

ENT-2032-1

Technology Law and Policy: A New Frontier for Business and Society

Spring 2024

4 credits

Course description:

Taught by a seasoned global tech lawyer and policy practitioner, this course will explore emerging law and policy issues in the realm of technology – in India and key foreign contexts including the U.S. and Europe. Given the increasingly pervasive nature of technology, these issues bring new and critical implications for a wide variety of professionals and businesses including but not only startups and other entrepreneurial initiatives; for society at large; and for the roles that businesses can play in society. These issues also transcend national boundaries, and routinely reflect and influence complex interactions between different nations. The course will address issues including data privacy; free speech and content moderation; competition; and others – and also distill practical skills and insights that cut across the various substantive issues discussed in the course. In doing so, the course will help prepare students to understand, navigate, and shape tech law and policy as part of the business world and more broadly – in India and globally – drawing from the instructor’s first-hand leadership experience in crafting and executing innovative, high-impact strategies in the field.

About the faculty – Nikhil Sud:

Nikhil Sud is a seasoned global tech lawyer and policy practitioner, and has been a leading voice in high-profile, cutting-edge tech law and policy debates – and in crafting and executing innovative, high-impact strategies to shape outcomes on these issues. In doing so, he has worked extensively with governments and businesses around the world. At Ashoka, Nikhil leverages his deep and specialized leadership experience in the practice of law and policy to teach (1) Tech Law and Policy: A New Frontier for Business and Society, and (2) Law and Lawyerly Thinking: An Introduction for Entrepreneurs and Beyond – and oversees associated strategic initiatives. Before joining Ashoka, Nikhil spent about a decade in Washington DC as a senior lawyer and policy practitioner, working across jurisdictions including India, the U.S., and Europe, on pressing issues particularly in the realm of technology, including data privacy, competition, censorship, cybersecurity, and others. Nikhil has published extensively and been quoted on these and other issues, and his work has played a key role in informing government and business thinking. Nikhil received a J.D. from Yale Law School, where he served as Senior Editor of the Yale Journal on Regulation, and Senior Editor of the Yale Law and Policy Review. He clerked for the Supreme Court of India during a summer at Yale Law School. He received his B.A., *magna cum laude*, from Yale University, where he majored in Economics. At Yale, Nikhil was an early inductee into the academic honors society *Phi Beta Kappa*, and named Senior Class Marshal (awarded to top-ranking graduating students). At Yale, Nikhil also founded the Yale Hindi Debate, a U.S.-based national-level Hindi language debate that received widespread media coverage and just entered its 16th year.

Learning outcomes:

- Drawing from first-hand insights curated over the instructor’s career as a leading tech lawyer and policy practitioner, students will develop a sophisticated knowledge of key cutting-edge law and policy issues in the realm of technology in India and globally. These issues include data privacy; free speech and content moderation; competition; and others.
- Beyond knowledge, students will learn how to critically evaluate these issues – and their major effects on a wide range of businesses across sectors; on society at large; and on the roles businesses can play in society.
- Students will also acquire a rigorous understanding of the international nature of these issues. For example, students will analyze how tech law and policy developments in one country can significantly affect such developments in other countries – often in counterintuitive ways and for multiple reasons, including nuanced and changing dynamics between countries, and the multinational nature of many businesses today.
- Students will learn how to monitor and anticipate the rapid and (to the untrained eye) unpredictable evolution of tech law and policy issues.
- Students will develop and refine key real-world skills relevant to all of the above, including the unique communication skills and, more broadly, multi-stakeholder engagement skills critical to tech law and policy issues.
- Student will achieve the outcomes listed above by, in part, engaging actively in class discussion. Among other things, the course will use interactive exercises to refine students’ knowledge, analysis, and the key real-world skills applicable to these issues.
- Students will emerge from the course equipped to navigate and shape tech policy and law in various contexts – for example, as part of the Indian and international business world (where a wide range of businesses and executives increasingly recognize such issues as pivotal and are deeply engaged on them); as part of the rapidly growing Indian and international policy communities advising and working closely with impacted businesses (communities increasingly comprising young individuals just out of college); in policymaking roles in India and abroad; and more broadly, as part of an informed, international, and engaged society.

