

## Asia Internet Coalition (AIC) Industry Submission on the Internet Transactions Act (ITA), Philippines

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28 August 2023

To,

**Hon. Senator Juan Miguel "Migz" F. Zubiri**

**Hon. Senator Joel Villanueva**

**Hon. Senator Mark A. Villar, Chair, Committee on Trade**

On behalf of the [Asia Internet Coalition \(AIC\)](#) and its members, we would like to submit our comments and recommendations on the Philippines “Internet Transactions Act”. 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. In the past AIC has submitted industry comments on ITA for government’s consideration and we seek to understand the proposed changes comprehensively and gain clarification on various aspects that could significantly impact on the business environment.

We understand intention of the “Internet Transactions Act (ITA)” is to focus on promoting the development of e-commerce in the country by building trust between sellers and consumers, stronger online consumer protection, safer e-payment gateways, easier online business registration, and formulating other policies and programs to increase the number of online merchants and consumers. However, there are key concerns, with respect to (i) inclusion of online media and digital advertising in the scope; (ii) vague and all-encompassing definitions, edited from the previous substitute bill, that can lead to overreach and overregulation; (iii) issue of solidary liability for platforms. Furthermore, given the vague definitions and inclusion of online media and digital ads, the applicability of registration to Online Business Registry (OBR) is unclear, for advertisers may be treated as merchants and required to register, and lists of advertisers provided to regulator. The prescriptive nature of the regulation could disincentivize business operators to make long-term investments as it would make it difficult for business operators to assess the true impact of this Act.

As responsible stakeholders, we appreciate the ability to participate in this discussion and the opportunity to provide further inputs into the policy-making process in the Philippines. **As such, please find appended to this letter detailed comments and recommendations, which we would like to respectfully request the Government of the Philippines to strongly consider.**

**We hope that through further engagement on the Draft Regulation, we can work toward preserving the conducive e-commerce environment within Philippines’ digital economy ecosystem.**

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact me directly at Secretariat@aicasia.org or +65 8739 1490.

Thank you for your time and consideration and we look forward to hearing from you.



Sincerely,

**Jeff Paine**  
**Managing Director**  
**Asia Internet Coalition (AIC)**

### Issues wise Comments and Recommendations

Provision or Topic	Concerns and Recommendation
<p>Inclusion of Online Media and Digital Advertising in the ITA bill</p> <p><i>Main concern: Online Media and Digital Advertising are separate industries that require the appropriate consultative process of regulation.</i></p> <p><i>The inclusion of online media [transactions] and digital advertising in the ITA is a form of premature regulation and can be considered an overreach.</i></p>	<ol style="list-style-type: none"> <li>1. Online media business models and activities are completely different from e-commerce platforms/activities.               <ul style="list-style-type: none"> <li>- It is important to fully examine the diversity of business models, and the different offerings taking place within a business model, in the evolving video and content marketplace, comprising traditional providers of cable, broadcast, and satellite services as well as online video providers like subscription video on demand (VoD), free VoD, platforms for user generated content (UGC), and other revenue and business models, and determine the industry's appropriate regulator. The inclusion of online media transactions and digital advertising transactions in the ITA is a form of premature regulation and can be considered an overreach.</li> <li>- It also requires a proper and longer period of consultation to ensure all stakeholders had provided proper input to this last minute addition.</li> <li>- Treating online media and digital advertising transactions the same as e-commerce activities (whether on the same platform or different platform) sends inaccurate and misleading signals</li> </ul> </li> </ol>

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	<p>to consumers and merchants with potential unintended consequences. Ultimately this could pose challenges for business operators in a similar situation to make long-term investment in a country due to unnecessary regulatory burdens.</p> <p>2. Moreover, the advertising industry in the Philippines is regulated by the Ads Standard Council, which is a self-regulatory organization. The advertising industry in the Philippines has over 30 years of self-regulation, with standards, code of ethics, sanctions, and penalties developed by the industry, in partnership with government and private sector. ASC also conducts review and monitoring of ads of their members that can require vast manpower resources. It may be prudent to have the ASC as part of the conversation when it comes to advertising per se given its experience and expertise on the ads industry.</p> <p><b>Recommendation:</b> Online media and digital advertising to be excluded from the coverage of the ITA, (Section 4 Scope and Coverage.)</p> <p><i>For reference:</i> THE FOLLOWING SHALL BE EXCLUDED FROM THE COVERAGE OF THIS ACT:</p> <p>a) CONSUMER-TO-CONSUMER (C2C) TRANSACTIONS, WITHOUT PREJUDICE TO THE APPLICATION OF OTHER LAWS AS MAY BE APPROPRIATE. b) FINANCIAL PRODUCTS AND SERVICES, AS DEFINED UNDER REPUBLIC ACT NO. 11765. c) DIGITAL PAYMENTS AND PAYMENT SYSTEMS, AS DEFINED UNDER REPUBLIC ACT NO. 11127. d) ENTITIES AND TRANSACTIONS AS REGULATED UNDER REPUBLIC ACT NO. 7653, AS AMENDED. e) <b>THE REGULATION OF CONTENT OF ONLINE MEDIA AND DIGITAL ADVERTISING</b></p>
<p>Section 3. Definition of Terms</p> <p><i>Main concern: Vague and all-encompassing</i></p>	<p>We strongly encourage the adoption of global standards when creating definitions and defining coverage of regulations. Vague and all-encompassing definitions, if not fixed, may lead to overreach, premature and over- regulation. Some of the examples to highlight:</p> <p>a. Internet transactions</p>

