

THE CONFLICT OF LAWS AND CROSS-BORDER ENFORCEMENT OF INDIA'S IP RIGHTS IN ONLINE FANTASY GAMES: JURISDICTIONAL CHALLENGES

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ABSTRACT

The surge of online fantasy games (OFG) within the meta-verse presents a complex challenge to the cross-border enforcement of intellectual property (IP) rights, particularly for India. OFG operates in the digital space. The creators, users, and servers are usually located in different countries and thus it is challenging to determine which law is applicable or where the jurisdiction lies. While international treaties like TRIPS and the Berne Convention offer broad guidance they struggle to address the complex realities of virtual worlds. In these spaces content is created and shared across borders making it hard to control IP infringement across different jurisdictions. Without a clear global legal framework, the problem only deepens. This calls for a serious rethinking of existing laws and the development of new enforcement strategies that fit the virtual landscape. With online fantasy sports expanding quickly and creating new IP challenges this research is very useful for policymakers, legal experts and the gaming industry as they navigate these evolving legal issues.

Additionally, this paper refers to NITI Aayog's policy guidelines which emphasises on the need for effective techno-legal solutions to address new digital challenges in OFG. It examines India's current approach to IP rights enforcement and the jurisdictional issues that emerge across countries. This paper proposes to highlight legal gaps and suggest practical steps to improve international IP enforcement in realm of OFGs so as to further improve, encourage innovation and fair competition across the online gaming industry while also ensure sustainable progress and gain confidence from all stakeholders.

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KEYWORDS: Conflict of Laws, Cross Border, Enforcement Mechanism, IP rights, Jurisdictional Challenges, Online Fantasy Games.

INTRODUCTION

Sports in India have long been about physical games, but they have gradually embraced the digital world too. The boom in online gaming and fantasy sports (FS) now makes people play, compete, and connect across countries. These virtual environments create exciting and engaging experiences for millions of players, encouraging creativity and shared enjoyment. Yet, as this industry grows, it also faces new challenges. One of the most important is protecting original ideas, characters, and designs used in the preparation of the graphics of these games. Safeguarding IP will help ensure these spaces stay fair, inspire innovation, and support sustainable progress for everyone involved.³⁴³ It's more important than ever to make sure the people who create these games, characters, and stories have their rights respected.

Online Fantasy Sports Games (OFSG) are popular across many sports like football, cricket, basketball, kabaddi, and more, allowing fans to compete by creating teams in these sports.³⁴⁴ OFGs are online games where users form virtual teams by choosing real athletes for matches on a particular day. Players pay an entry fee, creating a prize pool distributed to top-ranking participants according to the actual performance of the athletes they have selected.³⁴⁵ Users are ranked according to the points their chosen players earn, based on real-game performances and set scoring rules.

When we talk about IP rights, we mean legal protections like copyrights trademarks and patents that help creators and inventors safeguard their original ideas. In OFSGs, these rights are fundamental. They protect the work of game developers ensuring their creativity is valued. This also keeps the gaming world fair and competitive while allowing players to fully enjoy and express themselves in a secure and respectful environment.³⁴⁶ Game developers dedicate immense time, energy, and resources to craft intricate narratives, captivating characters,

³⁴³ Yatan Pal Singh Balhara, Daman Deep Kaur Gulati and Akanksha Jayant Rajguru, 'Fantasy Sports as Gaming or Gambling? Perception, Attitudes, and Engagement Behavior of College Students' (2024) 46(1) *Indian Journal of Psychological Medicine* 60

<<https://journals.sagepub.com/doi/pdf/10.1177/02537176231207994>> accessed on 26 June 2025

³⁴⁴ KPMG, *The Evolving Landscape of Sports Gaming in India* (March 2019)

<<https://assets.kpmg.com/content/dam/kpmg/in/pdf/2019/03/online-gaming-india-fantasy-sports.pdf>> accessed on 26 June 2025

³⁴⁵ Suraj Bhosale and Samrat Ray, 'A Review Paper on the Emerging Trends in Sports Analytics in India' (2023) 19(02) *World Journal of Advanced Research and Reviews* 461

<<https://wjarr.com/sites/default/files/WJARR-2023-1623.pdf>> accessed on 26 June 2025

³⁴⁶ International Institute of Sports & Management, *Survey Report on NITI Aayog's Guidelines for Fantasy Sports* (2022) <<https://iismworld.com/research-white/survey-report-on-niti-aayog-guidelines-for-fantasy-sports/>> accessed on 26 June 2025

stunning landscapes and inventive game play graphics.³⁴⁷ These artistic endeavors warrant legal safeguarding to nurture an environment of innovation and fuel the ongoing expansion in the gaming sector.³⁴⁸ Players also dedicate considerable time and emotional investment in their game characters.³⁴⁹ As virtual economies flourish and player-driven content creation expands, the boundaries between user-generated content and copyrighted material become progressively ambiguous, presenting intricate legal and ethical dilemmas.³⁵⁰

The objective of this paper is to comprehend the hurdles encountered by game developers, players, and IP owners in virtual realms while engaging in such games at the international level i.e. where the games are operational at the global level. The limitation of this research is it being a doctrinal study, requires real life case studies or an empirical study to better determine the operative legal structure which can be established to foster fair gaming market on OFSGs platforms. Additionally, this paper is only analyzing the IP rights enforcement and not the IP licensing challenges in the global context within the OFSG spectrum.

