



Luthra and Luthra
LAW OFFICES INDIA

TMT LAW NEWSLETTER

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And Many More....



Telecommunications

1. Department of Telecommunications (“DoT”) releases the Indian Telegraph-Infrastructure Safety Rules, 2022

The DoT, [vide](#) notification dated January 03, 2023 released the Indian Telegraph (Infrastructure Safety) Rules, 2022.

Salient features of the rules are listed down below:

- Central Government has made it mandatory for any person, who desires to dig or excavate while exercising any right with any property, to send a notice to the licensee through the common portal if such an act is likely to cause damage to a telegraph infrastructure or to interrupt or interfere with telegraphic communication which is in accordance with the Indian Telegraph Act, 1885.
- Such notice should be sent before the commencement of such exercise and also contain information regarding such digging or excavation, name, and address of the person exercising such right, agency details, etc.
- The licensee shall immediately provide the details of telegraph infrastructure which is

owned/managed/controlled by the licensee themselves and any other precautionary measures for coordination with such person exercising his legal right over any property to avoid damages to the telegraph infrastructure. If the licensee fails to provide such details within the prescribed time period, as per Section 19(A), the person having a legal right to dig or excavate shall be free to dig or excavate the property thereafter.

- If the person exercising his legal right over the property by digging or excavations causes damage to the telegraph infrastructure which was placed as per the law, shall be liable to pay damage charges to the telegraph authority, which shall be computed based on such expenses taken in restoring such damages.

2. DoT releases the Draft Indian Telecommunication Security Assurance Requirements (“ITSAR”) document (“Draft ITSAR Document”) for Network Function Virtualization (“NFV”)

The National Centre for Communication Security in the DoT, [recently](#) released a Draft ITSAR Document for NFV.

Salient features of the Draft ITSAR Document are as follows:

- Provide a comprehensive country-specific security requirement for

NFV as applicable to mobile generation technologies.

- Details about the NFV technology and its architectural framework are stated along with functions and security aspects. Further, it provides for common security requirements about management protocols, management traffic protection, requirements regarding password changes, security updates/upgrades, etc.
- Provides for specific security standards concerning SDN and MANO like centralized log auditing, prevention from attacks via a virtualized environment, SDN security, etc. for the former, and data transfer in MANO, identity verification in MANO, a format of access token with their limited lifetimes, etc. for the latter. It has additionally prescribed detailed security requirements and their workings for NFV.

It is noteworthy that the Draft ITSAR Document, is still at draft stage, and is yet to become the law of the land.

3. DoT releases advisory guidelines to M2M/Internet of Things (“IoT”) stakeholders for securing consumer IoT

The DoT, on March 2, 2023 [released](#) advisory guidelines for the M2M/IoT stakeholders for securing consumer

IoT. With IoT’s utilization in the creation of smart infrastructure and its proliferation in several technologies, it is one of the fastest emerging technologies. Therefore, because of its growth, DoT aims to ensure that M2M/IoT endpoints comply with the safety and security standards and guidelines to protect the users and the networks that connect these devices from causing significant harm. Following are some key guidelines issued:

- M2M/IoT devices' usernames and passwords should not be default (such as 'admin') but should be unique per device and/or require the user to choose a password that follows best practices, during device provisioning. The passwords must not be resettable to any universal default value. Multi-factor authentication and password reset only after appropriate authentication of the user were also stated.
- A system for public point of contact for accounting vulnerabilities by the M2M/IoT stakeholders and the encouragement of the cyber security community to identify, report and remedy the said vulnerabilities were also stated.
- The software components of the M2M/IoT devices must be regularly and securely updated, not adversely impacting the

functionality of the device. Such updates shall be easy to implement and the duration for which the updates shall be given for the devices should also be published, with the manufacturers/retailers notifying the consumers of the update.

4. TRAI releases consultation paper on Telecommunications Infrastructure Sharing, Spectrum Sharing, and Spectrum Leasing

The TRAI, on [January 13, 2023](#), released a consultation paper on 'Telecommunication Infrastructure Sharing, Spectrum Sharing, and Spectrum Leasing'. This was released in light of the DoT informing TRAI, through a letter dated February 10, 2022, to promote optimum resource utilization among the licensees, it proposed to allow sharing of all kinds of telecom infrastructure and network elements among all categories of service providers, licensed under the Section 4 of Indian Telegraph Act, 1885. Through the said letter, DoT sought TRAI's recommendations under Section 11(1)(a) of Telecom Regulatory Authority of India Act, 1997 ("**TRAI Act**") on this issue. Written comments on the consultation paper are no longer being accepted.

