



INFOLEX- TMT PRACTICE

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TECHNOLOGY, MEDIA & TELECOM

We bring to you a first new volume of INFOLEX, legal update from the legal point of view for India's technology, media & telecom (TMT) and gaming industries. This is an indication of what we feel will become important developments in the foreseeable future. This volume covers recent legal updates

THE CENTRAL GOVERNMENT NOTIFIES THE AMENDMENTS TO THE IT RULES, 2021 FOR SOCIAL MEDIA INTERMEDIARIES:

On October 28, 2022, Ministry of Electronics and Information Technology ("MeitY") released the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2022 ("Amendment Rules"). The Amendment Rules, inter alia, make significant changes to the IT Rules, 2021:

1. The Amendment Rules mandate that one or more grievance appellate committees ("GACs") are to be established within three months of the Amendment Rules coming into force. Each GAC shall consist of a chairperson, two whole time members appointed by the Central Government, one of which shall be an ex-officio member, and two independent members.
2. Any person aggrieved by a decision of the grievance officer may prefer an appeal to the GAC within a period of thirty days from the date of receipt of communication from the grievance officer. While dealing with the appeal, if the GAC thinks it necessary, it may seek assistance from any person having requisite qualification, experience, and expertise in the subject matter, and will aim to resolve the appeal within thirty days. Additionally, the GAC shall adopt an online dispute resolution mechanism wherein the entire appeal process, from filing of the appeal to the decision thereof, shall be conducted digitally. It is also prescribed that every order passed by the GAC shall be complied with by the intermediary concerned and a report to that effect shall be uploaded on its website.
3. The grievance officer appointed under the IT Rules, 2021, is now mandated to resolve any complaint in the nature of request for removal of information or communication link under Rule 3(1)(b) of the IT Rules, 2021, except subclauses (i), (iv) and (ix), as expeditiously as possible, and within seventy two hours of such reporting, in contrast to other complaints which are mandated to be resolved within fifteen days of receipt of the complaint.
4. The intermediary's obligation to prominently publish on its website or mobile based application the rules and regulations, privacy policy and user agreement of the intermediary, has been extended to making such documents available in "English or any language specified in the Eighth Schedule to the Constitution" for access or usage by any person, "in the language of his choice", and to ensure compliance of the same.
5. While the IT Rules, 2021 mandated that social media intermediaries would be responsible for informing users not to host, display, upload, modify, publish, transmit, store, update or share any information not permitted under the law, the Amendment Rules only provide that intermediaries should take 'all reasonable measures' to inform users of the provisions of the IT Rules, 2021.
6. The Amendment Rules also provide a shorter timeline of twenty four hours to act on sensitive content and require significant social media intermediaries to "respect all the rights accorded to the citizens under the Constitution, including in Articles 14, 19 and 21."

BROADCASTING SERVICES INCLUDED WITHIN THE AMBIT OF DRAFT INDIAN TELECOM BILL 2022

The Department of Telecommunications ("DoT") issued the draft Indian Telecommunication Bill, 2022 ("Draft Bill") on September 21, 2022, for public comments. The Draft Bill proposes to bring in sweeping changes to the governance of the telecommunication sector and to replace three colonial-era legislations which still govern the sector, namely the Indian Telegraph Act, 1885, the Indian Wireless Telegraphy Act, 1933, and the Telegraph Wires (Unlawful Possession) Act, 1950.

The Draft Bill includes broadcasting services within its ambit and also lists in Schedule 2, the different kinds of broadcasting services which will require a license to operate. The definition of broadcasting services is vague and it refers back to the main definition of “telecommunication services” which itself is very broad. There is also a lack of clarity on whether OTT streaming apps are intended to be included within the ambit of the Draft Bill.

CBFC DIRECTS FILM ADVERTISEMENTS TO CARRY FILM CERTIFICATION

The Central Board of Film Certification (“CBFC”), issued a press release, directing film producers to carry the category of the certificate granted to their film, in all advertisements, after the date of certification. The press release also stated that the rating granted to the film, such as “U/A”, “A” or “S” should appear in all advertisements, as provided under the Cinematograph (Certification) Rules, 1983. Additionally, the press release mandated the producers to carry the category of certificate granted to a film in the film’s advertisements in newspapers, wall posters, handbills, and other media as well, after the date of certification, and noncompliance of the same might invite action.

