

In collaboration with



Social & Casual Gaming in India

A Primer on Relevant Indian Laws

November 2013

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recipient of Prof. Yunus 'Social Business Pioneer of India' – 2010 award.

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Foreword

Games, i.e. interactive entertainment, are enjoyed by people of all age groups across the globe for the pure entertainment value they provide. Electronic games first became popular with game arcade machines in Japan followed by USA and Europe, leading to 'home' entertainment systems which became ubiquitous in most western households with Nintendo's Gameboy and Wii, Sony's Playstation 1, 2 and 3 and Microsoft's Xbox & Xbox360. Computer games also became popular, and the advent of the Internet gave rise to 'online games', with countries like Korea and China taking to MMORPG games in a big way. The mobile & smartphone revolution has added millions of new gamers and thousands of game developers, thanks to the popularity of 'app stores'. These app stores now make it possible for small teams to make and sell games that could, if they became popular, result in millions of downloads and many millions in revenues.

In India, mobile gaming and online gaming models have received great impetus owing to the telecom revolution and penetration of internet and cable in substantial parts of the country, along with easy accessibility of affordable devices to use such media. The Indian gaming market is considered to be an exciting market by most in the industry, however, at the same time, the market is very price sensitive, and this presents a unique challenge to gaming companies. The past few years have seen a surge in the number of all forms of games, i.e. consoles based games, computer games, mobile games and games built for other devices such as DTH set-top boxes.

Given the high growth potential of the gaming industry in India, the Indian gaming industry is mushrooming, with the number of game developers zooming from just 25 in 2010 to around 200 in 2013. Many foreign entities have already set up base here and there are various others which are exploring possibilities to set up operations in India. Some foreign gaming companies are signing distribution agreement with leading Indian mobile game developers to distribute their products in India.

It is important to note that gaming (i.e. interactive entertainment) forms a separate category of games, and typically does not have the objective of betting or wagering and is as such not to be associated with gambling.

* Associates, a leading law firm in India, have collaborated to put together this paper, which covers the gamut of Indian laws affecting casual and social games, and we hope this will be useful to entities that are looking to tap the huge potential market that is beginning to take shape in India.

Rajesh Rao,
Chair, NASSCOM Gaming Forum

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1. Laws Affecting the Content of Casual & Social Games

Casual and social games typically refer to games like puzzles, adventure themed games, sports and action games, arcade games, card or board games etc.

Casual games have always been one of the popular means of entertainment for the masses. Video games introduced the audience to a whole new experience of gaming compared to the traditional board games and today such gaming businesses thrive on the online and mobile platforms too. The popularity of such games is quite evident from how a simple game like 'Angry Birds' had an overwhelming number of downloads within 24 hours of its release on the Android and Apple App Store market along with the response to the game 'Candy Crush Saga'.

Another type of casual gaming is through social media. Social games such as Farmville, Cityville have impacted the way consumers use social networks and Facebook is reckoned as one of the world's largest online gaming platform. Multiple player interfaces and ease of interactions with players online have enabled such social games to carve a niche for themselves in the market.

The nomenclature 'casual' or "social" does not do away with the fact that there are laws to regulate such games. Some such laws are:

I. Prize Competition and Other Related Laws

Since certain casual or social games may also be based on building up, arrangement, combination or permutation, of letters, words, or figures, the provisions of the Prize Competition Act, 1955 ("**Prize Competitions Act**") and related prize competition laws may get attracted to such

games. We have elaborated the provisions and applicability of the prize competition laws in Chapter II (Prize Competitions) of this paper.

II. Pornographic and Obscenity Laws

Many games and gaming websites in India include content which may be categorized as objectionable under the pornographic and obscenity laws of India. For instance, some of the popular websites offer games which have animated caricatures of human beings, including women, depicted in a manner which may be construed as an offence as per the moral standards of India.

