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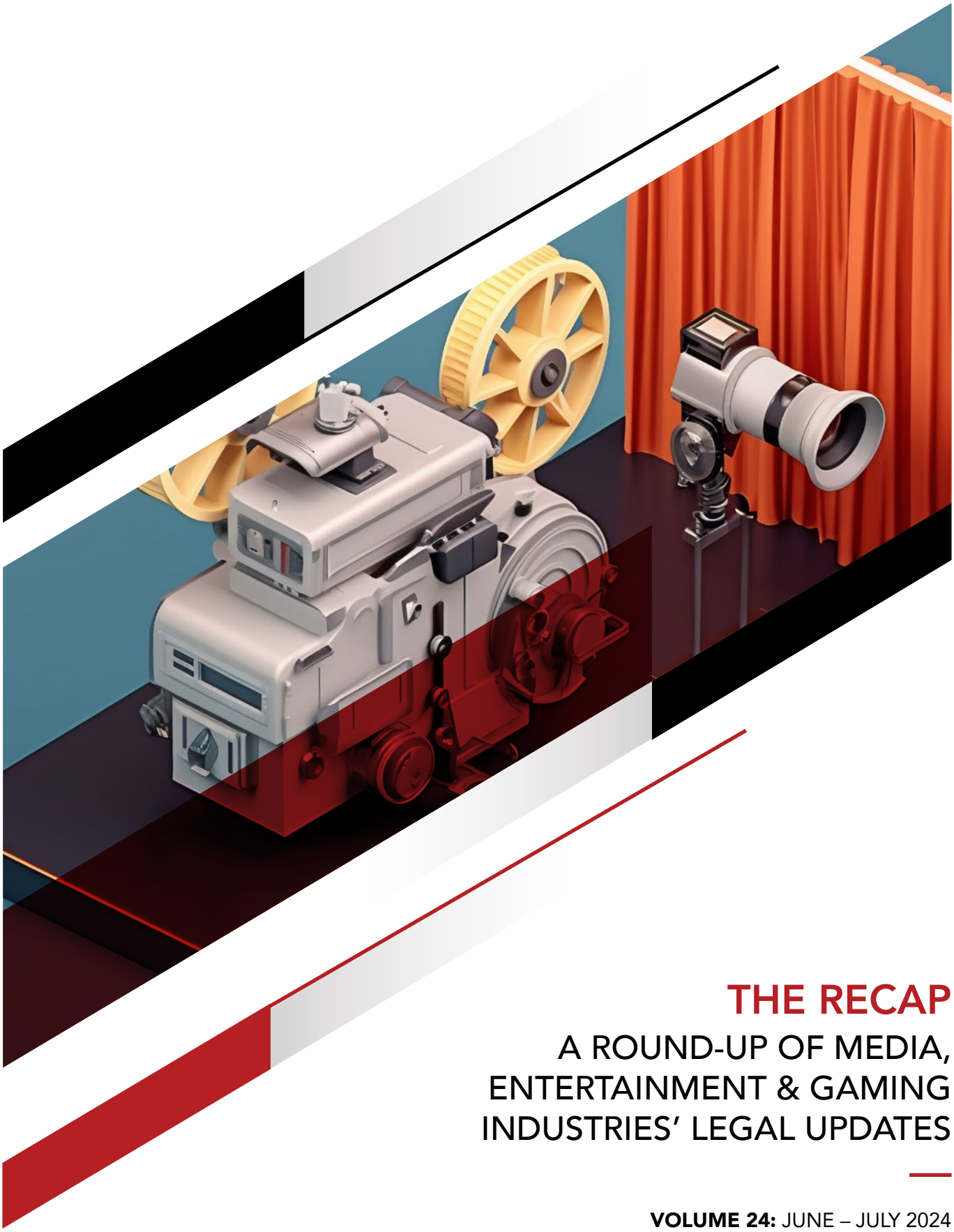

THE RECAP

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

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INTRODUCTION

"Hope is a good thing, maybe the best of things, and no good thing ever dies."

This iconic line from one of the greatest movies of all time, *The Shawshank Redemption*, perfectly encapsulates the sentiment surrounding the recent legal and regulatory developments in the Indian media & entertainment industry. As we stand on the precipice of significant changes, the anticipation is palpable, as the future holds both promise and uncertainty.

Real-money gaming companies are waiting in anticipation for the Supreme Court to hear the case on the 28% (twenty eight percent) Goods and Services Tax regime, hoping for a favourable outcome that could potentially reshape the financial landscape for their businesses. On the media front, the government is contemplating whether there is a need for the Broadcasting Services (Regulation) Bill, 2023. A diverse range of stakeholders would be consulted before the government arrives at a decision.

As we look forward to these potential changes and developments in the coming months, the underlying theme remains one of cautious optimism. The outcomes of these developments could significantly impact various sectors, and like Andy Dufresne in *The Shawshank Redemption*, we hold on to hope, believing that the best is yet to come.

With these thoughts, we present to you, Volume XXIV of IndusLaw's *The Recap*, a round-up of legal updates for the media & entertainment and gaming industries. This edition covers updates from the months of June and July 2024 and their related developments from August 2024.

MEDIA AND ENTERTAINMENT UPDATES

Government to assess the need for Broadcasting Services (Regulation) Bill, 2023

As per latest news reports, on August 19, 2024, Mr. Ashwini Vaishnaw, the Union Minister for Information and Broadcasting stated that the government is assessing the need for a new regulatory framework for broadcasting services and is open-minded about its approach. He stated that the Ministry of Information and Broadcasting ("**MIB**") will continue to have extensive consultations with a diverse set of stakeholders to assess the purpose of the law. He also added that the government has encouraged the content creator economy and enabled it to create more intellectual property.

Mr. Vaishnaw's statements were made in the backdrop of the controversy surrounding the consultation process and the provisions of the Broadcasting Services (Regulation) Bill, 2024 ("**Revised Broadcasting Bill**"). As per latest news reports, MIB held a private meeting with select industry stakeholders and shared physical copies of the Revised Broadcasting Bill. This version of the bill was not released for public consultation. However, various stakeholders, who accessed the Revised Broadcasting Bill criticized it for potentially creating a chilling effect on the freedom of speech and expression.

Reports also indicate that due to the backlash faced by the government, on August 12, 2024, MIB had asked the select stakeholders to return their physical copies of the Revised Broadcasting Bill. The ministry also extended the time for stakeholders to provide comments to the Broadcasting Bill, 2023 ("**Broadcasting Bill**") till October 15, 2024, and had stated that a revised version of the bill would be released after the consultation process, without any reference to the Revised Broadcasting Bill.

