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Games Law Explainer 2024
The Indian Position

NOIDA | NEW DELHI | MUMBAI | BENGALURU

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I. Overview



1. The Indian Government recognizes online gaming segment as having the potential to make significant contributions to the Indian economy through FDI investments, employment opportunities and revenue generation for the government. Recent industry report estimated that the Indian gaming community comprises ~425mn gamers in FY 2023 with a y-o-y growth @ 4-5%.¹ This segment has cumulatively attracted investments close to USD 1.9 mn between FY20- FY23. According to another industry report,² this segment is expected to reach USD 4.6 bn by 2025 at a Compound Annual Growth Rate of 21%. With increasing acceleration in internet access in India, as well as ~548mn smartphone users, approximately~430 mn unique downloads of gaming apps took place in in FY23.
2. Till now, real money gaming (RMG) sub-segment is dominant with a market share of 82.8% in FY23. Indian developers and publishers have thus, till now, focused on the RMG segment. Even the Statutes, Regulations and Policy initiatives have, till now, revolved around addressing the concerns of the RMG segment. The Government as well as the enforcement machinery (through the Judiciary and Law Enforcement Agencies) has focused on curbing illegal betting / gambling so as to protect and promote legal RMG online games.
3. Four major lobby groups represent the majority online gaming companies in India - the Internet and Mobile Association of India (IAMAI), the Federation of Indian Fantasy Sports (FIFS), the E-Gaming Federation (EGF) and the All India Gaming Federation (AIGF). As has been the theme, their focus has also, till now, revolved around lobbying for legitimizing RMG games of skill and to shed the baggage of illegal betting / gambling for such games. Their voluntary code of ethics has become the industry standard in protecting consumer interest and creating a healthy online gaming environment in India.
4. However, identifying the immense potential of non-RMG games, the Indian Government in its recent Consultation Paper has sought industry views on promoting Indian developers and publishers. The Government recognizes that popular online games are all developed in foreign countries as Indian developers lack the expertise and the wherewithal to market, distribute and manage their gaming communities in the absence of support from independent publishers. The discussion around promoting Indian developers and independent publishers has thus commenced in India. The focus is slowly shifting from the debate on illegal gambling / betting versus legal RMG games, to means and ways to tap into the revenue potential of the online gaming industry.

References:

¹Ernst and Young, *Navigating the evolving landscape for online gaming in India*, (December 2023), available at <https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/news/2023/12/ey-new-frontier-online-gaming-report.pdf?download>

²FICCI and Ernst and Young, *#Reinvent: India's Media and Entertainment Sector is Innovating for the Future*, (March 2024) [116], available at <https://assets.ey.com/content/dam/ey-sites/ey-com/en_in/topics/media-and-entertainment/2024/03/ey-in-india-s-media-entertainment-sector-is-innovating-for-the-future-03-2024-v3.pdf?download>

II. Illegal Betting / Gambling versus Legal RMG Online Games



(a) *Games of chance versus Games of mere skill*

5. Pre-independence, the Public Gambling Act, 1867 prohibited gambling, wagering, and betting on games whose outcome depended upon an element of chance. Staking money on horse racing, and games of 'mere skill' involving money, were excluded from the scope of the Act. Judicial interpretations adopted the predominance test to assess whether a game is a game of 'mere skill'. Thus, games that may have an element of chance but predominantly involved skill were excluded from the prohibition under the Public Gambling Act. The rationale behind this test is that a pure game of chance is entirely passive with the participant not having any control or having little determinative control in maximizing their expectation of success. On the other hand, games which require a predominant degree of skill, involving the use of strategic thinking, analysis of gameplay, accounting for rules of the game, time constraints, etc., fell in the category of permissible games of skill.
6. After India gained independence, it followed a federal structure and gambling activities became the subject of State laws. Consequently, the position of the law on exemption to gambling laws varies across states. Barring six (6) states, all States and Union Territories in India have adopted the same principles as enshrined in the Public Gambling Act, 1867, as a part of their local laws. What this means is that in all these states, games of mere skill involving money can be offered. Two (2) states - Sikkim and Nagaland - have legalized betting, wagering and gambling as well, through strict licensing regimes. The State of Goa also has casinos but those are on territorial waters and not on land. On the other hand, four (4) states - Orissa, Assam, Telangana and Andhra Pradesh - have gone the other extreme and prohibited games of mere skill if they involve any form of real money. Thus, in these four (4) states, only free online games of mere skill are permitted, and not their paid versions.
7. Judicial attention has mostly focused on whether an online game falls within the prohibition or exemption under these gambling laws. Till now, litigations have

revolved around assessing that card games such as Rummy and Poker, and online fantasy gaming platforms like Dream11 and MPL, are games of mere skill. The online gameplay of Poker and Rummy has also been held to be legal by various High Courts. However, in context of the specific state legislations categorizing online Rummy and Poker to be prohibited games of chance, the issue is currently pending before the Supreme Court of India.

8. RMG online games in India is thus understood in this context - as involving games of mere skill where real money is involved as a stake. Lobbying efforts to legitimize such RMG games of mere skill led to the introduction of the Online Gaming Intermediary Rules (OGI Rules) under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, administered by the Ministry of Electronics and Information Technology. More about this is discussed in Part V(a).

(b) *Prohibited advertisement versus legitimate brand extension*

9. Advertisements of products or services that are otherwise prohibited from being produced, sold, or provided under any law in force in India is barred under the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 framed by the Central Consumer Protection Authority (CCPA) under the Consumer Protection Act, 2019. Notably, these Guidelines apply agnostic of the medium of dissemination of the advertisement. Violations could lead to stringent actions against the manufacturers, advertisers, publishers, intermediaries, social media platforms, celebrities, influencers, endorsers, and other relevant stakeholders. This includes penalties ranging up to USD 13,300 along with imprisonment for up to two years and up to USD 60,000 for repeated contravention along with imprisonment for up to five years.
10. However, these Guidelines permit the mere use of a brand name or company name which may also be applied to goods, product or service whose advertising is prohibited or restricted, if such advertisement is not otherwise objectionable as per the provisions set out in these guidelines.

