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A GNLU CENTRE FOR LAW AND TECHNOLOGY INITIATIVE

Monthly Newsletter - TechTalk



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Serving as the conduit to the dynamic intersection of science, technology, and the law, our mission is to provide updates on the latest developments, promote academic excellence, and empower legal professionals to navigate this ever-evolving landscape. Join us in bridging the gap between these crucial fields and shaping the future of legal practice in our interconnected world.

↓ Enclosed in this newsletter are the following highlights:

Updates on law and technology, showcasing the latest developments in this ever-evolving field. Our curated content might just spark your next research topic idea. Stay informed and stay inspired and keep reading!

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GOOGLE'S CLASH WITH INDIAN STARTUPS: BATTLE OVER PLATFORM FEES

Google's conflict with Indian developers over in-app payment fees escalated as several apps, including matrimonial and streaming services, were delisted from the Play Store after the Supreme Court refused interim relief to the companies. Among the affected apps were Bharat Matrimony, Truly Madly, Quack Quack, ALTT by Balaji Telefilms, and Kuku FM. The move shocked the affected firms, with Bharat Matrimony's founder expressing dismay and Kuku FM's co-founder criticizing Google's actions as monopolistic. Despite this, some companies, like Quack Quack, expressed willingness to comply with Google's policies to regain access to the marketplace.

The government, represented by IT and Telecom Minister Ashwini Vaishnaw, intervened, stating that the fate of Indian startups cannot be decided solely by big tech companies. A meeting between the government, Google, and the affected developers was scheduled to resolve the dispute. The minister emphasised the importance of protecting the Indian startup ecosystem and ensuring fair policies.

Google, in response, defended its position, stating that it had provided ample time for developers to comply with its policies. The company insisted on enforcing its platform fees, arguing that allowing exemptions would create an unfair playing field. Despite criticism, Google maintained its stance on collecting fees from developers benefiting from the Google Play platform.

Following interventions and discussions, Google announced the temporary restoration of delisted apps, pending resolution of the legal dispute. However, developers would be required to pay the applicable platform fees. This decision was seen as a setback for the developers resisting Google's fees. Nevertheless, both parties expressed hope for a collaborative resolution in the future. Minister Vaishnaw expressed optimism regarding finding a long-term solution that would benefit both startups and Google.

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The Ministry of Electronics and Information Technology (MeiTY) has recently undertaken a significant revision to its contentious advisory pertaining to the regulation of Artificial Intelligence (AI) in India. This move has sparked a multifaceted debate within both the technology industry and legal circles, as stakeholders grapple with its implications and the broader landscape of AI governance. Originally issued on March 1, the advisory mandated that AI firms obtain explicit government approval before deploying their products online. This requirement drew sharp criticism from various quarters for its potential to stifle innovation and impede the growth of the AI sector. Critics raised concerns about the lack of legal basis for such directives and emphasized the importance of transparent and consultative policymaking processes.

In response to the backlash, MeiTY issued a revised advisory on March 15, which rescinded the requirement for government approval while retaining admonitions against bias, discrimination, and threats to electoral integrity. This recalibration of the directive follows extensive discussions and deliberations prompted by concerns raised by tech firms and legal experts. The genesis of the controversy can be traced back, in part, to Minister Rajeev Chandrasekhar's critique of Google's Gemini chatbot's response to a contentious query about Prime Minister Narendra Modi. This incident ignited broader conversations about AI compliance with India's IT laws and the need for regulatory clarity in this rapidly evolving domain. Despite Chandrasekhar's clarification that the advisory primarily targeted large tech platforms, questions persisted regarding its potential impact on startups and smaller AI firms.

Rohit Kumar, founder of The Quantum Hub, welcomed the revision as a positive step towards preserving the innovation ecosystem. However, he cautioned against the absence of procedural safeguards and advocated for a more consultative approach to policymaking to avoid reactionary measures in the future. MEITY's issuance of advisories without clear legal backing has raised concerns about regulatory overreach and administrative standards. This episode underscores the broader challenges inherent in technology regulation in India, highlighting the delicate balance between fostering innovation and ensuring accountability and ethical integrity in AI development and deployment. As the government endeavors to address these challenges, transparent and inclusive processes will be crucial in shaping a regulatory framework that promotes responsible innovation and sustains public trust in India's digital future.