Notably, some unnamed official sources quoted by news reports have stated that the Broadcasting Bill has been put on hold for the time being. As on date, the Revised Broadcasting Bill stands withdrawn.

Some of the key provisions of the Revised Broadcasting Bill as per reports were:

- Individuals engaging in systematic business or commercial activities through social media, such as uploading videos, creating podcasts, or writing online, are now classified similarly to traditional broadcasters. This includes those who are involved in systematic and professional activities, where "systematic" refers to structured activities with planning and continuity.
- News content creators online who are not linked to traditional or registered digital media are now subject to similar obligations as streaming platforms, i.e., Over-The-Top ("**OTT**") broadcasting services.
- Definitions of 'programme' and 'broadcasting' has been expanded to include "texts" alongside traditional audio, visual, or audiovisual content.
- The definition of 'intermediary' encompasses social media platforms, advertisement intermediaries, internet service providers, online search engines, and online marketplaces.
- The government under the Revised Draft can set different due diligence guidelines for social media platforms and online advertisement intermediaries. All intermediaries will now need to provide detailed information about OTT and digital news broadcasters to the Central Government to ensure compliance.
- Intermediaries will risk losing their safe harbour status and face penalties under Bharatiya Nyaya Sanhita, 2023, if they fail to comply with the government directions.

Financial Express' coverage of the update can be viewed here and here.

Money Control's coverage of the update can be viewed here.

MediaNama's coverage of the update can be viewed here.

The Hindu's coverage of the update can be viewed here.

Self-Declaration Certificate case moves forward: Ministry of Consumer Affairs to reinitiate its tie-up with ASCI to track misleading advertisements; MIB files its affidavit

During the recent hearings in *Indian Medical Association v. Union of India* ("**Patanjali Case**"), the Supreme Court of India ("**SC**") highlighted the inefficacy of the Grievance Against Misleading Advertisements ("**GAMA**") portal noting a significant decline in registered complaints following the end of the collaboration between the Ministry of Consumer Affairs ("**MCA**") and the Advertising Standards Council of India ("**ASCI**").

The SC observed that the GAMA portal operated by the MCA was not effective. The SC noted that the MCA had registered only around 130 (one hundred and thirty) complaints under GAMA between 2020-2024, compared to over 2500+ (twenty five hundred plus) complaints between 2018-2020 when the MCA had a collaboration with the ASCI. The SC also pointed out that the MCA was only

acting against misleading advertisements when a complaint was made rather than acting on its own. The SC observed orally that the MCA should start acting against such advertisements on its own instead of waiting for complaints to be filed.

Observing that the ASCI does "a lot of *suo motu* due diligence on ground", the SC implied that the approach adopted by ASCI was more effective in curbing misleading advertisements as compared to the MCA's approach of waiting for complaints to be made on the GAMA portal. This observation, though likely to be *obiter dictum*, may give a boost to the ASCI framework. The *amicus curiae*, Shadan Farasat, suggested that the mechanism developed under the MCA's tie-up with the ASCI be re-initiated (among his other suggestions in relation to medicines and food products).

Separately, the Additional Solicitor General ("**ASG**"), Mr. K.M. Nataraj, appearing for MIB informed the SC in July that stakeholder meetings had been conducted on the issue of the self-declaration for advertisements and more than 40 (forty) stakeholders had given their views and suggestions on the issue. However, the ASG sought more time to gather some more stakeholder views, collate them, and file a response (affidavit) containing MIB's recommendations on the issue.

MIB reportedly filed its affidavit on August 24, 2024, in the SC containing its suggestions for the self-declaration for advertisements. The recommendations are broadly based on stakeholder consultations and submissions of the interveners in the case. 6 (six) key points that MIB has said in the affidavit are:

- Self-declaration ("**SD**") should be filed only by private companies or advertisers, not by advertising agencies.
- Limit SDs only to advertisements of health and food products and services.
- Exempt start-ups and micro and small enterprises from filing SDs.
- Single SD should be applicable across all media platforms to reduce compliance burden.
- Merge the two existing portals for SDs into one to make the process more efficient and user friendly.
- Either take the SD as a blanket one for all ads intended to be released within one year or the SD could be made a part of the annual financial statement filed at the end of the financial year.

The SC's directions to hold stakeholder meetings comes in light of MIB's advisories on self-declaration for advertisements which posed to be a challenge to the advertising industry. MIB, through its advisory, dated June 03, 2024, ("**June Advisory**") had issued an advisory to mandate all advertisers and advertising agencies to obtain an SDC for all new advertisements that would be issued/ telecast/aired/published on or after June 18, 2024. The June Advisory established the procedure for advertisers to file SDCs on the 'Broadcast Seva Portal' or the Press Council of India's portal depending on the medium of communication. However, in response to the industry backlash, MIB had issued a new advisory dated July 03, 2024, ("**July Advisory**"), to ease the SDC requirements for advertisers by restricting its applicability to the food and health sectors on an annual basis.

The next date of hearing in the matter has been tentatively scheduled for October 15, 2024.

The Patanjali Case also simultaneously dealt with contempt proceedings against Patanjali founders, Patanjali Ramdev and Acharya Balkrishna, for violating their undertakings submitted to the SC. The founders had assured the SC that they would refrain from making misleading advertisements about curing certain diseases. However, they continued in their practices and a contempt proceeding was initiated accordingly. The SC has accepted apologies from the founders and has closed the contempt proceedings in its judgment dated August 13, 2024.

The SC's judgment dated August 13, 2024, can be viewed here.

The SC's order dated July 30, 2024, can be viewed here.

The SC's order dated July 09, 2024, can be viewed here.

The June Advisory can be viewed here.

The July Advisory can be viewed here.

LiveLaw's coverage of the update can be viewed here.

LiveLaw's coverage of the contempt update can be viewed here.

The Hindustan Times' coverage of the affidavit filed by MIB can be viewed here.

MIB issues advisory to broadcasters: Seek IN-Space approval before using foreign satellites

MIB, on July 10, 2024, issued an advisory to all private satellite television channels, broadcasters, and teleport operators directing them to seek permission from the Indian National Space Promotion and Authorization Centre ("**IN-SPACe**") before using Non-Indian Satellites ("**NIS**") for broadcasting services. The advisory requires fresh authorisation to be sought from IN-SPACe if NIS were to be used for space-based communication and broadcasting services in India.

