

31 May 2024

To

Mr. Samuel Abrijani Pangerapan, B.Sc., M.M.
Director General of Information Applications
Ministry of Communication and Information Technology (KOMINFO)

Subject: Asia Internet Coalition (AIC) Industry Comments on Draft of Government Regulation on the Governance of Child Protection in the Implementation of Electronic Systems

On behalf of the Asia Internet Coalition (AIC) and its members, I am writing to express our recommendations to the Ministry of Communication and Information Technology (KOMINFO) on the Draft Government Regulation on the Governance of Child Protection in the Implementation of Electronic Systems. AIC is an industry association of leading internet and technology companies in the Asia Pacific region with a mission to promote the understanding and resolution of Internet and ICT policy issues in the Asia region. KOMINFO on May 13 2024 conducted its first online consultation to prepare the draft regulation on child protection in electronic systems. Following this, KOMINFO has officially issued a the draft for consultation. We acknowledge the importance of protecting Children's privacy, safety, and well-being in the digital environment.

Issues and Recommendations for KOMINFO'S consideration:

1. Article 1 para 1

- a. To address the complexities arising from multiple laws defining the age of a "child," the draft regulation should aim to harmonize these definitions across various legal contexts, ensuring consistency and clarity. This includes acknowledging different legal purposes, such as protection, contractual capacity, and criminal responsibility, and providing explicit guidelines on interactions with existing laws. Special attention should be given to 17-year-olds, considering their legal status in Indonesia, where they can obtain a KTP and enter into contracts, ensuring they are appropriately classified and treated within the legal framework. Given, multiple laws and regulations stipulate different specific ages regarded as "child", we may face problems in the future which age will be regarded as the correct baseline.

17 is the commonly accepted legal age in Indonesia as people in this age are required to have a valid ID (KTP) and eligible to enter into a contract. We would like to seek clarity if they still be considered "Child" or "Children" under this draft regulation?

- b. Additionally, a public awareness campaign and educational programs for stakeholders should be developed to ensure understanding and effective implementation of the regulation. This will enhance legal coherence, protect minors' rights, and ensure clarity in the legal status and treatment of individuals aged 17.

2. Article 2 para 1

No articles in this draft regulation limits the responsibilities of the Electronic System Operators (ESO), when a minor accesses a service without the permission of the parents/legal guardian who are the registered user(s) of such platform or provides a false information to gain access to the service.

In addressing the responsibilities of Electronic Service Operators (ESOs) when minors access services without parental permission or by providing false information, the draft regulation should clarify the following points:

a. Platform Recognition of Minor Access:

- **Proposal:** Specify the extent to which platforms are expected to recognize and verify that their service is accessed by a child.
- **Implementation:** Require ESOs to implement age verification mechanisms and regular audits to ensure compliance. The regulation should outline reasonable steps that ESOs must take to identify and prevent unauthorized access by minors.

b. Parental/Guardian Responsibilities:

- **Proposal:** Introduce provisions outlining the responsibilities of parents or legal guardians in supervising and controlling their children's access to online services.
- **Implementation:** Include guidelines that hold parents/guardians accountable for monitoring their children's online activities and for ensuring that accurate information is provided. If not feasible to cover in detail, the draft should mandate the development of supplementary regulations or guidelines focusing on parental responsibilities.

3. Article 2 para 3

This regulation should apply to both private and public Electronic System Operators (ESOs), recognizing that services provided by public ESOs can also be accessed by individuals under the age of 18. The regulation must ensure that all ESOs, regardless of their public or private status, implement measures to verify the age of users and prevent unauthorized access by minors.

Furthermore, the regulation should follow the elucidation of Article 16A of Law No. 1 Year 2024 on the Second Amendment to the ITE Law, which addresses the responsibilities of ESOs in managing user information and preventing misuse by minors. This includes implementing robust age verification mechanisms and holding parents or legal guardians accountable for supervising their children's online activities and ensuring the accuracy of the information provided for accessing services.

4. Article 4 para 2

Please consider use "*...are reasonably appropriate...*" as appropriateness is quite subjective.

5. Article 5 para 1

Additionally, the draft regulation should stipulate the acceptable standards for conducting assessments to ensure compliance with these requirements. It should also address the treatment of services already available prior to the regulation's official issuance, providing guidelines for ESOs to retroactively comply with the new standards.

6. Article 6 para 1

The draft regulation should also address the treatment of services already available prior to the regulation's official issuance. ESOs should be provided with a grace period to update and align their existing services with the new standards and requirements.

7. Article 7 para 1

"In reviewing the draft regulation, it's essential to acknowledge that no single technical and operational measure can ensure guaranteed results. Therefore, it's prudent for the paragraph to advocate for the adoption of '...reasonable technical and operational measures...' Instead of promising absolute outcomes, emphasizing the implementation of practical and achievable measures aligns with a more realistic approach to regulation."

8. Article 7 para 2 letter a

In a scenario where a child accesses a service without parental or legal guardian permission, leading to the exposure of the child's data, it's crucial for the draft regulation to address the limitations of responsibilities for the platform. However, the current draft regulation appears to lack any discussion on such matters. It's imperative for the regulation to outline clear guidelines regarding the platform's responsibilities in cases of unauthorized access by minors. This could involve delineating the platform's duty to implement robust age verification mechanisms and to provide adequate safeguards for protecting minors' data. Additionally, provisions should be included to specify the platform's obligations in promptly addressing and mitigating any potential risks or harms resulting from unauthorized access by minors. By incorporating these considerations, the regulation can effectively address the complexities surrounding minors' access to online services while also ensuring accountability on the part of the platform.

We further welcome the opportunity to offer our inputs and insights, directly through industry meetings and participating in the official consultations / workshops. Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at Secretariat@aicasia.org or at +65 8739 1490.

Thank you,

Sincerely

A handwritten signature in blue ink, appearing to read "Paine".

Jeff Paine
Managing Director, Asia Internet Coalition (AIC)