

Education Sector Hotline

January 20, 2022

DECODING THE UGC AND AICTE'S NOTICES ON FRANCHISING AND MIS-ADVERTISING FOR ONLINE DEGREE PROGRAMMES

The University Grants Commission ("UGC") and the All India Council for Technical Education ("AICTE") (the two key regulators for higher education in India) recently issued public notices¹ ("Notices") reiterating that franchising arrangements between higher education institutions ("HEI") and EdTech companies are not permitted. The focus of these Notices seems to be directed at some of the advertisements issued by certain EdTech entities stating that such EdTech entities are offering degree and diploma programmes in online² / open and distance learning ("ODL") mode³ in association with HEIs recognised / entitled by the UGC. While the Notices have been taken in good spirit by the EdTech industry, they seem to have stirred some unrest due to vagueness on what they intend to achieve.

To give a little background about the applicable regulations, the Government notified the UGC (Open and Distance Learning Programmes and Online Programmes) Regulations, 2020⁴ ("UGC Regulations") which specifically permit universities and institutions deemed to be universities to offer degree and post graduate diploma online as well as in ODL mode. The AICTE followed suit by notifying the AICTE (Open and Distance Learning Education and Online Education) Guidelines, 2021⁵ ("AICTE Guidelines") which permitted certain technical programmes to be offered in online or ODL mode. All these measures resulted in an exponential rise in learner enrolments and the popularity of online degree programmes, facilitated by EdTech platforms.

Given that most of what is stated in the Notices is taken care of through the UGC Regulations and AICTE Guidelines, there are outstanding questions as to what within the relation between an HEI and an EdTech platform is being considered as an issue by the Government.

The Notices mainly deal with four aspects in our view:

Firstly, they emphasize on the fact that it is the HEI which is solely responsible for offering the online / ODL programmes. There are many provisions in the UGC Regulations and AICTE Guidelines which expressly say so. For instance, Regulations 3 and 4 of the UGC Regulations states that the HEI is required to make an application for the Online and ODL programmes it proposes to offer. The application must include evidence of the HEI's preparedness status for offering the programme, which includes the availability of academic and other staff.⁶ The application must also demonstrate the HEI's capability to develop and produce the online programmes.⁷ Further, the degree is also to be awarded by the HEI to students who successfully complete the programmes. Hence, the primary responsibility for the programmes is clearly on the HEI.

Secondly, the Notices deal with the interplay between the roles of the HEI and learning platforms in offering online / ODL programmes. The UGC Regulations expressly permit HEIs to use a learning platform other than the Government's SWAYAM platform, as long as it is duly approved by the UGC, for offering online programmes.⁸ Moreover, the UGC Regulations lay down the features which such learning platform should have, under Annexure IX.⁹ In fact details of such non-SWAYAM learning platform are to be provided as part of the application form itself. Forms submitted by the HEIs offering Online and/or ODL programmes under the UGC Regulations is available at <https://deb.ugc.ac.in>. Hence, the fact that a non-SWAYAM platform will be used by the HEI is disclosed upfront to the UGC. This knowledge is also in public domain as the forms are publicly available on the aforementioned website.

Therefore, the UGC Regulations make it clear that an HEI may use a learning platform for offering its online programmes. This also makes logical sense as the HEI's core function is academics, and not development or operation of an online learning platform. In fact, as an analogy, use of an EdTech platform by an HEI to provide courses to students is equivalent to the HEI leasing land and building in the physical world where students can come to attend lectures imparted by the faculty of the HEI. An EdTech platform is the equivalent of that land and building in the virtual world.

