

WRITE TO INFORMATION

Technology, Media, Telecommunication Laws

February 2022

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ABOUT US

TMT Law Practice is a boutique law firm providing a full suite of services in the TMT sectors. Over time, the firm's practice has expanded from a niche boutique IP practice, to include practice areas such as commercial disputes resolution & arbitration, regulatory litigation & advisory, corporate/commercial advisory and transactional support, and policy and legislative drafting across industry verticals. The Firm represents a broad range of clients including Fortune 500 companies, as well as MSMEs and Start-ups.

The firm engages in the practice of the conventional domains of law, and, is also heavily invested in the niche areas of emerging technology, including space technology and policy; healthcare and ICT; data privacy and protection; and, sports laws.

The Firm stresses on developing well-rounded, solution - oriented professionals, who specialize in client - focused service delivery.



TECHNOLOGY LAWS

1. **No Stay on release of 'Gangubai Kathiawadi' Movie: Supreme Court Dismisses Plea of 'Adopted Son'**

The Supreme Court dismissed a Special leave Petition (SLP) which sought a stay on the release of movie "Gangubai Kathiawadi" produced by Bhansali Production Private Limited and directed by Sanjay Leela Bhansali represented by TMT Law Practice. The SLP was filed on behalf of one Babuji Rawji Shah who claims to be the adopted son of Gangubai Kathiawadi.

With respect to the same movie, other proceedings were also initiated before the Bombay High Court, where the division bench disposed of one PIL while dismissing another PIL by MLA Amin Patel and a Writ petition filed by residents of Kamathipura (of which Gangubai was a resident) being aggrieved by the fact that the movie maligns the said area and that all residents of the area are not sex workers. However, all the above-mentioned petitions were rejected by the Bombay High Court.

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2. **UK IPO announce new IP Counter-Infringement strategy**

The Intellectual Property Office (IPO) has published the United Kingdom's (UK) new Intellectual Property counter-infringement strategy, which sets out how the government will address IP crime and infringement over the next five years. The strategy seeks to establish how enforcement agencies, government and industry can work together to build upon and improve current structures, ensuring that IP infringement is tackled coherently as a strategic economic and social threat at home and internationally.

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3. **New Guidelines for Trademark Examination and Trial in China have enforced since 1st January 2022**

The China National Intellectual Property Administration (CNIPA), through Announcement No 462, released the Guidelines for Trademark Examination and Trial (the Guidelines 2022). As of 1 January 2022, the Guidelines 2022 have come into effect, repealing the Standards for Trademark Examination and Trial. The purpose of issuing the

Guidelines 2022 was to 'standardise the trademark examination and trial procedures and ensure the uniform application of laws and consistent implementation of standards in all trademark examination and trial aspects. The Guidelines 2022 are divided in two parts. Part A systematically reviews and optimises the existing standards and working procedures for the formal review of the various processes; Part B provides the substantive standards for trademark examination and adjudication.

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4. **European Commission calls for evidence on anti-counterfeit toolbox initiative**

The European Commission ('EC') announced that it would establish an EU Toolbox against counterfeiting. The EU Toolbox is part of the EU Strategy to tackle Organised Crime 2021-2025. The EC reports states that despite efforts to battle counterfeit goods, the market is still thriving, with an increase of detained articles at EU borders. In 2019, the imports of counterfeit goods equalled 5.8 % of total EU imports, with a value of EUR 119 billion. The EC furthermore notes a surge in counterfeit COVID-19 related goods such as face masks, protective equipment and even vaccines.

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5. **Federal Circuit rejects gTLD Trademark registration of 'SUCKS'**

The United States (US) Court of Appeals for the Federal Circuit has dismissed Vox Populi Registry's bid to register 'sucks' as a trademark. Vox is attempting to register a both the standard character service mark. The aforementioned trademarks were rejected on the ground that the marks are merely descriptive and lacks distinctiveness.

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6. **Right to Privacy cannot be superseded by suspicion of police: Madras High Court on installation of CCTV in clubs**

The Madras High Court recently rejected a request by the police to install CCTV cameras inside all areas of two clubs/recreation centres with a view to keeping a tab on gambling and other illegal activities. The Court held that suspicion of illegal

gaming activities, howsoever strong, cannot justify the violation of the right to privacy of people who visit club/recreation centres in the case of MM Nagar Sports & Recreation Centre and Another v. The Superintendent of Police, Kancheepuram District and Ors.

