



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

VOLUME 3: NOVEMBER 01 – DECEMBER 31, 2021

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INTRODUCTION

Premiering on 6 September 1955 on the ABC network in the USA, *The Life and Legend of Wyatt Earp*¹ became a trendsetter TV show in multiple ways. It was the first Western genre television series written for adults, one of the first shows that had a continuing storyline and a season-long arc—and one of the first TV shows to use the recap sequence to remind its viewers of what had happened in the last episode. “A few voice-over sentences usually sufficed to summarize the events of the previous Tuesday evening, because the show really only had one plot line, one life and legend. [The recap sequence], a decades-old staple of television, now fading in prevalence, is inextricably tied to the rise of intricate narratives on the small screen.”²

Legal news & updates are no less intricate in their own right and also have a continuity and arc that may be difficult to keep a track of, at times. To this end we bring to you *The Recap*, your bi-monthly dose of all that's important and unmissable from the legal point of view from India's media & entertainment (M&E) and gaming sectors. This edition is an eclectic mix of updates from the months of November & December 2021 and range from courtroom updates for skill gaming operators to crucial verdicts on copyright & trademark laws along with a snapshot of what kept our lawmakers busy in the Winter Session of Parliament. Read on and get in sync with the arc of this season's M&E and gaming legal updates!

1. <https://www.imdb.com/title/tt0047750/>

2. Laura Bliss, “Previously On: In Praise of the Television Recap Sequence”, February 4 2015, *The Atlantic*, available at <https://www.theatlantic.com/entertainment/archive/2015/02/previously-on-in-praise-of-the-television-recap/385036/> (last accessed 10th January 2022)



TRAI and broadcasters face off on availability of live linear TV channels on OTT platforms

The availability of live linear TV channels on over-the-top (“OTT”) platforms has become a flashpoint between the Telecom Regulatory Authority of India (“TRAI”) and major television broadcasters. After receiving complaints from Direct-to-Home companies (“DTH”) and Multi-System Operators (“MSOs”) that the availability of TV channels was denting their paid subscriber base, TRAI sent a letter to all major TV broadcasters seeking details about the mode and infrastructure through which linear TV channels were being provided to their own as well as third-party OTT platforms. TRAI is of the opinion that broadcasters are in violation of the *Policy Guidelines for Downlinking of Television Channels, 2011*³, which allows companies to provide signal reception decoders only to DTH, MSOs, cable operators and IPTV⁴ service providers. Broadcasters on the other hand contend that they are not employing infrastructure regulated by TRAI to deliver linear content on OTT platforms and hence TRAI’s queries lack jurisdiction.

Broadcasters Sony and Sun TV Network challenged TRAI’s letter before the Telecom Disputes Settlement and Appellate Tribunal (“TDSAT”), contending that the information sought by TRAI for content on OTT platforms are beyond TRAI’s jurisdiction under the *Cable Television Networks (Regulation) Act, 1995* and the *Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulations, 2017*. TRAI on the other hand asserted that the information was sought from the broadcasters (which are regulated by it) and not from OTT platforms owned by these broadcasters. The broadcasters also argued that linear TV channels are provided to OTT platforms under their broadcast reproduction rights available under Section 37 of the *Copyright Act, 1957*.

Admitting the plea, TDSAT in its preliminary order acknowledged the broadcaster’s contentions and has listed the matter for 24 January 2022 for TRAI’s reply. In the interim, no coercive action is to be taken against the broadcasters.

It is pertinent to mention in this context that recently TRAI Chairman PD Vaghela speaking at a public event had said that TRAI was planning to review sectoral regulations to ensure a level playing field between TV broadcasters and OTT platforms.

TDSAT’s brief order dated 16 December 2021 can be viewed [here](#).

TRAI’s ‘Recommendations on the Regulatory Framework for OTT Communication Services’, which led TDSAT to prima facie observe (in the above order) that OTT services may be

beyond the extant TRAI regulations, can be accessed [here](#).

MeitY is considering appointing nodal officers for the takedown of content on social media

As per a news report, the Ministry of Electronics and Information Technology (“MeitY”) is considering appointing ministry-wise nodal officers for issuing directions for the takedown of content under the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* (“IT Rules 2021”). An inter-ministerial review is reportedly underway for formulating the Standard Operating Procedures (“SOPs”) for various aspects of the IT Rules 2021. The idea of nodal officers has emerged on the ground that individual ministries are better-suited to classify and identify unlawful content as per their departments. As per the report, the SOPs are being drafted by a committee comprising of officials from MeitY, Ministry of Information and Broadcasting, and Ministry of Law and Justice. These SOPs and the recent FAQs are part of the government’s efforts to address concerns with respect to the implementation of the IT Rules 2021.

