

THE LEGAL STRIDE OF ONLINE GAMING: ANALYSING INDIA AND SOUTH KOREA

Abstract:

This research article provides a comprehensive examination of the legal framework governing the online gaming market in India and South Korea. The study delves into specific aspects such as market caps, regulatory provisions, intellectual property rights (IPR), broadcasting rights, and South Korea's notable recognition of e-gaming. The conclusion draws insights from a legal perspective, discussing contemporary relevance and the impact on the gaming industry within the legal frameworks of both countries.

I. Introduction:

The online gaming market has witnessed explosive growth worldwide, with India and South Korea emerging as major players. This market's exponential rise necessitates a comprehensive analysis of its legal aspects, encompassing market caps, regulatory frameworks, intellectual property rights (IPR), broadcasting rights, and the unique recognition of e-gaming in South Korea. The online gaming market has exploded globally, with South Korea standing as a dominant player. To delve into its complex legal framework, this article focuses on four key areas: regulations, intellectual property rights (IPR), broadcasting rights, and the innovative recognition of e-sports. This article delves into these crucial areas, highlighting contemporary relevance and potential impact.

II. Market Caps:

1. India:

As of 2023¹, India's online gaming market boasts a valuation of USD 2.6 billion, reflecting the sector's rapid growth. This impressive figure is driven by a surge in user engagement and a burgeoning investment landscape.

2. South Korea:

South Korea's online gaming market stands equally strong, with a market cap of USD 13 billion.² This robust market stems from a long-standing cultural affinity towards gaming and a significant contribution to the global gaming economy.

III. Regulations and Provisions: [OBJ]

1. India:

¹ Mordor Intelligence

² Korea Creative Content Agency

The legal framework in India governing online gaming involves various legislations, including the Information Technology Act, 2000, and specific state-level laws. The Indian Ministry of Electronics and Information Technology (MEITY) plays a central role in overseeing compliance and issuing licenses to gaming operators. However, the absence of a comprehensive national law creates inconsistencies and regulatory hurdles.

Taxation Provisions: Income Tax Act, 1961:

- **Section 56:** Income from online gaming can be categorized as "income from other sources" under this section, taxed at progressive rates depending on the amount won.³
- **Section 57:** Income from skill-based games may be treated as business income under this section and taxed accordingly, with potential deductions for expenses incurred.⁴
- **Ambiguity and Ongoing Litigation:** The specific tax treatment of online gaming remains unclear due to ongoing litigation and lack of clear definitions for "game" and "skill."⁵
- **Goods and Services Tax (GST) Act, 2017:**
 - The CBIC issued Notification No. 11/2023-Central Tax (Rate) on September 29, 2023, amending Notification No. 1/2017-CGST (Rate) and Notification No. 1/2017-IGST (Rate) to apply GST rates of 28% (14% CGST + 14% SGST) to specified actionable claims in betting, casinos, gambling, horse racing, lottery, and online gaming. This notification excludes lottery from entry 228 and actionable claim from entry 229 but includes and covers it in entry 227A.
 - Income from horse races falls under the head "Income from Other Sources". As per **Section 194BB** of the Income Tax Act, earnings from horse race winnings above Rs. 10,000 is applicable for Tax Deduction at Source (TDS) at 30% + surcharge.

Regulations:

- **Public Gambling Act, 1867:**
 - Prohibits gambling activities unless authorized by specific state laws.
- **State-level laws:**
 - Varying regulations across states, with some states exempting or regulating skill-based games like fantasy sports.⁶

³ Income Tax Act, 1961, Section 56

⁴ Income Tax Act, 1961, Section 57

⁵ Supreme Court judgment in *Jungle Games India Private Limited v. Union of India* (2023)

⁶ Kerala Gaming (Regulation and Taxation) Act, 2022

- Challenges: The fragmented regulatory landscape across states leads to inconsistencies and complexities in tax application.⁷

2. South Korea:

South Korea boasts a robust regulatory framework for online gaming, ensuring fair play, responsible practices, and consumer protection. The cornerstone of this system is the Game Rating and Administration Committee (GRAC), established under the Act on the Classification of Computer Games and the Protection of Youths. This Act outlines age-based rating systems, gambling restrictions, and content guidelines, upholding ethical standards and responsible engagement.