SINGLE-WINDOW CLEARANCE LIKELY FOR THEATRES IN UPCOMING MODEL POLICY

The Ministry of Information and Broadcasting, the Government of India (MIB), has announced that it is working on a model theatre policy, in consultation with all stakeholders, to roll out a pan-India single-window clearance system, which will help to revive the sector. It is stated that the MIB has asked the Film Facilitation Office to work in conjunction with Invest India, to come up with a single-window portal for the opening of theatres, so that a larger number of theatres can be opened for public benefit and enjoyment. The MIB also stated that the Central Government will work with the states to create a model theatre policy for states to adopt. The Government is considering different models, such as all-encompassing entertainment hubs comprising a food court, sports facility and multiscreen cinemas under one roof, which have become popular in parts of India.

MIB ISSUES ADVISORIES TO BROADCASTERS AND DIGITAL MEDIA PUBLISHERS AGAINST OFFSHORE ONLINE BETTING OPERATORS

The Ministry of Information & Broadcasting (“MIB”) issued set of advisories on advertisements of ‘online betting platforms’ (“Advisories”) to publishers of news and current affairs on digital media, publishers of online curated content and private satellite television channels. These Advisories come in the backdrop of their earlier advisory in June 2022 seeking publishers to refrain from advertising these platforms over the internet. However, the MIB observed that their advisory was not being adhered to. Stating that betting and gambling is illegal across most parts of India, the MIB relied on the recently notified misleading advertisements guidelines under the Consumer Protection Act, 2019 and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“IT Rules, 2021”) to highlight that the advertising of prohibited activities is not permitted in India. The MIB has also noted that betting platforms are indulging in surrogate advertising by using news websites and sports blogs whose logos are strikingly similar to the online betting platform, which is not in conformity with Indian laws. The MIB has strongly advised digital media publishers against displaying advertisements of online betting platforms and/or their surrogate news websites, with private satellite television channels under the threat of penal action, if they fail to adhere to the Advisories.

GAMING LAWS

CENTRAL COMMITTEE ISSUES RECOMMENDATIONS ON CENTRAL LAW FOR ONLINE GAMING

A seven-member committee (“Committee”) had been set up by the Central Government comprising of secretaries of various ministries, to formulate a central gaming law. The Committee has submitted a report of their recommendations to the Central Government. The broad suggestion by The Committee is as follows: (i) Proposed law should apply to games of skill including fantasy sports, card games, esports and casual games whether free to play or for real money; and (ii) regulations for games of chance should be left to the discretion of each State Government; (iii) MeitY will be the Central Ministry for online gaming except for esports and games of chance; (iv) MeitY is to set-up a regulatory body to evaluate game formats and determine if they are games of skill or chance. While the consensus on new law may take time, as an interim measure, the online gaming industry can be regulated through rules drafted under the Information Technology Act, 2000. The Committee also proposed the law to have powers to punish and block game formats prohibited under the proposed central gaming law. After analyzing international best practices, the Committee has suggested introducing de-addiction measures like deposit and withdrawal limits, periodic warning and advisories on responsible gaming to assist players with their engagement with the game. Along with due diligence requirements and Know-Your-Customer norms, gaming platforms will be required to have a robust three-tier dispute redressal mechanism consisting of the gaming platforms, a self-regulatory organization of the gaming platform and an oversight committee led by an appropriate ministry. MeitY will finalise the report after receiving further comments from the Committee.

MEGHALAYA REGULATION OF GAMING ACT, 2021 TO BE SCRAPPED

The Meghalaya Government has decided to repeal the Meghalaya Regulation of Gaming Act, 2021 (“Meghalaya Gaming Act”) which regulated online gaming in the state under a licensing regime. Various organizations have been vocal against the Meghalaya Gaming Act as they believed its existence has adverse consequence to the society at large. While the Meghalaya Gaming Act was introduced to boost tourism, generate local employment and revenues for the state, the Government stated that they have taken into consideration the apprehensions of those opposing the law and have decided to scrap it. An ordinance will be placed before the state assembly for repealing the Meghalaya Gaming Act. Till then it will be in force and once the procedure is complete the Meghalaya Prevention of Gambling Act, 1970 will remain as the principal gaming legislation in the state.

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