11. Current efforts of the industry stakeholders and the Indian Government are aimed at taking action against advertisements of illegal gambling and betting platforms in India camouflaged as legitimate brand extensions but bordering on illegal prohibited advertisements. As recently as 6th March 2024, the CCPA issued an advisory titled “Prohibition of advertising, promotion, and endorsement of unlawful activities, particularly betting and gambling.” It strictly warned relevant stakeholders against promoting or advertising or endorsing betting or gambling activities including any betting or gambling platform.

appropriate government authority, net sales turnover amounting to USD 600,000 nationally or USD 120,000 per state, of the brand extension if it is in the market for more than two years, and USD 20,000 per month from launch if the product is yet to complete two years since launch, demonstration of investment exclusive to the advertised brand extension, evidence of board resolution and purchase orders, evidence of turnover being greater than (ten)10% of the turnover of the same brand in the restricted category, among others.
12. Similarly, the Ministry of Information and Broadcasting (MIB) has also, time and again over the last few years, issued various advisories prohibiting the promotion and advertisement of betting and gambling by gaming platforms, including by way of surrogate advertisement (for instance, advertisements as a sports news platform while primarily being a betting platform). In fact, the MIB has also in the past directed Google to stop displaying surrogate advertisements of betting companies such as Betway, Fairplay, PariMatch, and 1xBet on its platforms citing that gambling in any form, be it online or offline, is illegal in India.
13. Ads of legitimate brand extensions are also regulated by voluntary Self-Regulating Advertising Code issued by the Advertising Standards Council of India (ASCI). ASCI’s Guidelines for Qualification of Brand Extension- Product of Service (‘Brand Extension Guidelines’) prohibit any advertisements which even indirectly promotes production, sale or consumption of prohibited products. It also provides various conditions for advertising brand extensions of such prohibited products, which includes omission of any reference to the prohibited product, no indirect promotion of prohibited product, no use of colors or layouts as used with the prohibited product. Only permissible depiction being depiction of the permitted brand extension and not the prohibited product.
14. Clause 3.6(a) of the ASCI Code has also prescribed an objective criteria for a brand extension to qualify as one that is permissible - registration with the

(c) *Regulating promotion of Legal RMG online games*
15. The Guidelines for Advertisement of “Online Games for Real Money Winnings” issued by ASCI, ensure that advertisements of online RMG are not misleading or harmful to society or individuals. They provide restrictions on depiction of minors in advertisements of online RMG, as well as provide certain print as well as audio/video disclaimers as well as their format requirements, that must accompany every advertisement of online RMG. Importantly, the Guidelines provide that no advertisement should present online games for real money winnings as an income opportunity or an alternate employment option.
16. The IAMAI’s Guidelines of Advertisements adopted by the FIFS strictly provide that advertisements should not target minors or induce them to engage in gaming, should not publish information that aids or facilitates gambling, should not use phrases like “try your luck”, “get lucky”, “you can win big”, etc., which compromise on the skill element and link such services with gambling and lottery. Adoption of these Guidelines by the industry associations is a positive step towards responsible advertisement and promotion by online RMG platform providers in India.
17. India follows the Goods and Services Tax (‘GST’) regime, governed under the Central GST Act, 2017. Under this regime, a GST Council makes recommendations on the taxes to be levied, goods and services that

(d) *Taxation of, and FDI in, Online Gambling Games*

may be taxed or exempted, as well as any other matter relating to goods and services tax.

18. In its 50th Council Meeting held on 11th July 2023, the GST Council recommended uniformly and retrospectively taxing all online games at a common rate of 28% on the full-face value of bets placed, irrespective of it being a game of skill or a game of chance. The CGST law was accordingly amended. For context, previously, games of chance were taxed at a rate of 28% whereas games of skill were taxed at a rate of 18%. Legal challenges against this recommendation are pending before the Supreme Court of India.
19. In India, according to the Foreign Exchange Management (Non-Debt Instrument) Rules, 2019, FDI is barred in entities that engage in:
 - a. *Lottery business, including online lotteries etc., and*
 - b. *Gambling and betting including casinos.*
20. Moreover, even technological collaborations in any form, including licensing trademarks, brand names, or franchise for a lottery or gambling/illegal betting business is prohibited. This, however, is not applicable in case of games of skill.

III. Law on Prize Competitions in India



21. Prize Competitions in India are regulated under the Prize Competitions Act, 1955. The Prize Competition Act is applicable in the following states- Andhra Pradesh, Maharashtra, Tamil Nadu, Orissa, Uttar Pradesh, Madhya Pradesh, Gujarat, Punjab, Delhi, Himachal Pradesh, Tripura and Manipur. Per the Act, a prize competition is any competition in which prizes are offered for solving a puzzle such as crosswords, missing words, or any such similar puzzle competitions. However, the value of prizes cannot exceed one thousand rupees and requires obtaining a license to run such competitions.
22. However, considering that this is an old legislation pre-dating the internet, it would be an interesting challenge for the courts to interpret this statute in the context of web-based puzzle games (for e.g., Wordle). Arguably, the statute is broadly worded (or to put it in different terms, lacks any specificity with respect to the mode of the puzzle games) and may be considered to extend to puzzle competitions online. In such a scenario, the providers of a puzzle game which amounts to a 'prize competition' would have to comply with the statutory requirements.

IV. Intellectual Property Protections



(a) Patent Law

23. In India, Patent protection is governed under the Indian Patents Act, 1970. Subject to ineligible patent matter, any novel product or process novelty involving an inventive step and being capable of industrial application is eligible to be a patentable invention. Relevant to the games industry, a mere scheme or rule or method of performing mental act or method of playing game is not an invention. A mathematical or business method or a computer program per se or algorithms are also not an invention.
24. Until recently, computer-related inventions were surrounded by a cloud of confusion regarding their patentability. This cloud was cleared in 2019 when the term “per se” was interpreted to mean that a computer program or software that provides a technical effect or a technical contribution will be patentable as an invention [Ferid Allani v. Union of India]. The technical effect or contribution can be demonstrated by showing that the invention solves a technical problem, enhances a technical process, or has some other technical benefit. Higher speed, reduced hard disk access time, more efficient database search strategy, data compression techniques, improved user interface, among others, has been held to successfully establish technical effect or technical contribution [Microsoft v. Assistant Controller].
25. This has opened significant value for seeking protection for computer-related inventions in the gaming space. Various inputs of games, gaming apparatus, as well as gaming systems have been granted patents in India. Mere search of the keyword “gaming” provides twenty-six (26) granted patents, and for “online gaming” provides one (1) granted patent. Apart from granted patents, there are >200 published patent applications that throw up when searching for “gaming”.

(b) Copyright Law

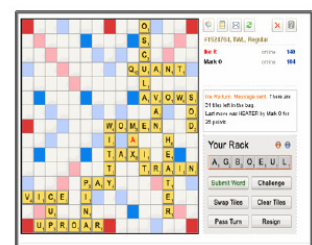
26. The Indian Copyright Act, 1957, governs copyright protection over original literary, artistic, musical, and dramatic works; sound recordings; and cinematograph films. The Copyright Act also covers protection

over neighboring rights viz. performer’s rights and broadcast reproduction rights. Computer programmes, tables and compilations including computer databases are protected as literary works.

27. The scope of exclusive rights for each category of protected works is different. For example, the exclusive right to sell or commercially rent or offer for sale or commercially rent is available to owners of computer programmes, cinematograph films and sound recordings only. The adaptation right, on the other hand, is not available to sound recordings and cinematograph films. As opposed to the open-ended fair use exceptions under US copyright law, Indian Copyright Act has limited and delineated exceptions to copyright infringement under Section 52.
28. Efforts have been made to seek exclusive copyright protection over various elements of games, including their artistic look and feel, text outputs, graphical user interfaces, videos and animations of gameplay, underlying computer software, etc. In *Mattel v. Jayant Agarwalla*, the popular word-forming board game “Scrabble” sought a permanent as well as a preliminary / temporary injunction against an online clone calling itself “Scrabulous”. The Delhi High Court was called upon to adjudicate whether the unique grid consisting of diagonally crisscrossed colored boxes, color scheme of the board, the use of patterns of arrangement of colored tiles, the rules of the game etc., whether combined as well as individually, would be protectable under copyright law.



