



THE RECAP

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

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INTRODUCTION

Renowned Oxford evolutionary psychologist & anthropologist Robin Dunbar is best known for contending that there is a limit to how many meaningful relationships a person can cognitively have and keep a track of at any one time.¹ This is so, Dunbar argues, because the time we have for interactions is obviously not infinite. This is arguably also true for many other things such as hobbies, work-life balance and news & updates that one is interested in. One can only keep a track of so many things at a time. Keeping that in mind and to make things easier, every two months, we bring to you *The Recap*, a short yet extensive compilation of legal updates from India for the Media & Entertainment and Gaming industries so that while you do not miss out on developments that matter you are also free to devote your cognitive energies elsewhere!

This volume covers updates from the months of September and October 2021. Even as the central government waits

for the Supreme Court to hear its transfer petition to club all challenges to the IT Rules 2021, legal challenges to the said Rules continued unabated in different High Courts. As the High Court of Delhi took its first step towards setting up a framework for intellectual property matters in light of the recent abolition of the Intellectual Property Appellate Board, a traditional news publisher took a new age news company to court for copyright violation. For the gaming industry operators, these two months were a mixed bag. While the High Court of Kerala gave a huge sigh of relief to rummy operators in particular and skill gaming companies in general, the state of Karnataka sent shockwaves through the industry with an anti-gambling law that ended up making real-money skill games a casualty too.

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

1. Robin Dunbar, *How Many Friends Does One Person Need?: Dunbar's Number and Other Evolutionary Quirks*, London: Faber & Faber, 2010.



ASCI launches service to help brands determine if their advertisements violate the ASCI Code

On 22nd September 2021, the Advertising Standards Council of India ("ASCI") launched "Advertising Advice" - a new service to help brands and advertising agencies assess beforehand whether claims to be made in their proposed advertisements may potentially violate *The Code For Self-Regulation of Advertising Content In India* ("ASCI Code"). This service comes in the backdrop of several complaints being filed by consumers over misleading advertisements in the gaming, education, food & beverage, and healthcare sectors. In 2020-21, ASCI processed over 6140 complaints against advertisements and found only a handful of them to be compliant with the ASCI Code. It has further processed over 80 complaints against gaming companies for violating the *Guidelines for Online Gaming for Real Money Winnings*² by ASCI. All of this makes the launch of the "Advertising Advice" service even more relevant.

The service is a paid one and is available for both members and non-members of ASCI at the pre-campaign and pre-production stage. A panel of technical experts will examine the claims made by the advertisements and pass recommendations to the concerned brand and/or advertising agency. To avoid any conflicts, the technical experts panel for the service will be independent and different from ASCI's regular complaints process. It is important to note that ASCI has made it clear that the service is not a 'pre-clearance' and does not guarantee safeguard against complaints filed either by a consumer or initiated *suo motu* by ASCI upon the advertisement's release. The advice is non-binding and simply helps brands to mitigate the risk of advertisements being misleading, offensive, unsafe, or unfair.

You may read the official press release by ASCI announcing the service [here](#).

You can access ASCI's statistics on the complaints filed against advertisements in the recent past [here](#).

Brands and advertisers can sign up for the service by filling this [form](#).

Suit for defamation and copyright infringement filed against Newslaundry by TV Today Network

Newslaundry, an independent media company has been sued by the media conglomerate TV Today Network that owns news channels like *Aaj Tak* and *India Today*. The suit filed before the High Court of Delhi is seeking INR 2 crores

in damages from Newslaundry for uploading infringing and defamatory content on its website and YouTube channel. The suit also seeks a direction from the High Court to remove 34 articles and 65 videos published by Newslaundry and restrain Newslaundry from writing, tweeting, or publishing anything defamatory about TV Today Network, its channels, or its anchors.

The suit comes in the backdrop of TV Today Network making several copyright infringement claims to YouTube against Newslaundry's videos in early October 2021. Following the claims, 5 videos and Newslaundry's YouTube account itself were suspended temporarily. According to YouTube's policy, if a copyright owner believes his work is being used by someone without authorization, they can submit a takedown request to an automated system that checks for any such copyright violation. If the automated system is satisfied that a violation has been committed it issues a 'copyright strike' to the infringer. A total of three copyright strikes puts the videos and the account under suspension.