While citing the IN-SPACe Norms, Guidelines and

Procedures for Implementation of Indian Space Policy – 2023, the advisory stated that all existing arrangements, mechanisms, and processes implementing the C, Ku or Ka frequency bands from NIS may remain operational till March 31, 2025. However, from April 1, 2025, only IN-SPACe authorized NIS will be permitted to provide space-based communication and broadcasting services in India.

For IN-SPACe authorization to be granted, an application must be submitted through the IN-SPACe digital platform solely by an Indian Entity such as an Indian subsidiary; joint venture or collaboration; or an authorised dealer or representative of the NIS operator in India.

MIB's advisory dated July 10, 2024, can be viewed here.

Punjab & Haryana HC permits Shahnaz Gill to sing for multiple music companies; declares contract terms as unfair

The Punjab & Haryana High Court ("**P&H HC**") refused to interfere with an appellate court order permitting singer Shehnaz Gill ("**Gill**") to sing for multiple companies and not solely for Simran Music Industries ("**Simran Music**"), a company she signed a contract with in 2019. The P&H HC found the contract terms to be unfair and lacking equal bargaining power.

Gill had signed a contract with Simran Music prior to entering the TV show, Big Boss, and it expressly barred her from singing for any other company. Gill filed a suit to declare the contract void, to restrain Simran Music from claiming ownership over her works, and to prevent Simran Music from defaming her in the media. She argued that she had signed the contract hastily under pressure. After gaining fame from Big Boss, Simran Music allegedly sent e-mails to third parties asserting exclusive rights over her music, and in-turn deprived her of new opportunities.

The trial court initially rejected Gill's claim for a temporary injunction, but the appellate court allowed the appeal. The P&H HC applied the principles of temporary injunction to the case, namely, the establishment of a *prima facie* case, the balance of convenience, and the likelihood of irreparable loss. Finding all three principles established in favour of Gill, the P&B HC declared that the terms of the contract were unfair and hence, it could not be considered valid or binding. The revision petition filed by Simran Music was dismissed.

The P&H HC's judgment can be viewed here.

The LiveLaw coverage for the case can be viewed here.

TRAI announces regulatory changes for Broadcasting and Cable

The Telecom Regulatory Authority of India ("**TRAI**") has issued a series of amendments to the regulatory framework for broadcasting and cable services. This includes the Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff (Fourth Amendment) Order, 2024, the Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) (Sixth Amendment) Regulations, 2024, and the Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) (Fourth Amendment) Regulations, 2024. Additionally, TRAI has released recommendations to MIB on the listing of channels in the Electronic Programme Guide (EPG) and upgrading the DD Free Dish platform to an addressable system. Most amendments will take effect 90 (ninety) days from publication in the official gazette.

These amendments followed a consultation process initiated on August 08, 2023, addressing key issues such as Network Capacity Fee ("**NCF**"), tariff structures, carriage fees, and platform service regulations. As per TRAI, key objectives of these amendments include promoting growth in the broadcasting sector, ensuring consumer protection, and enhancing market flexibility.

Significant changes include the removal of NCF ceilings, allowing greater discounts on channel bouquets, and requiring distribution platform operators to declare tariffs for platform services. The interconnection regulations now promote High-Definition ("**HD**") content by removing distinctions between HD and Standard-Definition channels for carriage fees. Regulations have also been adjusted for transparency and consumer clarity.

TRAI's recommendations for the DD Free Dish platform involve transitioning to an addressable system to improve quality, prevent piracy, and maintain subscriber records. This includes encrypting signals and adopting interoperable set-top boxes.

In its press release, TRAI stated that the measures aim to balance market dynamics with consumer interests, ensuring transparency, accountability, and ease of doing business in the broadcasting and cable services sector. As per TRAI, further consultation on additional stakeholder issues in relation to the above will follow.

The press release issued by TRAI can be viewed here.

Delhi HC directs Enami Ltd. to deposit INR 10 lakhs in copyright infringement suit

The Delhi High Court ("**Delhi HC**"), in an application by Saregama India Limited ("**Saregama**") against Emami Limited ('**Emami**') for an interim injunction, ordered Emami to deposit INR 10 (ten) lakhs with the court registry within two weeks, stating that this was an interim arrangement subject to further hearing.

Saregama sought to restrain Emami from using the song 'Udi Jab Jab Zulfein' in its advertisement for Emami Kesh King Anti Hairfall Shampoo without a license. Saregama claimed it held all rights to the song, assigned by the producer BR Films, and confirmed by the Indian Performing Right Society Limited ("**IPRS**").

Emami approached Saregama for a license but later challenged Saregama's ownership, demanding confidential documents. Saregama provided a certificate from IPRS affirming its rights. Saregama argued that Emami's use of the song without permission was copyright infringement. Emami contended that Saregama's rights had expired and questioned the validity of the assignment.

The Delhi HC issued notice to Emami and directed them to deposit INR 10 (ten) lakhs. The Delhi HC also asked Saregama to submit documents pertaining to the licensing fees.

The matter will be heard next on September 19, 2024.

The Delhi HC's order can be viewed here.

The SCC coverage for the case can be viewed here.

Bombay HC directs social media platforms to take down deepfakes of NSE CEO

A single judge bench of the Bombay High Court ("**Bombay HC**"), in *National Stock Exchange of India v. Meta Platforms, Inc. & Others*, directed social media platforms - Facebook, WhatsApp, Instagram, LINE and others ("**Platforms**") to take down posts, pages, accounts, profiles, and groups circulating deepfakes of Mr. Ashishkumar Chauhan, CEO and MD of the National Stock Exchange of India ("**NSE**").

Several social media pages, namely, *Stock Analyst, The Sky of the Stock Market, Manuel Dan Cann, NSE Stock Market, NSE India, Stock Market Helper, Stock Analyst, Stock Analyst2, Stock Analyst3, StockAnalyst4, and Stock analyst5* and groups like the *(9Rajiv Jain) Learning Communication Group* circulated deepfakes of the NSE CEO in which he was allegedly persuading common investors to join a free WhatsApp community for stock picking. In another deepfake, he allegedly stated that investors would receive full reimbursement from NSE if any losses were incurred in the process. Aggrieved by these false and misleading claims, NSE sought several actions against the anonymous infringers and the Platforms, including but not limited to trademark infringement of their word mark and device mark "NSE". NSE also sought compliance from the Platforms with the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 ("**IT Rules 2021**").

NSE argued that the anonymous infringers violated their rights vested in their individual rights as well as registered trademarks. Further, it was argued that the Platforms took longer than the statutorily mandated limit of 15 (fifteen) days under the IT Rules 2021 and hence, a time limit of 10 (ten) hours (not exceeding 14 (fourteen) hours) was sought as a measure of relief. Lastly, NSE sought an ad-interim relief through a John Doe order against the anonymous infringers, restraining them from creating deepfakes and infringing their trademarks by making, creating, publishing, uploading, circulating, and reproducing deceptively similar content.