SCRABBLE



SCRABULOUS

29. Denying a preliminary injunction on copyright grounds (though granting one on trademark grounds, discussed later), the Delhi High Court held that the idea-expression dichotomy and the merger-doctrine preclude protection to game rules, or to the diagonal color scheme with values for words on a board, which are merely an expression of the rules. The Court held that if these rules, which form the only method of expressing the underlying idea of the game are given a monopoly, then there will only be one such game, which is not the intent of the law. Importantly, this was only a preliminary finding in relation to motion for preliminary injunction. The Court felt that the issue merited trial and accordingly, the parties were relegated to a trial. Interestingly, prior to trial concluding, the parties settled their disputes. Scrabulous agreed to not only change its title but also make changes to the board - different tiles to be played at each turn, different points system, different tile distribution, different pattern on the board, and the game to be offered only in digital form and not in the physical board form.
30. Relevant to the online games industry, under Indian Copyright Act, the underlying source and object code of a graphic user interface (GUI) is protected as a literary work. However, there is a debate as to whether the said protection over the software automatically protects the displays generated by the said software. The sequence of images depicted as part of screen display through the software, if original, could be copyrightable as an artistic work. However, if the image depicted as part of screen display is an essential part of game play, or is a depiction dictated by the rules of the game, or is a method of operation, it would not be protectable, due to the idea-expression and the merger doctrine in Copyright law. This, however, does not preclude protection of elements in GUI which are beyond rules and involve an element of skill and judgment. This was discussed in *Hulm v. Fantasy Sports*.
31. This case concerned protection and infringement of the graphical user interface (GUI) as well as trading features of a fantasy sports mobile application EXCHANGE22 claimed to be unique combination of fantasy sports league with stock exchange, by another fantasy sports mobile app MYFAB11. The Delhi High Court had to adjudicate whether a detailed concept note explaining the working of the gaming platform, as well as its graphical user interface is protectable under Copyright law [*Hulm v. Fantasy Sports*].
32. While assessing originality from a reasonable readers perspective the Court held that the trading features and concept note lacked originality as they were in existence apriori. On the aspect of GUI, the Court observed that a GUI comprises of three components potentially eligible for copyright protection: (i) a computer program; (ii) artistic/graphic elements of the visual display; and (iii) text / literary works visible to users. None of these were found infringed by MyFAB11. Upon reviewing GUIs of other third-party apps in the market, the Court further opined that there are a limited number of ways to convey certain key features / elements of fantasy cricket gaming (such as number of balls to be played, constitution of teams, scores, etc.) and as such, there is inevitable overlap in the expression of these ideas by market players. Thus, insofar as expression of these ideas or broad features is concerned, the Court invoked the doctrine of merger and refused to confer monopoly over such ideas to EXCHANGE22. There is an interim stay by the Appeal Court. The Appeal is pending adjudication.
33. An interesting case [*Cashgrail v. Blue Horizone*] pending before the Delhi High Court deals with a claim filed by a leading online games company - "Zupee" over its skill based online game - "Ludo Supreme". Zupee asserts that the game mechanics, the game play, its look and feel, the arrangement not limited to combination of colors, shapes, layouts, etc. but along with several other features depicting behavior of different game elements, that deviate from traditional Ludo, are Zupee's original expression, protectible under copyright law. Infringement by Ludo Tournament is alleged on grounds of identical number of moves / game plays, placement of features on the board, the point system, the set of instructions etc. Blue Horizone is asserting that granting the claim would lead to a monopoly on a traditional game of Ludo. This case is pending adjudication.

34. While GUI may be protectable under India copyright law as also design law, there is a thin balancing line to be navigated. Indian copyright law bars copyright protection of any artistic work that is registered under Designs Act, 2000. If an artistic work is capable of being registered as design under the Designs Act, copyright shall cease to exist as soon as the article to which the design is applied is reproduced more than fifty times by an industrial process by the owner or a licensee. According to Courts, however, the Copyright Act does not exclude from its ambit, protection of the “artistic work” upon which the design is based and even if original drawing may be used to industrially produce an article, such drawings would continue to be artistic works which are protected under Copyright law. [Microfibres v. Girdhar, Mody Pumps v. Sovereign Pumping]

(c) GUI protection – design law and passing off

35. Rule 10 the Design Rules, 2001, has aligned the classification of designs in India with the Locarno Classification as published by WIPO, for the purpose of design registration. In view of that, now there is provision for registration of design of GUI under Class 14-04 ‘Screen Displays and Icons’ [which includes Augmented reality GUI (for screen display), GUI, Graphic Symbols for screen display, icons and web banners] and Class 32-01 ‘Graphic Symbols and Logos, Surface Patterns, Ornamentation’ of Locarno Classification.

36. Courts have also recognised that the process of application of the subject design i.e., GUI on the finished article is a mechanical and manual process (embedding of the source code in the micro controllers/processors), falling within the scope of “industrial process” and is thus, protectable as a design under the Designs Act, 2000. [UTS Global (Singapore) Pt. Ltd. v. Controller of Patents & Designs & Ors.]

37. Interesting, passing off in relation to GUI can be shown by comparing the step by step sequential screenshots of GUI of rival gaming applications, and if it is found that all essential elements of Claimant’s GUI is copied by infringer, it would be infringing, especially if arrangement of elements,

sequence of elements, color combination of icons, pattern of artistic elements, and indentations and embellishments of fonts are all copied. These indicate the intention to misrepresent by trading over goodwill and representation of the Claimant.

(d) Trade Mark Law

38. The title and sub-title of the game, catch phrases associated with the game, logo/device, short sound jingle associated with the game, distinctive color combination, a distinctive 3D object in the game having a unique shape, among other components, are all protectable as a trademark under the Indian Trade Marks Act, 1999. This helps to exclusively use and commercialize these elements as a source identifier. Registration of a trade mark is considered prima-facie evidence of validity but common law rights of passing off, unfair competition, unjust enrichment, and commercial misappropriation are also available in respect of unregistered trademarks.

39. Courts regularly grant injunctive relief to game developers against deceptively similar source identifiers. Use of the mark “Baazi” by Winzo Games was permanently enjoined in light of trademark infringement claims by PokerBaazi which had a slew of trademarks with Baazi as a prominent feature. ‘Baazi’ is a hindi word **बाज़ी** that means ‘to bet’. Winzo’s assertions of descriptive use were rejected, and the Delhi High Court held Baazi to have acquired secondary meaning as well as a distinctive identity associated with Pokerbaazi. The injunctions to use of Baazi in the name, as a keyword, as a hashtag, as a metatag or as a domain name, among others [Moonshine v. Tictok Skill Games]. Even use of a trademark by a competitor as a keyword or an ad word, has prima facie, been held to be infringement [Head Digital v. Tictok Skill Games]. Moreover, use of Scrabulous was held to be deceptively similar to Scrabble, phonetically as well as semantically. Thus, the Court granted an injunction due to a likelihood of confusion, as well as due to the finding that people found and played Scrabulous on the basis of web search for online Scrabble. [Mattel Inc. v. Jayant Agarwalla]

40. Courts have also, regularly, granted injunctions in favour of gaming app developers against Rogue Websites/Apps/ social media handles which replicate artistic features, or have a similar trade name. These injunctions have even been applicable against Internet Service Providers directing them to block such rogue websites and domains.