Newslaundry has vehemently denied allegations of copyright violation and called the suit filed by TV Today Network as frivolous. They claim that their videos used clips from *Aaj Tak* only to critique and comment which does not amount to infringement of copyright as per Section 52³ of the *Copyright Act, 1957* and that such use qualifies as 'fair use'. Newslaundry also points out how YouTube's own terms of use exempt 'fair use' from copyright infringement claims and hence YouTube's policy to act on copyright infringement claims should also be re-looked at. The Internet Freedom Foundation has also sent a letter to Google backing the claims made by Newslaundry and highlighting how YouTube's failure to give Newslaundry a right to hearing before removing access to their account violates the recently issued IT Rules 2021. It will be interesting to see how the court evaluates copyright infringement vis-à-vis criticism or review of copyrighted work as well as if any directions are given to YouTube regarding the way in which it implements its content takedown policy⁴.

You can read more on this controversy in 'The Wire' and 'Scroll' reports respectively [here](#) and [here](#).

Internet Freedom Foundation's letter to Google in support of Newslaundry can be accessed [here](#).

2. Released in November 2020. Available at <https://mib.gov.in/sites/default/files/Advisory.pdf>

3. S. 52 lists acts which do not constitute an infringement of copyright. S. 52 (1) (a) (ii) specifically refers to "criticism or review, whether of that work or of any other work"

4. Available at https://www.youtube.com/intl/ALL_in/howyoutubeworks/policies/copyright/

Delhi High Court issues draft Intellectual Property Rights Division Rules 2021

On 8th October 2021, the High Court of Delhi issued the draft *Intellectual Property Division Rules 2021* ("**IPD Rules 2021**"). These rules will govern the practice and procedure of the Intellectual Property Division ("**IPD**") while exercising its original and appellate jurisdiction. The High Court of Delhi had established the IPD in July 2021, to deal with intellectual property matters transferred to the High Court from the erstwhile Intellectual Property Appellate Board which was abolished by the *Tribunals Reforms Act, 2021*.

The draft IPD Rules 2021 consists of 31 rules and *inter alia* contain rules for allowing registered patent agents, trademark agents, and other professionals to assist the court; empowering the IPD to pass summary judgements; and for clubbing multiple proceedings relating to the same or related intellectual property. Interestingly, the IPD Rules 2021 define intellectual property to include "rights pertaining to data protection, data exclusivity and related matters" which consequently brings such cases within the jurisdiction of the IPD.

The draft is currently at the proposal stage and the High Court of Delhi had requested stakeholders to submit recommendations and suggestions within two weeks of issuance. *IndusLaw* has sent comments to the High Court of Delhi on the draft IPD Rules 2021. Please get in touch with us at therecap.queries@induslaw.com to know more on this.

You may access the draft IPD Rules 2021 [here](#).

Official format released for monthly disclosure of information by digital media publishers and self-regulatory bodies under the IT Rules 2021

On 9th September 2021, the Ministry of Information and Broadcasting ("**MIB**") released the official format which publishers and self-regulatory bodies have to use to make the monthly disclosures of information under the *Information Technology (Intermediary Guidelines and Digital Media Ethics Codes) Rules, 2021* ("**IT Rules 2021**"). Rule 19 of the IT Rules 2021 requires a publisher and a self-regulating body to make monthly disclosures of the grievances it received from the public, the way they were disposed, action taken on the grievance, reply sent to the complainant, orders or directions received by it under the IT Rules 2021, and action taken on such orders or directions. All this information must be displayed publicly and updated monthly by the publisher or self-regulating body (as the case may be) in the format now notified by the MIB preferably by the 10th of the next month.

You can read the notice released by MIB and the appended official format therein, [here](#).

Centre files affidavit before High Court of Delhi in the WhatsApp case

The Ministry of Electronics and Information Technology ("**MeitY**") has filed an affidavit before the High Court of Delhi in the case of *WhatsApp LLC v. Union of India*.⁵ The said affidavit is in response to a petition filed by WhatsApp and Facebook in May 2021 challenging Rule 4(2) of the IT Rules 2021, which requires a "significant social media intermediary" to locate the first originator of information upon directions of a court or a competent authority under the *Information Technology Act, 2000*. WhatsApp and Facebook have challenged this rule claiming that it will infringe a user's right to privacy on their platform guaranteed as a fundamental right by the Supreme Court in *Justice KS Puttaswamy v. Union of India*⁶ ("**KS Puttaswamy Case**").

The central government's affidavit filed through MeitY reportedly submits that WhatsApp and Facebook are not legally entitled to claim privacy protection since they monetise user data, as well as deny users dispute resolution rights in the country which is unconstitutional. It further adds that since WhatsApp is a foreign entity, it cannot challenge the constitutionality of an Indian law as they do not have a place of business in India and are simply engaged in propagating information to users through its platform. The said affidavit is in line with a press release issued by MeitY on 26th May 2021 soon after WhatsApp had filed the petition in question.