Thirdly, the Notices reiterate the restriction on franchising arrangements under the UGC Regulations and the AICTE Guidelines with respect to offering online / ODL programmes and state that HEIs should not offer them under any franchising arrangement. In this regard, the UGC Regulations clearly lay down the criteria for determining whether an arrangement is in the nature of franchising. Regulation 2(l) of the UGC Regulations defines franchising as follows:

"Franchising' for the purpose of these regulations, means and includes the practice of allowing, formally or informally, any person or institution or organisation, other than the Higher Educational Institution recognised under these regulations for offering programmes under Open and Distance Learning mode and Online mode, to offer such programmes of study or any related activity on behalf of or in the name of the recognised Higher

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The AICTE Guidelines also define franchising almost identically. Further, Regulation 4(C)(vi) provides that an application made by a HEI for offering online / ODL programmes is required to be

"accompanied with evidence to ensure that the Higher Educational Institutions offering Online Programmes is not having any franchise arrangement with a private service provider and the ownership of offering Online programmes including all the required components of Online education and compliance to all the provisions of the regulations shall be that of Higher Educational Institutions only."

While the AICTE Guidelines do not contain an express restriction on franchising arrangements, they refer to the requirements under the UGC Regulations for submissions of a proposal for offering a programme, which would cover the above provision.

Only if the EdTech platforms "offer such programmes of study or any related activity on behalf of or in the name of the recognised Higher Educational Institution" the prohibition on franchising should trigger. The UGC Regulations and AICTE Guidelines leave no scope for franchising to be possible. This is because as per the Regulations, HEIs are required to maintain ownership and responsibility of the programme. The HEI would only be using the learning platform as the *medium* for facilitating the programmes to the students, while all other essential functions of the programme would be performed by the HEI. This is what the UGC Regulations envisage as well, and hence, expressly permit.

What is not permitted is an arrangement where the HEI has its hands-off – wherein the HEI merely licenses its brand and / or curriculum to a private entity, and the private entity then enrolls students, tutors them, and becomes primarily responsible for offering the programme. It is only the name of the HEI which is being used, while the essential functions of the HEI are being performed by the private entity. This would, in effect, amount to the private entity offering the programmes *in place of the* HEI, when the private entity is not authorised under law to confer degrees. Such an arrangement would indeed amount to franchising and is prohibited.

It is important to keep this distinction in mind. All arrangements involving a learning platform should not be categorised as franchising arrangements in a blanket fashion, since this would contradict what is expressly permitted under the UGC Regulations.

Lastly, but most importantly, the Notices reflect on advertisements by certain EdTech entities which allegedly claim to be offering online / ODL programmes in association with HEIs. Misleading advertisements are a cause of concern and a consumer protection issue as well. If any EdTech entity which provides a "service"¹⁰ as defined under the Consumer Protection Act, 2019 ("CPA")¹¹ publishes misleading advertisements, the Central Consumer Protection Authority ("CCPA") established under the CPA could accordingly take action against such entities. Therefore, EdTech entities cannot represent that a degree or diploma programme is offered by them when, in fact, it should be offered by the HEI. EdTech entities, depending on their business model, may also fall within the definition of an "e-commerce entity" under the E-Commerce Rules, 2020¹² ("EC Rules") (framed under the CPA), and hence, the EC Rules would apply to such entities.

In addition, the Advertising Standards Council of India ("ASCI")'s Code for Self-Regulation of advertising content in India¹³ also contains specific provisions under Chapter 10 for Advertising of Educational Institutions and Programs. These include the following key guidelines:

- a. The advertisement shall not state or lead the public to believe that the institution/course or program is accredited, authorized, or recognized unless the same can be proved.
- b. An advertisement offering a degree, diploma, or certificate which is required to be recognized by law or approved shall have the name of the authority specified for that particular field.
- c. In cases where the advertised institution or program is not recognized or approved by any mandatory authority, but is affiliated with another institution that is approved or authorized, then the name and location of the affiliated institution shall also be provided in the advertisement. The name of such affiliated institution shall not be less than 50% of the font size as that of the other institution. Additionally, in the event of a radio advertisement, the name of the affiliated institution shall also be stated.
- d. Advertisements shall not state or lead the public to believe that enrollment in the institution or program will provide the student a temporary or permanent job, a promotion, or the like. Further, such advertisements shall carry a disclaimer that "past record is no guarantee of future job prospects". The disclaimer shall be of the same font size as that of the claim being made.