(e) *Personality Rights in Context of Online Games*

41. Violation of the right of publicity is considered on the touchstone of the common law wrong of passing off and is weighed against the 'right to freedom of speech and expression' enshrined under Article 19(1)(a) of the Constitution of India. In the context of online games, in a case (*Digital Collectibles v. Galactus*) concerning usage of images and attributes of personalities of cricket players on an online digital collectibles platform, the Delhi High Court ruled that in absence of a specific legislation, the right to publicity / personality cannot be deemed an absolute right in India. Rario claimed it exclusively owned certain personality rights of players through licenses, and thus has exclusive rights to offer player cards along with artworks of such player images and attributes. Rario sued Striker for offering player cards that used player names along with artwork depicting the player, and other attributes of various cricketers for which Rario had exclusive rights without a license.



42. The Court held that Striker uses publicly available player information, not exclusive to Rario. Facts available in the public domain, such as match information or player statistics, cannot be owned, even if used for commercial gain by a third party. The Court further concluded that using celebrity names and images for lampooning, satire, art, scholarship, music, academics, news and other similar expressive purposes, even if commercial, would be permissible under Article 19(1)(a) of the Constitution of India,

and hence would not impinge upon the right of publicity. It held that in the absence of statutory legislation for protection of personality rights, the only common law protection available to player attributes is in the context of endorsement. On facts, it held that usage of player attributes by Striker did not amount to endorsement. While the appeal against this judgment was pending, Striker ceased to operate as a platform. The Appeal was thus dismissed as infructuous, with all questions of law left open to be decided in a future case.

(f) *IP and Generative AI*

43. Authorship of an underlying, i.e., literary, dramatic, musical, or artistic work can only be claimed by a natural person in India and does not lie with a juristic person. However, in the case of cinematographic films and sound recordings, producers, who may be juristic entities, can claim authorship.

44. Considering the number of Gods and Goddesses in India, Indian Courts have extended the concept of juristic personality to non-living entities to protect ancillary interests of living beings that are co-mingled with the non-living entity. For instance, religious idols have been granted juristic personality to collectively protect the interests of devotees that are connected to the protection of the idol. As Artificial Intelligence models govern legal relations between multiple stakeholders, it is possible that, legal personality is extended to AI models.

45. Use of copyrighted works for training Generative AI models is a continuous subject of debate in India, and the Union Government in India has maintained a stand that the existing IP regime is well equipped to deal with such questions. Possibly, use for training generative AI models is likely to be protected by the idea-expression dichotomy, as Indian law protects extracting information, embedded in expressions. However, the rights granted to an author/owner of a work include "storage" in any material form. Thus, unless the storage is transient or incidental, a legal claim may lie against storage of copyrighted works for training purposes.

46. Unlike US copyright law, India does not recognize a broad “transformative use” exception to copyright law. However, there is at least one judicial precedent in the context of guide books (Cambridge vs. B.D. Bhandari) recognizing that use of copyrighted works for a transformative purpose is beyond the scope of protection of the copyrighted work and does not amount to infringement.
 47. India allows circumventing technological protection measures for purposes that are not prohibited under the Copyright Act, so long as the person undertaking or facilitating the circumventing maintains proper data about the request for circumvention along with other details. However, removing of Rights Management Data may expose one to criminal liability.
 48. Outputs generated by Generative AI models, if substantially similar to a copyrighted work, would be infringing under Indian law. However, if the allegation is that the output is merely based upon a copyrighted work, unless substantially similar, it would probably not be infringing of the adaptation right under Indian law.
- (g) *IP Remedies*
49. Claimants can claim a variety of remedies for infringement under IP laws in India. For copyright and design infringement, a Claimant can seek injunctions, damages, and account of profits as reliefs. For trademark and patent infringement, a Claimant can seek injunctions, delivery up and either damages or account of profits.
 50. Due to the poor judge:population ratio, grant or denial of an interim injunction (or preliminary / temporary injunction as known in other jurisdictions) assumes significance in India as a remedy for IP infringement claims. Indian Courts have been open to granting various unconventional and innovative forms of injunctive relief including:
 - a. Dynamic Injunctions: Orders blocking content with reference to the specific URLs of Rogue Websites.
 - b. John Doe Injunctions: ex parte injunctions issued when the Defendant is unidentifiable.
 - c. Dynamic + Injunctions: Injunction against mirror/redirect/alphanumeric variations of websites, which provide a new way of accessing same primary infringing websites which are already enjoined. These include for future works.
 - d. Global Injunctions: Indian Courts have granted global injunctions which effectively allows blocking of infringing URLs on a global scale – by directing the domain name registrars to block a rogue website.
 51. Though damages jurisprudence is not yet mature in India, Courts have increasingly started granting notional damages or compensatory damages, as well as punitive or aggravated damages in Intellectual Property disputes.
 - a. For calculating compensatory damages, Courts consider the quantum of lost profits suffered by the injured party, profits earned by the infringing party as a result of the infringement, accrued license/royalty amount, duration of infringement, intent component, as well as mitigating conduct.
 - b. In cases where no evidence of quantity of loss is provided, Courts have also granted notional damages, including lawyer fee, basis a sum that the court deems to be fit in the situation.
 - c. Notably, Indian Courts have also granted punitive and exemplary damages especially in cases of repeated and habitual infringers, both in copyright as well

V. Regulatory and Policy Landscape



(a) *Rules governing Online Gaming Intermediaries*

52. The Information Technology Act, 2000 (IT Act), governs obligations of online intermediary platforms. Safe harbor against actionable claims was introduced in the IT Act in 2008 whereby exemption from liability was provided upon compliance with certain rules and regulations. Till April 2023, the Information Technology (Intermediary Guidelines and Digital Media and Ethics Code) Rules, 2021 governed intermediaries (including significant social media intermediaries), and publishers of online curated content and news and current affairs. In April 2023, amendments were notified with a view to specifically regulate online gaming intermediaries and online real money game providers in India. The portion of these Rules specific to online games (known as Online Gaming Intermediary or OGI Rules in short) classify games into four broad heads namely (i) online games, (ii) online real money games (RMGs), (iii) permissible online games, and (iv) permissible online real money games. Broadly online games refer to a game offered on the internet and accessible through a computer resource or an intermediary platform, whereas online RMGs are online games which involves users depositing certain sums of money, with an expectation of earning winnings on the said deposit. Permissible online RMGs are Online RMGs that are verified by an online gaming self-regulatory body, recognised under the OGI Rules.

