act, 2000 ("IT Act, 2000").

The initial complaint filed with the Delhi Police had alleged that the web series contained vulgar and obscene language, constituting offenses under various sections of the Indian Penal Code, 1860 ("IPC"), IT Act, 2000 and the Indecent Representation of Women (Prohibition) Act, 1986 ("IRWA, 1986"). TVF and the actors had approached the Delhi HC for quashing this complaint, but the Delhi HC dismissed the petition and directed registration of FIR under Sections 67 and 67A of the IT Act, 2000.

The SC differed with the Delhi HC judgment and held that "profanity is not per se obscene". The SC stated that the Delhi HC equated profanities with obscenity, without undertaking a proper or detailed analysis into how such language, by itself, could be sexual, lascivious, prurient, or depraving and corrupting. The SC further stated that while a person may find vulgar and expletive-filled language to be distasteful, unpalatable, uncivil, and improper, that by itself is not sufficient to be 'obscene'. The SC held that obscenity relates to material that arouses sexual and lustful thoughts, which is not at all the effect of the abusive language or profanities that have been employed in the impugned web series. The SC also reiterated that the standard for determination of obscenity cannot be an "adolescent's or child's mind, or a hypersensitive person who is susceptible to such influences". The Delhi HC was found to have incorrectly used the standard of "impressionable minds" to gauge the effect of the material and therefore, erred in applying the test for obscenity.

The SC's judgment is available [here](#).

A detailed report on this case by Medianama can be read [here](#).

SC takes actions against Patanjali Ayurved in misleading advertisements case, and questions governmental authorities for inaction

In the case of *Indian Medical Association v. Union of*

India,³ the Indian Medical Association ("IMA") filed a petition against Patanjali Ayurved Ltd ("Patanjali") for violating the Drugs & Other Magic Remedies Act, 1954 ("DMR Act"), and the Consumer Protection Act, 2019, by publishing advertisements and making false statements against allopathy and spreading false rumors about COVID-19 vaccines. On November 21, 2023, the SC imposed a temporary ban on Patanjali's advertisements and issued them a notice for publishing misleading claims and advertisements against modern medicine systems. In its order, the SC warned Patanjali that it would impose costs ranging up to INR 1 (one) crore for making a false claim regarding any product that could potentially cure any diseases. Patanjali gave an undertaking to the SC that it would restrain from publishing any such misleading advertisements or making any casual statements to ensure compliance with the SC's order.

Soon after the SC passed the order, the Managing Director and Co-founder of Patanjali namely Acharya Balakrishna and Baba Ramdev made false claims in a press conference. Subsequently, they also published advertisements claiming Patanjali has permanent cures for diseases including diabetes, blood pressure, asthma, arthritis, and glaucoma, most of which are covered under the Schedule of the DMR Act. Following the above infractions by Patanjali, on February 27, 2024, the SC issued a contempt notice to Patanjali, Acharya Balakrishna and Baba Ramdev to show cause why action should not be taken against them for contempt of the SC's order passed in November 2023. Following the issue of the contempt notice, the SC was informed on March 19, 2024, that Patanjali had failed to reply to the contempt notice.

Noting the same, the SC passed an order seeking the personal appearance of Acharya Balakrishna and Baba Ramdev. Upon appearance, Baba Ramdev and Acharya Balakrishna filed their replies, apologizing for their statements. However, in their affidavits, they argued that the DMR Act was an 'archaic' law and has not been amended in light of recent scientific evidence supporting ayurvedic medicines. Additionally, they also claimed that their media department inadvertently published the impugned advertisements as they were unaware of the SC's order passed in November 2023. The SC refused to accept their apologies, stating that they were not 'unqualified' or 'unconditional'. The SC also remarked that non-observance of the law due to it being archaic was not acceptable, especially, given that the advertisements issued by Patanjali were in blatant violation of the said Act. Thereafter, Baba Ramdev and Acharya Balakrishna expressed

3. W.P.(C) No. 645/2022.

an unconditional apology for publishing misleading advertisements and making comments against allopathic medicines in breach of their undertaking to the SC.

They also agreed with the SC to issue a public apology for their actions. Following this undertaking, Patanjali published advertisements apologizing for the “mistake of publishing advertisements and holding a press conference even after our advocates made a statement in the apex court”. However, the SC objected to the small size of the apology issued in the newspapers. A day after the SC’s objection, the company issued another ‘bigger’ apology in approximately 300 (three hundred) newspapers on April 24, 2024, titled “unconditional public apology” on behalf of the company, Baba Ramdev, and Acharya Balakrishna. In subsequent hearings, the SC also questioned IMA on inflated billing and prescription of expensive medicines by the doctors, in cahoots with pharmaceutical companies. The SC also objected to the statements made by the IMA President criticizing the SC. The SC also chided the Union Government and the Uttarakhand state authorities for failing to take any action against Patanjali.