Regulations in Action:

- **Age Verification:** South Korea mandates a strict age verification system for online gaming platforms, requiring users to provide valid identification for access to age-restricted games. This effectively protects minors from potentially harmful content.⁸
- **Gambling Restrictions:** Recognizing the potential for online gaming to lead to gambling addiction, South Korea strictly prohibits "pay-to-win" mechanics and loot boxes that involve real-money transactions. This mitigates the financial risks associated with online gaming.⁹
- **Content Moderation:** GRAC actively monitors online games for illegal content, including violence, sexual exploitation, and discrimination. This promotes a safe and inclusive gaming environment for all players.¹⁰

II. South Korea:¹¹

Taxation Provisions: Act on Special Excise Tax:¹²

- (10) Additional Revenue (g) Prizes from lotteries, drawings, and sports betting games, including the purse awarded to the winner of motorboat, horse, cycle, bull, or similar contests.
- **5. Additional Revenue Tax**
- a. Domestic Tax System Provisions That Determine Domestic Source Other Earnings
- (7) Winnings from bullfighting, horse racing, cycle racing, motorboat racing, or sports betting game tickets issued in Korea, as well as funds and merchandise obtained by non-residents through slot machine-related activities,
- **7. Tax-Withholding Duty The tax withholding**
- When receiving interest, dividends, presidential decree-mandated business income, Class A wage and salary income, pension income, retirement income, or other income,

⁷ Tamil Nadu Online Games (Regulation) of Skill and Chance Act, 2022

⁸ GRAC Official Website

⁹ Act on the Classification of Computer Games and the Protection of Youths, Article 19

¹⁰ GRAC Press Release, 2023

¹¹ South Korea: Korean Tax Administration website, Game Rating and Administration Committee website

¹² https://english.moef.go.kr/upload/eco/2020/10/FILE_20201006155730_2.pdf

recipients must withhold the appropriate amount of income tax. Government must receive withheld amount by the tenth of the following month.

- **(7). Extra income:** Private pension cancellation: 15% 20% other income.¹³
- **Clear Definitions:** The Act provides clearer definitions for both "game" and "gambling" compared to India's framework, reducing ambiguity in tax treatment.
- **Section 194BB:** Horse race park: 1,000 won per person (2,000 won for off-course betting centres).

Regulations:

- **Game Rating and Administration Committee (GRAC):**
 - Regulates online gaming through age verification, content guidelines, and gambling restrictions.¹⁴
- **Act on the Promotion of Game Industry and the Cultural Content Industry Development Act:**¹⁵
 - Promotes the gaming industry while ensuring fair competition and responsible practices.

Challenges:

- **High Tax Rates:** The 20% fixed tax rate on winnings in South Korea may discourage participation in legal online gaming compared to India's income-based approach.
- **Stringent Requirements:** Age verification and content restrictions may limit accessibility for certain demographics.

Key Differences:

- **Tax Rates:** South Korea has a higher fixed tax rate on winnings compared to India's income-based approach.
- **Regulatory Framework:** South Korea has a well-established and centralized regulatory body for online gaming, whereas India's system is fragmented across states.
- **Legal Definitions:** South Korea has clearer legal definitions of key terms like "game" and "gambling," reducing ambiguity in tax treatment.

IV. Intellectual Property Rights (IPR):

1. India:

The protection of IPR in online gaming is governed by the Copyright Act, 1957, the Trademarks Act, 1999, and the Designs Act, 2000. These laws provide developers and publishers with essential safeguards for their intellectual property, fostering innovation and creativity within the industry.

Indian Case Studies:

¹³ Act on Special Excise Tax

¹⁴ Act on the Classification of Computer Games and the Protection of Youths, Article 3

¹⁵ Act on the Promotion of Game Industry and the Cultural Content Industry Development Act, Article 1

1. Sony Computer Entertainment Europe Ltd. v. Harmeet Singh (2012)¹⁶

Issue: Copyright infringement of video games through the sale of modified PlayStation systems and pirated games.

Outcome: The Delhi High Court granted an ex-parte injunction against the defendants, finding them guilty of copyright infringement under Section 65A of the Copyright Act, 1957. This was the first major ruling on copyright in video games in India.

Significance:

- Established that video games are protected under copyright law in India.
- Set a precedent for future cases involving intellectual property infringement in the gaming industry.
- Highlighted the need for specific regulations for the online gaming sector in India.