53. OGI means an intermediary platform that enables access to online games. OGIs have publication obligations (platform's rules and regulations, user agreements, privacy policy, etc.), content obligations (inform users to not host, display, upload, modify, publish, transmit, store, update or share certain type of information, particularly those which cause user harms), and grievance redressal obligations (set up grievance redressal mechanisms as per the OGI Rules). Pertinently, in so far as content obligations are concerned, OGI are not only required to inform their users not to upload certain type of information but are mandated to 'make reasonable efforts by itself' to not have such information available on its platforms.

54. OGIs that permit access to online RMG on their platforms are also obligated to:

- a. Appoint a Chief Compliance Officer to ensure compliance with Rules. The CCO must be key managerial personnel or any other senior employee resident in India.
- b. Appoint a nodal contact person for 24x7 coordination with law enforcement agencies and the government. Such a person must be an employee who is resident in India.
- c. Appoint a Resident Grievance Officer responsible for managing the grievance redressal functions. RGO must be an employee who is resident in India.
- d. Publish periodic monthly compliance reports.
- e. Have a physical contact address in India.
- f. Shall enable users to voluntarily verify their accounts (including through Indian mobile number) and thereby provide with a demonstrable and visible mark of verification.
- g. Publish policies regarding withdrawal, usage, deposit, and protection of funds; and know-your-customer procedures.
- h. Identify and verify users prior to accepting any deposit in cash or kind from them.
- i. Not finance by way of credit or enable finance to be offered by third party for purpose of playing online RMG games.

55. Specifically in respect of Online RMGs, the game providers are mandatorily required to obtain and display a verification mark, granted by a notified self-regulatory body. This verification is to confirm that the online RMG is a game of skill and does not involve wagering or betting on any outcome and is thereby compliant with the Rules. Unfortunately, the self-regulatory body mechanism is not yet operational as the Government has not yet notified any SRB. However, online RMG are being offered currently in India after certification from gaming associations whose standards have been accepted industry wide.

56. The OGI Rules, to the extent that they create a framework for regulating online games by classifying online game providers as intermediaries under the Information Technology Act, 2000, have been challenged before the Delhi High Court by a Non-Governmental Organization, claiming that the Rules traverse beyond the mandate of the statute, which only governs intermediaries and not online games platforms. The matter is pending adjudication.

(b) IMAI Voluntary Code Of Ethics For Online Gaming Intermediaries

57. Internet and Mobile Association of India (IAMAI) is a non-profit industry body representing interests of the online and mobile services industry. IMAI has formulated a voluntary code of ethics for online gaming intermediaries, which has been signed by the leading online games industries bodies including the All India Gaming Federation (AIGF), E-Gaming Federation (EGF), and the Federation of Indian Fantasy Sports (FIFS).

58. General compliances provided within this voluntary code include advising users on responsible gaming practices, allowing users to set time or spend limits, age gating i.e., providing safeguards – like restricting minors from online RMGs, ensuring real person participation in online RMGs, undertaking KYC procedures, and preventing money laundering or other unlawful activities. This Code also provides guidelines for responsible advertising, as well as safe, secure and reliable gaming.

59. As mentioned previously, till the SRB is notified by the Government, many online RMG providers are ensuring compliance with industry codes such as the ones published by IMAI and other industry associations, which have received wide-spread acceptance.

(c) OGIs And Consumer Protection

60. A person who purchases a subscription to, or make any other in-app purchase in, an online game falls within the definition of a consumer for the purposes of the Consumer Protection Act, 2019 (CPA). However, in a case where the person gains

access to the online game for free, merely with an option of in-game purchases (and has not made any such in-app purchases), the application of the CPA is more nuanced. It is only when the player makes in-game purchases, the player would qualify as a consumer within the Act. This is for the reason that a consumer is defined to include only such persons who buys goods or avails services for a consideration to be paid. Its largely understood to mean monetary consideration.

61. Online games which operate on a free-to-play basis offer various in-game purchases in the form of loot box/loot crate, wherein users can buy these loot boxes using in-game currency and redeem them later. To obviate any liability under the CPA for conducting a “game of chance”, adequate disclaimers and/or provisions disclaiming the nature of the prizes / loot which a user may acquire from a loot box, along with details of the odds / chances of acquiring a particular item, should be provided.

62. If an individual purchases an online game for streaming or participating in e-sports tournaments for earning their livelihood, the individual could be considered a “consumer” under the CPA. By contrast, purchasing multiple n online game subscriptions for organizing tournaments or for providing such games in parlors/cafes, i.e., with the purpose of earning a profit, would arguably not be within a consumer under the Act. This is for the reason that buying of goods or availing of services for commercial purposes is not within the scope of CPA, but when such good or service is used to earn livelihood by means of self-employment, then it is covered within the CPA. Notably, Courts in India have clarified that consumer complaints against foreign companies are maintainable under the CPA [Trans Mediterranean Airways vs Universal Exports]. In other words, an entity which owns/operates or makes available an online game, irrespective of being located out of India, can be brought under the ambit of CPA. Enforceability of any orders against such foreign entities may be an issue. However, there is precedent in other areas (site blocking orders) where lack of compliance with orders by Indian courts, when foreign entities were targeting Indian audiences and earning revenues from India)

was sufficient ground for the Government to take action and direct internet service providers to block access to online platforms of such foreign companies in India (Star v mhdvtv.com; Dabur v Ashok Kumar - where NameCheap was blocked as it failed to comply with orders of the Delhi High Court to block and suspend domain names of rogue websites infringing copyright).

63. The scope of consumer rights under the CPA is extremely wide. Consumer's right to be informed has been elevated to an enforceable right under the CPA. The CPA further protects not only against defective products or deficiency in services but also against misleading advertisements, unfair trade practices, and unfair contracts. Claims under CPA can be brought in by consumers for, inter alia, defect or imperfection in quality, quantity or standard of goods as required by law or claimed by trader; deficiency or inadequacies in quality or manner of service; harm i.e., damage to property, personal injury or mental distress arising out of the product; misleading advertisement; as well as unfair trade practice i.e., unfair or deceptive methods adopted to promote sale or supply of goods or services, including misleading offers, games of chance or lotteries etc. Specific rules have been framed under the CPA governing E-commerce transactions and obligations of marketplace and inventory based ecommerce entities, multi-level marketing through Direct Selling schemes, and permissible surrogate advertisements and legitimate brand extensions.

64. Importantly, a consumer has two parallel regimes to redress their grievance under the CPA - to approach Consumer Dispute Redressal Commissions (that have been constituted at District, State and National levels) or to approach the Central Consumer Protection Authority or the CCPA (that is a Government Regulatory tasked with investigating and adjudicating consumer harms). The Consumer Commissions are judicial bodies adopting summary procedures for redressing consumer grievances. They have powers to grant injunctive relief including but not limited to removal of defects or deficiencies, payment of refund or replacement, recall of goods, cease manufacturing, corrective

advertisements. They can also award damages and costs. The CCPA, on the other hand, has an investigative arm and an adjudicatory quasi-judicial arm. The CCPA's powers are as wide as that of India's anti-trust regulator. In addition to all the powers available with the Consumer Commissions, the CCPA can also conduct search and seizure, take suo moto action to protect consumer rights, to issue Guidelines to prevent unfair trade practices and protect consumer interests, advise Ministries on consumer welfare measures, recommend adoption of international practices, spread awareness on consumer issues, etc.

