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# THE TECHNOLOGY NEWSLETTER

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## INTRODUCTION

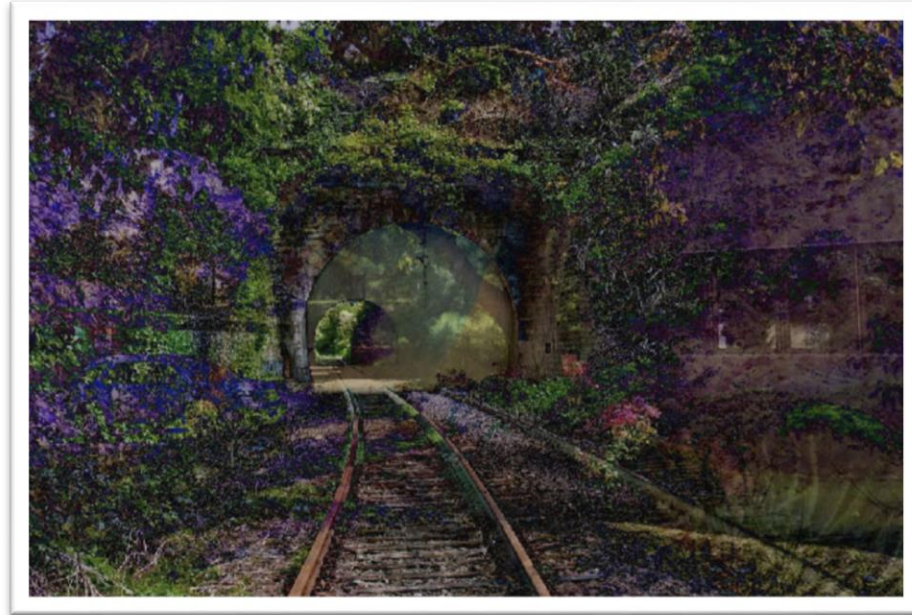
The Argus Technology Newsletter discusses recent developments in technological advances or milestones or events. As lawyers, we enjoy delving into the legal nuances and implications of technological changes and analysing their impact on our clients and their activities. It is said that law always lags behind technological advances and there could be some truth behind such statement, but there is no reason for lawyers to lag behind technological advances.

The Argus Technology Newsletter is not meant to be a substitute for your regular technology periodical. Instead, we hope and promise to offer a lawyer's insights into technological change and innovation.

Argus Partners has developed a strong and a robust technology and data privacy practice, which spans transactional advisory, corporate and regulatory advisory as well as contentious matters and disputes. Whilst physically the attorneys are based out of our Mumbai, Delhi & Bangalore offices, the team is servicing clients across the globe on Indian legal issues in technology and data privacy.

## Copyright and AI

*Contributed by Rabia Rahim (Associate)*



Technological advancements frequently result in the emergence of new moral dilemmas that legal practices take time to catch up and account for. Imaging workflows that are executed by artificially intelligent entities and algorithms present similar challenges in the domain of litigation. How does a law-making or governing authority address the aspect of intellectual property when the creation happens through the engagement of an artificially intelligent, non-humanoid entity?