The Bombay HC noted that NSE was entitled to relief against the anonymous infringers through a John Doe order. It observed that the Platforms were intermediaries mandated by the IT Rules 2021 and that they were to take prompt action on the complaints brought by NSE. Hence, acknowledging that a strong prima facie case for ad-interim relief was made against the anonymous infringers and the Platforms, the Bombay HC opined that the balance of convenience lied in NSE's favour and granted the prayers as claimed above. The Platforms were directed to comply within 10 (ten) hours of receiving a complaint from NSE and to remove any current circulation of the deepfakes. The anonymous infringers were restrained through a John Doe order.

The matter will be heard next on September 9, 2024.

The Bombay HC's order can be viewed here.

The LiveLaw coverage for the case can be viewed here.

Bombay HC grants interim relief to Arijit Singh; upholds his personality rights against unconsented AI generated content

The Bombay HC granted interim relief to Arijit Singh ("**Singh**") in a suit filed by him against several Artificial Intelligence ("**AI**") platforms for violation of his personality rights and copyrights. It held that over 38 (thirty-eight) entities, including 5 (five) AI platforms and several John Does, had commercially exploited his persona through attribution of his name, image, voice, and other unique characteristics. Singh claimed protection of additional elements such as his vocal style, technique, vocal arrangements, vocal interpretations, and manner of singing. Additionally, Singh argued that the unauthorized use, distortion, modification, or dissemination of his performances, audios or videos harmed his reputation and violated his moral rights guaranteed under Section 38B of the Copyright Act, 1957.

Singh claimed that the AI platforms implemented AI tools to synthesize voice clones of him and one platform had over 456 (four hundred and fifty six) of his songs uploaded without consent. Action was also sought against those promoting the usage of such tools. Singh further argued that the platforms enabled users to create, download, and share Graphic Interchange Formats ("**GIF**"). The GIFs allegedly led to ridicule, embarrassment, and humiliation. Singh also brought ancillary claims of domain name infringement, promotion of false association, and sale of fake merchandise.

Justice RI Chagla of the Bombay HC ruled that the usage of a celebrity's voice by users on an AI platform without their consent would amount to violation of the celebrity's personality rights. He observed that the technological exploitation not only infringed upon Singh's right to control and protect his likeness but also undermined his ability to prevent commercial exploitation. While addressing the right to freedom of speech and expression, the Bombay HC held that while such freedom allowed for critique, the same could not extend to commercial exploitation of a celebrity's persona.

The matter will be heard next on September 2, 2024.

The Bombay HC's order can be viewed here.

The LiveLaw coverage for the case can be viewed here.

MIB advisories on broadcasting

MIB, on June 03, 2024, issued an advisory to all private satellite TV channel broadcasters / teleport operators, to refrain from engaging in unauthorized uplinking of their TV channels, on multiple frequencies without obtaining MIB's approval. This advisory was issued in light of practices that news broadcasters were engaging in, to make their channel, the most watched channel. MIB noted that such broadcasters would adopt unfair practices of uplinking their channels on multiple feeds, due to which, it would become available on multiple logical channel numbers across various distribution platforms, giving an undue advantage to such channel by increasing its viewership.

Additionally, MIB on June 25, 2024, issued an advisory to all broadcasters warning them that transferring core operations of a TV channel to a third party, including group entities, without MIB's prior permission, would be construed to be a violation of the Policy Guidelines for Uplinking and Downlinking of Television Channels 2022 *(which specifically requires such transfers to be undertaken only after obtaining the MIB's prior approval)*, and would result in the cancellation of such broadcasters' license. MIB issued this advisory in light of representations and complaints received by it regarding practices adopted by certain TV Channels of contracting out the operations or other core functions of the channel to any non- permitted entity/ person(s) without MIB's prior permission.

MIB's advisory dated June 03, 2024, can be viewed here.

MIB's advisory dated June 25, 2024, can be viewed here.

TRAI recommendations on National Broadcasting Policy

Further to TRAI's consultation paper on 'Inputs for formulation of National Broadcasting Policy-2024' dated April 02, 2024, TRAI has taken into account comments and inputs received from various stakeholders, and basis the same, has provided recommendations to the government. These recommendations set out under the 'Recommendations on Inputs for formulation of National Broadcasting Policy-2024' were issued by TRAI on June 20, 2024 ("**NBP Recommendations**"). The NBP Recommendations set out the mission of establishing India as a global leader in the broadcasting sector, with the goals of (a) propelling growth by establishing a robust broadcasting system; (b) promoting content by promoting Indian content outreach at the global stage; and (c) protecting interests by safeguarding content creators' rights and leveraging broadcasting services for protecting socio- environmental interests of the society. For propelling growth, TRAI has *inter alia* recommended that (a) research and development in the broadcasting sector be strengthened; (b) public service broadcasters be mandated to procure and deploy indigenous broadcasting technologies and equipment, upto a certain proportion; and (c) cross-border broadcasting activities and cooperation be promoted by encouraging collaboration between foreign companies and Indian partners through bilateral agreements. Further, TRAI has recommended that content in the broadcasting sector can be promoted *inter alia* by (a) creating co-funding schemes in partnership with state governments, panchayats and urban local bodies for extension of financial support to local talent, content developer, and technicians; (b) developing OTT platforms by Prasar Bharati for promotion of Doordarshan and AIR channels' content, and (c) implementing strict measures for enforcement of copyright laws to combat music piracy. Additionally, TRAI has recommended that interests in the broadcasting space be protected by (a) collaborating with Law Enforcement Agencies ("LEAs") for establishment of dedicated anti-piracy units within the LEAs; (b) incentivizing schemes for women employment in the broadcasting sector; and (c) promoting life-skill and value education through broadcasting for adolescents and youth.