FANTASY SPORTS: INDIA'S CURRENT LEGAL STRUCTURE

Currently, in India, the fantasy sports (FS) are under the supervision of The Federation of Indian Fantasy Sports (FIFS) renamed in 2020 and formed in 2017, established as the self-regulatory body in regard to fantasy gaming culture in India, also formerly known as the Indian Federation of Sports Gaming (IFSG). FIFS is primary organization for operationalization of *fantasy games* in India and to safeguard the consumer's interest and create guidelines and set standards of operation to secure the FS users and operator's interest.³⁵¹ FIFS and Deloitte Report indicate that the fantasy sports sector is envisaged to grow with a compound annual growth rate (CAGR) of 13% by 2029.³⁵² Additionally, there is All India Gaming Federation (AIGF), an association for online gaming in India; however, it makes no explicit mention of fantasy sports.³⁵³

³⁴⁷Manish Kumar, 'Fantasy Cricket: Gambling or Game of Skill' (2024) *Managing Sport and Leisure* 1 <<https://www.tandfonline.com/doi/full/10.1080/23750472.2024.2384489>> accessed on 26 June 2025

³⁴⁸ *Ibid.*

³⁴⁹KPMG, *The Evolving Landscape of Sports Gaming in India* (March 2019) <<https://assets.kpmg.com/content/dam/kpmg/in/pdf/2019/03/online-gaming-india-fantasy-sports.pdf>> accessed on 26 June 2025

³⁵⁰ Advocate Gauri Suresh Khandelot, Patil Rutisha Santosh, Prof Durga Naik and Ninad Prashant Kelaskar, 'Jurisdictional Issues in IPR Enforcement in the Digital World' (2023) 3(11) *International Journal of Emerging Technologies and Innovative Research* 142 <<https://iciset.in/Paper2620.pdf>> accessed on 26 June 2025

³⁵¹ Federation of Indian Fantasy Sports, *FIFS Official Website* <<https://fifs.in/>> accessed on 26 June 2025

³⁵² Federation of Indian Fantasy Sports and Deloitte, *Beyond the Field: India's Sports Tech Revolution* (13 February 2025) <<https://fifs.in/wp-content/uploads/2025/02/FIFS-Deloitte-Press-Release-1.pdf>> accessed on 26 June 2025

³⁵³ All India Gaming Federation, *The AIGF Story* <<https://aigf.in/our-story>> accessed on 26 June 2025

As of 2025, the legal framework governing OFGs in India is characterized by a combination of national guidelines, state-specific regulations, judicial interpretations, and industry-led self-regulation³⁵⁴. Given the vast market of Indian sports fans and the availability of digital ecosystem and engineering talent in India, India could be an engine for development and advancement in FS across the world and transform into a pan world epicenter for such games. Major market shareholders in the aspect of OFGs are Dream11, Mobile Premier League (MPL), My11Circle, Ballebaazi, etc³⁵⁵. In the global market, there are DraftKings, ESPN, DreamSports, and FanDuel etc³⁵⁶. Notably, till January 2024, FIFS has 60 members, of which Dream11 is the founding member, Sportasy is a bronze member amongst other 6 platforms, 46 are startup members and some are affiliated members are also associated as members.³⁵⁷ Dream11 is operationalized by Sporta Technologies Private Limited while Sportasy is functional by Blossomfield Gaming Zone Private Limited. The plethora of research as well as judicial contentions exists on clarification of whether fantasy sports qualify as games of skills or merely luck-based games, the legal backdrop of such a statement requires deeper scrutiny. A skilled based game means a game that requires some degree of judgment, creative mind, and talent of the user in the contest rather than subjecting the chances of winning or losing to mere chance or luck.³⁵⁸

The legal framework surrounding games begins with the old Public Gambling Act of 1867 enacted by British colonial authorities in India to prohibit public gambling houses and participating in any form of gambling.³⁵⁹ The Act, however, applies only to traditional modes of gambling and does not specifically mention online or digital versions of it such as fantasy sports neither does it include skill games, thereby establishing a relatively bright legal demarcation amongst the games of chance/gambling and skill-based games³⁶⁰. Gambling has been specifically included in the State List in the Indian Constitution thus

