



## India Future Foundation

### **Submission of comments on the Consultation Paper on “Inputs for formulation of National Broadcasting Policy-2024”**

The Telecom Regulatory Authority of India (TRAI) on 2 April 2024 had released the Consultation Paper on ‘Inputs for formulation of National Broadcasting Policy-2024’ and has invited comments on the same from stakeholders till 30 April 2024.

We appreciate the efforts made in formulating the policy. While the objective of the consultation paper is in the right direction it does have some areas of concern. This submission is an attempt to highlight those areas so that they can be addressed at the right time so that it leads to the broader growth of the economy. After a careful consideration of this consultation paper gives the impression that the intended policy paper is an attempt to bring within its fold, online gaming and streaming. Broadly speaking this policy intends to expand the ambit of broadcasting from linear television to online streaming and online gaming and therein lies the concerns for the online gaming sector.

#### **The Background**

The Ministry of Information and Broadcasting (“MIB”), Government of India had requested the TRAI, in July 2023, to provide its inputs under Section 11 of the TRAI Act, 1997 for the formulation of the National Broadcasting Policy. In this regard the telecom regulator, as a first step, had in September 2023, released a pre-consultation paper on the matter to seek inputs and suggestions in the issues that needed to be considered with regards to the formulation of the National Broadcasting Policy. As per the information published in the Press Information Bureau website<sup>1</sup>, the TRAI had received 28 comments on the matter. The telecom regulator after evaluating the comments, reviewing and studying media and industry reports (on the matter) and examining global best practices and initiatives taken by the government, came up with this consultation paper—“**Inputs for formulation of National Broadcasting Policy-2024.**”

#### **Main Focus Areas**

This consultation paper clearly states that the broadcasting sector is a sunrise sector, and it has immense potential to contribute towards the growth of the Indian economy. It also goes on to state that the broad objective of the formulation of the National Broadcasting Policy is to create a conducive environment for the planned development and growth of the broadcasting sector in the country in the era of new and emerging technologies. The major thrust area of the policy however is to make India a “Global Tech Hub.”

The Press Note on the matter issued by the Ministry of Communications clearly mentions that the “Consultation Paper raises questions on the policy and regulatory measures and the strategies to be adopted for increasing the contribution to the economy through universal reach, fostering innovation

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<sup>1</sup> <https://pib.gov.in/PressReleasePage.aspx?PRID=2016891>



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with focus on R&D, facilitating job creation, skill development and start-up promotion. The paper also discusses on strengthening the public service broadcasting, issues on various segments of media and entertainment sector, combatting piracy and ensuring content security, robust audience measurement system, terrestrial broadcasting and socio-environmental responsibilities.”

The major area of concern where the consultation paper dwells on is online gaming. While the Ministry of Broadcasting has in the past issued advisories “ to all the stakeholders including media entities, online advertisement intermediaries and social media platforms to immediately refrain from showing direct and indirect advertisements of betting and gambling platforms,” it is imperative to note that the nodal agency to regulate the online gaming sector, including the real money gaming in the country is the Ministry of Electronics and Information Technology (MeitY).<sup>2</sup>

The consultation paper in section 2.81 defines what is an “online game.”

The National Broadcasting Policy has recognised the predominance of skill as the key factor, stating that skill should control the chance element for a game to be considered a game of skill. The involvement of money doesn't alter a game's fundamental nature; thus, games where skill predominates are not classified as gambling solely due to monetary involvement. Considering that MeitY is the nodal agency to regulate online gaming in the country, and that it has already defined what an “online game” in *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 [updated as on 6.4.2023]*.<sup>3</sup> Therefore, it is our humble submission that definition on the same subject by the two government ministries should convey the intent and message in the same language to remove any room for ambiguity.

Section 2.84 of the consultation paper touches upon the issue of consumer protection in the online gaming space. MeitY is already working in the space and a much more nuanced and detailed approach, even mentioning child protection, is mentioned in *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 [updated as on 6.4.2023]*.<sup>4</sup> It is our humble submission that the matter be as nuanced in the consultation paper.

Online gaming is a part of AVGC sector and not Media and Entertainment Sector as mentioned in section 1.9 of the consultation paper. While the AVGC sector contributes to the growth of M&E, they cannot be said to be a part of M&E.

