

Market Summary – Indonesia

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06/10/2021

[Electronic System Operators Registration \(ESO Registration\) Regulation 5/2020 \(Part 1\)](#)

As you are aware, the requirement is that foreign electronic service operators (ESO's) are obliged to register with the Minister of Communication and Informatics before their systems can be accessed by end-users. Given that the necessary online submission process for foreign ESO's was not put into place by May, when the registration was originally due, a 6-month extension was granted. With 6 months now having passed, and the online system for foreign ESO's still not having been activated, there has been some concern about the effect of non-compliance. We understand from some of our members that the Director General has stated that an additional 6-month grace period will be given for registration, such period to run from the time that the registration system for foreign ESO's is made available.

06/12/2021

[Electronic System Operators Registration \(ESO Registration\) Regulation 5/2020 \(Part 2\)](#)

We understand a registration system has been put in place for foreign ESO's but it appears this is targeted more at the trading sector and possibly not appropriate for media groups. We are checking with the Indonesian authorities and will confirm but please remember that all organisations will have six months from the date on which such a system goes live, to register.

[Cyber Media Law \(Part 1\)](#)

Draft bill predominantly aimed at big tech companies but similar goal to legislation initiative we have seen in Australia ie to compel tech outlets to negotiate with media providers for payment of fair revenues; currently only focused on news content.

[ITE \(Electronic Information and Transaction\) Law \(Part 1\)](#)

Revision exercise commenced to amend ITE (Electronic Information and Transaction) Law – strong lobbying afoot to ensure freedom of expression but current focus of drafters is to clarify provisions that are vague and open to multiple interpretation. Unlikely this will happen in 2021 as DPR goes on recess on 16/12/21.

[Broadcasting bill](#)

No update

[Omnibus law \(Part 1\)](#)

The Constitutional Court, on 25/11/2021 ruled the Omnibus Law unconstitutional (on the basis of vagueness as to whether it constituted a new law or a revised law and due to its lack of public debate and consultation) and has given the government two years to make amendments; until such time, has to cease issuing additional implementing regulations. Our understanding from some of our members is that, while this ruling may result in some business uncertainty regarding eg foreign investment, we should for now, proceed, as if it is in force.

[Analog to Digital TV switchover \(Part 1\)](#)

Kominfo has announced that they will continue with the Analog to Digital TV switchover as planned with the first phase to be completed by the end April 2021.

16/12/2021

[Electronic System Operators Registration \(ESO Registration\) Regulation 5/2020 \(Part 3\)](#)

Please note that this system for registration is now live. As we indicated in our previous regional policy update, some of our members were of the view that the format is far more appropriate for the trading sector, less for the media sector. Given that registration has to be completed within six months of the system going live, until we have further clarity, we have decided to go ahead and translate the document. A copy is attached.

[Broadcasting Bill \(Part 1\) & ITE Law \(Part 2\)](#)

The Bills are now formally postponed to 2022.

03/03/2022

[Mandated network use fees debate \(Part 1\)](#)

You will all be aware of the debate which remains ongoing in Korea - we are witnessing similar arguments being made in other markets like Indonesia and Australia. The CEOs of Telefónica, Deutsche Telekom, Vodafone and Orange have recently called on the European Commission, in an open letter, to make large content providers contribute to the infrastructural investments. These parties stressed that they have had to make massive investments to upgrade the capacity of their networks during the COVID pandemic because internet traffic surged due to the lockdowns.

20/04/2022

[Omnibus Law \(Part 2\)](#)

No significant movement in market - focus still squarely on amendments required to be made to the Omnibus Law to ensure that it complies with the requirements of the Constitution.

07/06/2022

[Revised Law Number 12 on Formation of Legislation](#)

No major updates on Indonesia save for the fact that the DPR revised a revised Law Number 12 of 2011 concerning the Formation of Legislation (UU PPP) on 24/5/2022.

[Omnibus Law \(Part 3\)](#)

The Constitutional Court had objected to the way the Omnibus Law had been formulated. So it appears the government moved the goal posts; rather than change the Omnibus Law, they simply changed the regulation on formulating legislation to include the omnibus law method. Of course, the other issue which still needs to be addressed is the Constitutional Court's objection to the lack of debate during the process so we may expect to see public hearings being conducted soon. Other laws are still on hold until the Omnibus Law is passed.