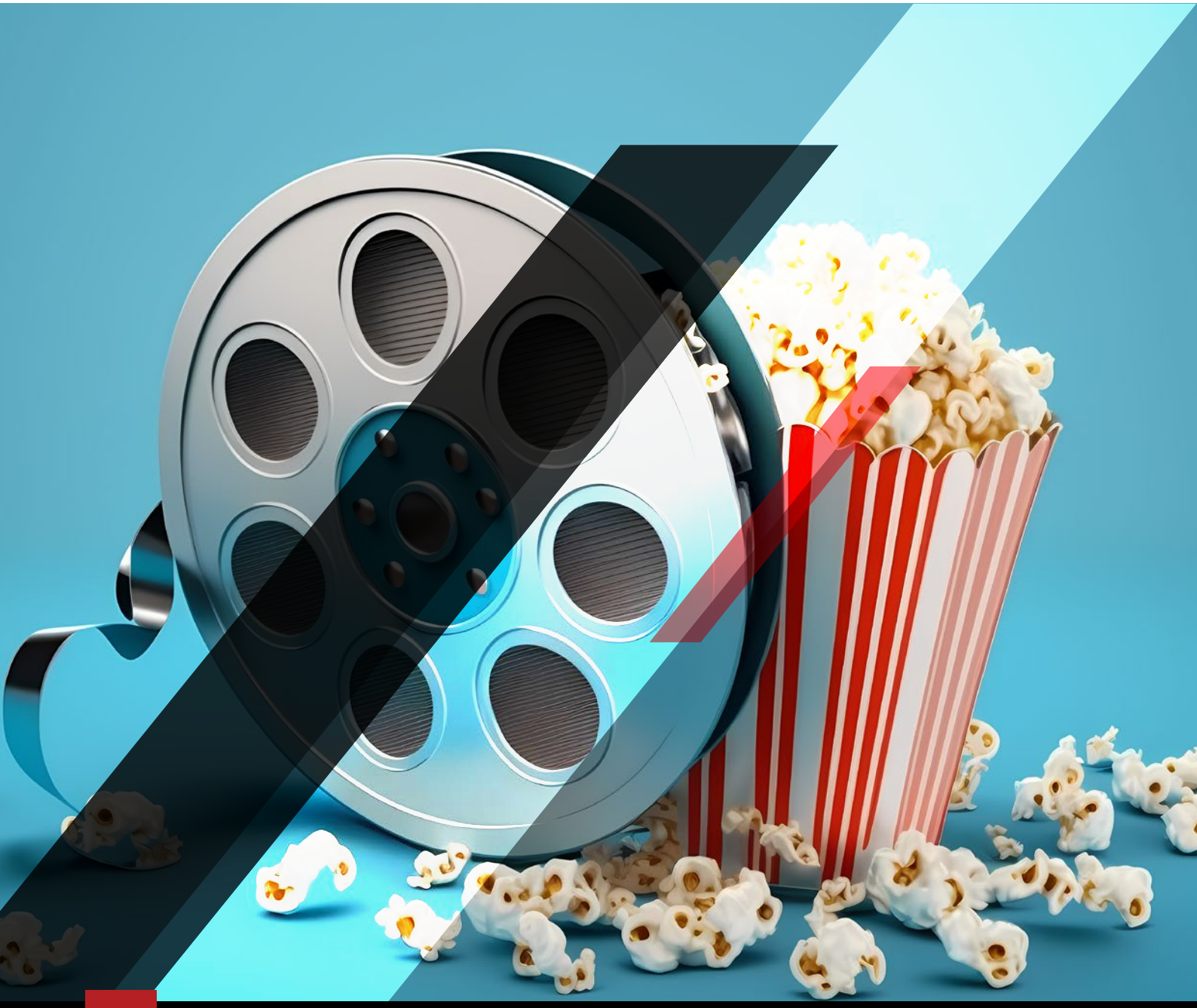
The NBP Recommendations can be viewed here.

Our coverage of the TRAI consultation paper can be viewed here.

News Broadcasters & Digital Association announces amendments to NBDS Regulations

The News Broadcasters & Digital Association ("**NBDA**"), a self-regulatory body for news broadcasters in India, *vide* a press release issued on June 28, 2024, announced amendments to the News Broadcasting & Digital Standards Regulations ("**NBDS Regulations**"), through which it has brought 'digital news' under its purview. In this regard, the NBDS Regulations will now be applicable to digital publishers which includes news portals, news aggregators, news agencies, and any other entities engaged in publishing of news and current affairs content on digital news platforms, OTT platforms, social networking sites, and social media. *Vide* the amendments, NBDA has also widened the penalties for violations of the Code of Ethics & Broadcasting Standards, guidelines and advisories issued by NBDA. In addition to warnings, admonishments, censures, and apologies, NBDA can impose fines up to INR 2 (two) lakhs, INR 5 (five) lakhs, and up to 1% (one per cent) of the channel's annual turnover, provided the fine doesn't exceed INR 25 (twenty-five) lakhs, for each subsequent violation. Further, on the occurrence of a third violation, NBDA has the power to issue a direction for suspension of a particular programme for up to one week and/or issue a direction to the broadcaster to suspend the anchor for up to one month.

The NBDA press release can be viewed here.



FILMS AND TV IN COURTS: A ROUNDUP

Madras High Court stays the re-release of 'Guna'

The Madras High Court ("**Madras HC**") on July 10, 2024, ordered a stay on the re-release of the 1991 Tamil movie 'Guna' by Pyramid Audio India Private Limited ("**Pyramid**") amidst a copyright claim by one Ghanshyam Hemdev ("**Hemdev**"). Hemdev claimed that he had acquired negative rights in ten Tamil movies, including Guna, from the concerned copyright holders. In June 2024 Hemdev discovered that Pyramid was planning to re-release Guna without obtaining any authorisation. Despite the Film Distributors Association being approached for resolution, Pyramid proceeded with the re-release of Guna by relying on a disputed agreement. Aggrieved by these actions, Hemdev alleged copyright infringement and sought an ad-interim injunction to prevent irreparable harm being caused by the re-release of Guna. Acknowledging that the balance of convenience lied in the favour of Hemdev, the Madras HC observed that a *prima facie* case had been established and thereafter, restrained Pyramid from re-releasing Guna.

The next date of hearing in the matter is September 6, 2024.

The Madras HC's order can be viewed here.

The LiveLaw coverage for the case can be viewed here.

SC lays down guidelines for portrayal of persons with disabilities in India

On July 8, 2024, while delivering its judgment in a plea against a Hindi feature film "Aankh Micholi" ("**Film**") for its alleged insensitive portrayal of Persons with Disabilities ("**PwD**"), a division bench of the SC comprising Chief Justice DY Chandrachud and Justice JB Pardiwala laid down a set of guidelines for the sensitive portrayal of PwDs in electronic and visual media ("**Framework**").

Originally filed before the Delhi HC, the plea by disability rights activist Nipun Malhotra ("**Appellant**") claimed that the Film violated the constitutionally protected rights of PwDs as well as multiple provisions of the Cinematograph Act, 1952, and the Rights of Persons with Disabilities Act, 2016. The Delhi HC had dismissed the plea against the Film because the Appellant had not disputed the explanations provided by the production house regarding the intent of the Film in its response to a legal notice served by the Appellant.