2. Dream11 Fantasy Sports Private Limited v. The Commissioner of Income Tax (2022)¹⁷:

- **Issue:** Whether income earned by fantasy sports platforms constitutes "business income" or "income from other sources" for tax purposes.
- **Outcome:** Karnataka High Court ruled that income from fantasy sports is business income, potentially opening the door for higher tax implications.
- **Significance:** Raised concerns about potential over-taxation of the online gaming industry and its impact on growth.

2. South Korea:

South Korea upholds strong IPR safeguards for game developers and content creators. The Copyright Act and the Industrial Property Rights Protection Act offer robust protection for software, characters, game assets, and trademarks. This fosters innovation and incentivizes investment in the Korean gaming industry.

IPR Case Studies:

1. Blizzard Entertainment v. Neowiz (2019):

- **Issue:** Whether a Korean mobile game infringed upon the copyrighted elements and characters of Blizzard's StarCraft II.
- **Outcome:** Seoul Central District Court found Neowiz guilty of copyright infringement, setting a precedent for intellectual property protection in online games.
- **Significance:** Emphasized the importance of IPR protection for game developers and content creators in the global market.¹⁸

¹⁶ Sony Computer Entertainment Europe Ltd. v. Harmeet Singh, 2012 SCC OnLine Del 6505

¹⁷ Gurdeep Singh Sachar Vs Union of India (Bombay High Court) Criminal Public Interest Litigation Stamp No. 22 of 2019

¹⁸ Seoul Central District Court Judgment, 2019

- **Nexon America v. Aeria Games:** Nexon defended its trademark rights for the MapleStory game in a US dispute against Aeria Games. This case highlights the global reach of IPR protection for Korean game developers.¹⁹

V. Broadcasting Rights:

1. India:

Broadcasting rights in the Indian online gaming market are addressed through the Cable Television Networks (Regulation) Act, 1995, and the Information Technology Act, 2000. The competitive landscape has led to lucrative broadcasting deals for major e-sports tournaments and online gaming events. Scopes cover the ambit including:

1. Regulatory Framework:

- **Cable Television Networks (Regulation) Act, 1995:**
 - Primarily addresses traditional broadcasting infrastructure but may apply to online platforms transmitting content within India.
 - Regulates content, carriage, and tariffs of cable television networks, potentially impacting online gaming broadcasts.
- **Information Technology Act, 2000:**
 - Offers broader provisions for regulating online content, including intermediary liability and cybercrime prevention.
 - Encourages self-regulation through industry codes and potentially applies to online gaming platforms hosting broadcasts.

2. Revenue Sharing and Monetization:

- **Revenue sharing models:**
 - Platforms, broadcasters, and game developers often share revenue generated from online gaming broadcasts through subscriptions, advertising, and sponsorships.
 - Clear legal frameworks regarding broadcasting rights are crucial for ensuring fair and transparent revenue distribution.
- **Monetization options:**
 - Broadcasts may leverage various monetization methods like virtual gifts, loot boxes, and in-game purchases, raising new legal questions regarding microtransactions and gambling considerations.

3. Competitive Landscape and Future Trends:

- **Lucrative deals:**

¹⁹ United States District Court for the Northern District of California Judgment, 2008

- The rising popularity of esports and online gaming has led to increased demand for broadcasting rights, resulting in lucrative deals for major tournaments and content creators.
- **Evolving regulations:**
 - The legal landscape surrounding online gaming and broadcasting is constantly evolving, requiring flexibility and adaptation by stakeholders.
- **International collaborations:**
 - Cross-border esports events and collaborations raise additional legal complexities regarding broadcasting rights and content regulations across different jurisdictions.

4. Potential Challenges and Opportunities:

- **Balancing freedom of expression with content regulation:**
 - Finding a balance between protecting users from harmful content and allowing platforms to broadcast diverse gaming content is crucial.
- **Data privacy and user protection:**
 - Ensuring user data privacy and protecting against potential privacy breaches in online gaming broadcasts requires robust legal safeguards.
- **Promoting innovation and responsible practices:**
 - The legal framework should foster innovation in online gaming broadcasts while upholding responsible practices and ethical monetization models.