28/06/2022

[Electronic System Operators Registration \(ESO Registration\) Regulation 5/2020 \(Part 4\)](#)

For those of you who are classified as an Electronic Service Operator and have not yet registered as such according to Regulation 5/2020, please note that the deadline for registration is 20 July 2022. One of our members recently requested clarification of the regulation so I am attaching it below for ease of reference.

Regulation 5/2020 requires that all private electronic system providers register through the online single submission portal **before 20 July 2022**. It applies to all private ESP's (established in and outside of Indonesia) that own portals, websites or applications which are used to:

- Facilitate , manage or offer goods/services;
- facilitate, manage or operate financial service transactions;
- Transmit paid-for digital materials using a data network to a user's device;
- Provide a search engine/information service
- Process personal data for electronic transactions by the public.

The reason for the earlier reluctance by companies to register was based on two further obligations that registration demands:-

1. Compliance with content moderation obligations including (i) ensuring no illegal information/information that disturbs public order is contained in the service and (ii) compliance with robust takedown provisions; and
2. Provision of access to the electronic system and data upon receiving a request from the relevant ministry or government agency (Please Note: a contact person has to be appointed on the ground to facilitate this access).

Penalties vary from takedowns to service suspensions.

In short, if you own and operate an electronic service in Indonesia, you have to register. Several companies had been pushing back until recently but DG Semy has been very clear – there is no option but to register and by no later than 20 July. We understand from discussions with other members that it is mainly targeted at local players and foreign social media companies but there is nothing in the law to exempt foreign curated content providers, neither does it contain any exemption for certain genres of content.

25/07/2022

[Electronic System Operators Registration \(ESO Registration\) Regulation 5/2020 \(Part 5\)](#)

Just to let you know that Bettina, our consultant in Indonesia, has confirmed that the deadline for registration (in accordance with Regulation 5/2020) has been **extended to 27 July 2022**. Please note that Director General Semy has recently been quoted in The Jakarta Post as follows:-“All unregistered DSPs will be categorized as illegal, and as illegals, in accordance with [the Electronic Information and Transactions or ITE] law, they can be blocked.”

Judicial Review of ITE Law (Part 3)

On 20 July 2022, the Constitutional Court rejected a judicial review of certain provisions of the ITE Law -Article 27 Paragraph (3) and Article 28 Paragraph (2) relating to hate speech / and criminal defamation. The Constitutional Court's concluded as follows: "The Court considers that the provisions of Article 27 Paragraph (3) and Article 28 Paragraph (2) of the ITE Law do not create legal uncertainty and have provided legal protection to everyone as guaranteed by the 1945 Constitution” The court went on to say that the petition of the applicants regarding Article 27 Paragraph (3) and Article 28 Paragraph (2), which claimed that the ITE Law provisions are contrary to the 1945 Constitution [which recognises free speech as a fundamental right], “is without legal basis.” Before the ITE Law was passed, criminal defamation was already regulated under Article 310 of the Criminal Code (KUHP), which makes it an offence to “intentionally damage the reputation or honour of a person by alleging a certain fact, with the clear intention of making that fact publicly known” UNLESS it is made in the public interest (Article 310(3)). When the ITE Law was first passed in 2008, it was criticised for overlapping with these provisions of the KUHP. When it was formally challenged in the Constitutional Court back in 2008, the Court ruled that the ITE Law did not introduce a new criminal offence but was simply adding a new element (online defamation) to “offline” defamation under the Criminal Code. For ease of reference, the respective provisions are included below:

Article 27 Paragraph (3) - "Everyone intentionally and without rights distributing and/or transmitting and/or making accessible electronic information and/or electronic documents that contain insults and/or defamation contents".

Article 28 Paragraph (2) - "Every person intentionally and without rights disseminates information aimed at causing hatred or hostility to certain individuals and/or community groups based on ethnicity, religion, race, and inter-groups." (SARA)".

18/08/2022

Regulation of the Minister of Communication and Informatics No. 5 of 2020 concerning Private Electronic System Operators (Part 6)

Several organisations have now formally registered. We understand from our consultant in Indonesia that the narrative on the ground has quickly moved on from blocking legitimate sites like PayPal and Yahoo (who were slow to register) to blocking gambling sites instead. Apparently, there has been some speculation in the press about a few stakeholders considering instituting legal action against Kominfo but nothing has been confirmed . We will keep an ear to the ground and update you when we know more.