Moreover, in the recent hearing, the SC also asked the Union Government to clarify why the government issued a letter dated August 29, 2023, to state and union territory licensing authorities to not take action against ads pertaining to Ayurvedic and Ayush products under Rule 170 of the Drugs and Cosmetic Rules, 1945 (“**1945 Rules**”), which prohibits the publication of advertisements of Ayurvedic, Siddha, or Unani drugs without licensing authorities’ approval. The Union Government responded to the SC that the letter was issued in line with the Ayurvedic, Siddha, and Unani Drugs Technical Advisory Board dated May 25, 2023, which recommended that Rule 170 of 1945 Rules should be omitted, for already being challenged before several high courts. It also highlighted that the recommendation was issued via a letter since such an omission through an official notification would have taken a considerable amount of time. With ongoing hearings in the case, presently, the case is still pending before the SC, and next hearing is set to take place on July 9, 2024.

The LiveLaw coverage for the case can be viewed [here](#), [here](#), [here](#) and [here](#).

The media coverage in relation to the matter as reported by the Hindu can be viewed [here](#) and [here](#).

SC quashes lower court’s interim order which directed Bloomberg to take down an allegedly defamatory article on Zee

The SC on March 22, 2024, set aside an interim order of an Additional District Judge at Delhi which had directed Bloomberg Television Production India Pvt. Ltd.

(“**Bloomberg**”) to take down an allegedly defamatory article against Zee Entertainment Enterprises Ltd. (“**Zee**”). The impugned order, which was also upheld by the Delhi HC, had restrained Bloomberg from posting, circulating, or publishing the impugned article on any online or offline platform.

On February 21, 2024, Bloomberg had published an article titled “India Regulator Finds \$241 Million Accounting Issue at Zee” which claimed that the Securities and Exchange Board of India (“**SEBI**”) had found “a hole of more than USD 240 (two hundred and forty) million in the accounts of Zee Entertainment Enterprises Ltd.” and also that “diverted funds may be 10 (ten) times of what was estimated initially”. Shortly thereafter, Zee initiated defamation proceedings against Bloomberg claiming that the article was speculative, baseless and published to malign Zee. Zee also claimed that its stock price fell by roughly 15% (fifteen per cent) after publication of the impugned article. On March 1, 2024, an Additional District Judge at Delhi granted an *ex-parte ad interim* injunction in favour of Zee and directed Bloomberg to take down the article.

On March 14, 2024, the Delhi HC upheld the lower court’s order, leading to Bloomberg filing a petition before the SC. The SC while referring to the well-established three-fold test for the grant of interim relief viz. (i) a *prima facie* case, (ii) balance of convenience, and (iii) irreparable loss or harm, stated that in suits concerning defamation by media platforms and journalists, an additional consideration to be borne in mind is the balancing of the fundamental right to free speech with the right to reputation and privacy. The SC observed that the three-fold test cannot be applied mechanically without providing detailed reasons to justify how each prong of the test is satisfied – something which, the SC stated, the trial judge did not do. The SC also stated that an *ex-parte* injunction should not be granted without establishing that the content sought to be restricted is malicious or palpably false.

The SC stated that the Delhi HC also did not properly assess the requirements for granting the injunction and its impact on the right to free speech. The SC also discussed the concept of “SLAPP” suits which stands for ‘Strategic Litigation Against Public Participation’. The term is used to refer to litigation predominantly initiated by entities that wield immense economic power against members of the media or civil society, to prevent the public from knowing about or participating in important public affairs. The SC has now directed the trial judge to rehear the matter bearing in mind the SC’s observations about SLAPP suits and the factors to consider before granting a pre-trial injunction.

The impugned article by Bloomberg is available [here](#).

A detailed report on these proceedings by SCC Online Times can be viewed [here](#).

Central government overhauls film certification process by notifying the new Cinematograph (Certification) Rules 2024

The Union Ministry of Information & Broadcasting (“MIB”) on March 15, 2024, notified new Cinematograph (Certification) Rules, 2024 (“**New Certification Rules**”) in supersession of the Cinematograph (Certification) Rules 1983. The New Certification Rules bring about sweeping changes to the film certification process to make it contemporary and also to ensure ease-of-doing business for the industry.