The friction between the government and social media intermediaries like WhatsApp and Facebook is currently accelerated in the absence of a dedicated data protection law in the country. We are hopeful that the *Personal Data Protection Bill, 2019* (soon to be tabled in the Parliament) will settle some of these differences and specify the way in which companies should protect a user's privacy.

A copy of the petition filed by WhatsApp in the High Court of Delhi can be accessed [here](#).

MeitY's press release dated 26th May 2021 can be accessed in this [report](#) by SCC Online.

Petition filed in the High Court of Kerala against Part II of the IT Rules 2021

A petition⁷ has been filed in the High Court of Kerala challenging Part II of the IT Rules 2021 which were notified this year in February and have been a subject of litigation

5. Writ Petition (Civil) No. 7284/2021

6. AIR 2017 SC 4161

7. *Praveen Arimbrathodiyil v. Union of India & Anr.*, Writ Petition (Civil) No. 9647/2021

and controversy since then. The petition claims that the IT Rules 2021 should be set aside since they exceed the bounds placed by its parent act i.e., the *Information Technology Act, 2000*, and place unreasonable restrictions on freedom of speech & expression and on the freedom of trade & profession guaranteed by the Constitution of India ("**Constitution**"). It further adds that the IT Rules 2021 undermine messaging platforms' end-to-end encryption – a key technological basis to the right to privacy upheld by the Supreme Court in the *KS Puttaswamy Case* as well as the principles laid down by it in *Shreya Singhal v. Union of India*⁸.

The central government has submitted that they are in the process of making a petition to the Supreme Court in this regard. A transfer petition (clubbing several petitions filed in different High Court against the IT Rules 2021) is also pending before the Supreme Court. The Kerala High Court has given the central government 3 weeks to file its counter affidavit.

8. AIR 2015 SC 1523



Karnataka bans real-money online skill gaming by introducing amendments to its anti-gambling act

The state of Karnataka on 5th October 2021 enforced the *Karnataka Police (Amendment) Act, 2021* ("**Amendment Act**") to prohibit all forms of online gambling in the state. However, much to the chagrin of industry bodies and skill gaming start-ups in the state, the language of the Amendment Act is such that it also prohibits all those skill games (including online skill games) that involve any monetary or equivalent stakes or the risk of losing money or money's worth. These amendments come in the backdrop of a petition filed last year by a social activist before the High Court of Karnataka ("**Kar HC**") seeking a direction from the Kar HC to ban all forms of online gambling and betting until appropriate regulations are framed by the state government. Over the course of the hearings, the state government had repeatedly sought time to take a decision and make its stand clear on the issue and to come out with an appropriate law or amendment. Consequent to the proceedings in the said petition, the state government enacted amendments to the *Karnataka Police Act, 1963* ("**KP Act**") (which contains the state's gambling law too) to empower the statute to prohibit online gambling. However, the state government's wording of the Amendment Act has ended up imposing a blanket ban on all games played for stakes in the state.

The key provisions of the Amendment Act substituted the definition of 'gaming' with one that now includes an online game of chance and the different modes of electronic payment for such chance based online gaming. The legislature has widened the scope of this definition by expanding on the explanation for 'wagering or betting' to now include "...any act or risking money, or otherwise on the unknown result of an event including on a game of skill..." Additionally, a new definition for 'online gaming' has been introduced to include the above forms of gaming on various electronic platforms. The Amendment Act has also substantially increased the quantum of jail term and monetary fines for gaming-related offences. It has also included 'aiding and abetting' to the existing descriptions of offences. However, the most significant change has been the dilution of the saving provision in the KP Act which earlier held wagering on games of skill as being outside the scope of the prohibitions of the KP Act. The Amendment Act has now deleted the portion "*and to wagering by persons taking part in such game of skill*" from the said provision making it abundantly clear that the state has no intention of permitting real-money gaming of any kind over any medium.

These aggressive amendments have faced heavy criticism from gaming operators and players alike. Unsurprisingly, within days of the Amendment Act coming into force a slew of writ petitions (ten at last count) were filed before the Kar HC by various stakeholders challenging the constitutional validity of the ban imposed on playing skill games for stakes online and also questioning the legislative competence of the state government for enacting such a law on skill games, the offering of which is constitutionally protected. In this regard, it is pertinent to note that multiple Supreme Court judgements and the recent Madras High Court judgement (in *Junglee Games India Pvt Limited v. State of Tamil Nadu*⁹, while quashing near identical provisions in Tamil Nadu's state gaming act), have categorically held that there is a lack of legislative competence in states vis-à-vis games of skill (whether for stakes or otherwise) as Entry 34 of the State List in the Constitution namely, 'Betting and Gambling' only gives states the legislative competence for games of chance and not games of skill. The petitions challenging the Amendment Act have been heard at length and at the time of writing this the petitions have been adjourned to the 11th of November 2021 for further hearing with the Kar HC directing the state government and police authorities to not take any coercive action (including arrests) against the petitioners.