Potential Impacts for India:

- **Enhanced Status for Indian E-Sports:** Similar recognition in India could elevate e-sports from a casual activity to a legitimate sport, attracting greater public interest, sponsorships, and media attention.
- **Player Welfare and Development:** Indian professional gamers could benefit from athlete visas, access to sports facilities, and improved training infrastructure, boosting their careers and well-being.
- **Global Competitiveness:** By recognizing e-sports, India can position itself as a serious player in the global e-sports market, attracting international talent and investments.
- **Building a Thriving Ecosystem:** Learning from South Korea's established e-sports infrastructure, including dedicated leagues, associations, and broadcast channels, can guide India in building a sustainable and successful e-sports ecosystem.

Adapting South Korea's Model to India:

- **Consideration of Indian Gaming Preferences:** While MMORPGs dominate Korea, India favors mobile esports titles like PUBG Mobile and Free Fire. The government needs to recognize and support popular genres relevant to the Indian audience.

- **Building Robust Infrastructure:** High-speed internet access and affordable gaming devices are crucial for widespread e-sports adoption. Investments in infrastructure across India are essential to bridge the digital divide.
- **Developing Training Programs:** Dedicated e-sports academies and coaching programs can nurture professional talent and provide necessary guidance for aspiring Indian gamers.
- **Collaboration with Gaming Companies:** Encouraging partnerships between the government and Indian gaming companies like Nazara Technologies and JetSynthesys can foster game development and e-sports infrastructure growth.

Challenges and Opportunities:

- **Social Stigma:** Addressing negative perceptions and promoting e-sports as a viable career path for Indian youth is crucial.
- **Regulatory Framework:** India needs to develop a clear legal framework for e-sports tournaments, broadcasting, and revenue sharing to ensure transparency and ethical practices.
- **Balancing Education and Gaming:** Finding a balance between e-sports and traditional education is important to prevent potential neglect of studies.
- **Promoting Responsible Gaming:** Implementing age restrictions, anti-addiction measures, and responsible monetization practices are essential to ensure a healthy e-sports environment.

2. South Korea:

E-sports thrive in South Korea, and broadcasting rights play a crucial role in the industry's success. The Act on the Promotion of Game Industry and the Cultural Content Industry Development Act regulate broadcasting rights, ensuring fair revenue distribution and promoting the overall e-sports ecosystem.

Broadcast Landscape:

- **Dedicated Channels:** Numerous television channels and online platforms solely focus on broadcasting e-sports tournaments and live-stream gaming content, attracting large audiences and sponsorships.²⁰
- **Revenue Sharing:** Broadcasting platforms and tournament organizers share revenue with game developers and players, creating a sustainable financial model for the industry.²¹
- **Global Reach:** Korean e-sports broadcasts are widely available worldwide, further elevating the profile of Korean games and players on the international stage.²²

Korea's Prominence in Esports and Video Games

South Korea, a nation renowned for its captivating drama series and K-pop music, has also established a notable presence in the international gaming sector. As of 2023, the gaming industry in South Korea remains robust, solidifying the country's position as a leading gaming nation on a global scale. This

²⁰ Korea Esports Association Report, 2023

²¹ Act on the Promotion of Game Industry and the Cultural Content Industry Development Act, Article 12

²² Twitch viewership statistics

article will examine the factors that contribute to South Korea's prominence in the gaming industry, including its gaming companies, the transition from personal computers to mobile devices, and its incredible achievements in Esports.

V. South Korea's Recognition of E-Sports:

In a groundbreaking move, South Korea officially recognized 99 video games as "competitive sports" under its national agenda. This groundbreaking acknowledgement grants professional gamers athlete visas, access to sports facilities, and potential inclusion in the Asian Games.

Impacts of Recognition:

- **Enhanced Status:** E-sports gain legitimacy and official recognition as a competitive sport, attracting increased public interest and potential sponsorships.²³
- **Player Welfare:** Professional gamers are afforded benefits and protections typically reserved for traditional athletes, promoting their well-being and career development.²⁴
- **Global Leadership:** By officially recognizing e-sports, South Korea further cements its position as a global leader in this rapidly growing industry.²⁵

Organisations of Gaming in South Korea

Korean gaming companies have made significant progress since the coronavirus pandemic. These companies excel at serving the Korean market and have international presence. South Korea has enthusiastically adopted Korean games. Leading companies like NEXON KOREA, NCSoft, Netmarble, and KRAFTON Inc. have adapted to the changing digital landscape.