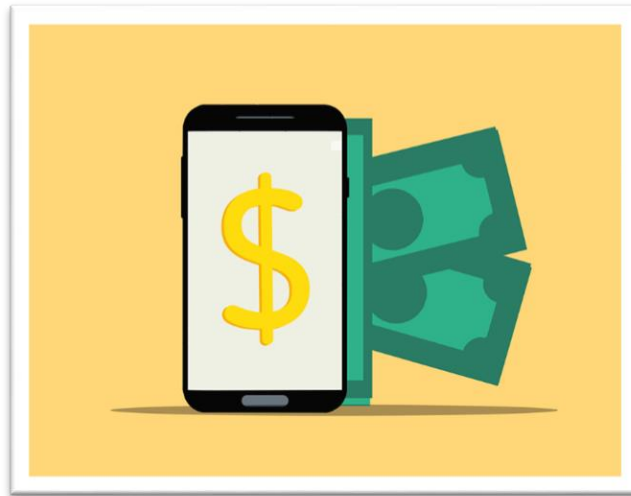
The Copyright Office in the US (“**Office**”) has recently denied an artificially intelligent entity (“**Creative Machine**”) the right to copyright a visual creation. Dr. Steven Thaler, a prominent practitioner in this field, made an attempt to gain intellectual property rights on behalf of an Artificial Intelligence (“AI”) imaging engine of his creation. A 3-member board ruled that the AI-generated image lacked tangible elements that indicate authorship by a human being. The board maintains that this notion constitutes an essential standard for the protection of rights in the realm of copyrights and intellectual property.

Dr. Thaler’s application to the Copyright Office was to copyright, on behalf of the AI, “A Recent Entrance to Paradise.”, a two-dimensional artwork created by the AI. Thaler describes the artwork to be a part of a series that is a “simulated near-death experience”; the AI algorithm reprocessed pictures to create hallucinatory images and a fictional narrative about the afterlife. Since the AI performed this reprocessing with minimal human intervention, the Copyright Office rejected the application for copyright by Dr. Thaler on behalf of the AI. The Office held that “the nexus between the human mind and creative expression” is an essential element for awarding copyright.

So, if a person tries to copyright a work similar to that created by the Creative Machine as a product of their own creativity and effort, the Office may grant such person the copyright over the work. Therefore, until there are further amendments in the law to incorporate technological advancements in the realm of AI and AI’s capabilities, humans will be expected to play intermediary.

## Ukraine Passes a Law Legalising Cryptocurrency

*Contributed by Smriti Tripathi (Associate)*



Ukraine has enacted a legal framework for its cryptocurrency industry. The “virtual assets” law determines the legal status, classification, and ownership of virtual assets. It also introduces financial monitoring measures for virtual assets. Suitable changes to Ukraine’s tax code and civil code are currently being prepared for a full-fledged market of virtual assets.

The new law will allow foreign and Ukrainian cryptocurrency exchanges to operate legally in the country and banks will be allowed to open accounts for crypto companies. Ukraine’s National Securities and Stock Market Commission will regulate the market. The Commission will, *inter-alia*, be responsible for issuing licenses to crypto businesses and implementing state policy in the industry.

During the Russia-Ukraine conflict, cryptocurrencies have taken on an important role in Ukraine. Millions of dollars in cryptocurrency have flowed in to support Ukraine’s army and hacktivist groups. Since Ukraine began accepting cryptocurrency donations, it has expanded the number of cryptocurrencies that it accepts for donations and has raised over \$63 million so far, according to blockchain analytics firm Elliptic.<sup>1</sup>

The Ukrainian government has also recently launched an official website to centralize its crypto-based fundraising effort. The website explains that Ukraine is accepting several cryptocurrencies, including bitcoin and dogecoin, to support its fight against Russia. The government has also engaged many crypto companies to help.

Ukraine now ranks fourth in the world in terms of crypto adoption, according to the blockchain research company Chainalysis.<sup>2</sup>

Ukraine’s cryptocurrency law has come at a time when countries around the world are determining how to regulate the crypto industry. While El Salvador has made bitcoin a legal currency and has sought to make the country a hub for crypto activity, China is looking to wipe out trading and cryptocurrency mining. Some countries, like the United States, Canada and Australia on the other hand, have taken the middle approach wherein trading in

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<sup>1</sup> <https://www.cnbc.com/2022/03/17/ukraine-legalizes-cryptocurrency-sector-as-donations-pour-in.html>.

<sup>2</sup> <https://www.vox.com/recode/22955381/russia-ukraine-bitcoin-donation-war-crypto>.

cryptocurrencies (which are regarded as property/asset) is allowed and such trading is subject to taxation and anti-money laundering laws, just like any other asset class.

