



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

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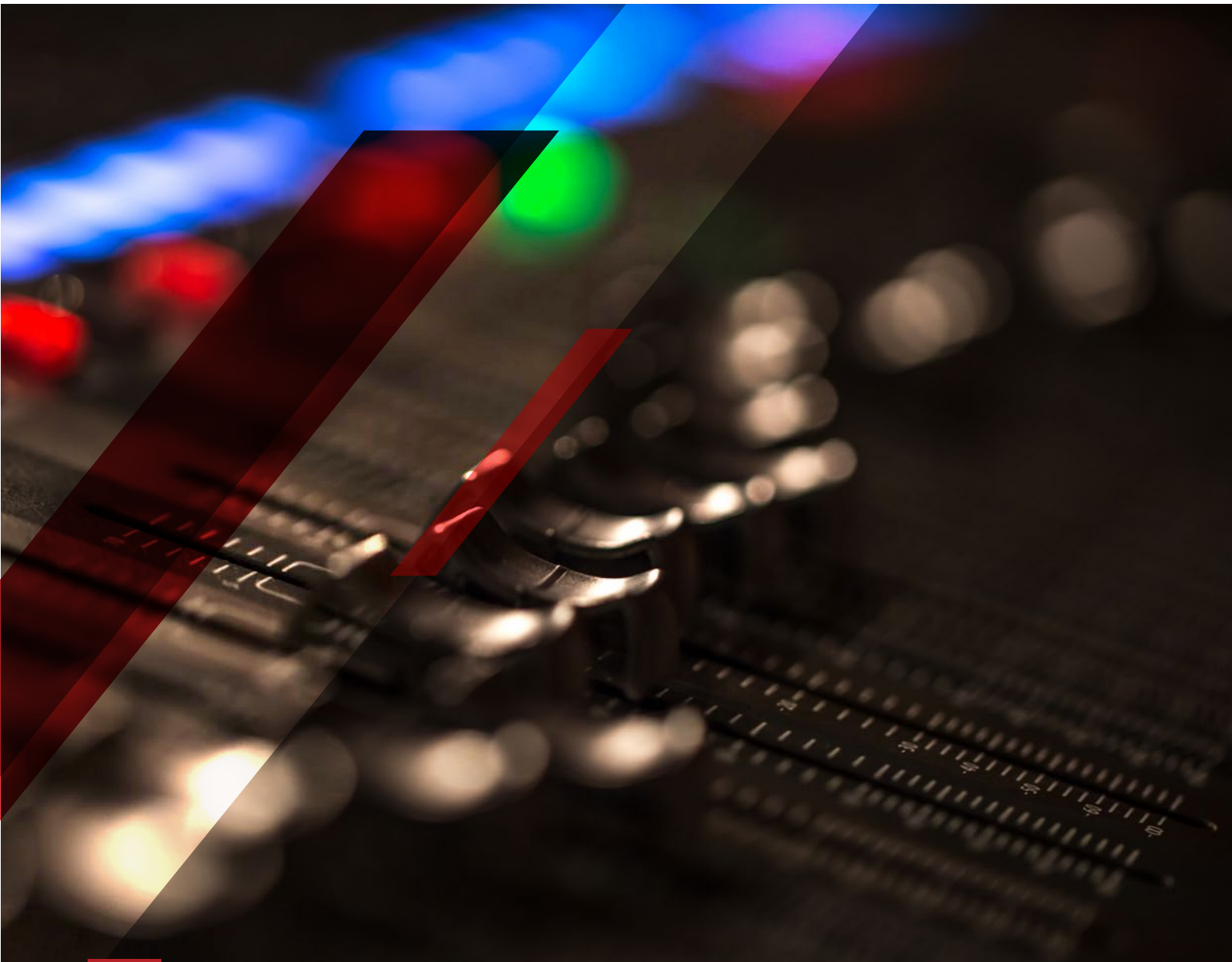
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INTRODUCTION

It is often quite difficult to grasp developments from the field of law in the absence of a linear narrative. Just like one cannot comprehend the storyline and characters of a show without having some kind of background information on them, similarly it is nigh impossible to understand India's complex media & entertainment (M&E) space without keeping constantly abreast of the latest developments. With Gaming industry sitting suitably as a part of our M&E practice, we combine the roll out of our updates for both these industries to present a more wholistic picture. To this end, we bring to you **The Recap**, a bi-monthly newsletter of the latest developments in M&E & Gaming laws from India.