Though the SC refused to interfere with the certification granted to the Film by the Central Board of Film Certification ("**CBFC**"), it issued a significant ruling in the form of the Framework. The SC stated that creative freedom of filmmakers under Article 19(1)(a) of the Constitution "cannot include the freedom to lampoon, stereotype, misrepresent or disparage" PwDs. The Framework consists of broadly nine detailed guidelines to prevent disparagement of PwDs and to ensure their sensitive portrayal in visual and electronic media. Some key highlights of the Framework include, without limitation:

- Direction to avoid usage of terms like *"cripple"* and *"spastic"* or *potrayal of PwDs based on myths.*
- Creators must extensively check for accurate representation of a medical condition to prevent misleading portrayals.
- Decision-making bodies must bear in mind the values of participation and thereby constitute statutory committees and invite experts to assess the impact of films on the dignity of individuals.
- Collaboration with disability advocacy groups can provide invaluable insights and guidance on the portrayal of PwDs.
- Writers, directors, producers, and actors must undergo training and sensitization programs to emphasize the impact of their portrayals on public perceptions of PwDs.

The SC's judgment can be viewed here.

SCC's coverage of this update can be viewed here.

Restriction on release of film 'Shaadi Ke Director Karan Aur Johar'

A single-judge bench of the Bombay HC, in the matter of *Karan Johar v. Indian Pride Advisory Private Limited & Ors.*, on June 13, 2024, has granted relief to the plaintiff and restrained the release of the film 'Shaadi Ke Director Karan Aur Johar' *(which was scheduled for release on June 14, 2024)* and any promotional material related to such film. The plaintiff contended that the reference to the plaintiff's name in the film subject was an unauthorized and unlawful use of the plaintiff's name (i.e., Karan Johar), and his celebrity status accorded to him by virtue of the blockbuster films directed by him. The plaintiff also contended that his name was used with *mala fide* intent to misrepresent to the public that the film was associated with the plaintiff. The plaintiff also averred that the premise of the film indicated that the defendants were using the personality of the plaintiff, thereby violating the plaintiff's personality rights. The plaintiff made reference to precedents to rely on the well settled principle of law that one who attains a celebrity status, has personality rights, rights of publicity and right to privacy, and unless their consent for usage of their personal

attributes is taken, such rights would deem to be violated. The Bombay HC was of the *prima facie* view that the title of the film used the plaintiff's name in an unlawful and unauthorized manner, and violated the plaintiff's personality rights, right to publicity and right to privacy.

The Bombay HC's order can be viewed here.

Dismissal of Pocket FM's plea against Disney + Hotstar

A single-judge bench of the Delhi HC in the matter of *Pocket FM Private Limited v. Novi Digital Entertainment Private Limited & Anr.*, on June 13, 2024, rejected the plaintiff's plea against Novi Digital, which is the parent company of Disney + Hotstar, for alleged copyright violation of 'expression of idea'. The plaintiff, Pocket FM, which is an audio entertainment platform, as a part of its business, licenses original literary work from copyright owners / authorized licensors, subsequent to which, it adapts the same into audio works which are published on its platform. Pursuant to such business, the plaintiff was assigned exclusive rights to an author's work, 'Yakshini', which the plaintiff adapted into an audio series. The plaintiff alleged that the defendant was set to release a tv series under the title 'Yakshini' and the same was an unauthorized adaptation of the plaintiff's audio series. The single-judge bench held that similarity of name cannot be the sole criteria for determining copyright violation, especially considering that 'Yakshini' was a mythological character, based on whom, several works, movies and books are already available. The court applied the prevalent tests used to determine copyright violations and noted that where there is only a similarity in 'theme', but the work is presented and treated differently, there is no copyright violation. Accordingly, the court was of the view that although the 'idea' between the plaintiff and the defendant's work was common, the same found its genesis in mythological stories, and nothing indicated that the defendant's work was similar to the plaintiff's. Accordingly, the plaintiff's plea was rejected.

The Delhi HC's order can be viewed here.

Approval for release of the film 'Maharaj'

A single-judge bench of the Gujarat High Court ("**Gujarat HC**"), in the matter of *Bharat Pranjivandas Mandalia & Ors. v. Union of India*, had issued an interim stay on the release of the film 'Maharaj' on Netflix, *vide* an order dated June 13, 2024. The petitioners, who were followers of the Pustimargi sect and devotees of Lord Krishan submitted that the film was based on the judgment delivered in the 'libel case of 1862' ("**1892 Case**"), and the excerpts of the said judgment contained scandalous and defamatory language, which would affect the Pustimargi sect. They further submitted that the release of the film could incite feelings of hatred and violence against the Pustimargi sect, and that the same would be in violation of the code of ethics under the IT Rules 2021 and the Self-Regulation Code of OTT. The respondents inter alia averred that the film was based on the 1862 Case as well as a book on the same subject matter released in 2013, and that the film had also received certification from the CBFC.

Following the interim-stay order, the single-judge bench on June 21, 2024, lifted the stay passed earlier and allowed release of the film on Netflix. The court observed that the movie was not derogatory to any sect, and was in fact, about bringing social reform. The court also rejected the argument that the film would cause communal disharmony, as a book based on the 1862 Case was already in the public domain, and no adverse incident being caused by such book, had been reported since then. The court also pointed to the fact that the CBFC, which is an expert body had also watched the film and certified its release, and accordingly, the court did not find any reason to restrict the release of the film. Following the single-judge bench's order, the film was released on Netflix on the same day.

The Gujarat HC's order dated June 13, 2024 can be viewed here.

The Gujarat HC's order dated June 21, 2024 can be viewed here.

Release of film 'Hamare Baarah'

Following a bunch of petitions filed in the matter of *Azhar Basha Tamboli Ltd. & Ors. v. Ravi S Gupta & Ors.*, a division bench of the Bombay HC, on June 19, 2024, allowed the release of the film, 'Hamare Baarah', which was the subject matter in the aforementioned case. The petitioners had sought a ban on the film and had submitted that the film portrayed lives of married Muslim women as having no independent rights as individuals in society, and that it contained various dialogues and visuals which were derogatory to the Islamic faith and married Muslim women in India. The respondents submitted that the film had been certified by the CBFC after deletion of objectionable dialogues and scenes. While the Bombay HC had postponed the release of the film, the petitioners had also approached the SC, which in turn put the film on hold and redirected the petitioners to Bombay HC for an appropriate decision to be taken by the Bombay HC. The Bombay HC, *vide* its order on June 19, 2024, permitted the release of the film subject to certain changes being made and disclaimers being added in the film, and re-certification for the film being done by the CBFC.