Legalizing Bitcoin as legal tender will force businesses to accept Bitcoin as a payment method, alongside the fiat currency – such as the US dollar, Indian rupee etc. One of the main reasons why nation-states have not yet legalised cryptocurrency as legal tender could be its highly volatile nature and the unpredictability of the disruption that it may cause.<sup>3</sup> It is also possible that governments around the world are waiting for the underlying blockchain technology to mature before giving sovereign backing to this form of currency.

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<sup>3</sup> <https://www.ndtv.com/business/how-many-countries-have-provided-bitcoin-the-status-of-legal-tender-2517591>



## Dubai Promulgates Law to Regulate Virtual Assets

*Contributed by Anurag Prasad (Associate)*



On March 11, 2022, the emirate of Dubai, United Arab Emirates promulgated a legal framework to regulate virtual assets in the interest of investor protection (“**VA Law**”). It was notified that the VA Law would be applicable throughout the Emirate, including special development zones and free zones, but not in the Dubai International Financial Centre (“**DIFC**”).

The VA Law provides for the setting up of the Dubai Virtual Assets Regulatory Authority (“**VARA**”) and laws down the powers and functions of VARA. The salient powers and functions of VARA are summarized below:

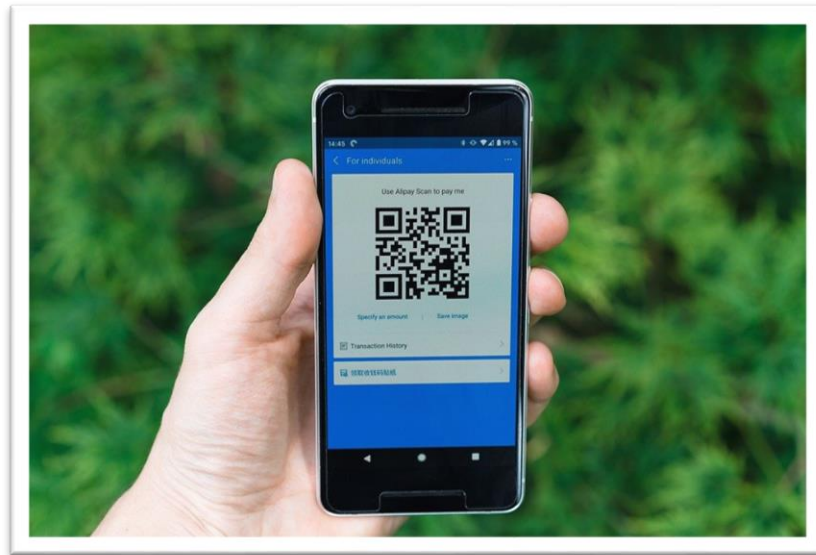
1. VARA shall have a legal personality and have financial autonomy. VARA shall be responsible for licensing and regulating the virtual asset sector across Dubai’s mainland and the free zone territories (excluding DIFC).
2. VARA shall be responsible for coordinating with the Central Bank of the UAE and the securities regulator of the UAE.
3. VARA shall be responsible for issuing guidelines and procedures for conducting virtual assets-related activities including management services, clearing and settlement services, and the classification of different types of virtual assets.
4. In addition to the above, VARA shall oversee the issuance and trading of virtual assets and tokens; authorising virtual asset service providers; ensuring data protection; monitoring transactions and preventing price manipulation.
5. The VA Law also empowers VARA to grant/withhold authorising of the following activities:
  - a) operating and managing virtual assets’ platforms services;
  - b) exchange services between virtual assets and currencies, whether national or foreign;
  - c) exchange services between one or more forms of virtual assets;

- d) virtual assets' transfer services;
- e) virtual assets' custody and management services;
- f) services related to the virtual assets' portfolio; and
- g) services related to the offering and trading of virtual tokens.