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EU FINES APPLE €1.8 BILLION: THE UNFAIR ADVANTAGE OF APPLE MUSIC

The European Commission has levied its first antitrust penalty against tech giant Apple, amounting to €1.8 billion. This action follows a nearly four-year investigation triggered by a complaint from Spotify, alleging Apple's unfair practices in promoting Apple Music over competing streaming services. The accusations against Apple revolve around its App Store policies. The EU's antitrust regulator found that Apple unfairly prioritized its own music streaming service by prohibiting rivals like Spotify from informing users about alternative subscription options, particularly cheaper ones available outside of the App Store. Apple's imposition of a commission of up to 30% on App Store purchases was a significant point of contention. This commission was waived if users made payments directly on the app's website.

The fine on Apple underscores the EU's commitment to addressing anti-competitive behavior, especially within the tech industry. It represents one of the largest fines imposed on a major tech company in the EU to date. Moreover, under EU antitrust laws, affected parties can seek damages from Apple for its anti-competitive practices. Apple's violation of EU laws, particularly Article 102 of the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the European Economic Area Agreement, regarding the abuse of a dominant market position, led to the imposition of the fine. These laws prohibit unfair trading conditions and actions that stifle competition.

In response to the fine, Apple vehemently rejected the allegations, asserting that there was no evidence of consumer harm or anti-competitive behavior. The company criticized Spotify for attempting to manipulate App Store rules to its advantage and announced its intention to appeal the decision. The ongoing dispute between Spotify and Apple exemplifies broader tensions within the tech industry regarding app store fees and competition policies. Spotify's accusations against Apple, coupled with other ongoing antitrust investigations involving tech giants like Google and Meta (formerly Facebook), highlight the regulatory scrutiny facing dominant players in the digital marketplace.

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The Committee on Digital Competition Law, established by the Ministry of Corporate Affairs in February of the previous year, has issued a report advocating for legislation to manage the market dominance of major technology corporations such as Google and Meta. This report, released on March 12, underscores concerns about the overwhelming influence wielded by these Big Tech firms, emphasizing the necessity for regulatory measures to mitigate their market power.

One of the key observations highlighted in the report is the inherent advantage enjoyed by these tech giants due to their "network effects," enabling them to rapidly expand their user base and establish a formidable market position that proves daunting for potential competitors. The committee warns against the risk of digital markets becoming permanently skewed in favor of established players, potentially stifling competition and innovation. To address these concerns, the committee proposes the enactment of a new legislation dubbed the Digital Competition Act. This act would introduce proactive regulatory measures specifically tailored to address the challenges posed by large digital enterprises. Firms with a substantial presence in the market for essential digital services, termed Systemically Significant Digital Enterprises (SSDEs), would be subject to this regulatory framework.

Under the proposed legislation, SSDEs would be required to assess their own status and designate themselves accordingly. Failure to comply would result in penalties calculated based on the global turnover of the entire corporate group rather than individual domestic revenues. The specific regulations governing SSDEs would be determined following public consultations, allowing for stakeholder input in shaping the regulatory framework.

The potential impact of such regulatory measures on major tech enterprises, including Google, Apple, and Amazon, is substantial. While proponents argue that these regulations are necessary to curb monopolistic practices and safeguard competition, critics express concerns regarding the potential stifling effect on innovation. Nevertheless, the committee's recommendations signify a significant step towards establishing a comprehensive regulatory framework to address the evolving challenges posed by Big Tech dominance in the digital landscape.

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Recent revelations shed light on behind-the-scenes lobbying efforts by U.S. officials, resulting in India's reversal of a stringent laptop licensing policy. Implemented in August, the policy mandated licensing for all shipments of imported laptops, tablets, personal computers, and servers, prompting concerns about potential delays in sales processes. However, India swiftly rescinded the policy within weeks, opting instead to monitor imports and defer further decisions for a year. Documents obtained through U.S. open records requests illustrate the significant unease the Indian regulations provoked in Washington. U.S. officials expressed dismay over the suddenness of India's measures, which they deemed detrimental to the business climate and approximately \$500 million worth of annual U.S. exports to India. The urgency of the situation prompted private lobbying efforts, resulting in a rare victory for U.S. interests as India reversed its stance.