(d) Regulation Of Dark Patterns

65. The CCPA notified the Guidelines for Prevention and Regulation for Dark Patterns, 2023 under the CPA. These Guidelines apply to -

- a. platforms i.e., an online interface in the form of a software including websites and applications;
- b. advertisers i.e., the designer, producer or publisher of advertisements to promote sale of goods or services; and
- c. sellers and service providers.

Thus, these Guidelines apply to gaming platforms, their advertisers, as well as advertisers who promote their products on these platforms.

66. The Guidelines prohibit persons from engaging in any dark pattern practice notified in the Annexure. The Annexure also provides illustrations to explain such dark patterns. Illustratively, the dark patterns mentioned include prohibition of:

- a. False Urgency, i.e., intentionally creating a sense of urgency or scarcity to manipulate users into making immediate purchase decisions;
- b. Basket Sneaking, i.e., adding extra items or charges to a user's purchase basket without explicit consent to increase in payable amount;

- c. Forced Action, i.e., requiring users to engage in additional transactions such as subscribing to unrelated services or sharing personal information without explicit consent;
- d. Subscription Trap, i.e., making it tough to cancel subscriptions or indirectly compelling to retain subscriptions;
- e. Bait and Switch, i.e., initially presenting a favorable outcome and suddenly switching it to a less favorable one during the process- e.g., cancelling initial discount on promotional product;
- f. Nagging, i.e., continuously bothering users with repetitive notifications or requests without their consent to drive transactions and for commercial gains.

These are merely illustrations and not exhaustive. The Guidelines provide various best practices that could be adopted to avoid contravening these prohibitions.

- 67. The CCPA can investigate into any allegation of contravention of these guidelines or any platform or seller engaging in dark patterns. If CCPA finds sufficient evidence of contravention of the guidelines, or engagement of dark patterns, it may issue orders mandating discontinuation of the said practice. Moreover, in context of advertisements, if CCPA determines an advertisement to be deceptive, it can issue directions to either cease or modify advertisements associated with dark pattern practices and also fine up to approximately USD 12,000. Contravention of CCPA orders can lead to a further fine including the remedy of imprisonment for a period of six months.

(e) Privacy And Data Protection In India

- 68. India adopted the Digital Personal Data Protection Act, 2023 (DPDPA) in August 2023. However, the DPDPA is yet to come into force and the Rules for its implementation have not been released by the Government. This Act has come in the wake of the Supreme Court of India declaring Right to Privacy to be a Fundamental Right under the Constitution of India. While various concepts of the DPDPA align with global

privacy legislations, such as notions of “Personal Data”, “Data Fiduciary”, “Data Principal”, certain peculiar requirements are provided in the Indian law. Thus, gaming operators should ensure compliance independently with the DPDPA, irrespective of their compliance with global regulations like GDPR.

- Notice Requirement

- 69. Under the DPDPA, platforms are required to provide users with a comprehensive privacy notice containing details of the types of personal data being collected, purposes for which the personal data will be processed, details on the mechanism of withdrawing consent and addressing grievances, and guidance on the procedure of lodging complaints with the Data Protection Board of India created by the DPDP Act and yet to be notified Rules. Importantly, this notice ought to be provided in English or any language provided within the Eighth Schedule of the Constitution of India, as chosen by the User.

- Consent Requirement

- 70. Blanket consents are rendered insufficient under the DPDPA, and personal data can only be processed with explicit consent and for legitimate purposes that are specified.
- 71. The consent must be free, specific, informed, unconditional, unambiguous, with a clear affirmative action, must signify agreement to process the personal data for the specified purpose and must be limited to personal data necessary for the specified purpose.
- 72. Operators may process personal data without consent, however, for legitimate purposes provided under the DPDPA, including for compliance with legal obligations or court orders. Identifying and using personal data obtained from publicly available sources is exempt from DPDPA obligations.
- 73. As a compliance measure, operators should revise their privacy policies, clearly explaining the rationale behind data processing, and consider discontinuing the collection of non-essential personal data for

unrelated commercial purposes.

- Approach towards data from minors.

74. DPDPA introduces significant changes by imposing specific obligations in relation to the collection and processing of personal data belonging to minors which, under Indian law, covers those below the age of 18 years. These are specifically relevant for online games which are targeted towards and attract a considerable number of teenage users.

75. Operators must obtain verifiable consent from a parent or guardian. They should also refrain from processing data that may adversely affect a minor gamer's well-being. Finally, operators are prohibited from engaging in behavioral monitoring or targeted advertising directed at minors.

76. A method for ensuring verifiable consent as proposed by the Indian Government is resort to the Digilocker App, where parents/guardians can add their child's Aadhaar details. Aadhaar is a 12-digit individual unique identification number allocated by issued by the Unique Identification Authority of India on behalf of the Government of India. Another method is the industry creating an electronic token system, subject to government authorization, wherein a consent manager would tokenize a user's government ID into an encrypted format.

- Consent Managers

77. Unique to India, DPDPA, requires a 'Consent Manager' who is a person registered with the Board and acts as a single point of contact to enable a data principal to give, manage, review and withdraw her consent through an accessible, transparent and interoperable platform.

78. Consent Managers are required to obtain registration from the Data Protection Board under the Act, are subject to technical, operational, financial and other conditions that may be prescribed in the Rules.

Ultimately, these consent managers are accountable to the data principals.

79. The provision of Consent Manager enables easier compliance with data related statutory requirements as well as provide an efficient mechanism to grant and manage consent.