Prerequisites: None.

Grading rubric:

- 25 percent of the grade will be based on class participation. Students are expected to engage actively in class discussion throughout the course. Discussion will be low-stress but important – it will not require heavy memorization, nor will it involve harsh questioning (no “grilling” of any kind), but will be fun, collaborative, and aimed at helping students develop and refine the analytical and communication skills relevant to the field, and their understanding of key issues. In addition, the last two classes will use interactive exercises to distill practical skills and insights that cut across the various substantive issues in the course.
- 30 percent of the grade will be based on a mid-semester examination.

- 45 percent of the grade will be based on the final examination.

Attendance policy:

- Attendance is important particularly because of how heavily the course will rely on class discussion. If a student needs to miss a class (beyond the university level 2-day allowance for absence without documentation), the student must discuss the matter with me beforehand.

Tentative calendar:

Note: For each week below that has assigned readings, students are expected to read the materials in a manner that cultivates general familiarity with the materials' key aspects – students are NOT expected to memorize all the details in the readings. Further, the readings provide only a general, non-comprehensive sense of the issues that will be discussed in class.

Week 1: Introduction. Assigned readings: none. Students are not expected to read materials in preparation for this lecture.

Week 2: Data privacy. Assigned readings:

- Warren, S., & Brandeis, L., *The Right to Privacy*, Harvard Law Review, Vol. 4, 193 (1890) available at: http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html
- *Griswold v. Connecticut*, 381 U.S. 479 (1965), available at: <https://www.law.cornell.edu/supremecourt/text/381/479>
- Draft *American Data Privacy and Protection Act* (2022), available at: <https://www.congress.gov/bill/117th-congress/house-bill/8152/text>
- [Optional] Wired, *How Cambridge Analytica Sparked the Great Privacy Awakening*, October 27, 2012, available at: <https://www.wired.com/story/cambridge-analytica-facebook-privacy-awakening/>
- [Optional] The New York Times, *Why Countries are Trying to Bank TikTok*, May 23, 2023, available at: <https://www.nytimes.com/article/tiktok-ban.html>
- [Optional] Delaware's data privacy bill (2023), available at: <https://legis.delaware.gov/BillDetail/140388>

Week 3: Data privacy (contd). Assigned readings:

- The European Union's *General Data Protection Regulation* (GDPR) (effective as of 2018), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679>
- *Justice K.S. Puttaswamy vs. Union of India* (2017) available at: <https://indiankanoon.org/doc/91938676/>
- India's data protection law (2023), available at: <https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf>
- [Optional] Time Magazine, *United Nations Report Declares Internet Access a Human Right*, June 7, 2011, available at: <https://techland.time.com/2011/06/07/united-nations-report-declares-internet-access-a-human-right/>

Week 4: Free speech and content moderation. Assigned readings:

- *Cubby, Inc. v. CompuServe Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991), available at: <https://law.justia.com/cases/federal/district-courts/FSupp/776/135/2340509/>
- *Stratton Oakmont v. Prodigy Servs. Co.*, 23 Media L. Rep. 1794 (1995), available at: <https://casetext.com/case/stratton-oakmont-inc-v-prodigy-servs>
- The European Union's *Digital Services Act* (DSA) (2022), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R2065>

Week 5: Free speech and content moderation (contd). Assigned readings:

- India's *IT Rules* (2018), available at: https://www.meity.gov.in/writereaddata/files/Draft_Intermediary_Amendment_24122018.pdf
- India's *IT Rules* (2021) (*English version*), available at: <https://web.archive.org/web/20210226232352/http://egazette.nic.in/WriteReadData/2021/225464.pdf>
- [Optional] India's *IT Rules* (2022) (*English version*), available at: <https://web.archive.org/web/20221029044017/https://egazette.nic.in/WriteReadData/2022/239919.pdf>
- *Shreya Singhal and Ors. v. Union of India* (2015), available at: <https://indiankanoon.org/doc/110813550/>
- [Optional] Time Magazine, *Why Twitter Co-Founder Jack Dorsey Is Clashing with India's Government*, June 13, 2023, available at: <https://time.com/6286814/india-twitter-jack-dorsey-clash/>

Week 6: In-class mid-semester examination. The exam will not require heavy memorization. It will instead focus on analytical and communication skills, and include questions similar to those featuring in class discussion.