With the setting up of an independent regulator and a definitive framework for virtual and digital assets, Dubai has embraced virtual assets as a legitimate asset class. This move by the Emirate is set to attract investors exchanges, service providers and other virtual asset stakeholders from across the world to invest in Dubai.

## RBI Introduces UPI Facility for Feature Phones and 24x7 Helpline for Digital Payments

*Contributed by Protiti Basu and Aryan Mohindroo (Associates)*



In order to further strengthen the digital payments ecosystem in India and to onboard more users in the digital payments' space, the Reserve Bank of India (“RBI”) has introduced the UPI facility for non-smartphones and more particularly, for feature phones. This enabling mechanism features a UPI123Pay facility, through which multiple options for digital payments using UPI may be used, namely –

- (i) **App-based Functionality:** An app that can be installed on feature phones, to work in a manner similar to UPI apps for smart phones, will be launched.
- (ii) **Missed Call Feature:** The UPI facility may be accessed through feature phones in the absence of a dedicated app by using a “missed call” feature. Feature phones users shall be able to perform routing transactions like fund transfers and bill payments by giving a missed call on the dedicated number displayed at the merchant’s outlet. By making a missed call, the customer shall be able to authenticate the transaction by entering their UPI pin.
- (iii) **Interactive Voice Response (IVR):** Users shall be able to complete the onboarding facilities for using UPI and start making financial transactions by calling an IVR number from their featured phones, without an internet connection.
- (iv) **Proximity Sound-based Payments:** Using technology that uses sound waves to enable contactless, offline and proximity data communication on any device, users shall be able to make digital payments without the need of an internet connection.

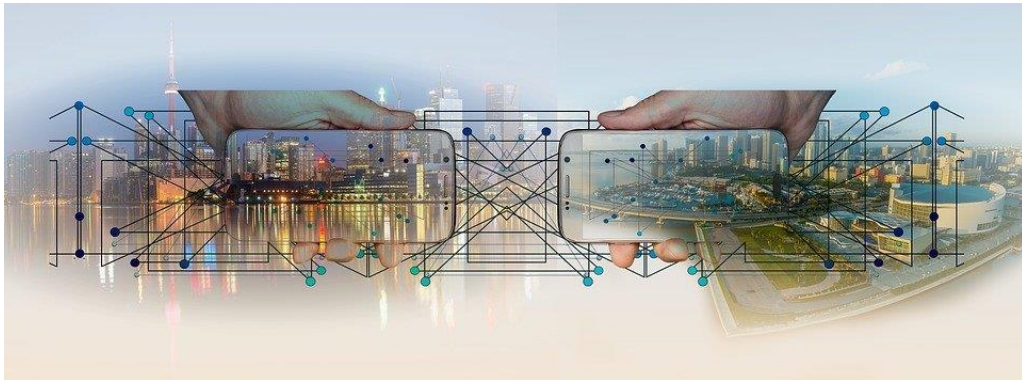
In addition to the UPI123Pay facility, the RBI has also introduced the 24X7 Helpline – “DigiSaathi” (“**Helpline**”). The helpline provides a channel to obtain help around anything related to digital payments. The Helpline provides assistance around digital payment products and services through automated responses, in both English and Hindi. The Helpline can be approached through multiple routes, including a toll-free number, a short code, as well as through chatbots on the website [www.digisaathi.info](http://www.digisaathi.info).



The facilities mentioned above seek to accelerate the adoption of digital payment methods in India, by extending these facilities to a large section of Indian population that rely on feature phones for communication and do not have access to a smartphone or active internet connections. It is noteworthy that in India digital transactions have grown by almost 90% in a matter of 3 (three) years between FY19 to FY21. Introduction of UPI123Pay is expected to prove instrumental in growing the market for digital payments, by tapping into a new user category and also bringing in opportunities for existing players to expand and for new players to enter the digital payments' market.