VI. Relevance of Competition law in India to the Gaming Industry



80. In India, competition law issues, in context of gaming industry, have primarily arisen in respect of App Stores and their policies. However, since gaming falls within the broad bracket of the Media and Entertainment industry, recent mergers that have been approved or are under scrutiny by the Competition Commission of India (CCI) - the primary regulatory and adjudicatory authority dealing with Competition issues under the Competition Act, 2002 - do pose relevance. The recent merger approval of Zee and Sony, which however did not ultimately go through, as well as the Reliance- Disney deal may pose issues concerning sports broadcasting rights which are important to watch out. Though these are primary relevant from a fantasy sports ecosystem, it also gives myriad opportunities for integrations into other online games.
81. Generally, the Competition Act, 2002 in India prohibits agreements that have an appreciable adverse effect on competition, or amount to an abuse of dominant position by an entity with a significant market share in the relevant market.
82. Specifically in respect of mobile applications (Apps), the Competition Commission of India has dealt with two batch of cases concerning Google's abuse of dominance with respect to its Play Store, the first concerning sideloading of Apps and the second concerning mandatory imposition of Google Play's Billing System.
83. In the first batch - the CCI held mandatory pre-installation of the entire GMS Suite, as well as prohibiting sideloading of apps to be Abuse of dominance and imposed a penalty of Rs. 1,300 crores (USD ~155 million). In Google's appeal against CCI's order, the National Company Law Appellate Tribunal affirmed the penalty but modified / quashed certain non-monetary directions. Appeal to the Supreme Court of India is pending.
84. The other batch of cases against Google deal with the mandatory imposition of the Google Play Billing System exclusively for paid apps and in-app purchases on the Google Play Store. The CCI held this practice to be abuse of dominance and penalized Google Rs. 936.344 crores (USD ~112 million). While Google challenged the decision, it also enabled Alternate Billing Systems alongside GPBS but retained a significant commission (Service Fee) for the said integration apart from certain anti-steering obligations. CCI has launched an investigation into Google's new Policy as well, based on complaints by App Developers. Google also recently proceeded to de-list various Apps from its Play Store for non-compliance with its new Policy, however the said de-listing has been rescinded as a temporary measure, as the issue pertaining the Google Play Billing System is also pending before the Supreme Court of India. These are interesting issues to watch out for gaming app developers looking to enter India through the Google Play Store which has, approximately, a 96% market share in the App distribution market in India.
- Competition (Amendment) Act 2023
85. By recent amendments to the Competition Act in India, the meaning of turnover, for the purposes of determining penalty under the Act, has been expanded to mean "Global Turnover". The CCI has also released the Competition Commission of India (Determination of Monetary Penalty) Guidelines, 2024, which specify factors required to be considered while determining the penalty amount upon contravention.
- Report of the Committee on Digital Competition Law and Draft Digital Competition Bill, 2024
86. The Government of India has recently released the Report of its Committee as well as a Draft Competition Bill, 2024 for regulating Digital Industries and certain large entities it has referred to as "Systematically Significant Digital Enterprise" (SSDE's). Taking cue from international developments, especially the Digital Markets Act in the EU, certain specific obligations are proposed on SSDE's in an ex ante framework, in order to prevent anti-competitive activities in the digital space, as a complementary measure to the already existing ex post policy. This is because of the need of timely intervention and considering the dynamic nature of digital markets. Given large digital enterprises are "multi-sided" by design and provided distinct albeit interrelated services to both consumers and business users it is

a very time-intensive exercise to determine the 'relevant market' for an enterprise that is operational on multiple sides of the platform. Hence, an ex-ante scrutiny measure has been deemed appropriate.

87. The Draft Bill mandates SSDEs and their Associate enterprises to operate in a fair, non-discriminatory, and transparent manner with both end users and business users. It also imposes an obligation to not favour its own products or products of related third parties. Even reliance on non-public data of business users operating on its core-digital service to compete has been prohibited. Various other anti-steering obligation, as well as anti-lock-in obligations have been imposed. The bill also provides the mechanism of investigation as well as the quantum of penalty on occasion of contravention.
88. Currently the Bill is out for public comments and discussion.

VII. Trade Secret Protection



89. Currently, provisions of the Indian Contract Act, Information Technology Act, Indian Penal Code, the Right to Information Act and common law principles of equitable relief enable protection of trade secrets and confidential information in India. Judicially, Indian Courts follow a four-fold approach to ensure a comprehensive evaluation of breach of confidentiality claims. These are - (i) identification of the information in question, (ii) circumstances showing confidentiality, (iii) nature of confidentiality, i.e., why is the information deserving of protection, (iv) unauthorized use or threat, i.e., use of information without consent or a threat to unauthorizedly use the same.
90. Recently, the Law Commission of India has, in its 289th Report on Trade Secrets and Economic Espionage, recommended a new specific legislation for protection of Trade Secrets, with exceptions relating to whistleblower protection, compulsory licensing, government use and public interest. Briefly the recommendations entail the following:
- a. Adoption of a triple criteria as specified under TRIPS Agreement of secrecy, commercial value and reasonable steps.
 - b. Liability should not be extended in cases where acquisition, disclosure or use is honest or bona fide. Only bad faith acts must attract liability. What does not constitute misappropriation ought to be clearly defined.
 - c. Any attempt to claim confidentiality or secrecy over publicly available information disguised as Non-Disclosure Agreements should be disallowed. Moreover, employees should not be restrained from utilizing learned skills in future employment without concrete evidence of misappropriation.
 - d. Remedies for trade secret misappropriation should encompass injunctive relief, damages, rendition of accounts, and surrender and destruction of infringing materials.
 - e. A three-year limitation period for trade secret misappropriation cases, starting from the date of misappropriation or when the holder becomes aware of it.
 - f. No incorporation of data exclusivity in the proposed legislation basis the TRIPS Agreement's lack of explicit endorsement for such measures
 - g. Provision of confidentiality in court proceedings regarding trade secret misappropriation using confidentiality clubs.

VIII. Ministries that could be relevant to Online Games



- *Ministry of Electronics and Information Technology (MEITY):*

91. MEITY has assumed a pivotal role as the nodal authority to regulate the burgeoning online gaming industry under the Government of India (Allocation of Business) (Three Hundred and Seventieth Amendment) Rules, 2022. This strategic move aims to address the prevailing regulatory uncertainties within the sector, fostering a more stable and transparent environment. By instituting comprehensive and centralized regulations, MEITY endeavors to streamline governance, ensuring consistency and fairness across the spectrum of online gaming platforms.

92. MEITY recently unveiled a set of regulations aimed at protecting online gamers from harmful content and addiction. These regulations, incorporated as an amendment of 2023 in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, introduce a self-regulation model for the online gaming sector. While these amendments have been challenged in the Delhi High Court, MEITY is strongly supporting their legality. The issue is currently pending.

93. MEITY rejected several proposals of SRBs by the gaming industry. The rejected proposals included those submitted by All India Gaming Federation (AIGF), Esports Players Welfare Association (EPWA), All India Gaming Regulator (AIGR), and from a consortium of the E-Gaming Federation (EGF) and the Federation of Indian Fantasy Sports (FIFS). The reasons for rejections were mainly that the SROs did not meet the required standards. This means MEITY will be preparing a framework for permitting and certifying online games that involve real money and the government might be looking to regulate the industry solely on its own.

94. However, recent comments by the Prime Minister Narendra Modi have suggested that the Government is not looking to regulate online games. [link]

- *Ministry of Youth Affairs and Sports (MYAS):*

95. MYAS has been designated as the pivotal ministry for overseeing e-sports within

multi-sport events under the Government of India (Allocation of Business) (Three Hundred and Seventieth Amendment) Rules, 2022. This decision underscores the official recognition of the integrated esports segment, signifying its growing significance in the realm of sports. Moreover, this initiative aims to establish clearer guidelines and procedures for the selection of Indian teams participating in international esports competitions, ensuring a more structured and equitable approach towards representing the nation on the global esports stage. MYAS is, however, yet to provide additional clarifications and details of their plans in relation to their involvement in esports.

