

# WRITE TO INFORMATION

Technology, Media, Telecommunication,  
January 2023

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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.



## A. TECHNOLOGY

### 1. The Supreme Court of India refused to stay the fine imposed by the Competition Commission of India (CCI) on Google

Google preferred an appeal against the decision of the National Company Law Tribunal and had sought a stay on the payment of the fine, which was imposed by the CCI over its anti-competitive policies, related to Android smartphones, which restrict other market stakeholders from entering the Indian market. The decision is said to have triggered strong reactions. Hailing the decision, Rohan Verma, MapMyIndia CEO, commented, “Today marks one very critical step towards India breaking free from the digital slavery Google has perpetuated on Indians for the last 15 years, and it is the right moment for all Indians to create our own indigenous ecosystem that gives India its rightful place at the forefront of the world, independent of foreign big tech monopolies”.

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### 2. The Ministry of Electronics and Information Technology’s amendments to the draft IT Rules, 2021 welcomed by online gaming industry

The Ministry of Electronics and Information Technology (MeitY) published the amendments to the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (IT Rules) in relation to online gaming. The amendments to the IT Rules have been welcomed by the online gaming industry. Prashanth Rao, Partner, Deloitte India, said “Clearly defined regulations will help remove ambiguity, build customer trust, gain investor confidence and have consistent pan-India operations”.

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### 3. Commission Nationale de l’informatique et des libertés (CNIL) imposes 3 million euro fine on Voodoo

Having carried out several checks on various mobile applications published by the company, Voodoo, France’s data protection authority, CNIL, levied a 3 million euro fine on Voodoo citing non-consensual user tracking.

The CNIL’s investigation revealed that the company applied Apple’s technical identifier without consent.

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### 4. Microsoft’s Azure to add ChatGPT

OpenAI’s ChatGPT will be added to Azure, Microsoft’s cloud-based service, according to the software giants. The announcement was made a week after it was reported that Microsoft was in the midst of discussions to invest approximately \$10 billion in OpenAI in order to take a larger stake than its’ initial investment of \$1 billion in 2019. Microsoft’s cloud customers will be able to have access to many OpenAI tools.

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### 5. Imbalance in control over digital platforms: Rajeev Chandrasekhar, MoS IT

In a bid to address the imbalance in the news industry, Union Minister of State for electronics and information technology, Rajeev Chandrasekhar, has urged tech aggregators to support digital news creators by sharing a slice of their revenue. Speaking at the Digital News Publishers Association conference, the minister added that the lack of an adequate system of checks and balances to ensure correct and factual news flow was an issue from a governance point of view.

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## B. MEDIA

### 6. Canada extends the term of copyright protection under its national legislation

Canada recently amended its national copyright legislation and extended the term of copyright from 50 years to 70 years after the death of the creator / author. The change has brought Canada in alignment with other jurisdictions that amended their national copyright protection legislations some decades ago with the European Union and the USA extending their copyright terms to 70 years at separate points during the 1990s. The Office

of the Minister of Innovation, Science and Industry attributed the change to the Canada-U.S.-Mexico (CUSMA) trade agreement.

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#### 7. Delhi High Court rejects Capital Foods' plea for injunction against a competitor on grounds of the words 'Schezwan Chutney' being descriptive

An application filed by Capital foods to restrain Radiant Indus Chem from using 'Schezwan Chutney' or 'Szechuan Chutney' marks was rejected by the Delhi High Court (DHC). The application filed before the DHC sought an injunction on the use of the marks by Radiant Indus Chem for its' product 'Mrs. Foodrite Schezwan Chutney'. The Court observed that the extensive use of the mark 'Schezwan Chutney' or 'Szechuan Chutney' by various manufacturers within the food industry indicates the mark more as a description of the product.