Regulation on Post, Telecommunications, and Broadcasting

The Supreme Court has cancelled Article 81 (1) PP46 2021 which required that “all broadcasters shall lease multiplexing slots from multiplexing providers” for digital FTA TV. The remainder of the regulation has been left intact. Kominfo is still waiting for clarification from the Supreme Court but has announced that this order in no way impacts the digital switchover timeline which is still planned for 2 November 2022. Certain media owners continue to lobby the government to delay the migration arguing that many consumers still rely on their old analogue TV's and that the new digital tv's are unaffordable for many consumers. This latest ruling from the Supreme Court adds insult to injury as the obligation to lease multiplexing services from these same media owners, has now been overturned.

[Personal Data Protection Bill \(Part 1\)](#)

Both DPR and the Government are pushing for the PDP bill to be ratified by the end of the year, so it looks increasingly likely it will happen. We will monitor closely.

We understand from our consultant that only once the PDP Law is ratified will the focus be turned on the ITE Law and only if that is passed will the Broadcasting Law be revisited.

06/09/2022

[Personal Data Protection Act \(Part 2\)](#)

In the last few weeks there has been several high profile data breaches including 1.3bn SIM cards and the Indihome data breach of 8 million customers. Given those breaches, there is now increasing pressure on the government to pass the Personal Data Protection Bill. The draft law has been finalised and a meeting is being held with Kominfo today for the bill to be returned to DPR – it is likely to be passed in September. Currently, personal data protection regulations can be found incorporated in several laws and regulations eg the use of personal data in electronic systems is governed by the ITE law. The PDP Bill is largely based on GDPR and includes definitions not currently covered by existing regulation such as data controller, data processor and sensitive personal data. We anticipate that, once this law is ratified, the government will commence work on the ITE Law so it will be interesting to see how the two pieces of legislation will compliment each other in terms of the data protection provisions.

[Analog to digital switchover \(Part 2\)](#)

Kominfo changed the ASO from three phases to “multiple ASO” meaning that each district will switch off when it is ready rather than on a specific date although the final deadline remains as 2nd November 2022.

23/09/2022

[Personal Data Protection Act \(Part 3\)](#)

The data protection bill was passed two days ago. While the law includes a two-year “adjustment” period, it fails to specify how violations are to be handled during that adjustment phase. The issue we raised in our last policy update email regarding the ambiguity of whether corporate fines will be calculated with reference to annual *Indonesian* revenue or annual *global* revenue, has not been addressed.

12/10/2022

[Personal Data Protection Act \(Part 4\)](#)

As we shared in a recent policy update email, Indonesia has suffered a spate of recent data breaches. Not surprising then that the Personal Data Protection Bill was issued so quickly. It has now been approved by Parliament and awaiting Presidential signature so is still not formally enacted. It will also have a transition period of 2 years so companies will have time to build their compliance plans. “Personal data processing” is referred to in the bill very widely as encompassing all possible methods of using data including collecting, managing, analysing, storing, revising, displaying, announcing,

disseminating, disclosing, deleting etc. There is currently no specific data protection authority mentioned – it will be appointed by the President and will report to the President. Key points to note:-

- a. Different compliance requirements apply based on whether a company is a data controller or data processor with data controllers being understood as those entities which give instructions to data processors. Understanding where your company is in the chain, will be key.
- b. Personal data is categorized into general personal data and specific personal data. General personal data includes generic information, such as name, gender, nationality, religion and marital status. Specific personal data includes particular information such as health data, biometric data, genetic data, criminal records, and personal financial data. Rather unhelpfully, no clarification is offered in the Bill as to how this differentiation is to be addressed in practice and /or whether any additional obligations in respect of specific personal data, are to be assumed.
- c. Explicit consent is not the only basis on which to process personal data – the Bill recognises other means on which to validly do so including fulfilment of a data controller’s obligations or fulfilment of a duty related to public interest.
- d. Data controllers that perform data processing with high potential risk (including large scale data processing or use of new technology), must prepare a data protection impact assessment. There is very little clarity on what constitutes high personal risk in the document.
- e. Data controllers and data processors that process personal data for the purpose of public service, those that have core activities that require systematic and orderly monitoring of large-scale personal data processing, and those that process specific personal data or criminal records, must appoint a data protection officer to ensure compliance. The educational requirements for this DPO, are to be set out in implementing regulations.
- f. Offshore transfer of personal data is acceptable if the receiving nation of the personal data has a similar or higher level of personal data protection. However, this requirement can be set aside if: (i) the sending data controller can ensure sufficient and binding personal data protection, or, if (i) cannot be fulfilled, (ii) there is consent from the data subject. One key article on the Bill points out that only data controllers are mentioned, suggesting that only they will be allowed to transfer data to foreign jurisdictions.
- g. Breach notification within 3 days to both the data subject and the data authority is compulsory. Details of disclosure and measures to be adopted to address the breach, will need to be communicated.
- h. Two notifications to data subjects of transfer of their data has to be done in cases of mergers, acquisitions, dissolutions and consolidations – once before and again after the corporate action.
- i. The administrative sanctions will include warning letters, temporary suspension of data processing activities, deletion of personal data, and/or administrative fines (the amounts of which are not yet determined).
- j. The criminal sanctions are in the form of a monetary penalty of IDR 4-6 billion and/or imprisonment of 4-6 years, depending on the crime. In addition, there are extra provisions if the crime is conducted by an entity, i.e:
 - i. Criminal sanctions can be imposed on the management, the controller, the instructor or the beneficial owner of the entity, and/or on the entity itself – note that the entity can only be imposed with a monetary penalty.