U.S. Trade Representative Katherine Tai personally conveyed the U.S. government's desire for India to revoke the licensing requirement during a meeting with Indian Commerce Minister Piyush Goyal. This high-level intervention underscores the seriousness with which Washington regarded the issue and its potential implications for bilateral trade relations. Amidst the diplomatic manoeuvring, U.S. officials and diplomats in India candidly acknowledged India's acknowledgement of its misstep in implementing the policy without prior consultation. The Indian Ministry of Information Technology conceded its error, attributing the decision reversal to mounting pressure from American companies operating in India.

Although Indian officials maintain that the policy shift was not a result of U.S. pressure, the emails and documents suggest otherwise. The sensitivity surrounding the issue was evident in cautionary directives issued to U.S. officials, emphasizing the need to tread carefully in public statements regarding India's trade policies. While India's decision to reverse the policy may alleviate immediate concerns for U.S. exporters, it underscores the delicate balance in U.S.-India trade relations. Despite India's efforts to promote local manufacturing and protect domestic interests, such policy maneuvers can strain bilateral ties and disrupt the operations of American companies in India.

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The European Union's landmark Digital Markets Act (DMA) has officially come into effect, ushering in a new era for the technology industry. The DMA primarily targets large tech giants, or "gatekeepers," such as Alphabet (Google), Amazon, Apple, Meta, Microsoft, and ByteDance (TikTok), by imposing strict regulations to promote fair competition and empower consumers.

The key changes brought about by the DMA include:

1. **Consumer Choice:** European consumers now have more control over their digital experiences. They can choose their default browser and search engine, as well as download apps from sources outside the Apple App Store.
2. **Interoperability:** Messaging services like WhatsApp and Facebook Messenger must now be interoperable with third-party messaging platforms, allowing users to communicate across different platforms.
3. **Limiting Self-Preferencing:** Tech giants are prohibited from giving preference to their own services over those of competitors on their own platforms, ensuring a level playing field.
4. **Fines and Sanctions:** Companies found to be in breach of the DMA rules face severe penalties, including fines of up to 10% of their global annual revenue, and in extreme cases, the possibility of being broken up.

The changes have already begun to take effect, with tech giants implementing measures to comply with the new regulations. While some experts express concerns about potential unintended consequences, such as the reinforcement of larger online platforms, the overall consensus is that the DMA will significantly transform the digital landscape, empowering smaller businesses and providing consumers with more choice and control.

The EU's bold move with the DMA is seen as a blueprint for other countries, including the United States, United Kingdom & India, to follow suit in regulating the powerful tech industry and promoting a more competitive and innovative digital ecosystem.

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GOOGLE FINED €250 MILLION BY FRENCH COMPETITION AUTHORITY IN NEWS PUBLISHERS DISPUTE

The French Competition Authority has imposed a €250 million (approximately \$272 million) fine on Google for failing to comply with commitments it made in a negotiating framework with French news publishers. This is the latest development in the ongoing dispute between Google and news publishers in the European Union over the compensation for the use of news content.

The fine was issued due to Google's failure to negotiate a fair payment for publishers' news content, as required by a 2019 EU copyright directive. France was the first EU member to adopt this directive, which aimed to establish a framework for balanced negotiations between publishers and digital platforms like Google.

This is the fourth fine levied against Google by the French Competition Authority in as many years for its failure to comply with the EU's legal framework. In 2021, the agency had fined Google €500 million (\$592 million) for similar issues.

Google has agreed to settle the latest fine, stating that it is time to "move on" despite considering the fine "not proportionate" to the issues raised. The tech giant has maintained that it has made efforts to address the concerns of the French watchdog.

The ongoing dispute is part of a broader effort by authorities in the EU and globally to force tech companies like Google to compensate news publishers for the use of their content on digital platforms. This is seen as a critical step in ensuring a fair and sustainable ecosystem for the news industry in the digital age.

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EU ADOPTS LANDMARK AI LAW: A COMPREHENSIVE REGULATORY FRAMEWORK

The European Union has unveiled a comprehensive rulebook for governing the use of artificial intelligence (AI) technologies, marking a significant milestone in the global effort to regulate this rapidly advancing field. The EU's AI Act is the first of its kind worldwide and is set to have far-reaching implications not only within the EU but also potentially serving as a precedent for other countries grappling with the challenges posed by AI.

