



www.kk-advocates.com

For further information please contact

Justisari P. Kusumah

Managing Partner
justi.kusumah@kk-advocates.com

Danny Kobrata

Associate
danny.kobrata@kk-advocates.com

K&K ADVOCATES - Intellectual Property. KMO Building, Fl. 05, Suite 502 Jl. Kyai Maja No. 1, Kebayoran Baru RT03/RW08, Jakarta Selatan DKI Jakarta 12120

Tel: +62 21 29023331

Fax: +62 21 29023107

GUIDANCE FOR OTT SERVICE PROVIDERS IN INDONESIA IS FINALLY ISSUED

The Indonesian government, via the Ministry of Communication and Information (MCI), has issued a Circular Letter or Surat Edaran No. 3 of 2016 concerning the Provision of Applications and/or Service Content through the Internet (OTT) dated 31 March 2016 ("Circular Letter") as a response to the controversies caused by the operation of OTT service providers in Indonesia in the past few months. For those who are not familiar with the term "OTT", it is an abbreviation for Over-The-Top, which is commonly used to refer to content or application services that are provided over the Internet by harnessing telecommunication services and infrastructure. Some examples of OTT include WhatsApp, Skype, Twitter, Netflix, etc.

This Circular Letter contains guidance for OTT service providers who operate in Indonesia. This Circular Letter will serve as preliminary guidance for the provision of OTT services in Indonesia and is intended to allow OTT players and telecommunication operators to take all the necessary actions (including legal compliancy) in preparation before the "real" government regulation concerning OTT is formally enacted by the MCI.

As guidance, this Circular Letter does not contain comprehensive provisions regarding OTT services, since the provisions set out in this Circular Letter are still normative. However, the issuance of this Circular Letter marks an important development in technology-related law in Indonesia because it is the first legal instrument to define the scope of OTT services and to specify the mandatory obligations for an OTT service provider.

Content

According to the Circular Letter, an OTT service provider is subject to the following obligations:

- OTT service provider who is not an Indonesian citizen or Indonesian company, must have a permanent establishment in Indonesia for taxation purposes;
- OTT service provider is fully liable for the service it provides;

– OTT service provider must comply with all the applicable laws and regulations in Indonesia including laws in the fields of anti-monopoly and unfair competition, trade, consumer protection, intellectual property rights, film and broadcasting, advertising, pornography, anti-terrorism, etc.; and

– OTT service provider must: (i) ensure personal data protection; (ii) conduct content filtering; (iii) use an Indonesian national payment gateway; (iv) use Indonesian IP numbers, (v) allow lawful interception for the purpose law enforcement; (vi) implement censorship procedures; and (vii) provide Indonesian language for the information and instruction contained therein.

Apart from the obligations mentioned above, the Circular Letter also provides some limitations for an OTT service provider in conducting its business in Indonesia, such as prohibition from providing service which is contradictory with the Indonesian Constitution and applicable laws and regulations; provoking inter-group/inter-race/inter-religious conflicts; inducing criminal actions, etc.

Although the Circular Letter is not legally recognized as a binding regulation according to the legal hierarchy in Indonesia, the rules set out in the Circular Letter reflect the MCI's position on OTT-related issues in Indonesia. It is important for OTT service providers to understand the MCI's position especially because the MCI has the authority to allow or block the operation/transmission of applications/content in Indonesia.

For any further information regarding the Circular Letter or provisions regarding OTT in Indonesia, feel free to contact Justisiari P. Kusumah, Risti Wulansari or Danny Kobrata or send us an email to office@kk-advocates.com