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7. ShareChat and MX Media announce a strategic merger of Moj and MX TakaTak

MX Media Co. Ltd, the parent company of MX TakaTak, and ShareChat, the parent company of Moj, announced a strategic merger between Moj and MX TakaTak, to create the largest short video platform for Indians, whereby the two platforms will now be controlled by ShareChat. Post this transaction, MX Media and its shareholders will become strategic shareholders of ShareChat.

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8. Argentina: INPI publishes first Trademark decisions

The first decision declared the invalidity of the trademark “Kimchi” registered under Nos. 3,067,332 and 3,067,334 in classes 35 and 29, respectively, for being indicative, descriptive or generic, as kimchi is a traditional dish of Korean cuisine. The decision was published in the Argentine trademark bulletin on December 29, 2021, where Argentina’s IP office, the Instituto Nacional da Propriedade Industrial (INPI), decided substantive issues regarding the invalidity of trademark registrations. In 2018 the trademark procedure was amended to allow the INPI to decide the cancellation of trademark

registrations (invalidity and lapsing due to non-use), subject to appeal to the federal courts, and in 2019 the corresponding rules for the administrative procedure were issued.

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9. Calcutta High Court injuncts Baidyanath Ayurved from disparaging Dabur trademark

While hearing a plea by Dabur seeking an injunction against the uploading of five advertisements that allegedly disparaged the goodwill and reputation of its trademark, the Calcutta High Court permanently injuncted four advertisements by the makers of Baidyanath Chyawanprash Special for being disparaging to all other brands of Chyawanprash including Dabur Chyawanprash in Dabur India Limited v. Shree Baidyanath Ayurved Bhawan Pvt Ltd.

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10. Nike files trademark infringement lawsuit against StockX NFTs

US-based sportswear company Nike has reportedly filed a lawsuit against online reselling platform StockX in a federal court in New York over unauthorised non-fungible tokens (NFTs). Nike alleges that StockX has started selling new virtual products using Nike’s trademarks without consent, with more than 500 Nike-branded Vault NFTs said to have been sold so far.

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PRIVACY LAWS

11. CNIL offers reference system for children’s, young adults’ privacy

France’s data protection authority, the Commission nationale de l’informatique et des libertés (CNIL), launched a repository for private or public organizations to aid data protection of minors and young adults ages 21 and under in the areas of social or medico-social welfare, education and legal proceedings. Created following a public consultation, the compliance support tool offers guidance for managing data collection, processing and the evaluation of sensitive information related to an individual’s well-being. New sections on legal

bases for processing and data retention periods have also been added.

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12. Norwegian-owned Telenor will not stop transfer of Myanmar customers’ data to military government

Norway’s industry minister stated that the government would be unable to stop a transfer of state-owned Telenor’s metadata that belongs to 18 million Myanmar customers, Reuters reports. In

response to a military coup in Myanmar last year, Telenor opted to sell its Myanmar operation to a local cellular provider amid “continued pressure” from the junta to activate intercept surveillance technology. Human rights groups have called on Telenor stop the sale or delete the data, but the company said doing either would endanger employees who work inside Myanmar.

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13. EDPB adopts reply on cybercrime convention protocol around data transfers

In a reply to the European Parliament’s Civil Liberties, Justice and Home Affairs Committee, the European Data Protection Board said protections of personal data transferred to third countries resulting from the Second Additional Protocol to the Cybercrime Convention “must be essentially equivalent to the EU level of protection.” The EDPB also adopted a final version of the Guidelines on Codes of Conduct as a tool for transfers and a letter on AI liability, welcoming plans to adapt rules to artificial intelligence. The main purpose of the guidelines is to clarify the application of articles 40 (3) and 46 (2) (e) GDPR. These provisions stipulate that, once approved by a competent Supervisory Authority (SA) and after having been granted general validity within the European Economic Area (EEA) by the European Commission, a code may also be adhered to and used by controllers and processors in a third country to provide appropriate safeguards to transfers of data outside of the EEA.