Week 7: Competition. Assigned readings:

- India's *Competition Act* (2002), available at: <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf>
- India's first non-personal data report (2020), available at: <https://ourgovdotin.files.wordpress.com/2020/07/kris-gopalakrishnan-committee-report-on-non-personal-data-governance-framework.pdf>
- India's revised non-personal data report (2020), available at: <https://ourgovdotin.files.wordpress.com/2020/12/revised-report-kris-gopalakrishnan-committee-report-on-non-personal-data-governance-framework.pdf>
- [Optional] *Small Business Trends, Google Antitrust Trial: What Small Business Owners Need to Know*, September 11, 2023, available at: <https://smallbiztrends.com/2023/09/google-antitrust-trial-begins.html>

Week 8: Competition (contd). Assigned readings:

- The European Union's *Digital Markets Act* (DMA) (2022), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R1925&qid=1687042411039>
- Competition Policy International, *Bi-Partisan Senators Re-Introduce Antitrust Bill*, June 20, 2023, available at: https://www.competitionpolicyinternational.com/bi-partisan-senator-re-introduce-antitrust-bill/?utm_source=Sailthru&utm_medium=email&utm_campaign=Main%20NL%2006/19&utm_term=daily_nl

Week 9: Other issues. Assigned readings:

- The Paris Call for Trust and Security in Cyberspace (2015), available at: <https://pariscall.international/en/call>
- India's cybersecurity directions (2022), available at: https://www.cert-in.org.in/PDF/CERT-In_Directions_70B_28.04.2022.pdf

- India's telecommunication bill (2022), available at: <https://dot.gov.in/sites/default/files/Draft%20Indian%20Telecommunication%20Bill%20C%202022.pdf>

Week 10: Other issues (contd).

- The European Union's draft *AI Act* (2021), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0206>
- Amendments to the European Union's draft *AI Act* (2023 amendments), available at: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0236_EN.pdf
- The Economic Times, *Seven countries to sign up for India Stack's digital public goods*, January 24, 2023, available at: <https://economictimes.indiatimes.com/tech/technology/seven-countries-to-sign-up-for-india-stacks-digital-public-goods-mos-it-rajeev-chandrasekhar/articleshow/97274552.cms>

Week 11: Getting real-world ready. Assigned readings: none.

- Students are not expected to read materials in preparation for this lecture. The lecture will rely significantly on interactive exercises and materials presented in real-time during the class – in order to distill practical skills and insights that cut across the various substantive issues discussed in the course.
- This week's lecture will hone multiple core skills, with a focus on the ability to interpret and apply nuanced and often ambiguous materials that tend to use (and misuse) business and policy jargon; and on the unique writing and oral communication skills critical to navigate tech policy issues.

Week 12: Getting real-world ready (contd). Assigned readings: none.

- Students are not expected to read materials in preparation for this lecture. The lecture will rely significantly on interactive exercises and materials presented in real-time during the class – in order to distill practical skills and insights that cut across the various substantive issues discussed in the course.
- This week's lecture will hone multiple core skills, with a focus on the ability to balance and engage with the various stakeholders typical of environments where tech policy is made and applied, often comprising decisionmakers and influencers with conflicting interests and deficient expertise on complex but crucial matters.

Week 13: In-class final examination. The exam will not require heavy memorization. It will instead focus on analytical and communication skills, and include questions similar to those featuring in class discussion.