Unlike the erstwhile 1983 rules that required applicants to submit their certification application in writing, the New Certification Rules provide for an online submission for all applications through a dedicated “E-CinePrmaan Portal” (“**Portal**”) of the Central Board of Film Certification (“**CBFC**”). Further, all applications must be supported by an online submission of, *inter alia*, the film’s synopsis, script, and full text of songs. A statement denoting the film’s duration and incorporation of accessibility features also needs to be submitted on the Portal. The erstwhile 1983 rules left it to the central government to decide on women’s representation in the CBFC. However, the New Certification Rules mandate that one-third of the CBFC members shall be women, and moreover, fifty percent women representation would be preferred. Upon payment of a higher fee, applicants can avail of an expedited certification process, if required.

To align with the Cinematograph (Amendment) Act 2023, the New Certification Rules sub-divide the UA category to introduce three age-based classifications of seven (UA 7+), thirteen (UA 13+), and sixteen (UA 16+) to serve as recommendatory guidance for parents/guardians. The New Certification Rules also have reduced timelines for completing different certification processes and, importantly, provide perpetual validity for CBFC certificates, instead of the 10 (ten) - year period under the erstwhile 1983 rules.

The New Certification Rules can be accessed [here](#).

Central government issues accessibility guidelines for theatrical exhibition of films for persons with hearing & visual impairment

The MIB on March 15, 2024 issued the “Guidelines of Accessibility Standards in the Public Exhibition of Feature Films in Cinema Theatres for Persons with Hearing and Visual Impairment” (“**Accessibility Guidelines**”). The Accessibility Guidelines have been issued under the Rights of Persons with Disabilities Act, 2016 [*specifically under Sections 29 (‘Culture and recreation’), 40 (‘Accessibility’) & 42 (‘Access to information and communication technology’) thereof*] and are applicable to all feature films [i.e., fictionalised story films exceeding 72 (seventy-two) minutes runtime] certified by the CBFC for commercial theatrical public exhibitions.

The Accessibility Guidelines aim to establish a supportive framework for persons with hearing & visual impairment to be able to enjoy films in theatres through the implementation of certain “Accessibility Standards” - not just for film content but also on assistive devices and theatre infrastructure. Feature films will be required to provide (as per the applicable implementation timeline, mentioned below) at least one accessibility feature each for visually & hearing-impaired persons by either using customised equipment in theatres or mobile apps or other technologies during a regular show. The different kinds of accessibility features include (a) “Audio Description”, an auditory narration of visual representations in a film (“**AD**”); (b) synchronized closed and open captions (“**CC**”); and (c) sign language interpretation provided in a “picture-in-picture” mode.

While applying for CBFC certification, producers will be required to submit a “digital cinema package” including the incorporated accessibility features. They will also need to integrate CC/AD and other accessibility features with a suitable software application to allow users to access these features via their personal devices during the film’s screening. Licensees of theatres are also directed to use separate theatre equipment like mirror captions, closed caption stands, headphones for audio description, and smart glasses during the regular shows.

The Accessibility Guidelines will be implemented in a phased manner. Those feature films which are to be certified in more than one language will have to comply within 6 (six) months while others will have to comply within a period of 2 (two) years. Additionally, the theatre owners (exhibitors) will be responsible for forming a self-regulatory mechanism for providing requisite seats with accessibility features within a period of 2 (two) years. From January 1, 2025, films submitted for events like the National Film Awards & International Film Festival will have to comply with the Accessibility Guidelines. MIB will set up a committee to monitor the enforcement of the Accessibility Guidelines and persons aggrieved by its non-implementation may approach this committee if their grievance (first raised with the concerned theatre), remains unaddressed for 30 (thirty) days.

The Accessibility Guidelines are available [here](#)

Central government issues blocking order against multiple OTT platforms for publishing vulgar and obscene content

The MIB on March 14, 2024, issued blocking orders (under the provisions of the IT Act, 2000) against 18 (eighteen) Over-The-Top (“**OTT**”) platforms for “publishing obscene, vulgar, and, in some instances, pornographic content”. A total of 19 (nineteen) websites, 10 (ten) mobile apps [7 (seven) on Google Play Store, 3 (three) on Apple App Store], and 57 (fifty-seven) social media accounts associated with these platforms have been blocked.

The MIB stated in an official press release that the content on these platforms depicted nudity, sexual acts and inappropriate contexts such as relationships between teachers and students or incestuous family relationships. The ban aims to address the demeaning portrayal of women and the presence of explicit content on these platforms, the MIB said. As per the press release, the ban is based *prima facie* violations of Section 67 and 67A of the IT Act, 2000, Section 292 of the IPC, and Section 4 of the IRWA, 1986. As per the press release, these platforms had amassed significant viewership and followers.