³⁵⁴ NITI Aayog, *Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India: Draft for Discussion* (December 2020) <https://niti.gov.in/sites/default/files/2020-12/FantasySports_DraftForComments.pdf> accessed on 26 June 2025

³⁵⁵ Anand Parthasarathy, 'India's Fantasy Sports Business is Largely Tech-Driven — And The Fastest Growing In The World' (26 April 2023) *Swarajya* <<https://swarajyamag.com/tech/indias-fantasy-sports-business-is-largely-tech-driven-and-the-fastest-growing-in-the-world>> accessed on 26 June 2025

³⁵⁶ James Austin, 'The Best Fantasy Sports Apps' (4 March 2025) *Wire cutter* <<https://www.nytimes.com/wirecutter/reviews/best-fantasy-sports-apps/>> accessed on 26 June 2025

³⁵⁷ Federation of Indian Fantasy Sports, *FIFS Members* <<https://fifs.in/members>> accessed on 26 June 2025

³⁵⁸ KPMG, *The Evolving Landscape of Sports Gaming in India 11* (March 2019) <<https://assets.kpmg.com/content/dam/kpmg/in/pdf/2019/03/online-gaming-india-fantasy-sports.pdf>> accessed on 26 June 2025

³⁵⁹ The Sports Law & Policy Centre, *The Laws Relating to Fantasy Sports Games in India*, 5 (August 2022) <https://csri.co.in/wp-content/uploads/2022/08/Fantasy-Sports_Legality_India_Report.pdf> accessed on 26 June 2025

³⁶⁰ *Ibid*

giving different regulations on the OFGs at state level³⁶¹. Currently, Haryana, Maharashtra, Punjab, Rajasthan, Uttar Pradesh, West Bengal have restricted the FG usage, while Assam, Telangana, Odisha, Andhra Pradesh, Sikkim, Nagaland, Tamil Nadu, Gujarat and Karnataka have banned these games³⁶². As a result, even the OFS operators like Dream11, MPL, and My11Circle have blocked users from states having hostile regulatory environments.³⁶³

Indian courts have articulated a subtle approach to the understanding to the OFSG and whether it's a game of skills or chances³⁶⁴. Even with some degree of protection under the "game of skill" category afforded by the judiciary for FS in India, conflicting state regulations still leave enough ambiguity to fuel the gray-market activity³⁶⁵. In 2020, NITI Aayog published a centralized policy framework as a provisional draft titled as '*Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India*'³⁶⁶. Summarily, these primary principles were considered as draft guidelines and left for discussion with stakeholders which envisaged that the requirement of a self-managed body under the aegis of the Government is crucial³⁶⁷. Secondly, the games offered for the users must differentiate between the skill driven games and chance even when they offer pay-to-play options. The consumer protection is paramount to these guidelines and thus require age limit of eighteen years and above to play OFSGs.

So far, the OFGs are recognized as skill dominated games but varied potential exists amongst states regarding its regulation, thus necessitating for a uniform national policy which brings transparency, uniformity and accountability. Currently, the legal regulations are being overlooked by the self-regulatory authorities as discussed above to streamline the operationalization and preserve the consumer's interest.

INTERFACE OF FANTASY SPORTS AND IP RIGHTS IN INDIA

³⁶¹ Akshay Mehta and Kavan Shah, 'Fantasy Sports in India' (2020) 2(1) *Sports Academia Research Journal* 51 <<https://iismworld.com/wp-content/uploads/2024/01/FANTASY-SPORTS-IN-INDIA.pdf>> accessed on 26 June 2025

³⁶² *Ibid* (n 53)

³⁶³ *Ibid*

³⁶⁴ IP and Legal Filings, 'Fantasy Sports in India: Legal Challenges and the Way Forward' (11 November 2024) <<https://www.ipandlegalfilings.com/fantasy-sports-in-india-legal-challenges-and-the-way-forward/>> accessed on 26 June 2025

³⁶⁵ *Ibid*

³⁶⁶ NITI Aayog, *Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India* (Draft for Discussion, December 2020) <https://niti.gov.in/sites/default/files/2020-12/FantasySports_DraftForComments.pdf> accessed on 26 June 2025

³⁶⁷ *Ibid* (n 8)

As per the above discussion, the OFGs involve the use of real sportspersons games on fantasy level thus bringing the past or live scores, player names or nicknames, logos, statistics or the compiled data etc to be employed in these games as well to give the users a real-time feel³⁶⁸. The concern is that these aspects are subject matter of the IP laws and thus derives attention from legal researchers on how the FS finds a nexus to the IP Rights, if violation occur and what is the redressal mechanism in such scenario.

