

Asia Internet Coalition (AIC) Industry Submission: Vietnam Draft Telecommunication Law

24 March 2023

To

- Mr. Nguyen Duc Hai, Vice Chairman of the National Assembly
- Mr. Le Quang Huy, Head of the National Assembly's Committee for Science, Technology and Environment
- Mr. Tran Van Son, Minister - Chairman of the Office of the Government

Cc:

- Mr. Vu Hai Ha, Head of the National Assembly's Committee for Foreign Affairs
- Mr. Hoang Thanh Tung, Head of the National Assembly's Committee for Legal Affairs
- Mr. Vu Hong Thanh, Head of the National Assembly's Committee for Economic Affairs
- Mr. Nguyen Manh Hung, Minister of Information and Communications
- Mr. Nguyen Hong Thang, Director General of the Authority of Telecommunications

On behalf of the [Asia Internet Coalition](#) (“AIC”) and its members, I am writing to express our sincere gratitude to the Ministry of Justice (MOJ) and the Ministry of Information and Communication (“MIC”) for the opportunity to submit comments on the draft amended Telecommunications Law (“**Draft Telecommunications Law**”). AIC is an industry association comprised of leading Internet and technology companies in the Asia Pacific region with an objective to promote the understanding and resolution of Internet and ICT policy issues.

Our submission details the following issues and recommendations, which are further elaborated in the Table provided in the Appendix.

1. **Overbroad definitions of “Telecommunications service” and “Internet application service in telecommunications”.** As written, these definitions could cover not just OTT messaging - which we understand to be the intent of the bill - but virtually any service available on the internet, in particular because “Internet application service in telecommunications” would apply to every service for which the main function is processing online information. There are nearly 2 million apps available on the Apple App Store and about 2.7 million apps on

the Google Play Store - it would be impossible for the potentially millions of covered online service providers to comply with these draft regulations. To the extent this regulation is considered necessary, the definitions should be revised to cover only network provider services. The EU telecom framework, for example, applies greater regulation to interconnected services and applies only a light-touch regulatory regime to non-interconnected services.

2. **Additional data access obligations are unnecessary, and sole reliance on consent as a basis for access is outdated and impractical.** Vietnamese law already contains broad data protections [against bad actors] and so it is unclear what specific concerns MIC intends to address through Article 33.2 of the draft telecom law. Regardless, many jurisdictions, including Vietnam, have long recognized that consent should not be the only legitimate basis for processing data, namely because obtaining individualized consent in every instance is impractical or impossible. Further, there is no policy justification to imposing a consent requirement on information that is not personal data - such data cannot identify an individual, and so poses no risk to their privacy.
3. **Requiring OTTs to form commercial agreements with telcos and requiring OTTs to establish a representative office is unnecessary and unduly burdensome.** It is unclear what such a commercial agreement would do or require and this should be clarified. In any event, a mandated agreement is clearly unnecessary because Vietnamese consumers have easy access to a wide array of high quality digital services today. Moreover, requiring commercial agreements could negatively impact consumer choice as not all providers would necessarily be able to negotiate such agreements; reducing the value of the internet to consumers would ultimately hurt network operators because demand for online content drives demand for broadband access. The requirement to form commercial agreements should be removed. To require platforms to have a local representative office, the costs involved would serve as a barrier for players to access the market. Normally, the concept of a local representative is to ensure that such a business operator is contactable. As long as there is a contact channel, the requirement of a local rep is not necessary. Requiring local presence would be onerous and this requirement should be removed.
4. **OTTs cannot ensure service continuity or quality, which is heavily dependent on the network and network provider.** OTT services do not own or control the underlying internet access infrastructure or the network chosen by the consumer, and so cannot necessarily provide any guarantees or remedy any issues regarding the service continuity or quality. We recommend that the requirements to ensure service continuity or quality should be removed.
5. **Implementation.** We recommend that the law provides a grace period of one year similar to its previous draft to ensure services under the scope have sufficient time to ensure compliance. It can be unrealistic for businesses to ensure its compliance within a short timeline.



We support MIC's vision that Vietnam's growth potential lies in the digital economy, and agree that continued digital transformation in Vietnam will benefit Vietnamese businesses and consumers alike.¹ It is crucial that the regulatory environment in Vietnam remains conducive for this growth, so that benefits may be realized for Vietnamese businesses and consumers. Regrettably, we note that the Draft Telecommunications Law has been expanded significantly in scope to capture industries which are not telecommunications services, imposing additional unclear regulatory burdens, and putting the potential benefits of the digital economy at risk through unintended negative impacts.

As responsible stakeholders in this policy formulation process, we appreciate the ability to submit our recommendations. As such, please find appended to this letter detailed comments and recommendations, which we would like to respectfully request the Government of Vietnam to consider when reviewing and further amending the Draft Law.

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. Importantly, we would also be happy to offer our inputs and insights on industry best practices, directly through meetings and discussions and help shape the dialogue for the advancement of ICT sector in Vietnam.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paine", is positioned below the word "Sincerely".

