



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

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INTRODUCTION

Tenets of Buddhism have defied time and are as relevant today (if not more) as they were centuries ago, when they were first pronounced by Buddha, the Enlightened One. They have been interpreted in unique ways to provide much-needed answers to all that ails our present fast-paced contemporary lifestyle.

A few years after he attained Enlightenment, Lord Buddha visited Kapilavastu, his hometown. His son, Rāhula, was seven years old at the time and is said to have followed his father and his flock of monks around Kapilavastu. As per Buddhist history and tradition, Lord Buddha is said to have imparted valuable teachings to Rāhula during this visit, which later came to be known as *Rahulavada Sutta* (The Exhortation to Rāhula).¹ One of the key principles that this discourse emphasised on was the *'importance of reflecting and looking back to understand what can be improved upon in the future.'* Modern scholars and followers have condensed this to *'looking back to move forward'*.²

Bearing this apposite postulate in mind and applying it to the pursuit and dissemination of legal knowledge, we bring to you Volume VI of The Recap, our bi-monthly newsletter which captures everything that's worthy of looking back at and reflecting upon for the future, from a legal point of view, for India's media & entertainment (M&E) and gaming industries. This edition covers updates from the months of May and June 2022 and presents an eclectic blend of judicial updates, multiple new regulatory guidelines and what various governments are planning as new laws.

1. Ambalattika-Rahulovada Sutta – Instructions to Rāhula at Mango Stone, translated from the Pali by Thanissaro Bhikkhu, available [here](#)
2. A blog on this interpretation can be accessed [here](#)



Ranchi court refuses interim injunction against release of the film 'Jugjugg Jiyo' in a copyright infringement suit

A commercial court in Ranchi ("**Ranchi Court**") dismissed an interim application seeking a stay on the release of the film, 'Jugjugg Jiyo' in a suit claiming copyright infringement.³

Based on the trailer of the film, the plaintiff filed a suit alleging copyright infringement of his story titled 'Bunny Rani' which was registered with the Screen Writer's Association ("**SWA**") in 2020. Submitting a brief story written on a single sheet of paper as evidence, the plaintiff insisted that upon comparing the same with plaintiff's story as indicated in the trailer, it was clear that the defendants had copied and used the plaintiff's story. The defendants submitted that 'Jugjugg Jiyo' is based on a story titled 'Golden Jubilee', written by Mr. Sumit Batheja, which was registered with the SWA in 2019, thus preceding the plaintiff's story in time.

The Ranchi Court observed that the damages quantified by the plaintiff (Rs. 1.5 crores) could not be stated to be an 'irreparable loss' in comparison to the massive amounts expended by the defendants on the production, marketing/promotion, and distribution of the film. Even assuming that the Plaintiff were to succeed in his suit, the Ranchi Court held that at this interim stage, the balance of convenience lies in favour of the defendants. Accordingly, the plaintiff's prayer for ad-interim injunction against the release of the film was refused.

You can access the Ranchi Court order [here](#).

Delhi HC allows release of the film 'Jayeshbhai Jordaar' on the condition that relevant disclaimers are added

The Delhi High Court ("**Delhi HC**") allowed the release of the film, 'Jayeshbhai Jordaar', after it was assured by the producers of the film that disclaimers would be displayed during scenes portraying women getting ultrasounds in the film.⁴

Youth Against Crime, a non-governmental organization, filed a plea in public interest, before the Delhi HC seeking direction against the Central Board of Film Certification ("**CBFC**") to delete scenes from the film which showed pre-natal sex determination being conducted at an ultrasound clinic. The plaintiffs submitted that the impugned scenes openly promoted the use of ultrasound techniques for sex determination, an act which is violative of the provisions of the *Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994*. The defendants submitted that the film does not

promote or advertise the use of such techniques, and rather sought to highlight the evils of female foeticide. Further, the defendants submitted that the movie had received the requisite clearance from the CBFC, subject to an insertion of a static disclaimer during the scenes of ultrasound, which had been duly inserted in the trailer along with a disclaimer at the start of the movie stating that, 'pre-natal sex determination is a punishable offence'.