Internationally speaking, the IP gained recognition through the Berne Convention for the protection of Literary and the Artistic Works (1886) which was under the aegis of the World IP Organization (WIPO)³⁶⁹. This convention practically and explicitly deals with the protection of literary works produced by the authors, musicians, painters, poets etc and to protect their rights³⁷⁰. It offers no commentary on the OFSGs and the IP rights violations occurring through such games. Additionally, there is Trade-Related Aspects of IP Rights (TRIPS) Agreement of 1995 which is till date the most comprehensive agreement on IP³⁷¹. In India, the Copyright Act of 1957 (CA, 1957) was brought forth to provide exclusive rights to the original author of any artistic, literary, dramatic or computer programmes, music, sound records or any cinematographic works³⁷². The author has the authority to sell or reproduce the work by licensing or translation etc³⁷³. TM law safeguards the name, logo, and unique identity of e-sports brands.³⁷⁴ Patent law protects gaming equipment like joysticks, consoles, and other devices that enhance game play.³⁷⁵ Meanwhile, copyright law covers the creative elements of a game, such as its source code, music, and visual design.³⁷⁶ Cumulatively, these laws provide a broad legal mechanism that helps protect different aspects of online gaming. FS, by contrast, differ from e-sports, wherein the former relies on the real-sports data making the users to

³⁶⁸ Akshay Mehta and Kavan Shah, 'Fantasy Sports in India' (2020) 2(1) *Sports Academia Research Journal* 51 <<https://iismworld.com/wp-content/uploads/2024/01/FANTASY-SPORTS-IN-INDIA.pdf>> accessed on 26 June 2025

³⁶⁹ *Berne Convention for the Protection of Literary and Artistic Works* (adopted 9 September 1886, as amended 28 September 1979) <<https://www.wipo.int/treaties/en/ip/berne/>> accessed on 26 June 2025

³⁷⁰ *Ibid*

³⁷¹ World Trade Organization, *IP: Overview of the TRIPS Agreement* <https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm> accessed on 26 June 2025

³⁷² The Copyright Act 1957 (14 of 1957), s 2 (India)

³⁷³ The Copyright Act 1957 (14 of 1957), s 14 (India)

³⁷⁴ A Mukundh Viswesh, 'Legal Challenges of the IP Rights in the Gaming Industry in India' (2023) 3(6) *Indian Journal of Integrated Research in Law* 206 <<https://ijirl.com/wp-content/uploads/2023/12/LEGAL-CHALLENGES-OF-THE-INTELLECTUAL-PROPERTY-RIGHTS-IN-THE-GAMING-INDUSTRY-IN-INDIA.pdf>> accessed on 26 June 2025

³⁷⁵ *Ibid* (n 208)

³⁷⁶ *Ibid*

contest by making virtual teams of real players and gain points through their performances.³⁷⁷ The IP rights like team logos, statistics and figures are used by operators either in their original form or in a compiled manner from the broadcasting channels.³⁷⁸

In order to be entitled to protection under the CA, 1957, a requirement of originality and some literary work involved to extend the protection under the said law must be met. The Act's definition of 'literary' works encompasses computer programs, tables, and compilations.³⁷⁹ It's a well-acknowledged principle that facts in themselves cannot be protected by CA of 1957.³⁸⁰ Thus, the graphs and statistics which reflect the data is per se 'factual' information and thus don't lead to IP violations if used by the OFSGs operators.

Notably, sometimes, these statistics and data are shown by way of some compilation data through some arrangement of materials in a form, which are per se are not 'facts' but 'literary' and 'original' work which demands copyrights protections.³⁸¹ In US, the Supreme Court in the case of *International News Service v. Associated Press*³⁸², developed the 'Hot News Doctrine' which denotes that the written content or live televised occurrences lose their significance in a short while after going into the public domain, thereby saving the economic worth of time-sensitive information. In the matter of *Star India Private Limited v. Piyush Agarwal*³⁸³, the Delhi HC expanded on this Doctrine to confirm that offering pay-to-play updates during a sports event is categorized as time-sensitive information that holds commercial potential.³⁸⁴ The Court's decision in this instance established that Star India had legally obtained exclusive rights to this information via a broadcast rights deal or agreement, allowing only Star India the exclusive right to utilize these updates for minimum of fifteen minutes after their initial broadcast by the company. This ruling however faced opposition from Delhi HC in *Akuate Internet Services Private Limited v. Star India Private Limited*.³⁸⁵ The decision concluded by

³⁷⁷ Cosmovici IP, *Fantasy Sports and IP: Legal Implications in the Digital Age* (11 September 2024) <<https://cosmovici-ip.com/news/fantasy-sports-and-intellectual-property-legal-implications-in-the-digital-age/>> accessed on 26 June 2025