The AI Act aims to strike a delicate balance between fostering innovation in the AI sector while simultaneously safeguarding fundamental rights, democracy, and environmental sustainability. The approach taken is a risk-based framework that imposes varying levels of obligations based on the potential impact and risks posed by different AI applications. The Act outright bans certain AI practices deemed too risky or unethical, such as biometric categorization systems that discriminate based on sensitive traits, social scoring systems, and the exploitation of vulnerabilities. It also places restrictions on the use of AI by law enforcement agencies, limiting the deployment of real-time biometric identification systems to specific cases with strict safeguards.

For "high-risk" AI applications, the Act mandates a range of obligations, including risk assessments, detailed logging, transparency, accuracy, and meaningful human oversight. Additionally, the Act grants EU citizens the right to submit complaints about AI systems and receive explanations for decisions that impact their rights. The Act also addresses the challenges posed by generative AI, such as deepfakes, by requiring the labeling of artificially generated or altered content. Furthermore, it imposes specific transparency requirements for general-purpose AI systems and their underlying models.

The EU's move to regulate AI is part of a broader global trend, with countries like the United States, China, India, and others also working on developing their own AI regulation frameworks. As the EU's AI Act takes effect, it is likely to serve as a reference point for other nations as they develop their own policies and guidelines for the responsible development and deployment of AI technologies.

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CHINA RELAXES SECURITY REVIEW RULES FOR SOME DATA EXPORTS

China's cyberspace regulator has issued new rules to facilitate and regulate cross-border data flow, easing compliance burdens for foreign companies. The rules, effective immediately, exempt data collected in international trade and cross-border transportation that does not contain personal or "important data" from declaration requirements. This move is seen as a relief for multinational corporations operating in China, although questions remain around how China defines "important data."

The rules finalize a relaxation of data export rules issued in September, which had caused confusion and concern among foreign firms. Chinese authorities have tightened control over data generated within the country in recent years as part of a national security drive. The new rules also establish a "negative list system" for free trade pilot zones, allowing them to independently determine which data needs to be included in security assessments.

In February, Shanghai announced plans to expedite approvals for foreign firms wanting to transfer local data offshore by leveraging its free trade zones. The rules also extend the validity of data export security assessment results from two years to three years. Despite these changes, more clarity is needed on the definition of "important data" and its implications for businesses operating in China.

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U.S. COURT DENIES META PLATFORMS' REQUEST TO DELAY FTC'S PRIVACY PROBE

Meta Platforms, formerly known as Facebook, has been unsuccessful in delaying the U.S. Federal Trade Commission (FTC) from reopening an investigation into alleged privacy failures. The U.S. Court of Appeals for the D.C. Circuit ruled against Meta's request, stating that Meta had not shown that its challenge to the FTC's authority was likely to succeed. The court said Meta had not met the burden of showing entitlement to an injunction pending appeal. The FTC's probe, announced last year, aims to tighten a 2020 privacy settlement with Facebook. The FTC wants to prohibit Meta from profiting from minors' data and expand restrictions on facial recognition technology. The agency has accused Meta of deceiving parents about protections for children.

In November, Meta filed a lawsuit against the FTC, challenging its constitutional authority to act as both an investigative and adjudicative body. Meta argued that allowing the FTC's action to proceed would violate its right to a trial by jury. U.S. District Judge Randolph Moss refused to halt the FTC's probe, stating that Meta had not overcome the FTC's strong public interest in scrutinizing its privacy controls. The D.C. Circuit's recent order addressed Meta's appeal of Moss's decision.

Separately, the FTC has accused Meta of antitrust violations in a lawsuit, alleging that Meta abused its power in the social media market to suppress or acquire competitors. If the FTC prevails in this case, Meta could be required to divest Instagram and WhatsApp. Meta has denied the FTC's allegations in both the privacy and antitrust cases. The company's legal challenges highlight the ongoing tension between tech giants and regulatory authorities over issues of privacy, competition, and corporate power.

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AMAZON FAILS TO SUSPEND EU'S DIGITAL SERVICES ACT REQUIREMENT ON ONLINE ADVERTISING

Amazon, the e-commerce giant, has lost its fight to suspend a requirement regarding its online advertising under the European Union's (EU) tech rules. The EU's top court, the Court of Justice of the European Union (CJEU), has backed the EU regulators, stating that the EU's interests outweigh Amazon's material interests. Under the Digital Services Act (DSA), which went into effect last year, Amazon was designated as a "Very Large Online Platform" (VLOP), subjecting it to tough rules to address illegal and harmful content on its platform. Amazon challenged a DSA requirement to make publicly available a repository containing detailed information on its online advertising and requested an interim measure to suspend this obligation until the court rules on the case.