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14. Google launches AI-based compliance review product for app developers

A team at Google recently launched a new product for mobile app developers called Checks which leverages AI technology to identify possible privacy and compliance issues within apps, amid a rapidly changing regulatory and policy landscape. The freemium solution will be offered to both Android and iOS app developers of all sizes, who will be able to have their apps analysed then receive a report with actionable insights about how to address the problems that are found. To use Checks, developers submit their app for a privacy compliance analysis, which involves both an automated review and, on some tiers of service, a human review, as well.

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15. Ministry seeks feedback on India’s draft Data

Accessibility & Use Policy

India’s Ministry of Electronics and Information Technology opened a public consultation on the country’s draft Data Accessibility & Use Policy. The proposed scheme would facilitate the sharing of unspecified non-personal data that is collected, generated and stored by government entities. The policy would also allow for some sharing with private companies which can then monetize the data. The consultation period ends March 18.

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16. Brazilian Congress approves personal data protection amendment to constitution

Brazilian Congress passed an amendment to Article 5 of the constitution that gives citizens the fundamental right to personal data protection. The amendment is an unchangeable clause, which means protections for citizens can only be expanded. Supporters stated the amendment elevated the General Data Protection Law into the constitution and would improve the investment climate for the technology and communications sectors. The proposal underpinning the amendment establishes that the federal government is solely responsible for the organization and supervision of the protection and processing of personal data and has exclusivity in terms of legislation relating to the protection and processing of personal information.

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17. Lawmakers take aim at potential IRS biometric technologies

U.S. Sens. Jeff Merkley, D-Ore., and Roy Blunt, R-Mo., introduced a bill to block the Internal Revenue Service from deploying biometric technologies to obtain services. The No Facial Recognition at the IRS Act comes in response to the IRS’s intended use of facial recognition to obtain tax services that was ultimately halted in the wake of pushback from lawmakers and civil rights advocates. “Facial recognition technology is not perfect,” Merkley said. “This process is burdensome, invasive, inconsistent, and unnecessary – taxpayers deserve to have their privacy protected.”

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18. European Commission introduces draft Data Act

The European Commission proposed the Data Act,

which would regulate the use of non-personal data. The draft law carries provisions on sharing data, conditions for access by public bodies, international data transfers, cloud switching and interoperability. European Commission Executive Vice President Margrethe Vestager stated the law aims to “give consumers and companies even more control over what can be done with their data, clarifying who can access data and on what terms.”

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19. Irish DPC revised preliminary decision to halt Facebook transfers

Facebook owner Meta is facing an imminent order from Ireland’s data regulator to suspend data

transfers to the United States, in a far-reaching privacy case that has already led to threats from the social media giant to pull its websites from Europe. The DPC has given Meta, Facebook’s parent company, 28 days to respond to a revised decision before it is presented to members of the European Data Protection Board under Article 60 of the EU General Data Protection Regulation. A spokesperson for Data Protection Commissioner Helen Dixon said the decision is likely to be filed to supervisory authorities in April. In its response to the decision, Meta stated, “this is not a final decision” and that the DPC has “asked for further legal submissions,” but added, a halt on transfers “would be damaging” to businesses and individuals.

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TELECOMMUNICATION

20. Karnataka High Court strikes down online gambling ban, paving way for companies to resume operations:

According to reports, the Karnataka Police (Amendment) Act 2021 which banned online gaming (with stakes) and betting in the state, has been struck down by the Karnataka High Court as unconstitutional. The Court clarified that the Court was not striking down the entire Act, adding that it will not interfere if the government brings in a new law that is congruent with the Indian constitution.

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21. There is no proposal to include online gaming with gambling: MeitY in response to a parliamentary question

Minister of State for Electronics and Information Technology Rajeev Chandrasekhar said in response to a question in the Rajya Sabha stated that the Indian government has no proposal to include online gaming under the category of gambling.

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22. MediaOne appeals against Kerala High Court order upholding ban on channel; submits ‘national security’ a ruse to cancel license

Madhyamam Broadcasting Limited, the parent company of the recently banned MediaOne news channel, has filed an appeal before a Division Bench of the Kerala High Court challenging a recent order

of the Single Judge upholding the ban imposed by the Ministry of Information and Broadcasting (I&B Ministry) on the channel.