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<sup>2</sup> [https://www.business-standard.com/article/current-affairs/it-ministry-appointed-as-nodal-ministry-for-online-gaming-in-india-122122700690\\_1.html](https://www.business-standard.com/article/current-affairs/it-ministry-appointed-as-nodal-ministry-for-online-gaming-in-india-122122700690_1.html)

<sup>3</sup> <https://www.meity.gov.in/writereaddata/files/Information%20Technology%20%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20%28updated%2006.04.2023%29-.pdf>

<sup>4</sup> <https://www.meity.gov.in/writereaddata/files/Information%20Technology%20%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20%28updated%2006.04.2023%29-.pdf>



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### THE ONLINE GAMING SECTOR IN INDIA

The online gaming sector beyond doubt is one of the sunrise sectors in the country and the Government of India has recognized its potential towards its goal of trillion dollar economy. Since the number of players by country, India with 42.5 crore gamers in FY 23 is second only to China, in the world, which has 75 crore gamers.<sup>5</sup> While these numbers are noteworthy a lot of more needs to be done because in terms of revenue India constitutes only 1.1% of the total revenue generated from online gaming across the world. For the country to increase its share in the global revenue in the realm of online gaming, proper and a conducive environment needs to be created.

The growth potential of the online gaming sector has also been highlighted by many reports on the sector. As per Ernst & Young's latest study titled '**New Frontiers: Navigating the Evolving Landscape for Online Gaming in India**', India's digital gaming sector has grown substantially over the last five years and is even expected to surpass the entertainment industry, as Indians spend more time gaming than watching films.<sup>6</sup> As per the same study, over the past three years, the online gaming industry has grown at a CAGR of 28 per cent, reaching Rs 16,428 crore in FY23 and is likely to reach Rs 33,243 crore by FY28. The study also noted that India continues to be a 'mobile first' market, with 94 per cent of its gamer base engaging in mobile gaming.

What is worth noting that behind this commendable growth of the sector, is a large talent pool, at the backend and the sector has immense employment potential. As per the report from the Interactive Entertainment and Innovation Council (IEIC) the online gaming sector, in India, directly and indirectly employed over 100,000 skilled professionals in 2023 alone. The study further notes that the sector is expected to generate over 250,000 more jobs in the coming decade.<sup>7</sup>

Thus it goes without saying that the sector has immense potential for growth in the future, all that is required is a conducive environment for the sector to flourish and grow from where it has reached in the present day. It needs to be remembered that with the necessary framework and a governance framework in place, the growth of the sector will be directly proportional to its contribution to the nation's economy.

### THE PRESENT-DAY REGULATORY LANDSCAPE GOVERNING THE SECTOR

MeitY, the nodal ministry in charge of creating the necessary framework to regulate the online gaming sector has been working towards this objective over the years.

In this regard, MeitY constituted the Inter-Ministerial Task Force for Online Gaming Regulation (IMTF) in May 2022, which had nine members, including secretaries of eight different Ministries of the Central Government and the CEO of NITI Aayog to comprehensively examine issues related to online gaming,

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<sup>5</sup> <https://economictimes.indiatimes.com/tech/technology/playing-on-numbers-making-sense-of-indias-gaming-boom/articleshow/105864435.cms?from=mdr>

<sup>6</sup> <https://economictimes.indiatimes.com/tech/technology/playing-on-numbers-making-sense-of-indias-gaming-boom/articleshow/105864435.cms?from=mdr>

<sup>7</sup> <https://indianexpress.com/article/technology/gaming/online-gaming-india-employment-downloads-report-9236060/>



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global best practices and due diligence mechanisms in the online gaming industry.<sup>8</sup> The IMTF, in its recommendations, said that in the long term it favours a new central legislation that will license the online gaming sector and also provide the government with powers to block/deregister entities violating India's laws.<sup>9</sup> After the IMTF submitted its report, the Cabinet Secretary amended the Allocation of Business Rules and allocated the subject matter of online gaming to MeitY and esports to Ministry of Youth Affairs and Sports.

As already mentioned MeitY has been regularly working towards creating the necessary framework for the growth of the online gaming sector in the country. *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* as amended on 6.4.2023 (IT Rules, 2023) is the most recent update on the matter. These among other things lay down the governance framework for the online gaming sector in the country.