Multiple significant developments kept M&E & Gaming lawyers busy during the months of July & August 2021. Just as some laws failed the test of constitutionality in courts, the respective governments renewed their resolve to begin afresh and plan new laws. There was some positive news from the central government as regards gaming laws but not-so-good news from them for the media and entertainment sector.

We list below some of the most vital developments from the past two months with a brief discussion of each and also a link to further reading, where available/required.



Draft Amendments to the Cinematograph Act, 1952

While the edition covers updates between July and August, as our inaugural edition, this update was too important to miss!

In mid-June, the central government (through its *Ministry of Information & Broadcasting*) made public a draft of proposed amendments to the *Cinematograph Act, 1952* and sought comments from the general public on them.¹ The amendments proposed had broadly three ingredients: new age-specific certification categories, restoration & enhancement of central government's revisional powers as regards film certification and measures to combat film piracy. The draft caused quite a furore amongst the industry stakeholders primarily due to the fact that if enacted, these amendments could mean that even after a film has received a certification from the Central Board of Film Certification (CBFC), the central government could send it for reexamination if it were to receive any complaint as regards it on any of the grounds mentioned in Section 5B (1) of the *Cinematograph Act, 1952*.²

You may access the official document of the draft amendments [here](#).

For a closer look at the probable repercussions of these draft amendments for the industry, you may read our Partner **Ms. Ranjana Adhikari's** views on them, [here](#).

Bombay High Court grants interim stay on 'Code of Ethics' under IT Rules 2021

In one of the more significant interim orders in recent times, the Bombay High Court, on the eve of India's 75th Independence Day, granted an interim stay on Rule 9(1) & 9(3) of the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* which mandated adherence by publishers of online news & current affairs and publishers of online curated content (referred to as OTT in common parlance) to an external and prescribed 'Code of Ethics'. The HC found these two sub-rules to be *prima facie* violative of the fundamental right to speech and expression and beyond the rule-making powers available to the central government under the parent law viz. the *Information Technology Act, 2000*, under which these Rules were framed. Notified and enforced in February 2021, these Rules have since then been a subject of constant controversy (including the one involving Twitter

India which was recently in the news) and multiple legal challenges in different High Courts of the country. Though the Bombay HC has just stayed two sub-rules and this is just an interim order, the reasoning of the interim order and the *prima facie* view taken by the court on the grounds urged by the petitioners is expected to have a substantial impact on the legality and constitutionality of these Rules. The final hearing is scheduled for September 27, 2021.

In a bunch of similar challenges to these Rules filed in the Delhi High Court by *The Wire, Quint & Press Trust of India*, the central government in the last week of August filed a reply asserting that that the Rules will help tackle fake news, that they do not have a chilling effect on free speech and that they are based on "co-regulation"

A transfer petition has also been preferred by the central government before the Supreme Court to transfer all pending petitions against these Rules to the Supreme Court to avoid contradictory findings by different High Courts in the country. It is quite possible that the Supreme Court accept the petition and transfer to itself all the challenges pending in different courts across the country and hear and adjudicate them together.

In an interesting development, soon after the aforesaid Bombay High Court interim stay, the *Union Ministry of Information & Broadcasting* which is the nodal ministry for digital media under the new Rules, wrote to industry bodies such as the *Federation of Indian Chambers of Commerce & Industry (FICCI)* and *Chambers of Indian Industry (CII)* to nominate expert members to be a part of the new 'Inter Departmental Committee' (IDC) as required by the new Rules. It is pertinent to note that the Bombay High Court had not ruled on this aspect of the petitioners' prayers saying that the petitioners may move the court for relief as and when the IDC is formed.