³⁷⁸ *Ibid*

³⁷⁹ The Copyright Act 1957 (14 of 1957), s 2(o) (India)

³⁸⁰ *Eastern Book Company and Others v DB Modak and Another* (2008) 1 SCC 1 (SC)

³⁸¹ Arun Prabhu and Rishabh Shroff, 'Use of Third Party IP in Fantasy Sports Games' in *The Laws Relating to Fantasy Sports Games in India* (The Sports Law & Policy Centre 2022) 27 <https://csri.co.in/wp-content/uploads/2022/08/Fantasy-Sports_Legality_India_Report.pdf> accessed on 26 June 2025

³⁸² 248 U.S. 215

³⁸³ *C.S. (O.S.) No. 2722/2012*

³⁸⁴ Arun Prabhu and Rishabh Shroff, 'Use of Third Party IP in Fantasy Sports Games' in *The Laws Relating to Fantasy Sports Games in India* (The Sports Law & Policy Centre 2022) 28 <https://csri.co.in/wp-content/uploads/2022/08/Fantasy-Sports_Legality_India_Report.pdf> accessed on 26 June 2025

³⁸⁵ 2013 SCC OnLine Del 3344

the Delhi HC appears to reinforce the idea that cricket game statistics are excluded from copyright protection.

The use of team logos, names, and player identity and his publicity is common and an essential feature of fantasy sports.³⁸⁶ The participants for choosing players to make their teams need to identify them and therefore the applications need to use pictures, names and logos etc to help the participants make decisions.³⁸⁷ The Trademarks Act of 1999 (TMA) maintains, inter alia, that the infringement of a legally recognized trademark occurs when an individual, not being the owner or an authorized user, employs a mark during business that is identical, similar, or deceptively like the legally registered trademark concerning the trademarked goods or services registered, and in a way that could lead the mark usage to be perceived as a trademark.³⁸⁸ FS platforms typically navigate these IP issues by negotiating licensing agreements with sports leagues and players' associations.³⁸⁹ These agreements grant them the legal right to use player's names, statistics, and sometimes even images. For example, DraftKings and FanDuel both have agreements in place with the National Football League (NFL) and Major League Baseball (MLB) to use the IP assets of these leagues. Recently in 2023, through the case of *Digital Collectibles Pvt. Ltd and Ors. v. Galactus Funware Technology Pvt Ltd and Anr*³⁹⁰, the HC of Delhi gave judgment in the favour of OFS operator and said that 'the exchange of non-fungible tokens (NFTs) representing player cards on OFS operator is a secondary aspect in contrast to the core objective of the gameplay. Thus, implementing NFT technology would not alter the fundamental essence of an OFS operator. Court emphasized that the publicly available information like player names and performance data cannot be licensed and such use including their images therefore, is not violation of the personality rights, unless they don't mislead the consumers. The transnational character of these gameplays complicates the enforcement of personality rights and Indian courts can adjudicate matters given that they involve the Indian citizens and operators are having their business in India, but enforcing judgment against foreign

³⁸⁶ Cosmovici IP, *Fantasy Sports and IP: Legal Implications in the Digital Age* (11 September 2024) <<https://cosmovici-ip.com/news/fantasy-sports-and-intellectual-property-legal-implications-in-the-digital-age/>> accessed on 26 June 2025

³⁸⁷ *Ibid*

³⁸⁸ Arun Prabhu and Rishabh Shroff, 'Use of Third Party IP in Fantasy Sports Games' in *The Laws Relating to Fantasy Sports Games in India* (The Sports Law & Policy Centre 2022) 29 <https://csri.co.in/wp-content/uploads/2022/08/Fantasy-Sports_Legality_India_Report.pdf> accessed on 26 June 2025

³⁸⁹ Cosmovici IP, *Fantasy Sports and IP: Legal Implications in the Digital Age* (11 September 2024) <<https://cosmovici-ip.com/news/fantasy-sports-and-intellectual-property-legal-implications-in-the-digital-age/>> accessed on 26 June 2025

³⁹⁰ CS(COMM) 108/2023

entities is complex and challenging. Therefore, need for regulation on publicity rights and how to enforce such rights across borders becomes a priority.

Similar is the situation of usage of photographic images of the players which is copyrightable material and ensures fair use upon obtaining any license or any such assignment from the rightful owner of the IP rights³⁹¹. The pertinent question that is to be addressed here is what will be the enforcement mechanism when such IP violation occurs at the international level. In simple words, what shall be the regulatory mechanism when the OFS operators in India have started their operation outside the country and uses the logos, names of players of foreign players, given the complex regime of obtaining licensing in the transnational platform itself being a challenge alone or vice versa, if the foreign based OFS operator, say FanDuel starts using the logos and compilation statistics of Indian players without licensing, or even if they obtained the licensing, in case of any dispute arising within the aspect of transnational IP rights enforcement, which jurisdiction shall apply, considering that the notion of jurisdiction lapses within the online games perse. This becomes even crucial when there stands no proper uniform legislation at the national level, let alone the regulation process of the IP rights in abroad. The international conventions are also silent on such matters and hence needs a strong deliberation at both national and international level.