After viewing the trailer and the relevant scenes from the film, the Delhi HC observed that although, for the purpose of storytelling, it may be essential to show that such activities are taking place despite prohibition, filmmakers cannot trivialize the activity itself. In view of its observations, the Delhi HC proposed that additional static warnings and disclaimers be displayed during the trailer as well as the relevant scenes in the film. Since the respondents undertook to display warnings on all viewing formats, including the trailer on Youtube, as well as other OTT platforms, the petitioner agreed not to press the petition further.

You can access the Delhi HC order [here](#).

Delhi HC rules that title of the film 'Sholay' is capable of protection under trademark law

The Delhi HC recently dismissed the argument that titles of films cannot be registered as trademarks and held that the word 'Sholay' being the title of a legendary film, can be recognized and protected under the trademark law.⁵

Sholay Media and Entertainment Pvt Ltd. and Sippy Films Pvt. Ltd. filed a suit before the Delhi HC against the defendants who had allegedly registered the domain name 'www.sholay.com' ("**Website**") and had been using the Website to sell various merchandise by incorporating scenes and names from the film 'Sholay'. The plaintiffs submitted that the defendants used the impugned mark as a metatag on their web pages and had been using a logo, colour scheme and device similar to that of the title of the plaintiff's film. Claiming that such use by the defendants amounted to passing off, dilution and tarnishment of the well-known mark 'Sholay', the plaintiffs sought a permanent injunction restraining the defendants from infringing the plaintiff's registered trademark.

3. Vishal Singh vs. Dharma Productions & Ors. Misc. Civil Application No. 265/2022

4. Youth Against Crime vs. Union of India WP(C) 7255/2022 & CM No. 22210/2022

5. Sholay Media Entertainment & Anr. vs. Yogesh Patel & Ors. CS (COMM) 8/2016 & CRLM 1918/2002

Observing that content in a movie is not restricted to theatrical screening, but also extends to online and other electronic platforms, the Delhi HC dismissed the defendant's argument that the goods and services offered by the plaintiff and defendants are not overlapping and unrelated. The Delhi HC held that this case satisfied both the tests established in the case of *Kanungo Media Ltd. Vs. RGV Film Factory & Ors.*,⁶ wherein it was held that in order for an unregistered title to triumph in an infringement suit, the plaintiff needs to establish that (i) the title has acquired secondary meaning; and that (ii) there is a likelihood of confusion amongst the potential audience regarding the source, affiliation, or connection. Further, the Delhi HC held that 'Sholay' is capable of being recognized as a 'mark' under trademark law as titles of certain films surpass the threshold of being merely ordinary words, and 'Sholay' is one such film. In view of these observations, the Delhi HC issued a permanent injunction restraining the defendants from operating the Website and utilizing the mark 'Sholay' in relation to any of its goods or services. The Delhi HC also directed the defendants to transfer the infringing domain names to the plaintiffs and awarded Rs. 25 lakhs as costs and damages to the plaintiffs.

You can access the Delhi HC order [here](#).

Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 notified by the CCPA

On June 9, 2022, the Central Consumer Protection Authority ("CCPA"), notified the 'Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements 2022' ("**Endorsement Guidelines**"). With the aim to prevent false or misleading advertisements, the Endorsement Guidelines seek to ensure that consumers are not being fooled with unsubstantiated claims, exaggerated promises, or misinformation claims.

Unlike some advertisement guidelines which apply specifically to a format such as cable TV or digital media, etc., the CCPA has made the Endorsement Guidelines applicable to all advertisements irrespective of form, format, or medium. The Endorsement Guidelines cast the obligation of compliance on all relevant stakeholders including manufacturers, service providers, traders, advertising agencies and/or endorsers of the product, good, or service. Since the Endorsement Guidelines do not separately stipulate the consequences of non-compliance or violation of its provisions, in case of a violation, the CCPA may impose penalties and enforcement actions as prescribed under the *Consumer Protection Act, 2019*.