The government in a move towards bringing the necessary transparency in the sector has also brought about the necessary changes in the tax treatment of winnings in online games. The government has launched new provisions vide Finance Act, 2023 for the taxability of winnings from online games. The government introduced section 115BBJ – the charging section and section 194BA – TDS on winnings from online games.<sup>10</sup>

### POTENTIAL REGULATORY MODELS THAT CAN BE ADOPTED BY MEITY

While MeitY on its part is working towards creating the necessary framework to regulate the online gaming sector, with your due permission we would like to propose the following. The Ministry through *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 [updated as on 6.4.2023]* has proposed a three tier governance framework structure for the sector.

In addition to the current suggested three tier structures, we would like to propose that:-

- an independent and non-autonomous regulator under the aegis of MeitY. Nonetheless, it's essential to acknowledge that a regulator operating in isolation from industry participation may hinder innovation and impede the growth of the emerging sector.
- Additionally, a registration mechanism which will be the first filter to allow entities to not only enter the sector but also create, the first level of transparency, in the sector. Every online gaming intermediary should be required to furnish details like their incorporation /GST certificate. Based on this verification would be done post which a registration certificate would be issued to showcase their authenticity. Such registration will also help in the investigation process if the need arises. The investigation authorities will have a ready database of entities, with all their details, that they would have furnished at the time of registration.

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<sup>8</sup> [https://www.business-standard.com/india-news/it-rules-ensure-safeguards-for-children-against-online-gaming-harms-meity-123112200045\\_1.html](https://www.business-standard.com/india-news/it-rules-ensure-safeguards-for-children-against-online-gaming-harms-meity-123112200045_1.html)

<sup>9</sup> <https://www.hindustantimes.com/india-news/govt-task-force-restarts-debate-on-status-of-online-gaming-platforms-101666896702910.html>

<sup>10</sup> <https://www.taxmann.com/post/blog/income-tax-on-online-gaming-in-india-detailing-provisions-for-taxation-and-tds-on-winnings#:~:text=Winnings%20from%20any%20online%20game,be%20taxable%20under%20this%20section.>



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Alternatively, MeitY may introduce any other regulatory framework that it may deem necessary to uphold safety, transparency, trust, and accountability.

### **PROMOTING INDIGENOUS GAME DEVELOPMENT IN INDIA**

The Prime Minister, Narendra Modi, in his interaction with leading game developers in mid-April 2024 had stressed on the need for creating games for change which will not only solve local problems but also address global issues.<sup>11</sup> Considering that the online gaming is a powerful medium and as already mentioned in this document that most Indians spend more time playing online games than even watching movies this medium needs to be harnessed to drive a more stronger message. This medium should be used to promote local talent, culture and even talent, which will at more macro level help in transforming India into a Global Content Hub which the policy aims to make India into.

Further, the Hon'ble Prime Minister of India, speaking on the announcement of the AVGC Promotion Task Force in the Union Budget 2022-23, highlighted that India is one of the top 5 markets in the world for mobile gaming. The gaming industry is at the core of the AVGC sector, and drives growth across its entire ecosystem.<sup>12</sup>

Steps in this direction has already been taken in the form of the AVGC Task Force Report. In a press communication the MIB highlighted the key points of the report by the AVGC taskforce.<sup>13</sup> The Animation, Visual Effects, Gaming and Comic (AVGC) Task Force called for a National AVGC-XR Mission with a budget outlay to be created for integrated promotion & growth of the AVGC sector. In a detailed report submitted to the MIB, the Task Force headed by Secretary I&B also recommended launching a 'Create in India' campaign with exclusive focus on content creation, In India, For India & For World.

In the present day even though the national policy for the AVGC-XR sector is yet to see the light of day, there are states like Karnataka, Maharashtra and Telangana have already have a policy for the growth and development of the AVGC-XR in their respective states. As per media reports the AVGC-XR division of FICCI, and other industry apex bodies like ABAI and SAIK are working with the Centre and State governments to firm up AVGC-XR policies for each State.<sup>14</sup>

Initiatives like these by the centre and the state will go a long in developing the AVGC-XR sector in India. Development of the sector will not only increase its contribution to the economy but will also increase the contribution of India, at the global level, in the same space. Against this background, it is imperative that a national policy for the AVGC-XR sector is finalised and notified at the earliest. Also states who are in the process or those who have not yet started the process, should do the needfull at the earliest. Policies at the national and state level will go a long way in realizing the government's

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<sup>11</sup> <https://timesofindia.indiatimes.com/technology/gaming/pm-narendra-modis-message-to-indias-top-gamers-create-games-for-change-which-will-/articleshow/109273667.cms>