Very recently, the Internet and Mobile Association of India has set up the Indian EdTech Consortium, which is a self-regulatory body for EdTech platforms and has decided to adopt a self-regulatory "Code of Conduct".¹⁴ The code *inter alia* seeks to regulate advertisements by members of the consortium, which includes 15 major EdTech players. A two-tier grievance redressal mechanism will also be set up under the code to deal with consumer grievances in relation to the code.

Thus, the issue of misleading advertisements can be easily tackled under existing laws and guidelines. For instance, the HEI may itself prohibit circulation of advertisements which misrepresent facts regarding its programmes. A misleading advertisement can also be taken down pursuant to an action taken by the CCPA, ASCI or the newly formed Indian EdTech Consortium.

EdTech in India has been growing at an unprecedented rate, making India one of the key education markets in the world. With the pandemic continuing since 2020, many students were deprived of the opportunity to attend campus education and hence had to move to online degree programmes. Eventually, the Government's emphasis on the use of technology for learning, awareness about online degree programmes, the 'flexi' learning feature and cost (saving) vis-a-vis the conventional mode of education became the attraction points for students. As stated above, the UGC Regulations and AICTE Guidelines have also enabled this.

Any regulatory action or notice should provide a detailed background, context and justification behind such action /

notice. Sudden regulatory actions often create unnecessary flutter in the industry. If any issues with respect to the EdTech sector arise in the future, the Government now has the Indian EdTech Consortium to approach, to first discuss the resolution of such issues. The Government should engage in regular dialogues with students, parents, and most importantly, the industry at large to deliberate upon and address any sector-specific issue. It is also equally crucial for the Government to change its role to a facilitator and enabler. Only then will the EdTech be able to grow with stability and sustainability in India and benefit the masses at large.

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You can direct your queries or comments to the authors

¹ https://www.ugc.ac.in/pdfnews/5156905_UGC-Public-Notice-DEB.pdf; <https://www.aicte-india.org/sites/default/files/ENGLISH.pdf> (Last visited on January 18, 2022).

² Regulation 2(u) of the UGC Regulations defines "Online Mode" as "a mode of providing flexible learning opportunities by overcoming separation of teacher and learner using internet, e-Learning Materials and full-fledged programme delivery through the internet using technology assisted mechanism and resources".

³ Regulation 2(v) of the UGC Regulations defines "Open and Distance Learning Mode" as a "a mode of providing flexible learning opportunities by overcoming separation of teacher and learner using a variety of media, including print, electronic, online and occasional interactive face-to-face meetings with the learners or Learner Support Services to deliver teaching-learning experiences, including practical or work experiences".

⁴ Available at <https://www.ugc.ac.in/pdfnews/221580.pdf> (Last visited on January 18, 2022).

⁵ <https://www.aicte-india.org/sites/default/files/aicte-odl-online-guidelines-2021.pdf> (Last visited on January 18, 2022).

⁶ Regulation 4(A)(x) of the UGC Regulations.

⁷ Regulation 4(C)(iii) of the UGC Regulations.

⁸ Regulation 13(C)(iv) of the UGC Regulations states that "(iv) The Online programmes' delivery shall be through the JSWAYAM portal or any other learning platform duly approved by the Commission on the recommendation of the Technical Expert Committee broadly complying to the features mentioning at Annexure-IX."

⁹ Assessment Criteria for Offering Online Programmes through Non-Swayam Learning Platform.

¹⁰ Section 2(42) of the CPA defines "service" as follows: "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

¹¹ <https://consumeraffairs.nic.in/sites/default/files/CP%20Act%202019.pdf> (Last visited on January 18, 2022).

¹² <https://consumeraffairs.nic.in/sites/default/files/E%20commerce%20rules.pdf> (Last visited on January 18, 2022).

¹³ https://ascionline.in/images/pdf/code_book.pdf (Last visited on January 18, 2022).

¹⁴ <https://indianexpress.com/article/explained/india-edtech-sector-self-regulation-7721488/> (Last visited on January 18, 2022).

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