Salient features of the Endorsement Guidelines are mentioned as below:

- The Endorsement Guidelines recognize, define, prohibit and/or establish conditions and/or restrictions on 'bait advertising', and 'free claim advertising'. While there are conditions imposed on advertisement offering low prices to attract consumers (bait advertising), there is a prohibition on describing any good, service or product as 'free' or 'without charge', if there is any unavoidable cost to consumer associated with it (free claim advertising). There is a blanket prohibition on surrogate or indirect advertising, i.e., advertisements which circumvent a prohibition or restriction on advertisement of certain goods/services by portraying it to be an advertisement for other permitted goods or services.
- The Endorsement Guidelines impose several duties on manufacturers, service providers, advertisers, and advertising agencies and also mandate due diligence and disclosure of material connection by endorsers of advertisements.
- Other conditions stipulated by the Endorsement Guidelines include those with respect to advertisements targeting children and disclaimers in advertisements.

You can access the Endorsement Guidelines [here](#).

ASCI's new Guidelines on Harmful Gender Stereotype

The Advertising Standards Council of India ("**ASCI**") has released the 'Guidelines on Harmful Gender Stereotype' ("**Gender Stereotype Guidelines**") with an aim to establish 'boundaries for unacceptable portrayals' and 'encourage advertisers to create more progressive gender depictions.' According to the Gender Stereotype Guidelines, advertisements must not include gender stereotypes that are likely to cause 'harm or serious offence'.

In order to determine whether an advertisement portrays any sort of harmful gender stereotype, ASCI has clarified that it will consider an advertisement's likely impact when taken as a whole; and the perspective of the group of individuals being stereotyped.

Some of the portrayals prohibited under the Gender Stereotype Guidelines are discussed below:

- mocking people for not conforming to gender stereotypes, their sexual orientation or gender identity or implying that the physique or physical characteristics of a person is a significant reason in them not being successful;

6. *Kanungo Media Ltd. vs. RGV Film Factory & Ors.* CS (OS) No. 324/2007

- reinforcing unrealistic and undesirable gender ideals or expectations or communicating that a person fails to achieve a task specifically because of their gender;
- communicating that an individual's happiness or emotional wellbeing depends on conforming to these idealised gender-stereotypical body shapes or physical features;
- suggesting that stereotypical roles or characteristics are always uniquely associated or the only options available to a particular gender;
- indulging in the sexual objectification of characters of any gender or depict people in a sexualised and objectified way for the purposes of titillating viewers;
- provoking or trivializing violence (physical or emotional), unlawful or anti-social behaviour based on gender or normalizing voyeurism, eye-teasing, stalking, emotional or physical harassment or any similar offences; and
- conveying that a particular children's product, pursuit, behaviour, or activity, including choice of play or career, is inappropriate for one or other gender(s).

You can access the Gender Stereotype Guidelines [here](#).

Draft Regulatory Guidelines for Child Participation in the Entertainment Industry or any Commercial Entertainment Activity released by NCPCR

On June 24, 2022, the National Commission for the Protection of Child Rights ("NCPCR") has issued draft guidelines for the protection of child artistes in the media and entertainment industry ("**Draft Child Artist Guidelines**") under the *Commissions for Protection of Child Rights Act, 2005*.

The final guidelines are proposed to be made applicable to content on television programmes, including reality shows; news; films; OTT platforms and social media; performing arts and advertising; etc. Some conditions, restrictions, and prohibitions that the Draft Child Artist Guidelines propose, include:

- Not casting any child in a role situation that is inappropriate, distressing or embarrassing to the child;
- Not permitting any child artist to labour for more than 27 consecutive days, with one shift per day and breaks every three hours;
- Not revealing the identity of the child, or any personal detail of the child without the prior permission of the parent/legal guardian;

- Not engaging any child for participation in any audio-visual media production or any commercial event without obtaining necessary permission of the District Magistrate where the activity is to be performed; and
- Depositing a minimum of 20% of the child's earnings from the production or event into a fixed deposit account in the child's name at a nationalised bank which shall be credited when the child attains adulthood.

The Draft Child Artist Guidelines are available on the website of the NCPCR for comments until July 24, 2022.

You can access the Draft Child Artist Guidelines [here](#).