5. TRAI issues consultation paper on Regulating Converged Digital Technologies and Services - Enabling Convergence of Carriage of Broadcasting and Telecommunication services

The TRAI, on [January 30, 2023](#), issued a consultation paper on 'Regulating Converged Digital Technologies and Services Enabling Convergence of Carriage of Broadcasting and Telecommunication services'. The consultation paper specifically highlights that the difference in policy structure and regulatory framework for the regulation of telecommunication and broadcasting sectors is causing governance challenges, such as the requirement to obtain multiple licenses for the same technology, regulatory ambiguity with respect to the outcomes of converged technologies, and demarcated administration of the converged digital services. Some salient issues tackled by the paper are as follows:

- The paper highlights that though Information Technology Act, 2000 ("**IT Act**") provides some level of regulation for over-the-top ("**OTT**") platforms as intermediaries, it does not regulate these platforms as communication service providers.
- At the licensing level, both Ministry of Information and Broadcasting

("MIB") and the DoT grant permission for the functioning of IPTV under the Indian Telegraph Act, 1885.

- Although TRAI is a unified regulator for the broadcasting and telecommunication sector, its power is limited to only prescribing and monitoring quality benchmarks, interconnect rules, and pricing of services.
- Different ministries have different standards, testing requirements, and certifications for the same equipment, creating multiple compliance requirements and confusion. Therefore, it recommended that such standardization bodies under different ministries should either be converged or should adopt a collaborative approach.

The consultation paper sought stakeholder comments on the following, among other things:

- Alternative licensing and administrative framework that facilitates the growth of telecom and broadcasting sectors, while considering the challenges brought forth by convergence.
- Whether there should be a separate comprehensive code to regulate the carriage of broadcasting and telecommunication services.

- Whether issues of convergence (licensing, legal, and regulatory framework) should be addressed more holistically (which would include both ITeS and the space sector), etc.

Written comments on the consultation paper are no longer being accepted.

6. TRAI releases consultation paper on Issues related to FM Radio broadcasting

The TRAI, on [February 9, 2023](#), released a consultation paper on 'Issues related to FM Radio broadcasting'. Recommendations were sought on issues of 'removing the linkage to non-refundable one-time entry fee in the formula for annual fee as prescribed in the FM Ph-III Policy Guidelines dated July 25, 2011' and 'extending the existing FM license period of 15 years by 3 years.' Representatives of AROI, inter-alia, raised certain issues for consideration of the TRAI, namely, 'permitting private FM Radio channels to broadcast independent news bulletins' and the 'availability of FM Radio receivers in mobile handsets.' Accordingly, this consultation paper was prepared to seek the comments/views of the stakeholders on the issues related to FM Radio broadcasting. Written comments on the consultation paper are no longer being accepted.



7. TRAI releases consultation paper on the Introduction of Digital Connectivity Infrastructure (“DCI”) Provider Authorization under Unified License (“UL”)

The TRAI, on [February 9, 2023](#), released a consultation paper on ‘Introduction of DCI Provider Authorization under UL’. In an effort to encourage new players to enter the DCI space, and thereby foster technological development, an effective licensing framework is sought to be brought in place. In August 2022, TRAI received a reference from DoT seeking recommendations regarding creation of a new category of license namely telecom infrastructure license and terms and conditions of such license, applicable license fee etc. The purpose of this consultation paper is to seek views of stakeholders on the proposed DCI Provider Authorization under UL. Written comments on the consultation paper are no longer being accepted.

8. TRAI releases recommendations on Rating of Buildings or Areas for Digital Connectivity

The TRAI, on [February 20, 2023](#), released its recommendations on ‘Rating of Buildings or Areas for Digital Connectivity’. In 2022, TRAI, suo moto, undertook the process of consultation to provide a framework for

establishment of an eco-system wherein DCI becomes part of all development activities. TRAI issued consultation paper on ‘Rating of Buildings or Areas for Digital Connectivity’ on March 25, 2022, to seek inputs from stakeholders on issues raised. Based on the comments received, discussions held with stakeholders during the open house discussion and analysis thereof, the recommendations of the TRAI on ‘Rating of Buildings or Areas for Digital Connectivity’ have been finalized.