This was reported by a Hindustan Times article available [here](#).

Parliamentary Committee on Communications and Information Technology finds urban bias in TRPs, suggests setting up a media commission

The 27th Report of the Standing Committee on Communications and Information Technology, headed by Congress MP Shashi Tharoor, was recently tabled in Parliament. Among its multiple vital findings, a few that are noteworthy are as follows:

The Committee opined that the present Television Rating Points (“TRPs”) system is heavily biased towards urban areas and that there is a need to change the system of measurement by giving equal weightage to rural and semi-

3. Clause 5.6 – “The applicant company shall provide Satellite TV Channel signal reception decoders only to MSOs/Cable Operators registered under the Cable Television Networks (Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India or to an Internet Protocol Television (IPTV) Service Provider duly permitted under their existing Telecom License...” A copy of the Policy Guidelines can be accessed [here](#).

4. Internet Protocol TV. Through IPTV live TV, Video On Demand (VOD) and Interactive TV (iTV) services are delivered across an access agnostic, packet switched network that employs the IP protocol to transport the audio, video and control signals. In contrast to video over the Internet, with IPTV deployments, network security and performance are tightly managed to ensure a superior experience.

urban areas through increased sample size. As regards news media, the Committee suggested that instead of the present Press Council of India, a wider Media Council be established to cover all types of media (not just the print media) and equip it with statutory powers to enforce its orders where required. The Committee concluded its Report by recommending the setting up of a Media Commission consisting of various stakeholders to explore and recommend action for the diverse issues highlighted by it in the Report.

The 27th Report of the Standing Committee on Communications and Information Technology can be viewed [here](#).

To get a sense of how long-standing the 'urban bias in TRPs' controversy is, you may read [this](#) Down To Earth article from 2008.

You can read about journalist bodies' demands for a media commission in [this](#) article by The Leaflet.

Delhi High Court injuncts radio broadcasters for not complying with Copyright Rules while invoking statutory license

The Delhi High Court ("Delhi HC") has held that compliance with all ingredients of Rule 29 of the *Copyright Rules, 2013* ("Copyright Rules") is required to validly invoke a statutory license under Section 31D of the *Copyright Act, 1957*. Rule 29 of the Copyright Rules deals with the procedural aspects of invoking a statutory license. Ruling on copyright infringement suits filed by music labels T-Series and Saregama against several radio broadcasters, the Delhi HC injuncted the defendant radio broadcasters from broadcasting/communicating to the public or otherwise exploiting the plaintiffs' copyright works through FM radio stations without complying with Copyright Rules in its entirety, especially those of its provisions which deal with informing the copyright owner of the programme in which the works will be broadcast, their time slots & duration and details of the payment of royalties at the rates fixed by the Intellectual Property Appellate Board.⁵

You can access a copy of the judgment [here](#).

Madras High Court: Film credits for story, screenplay & dialogue do not amount to acknowledgment of independent copyright ownership

Adjudicating on a copyright infringement dispute as regards the right of a producer to grant rights to 'remake' a cinematograph film, the Madras High Court ("Madras HC") has held that merely giving credits for the story, screenplay & dialogue of a film to someone does not amount to acknowledging their copyright ownership independent of the producer's right as the first owner of copyright in a

cinematograph film. The appellant, S. J. Suryah, had been credited with writing the story, screenplay & dialogue for the 1999 hit Tamil film *Vaalee* and had also directed the film. Suryah filed a case of copyright infringement against the producer of the film upon learning of an agreement between the producer and a third party pertaining to 'remake' rights of the film. In addition to rejecting Suryah's claims on the aforesaid reasoning, the Madras HC also held that the remake rights are part of the producer's rights to make a 'copy of the film' under Section 14 (d) (i) of the *Copyright Act, 1957*. The court also held that Suryah had not been able to make out a *prima facie* case as the owner of the copyright in the screenplay or the dialogue notwithstanding the film credits. The court also took into account the fact that the appellant had not opposed two previous remakes of the film.

A copy of the judgment can be accessed [here](#).