The official MIB press release, which includes the full list of the banned platforms, can be accessed [here](#).

Content takedown in the backdrop of Lok Sabha Elections 2024

In light of the ongoing general elections in India, the Election Commission of India (“**ECI**”) issued a letter to social media platform, X (formerly Twitter), ordering it to takedown 4 (four) posts on the platform, by various political leaders, stating that these posts are violative of ‘clause (2) of Part I, ‘General Conduct’ of the Moral Code of Conduct for guidance of political parties and candidates’⁴ as well as paragraph 9(iii) of the ECI’s advisory dated March 01, 2024.⁵ The communication sent to X also reiterated that pursuant to X’s commitment to comply with the ‘[Voluntary Code of Ethics for the General Elections 2019](#)’ (“**Ethics Code**”) (which the signatories had agreed to comply with during all elections), X is required to undertake expeditious action on valid legal requests submitted by the ECI, and make adequate arrangements to safeguard against any misuse of the platform. The ECI highlighted that failure to comply with its directive would lead to a violation of the Ethics Code, and urged X to take necessary action urgently. While X complied with the letter and took down the aforementioned posts from its platform, it issued a [statement](#) expressing its disagreement with the ECI’s orders, and noted that freedom of expression should extend to the aforesaid posts and political speech in general. The statement by X also highlighted that X was publishing ECI’s letters in the interest of transparency, and urged the ECI to publish all its takedown orders in the future.

The Hindu coverage in relation to this update can be found [here](#).

The Indian Express coverage in relation to this update can be found [here](#).

WhatsApp to discontinue its services in India if directed to break encryption

On March 22, 2024, the SC transferred to the Delhi HC a flurry of pleas pending before different high courts challenging Rule 4(2) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

(“**Intermediary Guidelines**”). The Delhi HC has listed these petitions from WhatsApp LLC and Meta for hearing on August 14, 2024. The aforesaid rule requires a significant social media intermediary (SSMI) providing messaging services such as WhatsApp to trace chats and reveal identity of the first originator of information on its computer resources as per a judicial order passed by a court or any competent authority under Section 69 of the Information Technology (Procedure and Safeguards for interception, monitoring and decryption of information) Rules, 2009. In its response, WhatsApp’s counsels have informed the Delhi HC that originator could also be identified through traditional method by examining sequence of senders of a message. Further, it also informed the Delhi HC that complying with the rule for identification of the originator will not only require it to change its privacy policies but will also put encryption at risk. Separately, the counsels also informed the Delhi HC that if WhatsApp is asked to break encryption, it will terminate its operations in India.

The Bar and Bench coverage in relation to the transfer petition can be viewed [here](#).

The media coverage in relation to the matter can be viewed [here](#).

Amicus curiae appointed by Kerala High Court in “review bombing” case submits report on movie reviews by influencers and bloggers

In the ongoing first-of-its-kind case in India on the phenomenon of “review bombing”,⁶ the Kerala High Court (“**Kerala HC**”) in October 2023 had started hearing a petition filed by a film director who sought action against those who maliciously give anonymous bad reviews.⁷ The petitioner had submitted that a differentiation needs to be made between a professional review and a malicious negative personal opinion intended to disparage and hinder the success of a film.

The petitioner Mubeen Rauf is the director of the then yet-to-released Malayalam film ‘Aromalinte Adyathe Pranayam’ and had sought an interim injunction on social media influencers and film reviewing vloggers from publishing any reviews of

4. Clause (2) of Part I, ‘General Conduct’ of the Moral Code of Conduct for guidance of political parties and candidates, states that ‘criticism of other political parties, when made, shall be confined to their policies and programmes, past record and work. Parties and candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism of other parties or their workers based on unverified allegations or distortions shall be avoided.’

5. Paragraph 9(iii) of the ECI’s advisory states that ‘no aspect of the private life, not connected with the public activities of the leaders or workers or other parties is to be criticized. Low level personal attacks to insult the rivals shall not be made.’

6. The phenomenon of weaponizing reviews/ratings with a mala fide intent to tarnish a film/show and its potential business is referred to as “review bombing”.

7. *Mubeen Rauf v. Union of India & Ors.*, WP (C) 32733/2023.

the film for at least 7 (seven) days following its release. The petition was joined by the Producers' Association of Kerala which also presented a similar plea. The Kerala HC had directed the Kerala Police to identify the legal actions that can be taken against individuals who publish anonymous and malicious reviews with the sole intention of denigrating films and extorting filmmakers. The State Government had informed the Kerala HC that it was examining the legal recourses for controlling motivated reviews and suggested that this process should be conducted in consultation with all industry stakeholders, including producers, directors, financiers, and the petitioners, among others.