The emphasis of these recommendations is on providing a framework for creation of an ecosystem for DCI to be an intrinsic part of building development plan similar to other building services such as water, electricity or fire safety system. TRAI emphasized that digital connectivity infrastructure developed in the buildings should be accessible to all service providers in a fair, transparent, non-discriminatory, and non-chargeable basis.

Fintech

9. The Ministry of Finance brings cryptocurrencies under Prevention of Money Laundering Act, 2002 (“PMLA”) regime

The Ministry of Finance [vide](#) gazette notification dated March 7, 2023, brought transactions involving crypto

assets under the PMLA. The notification provided the nature of the transactions that is intended to be covered under the PMLA regime, which are:

- exchange between virtual digital assets (“**VDAs**”) and fiat currencies;
- exchange between one or more forms of VDAs; (c) transfer of VDAs;
- safekeeping or administration of VDAs or instruments enabling control over VDAs; and participation in and provision of financial services related to an issuer’s offer and sale of a VDA.

10. Reserve Bank of India (“RBI”) issues Frequently Asked Questions (“FAQs”) on Digital Lending Guidelines

The RBI on February 14, 2023, [released](#) FAQs on guidelines on digital lending (“**Guidelines**”). The RBI in September 2022 released the Guidelines to regulate digital lending such as lending through online platforms and mobile apps, which left certain questions unanswered. Notably, these FAQs are released at a time when certain digital lending apps were banned by the Indian Government.

The key aspects clarified in the FAQs are as follows: -

- The Guidelines are applicable to ‘digital loans’ offered over any digital platform which meet the

definition of ‘Digital Lending Apps/ Platforms’.

- The payment aggregators (“**PAAs/PA**”) offering only payment aggregating services do not fall under the ambit of the Guidelines and hence can continue to play a role in loan disbursement and repayment, but any PA that is also acting as a lending service provider (“**LSP**”) will fall under the Guidelines.
- In respect of appointment of grievance redressal officer (“**GRO**”), only those LSPs which have an interface with the borrowers would need to appoint a nodal GRO. Further, regulated entity shall remain responsible for ensuring resolution of complaints arising out of actions of all LSPs engaged by them.
- EMIs on credit cards will not be covered by the Guidelines. However, other loan products offered on credit cards which are not regulated by these directions fall under the Guidelines and so do all loans offered on debit cards, including EMI programmes.



11. RBI allows issuance of prepaid payment instruments (“PPIs”) to Foreign Nationals/Non-Resident Indians visiting India

The RBI [vide](#) circular dated February 10, 2023, allowed the access of Unified Payments Interface (“UPI”) to foreign nationals and NRIs visiting India. It was announced that the facility will be extended to travellers from the G-20 countries at select international airports for their merchant payments (“P2M”) while they are in the country and going forward, the same will be enabled across all entry points in the country.

In line with the same, the [Master Directions on Prepaid Payment Instruments \(PPIs\) dated August 27, 2021](#) has been updated by inserting paragraph 10.3. The key changes are as follows: -

- Banks / non-banks permitted to issue PPIs can issue INR denominated full-KYC PPIs to foreign nationals / NRIs visiting India (to start with, this facility will be extended to travellers from the G-20 countries, arriving at select international airports). Such PPIs can also be issued in co-branding arrangement with entities authorised to deal in foreign exchange under Foreign Exchange Management Act, 1999 (FEMA);

- The PPIs shall be issued after physical verification of passport and visa of the customers at the point of issuance. The PPI issuers shall ensure that such information and record thereof are maintained with them;
- The PPIs can be issued in the form of wallets linked to UPI and can be used for P2M only;
- Loading / reloading of such PPIs shall be against receipt of foreign exchange by cash or through any payment instrument; and
- The amount outstanding at any point of time in such PPIs shall not exceed the limit applicable on full-KYC PPIs;

12. The National Payments Corporation of India (“NPCI”) releases interoperability guidelines for UPI

NPCI [vide](#) circular dated March 20, 2023 released interoperability guidelines for UPI.