Dainik Jagran gets interim relief against Telegram in a platform liability debate over unauthorised circulation of its publication's PDFs

The Delhi HC issued an *ad interim* injunction against popular instant messaging app Telegram, in a copyright infringement case⁷ filed by the parent company of the leading Hindi daily *Dainik Jagran* for illegal circulation of *Dainik Jagran's* e-paper edition on Telegram channels. The ruling is significant because the court went on to order Telegram to disclose the identity of the Telegram channel owners and also take down channels contributing to the alleged copyright infringement. The court also noted that since the plaintiff had issued notices to the defendant to take down such channels and the defendant failed to respond to them, the defendant could not claim protection under the IT Act's safe harbour provision.⁸

You may read this order of the Delhi HC [here](#)

Delhi HC: Use of a trademark as keywords for Google Ads by third-party is an infringing act

The Delhi HC has ruled that Google's policy in India of using registered trademark as keywords for third-party Google ads is an infringing act. The order came after an application was filed by plaintiff DRS Logistics Pvt. Ltd. seeking *ad interim ex parte* injunction against Google India seeking to restrain them from using or permitting third parties to

5. Rule 29(4) (i), (j) and (k) of the *Copyright Rules 2013*

6. 69A. Power to issue directions for blocking for public access of any information through any computer resource

7. *Jagran Prakashan Ltd. v. Telegram FZ LLC & Ors.*, CS (COMM) 146/2020

8. Section 79 of the *Information Technology Act, 2000*, available [here](#).

use the plaintiff's registered trademark 'Agarwal Packers & Movers' either as a keyword or as a trademark.⁹ Keywords are terms used in Google Ads which allow its search engine to rank and display an advertisement among search results, based on its relevance.

The plaintiff had alleged that when a user on the internet searches for the plaintiff, despite the plaintiff having a registered trademark in its favour, the website of the advertiser who may be a competitor of the plaintiff having a similar or deceptive mark pops up over and above the organic search results pertaining to the plaintiff by virtue of being the sponsored results of Google's Ad services.

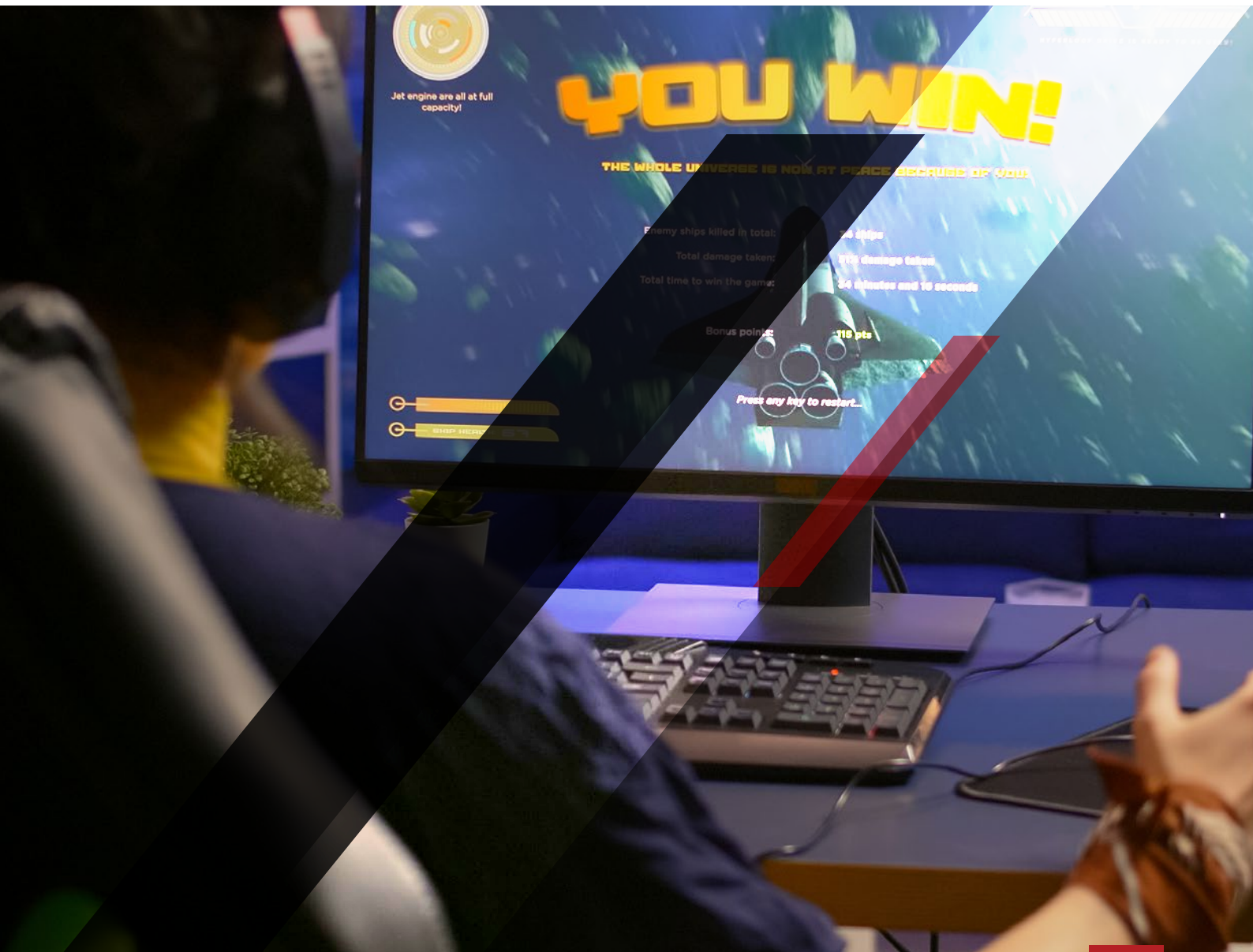
The Delhi HC observed that Google has a lack of parity in its policy toward India in comparison to European Union countries when it comes to investigating cases of trademark usage as a keyword on its search engine by third party entities, resulting in traffic being diverted away from