A. Indian Penal Code, 1860 and the Information Technology Act, 2008

The Indian Penal Code, 1860 ("**IPC**") and the Information Technology Act, 2008 ("**IT Act**") penalize publication, distribution and transmission of obscene content. The IPC, amongst others, also prohibits the sale, hire, distribution, exhibition, circulation of any obscene object and also penalizes any person who engages in or advertises or promotes or offers or attempts to do any obscene activity.¹ The IT Act, amongst others, penalizes the transmission of any obscene content or sexually explicit material in electronic form including child pornographic content.²

As per the IPC and the IT Act, any material which is lascivious or appeals to the prurient interest or which may deprave and corrupt persons would be considered obscene. In determining whether or not the games and the images depicted in the games are lascivious or appeals to the prurient interest, the court would take into consideration

1. Section 292 and 294 of the IPC.

2. Sections 67, 67-A and 67-B of the IT Act.

factors such as - (a) whether the work taken as a whole appeals to the prurient interest; (b) whether the work is patently offensive; (c) whether the work taken as a whole, lacks serious literary, artistic, political or scientific value. The court would also take into account other factors depending on the facts and circumstances of the case.³

Under both these legislations, liability could be in the form of imprisonment, ranging from up to three to seven years or fine in the range of three lakh to ten lakh rupees or both, which may increase in case of repeat offenders. Further, under the IPC, additional liability could be attracted when obscene material is made available to young persons, (that is, below the age of twenty).⁴

B. Indecent Representation of Women

The Indecent Representation of Women (Prohibition) Act, 1986 prohibits any indecent representation of women i.e. the depiction in any manner of the figure of a woman, her form or body in such a way as to have the effect of being indecent, or derogatory to, or denigrating, women, or is likely to deprave, corrupt or injure the public morality or morals.⁵ The statute prohibits any such depiction, whether through advertisements or in publications, writings, paintings, figures or in any other manner and provides for penalty in connection with the same. The mode of transmission of advertisements is not specified, and as such it may be construed that such advertisement may also be transmitted through the electronic form. This statute also penalizes the circulation of any material (including a film, any writing or drawing) containing any indecent representation of women and may get attracted if the casual or social games represent women in

the manner stated hereinabove. The penalty for violating provisions of the Act is imprisonment of up to two years and fine of up to two thousand rupees with provisions for more severe punishments in case of repeat offences.

III. Laws Affecting Action Based and Violent Games

Many popular casual games, such as Grand Theft Auto, Call of Duty, etc., are action based games which specifically appeal to young gamers. In such cases, the Young Persons' (Harmful Publications) Act, 1956 assumes relevance. The statute makes it an offence to print, publish or otherwise be involved in the printing, distribution or selling of any publication which depicts any acts that may be offences, acts of violence or incidents of a repulsive nature in such a manner as would tend to corrupt young persons (that is, a person under the age of twenty years). A person found liable could be awarded punishment in the form of imprisonment up to six months or fine or both.

While the linkage between exposure of certain forms of games to teenagers and violence in society has not been tested in Indian courts, this issue has been subject to enormous interest and controversy in the USA, Europe, and other Asian countries. Some US states, including California have previously passed laws to regulate sale of certain types of videos to children, but the US Supreme Court invalidated the same saying that video games form part of the constitutional right to free speech and hence could not be regulated.⁶ The Court also ruled that there was no direct link showing that these video games cause violence in society. However, despite this ruling, the state of New Jersey is mulling a law restricting sale of video games to minors.⁷

3. *Director General, Directorate General of Doordarshan & Ors vs Anand Patwardhan & Anr* (Appeal (civil) 613 of 2005 of Supreme Court.

4. Section 293 of the IPC provides that on first conviction, the offender shall be punished with imprisonment for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extend to seven years, and also with fine which may extend to five thousand rupees.

5. Section 2 (c) of the Indecent Representation of Women (Prohibition) Act, 1986.

6. http://www.nytimes.com/2011/06/29/arts/video-games/what-supreme-court-ruling-on-video-games-means.html?_r=0.

7. <http://arstechnica.com/gaming/2013/04/new-jersey-ignores-supreme-court-in-pushing-for-violent-game-legislation/>.

It is also interesting to note that countries such as USA and Canada have independent self-regulatory bodies such as the Entertainment Software Rating Board (ESRB), which assigns ratings as regards to age and content and also issues various guidelines to the video and computer games industry.⁸

IV. Intellectual Property Rights Issues

Casual games are often theme based in nature and use pictures, musical notes, figures, characters etc. to add to the appeal of the games. Since all such works are subject to copyright protection in their own individual sense, the use of such copyrighted material in the games without taking adequate permissions / licenses from the owner of copyrighted material can trigger copyright infringement issued under the Copyright Act, 1957. The owner of the copyright can take civil (such as injunction, suit for damages or account of profits) or criminal action against the infringer.⁹