- The compliances are detailed out below:
 - **For UPI Payment Apps:** include the text of: ‘Send Money to any UPI App’ or ‘Scan any UPI QR and display the UPI logo along

with the prominent apps' logos on send money and QR scan screens within the apps. Further, include the message in all customer and merchant communications.

- **For all UPI Online Merchants:** UPI as a payment option to be clearly and prominently visible 'over and above' any individual UPI app for the merchant payments especially for online transactions, as per the prescribed checkout standardization for all UPI based merchant payments (one-time, autopay etc.)
- The merchant application/website is responsible for the user interface-based changes. Further, PSP acquiring bank and PA/PG will be responsible for displaying 'Pay by any UPI app' option on the checkout page, as prescribed.
- The UPI ecosystem is required to adhere to the guidelines by September 30, 2023.

Information Technology & Data Protection

13. Securities Exchange Board of India ("SEBI") mandates data localization for securities sector

The SEBI [vide](#) circular dated March 6, 2023, mandated the regulated entities ("REs") to store/ process the data including logs and any other data/ information pertaining to RE in any form in cloud.

- Such storage or processing of data is subject to following conditions: -
 - The data should reside/be processed within the legal boundaries of India.
 - For the investors whose country of incorporation is outside India, the REs are required to keep the original data/ transactions/ logs, available and easily accessible in legible and usable form, within the legal boundaries of India.
- The REs include stock exchanges, clearing corporations, depositories, stock brokers through exchanges, depository participants through depositories, asset management companies (AMCs)/ mutual funds (MFs), qualified registrars to an issue and share transfer agents., KYC registration agencies (KRAs).



- The data localization is mandated by the SEBI to ensure that RE and SEBI's right to access RE's data as well as SEBI's rights of search and seizure are not affected by adoption of cloud services. Further, the REs are required to ensure that the conditions as mentioned above are fulfilled at all times during adoption/ usage of cloud services.

14. Unique Identification Authority of India ("UIDAI") notifies the requirement of obtaining informed consent before conducting Aadhar authentication

The UIDAI [vide](#) circular dated January 23, 2023, notified that the requesting entities before carrying out Aadhar authentications, are required to do the following:-

- obtain residents' informed consent either on paper or electronically.
- be courteous to residents and assure them about the security and confidentiality of the Aadhar numbers, which are being used for authentication transactions.
- report about any suspicious activity around authentications like suspected impersonation by residents, or any compromise or fraud by any authentication operator.

- not store Aadhaar either in physical or electronic form without masking or redacting the first 8 digits of the Aadhaar number.
- provide effective grievance handling mechanisms for residents and cooperate with UIDAI and other agencies deputed by it for any security audit as required under the laws and regulations.

Online Gaming

15. Ministry of Electronics & Information Technology ("MeitY") notifies amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, in relation to online gaming

The MeitY [recently](#) introduced amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("**Intermediary Guidelines**"), related to online gaming. It is noteworthy that MeitY introduced draft amendments to the Intermediary Guidelines in January 2023, and after conducting a consultation process with the

industry stakeholders, have introduced the said amendments.

“**Online game**” is defined as a game that is offered on the internet and is accessible by a user through a computer resource or an intermediary. On the lines of the draft amendment, concept of “**online gaming intermediary**” has been retained, to mean any intermediary that enables the users of its computer resource to access one or more online games.

In a sharp contrast with the draft amendments, concept of online real money game has been introduced. “**Online real money game**” would mean an online game where a user makes a deposit in cash or kind with the expectation of earning winnings on that deposit, whereas “**permissible online real money game**” would mean an online real money game verified by an online gaming self-regulatory body.

Following are certain key compliances that have been introduced to the Intermediary Guidelines, for Online Gaming Intermediaries:

- An intermediary including a social media intermediary, a significant social media intermediary and an Online Gaming Intermediary, shall prominently publish on its website/mobile application, as well as inform its rules and

regulations, privacy policy and user agreement, to the users in English or any language specified in the Eighth Schedule to the Constitution in the language of his choice and shall make reasonable efforts to cause the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that:-

- is in the nature of an Online Game that is not verified as a permissible online game,
 - is in the nature of advertisement or surrogate advertisement or promotion of an Online Game that is not a permissible online game, or of any Online Gaming Intermediary offering such an Online Game, and
 - most significantly any content that in respect of any business of the Central Government, is identified as fake or false or misleading by such fact check unit of the Central Government as MeitY may, by notification published in the Official Gazette, specify.
- An Online Gaming Intermediary who enables the users to access any Permissible Online Real Money Game shall inform its users of such change as soon as possible, but not later than



twenty-four hours after the change is effected.