the trademark owner's website and toward the third-party entity's website. The court added that allowing third parties who are not owners of a trademark to choose a keyword which is a registered trademark term may constitute an infringement of a trademark and/or passing off. The court rejected the argument that Google has safe harbour protection.¹⁰ The court held Google *prima facie* liable for the use of trademarks as keywords which is an infringement under the *Trademarks Act, 1999*.

You can read the said order of the Delhi HC [here](#)

9. *DRS Logistics Pvt. Ltd. & Anr. v. Google India Pvt. Ltd. & Ors.*, the Delhi High Court passed the order for the CS(COMM) 1/2017 & I.As. 21153/2011, 4474/2014, 2645/2020, 2646/2020, 7203/2020

10. Section 79 of the *Information Technology Act, 2000*. The Delhi HC relied on the ruling in *Christian Louboutin Sas v. Nakul Bajaj*, (2018) 253 DLT 728.



Petitions challenging the Karnataka Police Amendment Act 2021, which banned real-money skill gaming, reserved for judgment

Writ petitions filed before the Karnataka High Court (“**Kar HC**”) by various stakeholders challenging the constitutional validity of the *Karnataka Police (Amendment) Act, 2021* (“**Karnataka Amendment Act**”) has been reserved for judgement with arguments concluding on 22 December 2021. The amendments have outlawed all forms of gaming played for money or money’s worth by diluting the exemption for ‘games of skill’ under the state gaming law i.e., the *Karnataka Police Act, 1963*. The petitioners relied on landmark Supreme Court judgements¹¹ and a recent Madras High Court judgement¹² to argue that ‘betting and gambling’ under Entry 34 of List II of Seventh Schedule to the Constitution (“**State List**”) means betting on games of chance only, and the state has no legislative competence to legislate on games of skill under the said Entry. Towards the end of the arguments, the Kar HC heard a new petition, filed by the Federation of Indian Fantasy Sports (“**FIFS**”) challenging the Karnataka Amendment Act on the grounds of its non-applicability to online fantasy sports (“**OFS**”). FIFS relied on judgements by different courts¹³ which have upheld OFS as a game of skill and as being neither betting and gambling nor wagering.

On the other hand, the Advocate General for the state of Karnataka, submitted that a game of skill played for stakes is betting as it is equivalent to wagering on an unknown outcome, the state has legislative jurisdiction to regulate betting under Entry 34 of the State List in addition to legislating on games of skill under other Entries such as 1¹⁴, 2¹⁵, 26¹⁶ and 33¹⁷ of the State List. He argued that the petitioners have incorrectly interpreted Supreme Court judgements on games of skill as they only deal with offline games of skill and are entirely different from their online counterparts. He contended that the Karnataka Amendment Act cannot be held as disproportionate because the menace of online gaming is widespread, and the amendments are a social legislation prohibiting activities injurious to public order. No date has been set for pronouncement of the judgement.