On the flip side, since any software as well as visual content, music, characters etc. that are developed for the purpose of a game are protected by copyright, the game developer / owner of such content will have the rights to commercially exploit such content. Increasingly, it has been seen that most lucrative facets of casual and social gaming are licensing of intellectual property and merchandising – in the past year, around 45% of the net profits (of USD 71 million) of the makers of the popular game ‘Angry Birds’ came from non-gaming consumer products such as merchandise.¹⁰

Popular titles may also be protected under the trademark law of India. More often than

not, competitors may try to piggy back on the popularity of the game titles or series titles (titles for a series of games). Titles can be registered and protected as trademarks under the Trade Marks Act 1999. Unregistered titles which are popular may be protected under common law if they have acquired a secondary meaning in the judgment of the target customers. The owner of the trademarks can take civil or criminal action against the infringer.¹¹

While a user of an unregistered trademark cannot sue another party for infringement of its trademark in India, such a user can institute a passing off action against the defaulting party. However, to successfully defend a passing off action, the proprietor of the title will need to prove that the titles of the games (especially popular games), or the get-up of the title logos is distinctive and the public identifies these with the proprietor, which would not be required if the trademark is registered. The proprietor will also need to prove that the defaulting party has been using the marks deceptively and passing off their goods or services as that of the former.

In addition to the rights described above, the software related to certain types of games / functionalities within the games can also be protected by way of a patent right. While software as such is not patentable in India, certain countries such as the US allow the patenting of software. This distinction between the patent regimes is of importance in relation to games that are made available online. A game developed in India, when offered online and made available / downloaded in a country like the US, may be found to be infringing patent rights held over similar functionalities by any person in such a country.

8. <http://www.esrb.org/index-js.jsp>.

9. Copyright infringement or abetment of the same is punishable with imprisonment for a term which may vary between 6 months to 3 years and fine which may vary between Rs 50,000 to Rs 2,00,000.

10. <http://techcrunch.com/2013/04/03/rovios-revenues-up-101-to-195m-non-games-45-of-that-net-profit-71m/>.

11. Section 134 and 135 of the Trade Marks Act 1999, provide for civil remedies, which may include an interim or permanent injunction, damages on account of profits, as well as an order for the delivery of infringing marks for destruction or erasure. Sections 101 to 105 of the Trade Marks Act, 1999 describe the various offences related to infringement under the Trade Marks Act, 1999 and provide for penalties which include imprisonment for a term ranging from 6 months to 3 years, as well as payment of fine which may range from INR 50,000 to INR 2,00,000.

V. Personality Right Issues

In order to attract gamers, many games such as the FIFA series or the Fallout Franchise, use the caricatures, likeness, voice, reputation or popularity of a celebrity for a commercial benefit without authorization from the celebrity. This may result in violation of the celebrity's personality rights which is a combination of privacy and publicity rights of a person. A violation of such rights would result in the court passing an order

restraining the company or person owning the game from displaying / exhibiting these games or using the image of the celebrity in such games. In addition, any person found to be causing harm to the reputation of a celebrity may be required to pay damages to the celebrity.

2. Prize Competitions

Prize competitions are competitions where a person is rewarded in cash or kind for solving a puzzle or a crossword or answering questions.

Traditionally one would find a prize competition in a local newspaper or announced on the radio. However, in recent times with the growing number of media outlets, prize competitions have begun to feature in different forms e.g on TV shows in the form of a puzzle, crossword or a picture prize competition and the viewers would subsequently send the solutions to the organizer by way of SMSes or calls. Also, there have been a growing number of SMS driven competitions and online prize competitions.

As discussed above, prize competition has been defined by the Prize Competition Act as any competition in which prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation, of letters, words, or figures. The Prize Competition Act prohibits prize competition(s) in which the total value of the prize or prizes (whether in cash or otherwise) offered in any month exceeds INR 1000 (approx. USD 20); and prize competition(s) where the number of entries exceed two thousand. Further any person intending to conduct such prize competitions has to obtain a license to engage in such activities and the details for obtaining such licenses are to be given in the rules made thereunder. If such a person does not obtain the required license, he/she may be punished with imprisonment up to three months, or with fine which may extend to one thousand rupees (approx. USD 20), or with both.