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#### 8. Famous sports apparel brand Adidas loses stripes trademark case against Thom Browne

The United States District Court in Manhattan dismissed Adidas AG's claim that luxury brand Thom Browne Inc's use of stripes on its clothing infringed its' signature three-stripe trademark. Adidas had sought nearly \$8 million in damages and losses after claiming similarities between Browne's parallel stripes motif and Adidas' three-stripe, citing that this similarity may mislead customers. This ushers in a new era of understanding in the concept of distinctive and similar marks and its usages.

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#### 9. Manchester United and Tezos Foundation accused of copying NFT

Popular football club, Manchester United, and its official blockchain provider Tezos Foundation were accused of copying designs and aesthetics in its new Non-Fungible Token (NFT) line belonging to an NFT artist Lucrece. The similarities led to some online community members questioning whether the artist was involved in the project. Lucrece refrained from

accusing MUFC specifically but posted an image on Twitter comparing the two pieces of art.

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#### 10. Samsung settles phone fingerprint patent lawsuit in a court in U.S.A.

Samsung Electronics Co. settled a patent lawsuit over biometric technology after facing allegations from Korean phone makers Proxense that it had violated intellectual property concerning the authentication of biometric data on electric devices. A joint stipulation was filed by both companies prior to the commencement of the trial in a Texas courthouse.

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#### 11. Delhi High Court recognises Sun Pharma and its' versions as a 'well known' trademark

The Delhi High Court granted 'SUN/ SUN PHARMA/ SUN PHARMACEUTICALS' the status of a 'Well-Known Trademark'. A plea was filed by Sun Pharmaceutical Industries Ltd. seeking a permanent injunction against Orison Pharmaceuticals from the specialties using the trade names 'ORISON/ ORISON PHARMA/ ORISON PHARMACEUTICALS' and the declaration of the trademark 'SUN/ SUN PHARMA' as a well-known trademark.

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#### 12. Google Board fails touchscreen patent challenge against Neonode Smartphone LLC

The Patent Trial and Appeal Board found that Google had not proven its' claims that a Neonode Smartphone LLC touchscreen technology are invalid. Google's argument that 13 claims in Neonode's US Patent No. 8,095,879 were obvious based on earlier patents was rejected. The ruling followed an earlier failed challenge by Samsung Electronics Co. and Apple Inc., who had argued the patent's claims were obvious based on a different set of prior art.

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### 13. Apple found to be in violation of U.S. Trade Laws

A United States Administrative Law Judge ruled that Apple had infringed on one of Masimo Corp's pulse oximeter patents by importing and selling certain Apple watches with light-based pulse oximetry functionality and components. The Judge concluded that four other patents at issue were not infringed.

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### 14. Amidst war, journalists' body calls upon Ukraine government to revisit new media law

The International and European Federations of Journalists (IFJ-EFJ) called upon the European Commission and the Council of Europe to convince the Ukrainian authorities to review the new media laws signed by President Volodymyr Zelensky. The new law has been called controversial with multiple provisions called problematic by representative trade unions of Ukrainian journalists. Under the law, the government can regulate print and online media, as well as internet, television, radio and online platforms.

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### 16. The Department of Telecommunications likely to seek law ministry's opinion for clarity over allocation of spectrum

The Department of Telecommunications (DoT) may seek the opinion of the law ministry on whether the allocation of spectrum to enterprises for rolling out private captive networks may be done through auction or administratively. The Union Cabinet had not specified the process for distribution when it approved direct allocation to enterprises.

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### 17. US Federal Communications Commission amends rules of notification of data breach to customers

In order to ensure faster reporting and address telecommunication carrier's data breach notification requirements, the US Federal Communications Commission (FCC) proposed to eliminate the seven-day waiting period before the customers may be notified of a breach by companies and launched a proceeding to strengthen data breach notification laws for telecommunications companies. The proposed amendments were passed unanimously with a 30-day period given for public comments.

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## C. TELECOM.