Since the issue was a relatively new one, the Court had appointed Senior Advocate Shyam Padman as *amicus curiae* to assist the court ("**Amicus**"). At a preliminary stage, the Amicus had suggested that action against anonymous malicious reviews may be taken under the IT Act, 2000 [section 66C (identity theft) and section 66D (cheating by personation)]. The Amicus on March 12, 2024 submitted his report containing some proposed suggestions to curb "review bombing", including the following:

- The Amicus has proposed to distinguish nuanced movie reviews by film critics who are part of the Film Critics Guild, from reviews by social media influencers.
- The Amicus has pointed out that the Department of Consumer Affairs, Govt. of India has taken note of the influence wielded by influencers and bloggers and has issued guidelines regarding advertisements and paid partnership posts. Similar steps must be taken by the MIB.
- The Amicus has also proposed a 48 (forty-eight) hour cooling period for reviews by influencers and bloggers.
- Influencers posting movie reviews should maintain respectful tone and avoid disrespectful language and personal attacks.
- Influencers should provide constructive criticism rather than simply tearing a film apart and consider the impact of their reviews on the film industry.
- Influencers should avoid spoiling major plot points of the film under review.
- Influencers should comply with legal and ethical standards including copyright laws, privacy rights and the community guidelines of the social media platform they use.
- Influencers should use their platforms ethically and avoid sensationalizing and click-baiting.
- Influencers should comply with the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 ("**Endorsement Guidelines**"), as issued by the Central Consumer Protection Authority ("**CCPA**").

You may read a detailed report on this update by Bar and Bench [here](#).

TRAI issues recommendations for establishing a Regulatory Sandbox in Digital Communication Sector

On April 12, 2024, Telecom Regulatory Authority of India ("**TRAI**") released recommendations on 'Encouraging Innovative Technologies, Services, Use Cases, and Business Models through Regulatory Sandbox in Digital Communication Sector'. With evolution of cutting-edge technologies including Artificial Intelligence ("**AI**"), Internet of Things (IoT), Virtual Reality (VR) and Machine to Machine (M2M) Communications in the digital communication sector, it was deemed necessary to provide an environment to test new services, use cases and technologies in a live network. To address the aforesaid need, the Department of Telecommunication (DoT) requested TRAI to provide recommendations on new technologies or services in digital communication sector. Accordingly, TRAI issued a consultation paper on the same subject on June 19, 2023 recommending establishment of a regulatory sandbox, and invited stakeholder comments. Subsequently, the Telecommunication Act, 2023 ("**Telecom Act**") also introduced provisions enabling the government to create a regulatory sandbox. Under the Telecom Act, a regulatory sandbox refers to a live testing environment for deployment of services, product, business models and processes with relaxations from the requirements under the Telecom Act, for a specified period of time ("**RS**"). In line with the aforesaid provisions, the TRAI released its recommendations on regulatory sandbox framework.

As per TRAI's recommendations, all licensed telecom service providers ("**Principal Applicants**") are eligible to participate in the RS framework. Any unlicensed service provider ("**Applicant**") desirous of participating in the RS will be required to engage a Principal Applicant for testing its products on a Principal Applicant's network. In case the Applicant is not able to collaborate with any Principal Applicant or the products do not require the Applicant to associate with a Principal Applicant, the Applicant can apply directly by attaching documents demonstrating its efforts for engaging a Principal Applicant. Entities applying for testing in the RS must be an Indian national or a company incorporated under the Companies Act, 2013 or a partnership registered under the Partnership Act, 1932. Further, RS will also include a live testing environment for any digital communication services or technologies which may require regulatory and licensing relaxations. Digital communication technologies, which are currently not subject to any licensing or regulatory requirements can be tested by the telecom service providers themselves, in compliance with rules issued by any regulatory or governmental agency.

Applicants are required to provide certain essential details in their application for RS including (a) requisite exemptions

from existing regulatory regime that might be applicable to them currently; (b) details of limited testing of the products; (c) scope of testing the product; (d) risk mitigation measures; and (e) exit strategy. Any permission granted for testing of products under the RS will only be valid for 12 (twelve) months, extension of the permission will be subject to the discretion of a competent authority. As part of the recommendations, TRAI has asked the Government to adopt the aforesaid framework for establishing a regulatory sandbox in line with the digital communication sector.

