ABSTRACT

This column provides a country-by-country analysis of the latest legal developments, cases and issues relevant to the IT, media and telecommunications' industries in key jurisdictions across the Asia Pacific region. The articles appearing in this column are intended to serve as ‘alerts’ and are not submitted as detailed analyses of cases or legal developments. © 2017 Gabriela Kennedy. Published by Elsevier Ltd. All rights reserved.

1. China

Gabriela Kennedy (Partner), Mayer Brown JSM (gabriela.kennedy@mayerbrownjsm.com).
Qi Chen (Associate), Mayer Brown LLP (qchen@mayerbrown.com).

1.1. New developments relating to China’s Cybersecurity Law

1.1.1. Background

China’s Cybersecurity Law (“CSL”) has been in force since 1 June 2017, but a more important deadline for many multinational corporations (“MNCs”) that operate in China has been deferred to 31 December 2018. This is because the Security Assessment Measures for Cross-Border Transfer of Personal Information and Important Data (“Cross-Border Measures”) granted an 18 month grace period for network operators to comply with the data transfer rules.1 Given the uncertainty over how the CSL and the related measures (“CSL Measures”) will be interpreted and enforced when the grace period ends, new guidelines, measures or regulations are awaited with a certain degree of anticipation. We look at two recent developments relating to the CSL Measures below.

1.1.2. Enforcement actions under the CSL

The Cyberspace Administration of China (“CAC”) announced the commencement of investigations into three of China’s largest social media platform operators, Tencent’s WeChat, Baidu’s Tieba and Sina’s Weibo, on 11 August 20172 on the grounds that users of these social media platforms had disseminated information that involves violence or terror, false rumours, and pornography or that would otherwise endanger national security, public safety and social order. On 25 September 2017, the Beijing and Guangdong Cyberspace Administration Offices found the three companies to have violated Article 47 of the CSL and fined each company for the maximum amount of fines allowed under Article 68 of the CSL, or 500,000 yuan3 (about 75,600 USD) (“Enforcement Actions”). The fines were based on each company’s violation of Article 47 of the CSL, which requires network operators to manage the

---

2 See http://www.cac.gov.cn/2017-08/11/c_1121467425.htm; Chinese language only.

* Mayer Brown JSM, Hong Kong.
E-mail address: gabriela.kennedy@mayerbrownjsm.com.
https://doi.org/10.1016/j.clsr.2017.12.005
0267-3649/© 2017 Gabriela Kennedy. Published by Elsevier Ltd. All rights reserved.
The broad definition of network operator under the CSL potentially extends the applicability of the CSL to any MNC that uses IT systems in China or operates a Chinese website, irrespective of the industry in which the MNC conducts its business. While the companies involved in the Enforcement Actions are amongst the largest Internet companies in China, the same regulations would also apply to any MNC operating in China currently and which uses an IT system that would allow its users to transmit information to others (e.g., an internal company chat room or bulletin board). MNCs operating in China are well advised to immediately start reviewing and monitoring their existing policies and practices to ensure compliance with these and other obligations placed on network operators under the CSL.

1.1.3. United States tells WTO that it is concerned with China’s Cybersecurity Law

The United States submitted a communication to the World Trade Organization’s Council for Trade in Services (the “Services Council”) on 25 September 2017 on the “Communication” outlining its concerns with the CSL as part of the CSL Council’s next agenda. The Services Council is the WTO’s council responsible for overseeing the functioning of the General Agreement on Trade in Services (GATS), a trade agreement between all members of the WTO relating to the cross-border trade for services. Under the GATS, member nations agree to adhere to certain principles as they relate to the trade of services such as transparency in trade governance, treating all other member nations equally, and having no discriminatory measures to the detriment of foreign services or service suppliers. While the WTO has a set of dispute resolution rules to help its member nations resolve their differences, this Communication will not trigger the commencement of the dispute resolution process. Instead, the United States may seek to exert more political pressure on China during Services Council meetings and thereby achieve its goal without having to submit a formal WTO complaint.

2. India

Stephen Mathias (Partner), Kochhar & Co. (stephen.mathias@bgl.kochhar.com).
Suhas Srinivasiah (Partner), Kochhar & Co. (suhas.srinivasiah@bgl.kochhar.com).
Naqeeb Ahmed Kazia (Associate), Kochhar & Co. (naqeeb.ahmed@bgl.kochhar.com).

2.1. Privacy law updates – Committee issues white paper

2.1.1. Introduction

In August 2017, a constitutional bench of the Supreme Court of India delivered a landmark judgment holding that the right to privacy is a fundamental right under the Constitution of India. Even as arguments were being heard in the case, the Government of India proceeded to appoint a committee to suggest principles to be considered for a data protection regime in India and to draft a new data protection law.

On 27 November 2017, the Committee released a white paper on a data protection framework for India. The 200 page white paper covers a wide range of issues concerning privacy and data protection including territorial scope, grounds for processing personal information, individual participation rights, governance issues and remedies. Our first impression is that the committee has done a comprehensive

---

4 For more details on the definitions for network operators and CII operators, please see “China Passes Cybersecurity Law” Asia IP & TMT Quarterly Review, 2016 Q4, https://www.mayerbrown.com/files/Publication/4e76421b-7c12-4d24-afe4-620ce0a41b34/Presentation/PublicationAttachment/7e947d52-0a47-4544-b2da-babaf65e476161222-ASl-IP-TMT-QuarterlyReview-2016Q4.pdf.


دریافت فوری متن کامل مقاله

امکان دانلود نسخه تمام متن مقالات انگلیسی
امکان دانلود نسخه ترجمه شده مقالات
پذیرش سفارش ترجمه تخصصی
امکان جستجو در آرشیو جامعی از صدها موضوع و هزاران مقاله
امکان دانلود رایگان ۲ صفحه اول هر مقاله
امکان پرداخت اینترنتی با کلیه کارت های عضو شتاب
دانلود فوری مقاله پس از پرداخت آنلاین
پشتیبانی کامل خرید با بهره مندی از سیستم هوشمند رهگیری سفارشات