### 15. The Department of Telecommunications invited public consultations on a proposed new legal framework for telecommunications

The Department of Telecommunications initiated public consultations on a proposed new legal framework for telecommunications. The Draft Indian Telecommunications Bill, 2022 (Bill) aims to modernize the laws governing telecommunication and IT-related matters. The Bill seeks to incorporate all forms of telecommunication platforms, including social media platforms and Over- The-Top (OTT) services within its' ambit. The Indian Wireless Telegraphy Act, 1933, the Indian Telegraph Act, 1885 and the Telegraph Wires (Unlawful) possession Act, 1950 shall be repealed once the Bill comes into effect.

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## D. DISPUTES:

### 18. Journalists not exempted from disclosing source to investigative agencies: Delhi District Court

A closure report filed by the Central Bureau of Investigation (CBI) was rejected by the Chief Metropolitan Magistrate, Anjani Mahajan, at the Patiala House Court. The CBI was tasked with investigating how certain news channels and a newspaper had aired and published reports related to a disproportionate assets case against late Mulayam Singh Yadav and his family members. The Court observed that 'there is no statutory exemption in India to journalists from disclosing their sources to investigating agencies, more so where such disclosure is necessary for the purpose of aiding and assisting in investigation of a criminal case'.

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### 19. Imposition of costs in an award without reasons arbitrary: Delhi High Court

The Delhi High Court has ruled that an arbitral award shall state the reasons on which it is based, must pervade every aspect of the award, including the award of costs under the mandate contained in Section 31(3) of the Arbitration and Conciliation Act, 1996. The Court opinionated that “Awarding costs by a stroke of the pen, without stating reasons therefor, would fly in the face of section 31(3), apart from being opposed to well accepted canons of fairness and justice”.

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### 20. Insolvency proceedings under IBC cannot be initiated by an unregistered partnership firm: NCLT Kochi

The Kochi bench of the National Company Law Tribunal (NCLT), while adjudicating a petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC), held that an unregistered partnership firm cannot initiate insolvency proceedings under the IBC. The bench also noted that unregistered partnership businesses are prohibited under section 69(2) of the Partnership Act, 1932. It was observed that the status of the partnership firm was not disclosed in the petition and that the sum in relation to which the petition was filed was under a business contract.

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### 21. The Supreme Court of India (SC) tweaks its' 2018 verdict on euthanasia and 'living will'

A Constitution bench of the India's Apex Court C noted that the 'living will' procedure and guidelines for terminally ill patients should be modified in order to make them more workable, less onerous and less time consuming. The SC further observed that the Right to Life protected by Article 21 of the Constitution cannot be devalued while stressing that the right to die with dignity was also a part of Article 21 of the Constitution of India. In 2018, the SC had passed a landmark judgment declaring 'passive euthanasia' permissible and legalising 'living will'.

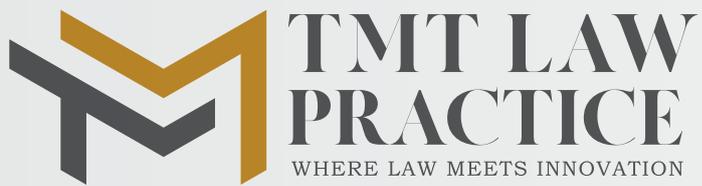
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## E. REGULATORY/POLICY:

### 22. The Ministry of Corporate Affairs invites public comments on proposed amendments in IBC

The Ministry of Corporate Affairs (MCA) has issued a notification inviting comment from the public on the proposed amendments to be made in the Insolvency and Bankruptcy Code, 2016 (IBC). The proposed changes relate to the admission of corporate insolvency resolution process (“CIRP”) applications, reinstatement of the CIRP, use of technology, streamlining the insolvency resolution process, recasting the liquidation process, and the role of service providers under the IBC.

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Established in 2008, headquartered in New Delhi, with branch office in Bengaluru, Mumbai and Bhubneshwar, 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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