In the case of *Bimalendu De v. Union of India (UOI) and Ors*,¹² the legality of the popular show

Kaun Banega Crorepati was in issue. A public interest litigation was filed in the Calcutta High Court requesting that the game shows *Kaun Banega Crorepati* (which is on the same lines as the celebrated show “*Who wants to be a Millionaire*”) and *Jackpot Jeeto* should be prohibited under the West Bengal Gambling and Prize Competition Act, 1957 (which has an analogous provision to the Prize Competitions Act). The court reviewed the provisions of the said statute and held that game show does not fit within the definition of a prize competition.

Similarly, the Bombay High Court¹³ has also held that the Prize Competitions Act, 1955 has a limited meaning and does not include skilled games and competitions such as *Kaun Banega Crorepati*. As such the Prize Competition Act only regulates a competition when prizes are offered for solution of any numerical or alphabetical puzzle.

While the prize competitions are regulated under the Prize Competition Act and the state specific prize competition laws, depending on the facts and circumstances of each case, the Gaming Legislations may also get attracted to such competitions. However, if the competitions fall outside the scope of the Prize Competition Act, Gaming Legislations and related state laws, such competitions will not be regulated under gaming laws of India.

The Tamil Nadu Prize Schemes (Prohibition) Act, 1979 regulates “prize schemes” in the State of Tamil Nadu. Under this enactment, there is a prohibition to conduct or promote a prize schemes.¹⁴ If the game format includes (i) purchase of goods; and (ii) draw of lots to select

12. AIR 2001 Cal 30.

13. *News Television India Ltd. and Others v. Ashok D. Waghmare and Another*; 2006 (2) MhLj431.

14. The Tamil Nadu Prize Schemes (Prohibition) Act, 1979 defines “Prize Schemes” as follows: “prize scheme means any scheme by whatever name called whereby any prize or gift (whether by way of money or by way of movable or immovable property) is offered, or is proposed to be given or delivered to one or more persons to be determined by lot, draw or in any other manner from among persons who purchase or have purchased goods or other articles from shops, centers or any other place whatsoever specified by the sponsors of the scheme or on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in relation to such purchasers.”

the prize winner from amongst the persons who have purchased the product, then such a game format would fall within the ambit of this enactment. Under the said enactment, there is no express exemption given for skill based (or preponderantly skill based) games/ prize schemes.

Though the Prize Competition Act does not expressly cull out an exception for skill based games, the Supreme Court in the case of *R. M. D. Chamarbaugwalla vs. The Union Of India*¹⁵ laid down the principle that skill based or preponderantly skill based competitions were not sought to be regulated under the Prize Competition Act. The Supreme Court looked at inter alia intention of the legislators, the mischief

that they sought to address under the legislation and the history before the legislation was brought into force.

However, under the Tamil Nadu Act this position has not been clarified. Therefore, till the time the courts or the legislature specifically clarifies the legal position under the Act *vis-à-vis* skill based games / prize schemes, depending upon the risk appetite, companies hosting such games / prize schemes have been taking either of the interpretations. In view of the same some entities in their terms and conditions for the games, expressly carve out the players from the state of Tamil Nadu.

¹⁵. 1957 AIR 628.

3. Impact of the Telecom Laws on Mobile Gaming

A recent study by market research¹⁶ firm Nielsen provided an interesting insight into the usage of mobile phones in India. As per the study, voice calls and texting accounted for only 25% (twenty five percent) of smartphone usage whereas multimedia, games, apps and Internet browsing made up the rest. Importantly, games were the most popular category among paid apps, with nearly three out of five users (58%) paying for games. There are certain telecom laws that are particularly important to consider by the gaming companies while evaluating their business models.

I. SMS Related Laws

In light of various complaints made against spam calls and SMSes, the Telecom Regulatory Authority of India (“TRAI”) issued the Telecom Commercial Communications Customer Preference Regulations, 2010 (“Regulations”) which seeks to prohibit *Unsolicited Commercial Communications* (“UCC”).

These Regulations prohibit the transmission of SMSes to subscribers who have elected not to receive such messages. Under these Regulations, subscribers have been given the option of registering either under the fully blocked category or the partially blocked category depending on their preferences.

In the fully blocked category, a subscriber opts not to receive any type of commercial communication, while the partially blocked category enables subscribers to receive commercial communications only in the categories they have chosen. Therefore, in the event that a subscriber has registered under the fully blocked category, he should not be sent any type of promotional / commercial messages / calls.

Whereas, subscribers under the partially blocked scheme may choose from a selection of categories including: banking, insurance, financial products and credit cards; real estate; education; health; consumer goods and automobiles; communication, broadcasting and entertainment; IT; and tourism.