You can view the *Karnataka Police (Amendment) Act, 2021* [here](#).

Tamil Nadu challenges Madras HC order before the Supreme Court

As mentioned in the previous edition of *The Recap*, the state government of Tamil Nadu has now officially approached

the Supreme Court by filing a Special Leave Petition¹⁸ against the judgment¹⁹ of the Madras HC which in August 2021 had struck down the blanket ban imposed by the state on all games (including online skill games) played for stakes in the state.

In its petition, the state of Tamil Nadu has sought restoration of the ban on real-money games in the state and has claimed legislative competence for itself under the head of ‘betting and gambling’ in the State List. The petition has also sought to justify the distinction drawn by it between online games with stakes and other games and has contended that such a distinction is compatible with constitutional provisions. Currently, the matter has been listed but no date has been appointed for preliminary hearing. It will be interesting to see how the Supreme Court deals with the issues involved in the appeal.

You may read the judgement of the Madras High Court which is being challenged [here](#).

You may read our analysis of the aforesaid judgement on [Mondaq](#).

You can read more on the petition as reported by Financial Express [here](#).

WinZo Games challenges the constitutional validity of the Odisha Gambling Act before the Orissa High Court

Vernacular social gaming platform WinZo Games has filed a writ petition²⁰ against the state of Odisha before the Orissa High Court (“**Orrisa HC**”) challenging the constitutional validity of the *Odisha Prevention of Gambling Act, 1955* (“**Gambling Act**”). The Gambling Act currently prohibits all

11. *RMD Chamarbaugwalla v. Union of India* (1957 AIR 628); *State of Bombay v. RMD Chamarbaugwalla* (1957 AIR 699) *Dr. KR Lakshmanan v. State of Tamil Nadu* (1996 2 SCC 226); *State of Andhra Pradesh vs. K. Satyanarayana & Ors.* (1968 AIR 825).

12. *Junglee Games India Pvt Ltd v State of Tamil Nadu*, Madras High Court (WP No 18022/2020).

13. *Varun Gumber v. Union Territory of Chandigarh* [CWP No. 7559 of 2017], *Gurdeep Singh Sachar v. Union of India* [Criminal P.I.L. No. 16 of 2019], *Avinash Mehrotra v. State of Rajasthan* [SLP (Civil) Diary No(s). 18478 of 2020]

14. Public order

15. Police

16. Intra-state trade and commerce

17. Sports, amusements and entertainment

18. SLP(C) No. 019981 - 019988 / 2021

19. *Junglee Games India Pvt. Ltd. & Anr. v. State of Tamil Nadu* Writ Petition No. 18022/2020

20. Writ Petition No. 34338/2021

forms of gaming for stakes and those found guilty of such an offence in the state can be punished with a one-month jail term or a fine of up to one hundred rupees or with both.²¹

WinZo Games has contended that the Gambling Act which imposes a blanket ban on all games played for stakes, regardless of it being a game of skill or chance, is arbitrary and violates the fundamental rights of gaming operators under Article 19(1)(g)²² of the Constitution. WinZo Games contends that the state lacks legislative competence²³ to regulate games of skill and can only regulate games of chance and have prayed for the Gambling Act to be struck down as unconstitutional. The matter was admitted on 15 November 2021 and will next be heard on 14 February 2022.

You may access the full text of the Odisha Prevention of Gambling Act, 1955 [here](#)

A copy of the order dated 15 November 2021 is available [here](#)

You may read more on this development in the The New Indian Express report [here](#)

Netflix rolls out mobile games for its subscribers, including in India

Netflix recently launched its free-to-play mobile games for its subscribers globally, including in India. Earlier the streaming company was only offering its games in select European regions but has now expanded globally and made them accessible on both Android and iOS devices. The company had issued a letter to its shareholders in July 2021 indicating its desire to create a new category for itself in gaming.

The streaming giant is offering its subscribers a mix of games with some being based on their original shows such as 'Stranger Things: 1984' and 'Stranger Things 3: The Game', and some being casual games namely 'Shooting Hoops', 'Card Blast', 'Teeter Up', 'Bowling Ballers' and 'Asphalt Xtreme'. The games are only accessible to existing Netflix subscribers and depending on the subscription package, subscribers can play on multiple devices via the same account. The games are only available to adult profiles, can be played offline and do not contain any advertisements or in-app-purchases.

You may read Netflix's official press release and its letter to shareholders [here](#) and [here](#) respectively.