- In case of an Online Gaming Intermediary who enables the users to access any Permissible Online Real Money Game, not later than twenty-four hours of the receipt of an order must provide information under its control or possession, or assistance to the Government agency which is lawfully authorized for investigative or protective or cyber security activities, for the purposes of verification of identity, or for the prevention, detection, investigation, or prosecution, of offences under any law for the time being in force, or for cyber security incidents.
- An Online Gaming Intermediary who enables access to its users to any Permissible Online Real Money Game, shall display a demonstrable and visible mark of verification of such Online Game by an online gaming self-regulatory body on such Permissible Online Real Money Game.
- An Online Gaming Intermediary shall, before accepting any deposit in cash or kind from any user for a Permissible Online Real Money Game, identify such user and verify his identity, provided

that the procedure required to be followed by an entity regulated by the Reserve Bank of India for identification and verification of a customer at the commencement of an account-based relationship shall apply to identification and verification of the users of such Online Gaming Intermediary.

- An Online Gaming Intermediary who enables the users to access any permissible online real money game shall not itself finance by way of credit or enable financing to be offered by third party for the purpose of playing such Online Game.
- Further, certain compliances applicable on significant social media intermediaries are extended to Online Gaming Intermediaries, specifically the obligation to appoint Chief Compliance Officer, Nodal Contact Person and a Resident Grievance Officer.
- Furthermore, mechanism related to verification of Online Real Money Games, by a self-regulatory body, has been introduced.



16. Government introduces new sections on Income Tax Act to tax user income from online gaming

Government has [introduced](#) two new sections 115BBJ and 194BA to the Income Tax Act, 1961 to tax user income from online gaming, which are as follows:-

- Section 115BJ of the Income Tax Act, 1961 provides that where the total income of an assessee includes any income by way of winnings from any online game, the income-tax payable shall be the aggregate of:
 - the amount of income-tax calculated on net winnings from such online games during the previous year, computed in the prescribed manner, at the rate of 30 %; and
 - the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the net winnings referred to above. The term "online game" has been defined as "a game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device".
- Section 194BA of the Income Tax Act, 1961, which will be effective from July 1, 2023, provides that 'any person' responsible for paying to 'any person' any income by way of winnings from any online game during the financial year shall deduct income tax at 30% on the net winnings in his "user account", computed in the manner as may be prescribed, at the end of the financial year. This TDS will apply without any threshold.
- Where there is a withdrawal from user account during the financial year, the income tax shall be deducted at the time of such withdrawal on net winnings, as well as on the remaining amount of net winnings in the user account, computed in the manner as may be provided by rules, at the end of the financial year.
- Where the net winnings are wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the net winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings.

17. Chhattisgarh enacts The Chhattisgarh Gambling (Prohibition) Act, 2022

Chhattisgarh [recently](#) enacted the Chhattisgarh Gambling (Prohibition) Act, 2022 ("**Gaming Act**"), with an aim to curb the tendency of extracting illegal money by involving in Gambling and further prevent the consequential financial trouble on the families in the State of Chhattisgarh. The significant features of the Gaming Act are as follows:

- The Gaming Act defines 'Gambling' as 'includes the wagering or betting or wagering or betting through online for the purpose of financial gain but does not include lottery'.
- Liability for gambling publicly is upto six months imprisonment, a fine of Rs 3,000 to Rs 10,000, or both.
- In respect of penalty for online gambling,
 - For the first offence, the person will be liable for an imprisonment which may range from 1 year to 3 years and also fine which may extend from Rs. 50,000 to Rs. 5,00,000.
 - For the first offence, the person will be liable for an imprisonment which may range from 2 year to 7 years

and also fine which may extend from Rs. 1,00,000 to Rs. 10,00,000.

- Advertisements of all gambling games on electronic and print media where chance prevails over the skills are also prohibited.