GLOBAL SCENARIO AND THE JURISDICTIONAL CHALLENGES IN ENFORCEMENT OF IP RIGHTS

In continuation to the preceding discussion, the OFSG and the IP rights should be understood even in the global context with a goal to familiarize with the current legal regimes regarding the IP rights protection and the legality of the OFSGs before protecting the IP rights violations occurring in the transnational boundaries in regard to OFSGs and addressing the issues of jurisdiction.

The OFSGs are well recognized in abroad, like US, UK and EU, considering the FS as game of skills than a game of chance, but concerning the IP rights protections, the legislations vary. The broadcasting of statistical data in raw form in US by the OFS operators was discussed through *National Basketball Association (NBA) v. Motorola*³⁹², wherein Motorola was selling basketball games progress through 'Sports Trax' in every two-to-three-minute intervals. NBA claimed that this leads to violation of the copyrights and an unfair competition. The Court ruled

³⁹¹ Arun Prabhu and Rishabh Shroff, 'Use of Third Party IP in Fantasy Sports Games' in *The Laws Relating to Fantasy Sports Games in India* (The Sports Law & Policy Centre 2022) 30 <https://csri.co.in/wp-content/uploads/2022/08/Fantasy-Sports_Legality_India_Report.pdf> accessed on 26 June 2025

³⁹² 105 F.3d 841 (2d Cir. 1997)

that such broadcasts are protected under the US Copyright law. Motorola was merely selling the raw facts³⁹³. However, the compilation of statistics in any manner if shared or broadcasted in the similar format without any input from the operator shall amount to copyright infringement³⁹⁴. In *Football Dataco Ltd v. Yahoo! UK Limited*³⁹⁵, EU Court also gave the similar protection to data which were ‘original, intellectual’ creations³⁹⁶. The use of logos, names of teams and players including colors, uniform designs etc are well protected under the TM laws. Wimbledon, for instance, acquired the trademark for using their colors of green and purple stripes in tennis uniform as well³⁹⁷. In US, Lanham Act of 1946 defines the trademark infringement upon any act of reproduction, counterfeiting, or copying or any imitation for commercial purposes that risk causing confusion or mistake or deceive without the authority of the owner³⁹⁸. In the case of *National Football League (NFL) v. Wichita Falls Sportswear Inc.*³⁹⁹ the NFL restrained the sportswear company to not sell and manufacture the NFL jerseys thereby creating confusion amongst consumers.⁴⁰⁰ The Court ruled that employing trademarks of NFL by the company was violation of trademark rights of NFL⁴⁰¹. Likewise, in UK and EU, the trademark reflected the origin the goods or services and that any such use which can jeopardize that aspect of guarantee will amount to infringement⁴⁰². Moreover, just as in India, concept of ‘dilution’ was brought forth, similarly the concept developed in US, EU and UK, such that the trademark owner now has the redressal to seek compensation if there is any malafide application of the mark by the third party such that it caused dilution by blurring or tarnishing the original mark, even if no evidence of confusion amongst consumers presents. The usage of registered trademarks in logos and names by OFS operators may be covered under the aspect of nominal or a fair use, however this is only possible, when the operators use such

³⁹³ Arun Prabhu and Rishabh Shroff, ‘Use of Third Party IP in Fantasy Sports Games’ in *The Laws Relating to Fantasy Sports Games in India* (The Sports Law & Policy Centre 2022) 30 <https://csri.co.in/wp-content/uploads/2022/08/Fantasy-Sports_Legality_India_Report.pdf> accessed on 26 June 2025

³⁹⁴ *Fiest Publications Inc. v Rural Telephone Service Co.* 499 U.S. 340 (1991)

³⁹⁵ C-604/2010

³⁹⁶ Arun Prabhu and Rishabh Shroff, ‘Use of Third Party IP in Fantasy Sports Games’ in *The Laws Relating to Fantasy Sports Games in India* (The Sports Law & Policy Centre 2022) 30 <https://csri.co.in/wp-content/uploads/2022/08/Fantasy-Sports_Legality_India_Report.pdf> accessed on 26 June 2025

³⁹⁷ *Ibid* (n 31)

³⁹⁸ *Ibid*

³⁹⁹ 532 F. Supp. 651 (1982)