DTH players seek 8% license fee waiver to sustain competition in market

In a letter addressed to the Ministry of Information and Broadcasting ("**MIB**") and the Department of Telecommunications ("**DoT**"), Direct to Home ("**DTH**") service providers' industry body, DTH Association, has requested the central government to waive the 8% license fee imposed on them. This development follows a similar waiver of license fee on broadband services for 5 years which is under consideration by the DoT pursuant to a recommendation by the Telecom Regulatory Authority of India.

With the license fee for broadband services being waived, the letter claims that while distribution platforms such as IPTV, OTT, etc. will become an even more formidable force, DTH will remain the only platform paying a license fee. This would render DTH uncompetitive in comparison to every other content distribution platform and put the already declining DTH volumes, large investments and over a lakh employees involved in the sector at risk.

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

MeitY releases draft amendments to IT Rules

The Ministry of Electronics, and Information Technology ("**MeitY**") has released a fresh draft of the proposed amendments to Part I and Part II of the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* ("**IT Rules**"). The amendments have been proposed to deal with new and emerging challenges as well as gaps perpetrated by the expansion of internet in India ("**Draft Amendments**").

Earlier, the MeitY had released draft amendments to the IT Rules vide a press note dated June 1, 2022. However, on June 2, 2022, those draft amendments were withdrawn. Subsequently, the fresh Draft Amendments were released vide a press note dated June 6, 2022.

The changes proposed by the MeitY under the Draft Amendments are briefly discussed hereinbelow:

- i. Requiring intermediaries to ensure that users comply with additional due diligence requirements under Rule 3(1)(a) and Rule 3(1)(b) of the IT Rules: This includes ensuring that the users of the intermediary's computer resource do not host any prohibited information as prescribed under Section 3(1)(b) of the IT Rules. The Draft Amendments propose mandatory enforcement of Rule 3(1)(a) and Rule 3(1)(b) by the intermediaries in addition to allowing intermediaries to create their own community standards as per their business policies.
- ii. Addition of Rule 3(1)(m) and 3(1)(n) which require intermediaries to respect the rights accorded to citizens under the Constitution of India: According to the MeitY, this has become necessary because a number of intermediaries have acted in violation of constitutional rights of Indian citizens.
- iii. Changes in the grievance redressal mechanism of the intermediary under Rule 3(2): The Draft Amendments propose:
 - Requiring the grievance officer to acknowledge within 24 hours, any complaint *including* the suspension, removal or blocking of any user account or any complaint pertaining to request for removal of information or communication link in relation to grounds prescribed under Rule 3(1)(b);⁷
 - Requiring any complaint for removal of any content to be addressed by the grievance redressal officer within 72 hours of the receipt of the user's complaint. This is expected to help 'ensure that problematic content

is removed expeditiously and does not become viral over a sustained period of time'.

- Allowing intermediaries to implement any safeguards to prevent any misuse of the grievance redressal mechanism by users.
- iv. Creation of a new GAC to provide an appeal mechanism to users: Under new Rule 3(3), the Draft Amendments also propose the creation of an appellate body called 'Grievance Appellate Committee' ("**GAC**"). The intention is to allow a person aggrieved by an order of the grievance officer to prefer an appeal to the GAC having jurisdiction within a period of 30 days of receipt of the communication from the grievance officer. The GAC is supposed to dispose of the appeal within a period of 30 days from the date of the appeal. Creation of such a body has been made necessary due to the absence of any appellate mechanism or credible self-regulatory mechanism put in place by intermediaries. The MeitY has clarified that even if this amendment is notified, the users will have the right to directly approach a court of law against the intermediary's decision.

As per online news reports, the first public consultation on the Draft Amendments took place on June 23, 2022.

You can access the press note and Draft Guidelines [here](#).

7. Rule 3(2)(i) of the IT Rules



MIB Advisory on Advertisements of Online Betting Platforms

The MIB, on June 13, 2022, has issued an advisory to print and electronic media outlets to refrain from publishing advertisements of online betting platforms. The online and social media, including the online advertisement intermediaries and publishers, were also advised against displaying advertisements in India or targeting such advertisements towards the Indian audience.