Jeff Paine
Managing Director,
Asia Internet Coalition

¹ <https://english.mic.gov.vn/Pages/TinTuc/147804/Vietnam-s-growth-potential-lies-in-the-digital-economy.html>

Appendix: Detailed comments and recommendations

No.	Article No. and Description	Comments/Concerns	Recommendations
1	<p>1 This Law provides for telecommunications activities, including telecommunications investment and business; rights and obligations of organizations and individuals engaged in telecommunications activities and telecommunications management; data center management, business activities of data center, cloud computing services, rights and obligations of organizations and individuals involved in activities and business of data center services, cloud computing services.</p>	<p>These seems to have significant overlap with other Vietnam regulations. To the extent that there needs to be a governing regulation, overlapping descriptions of obligations in different legislation, in which slightly different language is used, will make it difficult for companies to understand and comply with regulations. The effect of this will be to undermine the intention to encourage investment in data centers</p>	<p>Recommend not to include “data center management, business activities of data center, cloud computing services, rights and obligations of organizations and individuals involved in activities and business of data center services, cloud computing services” within the scope of “telecommunications activities” and this bill</p>
2	<p>2 This Law applies to domestic organizations and individuals, foreign organizations and individuals directly involved in or related to telecommunications activities in Vietnam and activities of providing data center services and cloud computing services in Vietnam.</p>	<p>It would not be practicable or enforceable for a foreign country to exercise extra-territorial effect of Vietnam laws on foreign CSPs. In line with global laws on privacy or electronic transactions, the law should apply only to entities formed or recognized under the laws of Vietnam. To attract international investors, the regulation needs to</p>	<p>Propose that the law should apply only to entities formed or recognized under the laws of Vietnam</p>

No.	Article No. and Description	Comments/Concerns	Recommendations
		avoid and resolve potential conflicts in legal obligations between Vietnam and foreign law.	
3	3.31 to 3.35 Definitions of data center, data center service, cloud computing, cloud computing service, data center service provider, cloud computing service provider	These are not telecommunications services.	Recommend for data center and cloud computing to be removed from scope of draft
4	Chapter IX BUSINESS DATA CENTER SERVICES AND CLOUD COMPUTING SERVICES	These industries are not telecommunications services.	Recommend removal.
5	69.1 Providers of data center and cloud computing services must meet conditions on investment and business before performing activities of providing data center services, cloud computing services to service users in Vietnam	This would already be covered in the Law on Enterprises and is duplicative here	Recommend removal
6	69.2 Data center service providers must meet technical standards and specifications according to regulations when designing, building, operating and utilizing data centers.	There are already existing technical standards for data centers, so this is duplicative and unnecessary. (E.g. TCVN 9250:2012, QCVN 32:2011/BTTTT, QCVN 9:2010/BTTTT, TCVN 3890:2009, QCVN 06:2010/BXD)	Recommend removal

No.	Article No. and Description	Comments/Concerns	Recommendations
7	<p>69.4 Ministry of Information and Communications shall promulgate national technical standards for data centers and promulgate and amend sample service agreement for the provision of data center services and cloud computing services</p>	<p>All technical standards should be aligned with international standards. If the technical standards are inconsistent between jurisdictions it would increase the cost of cloud services in the country by forcing companies to maintain multiple security compliance programs, rather than adhering to global security standards. This could ultimately hinder foreign investment and undermine the purported objectives of this law.</p>	<p>Recommend benchmark with international standards for technical standards and sample service agreement</p>
8	<p>70.1 Comply with relevant laws on information storage, protection of personal information, private information of organizations and individuals</p>	<p>If companies will already be subject to the provisions of other legislations, the reference here is duplicative</p>	<p>Recommend removal</p>
9	<p>70.2 Announce, publicly and transparently declare technical standards and specifications as required, and be responsible for service quality according to the declared standards and specifications.</p>	<p>Leveraging international standards enables governments to benefit from the expertise of leading thinkers and cumulative global experience. By contrast, local standards increase cost, reduce product choice, and limit innovation without delivering security value beyond that offered by internationally recognized cloud security standards.</p>	<p>Recommend to allow for/accept international standards equivalent certification, in place of local certification and standards requirements. E.g. if a DC service provider or CSP has the international standards certification that matches or is above local standards, MIC should recognize the international certification</p>

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10	70.4 Ensure network information security and protect the interests of service users.	The rights of service users should be as per the service agreement, putting an overarching obligation on service providers to "protect the interests of service users" could disproportionately burden the service provider and deter progress in this industry.	Recommend release this obligation for service providers
11	70.5 Must action on content that violates copyright, intellectual property rights or violates the law at the request of competent authorities	Frequently, cloud providers do not have read visibility or control over granular pieces of content - control remains with the service user. It is impracticable for cloud providers to take action on specific pieces of content. Regulators should enforce against the service user responsible for uploading the content.	Recommend release this obligation for service providers and enforce upon service users. In case this obligation were to be retained, "request of competent authorities" is very broad. Suggest to amend to "in accordance with a binding court order or law enforcement directive".
12	70.6 Not to perform acts of competition restriction, unfair competition, acts of coercion or blocking other organizations and enterprises from doing business.	This would be better governed under the Law on Competition.	Recommend removal
13	71.5 To be guaranteed the confidentiality of private information as prescribed by law	It is not realistic for Cloud Service Providers (CSPs) to guarantee the confidentiality of workloads because this is a shared responsibility between CSP and customers. The rights of service users should be as per the service agreement. Putting an overarching obligation on service	Recommend release this obligation for service providers

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		<p>providers to guarantee the confidentiality of private information could disproportionately burden the service provider and deter progress in this industry.</p>	
14	<p>71.6 Complain about service prices and service quality; be reimbursed for service charges and other direct damages caused by the fault of the service provider of data center or cloud computing service;</p>	<p>Remedies would already be addressed in the service agreement (e.g. the nature of damages, liability caps, types of remedies available). This takes into account the unique nature of cloud services, and helps CSPs and users manage risk with certainty. Conversely, imposing broad statutory requirements that could be interpreted inconsistently with the service agreement risks creating uncertainty amongst CSPs and users alike, and may hinder progress in this industry.</p>	Recommend removal