For a detailed analysis of the provisions of these new Rules, please read *IndusLaw's Infolex NewsAlert* [here](#).

For our detailed analysis of the aforesaid Bombay High Court interim order and its expected effect, please read *IndusLaw's Infolex NewsAlert* [here](#). You can also read it on [Mondaq](#).

1. *Draft Cinematograph (Amendment) Bill, 2021*

2. Namely, "sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence."

Bombay High Court grants relief to makers of film *Gangubai Kathiawadi*

The film *Gangubai Kathiawadi* produced by Sanjay Leela Bhansali, is based on the book *Mafia Queens of Mumbai* authored by S. Hussain Zaidi. The book as well as the film have been entangled in a slew of legal battles. Various civil and criminal proceedings have been initiated by one Mr. Babuji Rawji Shah who claims to be the adopted son of late Gangubai Kathiawadi.

It is alleged by Mr. Shah that the book and the film have defamed his adoptive mother and his family and therefore filed an appeal before the Hon'ble Bombay High Court against the order of the lower court which dismissed the defamation suit filed therein. As an interim measure, Mr. Shah also sought a stay on the release of the film along with a restraining order on the writers and publishers of the book from creating any third-party rights or writing stories on the life of Kathiawadi. Counsel appearing for Mr. Bhansali & others contended that a suit for defamation filed by the legal heir of the person alleged to be defamed is not maintainable. Further, it is the case of Mr. Bhansali that Mr. Shah did not suffer any legal injury nor is likely to suffer any irreparable loss as there is no legal right vested in him and therefore the application seeking injunction ought to be rejected. The law on the principle of Torts that an action dies with the person in a defamation proceeding, was considered by Justice Nitin Sambre and the interim application was rejected on these grounds that the content of defamatory nature dies with the person's death, and it was further noted that Mr. Shah failed to demonstrate that he is the adopted son of the deceased Gangubai Kathiawadi and as such failed to establish the legal injury suffered by him.

In a separate development, the Bombay High Court ordered a stay in a proceeding initiated against Mr. Bhansali & others by a trial court in a criminal defamation complaint filed in connection with the film.

You may read more on this development as reported by *The Free Press Journal*, [here](#).

You may read the respective orders of the Hon'ble High Court [here](#) and [here](#).

Supreme Court denies broadcasters interim stay on 'NTO 2.0'

The Telecom Regulatory Authority of India's ("TRAI") *Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Second Amendment) Order, 2020 ("NTO 2.0")* pits benefits to consumers against the potential financial implications for cable TV channel broadcasters. By way of background, TRAI in its amendments

reduced the price-cap on cable TV channels which can be offered in a bouquet to consumers from INR 19 to INR 12 a channel. They introduced twin conditions on broadcasters wherein the sum of a-la-carte channels offered in a bouquet cannot exceed one and a half times the cost of the bouquet itself and secondly the a-la-carte price of each channel in the bouquet must not exceed three times the average price per channel in the said bouquet. Additionally, the base Network Capacity Fee slab, which is a charge levied by the broadcaster on the consumer depending on the number of channels subscribed for, earlier offered consumers 100 channels at INR 153. It has now been increased to provide consumers with 200 channels at no additional cost.

Earlier in July 2021, the Hon'ble Bombay High Court upon hearing the *Indian Broadcasting & Digital Foundation's* and other broadcasting houses' writ petitions challenging NTO 2.0 upheld almost all its provisions.³ This was challenged by *Indian Broadcasting & Digital Foundation* & others before the Supreme Court. The Hon'ble Supreme Court in its order dated 18th August 2021 refused to yield to the appellants' prayer for an interim stay on the impugned Bombay HC order. While NTO 2.0 can significantly reduce the cost per channel to the end consumer, it does not necessarily bode well for already dipping cable TV channel revenues. Generating high quality content is an important consideration for the broadcasters and these changes to the prices of cable TV channels have the potential of forcing broadcasters to compromise on content quality produced on their TV channels. Today broadcasters are already competing with OTT platforms. The economics of NTO 2.0 may further jeopardize the business of cable TV channel broadcasters.