- ii. The monetary penalty will be 10 times the amount stated above.
- iii. In addition to the monetary penalty, additional criminal sanctions can be imposed such as seizure of profits/gains, freezing of business, permanent prohibition of certain acts, closure of business, revocation of license and/or dissolution of the entity.

11/11/2022

[Personal Data Protection Act \(Part 5\)](#)

On September 20, 2022, Indonesia's parliament ratified the Personal Data Protection Act (the "Act"). The Act is the first comprehensive data protection law to be enacted in Indonesia and will come into effect on a date set by the Minister of State Secretariat. Organizations subject to the Act will have two years to come into compliance with the Act's requirements. By way of reminder, the Act requires entities (whether public or private) that handle Indonesian residents' personal data to ensure the protection of the data in their systems. The Act also will impose sanctions for the mishandling of personal data, including prison terms of up to six years for falsifying personal data for personal gain. The Act provides the Indonesian president with the authority to create an oversight body to levy fines for violations of the Act. Fines of up to two percent of an entity's annual revenue may be levied for violations of the Act. Additionally, those in violation of the Act may have their assets confiscated or be imprisoned for up to five years. Under the Act, Indonesian residents will be able to claim compensation for breaches of their personal data and will be provided certain privacy rights, including the rights of access, deletion and restriction.

[ITE Law \(Part 4\)](#)

It is anticipated that now that this law is passed, the legislature will turn their efforts into amending the ITE Law, which was put on hold while the government focused on addressing the spate of data privacy breaches which had recently occurred within Indonesia.

19/5/2023

[ITE Law \(Part 5\)](#)

We had anticipated that debate would resume on the revision on the 2016 Internet and Electronic Transactions Law (ITE) once Indonesia's fasting month ended (middle of last month). However, Johnny G. Plate, the Communication and Information Technology Minister was arrested 2 days ago on corruption charges; as yet it remains unclear the impact this will have on Kominfo. In the meantime, Muhfud MD has been appointed acting Menkominfo on a temporary basis.

[Appointment of new positions at Kominfo](#)

Other recent developments in Indonesia have revolved around the appointment of a new Chairman and Vice Chairman at the KPI, as well as the creation of a new Deputy Minister position at Kominfo. The new Chairman of KPI is Ubaidillah; he was previously a KPI Commissioner from 2016 -2019 responsible for content. The new KPI Vice Chair is Mohamad Reza; he was previously KPI Commissioner from 2019-2022 during which time he was coordinator of broadcasting system and structure management. More interesting is President Jokowi's decision to create a Deputy Minister role at Kominfo – previously Kominfo hasn't been seen as prestigious enough to warrant a Deputy Minister.

04/08/2023

Film Law

Some of you may be aware that the LSF (Lembaga Sensor Film Republik Indonesia), recently called a meeting with OCC players. For those of you who don't know the LSF, they are the Indonesia equivalent to the Filipino MTRCB, responsible for ratings, classification and censorship under the Film Law. Their remit is unclear but they are generally understood to have a charter which only covers film (theatrical) and television. On several previous occasions they have sought to assert control over OCC players stating they come under the regulatory ambit of the Film Law. You may recall that a similar issue arose when the Broadcasting Law was attempted to be applied to OCC players, but in this case the legal challenge found this not to be the case. As we start to approach election season however, there is heightened sensitivity around content that is available on OCC platforms (including nudity, LGBTQ content etc) which is only available on OCC platforms as such content would be prevented by the LSF pre-certification process. LSF therefore invited all OCC players to attend a meeting, implying that the Film Law was applicable to OCC content and that pre-certification would be required. There was substantial pushback from a number of players, including local companies refuting the LSF assertion. Kominfo were present as the regulator of internet content but failed to sufficiently make the argument that under MR5, OCC content is already regulated. The meeting ended with no further action required, although LSF have reportedly requested quarterly meetings with the OCC industry. It is possible that further pushes will be made to attempt to widen the remit of the LSF and bring the OCC industry under the Film Law. We will monitor the situation closely and engage as needed.