Please write to us at therecap.queries@induslaw.com to get a first-hand account of the preliminary arguments made by the petitioners in the Kar HC. You may also get in touch with us to seek legal and regulatory advice on the impact of the Amendment Act on your gaming operations in Karnataka.

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

You may read our analysis of the aforesaid Madras High Court judgement as an IndusLaw Infolex NewsAlert [here](#).

High Court of Kerala quashes notification banning online rummy for stakes in the state

In the last week of September, the High Court of Kerala in a significant judgment for online rummy operators, quashed the state government's February 2021 executive notification which had banned online rummy for stakes in the state. The High Court held the said notification to be arbitrary, illegal, and violative of Article 14 (equality before the law) and Article 19(1)(g) (right to trade, business, profession, and occupation) of the Constitution. For the past four decades, in Kerala, rummy (along with few other games like dart throw, ball throw, and cup & coin) were exempted from prohibitions under the *Kerala Gaming Act 1960* by virtue

9. Writ Petition No. 18022/2020

of their classification as ‘games of skill’ under a notification issued by the state government to that effect under Section 14A¹⁰ of the said Act. In February 2021, the state government specifically removed ‘online rummy played with stakes’ from the ambit of the aforesaid exemption, essentially imposing a ban in the state on online rummy when played for stakes.

Prominent online rummy operators challenged this in the High Court and had argued that banning online rummy while permitting it offline is arbitrary; that involvement of monetary stakes cannot be a factor in deciding if a game is based on skill or chance; and that a ban on a ‘game of skill’ violates the fundamental right to profession. The court agreed with these submissions and held that rummy is exempted from the Kerala Gaming Act 1960 as a ‘game of mere skill’ and is not dependent on government notifications for that status.

You can access the impugned February 2021 notification [here](#).

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

Tamil Nadu to challenge Madras High Court judgement in the Supreme Court

On 16th September 2021 news reports quoted Tamil Nadu Law Minister Mr. S. Regupathy saying that the state government had decided to approach the Supreme Court in appeal against the judgement of the Madras High Court in *Junglee Games India Pvt. Ltd. & Anr. v. State of Tamil Nadu*¹¹ which struck down Part II of The Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 and thereby revoked the blanket ban which had been imposed in Tamil Nadu on all games (including online skill games) played for stakes. Mr. Regupathy was responding to queries from journalists when he said that the state government had not yet passed a new law to ban gaming activities and have instead decided to appeal the judgement before the Supreme Court. Further details are awaited regarding the filing of the appeal.

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

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

Madras High Court dismisses petition against celebrities who endorsed online games

A petition filed in the Madras High Court which sought action against online gaming platforms and their celebrity brand ambassadors was dismissed by the High Court labeling the petition as an attempt “fuelled by the petitioner’s ambition to propel himself to stardom”. According to the petitioner, the gaming platforms are involved in “cyber-crimes, scams, illegal data transfer and infringement of privacy of users”. The petitioner had made cricketers Virat Kohli and Sourav Ganguly, actors Prakash Raj, Tamannaah Bhatia, Rana Daggubati and Sudeep as respondents in the petition. While Virat Kohli & Tamannaah Bhatia are brand ambassadors for Mobile Premier League (MPL), Saurav Ganguly endorses fantasy sports platform My11Circle, whereas Prakash Raj & Rana Daggubati have featured in advertisements for Junglee Rummy. The dismissal of this frivolous petition is a step in the right direction and will have a persuasive effect on other High Courts in the country when they are faced with similar busybody petitions. It is pertinent to mention that similar petitions against celebrity endorsers of online gaming have also previously been filed in July 2020 and January 2021 before the Madras High Court & Kerala High Court respectively and are currently pending.

You may read more regarding this latest petition in this *Times of India* [report](#).

10. S. 14A: The Government may, if they are satisfied that in any game the element of skill is more predominant than the element of chance, by notification in the Gazette, exempt such game from all or any of the provisions of this Act, subject to such restrictions and conditions as may be specified in the notification.

11. Writ Petition No. 18022/2020

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