You can access the TRAI's recommendations on 'Encouraging Innovative Technologies, Services, Use Cases, and Business Models through Regulatory Sandbox in Digital Communication Sector' [here](#).

TRAI issues a Consultation Paper on 'National Broadcasting Policy 2024'

On April 02, 2024, TRAI, issued a consultation paper on 'Inputs for formulation of National Broadcasting Policy 2024' ("**Consultation Paper**"), in furtherance of a letter by the MIB to the TRAI on the MIB's intent to formulate a national broadcasting policy ("**NBP**"). *Vide* this letter, the MIB sought TRAI's inputs under Section 11 of the TRAI Act, 1997, pursuant to which, TRAI issued a [pre-consultation paper](#) on September 21, 2023, through which it invited comments on issues which need to be considered for the NBP. After taking into consideration stakeholder comments, the TRAI has now issued the Consultation Paper which *inter alia*, highlights pertinent issues prevalent in the broadcasting sector with an objective of making India a 'Global Content Hub'.

The Consultation Paper seeks to put in place a policy roadmap for achieving strategic objectives of attracting investment, fostering innovation, facilitating job creation and nurturing skill development, and strengthening the public service broadcasting. While several issues have been raised in the Consultation Paper, some key issues highlighted for consultation include: (a) provisioning of affordable television services in 'TV Dark' households; (b) augmenting R&D capabilities in India and promoting indigenous manufacturing of broadcasting equipment; (c) employment generation with emphasis on skill development; (d) promotion of innovation led start-ups and small and medium size enterprises; and (e) what measures can be taken to promote the uplinking of television channels owned by foreign companies from India, given that MIB has revised its Uplinking/Downlinking Guidelines in 2022 to ease out restrictions on uplinking, with an aim to make India an 'Uplinking Hub'.

Additionally, *vide* the Consultation Paper, TRAI has sought suggestions on policy and regulatory aspects that should be adopted for the orderly growth of online gaming in

India, given that online gaming is a dynamic sector with potential for contributing to the economy. TRAI has also sought suggestions on what measures are required to support local game developers to compete and grow, and safeguards that can be implemented to protect general public (especially underage players) from negative and psychological side effects, while promoting healthy gaming.

TRAI has invited stakeholder comments on the Consultation Paper which were to be submitted by April 30, 2023.

The Consultation Paper can be viewed [here](#).

Legal dispute between Ilaiyarajaa and Echo Recording Company

A division bench of the Madras High Court ("**Madras HC**") is currently hearing an appeal against a single judge's order made in 2019 ("**2019 order**"). The appeal is filed by Echo Recording Company ("**Echo**") against Ilaiyarajaa, an Indian musician and composer, challenging a 2019 order which recognised Ilaiyarajaa's 'special, moral right', over 4,500 (four thousand and five hundred) songs composed by him for more than 1,000 (one thousand) movies between the 1970s and 1990s. The Madras HC has passed an interim order and has noted that musicians cannot claim 'sole ownership' of songs because lyrics also play a crucial role in songs. The Madras HC has also ordered that all commercial transactions between Ilaiyarajaa and music streaming platforms would be subject to the outcome of the Echo's appeal. Echo had argued that the rights for the songs lie with a film's producer since the composer for their work is compensated by such producer, and that the composer i.e., Ilaiyarajaa here, has rights over the melody, and not complete rights over the songs. However, Ilaiyarajaa's counsel made reference to Section 1 of the Copyright Act, 1957 ("**Copyright Act**") and argued that the copyright for Ilaiyarajaa's compositions would remain with him regardless of any agreements the film producers enter into. The next hearing on this matter has been scheduled for June 13, 2024.

The Hindu coverage in relation to this matter can be viewed [here](#).

Films and TV in courts: A roundup

CBFC modifies dialogues in the theatrical cut of the trailer of 'Crew'

As per news reports, the CBFC replaced several dialogues in the theatrical cut of the trailer of 'Crew' as the CBFC deemed certain explicit dialogues unfit for public consumption. The CBFC replaced dialogues which contained explicit words and phrases.

A report on this by *The Times of India* can be read [here](#).

Telangana High Court refuses to stay the release of the film "Razakar: A Silent Genocide of Hyderabad"

The Telangana High Court ("**Telangana HC**") dismissed a PIL seeking a stay on the release of the film "Razakar: A Silent Genocide of Hyderabad". The film depicts events in the erstwhile Hyderabad State under Nizam rule after India gained independence.