12/12/2023

Broadcasting Bill (Part 2)

Louis and Clare visited Jakarta in September for the Indonesia in View and took advantage of that to meet with the KPI and the Minister for Tourism and Culture, amongst others. This gave us a chance to meet with the new Chairman of KPI and introduce AVIA to the new Commissioners. Chairman Ubaidallah was interested to explore KPI's role in regulating online content. We explained that AVIA's view was that a self-governance approach was preferable and introduced them to our Self Governance Framework. We asked about the status of the Broadcasting Bill which was currently being discussed in Parliament. KPI noted that they were seeking changes to the Broadcasting Bill to give them the legislative oversight of online content. However, there were other, more urgent Bills that would be focused on before the Broadcasting Bill, most notably the ITE Law.

ITE Law (Part 6)

We had initially assessed that the ITE Law wouldn't progress until early next year. However, rather unexpectedly given the impending elections, the Parliament very quickly passed the ITE Amendments on Wednesday last week. Whilst we had been tracking this and were aware that an amendment was needed in order to bring some of the ITE Law into line with the Criminal Code, we had anticipated that this wouldn't progress until early next year. We are still analysing the contents and implications and plan to give a detailed briefing at the next Regulatory & Anti-Piracy Committee meeting next Monday. But the initial assessment is that there is limited effect on online content, although there are provisions focusing on operators providing safety provisions for children; restrictions on content which violates decency, is pornographic or gambling and the ability for the government to terminate access to such content.

12/03/2024

[ITE Law \(Part 7\)](#)

Indonesia elections have now taken place, although the official results have yet to be announced, it is anticipated that Defence Minister Prabowo Subianto will be the new President in October 2024. From a policy perspective, given the ITE Law Amendments were passed in December, the focus now turns to the implementing legislation which has yet to be written. Whilst we broadly anticipate these will take at least a year and are unlikely to have a significant impact, given the vagueness of language regarding, for example, child protection, we will seek to engage with Kominfo, who have the pen, to ensure that any implementing language is as unambiguous as possible and do not place any unintended consequences on members

03/07/2024

[Draft Broadcasting Bill](#)

Indonesia, as we know, is another market where there's been an election and we are now in that period with an outgoing President, with the new one not due to take up the role until October. This potentially means that the outgoing administration could attempt to rush through some unhelpful legislation or may mean that the clock runs down and everything re-starts with the new Administration. This is a particularly concerning issue with regard to the Draft Broadcasting Bill which, as currently drafted, would be extremely unhelpful. There has been much press reporting about the plans for this, both focusing on potential provisions as well as timing. A version of the Bill has apparently been drafted by the DPR Committee who tried to release it without having consulted key departments, notably Kominfo. The subsequent uproar and press coverage resulted in its withdrawal but there remains the risk that it could again be presented for debate before the change of government. As currently drafted the Bill is extremely challenging for our industry from a number of angles, not least with the increase of control KPI would get, the banning of foreign advertising and restrictions on foreign broadcasters and press restrictions. It is possible that it could re-emerge on the Parliamentary calendar for discussion and, as we have seen before, the Bill could be passed with limited to no ability for consultation or submissions. We will follow this issue closely – the best outcome would be, as some commentators have suggested, that it doesn't come up for discussion but is instead left for the new government to start again on.

[ITE Law \(Part 8\)](#)

Elsewhere, the ITE Amendments relating to Child Protection Governance implementing legislation were issued back in May. AVIA submitted our comments to Kominfo, in particular asking for clarity that the text should be consistent with Indonesia's new Personal Data Protection Law which is due to come in in Oct 2024, with a key need to focus on the request to minimise additional compliance requirements. At short notice Kominfo convened a discussion earlier this week for AVIA and other interested bodies to go through the various points that had been raised. Apparently this is one of a number of consultations that Kominfo are having, the result of which will be a revised draft to be issued in mid-July. Our consultant was able to attend and underscored our concerns on several key Articles. Of key interest to members, the text will be amended on Article 5 and 16, but no change has currently been accepted for Article 17. Once we receive the updated text we'll circulate it to members again.