The MIB observed that several advertisements of online betting websites and platforms have been appearing in print, electronic and digital media. Further, the MIB pointed out that betting and gambling is illegal in most parts of India and that it is concerned that advertisements of online betting promoting a largely prohibited activity poses a significant financial and socio-economic risks for the consumers, especially the younger members of society. Without specifically mentioning the provisions, the advisory also observed that such advertisements are not in strict conformity with the *Consumer Protection Act, 2019*, the *Advertising Code under the Cable Television Networks Regulation Act, 1995*, advertisement norms under the *Norms of Journalistic Conduct laid down by the Press Council of India under the Press Council Act, 1978*, as well as the *IT Rules*. Given the prohibitions on gambling in India and in the larger public interest, the MIB has issued this advisory to all advertising mediums.

You can access the MIB advisory [here](#).

WinZO drags MPL to court over copyright infringement claims

WinZO has filed a suit against Mobile Premier League (“MPL”) before the Delhi HC alleging copyright infringement over its popular team gaming format—‘World War’.

WinZO launched ‘World War’, a gaming format which has garnered over 80 million registered users worldwide, on its platform, in April 2020. In late March 2022, WinZO found a gaming format similar to ‘World War’, under an identical name, on MPL’s platform. Following this, WinZO urged MPL to take down the format from their platform and MPL complied with the request. However, by April 2022, MPL started using the same format again with the name ‘Team Clash’, but the notifications/ pop-ups sent to users still used the term ‘World War’. Following this, WinZO addressed a

cease-and-desist letter to MPL, which the latter did not respond to. In response, WinZO filed a suit before the Delhi HC seeking an injunction to restrain MPL from continuing to use the format on account of ‘copyright infringement, passing off and unfair competition’. Further, WinZO submitted that it has filed a patent for the invention, along with a copyright registration of the format, and trademark application for ‘World War’.

During the hearing that took place on June 3, 2022, MPL undertook not to use the mark ‘World War’. With respect to other allegations made by WinZO, MPL submitted that they will attempt to resolve the same through negotiations with WinZO. The matter is listed for further hearing on July 4, 2022.

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

Tamil Nadu seeking to pass an ordinance on online gaming, another ban looming

Tamil Nadu is in the news again, and this time around is seeking to ban online gaming, again! We haven’t completed a year since the Madras High Court (“**Madras HC**”) struck down the amendments made to the *Tamil Nadu Gaming Act, 1930* seeking to ban all forms of online gaming⁸ and we are already on the cusp of another ordinance seeking to do the same. The tension created from opposition political parties in the state is palpable. From calls for a ban in the state assembly, to meeting the governor culminating into a full-blown protest. The message is clear: *ban online gaming, agnostic of it being a game of skill or chance*.

To achieve this end, the Chief Minister MK Stalin set up a committee to advise the state government on enacting a fresh legislation on online gaming. The committee is headed by retired judge of the Madras HC, Justice K Chandru with 4 other members including a secretary to the state government, the Additional Director General of Police, a psychologist, and a professor from the Indian Institute of Technology, Madras. The committee is given 2-week time frame to study the online gaming sector, and answer whether online games are based on skill or only luck

8. *Junglee Games India Pvt Ltd v State of Tamil Nadu* WP No. 18022/2020

as well as identify how online games are addictive in nature. They have also been tasked to examine the possibilities of banning advertisements and payments for online gaming. The report submitted to the government must also make recommendations on a proposed law to ban online gaming. At the time of writing, the committee has handed over the report to the Chief Minister which is being deliberated over in a cabinet meeting. If the ordinance bans all forms of online gaming including rummy, a game of skill, the Madras HC might be subject to more petitions and prayers from the online gaming industry.

You can access the Madras HC order [here](#).

You can read more about this development as reported by the Hindustan Times [here](#).

Rajasthan proposes a bill to regulate online gaming in the state

In line with the statements made by Chief Minister Ashok Gehlot during his Rajasthan budget speech to regulate online skill gaming in the state, the Finance Department of Rajasthan has issued a draft *Rajasthan Virtual Online Sports (Regulation) Bill, 2022* ("**Rajasthan Sports Bill**") for stakeholder comments and suggestions. Interestingly, the bill only proposes to regulate two types of games of skill i.e., fantasy sports and esports ("**Virtual Online Sports**") and their respective platforms ("**Sports Engagement Platforms**") under a state monitored licensing regime.