⁴⁰⁰ Arun Prabhu and Rishabh Shroff, ‘Use of Third Party IP in Fantasy Sports Games’ in *The Laws Relating to Fantasy Sports Games in India* (The Sports Law & Policy Centre 2022) 33 <https://csri.co.in/wp-content/uploads/2022/08/Fantasy-Sports_Legality_India_Report.pdf> accessed on 26 June 2025

⁴⁰¹ *Ibid*

⁴⁰² *Ibid* (n 34)

information to reasonably identify the player⁴⁰³. Even the players have protection of their identities as ‘publicity rights’. Thus, any misuse on the same would amount to infringement of ‘publicity rights’ of the players. In the case of *C.B.C. v. Major League Baseball Advanced Media*⁴⁰⁴, The US Court held that use of player names and performance statistics in fantasy sports games are publicly available information and do not encroach upon IP protections. However, the court recognized that athletes still have proprietary rights over their personas, and businesses cannot exploit these without proper consent⁴⁰⁵. Nonetheless, what is of significance is that while the position is clear on the commercial use of player’s name or personality would amount to violation of IP rights, but what if the used information is a fact that relate to the players is yet not clear⁴⁰⁶. In EU, there is recognition of publicity as well as privacy rights of celebrities. It is concluded that where the player personality or other measures are adopted for promotional purposes by the operators, then the defense of nominal use fades. As intricate this discussion is at national level, it is much convoluted and raveled at the international level when IP rights are unfolded within the OFSGs.

Recently, Dream11 has made strides by reaching out in the foreign gaming market. Dream 11 recent partnerships with the European Cricket Network (ECN) to offer fantasy games for European Cricket Series and European Cricket League tournaments shows how the international gaming markets are evolving as well.⁴⁰⁷ The issue regarding the jurisdictional challenges pertaining to violation of IP rights at international level, IP licensing mechanism, national level regulation in India for OFSGs, EU laws on IP rights and OFSGs etc become paramount through such partnerships. For instance, EU’s, General Data Protection Regulation (GDPR) may add another layer of complexity when OFS operators like Dream11 collect and use personal data. Since, adherence to these regulations would be essential, particularly when such platforms target international users, the legal mechanism need to be strengthened both nationally and internationally in respect of enforcement of IP rights violations.⁴⁰⁸

⁴⁰³ Cosmovici IP, *Fantasy Sports and IP: Legal Implications in the Digital Age* (11 September 2024) <<https://cosmovici-ip.com/news/fantasy-sports-and-intellectual-property-legal-implications-in-the-digital-age/>> accessed on 26 June 2025

⁴⁰⁴ 505 F.3d 818 (8th Cir. 2007)

⁴⁰⁵ Arun Prabhu and Rishabh Shroff, ‘Use of Third Party IP in Fantasy Sports Games’ in *The Laws Relating to Fantasy Sports Games in India* (The Sports Law & Policy Centre 2022) 38 <https://csri.co.in/wp-content/uploads/2022/08/Fantasy-Sports_Legality_India_Report.pdf> accessed on 26 June 2025

⁴⁰⁶ *Ibid*

⁴⁰⁷ Dream11, *Dream11 Strengthens Its Partnership with European Cricket Network* (27 February 2020) <<https://www.dreamsports.group/newsroom/dream11-strengthens-its-partnership-with-european-cricket-network/>> accessed on 26 June 2025

⁴⁰⁸ Arun Prabhu and Rishabh Shroff, ‘Use of Third Party IP in Fantasy Sports Games’ in *The Laws Relating to Fantasy Sports Games in India* (The Sports Law & Policy Centre 2022) 40 <https://csri.co.in/wp-content/uploads/2022/08/Fantasy-Sports_Legality_India_Report.pdf> accessed on 26 June 2025

BRIEF COMPARISON ACROSS NATIONS: ONLINE FANTASY GAMES & IP RIGHTS

Parameters		US	UK	EU	India
Protection of IP Rights	Copyright Protections (Player Data, Stats)	Strong protection under copyright laws ('Hot News Doctrine' protects time-sensitive data) and the Lanham Act (trademark infringement if unauthorized use),	Post Brexit, some divergence from EU standards. Protection Laws in UK - Copyright, Designs and Patents Act, 1988, Passing off (Tort) for publicity rights.	Protects compilations, TM Laws use which confuses or dilutes product. While publicity rights – varies amongst members states with some variations	Compilations under the CA, 1957, TM, 1999 requires nominal or licensed use. While no statutory law on publicity rights, but recognized by courts (Digital Collectibles case)
	Trademark Issues (Logos, Names, Jerseys)				
	Publicity Rights / Personality Rights	Publicity rights are protected, if no consent. Digital content and branding are well covered through its Digital Laws.			
Concern regarding Protection of Data & Privacy Rights of the Players		State specific laws with California Consumer Privacy Act 2018- the strongest. In-game data collection is a concern. So far less strict than EU's GDPR	The UK GDPR is mostly in line with the EU's law with some differences.	GDPR sets strict rules on user data, affecting how fantasy platforms operate across borders.	DPDP Act, 2023. Enforcement mechanisms are at nascent stage
Conflict of Laws / Transnational Jurisdiction		Stronger but still fragmented, not IP-specific	Not governed by Brussels, but Rome I (Choice of	Rome II and Brussels I are	Weak enforcement across