The petitioner claimed that the film has the potential to incite communal feelings, create animosity among communities and result in disturbances to law and order. However, the Telangana HC observed that the certificate issued to the movie by the CBFC was not challenged and that the petitioner cannot demand a stay based on the trailer of the film. The Telangana HC also observed that the film was granted an 'A' certificate by the CBFC.

A report on this by *The Times of India* can be read [here](#).

NCPCR writes to MeitY for action against OTT platform "Ullu"

The National Commission for Protection of Child Rights ("**NCPCR**") has written to Ministry of Electronics and Information Technology ("**MeitY**") to take action against OTT streaming platform "Ullu" for allegedly distributing explicit and inappropriate content without proper age verification mechanisms. "Ullu" offers viewers adult-centric

movies and series. NCPCR said it has been receiving complaints against "Ullu" for lack of age verification measures thereby making inappropriate content accessible to children.

NCPCR has requested MeitY to initiate measures against Google Play Store and Apple App Store for enforcing stricter age verification mechanisms for individuals accessing "Ullu" and other similar applications.

A report by *Economic Times* on this development can be read [here](#).

Multiple leading OTT platforms approach Delhi HC against "cyberlocker" websites

Netflix, Disney, Amazon Content Services, Warner Bros. and five other OTT platforms approached the Delhi HC seeking a permanent injunction against "cyberlocker" platforms/websites hosting pirated content infringing the companies' copyright. The petition mentioned multiple 'cyberlocker websites' operating in India that facilitate the unauthorized hosting, uploading, storing, sharing, streaming, and downloading of pirated copyrighted material. The Delhi HC on March 22, 2024 directed the infringing websites like 'doodstream.com', 'dood.stream', 'doodstream.co' and others, as named by the petitioner companies, to takedown the pirated content within 24 hours.

A report by *SCC Online Times* can be read [here](#).



MIB and CCPA issue separate advisories against advertisements of online betting and gambling platforms

The CCPA, the statutory body under the Consumer Protection Act, 2019 and the MIB released separate advisories in March 2024 advising against direct and surrogate advertisements of online betting and gambling platforms. Though this is the first CCPA advisory in this regard, the MIB has issued five advisories in the past against advertisements of betting and gambling platforms, with the first such one coming out in June 2022. Both the advisories refer to penalties under different applicable laws, including under the Consumer Protection Act 2019.

The CCPA advisory cites Clause 9 of the Endorsement Guidelines which specifically prohibits advertisements of services that are barred from being advertised, produced or sold under applicable laws. It also states that endorsement of betting and gambling platforms by celebrities lends an impression that such activities are acceptable and legal. Accordingly, endorsers and advertisers have been cautioned against such promotion or risk being liable under applicable laws. The CCPA advisory also points out that the Endorsement Guidelines are medium-agnostic and hence the restrictions apply to all mediums including cable TV, radio, print and online media.

The MIB advisory referenced the aforesaid CCPA advisory and reiterated the obligation of all intermediaries (including advertising intermediaries since regulation of "online advertisements" now falls under MIB's purview) to expeditiously remove unlawful content after being apprised of the same by the appropriate government. The MIB advisory expressly directs endorsers and social media influencers to refrain from promoting online betting and gambling platforms including by way of surrogate advertisements. Social media platforms have been directed to conduct sensitization efforts among their users to prevent them from publishing such content.

The CCPA advisory can be viewed [here](#)

The latest MIB advisory can be viewed [here](#)

Recent developments in relation to GST notices to online gaming companies

The SC, on April 05, 2024, transferred 27 (twenty-seven) writ petitions pending across 9 (nine) State High Courts, challenging the levy of 28% (twenty-eight per cent) Goods and Services Tax ("GST") on all forms of online real-money gaming. Chief Justice of India, D.Y. Chandrachud, noted that the intent behind such transfer was that it would be

more beneficial for the SC to hear the matter and deliver an authoritative ruling, given the probability of different High Courts delivering varying judgments on the same issue. These petitions will now be tagged with the pending petition at the SC against Karnataka High Court's decision of quashing a GST show-cause notice amounting to INR 21,000 (twenty-one thousand) crores against Gameskraft Technologies Private Limited ("**Gameskraft**") on the ground that online or electronic or digital Rummy played on Gameskraft was not taxable as a betting or gambling activity. Detailed arguments were heard on the matter on May 02, 2024, and has now been tentatively listed for hearing in July.

Separately, on a related note, Gameskraft has obtained favourable opinions from retired SC judges, Justice MR Shah and Justice R Subhash Reddy vis-à-vis the matter concerning the tenability of GST show-cause notice pending before the SC. While Justice MR Shah, in his opinion, highlighted that, games of skill (even if played for stakes) is not gambling, both, Justice Shah and Justice pointed to the inapplicability of the Skill Lotto case to assess issues concerning online skill gaming.