Union Government issues advisory to parents and teachers on online gaming addiction among children

On 10 December, 2021 the Union Ministry of Education ("Education Ministry") issued an advisory to parents and teachers on safe online gaming practices cautioning them against the increasing online gaming addiction in children.

The advisory noted that online games are designed to emotionally compel children to buy expensive in-game content with real money and also that the absence of a play time limit in children can cause them to get addicted to these games, adversely impacting their education and social life.

In its advisory, the Education Ministry issued a list of do's and don'ts for parents and teachers such as not allowing children to make in-game purchases without parental consent and avoiding credit/debit card registration on the games/apps. The advisory said that parents and teachers should not let children use their personal information when playing online games so as to safeguard their privacy and also to install adequate virus protection on gaming devices. It also recommends that parents check the age rating and parental features of games their children play. In its advice to teachers, it recommends that they keep an eye out for a sudden fall in the child's grades or a change in social behaviour and that teachers should educate children on the pros and cons of the internet.

You may read the advisory in full [here](#).

Parliamentarians raise questions on online gaming in Parliament's Winter Session

During the 2021 Winter Session of Parliament, various Members of Parliament ("MPs") questioned the central government on the regulation of fantasy sports and online gaming. In the lower house of Parliament, the Lok Sabha, BJP MP Dr. Sanjay Jaiswal asked the government questions on fantasy sports and if there was a nodal agency for regulating fantasy sports in India. BJP MPs from Rajasthan, Swami Sumedhanand Saraswati and Smt. Ranjeeta Koli raised a starred question on 'internet games' whereas Congress MP Anto Antony raised a specific question on 'suicide due to internet games'.

On fantasy sports, the government responded that it has neither designated nor is it considering appointing any organisation as a nodal agency for fantasy sports. On the question of 'internet games' the government acknowledged that they are aware of the rise of such games and the associated risks attached to them. However, they clarified that the onus of regulating online games is with the respective state governments and not with the central government.

In the Rajya Sabha, BJP MP Sushil Kumar Modi raised the issue of online gaming during a zero hour discussion and got the support of multiple parties. He urged the central government to levy a uniform tax on online

21. Section 3 of the Odisha Prevention of Gambling Act, 1955

22. All citizens have the right to practice any profession, or to carry on any occupation, trade or business.

23. Entry 34 of List II of the Seventh Schedule of the Constitution – 'Betting and Gambling'

gaming platforms and also come up with a comprehensive regulatory framework to regulate online gaming. Raja Sabha Chairman M Venkaiah Naidu noted the issues raised by Mr. Modi and urged the central government to take appropriate action.

You can access Dr. Sanjay Jaiswal's question and the response to it [here](#).

You can access the starred question raised jointly by Sumedhanand Saraswati & Ranjeeta Koli and the response to it [here](#).

MP Anto Antony's question and the response to it is available [here](#).

Meghalaya publishes rules to supplement its new gaming law

On 14 December 2021, the government of Meghalaya approved the *Meghalaya Regulation of Gaming Rules, 2021* ("**Gaming Rules**") under the *Meghalaya Regulation of Gaming Act, 2021* ("**Gaming Act**") which makes it mandatory for a gaming operator in the state offering games of skill or chance for stakes to obtain a license from the state government. The Gaming Act imposes an imprisonment of up to two years and a fine of up to INR

10 lakh for operating these games without a valid license. The Gaming Rules prescribe the form and way in which the applicant may apply for the license. A license shall only be issued to an Indian citizen or a legal entity incorporated in India with an operator required to set up a physical office in the state within 30 days from the date of the license being issued. A licensee must pay an annual license fee of INR 2 crore along with a royalty fee of 2% of the licensee's gross gaming revenue generated each quarter.²⁴

However, it is relevant to note that these games can only be played by individuals above the age of 18 years, that the residents of Meghalaya are prohibited from entering the physical gaming premises and that games can be offered online only via state-wide intranet. The Gaming Rules will take effect on their publication in the Official Gazette.

You can access the official copy of the *Meghalaya Gaming Regulation of Gaming Rules 2021* [here](#).

You can access the official copy of the *Meghalaya Gaming Regulation Act 2021* [here](#).

24. Section 2(o), the Gaming Act: "Gross Gaming Revenue is a sum of the total amount of all bets made and the revenue generated from advertising, marketing, and promotion minus the value of all winnings and prizes, bonuses and discounts, and cash backs, as well as the payment gateway and banking charges in the course of the gaming period."



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