Media & Broadcasting

18. MIB issues clarifications in relation to applicability of Foreign Direct Investment ("FDI") Policy of Government of India for OTT

The MIB [vide](#) circular dated March 10, 2023, clarified that when the OTT platform is hosting digital feed of a TV news channel which have been granted permission under the Uplinking and Downlinking Guidelines, 2022 ("**Uplinking Guidelines**"), only as a medium and makes it available to its subscribers/ users, such an OTT platform would not be covered under the 26% FDI rule applicable to digital news media publishers.

It is to be noted that in 2019, the Department for Promotion of Industry and Internal Trade ("**DPIIT**") vide press note 4 dated [September 18, 2019](#) ("Press Note 4"), provided FDI upto 26% under Government approval route for the entities involved in uploading/streaming of news and current affairs through digital media.

Further, vide public communication dated [October 16, 2020](#), the DPIIT issued clarification in respect of Press Note 4 and provided that the decision of permitting 26% FDI through Government route would apply to following categories of Indian entities, registered or located in India:

- digital media entity streaming/uploading news and current affairs on websites, apps or other platforms;
- news agency which gathers, writes and distributes/transmits news, directly or indirectly, to digital media entities and/or news aggregators; and
- news aggregator, being an entity which, using software or web application, aggregates news content from various sources, such as news websites, blogs, podcasts, video blogs, user submitted links, etc. in one location.

Further, the entities covered above would be required to align their FDI to the 26% level with the approval of the Central Government, within one year from the date of issue of the clarification.

19. MIB issues clarification on the definition of director under the 'Guidelines for Uplinking and Downlinking of Satellite Television Channels in India, 2022.'

The MIB [vide](#) press release dated January 25, 2023, issued a clarification on the definition of "director" under the Uplinking Guidelines. The notification clarifies the following points under said guidelines;

- The term "director" must be read in terms of the Companies Act, 2013.
- All key managerial personnel and editorial staff of the entity as discussed within the "furnishing of application" provisions of the Uplinking Guidelines must be resident Indians and the majority condition as stated under the Uplinking Guidelines is only to be read in reference to directors in the board of directors.

20. MIB releases advisory on Obligation of Public Service Broadcasting

The MIB [vide](#) notification dated February 14, 2023, published an advisory on the obligation of public service broadcasting for private satellite TV channels. The advisory provides clear guiding principles for public service broadcasting to be undertaken by private satellite TV

channels as envisaged under Paragraph 35 of the Uplinking Guidelines.

The advisory dictates a four-pronged approach for the manner in which public service broadcasting will be undertaken by private satellite TV channels. The regulation can be categorized under the heads of content, accounting of timing, reporting and identification. These categories are substantiated below as follows:

- **Content:** The list of themes of national importance and social relevance would be governed by the Uplinking Guidelines and include themes such as education, agriculture, health and family welfare, science and technology, welfare of women, welfare of weaker sections of the society, protection of environment and cultural heritage and national integration. Further, the broadcasters have the liberty to modulate their content. Furthermore, the content can be shared between broadcasters and repeat telecast on one or several TV channels.
- **Accounting of Timing:** The content totalling 30 minutes can be spread over time. Further, the time of this broadcast will be accounted cumulatively on monthly basis. Lastly, the public service content can be broadcasted at any time except for between midnight and 6:00 AM.
- **Reporting:** The guiding principles for reporting shall be self-certification and voluntary compliance. The broadcasters are mandated to submit a monthly report on the Broadcast Seva Portal on or before the 7th day of the following month. Channels broadcasting predominantly (more than 12 hours) sports and devotional/spiritual/yoga content are exempt from submitting monthly reports.
- **Identification:** Every broadcaster shall keep record of the content telecast over the last 90 days. Further, the Electronic Media Monitoring Center, under the MIB is obligated to keep the record of the telecasted content for a period of 90 days.

Consumer Protection and E-commerce

21. The Advertising Standards Council of India (“ASCI”) proposes ‘Guidelines for Advertising of Educational Institutions, Programmes and Platforms’ (“Advertising Guidelines for Education”)

The ASCI [vide](#) press release dated March 2, 2023, released guidelines for educational institutions, including universities, schools, and edtech platforms, regarding their advertising

practices. Major changes introduced under these guidelines are as follows;

- No advertisement shall state or lead the to believe or convey to the public that enrolment in the institution, program or preparation course or coaching classes guarantees a level of performance in exams/ selection for institutions and more.
- An advertisement may not normalize unhealthy habits that are detrimental to student health by showing students compromising on sleep or meals in order to study/perform.
- An advertisement must not portray an average or poor scorer as an unsuccessful student or a failure or show him/ her/ them as demotivated, depressed or unhappy, or receiving less love or appreciation from parents, teachers or peers. However, the advertisement may show disappointment for achieving low scores.
- An advertisement must not create a false sense of urgency or fear of missing out that could accentuate parental or student anxieties regarding education.
- Any advertisement must not suggest that certain subjects are associated with particular genders alone. Advertisements must also

not suggest that students with high scores are always associated with stereotypical characteristics such wearing thick glasses.