However, certain SMSes do not need to adhere to the above mentioned restrictions and may be sent to any subscriber. Such messages are known as transactional messages, i.e. messages that represent a transaction undertaken by the subscriber, for example, messages regarding banking transactions, ticket reservations etc. since these SMSes are generated pursuant to a request made by the subscriber himself.

Interactive games modeled around SMSes typically face the following embargos:

- The Regulations lay down that only an entity registered with the TRAI (“**Telemarketer**”) may send commercial communication and that no other entity shall send commercial communication.
- There are other restrictions placed on commercial communication, such as, these messages can only be sent from 9AM to 9PM and no commercial communication can be sent thereafter.

Therefore, interactive SMS based games need to be structured carefully so that SMSes qualify as transactional messages.

Further, telemarketers sending commercial communication have been prohibited from receiving incoming messages. This poses a challenge when the interactive game requires responses to be sent via SMS by the subscriber.

¹⁶ <http://www.nielsen.com/us/en/newswire/2013/smartphones-keep-users-in-india-plugged-in.html>.

However, we have observed that most interactive games in India are now structured in a manner that the number which the participant needs to respond to is included in the body of the text with instructions to reply to the designated number instead.

II. Activation of Value Added Services

After various complaints regarding the activation of value added services (“VAS”) without the authorization of subscribers and the consequent deduction in balance of the subscribers, the TRAI enacted specific regulations to ensure that consumers are not charged incorrectly / excessively for any VAS.

The TRAI has imposed various obligations on telecom operators including:

- Informing the consumer, through SMS, on activation of a VAS, the validity period of such service, the charges for renewal and the procedure for the consumer to unsubscribe from the service;
- Before subscribing to a VAS, the operator must obtain confirmation from the consumer via a

SMS within twenty four hours of activation of the VAS. The consumer must be charged only if such confirmation is received, failing which, the VAS must be discontinued;

- In case a VAS is offered via WAP or mobile internet, explicit consent of the consumer is required via an online consent gateway as is detailed in TRAI’s directions.

Though the TRAI has placed all these obligations on telecom operators, we have observed that most VAS agreements between the game developers and telecom operators typically involve the telecom operator passing on its obligations to the VAS provider. Further, telecom operators typically also require the VAS provider to comply with all applicable laws and further indemnify the telecom operator in the event of any loss / penalty.

Therefore, in the event that an interactive game is designed centered around regular SMSes being activated on a subscriber’s handset, the game developer must be mindful of such obligations that may be applicable to such games.

4. Other Laws Affecting the Gaming Industry

I. Restrictions Under Exchange Control Regulations

Under the Foreign Exchange Management (Current Account Transaction) Rules, 2000, remittance of income from winnings from lottery, racing/riding or any other hobby is prohibited. Keeping in view the spirit of this provision, remittance of prizes to any player in foreign currency may potentially contravene these rules and incur penalties which may extend up to three times the amount remitted. Further, remittance of monies from India, by Indian players to gaming sites are prohibited.

II. Duty of Internet Service Providers (ISP) Under the New Rules Notified Under the Information and Technology Act, 2000 (IT Act)

In April 2011, new guidelines for intermediaries have been notified under the IT Act, which require the intermediaries like ISPs to *inter alia* observe necessary due diligence and publish rules and regulations and user agreements for access or usage of the bandwidth provided by the ISP. Such rules and regulations and user agreements need to include terms which *inter alia* inform the users of the bandwidth not to host, display, upload, modify, publish, transmit, update or share any information, that relates to gambling, obscene content, etc. or is otherwise unlawful in any manner whatsoever. We understand that as an industry practice the ISPs have already been including such terms in their user agreements and other policies and have been either temporarily or permanently blocking gambling and gaming related websites as and when they receive any take down notices from the authorities or others. The Registrar accredited with the ICANN has also been blocking the websites on its own. However, since the law expressly imposes inserting such

terms as an obligation on the ISP, the ISPs may increasingly block such websites *suo motu* or on notices from the Department of Telecom (“DOT”) or similar authorities. Since the rules have been recently notified, the practical impact on the ISPs is yet to be tested.