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23. Bangladesh Releases Draft Rules to Regulate OTT Platforms, Modelled on India’s IT Rules

The Bangladesh Telecommunication Regulatory Commission (BTRC) has come up with regulations, akin to India’s IT rules, 2021, for social and digital media, including OTT platforms in the country. The commission wrote that the BTRC Regulation for Digital, social media And OTT Platforms, 2021, was drafted so as to provide a complaint mechanism wherein users of digital platforms can register their complaint and get it addressed within a defined timeline.

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24. Kerala High Court upholds Central govt decision to revoke MediaOne news channel license

The Kerala High Court upheld the decision of the Union Ministry of Information & Broadcasting to revoke the licence of Malayalam news channel MediaOne. The Court held that there are sufficient intelligence inputs which justify the decision of the Centre in Madhyamam Broadcasting Limited v Union of India & Ors.

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25. BARC had sought 8 weeks to resume release of news channel ratings: Anurag Thakur

Broadcasters Audience Research Council (BARC) India had apprised the Ministry of Information and Broadcasting (MIB) that it was informing the constituents about the revised and augmented Data Reporting Standards. Further, BARC also told the MIB that it will need eight weeks' time to release viewership data for news and niche genres. This information has been provided by I&B minister Anurag Singh Thakur in the Lok Sabha.

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26. TRAI seeks submission by Feb 15 on 5G auction as telcos, satellite cos divided over allocation

Telecom operators and satellite players remained sharply divided at open house discussion held by Telecom Regulatory Authority of India (TRAI) on

rules for allocation of spectrum for 5G services in the auction planned to be held this year. TRAI has asked companies and other interested parties to provide their additional submission before February 15, especially with details around methods for valuation of the spectrum.

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27. CCI imposes a collective penalty of Rs 1,788 crore on five tyre manufacturers

Competition Commission of India (CCI) has imposed a collective penalty of over Rs 1,788 crore on five tyre companies for indulging in alleged cartelization. The five tyre companies include Apollo Tyres Ltd, MRF Ltd, CEAT Ltd, JK Tyre & Industries Ltd and Birla Tyres Ltd.

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SPORTS LAW

28. Garena Free Fire banned in India

Garena Free Fire has been banned in India following orders from the government (Ministry of Home Affairs) to block China-linked apps in the country. The game is among 53 other apps that have been banned under Section 69A of the Information Technology Act, 2000. Many of the apps named are considered clones of over 300 apps connected to Beijing, which have been prohibited in India since 2020. While Garena is based in Singapore, 18.7% of the company is owned by Tencent (a Chinese multinational technology and entertainment conglomerate and holding company headquartered in Shenzhen).

The Indian IT Department hasn't yet released a statement regarding the specific ban of Garena's Free Fire. As of yet, the game is not available for download either on Google Play Store or the App Store.

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29. UEFA and the United Nations World Tourism Organization (UNWTO) have agreed to partner for promoting sports tourism.

The European football body's President, Aleksander Čeferin, met with UNWTO secretary general Zurab Pololikashvili to acknowledge the impact both sectors can have, including promoting friendship, and solidarity in addition to social and economic change. As a part of the deal, UEFA will join the UNWTO Global Youth Tourism Summit, an event purposed for aiding young people to voice their views in the future of the industry and to reward them with skills and knowledge in tourism.

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30. Federation of Electronic Sports Associations of India to release a policy paper as a framework for the development of esports in India.

The said policy paper will seek to facilitate a policy-centered esports outlook that aims to address

the talent development ecosystem that covers the spectrum of talent, businesses, job creation, education, and revenue generation for India with regional centres of excellence.

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31. Alexander Zverev fined \$40,000 for outburst and breach of ATP Rules.

Alexander Zverev has been fined \$40,000 and faces a further review by the ATP for violently smashing his racket repeatedly against the umpire's chair.

He was fined \$20,000 for verbal abuse, \$20,000 for unsportsmanlike conduct and will forfeit more than \$31,000 in prize money and all rankings' points earned from singles and doubles action at the Abierto Mexicano tournament.

ATP will also launch a further review of the incident and an internal investigation, which could lead to more sanctions (such as ban) from the ATP.

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Established in 2008, headquartered in New Delhi, with branch office in Bengaluru, Mumbai and Bhuvneshwar, TMT Law Practice is India's premiere Law Firm in segment of Technology, Media and Telecom, behind India's iconic clients and judgements, often cited for "Where Law Meets Innovation"...

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