22.The ASCI releases ‘Guidelines for Disclaimers Made in Supporting, Limiting or Explaining Claims Made in Advertisements’ (“Disclaimer Guidelines”).

The ASCI [vide](#) press release dated January 17, 2023, published Disclaimer Guidelines. The Disclaimer Guidelines expands on Chapter I (4) of the ASCI code which states “Advertisements shall neither distort facts nor mislead the consumer by means of implications or omissions.” The Disclaimer Guidelines provide the following four major features:

- Disclaimers can be used to expand, clarify, or qualify claims made in an advertisement without modifying the main message conveyed. However, Advertisers should not use disclaimers to modify/ or to contradict the material claim or contradict the main message projected by the advertiser.
- Disclaimers should not be used to conceal material information with respect to the claim.
- A disclaimer should not be created as an attempt to correct a

misleading claim.

- In addition to the above, the Disclaimer Guidelines also set out parameters for legibility of disclaimers. The parameters for legibility of disclaimers include:
 - The advertisers should take all steps to ensure that disclaimers are kept to a minimum, are as straightforward and simple to comprehend as possible, and do not deter the legibility of the disclaimer.
 - Additionally, in some cases alternative improvements should be considered by advertisers such as the modification of headline claim to reduce the need for further qualification, removal of words that not simple or direct, removal of words phrases or sentences that serve no essential purpose. However, when a disclaimer is lengthy owing to compliance with regulatory requirement, the same shall not be considered to mislead or deter the legibility of the disclaimer.

The Disclaimer Guidelines also prescribe a host of technical measures to secure legibility including but not limited to; the placement of

disclaimers on packaging should be in a prominent and visible space, and the direction of disclaimers should be along the natural reading direction of the medium. For comparative claims, the basis of comparison must be stated in a font size that is at least 25% of the font size of the claim which is being made and positioned in close proximity to the claim. The speed of spoken disclaimers in advertisements in radio/TV/internet etc., should not exceed 6 syllables per second, and its volume should be at the same level as the rest of the audio and more.

23. The Department of Consumer Affairs (“DoCA”) releases ‘Endorsement know-hows! For celebrities, influencers and virtual influences on social media platforms. (“Endorsement Guidelines”)

The Department of Consumer Affairs (“DoCA”) *vide* press release dated January 20, 2023, released Endorsement Guidelines. The Endorsement Guidelines ensure that individuals do not mislead their audiences when endorsing products or services and that they are in compliance with the Consumer Protection Act, 2019 and any associated rules or guidelines.

- The Endorsement Guidelines mandate that Celebrities,



Influencers and Virtual Influencers must provide disclosures to the audiences in case of material connection between an advertiser and celebrity/influencer that may affect the credibility of the representation made by the celebrity/influencer.

- Material connection is defined as monetary or other compensation, free products with or without any conditions, attached, including those received, unsolicited, discounts, gifts, contest and sweepstakes entries, trips or hotel stays, media barter and more.
- These disclosures should be made in either picture, video or live stream of the celebrity/influence and in a way that is hard to miss

and in a simple and clear language. Further the disclosure should be simple and clear and in same language as the endorsement with terms such as 'paid promotion', 'paid' or 'paid promotion'.

However, as a measure to provide more clarity on what words/phrases to be used for demonstrating a partnership in influencer advertisements, DoCA [vide](#) press release dated March 6, 2023, clarified that, for paid or barter brand agreement, the disclosures may be indicated with the term "advertisement," "ad," "sponsored," "collaboration," or "partnership" expressly indicated in the hashtag or headline text.

This newsletter is only for general informational purposes, and nothing in this edition of newsletter could possibly constitute legal advice (which can only be given after being formally engaged and familiarizing ourselves with all the relevant facts).

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