- *Ministry of Information and Broadcasting (MIB):*

96. MIB exercises regulatory oversight over online content and advertisements as notified under the Government of India (Allocation of Business) (Three Hundred and Seventy-second Amendment) Rules, 2023. In October 2022, MIB took proactive steps by issuing distinct advisories to TV channels, digital news publishers, and OTT platforms. These advisories explicitly cautioned against the airing or publication of advertisements promoting online sports betting platforms. Additionally, MIB discouraged surrogate advertisements for offshore sports betting platforms. The advisory underscores that MEITY possesses the authority to instruct intermediary platforms to promptly remove advertisements promoting such platforms upon their detection. Additionally, MIB issued a cautionary reminder that such advertisements are in violation of the advertising code delineated in the Cable TV Network (Regulation) Act, 1995, and the Cable Television Network (Amendment) Rules of 2021. These regulations explicitly prohibit the promotion of prohibited products through advertisements.

97. In the Budget speech for the fiscal year 2022-2023, the Finance Minister of India, Smt. Nirmala Sitharaman, unveiled the formation of an Animation, Visual Effects, Gaming, and Comics (AVGC) Promotion Task Force under MIB's purview. The AVGC Promotion Task Force has been bestowed with the responsibility of devising policies

and strategies of growth for the AVGC sector in India as per the AVGC Promotion Task Force Report, MIB 2022.

98. In fact, the Telecom Regulatory Authority of India (TRAI) has recently opened consultation on the National Broadcasting Policy. The deadline for submissions is 30 April 2024. As a part of this consultation, it has also raised the following two questions specific to online gaming industry:

Q9. Online gaming being a rising sector holds potential for contributing to economy, what policy and regulatory aspects should be adopted for the orderly growth of online gaming in India? Further, suggest measures to support local game developers to compete and grow. Also suggest safeguards to protect general public (especially underage players) from negative and psychological side effects, while promoting healthy gaming.

Q10. What further steps and initiatives should be adopted by the Central and State Governments and the industry for the growth of animation, VFX and post-production segment? Provide your comments with detailed reasoning and justification.

• *Ministry of Commerce and Industry (MOCOM):*

99. MOCOM issued the Foreign Direct Investment Policy of India (the “FDI Policy”) which was codified into law by the Foreign Exchange Management Act, 1999 (FEMA) and the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (the “Non-Debt Rules”). As per the Consolidated FDI Policy, 2020, foreign direct investment (FDI) is prohibited in lottery business (including state or private lotteries and online lotteries) and gambling and betting (including casinos).

100. The Enforcement Directorate (ED), tasked with overseeing India’s exchange control and anti-money laundering regulations, has initiated raids across multiple states including Goa, Chhattisgarh, Maharashtra, Punjab, Karnataka, and West Bengal. These operations aim to investigate potential violations of FEMA by offshore betting firms and online casino operators.

101. The legal landscape concerning intellectual property (IP) issues in gaming is shaped by key legislations such as the Copyright Act, 1957, the Trademarks Act, 1999, the Designs Act, 2000 and the Patents Act, 1970. These statutes are also administered and overseen by the MOCOM.

• *Ministry of Corporate Affairs (MCA):*

102. MCA through the Investor Protection and Education Fund (IPEF), under its purview, will be commencing an awareness campaign regarding cryptocurrencies and online gaming. This outreach initiative aims to educate individuals about the legal standing of cryptocurrencies and online gaming platforms while also emphasizing the associated risks of investing in such assets and participating in such platforms.

• *Ministry of Finance (MOF):*

103. MOF is an important avenue to push for progressive budgeting to empower responsible online gaming, aligning with AVGC policies and fostering self-regulation, as recommended by the MIB’s AVGC Task Force. The Union Budget February 2024 made an announcement proposing long term financing for the sunrise sectors to scale up on research and innovation which will be beneficial for the technology and start-up sector as a whole, including the gaming and game-development sub-sectors.

104. All charges and taxes pertaining to the sustenance of the gaming industry come under the MOF.

105. The Reserve Bank of India (RBI) in 2018 issued a circular prohibiting “virtual currency” activity. However, this circular was set aside by the Supreme Court in *IAMAI v. RBI*. The Supreme Court held that such prohibition was unreasonable and affirmed virtual currency exchanges’ fundamental right to trade and do business, guaranteed under the Constitution of India. In July 2019, the MOF’s Inter-Ministerial Committee (IMC) released a report (IMC Report) recommending the prohibition of virtual currencies, proposing criminal penalties for dealing with them. The report also suggested promoting distributed ledger

technology without virtual currencies and exploring the development of a sovereign digital currency. While non-binding, the government is considering these recommendations. In June 2022, the MOF indicated plans to introduce a consultation paper on regulating the industry after gathering input from domestic and international stakeholders, including the World Bank and the International Monetary Fund (IMF).

- *Ministry of Consumer Affairs (MCA)*

106. In line with its commitment to safeguard consumer interests, MCA introduced the Consumer Protection (E-Commerce) Rules, 2020, placing obligations on e-commerce entities. These regulations are anticipated to encompass real-money online gaming platforms, ensuring greater accountability and protection for users. Complementing these rules, the Consumer Protection Act, 2019 (CPA), imposes stringent measures on all service providers, including gaming operators. These measures prohibit unfair and restrictive trade practices, unfair contracts, deficient services, and misleading advertisements, with the aim of enhancing consumer rights and fostering a fair marketplace,

107. Advertising of skill games is regulated by the CPA's Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022. These guidelines read with CPA prohibit misleading advertisements, surrogate advertisements, and unfair trade practices through certain types of promotional activities. The CCPA's Dark Pattern Guidelines are also relevant, already discussed above.

108. MCA has initiated a comprehensive research study aimed at gaining deeper insights into the challenges stemming from online gaming addiction among young individuals. This study seeks to not only comprehend impulsive behavior but also to cultivate healthy digital habits. The study aims to identify the factors resulting in excessive consumption of online content, and prepare a framework to predict, alert, and intervene with appropriate coping mechanisms. The research findings will not only offer valuable insights for crafting guidelines to safeguard

consumer interests in online gaming but also guide the industry in optimizing their practices to mitigate risks and promote responsible technology usage.

109. The MCA along with the Department of Consumer Affairs is very active in ensuring a safe environment for online gamers, protecting them from user harms, and fostering a healthy gaming environment. They have taken many steps against proliferation of online gambling and betting platforms, camouflaged as online gaming ventures.

- *Ministry of Education (MOE):*

110. MOE recently issued a crucial advisory addressing the recognition and definition of gaming disorder. Within this advisory, it was emphasized that online gaming companies frequently resort to emotionally coercive tactics, leading children into making in-app purchases and inadvertently disclosing private information.

Names of Contributors

Sneha Jain, Devvrat Joshi, Angad Singh Makkar, Disha Sharma, Subhoshree Sil, Sudarshan MJ, Ramya Ramkumar, Srishti Kumar, Rishabh Rao, Vivek Kumar, Akshat Agrawal.

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picklers@lawpickle.com