You may read more on the background to this development in this report by *MoneyControl*, [here](#).

You may read the aforesaid judgment of Bombay High Court [here](#).

You may also read the short order of the Hon'ble Supreme Court [here](#).

3. The High Court has upheld the constitutional validity of NTO 2.0 but has struck down the second provision of a 'twin conditions' which requires a broadcaster to ensure the maximum retail price per month of any a-la-carte pay channel which forms part of a bouquet to not exceed three times the average maximum retail price per month of a pay channel of that bouquet.



GAMING

Madras HC Grants A Win to Gaming Industry

In a significant judgment for gaming law in India, the Madras High Court in early August, quashed those amendments to the *Tamil Nadu Gaming Act, 1930* which had imposed a blanket ban in Tamil Nadu on all games played for stakes (including online games and skill games). These amendments were brought in by *The Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021* which was enacted by the state legislature in February 2021. The HC held them to be violative of the Constitution of India, disproportionate to their declared objectives, manifestly arbitrary and beyond the legislative competence of the state legislature. Such was the absurd sweep of the impugned amendments that the HC remarked in its judgment that if the amendments were allowed to operate, sporting events like the *Indian Premier League* matches and other international cricket matches would become illegal in Tamil Nadu as they were skill games and had cash awards attached to them.

You may read our analysis of this judgment as an *IndusLaw Infolex NewsAlert* [here](#). You can also read this analysis on [Mondaq](#).

Reaffirmation of Fantasy Sports as a game of skill, hence a legitimate business

The fantasy sports industry in India and *Dream11* in particular, celebrated some key judicial verdicts recently. By way of background, *Dream11* is the leading fantasy sports platform in India and a unicorn within this sunrise industry. Over the years, there have been a number of public interest litigations in which the legality of the fantasy sports format came into question. In July of this year, the High Court of the state of Rajasthan rejected a writ petition⁴ filed by a private citizen which had, *inter alia*, sought regulation or prohibition of online fantasy games played for stakes. The

Rajasthan HC, relying on earlier judgments on the issue, rejected the petition and held that offering of online fantasy sports in accordance with self-regulation guidelines of the industry body, *Federation of Indian Fantasy Sports (FIFS)* had already been judicially recognized as a game of skill and hence a legitimate business consequently entitled to protection as a fundamental right under the Constitution of India.

Towards the end of the same month, the Supreme Court in a vital judgement⁵, held that the issue of legality of fantasy sports was no longer an unsettled issue. Though the court acknowledged that a different matter⁶ on the same issue was pending before a larger bench of the Supreme Court, it nevertheless affirmed that Special Leave Petitions on the issue of legality of fantasy sports were being rejected by the Supreme Court since 2017.

You may read this short order of the Supreme Court [here](#).

New Union IT Minister says, "Uniform Approach" Under Consideration

In an interesting development for India's gaming industry, India's Union Minister for Electronics & Information Technology ("**IT Minister**") Mr. Ashwini Vaishnaw has indicated that the central government is considering a uniform approach in the area of regulation of online gaming and gambling. This information has emerged from an official response that the IT Minister sent in a letter

4. *Saahil Nalwaya v. State of Rajasthan & Ors.* (Division Bench Civil Writ Petition No. 2026 of 2021)
5. *Avinash Mehrotra v. State of Rajasthan & Ors.* (Special Leave Petition (Civil) Diary No(s). 18478/2020)
6. *State of Maharashtra v. Gurdeep Singh Sachar* (SLP (Crl.) Diary No. 42282 of 2019)

addressed to the Chief Minister of the state of Andhra Pradesh. The IT Minister was responding to a letter written to his predecessor Mr. Ravi Shankar Prasad by the Andhra Pradesh Chief Minister in October of 2020. In this letter the Andhra Pradesh Chief Minister had requested the then IT Minister to direct Internet Service Providers (ISPs) to block 132 gaming and gambling websites.