A lower tribunal in September had agreed to Amazon's request for an interim measure, which prompted the European Commission to turn to the CJEU. The CJEU has now set aside the suspension order and dismissed Amazon's application for an interim measure. The judge acknowledged that Amazon's argument about the obligation unlawfully limiting its fundamental rights to respect for private life and the freedom to conduct a business was not irrelevant. The judge also said that without a suspension, it was likely that Amazon would suffer serious and irreparable harm before any judgment annulling the Commission's decision.

However, the judge stated that a suspension could have a detrimental impact on the objectives of the DSA. The judge said that a suspension "would lead to a delay, potentially for several years, in the full achievement of the objectives of the Regulation on a Single Market for Digital Services and therefore potentially allow an online environment threatening fundamental rights to persist or develop." The judge concluded that "the interests defended by the EU legislature prevail, in the present case, over Amazon's material interests, with the result that the balancing of interests weighs in favour of rejecting the request for suspension." Amazon expressed its disappointment with the decision, maintaining that it does not fit the description of a VLOP under the DSA and should not be designated as such.

The case is C-639/23 P(R) | Commission v Amazon Services Europe.

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UNITED NATIONS ADOPTS FIRST GLOBAL RESOLUTION ON ARTIFICIAL INTELLIGENCE GOVERNANCE

The United Nations General Assembly has unanimously adopted the first global resolution on artificial intelligence (AI). The resolution, proposed by the United States and co-sponsored by China and over 120 other nations, encourages countries to safeguard human rights, protect personal data, and monitor AI for risks. The non-binding resolution advocates the strengthening of privacy policies and the proper design, development, deployment, and use of AI systems to avoid undermining the protection, promotion, and enjoyment of human rights and fundamental freedoms.

"Today, all 193 members of the United Nations General Assembly have spoken in one voice, and together, chosen to govern artificial intelligence rather than let it govern us," said U.S. Ambassador to the United Nations Linda Thomas-Greenfield. The resolution is the latest in a series of initiatives by governments around the world to shape AI's development, amid concerns about its potential to disrupt democratic processes, facilitate fraud, and lead to job losses. In November, the U.S., Britain, and more than a dozen other countries unveiled the first detailed international agreement on how to keep AI safe from rogue actors, pushing for companies to create AI systems that are "secure by design." The EU has also taken the lead in this area, with lawmakers adopting a provisional agreement this month to oversee the technology. The Biden administration has been pressing U.S. lawmakers for AI regulation, but a polarized Congress has made little headway. Instead, the White House has sought to reduce AI risks to consumers, workers, and minorities while bolstering national security with a new executive order in October. According to U.S. National Security Advisor Jake Sullivan, the UN resolution took nearly four months to negotiate, and it gives the world "a baseline set of principles to guide next steps in AI's development and use."

While negotiators faced resistance from some countries, including Russia and China, the administration actively engaged with nations that hold different views on the matter. Both countries are actively exploring the use of AI tools for a variety of purposes, including espionage, as evidenced by a recent Microsoft report. The UN resolution is a significant step forward in the global effort to govern AI and ensure its responsible development and deployment, even though it is non-binding. It provides a framework for countries to work towards a more harmonized approach to AI regulation and oversight.

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SPOTLIGHTING RESEARCH TOPICS: EMPOWERING RESEARCH PAPER ASPIRATIONS

We understand that embarking on a journey to create impactful research papers can be both exciting and daunting. As you navigate through your academic pursuits, we're here to help illuminate your path and fuel your scholarly ambitions. This section presents a curated selection of broad research paper topics designed to spark your intellectual curiosity and inspire your next paper based on the latest developments of this month. Each topic represents an opportunity for exploration, discovery, and the potential to contribute to the ever-evolving landscape of law and technology. We believe that a well-chosen research topic is the cornerstone of a successful publication, and our aim is to empower you to make informed choices.

- *Proposed Digital Competition Act and its Implications for Digital Platforms*
- *Balancing Free Speech and Content Moderation*
- *Protecting Consumer Privacy in the Age of AI*
- *Cross-Border Data Flows and Data Sovereignty*
- *Enforcing Corporate Accountability for Privacy Violations*
- *Navigating the Intersection of Labor Rights and Technology*
- *International Cooperation in AI Governance*
- *The Role of Intermediary Liability in Content Moderation*

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