The Supreme Court order in relation to the transfer petition can be viewed [here](#).

The Bar and Bench coverage in relation to the transfer petition can be viewed [here](#).

The media coverage in relation to the Gameskraft matter can be viewed [here](#).

Central GST authorities write to MeitY to block 60 offshore gaming platforms for non-compliance with registration requirements under GST laws

As per news reports, the central GST authorities have written to MeitY, urging it to block 60 (sixty) offshore online gaming/gambling platforms for their alleged failure to register under the revised GST framework for the sector.

As per the 2023 amendments to the Integrated GST Act 2017 ("**IGST Act**") which came into force from October 1, 2023, foreign online gaming/gambling not having a physical presence or a representative in India are required to appoint a representative to pay the requisite GST dues and also register with the GST authorities. Non-compliance with these provisions entails blocking of their platform(s) in India.

As per news reports which quoted an official privy to the matter, while 60 (sixty) platforms are to be blocked for

their failure to register themselves, these are in addition to around 110 (one hundred and ten) other foreign online gaming platforms that are allegedly facing similar action. Investigations by the Indian Cybercrime Coordination Centre under the aegis of the Union Ministry of Home Affairs are currently ongoing for these 110 (one hundred and ten) platforms.

An exclusive report by NDTV Profit in this regard can be viewed [here](#)

ED likely to summon several Bollywood celebrities as prosecution witnesses in Fairplay case

As per news reports, the Enforcement Directorate (“ED”) is scrutinising the endorsement contracts of several Bollywood celebrities with the FairPlay app (allegedly a part of the Mahadev Online Book group) for assessing the modalities of the transactions and payment modes used by FairPlay to pay them for promoting the app. This scrutiny is aimed at ascertaining whether illegal proceeds were used to compensate the celebrities to identify possible money laundering. This is also because ED’s earlier investigation had revealed that promoters associated with the Mahadev Online Book utilised funds from several shell companies to pay the celebrities.

A news report on this by the Free Press Journal can read [here](#).

EGF and NLU-D announce collaboration to submit recommendations on a new regulatory framework for online gaming

With recent news reports claiming that MeitY is planning to institute an “independent regulator” for regulating the online gaming sector, the E-Gaming Federation (“EGF”) has reportedly partnered with the National Law University, Delhi (“NLU-D”) to submit its recommendations to the central government in this regard.

As per news reports, the proposed regulatory body is expected to regulate the sector by allowing only “registered entities” to offer online gaming products in India. To aid the central government in drafting a new set of regulations for the sector on these lines, the EGF has partnered with NLU-D to submit recommendations after consulting industry stakeholders. The recommendations are likely to be submitted after the 2024 general elections.

Earlier, in April 2023, the Intermediary Guidelines were amended to prescribe a co-regulatory model for the online gaming sector whereby ‘online real money games’ were proposed to be verified as ‘permissible online real money games’ by MeitY-designated self-regulatory bodies (“SRBs”). However, no SRB has been notified yet by MeitY and recent reports have claimed that it is MeitY’s intention to scrap the SRB framework altogether.

A relevant report by the Indian Express can be viewed [here](#)

A report by the Economic Times on the EGF-NLU-D collaboration can be read [here](#)

Prime Minister meets online gamers; EPWA makes representation on regulatory framework for gaming in India

In April 2024, Prime Minister Narendra Modi invited several Indian gamers for a freewheeling chat wherein he noted that while the gaming space in India does not require regulations for its oversight, bringing it under an organised legal structure would uplift the sector.

On a related note, the E-Gamers and Players Welfare Association (“EPWA”) has written a letter to the Prime Minister, highlighting several facets which must be considered for a holistic regulatory framework for governing gaming in India. The letter *inter alia* states that issues around (i) use of deep fake and protection of user’s data; (ii) online abuse of children and women; (iii) flouting of anti-money laundering provisions by offshore gaming companies; (iv) high taxation on gamers; (v) violation of exchange control laws by gambling companies; and (vi) need for no-bot certificates in gaming, are some of the pertinent issues that must be tackled with in the proposed regulatory framework. The EPWA has advocated for a holistic and comprehensive framework for governing the gaming sector, covering multiple facets such as data protection, content moderation, consumer protection, age-gating, and mitigation of harm, given the dynamic nature of the sector itself.

Prime Minister’s interaction with Indian gamers can be found on the YouTube channel [here](#).

Other media coverage for these updates can be viewed [here](#), and [here](#).

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