A brief chronology of the events is as follows:

- [25th Sep 2020](#): Andhra Pradesh notifies the *Andhra Pradesh Gaming (Amendment) Ordinance, 2020* banning all online gaming for stakes.
- [27th Oct 2020](#): Andhra Pradesh CM writes to IT Minister Ravi Shankar Prasad seeking blocking of 132 websites.
- [31st December 2020](#): Andhra Pradesh notifies the *Andhra Pradesh Gaming (Amendment) Act, 2020*
- [8th July 2021](#): Ashwini Vaishnaw assumes charge as new IT Minister
- [3rd August 2021](#): Ashwini Vaishnaw responds to the above letter written to his predecessor by the Andhra Pradesh CM, says uniform approach for online gaming and gambling under consideration.
- [19th August 2021](#): Tech policy news portal *Medianama* reports the said response on the basis of a Right to Information query

This is a key development and one of the few instances where the central government has acknowledged on record the need for a uniform approach in the gaming arena (the other recent similar response came in an official reply to a Right to Information application filed, wherein the Prime Minister's Office indicated that draft guidelines for fantasy sports platforms, formulated by [NITI Aayog](#), as well as the need for a central regulatory framework for online gaming in India may soon be deliberated upon by the Union Council of Ministers.

You may read the letter written by the Andhra Pradesh Chief Minister, accessed by *Telugu news portal Samayam*, [here](#).

You can access the full text of the IT Minister's letter [here](#).

Telangana Says Working On New Industry-Friendly Regulation

Speaking at a webinar that was organised in August by India's self-regulatory body for online fantasy sports, the *Federation of Indian Fantasy Sports (FIFS)*, a senior IAS official from the Telangana state government announced that the state government was considering a new piece of regulation for online gaming in place of what currently exists. Mr. Jayesh Ranjan (IAS), *Secretary for IT & Industries & Commerce* in the state government said that the new law

would be simple, industry-friendly, a role model for other states and will encourage self-regulation and local game development. He added that a draft had been prepared after consultations with several stakeholders and that the same would soon be circulated to other concerned authorities within the state government and was likely to be made public soon. It is interesting and pertinent to note that Telangana was the first state to impose a blanket ban on all games played for stakes (including skill games and online games) back in 2017, which had started the trend of similar bans in other southern Indian states.

You may read more on this development as reported by *Outlook magazine*, [here](#).

MeitY reiterates that it cannot block gaming/gambling websites

In its written response to a petition filed in the Delhi HC seeking blocking of gambling websites, the *Ministry of Electronics & Information Technology (MeitY)* reiterated that it cannot block such websites. MeitY said that it "cannot be expected to traverse law or legislative mandate and perform the action of blocking online gambling websites. Further, any such action expected to be taken by it of regulating online gambling/gaming websites will result in a conflict of powers vis-a-vis with the "appropriate government" which is the state government.". It also made the following submissions to the court.

- Since gaming/gambling are state subjects, states are the appropriate governments to issue notice to the intermediaries to block access to any gambling websites. Thus, the MeitY is not authorised to direct any intermediary to block any online gaming or gambling websites.
- There is no legislative mandate nor any legal duty on MeitY to take action on gambling or betting related issues that otherwise clearly falls under the exclusive domain and the legislative competence of State Legislatures.
- The petitioner has chosen not to make party any of the states-some of which have brought out legislations that specifically regulate online gaming- and without hearing the views of these states, effective adjudication is not possible in this case.
- All states are expected to amend their existing state laws to regulate online gambling/games (as done by Sikkim, Nagaland, Telangana, Andhra Pradesh and Tamil Nadu).
- Issues relating to FEMA or money laundering or tax evasions do not fall under the domain of MeitY.

You may read more on the court proceedings in this petition, as reported by *NDTV*, [here](#).

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