III. Data Protection Norms

Gaming companies that *inter-alia* collect sensitive or personal data or information from players which is capable of identifying them will also have to adhere to the data protection norms issued by the Government of India. As per the Information Technology (Reasonable Security Practices and Procedures and Sensitive Data or Information) Rules, 2011 a body-corporate or person collecting sensitive information such as passwords, bank account details, password etc. must obtain written consent through email or fax from the person so providing the information. Further, the body collecting information also needs to adhere to various compliances including publishing a privacy policy along with guidelines for collection of the information, providing a grievance redressal mechanism and maintaining reasonable security policies and procedures. Disclosure of any personal or sensitive information to third parties is also prohibited except with prior consent of the user.

IV. Payment Systems

Like e-commerce business, online players of games can make payment to Indian gaming companies by using a credit card/debit card/internet banking/pre-paid cards. In order to receive payments from players, a gaming company has two options:

A. Contractual Arrangements with Banks

A gaming company can make contractual

arrangements with banks whose credit/debit cards are used for making payments and also for availing their internet banking facilities. Further, the gaming company is also required to enter into contractual arrangement with companies that issue pre-paid instruments in case it wishes to receive payments through pre-paid instruments as well. Practically, this is a very challenging task and also uneconomical for a small gaming company to enter into contracts with multiple banks and other companies. It is important to note that pre-paid instruments are also regulated and in certain cases, one needs to seek the license from the Reserve Bank of India before engaging in providing the same to its customers.

B. Payment Gateways

A gaming company can also avail services of an independent payment gateway company. Payment gateway companies have tie up with banks and pre-paid instruments issuing companies to facilitate the payment processing. PG Companies provide this service to merchants for a fee which is usually in the range of 1% to 4% of the invoice value of the goods/services. In order to avail services of a payment gateway company, gaming company is required to enter into an agreement with the merchant / payment gateway company and also is required to comply with certain prescribed KYC (Know Your Customer) norms.

V. Consumer Protection Law

In various mobile gaming models, for participating in the various games, the player may need to pay premium SMS charges. Of this, the gaming company may be receiving a percentage of the revenues received by the mobile operators

against such services which fact, at times is not disclosed to the participant. If the prizes are given by the gaming company or if the games are hosted/co-hosted/produced by the gaming company then the terms and conditions of the games should reflect that the gaming company is receiving money directly from the amounts paid by the participant. Creating an impression that the services are being given by the gaming company free of charge when it is fully or partly covered by the amount charged in the transaction as a is an unfair trade practice punishable under the Consumer Protection act, 1986. There is a strong chance that if the participant is not aware that the gaming company is recovering the prize money / value of the prize from the money received from the participant, he may view his participation in the game as a free service. This may be construed as unfair trade practices under the Consumer Protection Act, 1986. The courts in the past have held that it is necessary for a service provider to indicate to the consumers that it shall be receiving a part of the money received from the consumers by the mobile operators. Non-disclosure fortifies the impression that it is a free service which is an unfair trade practice under this legislation.¹⁷

In addition, where games are made available to players for a fee, and such games are found to be defective in any manner, there may be a possibility that action is taken against the gaming company under the Consumer Protection Act, 1986.

Further, if games, competitions or contests are conducted to directly or indirectly promote business interests and sale or supply of any good or service, the same may even amount to an unfair trade practice under the Consumer Protection Act, 1986.¹⁸

17. *Society of Catalysts v. Star Plus TV & Ors* (Consumer Complaint No. 83 Of 2007), The National Consumer Disputes Redressal Commission.

18. Consumer Protection Act under Section 2 (1) (r) 3 provides that “‘unfair trade practice’ means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely: (3) permits - (a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole; (b) the conduct of any contest, lottery, games of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest.”

Thus, the business house running such competitions for promotional purposes could be liable for civil damages and could also be asked to refrain from conducting such competitions in future.




This could have a direct impact on the various games being built around a specific product / strategic placement of a product in a game.

Conclusion

The development of a game is no doubt a technical process involving development of ideas, software, visuals, testing the game, and the actual launch and commercialization of the game, among other things. On the other hand, each of these activities brings with it a host of legal and regulatory issues and compliances that have to be carefully considered by every game developer and / or gaming company operating in India. While it may be easy to lose track of the legal implications associated with each facet of game development, laws relating to foreign investment, exchange

control, payment systems, anti-money laundering etc. may have a grave impact on the structure of a gaming company's business model as well as its viability. Equally important are the laws that have an impact on the content of a game, whether related to intellectual property and celebrity rights or even obscenity and violence. This paper has provided a snapshot of the various laws that every game developer / gaming company must keep in mind during the entire process of development and commercialization of a game.

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