## New Regime for Big Tech in Europe Pushes for Interoperability of Messaging Platforms

*Contributed by Aishwarya Manjooran (Associate)*



On March 24, 2022, the European Union (“EU”) found consensus for a major competition reform that will subject major intermediary tech platforms to a set of upfront rules on how they can and cannot operate. These rules are accompanied by the threat of fines of up to 10% (ten percent) of global annual turnover in the event of any violation of these rules. In case of repeat violations, the fine could go up to 20% (twenty percent).

The Digital Markets Act (“DMA”) will apply to large companies providing "core platform services" — such as social networks or search engines — with a market capitalisation of at least €75 billion or an annual turnover of €7.5 billion, according to three-way discussions between the European Council, parliament, and Commission. Companies must also have at least 45 million monthly end users in the EU and more than 10,000 yearly business users to be recognised as "gatekeepers" and so fall under the purview of the DMA. As a result, US tech conglomerates such as Apple, Google, and Meta (Facebook) would directly fall under the scope of the DMA. These major changes to the competition rules could force the world's biggest tech platforms, including Amazon and Microsoft to revamp their business models and relook at how their platforms and applications interact with their end users.

*“The agreement ushers in a new era of tech regulation worldwide, the Digital Markets Act puts an end to the ever-increasing dominance of Big Tech companies. From now on, they must show that they also allow for fair competition on the internet. The new rules will help enforce that basic principle. Europe is thus ensuring more competition, more innovation and more choice for users.”* Andreas Schwab, the European Parliament's Rapporteur for the file, said in a statement.

Interoperability for messaging platforms is one of the key requirements agreed upon by the EU's co-legislators, which means that smaller platforms will be able to request that dominant gatekeeper services open upon request and allow their users to exchange messages, send files, or make video calls across messaging apps, thus giving them more choices. If the EU implements the proposed DMA this year, developers of messaging apps may be forced to make their applications interoperable, in a rather short timeframe, so as to not risk non-compliance.

Apart from this, the new EU rules also usher in two other requirements. When implemented by EU member states, the DMA would require companies to obtain "explicit consent" to target ads based on personal data. This implies that a gatekeeper will need explicit authorisation from users before combining personal data for targeted advertising. The EU spokesperson

also added that to avoid consent fatigue, the European Parliament will limit the number of times gatekeepers can seek consent after consent to these practices was refused or withdrawn once per year. This is important because the practice of obtaining consent is rendered meaningless if gatekeepers have the ability to badger or spam users until they give in.

The other requirement specifies that large platforms are required to give users the freedom to select a browser, search engine and personal voice assistant of their choice, when such a service is operated by a gatekeeper. Apart from these three major requirements, the text of the DMA also imposes other obligations and restrictions upon the gatekeepers.

To cite a few of such obligations imposed by the DMA, gatekeepers are obligated to ensure that users have the same right to unsubscribe from core platform services as they have to subscriptions. They are also required to offer app developers fair access to supplementary functions of smartphones and provide sellers access to their platform's marketing or advertising performance data. There is also a requirement upon the gatekeepers to update and inform the European Commission of their acquisitions and mergers.

The DMA bans gatekeepers from ranking their own products or services higher than those of others. Gatekeepers cannot reuse private data obtained during one service for the benefit of another. They cannot create unfavourable conditions for business users. They cannot pre-install certain software applications and cannot require app developers to use certain services (such as payment systems or identity providers) to be listed in app stores.

From a quick overview of the requirements and restrictions contained in the DMA, it is fairly safe to conclude that Europe has its eyes set on implementing a tough antitrust regime. When the General Data Protection Regulation was passed in 2016, the EU provided companies 24 (twenty-four) months to comply with the same. In comparison, the DMA gives companies 6 (six) months from the date the legal text of the statute was finalized and passed by the European Parliament, to be in compliance with its requirements.

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