The SC's order dated June 13, 2024 can be viewed here.

The Bombay HC's order dated June 19, 2024 can be viewed here.

GAMING

SC Adjourns Pleas Challenging Retrospective GST Notices to RMG Firms

The SC has adjourned petitions challenging application of retrospective Goods & Services Tax ("**GST**") on real-money online gaming companies to September 3, 2024. In April 2024, the SC transferred 30 (thirty) petitions challenging the GST demand notices issued to them by the GST authorities, which were pending in different high courts to the SC. The petitions were filed by the real-money gaming ("**RMG**") companies against the GST demand notices received by them. These notices were issued in light of the recommendations of the GST council made on July 11, 2023, wherein it was decided that GST will be applicable at the rate of 28% (twenty-eight per cent) for the supply of actionable claims in online gaming, horse racing, and casinos. In case of online gaming, the GST will be charged on the amount deposited with the supplier and not on the total value of each bet placed. This GST rate was implemented on October 1, 2023.

Post implementation of GST, several companies received retrospective GST demand notices from the GST authorities. However, the GST council issued a statement post its 52nd (fifty second) meeting that the notices were not retrospective in nature, and its recommendations made in July 2023 merely clarified the existing position on valuation of supply of actionable claims in online gaming, casinos, and horse racing. By December 2023 real money gaming companies received 71 (seventy one) show cause notices for alleged GST evasion amounting to approximately INR 1 (one) lakh crores. Recently, as per reports, Nazara Technologies Limited's 2 (two) subsidiaries, Openplay Technologies Private Limited and Halaplay Technologies Private Limited, have also received GST demand notices from GST authorities for proposed liability of approximately INR 845 (Eight Hundred and Forty-Five) crores and INR 274 (Two Hundred and Seventy Four) crores.

The SC's order dated can be viewed here.

A detailed report by Inc42 can be viewed here.

A detailed report by the Economic Times on notices received by Nazara Technologies can be viewed here.

No deliberation in the 53rd GST Council meeting on 28% GST for online gaming

The 53rd (fifty third) GST Council ("**Council**") meeting was held on June 22, 2024, and thereafter the Union Minster of Finance confirmed that there were no deliberations vis-à-vis the 28% (twenty eight percent) GST levy on online gaming companies.

As per news reports, the deliberations on the GST levy on online gaming companies did not feature in the agenda of the 53rd Council meeting, despite significant representations from industry stakeholders on the same. However, the Council proposed the incorporation of a new Section 11A to the Central Goods and Services Tax Act, 2017 ("**CGST Act**") to give powers to the government (on the recommendations of the Council) to allow regularization of non-levy or short levy of GST, where the requisite tax was either not being paid or was being paid in the form of a lower amount pursuant to common trade practices. If enacted, this is likely to provide some relief to online gaming companies on the retrospective GST claims against them.

A report on the suggested amendment to the CGST Act can be viewed here.

Tamil Nadu Online Gaming Authority is considering monetary and time limits for online gaming in Tamil Nadu

The Tamil Nadu Online Gaming Authority ("**TNOGA**") is reportedly planning to introduce monetary and time limits on both real-money and free-to-play online games offered in Tamil Nadu, *vide* a dedicated legislation. The TNOGA is a five-member statutory regulatory body constituted under Section 3 of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022 ("**TN Online Gaming Act**").

The decision is targeted towards addressing gaming addictions (especially amongst the youth), and the imposition of monetary and time limits is expected to achieve that objective. These limits are unlikely to be restricted to RMGs as TNOGA is of the view that guidance is needed on the time that should be spent on online gaming generally.

This development comes after the central government's reported plans to introduce time and spending limits on online games, particularly RMGs (similar to regulations in China) as opposed to having online games verified as "permissible online real money games" by self-regulatory bodies under the IT Rules 2021.

A copy of the TN Online Gaming Act can be viewed here.

A report by The Economic Times on this development can be viewed here.

A report by The Economic Times regarding similar plans of the central government can be viewed here.

Stakeholders request the Prime Minister to create distinction between video games and real money games

A consortium of 70 (seventy) gaming companies in India including *inter alia* E-sports Federation of India, Outlier Games, Gmonks Entertainment, and Redvil Studios have written a letter to the Hon'ble Prime Minister and MIB requesting them to create a clear distinction between RMG and traditional video games. This distinction has been deemed necessary given the increased scrutiny in the form of frequent show cause notices and taxation raids on companies making video games owing to the confusion between 'real money gaming' and 'video gaming'.

As per the latest news reports, the consortium has also requested the government to reduce the GST on video games from 18% (eighteen percent) to 12% (twelve percent). It has further recommended introducing a tiered corporate tax incentive, which would include an absolute and complete tax exemption for 3 (three) consecutive years, followed by a 50% (fifty percent) tax reduction for an additional 2 (two) years. This tiered taxation scheme is proposed to be made available to video game companies on an opt-in basis, allowing the companies to decide when they want to initiate the 5 (five) year tax benefit.

Some of the other key recommendations also include *inter alia* designating MIB as a nodal agency for the sector and creation of a dedicated wing, namely, AVGC-XR for implementation of the Animation, Visual effects, Gaming, and Comics, and Extended Reality (AVGC-XR) policy.

A detailed report by Medianama on this development can be viewed here.

Directorate General of GST Intelligence issues summons to multiple online gaming companies about cashbacks to players

As per latest news reports, the Directorate General of GST Intelligence ("**DGGI**"), as part of the Central Board of Indirect Taxes and Customs (Department of Revenue, Ministry of Finance, Government of India) has issued summons to multiple online gaming companies inquiring about the cashback payments made to players since the implementation of the recent GST amendments for real-money gaming from October 1, 2023.

As per these news reports, DGGI found that reimbursements of the taxed amounts were being made to players as cashbacks in a separate promo account by online gaming companies following the implementation of the 28% (twenty eight percent) GST regime on the entire player deposit amount. The Gurgaon office of DGGI has issued summons to such companies for the period of October 1, 2023, to June 15, 2024.

A report by the Economic Times on this development can be viewed here.

Division Bench of Karnataka High Court prohibits Bangalore Turf Club from conducting on-course and off-course horse racing and betting

A division bench of the Karnataka High Court ("**Karnataka HC**") on June 22, 2024, stayed a single-judge interim order of the same court which had allowed the Bangalore Turf Club ("**BTC**") to undertake on-course and off-course horse racing and betting activities in accordance with the Mysore Race Course Licensing Act, 1952 and its allied rules.