		law - Contract), Rome II (Choice of law – Tort) yet not IP-specific	followed, but not IP-specific	borders; territoriality in IP laws
Transnational Enforcement	Moderate	Effective in international collaboration, yet complex in IP rights post Brexit, territoriality of laws	IP rights can be enforced across member countries; Strict but complex	Enforcement abroad depends on treaties and how foreign courts recognize Indian rights; weak enforcement
IP related Challenges in OFSGs	Fair use v. commercial use, personality rights are varied across jurisdictions	Similar to the EU, though the UK is developing its own policies post-Brexit.	Harmonizing IP laws across member states to consumers interest as well	State-level bans, IP laws ambiguity, no uniform national law

Summarily, keeping in line with the technological advancements and the craze of entertainment through sports and online games, the OSFG are gaining their recognition amongst the users, businesses and the governments across various jurisdictions. But what remains at a dead-end is the formulation of the IP laws which the legislators rarely draft with any consideration of the transnational scenarios⁴⁰⁹. The EU has IP-specific provisions in its instruments on conflict of laws. In US, however, state conflict of laws rules provides no IP-specific rules.⁴¹⁰ The authors therefore suggest that with rising importance of transnational IP Laws related activities; the legislators must give some attention to calibrate the territorial scope of national IP laws with conflict of laws rules to achieve the desired territorial reach of national IP policies.⁴¹¹

⁴⁰⁹ Marketa Trimble, *Advancing National IP Policies in a Transnational Context* (2015) 74 *Maryland Law Review* 203 <<https://digitalcommons.law.umaryland.edu/mlr/vol74/iss2/5/>> accessed on 26 June 2025

⁴¹⁰ *Ibid* (n 204)

⁴¹¹ Annette Kur and Ulf Maunsbach, 'Choice of Law and IP Rights' (2019) 6(1) *Oslo Law Review* 43 <<https://doi.org/10.18261/issn.2387-3299-2019-01-07>> accessed on 26 June 2025

Additionally, the jurisdictional challenges in IP rights enforcement are due to different legal standards and enforcement mechanisms in the various countries varying from strict and robust regimes to almost weak and inefficient systems. This disparity creates a loophole in the legal framework that the infringers can use to exploit in the operating jurisdiction with less or a weak enforcement mechanism.⁴¹² The basic challenge that lies in the transnational enforcement of IP rights in OFSGs is the choice of forum, i.e., when any legal action arises which forum will be taking up the matter for hearing. On digital platforms, the concept of territory dilutes and the infringing activities can occur in multiple locations, therefore the choice of forum will become even more complex. Secondly, the enforcement of foreign judgment in the IP related cases is difficult, for instance, a right holder obtains a judgment in one jurisdiction, and then the enforcement in another jurisdiction may raise complications, due to different rules regarding the recognition of judgment from foreign countries or judgment being opposite to the laws or policies of another country⁴¹³. Moreover, since the IPR laws are grounded in the principle of, meaning thereby that these laws are merely limited to the country of issuance, but in online gaming, the content can easily be transnational, thus the limitation of territoriality creates a challenge for the right holders seeking protection of their IP rights abroad. The authors therefore suggest that stronger national as well as international mechanisms are needed to regulate the OFS operators and related IP rights enforcement and jurisdictional issues.

CONCLUSION

The OFSGs will continue to expand its operation and gain popularity while also intersect with the IP rights. Understanding the national as well international nuances, it becomes fundamental to not solely rely on judicial interpretations, especially when the matters relate to the privacy and publicity rights of the sportspersons but rather emphasize setting certain legal boundaries. Authors assert that the need for uniform national law may serve as a benchmark to regulate the fantasy sports sector while efforts are aligned towards making IP laws enforceable abroad through treaties and agreements, and extensive licensing agreements, It is imperative that the role of legislators, policymakers, international organizations, legal systems across various jurisdictions, consumers, businesses need to collaborate and coordinate to evolve with these games while protecting the IP rights of those who are the rightful owners of the same.



⁴¹² Gauri Suresh Khandelot and others, 'Jurisdictional Issues in IPR Enforcement in the Digital World' (2023) 3(11) *International Journal of Emerging Technologies and Innovative Research* 142

<<https://iciset.in/Paper2620.pdf>> accessed on 26 June 2025

⁴¹³ *Ibid* (n 143)