<sup>12</sup> [https://mib.gov.in/sites/default/files/Final%20AVGC-XR%20Task%20Force%20Promotion%20Report%20-%202022\\_16th%20Dec-AG%20Edit.pdf](https://mib.gov.in/sites/default/files/Final%20AVGC-XR%20Task%20Force%20Promotion%20Report%20-%202022_16th%20Dec-AG%20Edit.pdf)

<sup>13</sup> <https://pib.gov.in/PressReleasePage.aspx?PRID=1886679>

<sup>14</sup> <https://www.thehindu.com/business/indias-avgc-xr-sector-to-become-26-bn-industry-by-2030/article67832231.ece>



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vision for enabling local game development. Even the taskforce constituted to lay down the roadmap for the growth and development of the sector recommended establishing a National Centre of Excellence (COE) for the AVGC sector so that it becomes an international reference point across Skilling, Education, Industry Development and Research & Innovation for the AVGC sector. The recommendations also speak of setting up regional COEs in collaboration with the State Governments to provide access to local industries and to promote local talent and content. Further for the growth the growth and development of the sector (read online gaming), greater synergy between the centre and state should be facilitated.

To address the issues mentioned herein above, a few measures can be adopted to safeguard the general public from the negative and psychological side effects of gambling.

**Age gating.** One of the measures, in this regard, is having in place age gating. This measure not allowing any player to participate in the game unless the player concerned has completed a certain age. In most cases this age threshold is 18 years. Even in India anyone who is under the age of 18 years is not allowed to play real money games. Age gating is a practice that is employed by the different governments across the globe. The age restrictions on online gambling in different states, in the United States of America, is mentioned below.

The IT Rules, 2023 outline a comprehensive framework for responsible gaming, mandating the following safeguards-

- **Need for registration.** Further it should also be made mandatory for every intermediary to only launch a game after the same has been verified by the self-regulatory body (SRB). Online gaming intermediaries need to be obligated to display a visible mark of registration on all their games that are registered with the SRB.
- **Mandatory KYC.** Necessary KYC needs to be made mandatory in the sector. These should be at least at the same level as mandated by the Reserve Bank of India in the banking sector.
- **Necessary consumer education.** Gaming intermediaries need to ensure that they are transparent to the maximum level possible with their users. This means they should provide their users with the necessary information about online games. So they need to educate their users about the risk of financial loss, KYC requirements, their registration with the SRB and their terms and conditions.

**Necessary compliances.** All gaming intermediaries need to have on their rolls, Grievance Redressal Officer, Chief Compliance Officer and a Nodal Officer. In short, people at these designations should be physically present in the office of the gaming intermediary. Also, the Grievance Redressal provided by the intermediary should be time-bound and a monthly compliance report should be published. Most importantly, the online gaming intermediary should in no way enable financing even though through a third party.



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Therefore, to ensure the implementation of these regulations, the appointment of Self-Regulatory Organizations (SROs) is crucial. SROs play a vital role in enforcing and overseeing compliance with the established rules and guidelines. Their prompt appointment will expedite the enforcement process, ensuring that responsible gaming measures are effectively complied. By delegating regulatory responsibilities to SROs, the regulatory framework can be swiftly implemented, promoting a safer and more transparent online gaming environment.

In summation we would like to highlight that the online gaming is regulated under MEitY, however there is an urgent requirement to implement the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023, to regulate online gaming in India. The existing regulatory framework for online gaming is fragmented and varied, leading to challenges in safeguarding digital citizens from illegal activities and online harms. MeitY's role in governing and administering this sector is crucial, and the proposed regulatory models, including a three-tier framework and a registration mechanism for intermediaries, can further strengthen user protection and industry integrity. Formalizing MIB advisories into enforceable regulations and encouraging the development of more online games domestically are also essential steps toward sustainable growth and regulation. It's imperative for stakeholders to collaborate closely to achieve a balanced regulatory framework that fosters innovation while safeguarding user interests in the dynamic online gaming ecosystem.

We express our gratitude to the government for its diligent efforts in establishing a comprehensive framework. We commend the collaborative efforts of all stakeholders involved in formulating and endorsing these initiatives. With collective dedication and cooperation, we anticipate a thriving gaming industry that prioritizes consumer protection and responsible gaming standards.