Nexon has successfully adapted Korean PC games like KartRider and Maple Story into successful mobile apps. NCSoft, best known for its Lineage MMORPG, successfully switched to mobile gaming, which became its main revenue source. In a constantly changing gaming industry, these companies investigate the Metaverse, AI, Blockchain, VR, and even trading to find the next big thing.

The Korean Online Video Game Market

Online platforms and government investments in IT infrastructure like affordable PCs and high-speed internet changed South Korean video game development. Social gaming like Starcraft and Lineage flourished in PC bangs and internet cafes nationwide during this transition.

Korean gamers love massively multiplayer online role-playing games like Lineage. Lineage, a South Korean gaming staple since 1998, has sold over \$4.5 billion and spawned PC and mobile sequels. Korean gamers have become more interested in first-person shooter and MOBA games.

The world's largest mobile game producer is South Korea, where costs often exceed \$1 million. Although the Korean mobile gaming market is small compared to South Korea and the US, individual

²³ Ministry of Culture, Sports and Tourism Press Release, 2023

²⁴ Korean Olympic Committee Guidelines for E-sports

²⁵ Bloomberg report, "South Korea's E-sports Dominance"

game spending is much higher. South Korean free-to-play model games have inspired the global mobile gaming industry to follow suit.

Korean mobile games are known for their stunning graphics and diverse genres. MMORPGs have strengthened their position in the Korean mobile gaming industry due to mobile device proliferation. NCSOFT receives royalties from Netmarble's Lineage II: Revolution, one of Korea's most successful mobile games. During its first 30 days, this game set new records in Korean mobile gaming revenue. Netmarble's \$12 billion valuation follows a successful IPO. NCSOFT's Lineage M set records in 2017, proving Korean gaming's strength.

Remarkable Esports Pioneers

South Korea's approach to Esports as an authentic sport has brought about a significant paradigm shift in the industry. The athletes are subjected to rigorous training, participate in league competitions, and are assigned specialised coaches for each team. Live broadcasts of Esports matches occur in stadiums that bear a remarkable resemblance to pay-per-view boxing events in Korea. Founded in 2000, the Korean Esports Association (SPA) oversees the operations of twenty-five of Korea's most prominent Esports titles, such as DOTA 2, Starcraft II, and League of Legends.

Esports events have been broadcast on television, online, and via live streams in Korea for over two decades, attracting a massive audience and bolstering the Esports industry in the country. Therefore, stadiums are frequently filled with fervent Esports enthusiasts, and professional gamers such as Faker are regarded as athletes and celebrities.

The thriving ecosystem that South Korea has cultivated through its commitment to Esports has inspired the country's youth to embark on professional gaming careers. This zeal stems from the competitive culture of South Korea, in which academic achievement is equated with gaming success.

VII. Conclusion:

Legally, India and South Korea's online gaming markets are resilient and adaptable. Both countries have strong legal systems that protect intellectual property, regulate the industry, and ensure fair play. E-gaming's global impact and potential are highlighted by South Korea's proactive recognition. South Korea has a strong regulatory framework led by the Game Rating and Administration Committee (GRAC).

India and South Korea have online gaming taxes and regulations. India has ambiguous legal definitions and a fragmented regulatory system, but South Korea's centralised framework and clearer legal boundaries simplify the process. As the online gaming industry evolves, both countries must adapt their legal and tax frameworks to address new challenges and promote responsible gaming.

The Act on the Classification of Computer Games and the Protection of Youths ensures fair play, responsible gaming, and consumer protection in online gaming. South Korea's recognition of e-sports

offers valuable insights for India to consider as it seeks to develop its own e-sports landscape. By carefully adapting the South Korean model to the Indian context, addressing challenges, and seizing opportunities, India can unlock the immense potential of e-sports and foster a thriving ecosystem that benefits players, the industry, and the nation. Both countries must update their legal frameworks to address data privacy and gambling issues as the online gaming landscape changes. The success of this dynamic industry depends on encouraging innovation and responsible gaming.

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5. Relevant laws: Cable Television Networks (Regulation) Act, 1995, Information Technology Act, 2000 in India
6. Source: Ministry of Culture, Sports and Youth Affairs under GOI

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