The Rajasthan Sports Bill is seeking to regulate Virtual Online Sports through a licensing authority with the administration and oversight by Self-Regulatory Organisations ("**SRO**") and a Rajasthan Virtual Online Sports Commission ("**Gaming Commission**"). All fantasy sport formats proposed to be offered in Rajasthan must either be approved by a court of law or the respective SRO. Esports must be recognized by both domestic and international accredited sporting federations. The Gaming Commission shall *inter alia* recognize the SROs representing the respective Virtual Online Sport as well as their code of ethics, charters, and by-laws. The SROs will, *inter alia*, administer the management of such Virtual Online Sport, evaluate, and certify a format as a Virtual Online Sport in accordance with the Rajasthan Sports Bill and issue directions to the platforms to comply with their code of ethics and governance.

Licenses can only be procured by an Indian citizen or an Indian legal entity which shall be valid for a period of 10 years subject to the terms and conditions imposed on the licensee, which have not been specified in the Rajasthan Sports Bill. The Sports Engagement Platforms must maintain

a record of all transactions with their users for a period of 5 years from the date of the transaction and shall provide information on their users whenever requested for by the licensing authority. The Rajasthan Sports Bill provides for a two-tier grievance redressal mechanism for disputes between licensees and users. It also lays out a list of offences and penalties such as a penalty of Rs. 4 lakhs per day for a Sports Engagement Platform offering a Virtual Online Sport without a license or after the license has been suspended. The Rajasthan Sports Bill was open for comments from all stakeholders including the public till May 28, 2022.

You can access the draft Rajasthan Virtual Online Sports (Regulation) Bill 2022 [here](#).

GST Council deliberate over revised GST for online gaming

The Group of Ministers ("**GoM**") constituted by the GST Council to examine the taxation on casinos, racecourses and online gaming have reportedly taken a unanimous decision to impose a 28% GST on online gaming. The GoM was first constituted in May 2021 and then re-constituted in February 2022. The convenor of the re-constituted GoM tweeted that the GoM meetings have concluded, and they have arrived at a common consensus on the nature and percentage of tax to be levied. Their recommendations were submitted to the GST Council and deliberated during their meeting which was held between June 28-29, 2022, in Chandigarh.

There is still a degree of uncertainty on what the GST rate will be levied at and at what valuation. At present, GST is paid at the rate of 18% by online skill gaming operators on the amount retained by them, also known as the platform fees or gross gaming revenue, and not on the 'pool amount' to be paid to the winners of the skill gaming contest.⁹ Ahead of the much anticipated meeting of the GST Council, reports emerged that the GoM has decided to recommend a uniform rate of 28% regardless of game being one of skill or chance. The 28% is being proposed to be levied on the entire pool amount and not just the platform fee, the only portion of the consideration that is retained by the online gaming platforms. While the GST Council did discuss the issue, it did not take a final decision and have asked the GoM to re-deliberate and submit an amended report to the GST Council after 15 days.

You can read more about this development as reported by the Business Standard [here](#) and CNBC TV 18 report [here](#).

You can access the Convenor's tweet [here](#).

9. Gurdeep Singh Sachar v. Union of India CRPIL 16/2019

Central government forms a committee to regulate online gaming

The central government has set up a committee to recommend a central gaming legislation and to identify a central ministry to regulate the same. The committee will consist of the Chief Executive Officer, NITI Aayog, Amitabh Kant and secretaries of various ministries such as the Ministry of Home Affairs, Information & Broadcasting, Sports and Youth Affairs, and Electronics and Information Technology.

The mandate for this committee is to study the global best practices, consult experts in this field, outline a broad central regulatory mechanism for gaming, and identify a central ministry to regulate the gaming market in India. The committee will also consider player protection, ensuring compliance and creating a level playing field for all stakeholders while submitting its report to the government within the next 3 months.

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



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