The primary contention in the case was whether BTC could be allowed to conduct on-course and off-course horse racing and betting when its application for grant of license for the same had been rejected by the state government and BTC's appeal thereto was still pending.

On the question of admissibility, the division bench held that the single judge's order had "trappings of finality", making it eligible for an appeal. On merits, it was deemed unsafe to leave the management and supervision of horse racing and betting events at BTC to its chairman, CEO, secretary, and other office bearers, as they were accused of offenses such as tax evasion, money laundering, and other statutory violations as mentioned in the first information report (FIR). Therefore, the division bench held that the competent authorities were justified in rejecting BTC's license to operate such activities, as they were susceptible to illegalities. The authorities' discretion in rejecting the license application was thus considered to be within the bounds of relevant applicable laws.

The matter is now listed for final hearing before the single judge on September 11, 2024.

The Karnataka HC's order can be viewed here.

A report on the case by The Hindu can be viewed here.

Google puts on hold its plans to allow new categories of real-money gaming apps on the Play Store

Google on June 21, 2024, announced that it has decided to pause the proposed expansion of its real money games Pilot Program ("**Pilot**") which was to start from July 1, 2024, for India and that consequently it would not be providing access to a wider set of RMG applications on the Play Store for now. However, it has extended the grace period for daily fantasy sports ("**DFS**") and real-money rummy gaming apps in India to allow them to continue to be listed on Play Store, till the next update on the Pilot.

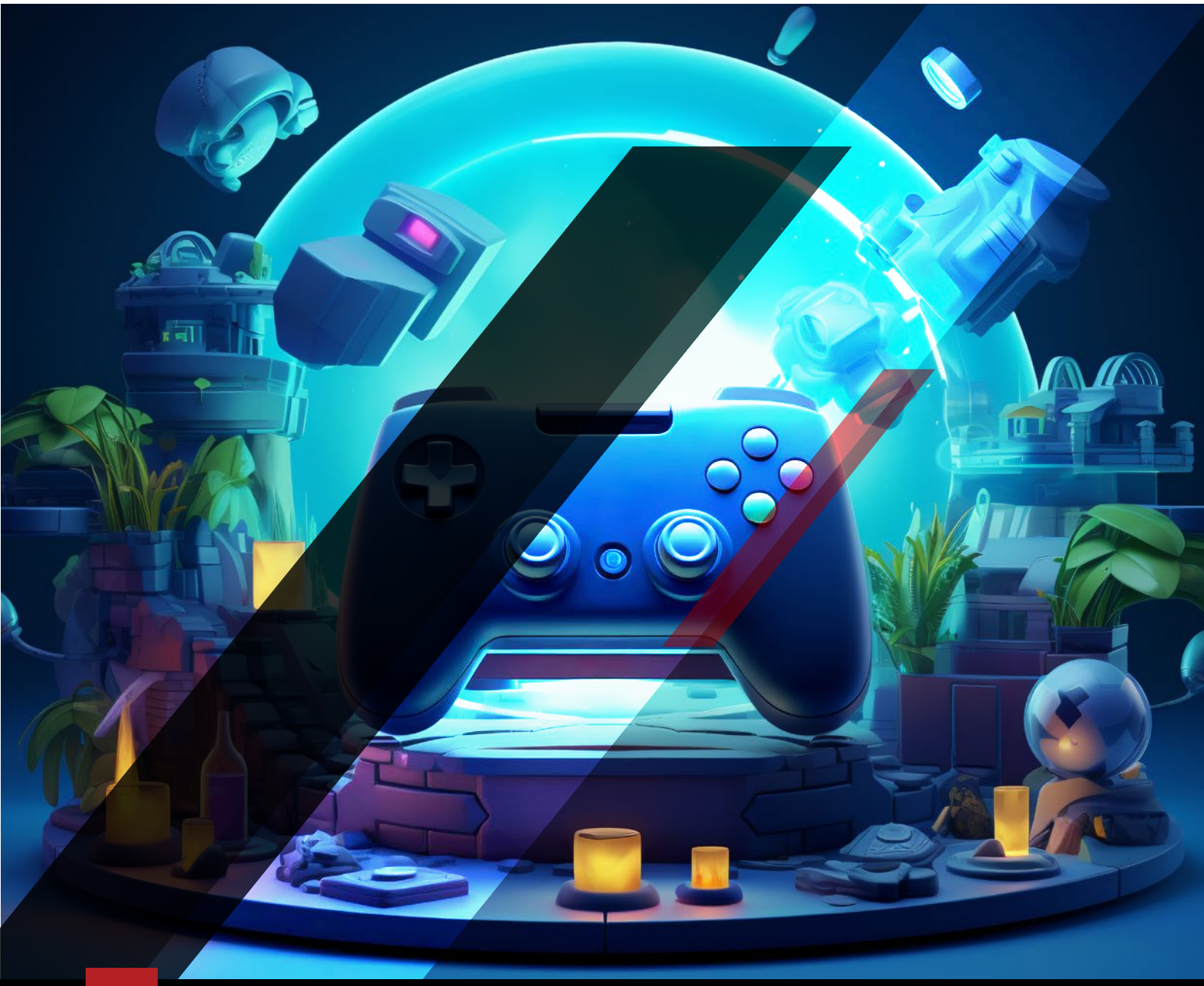
Google said in a statement that *"Expanding our support of real-money gaming apps in markets without a central licensing framework has proven more difficult than expected and we need additional time to get it right for our developer partners and the safety of our users."* As far as the existing DFS and rummy apps on the Play Store are concerned, they must comply with certain requirements including but not limited to (a) compliance with all the applicable laws; (b) having requisite age verification mechanisms to ensure access only by persons above 18 (eighteen) years of age; (c) not being available as a paid app on the Play Store or use its in-app billing; and (d) not being an aggregator of other RMG products or services owned/operated by third parties.

A report on the development as covered by TechCrunch can be viewed here.

International Olympic Committee proposes introduction of 'Olympic Esports Games'

The Executive Board ("**EB**") of the International Olympic Committee ("**IOC**") has proposed the introduction of 'Olympic Esports Games'. The EB's proposal to introduce the games is slated to be discussed at the upcoming 142nd (one hundred and forty second) IOC Session during the 2024 Paris Olympics when the IOC Members will vote on this proposal. This comes against the backdrop of e-sports' successful venture in global events such as the Olympic Virtual Series (2021) and the Olympic Esports Week held in Singapore in June 2023.

The official press release issued by the IOC on the development can be viewed here.



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