

Social Media Management Directives 2077 (2021)

Introduction

As per the recent media reports and document obtained unofficially, the Government of Nepal (“GON”) prepared draft of the Social Media Management Directive 2077 (2021) (“Directive”) exercising its power under Section 79 of the Electronic Transaction Act 2063 (2008) with an intent to regulate and manage the use and operation of social media. The official copy of the Directive is yet to be released by the GON officially.

Definition of Social Media

The Directive defines “Social Media” as internet or information technology based medium which provide services of interactive communication between individuals or entities and publication of user created content, including platforms such as Facebook, Twitter, Viber, WhatsApp, Messenger, Instagram, YouTube, LinkedIn, etc.

Social Media Registration and Regulation

The Directive mandates all domestic and international social media companies to be registered at the Department of Information Technology (“Department”) within three months from the date of enforcement of the Social Media Directive. The GON may prohibit the usage of unregistered social media platforms. Registration must be renewed after five years.

Duties of Social Media Operator

The Directive specifies the duties of social media operators, which include, namely:

- to abide by the prevailing laws of Nepal and to ensure that the operation of social media is not against the public decency and morality;
- to ensure data security and privacy;

- to provide necessary information/data to the concerned authority if required for any investigation under prevailing law;
- to remove any information/data/details which are contrary to prevailing laws of Nepal, upon receipt of written order for the same purpose;
- to prevent the use of unauthorized advertisement through social media;
- to conduct security audit of social media operated by them in every five years; and
- to provide encrypted data in decrypted form to the concerned investigation officer in relation to investigation of a crime, to such keep data in secured form and to help in collection of such data.

Duties of Social Media Users

The Directive prohibits social media users from publishing contents which undermine sovereignty of Nepal, incite violence, send threat and abuse, advertise prohibited goods or defame any person. The Directive also restricts users from sharing, liking, reposting, live broadcasting or commenting in any prohibited content. Further, users are prohibited to make fake user id and to make unauthorized use of other person’s id.

Direction from Department

The Department may direct a social media operator not to publish or remove any inappropriate material. Social media operators are under obligations to abide by such direction of Department.

P&A Comments

The draft Directive and provisions thereof have been widely criticized by members of civic societies and general public as being unconstitutional since it aims to infringe the fundamental right of free speech

granted by the Constitution. It is yet to be seen whether the GON will enforce the Directive amidst such widespread opposition. Even if it is enforced,

it can be fairly expected that there will be legal challenge against the Directive before courts on the constitutionality grounds.

For further information about the subjects covered in this Alert, please contact:



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