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<p><i>definitions can lead to overreach and overregulation</i></p>	<ul style="list-style-type: none"> <li>i. Including online media and digital ads under this category and definition may result in regulating all types of content beyond advertising</li> <li>ii. Moreover, an internet transaction is not mutually exclusive to an e-commerce transaction, based on industry practice. A transaction, per se, should constitute an exchange of a good or service between two entities, including completion of payment and delivery.</li> <li>iii. Online media, on the other hand, has its own nature of operation and regulation. Adding this sector under “internet transaction” begs the question for specificity of the “transaction” and applicability of the ITA. .</li> <li>b. Business-to-Customer Transaction - including customer-to-customer transactions that are done on a “regular basis” as part of scope of ITA can discourage up and coming entrepreneurs that are “testing” their products over the internet as well as other similarly-situated startup businesses.</li> <li>c. Digital advertising               <ul style="list-style-type: none"> <li>i. The proposed definition is broad and could encompass content that goes beyond advertising.</li> <li>ii. Due to the all-encompassing nature of the proposed definition, this potentially gives the assigned regulator power to takedown any content, as the interpretation of what constitutes digital advertising may be open to interpretation.</li> <li>iii. Advertising in itself is a whole industry that is self-regulating. The digital nature of digital advertising does not exempt it from being a subsector of that industry</li> </ul> </li> </ul>
<p>Section 23. Obligations of E-Marketplaces and Other Digital Platforms</p> <p><i>Main concern: Submission of list of</i></p>	<p>1. Companies must adhere to international best practices on data privacy and minimization. Additional obligations to store, collect, and disclose data requires a lengthy, deep, and expansive assessment process that disrupts what is fundamental to some business models. The updated set of obligations raise the following concerns:</p>

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<p><i>online merchants to the E-Commerce Bureau</i></p>	<ul style="list-style-type: none"> <li>- Potential to submit information of ALL USERS, seller, individual or advertiser, to the government.</li> <li>- Mandating online platforms to create new processes to collect, maintain and verify huge amounts of information legally (including PRC licenses and other such IDs), would be a huge administrative, lengthy, and costly burden. It is not only operationally unfeasible, it will also eventually increase the amount of personal information to be held by platforms. This direction may raise privacy concerns.</li> </ul> <ol style="list-style-type: none"> <li>2. In addition, we also raise the possibility that data privacy issues may arise given the lack of clarity in the provisions on how the data will be stored and processed by the government.</li> <li>3. Online merchants are fundamental in supporting a vibrant ecommerce ecosystem. We understand that many governments in the region are coming up with regulations that require online merchants to register to the government for supporting and monitoring purposes. <u>But, we have not seen any regulation in the region requiring platforms to share their all online merchants data to the government outside legal investigation and hearing. Platforms may support the government by encouraging merchants to register with the government, but not assume the responsibility to gather this data on behalf of the government.</u></li> <li>4. We understand the request for a merchant list is based on concerns about consumer safety, such as scams, but this is not the silver bullet. Fighting scams requires a holistic, multi-sectoral approach that also considers technical and technological capacities of all concerned, as well as the information known to its audience. <u>We also believe it is important to consider carefully how responsibilities should be allocated. While platforms can build systems that allow for accurate disclosure of required information, the primary onus for providing accurate information should be on sellers given the scale and volume of users and platforms' limited ability to verify off-platform and offline information.</u> For example, platforms can restrict the ability of an individual or organization to access a service, But this is minor compared to the types of sanctions only governments can do, like impose criminal or civil penalties.</li> </ol>

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	<p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>- We recommend deletion of the Section 23. a. - mandating to maintain a list and submission to the Bureau.</li> <li>- Since consumers will have access to the Online Business Registry (OBR) system, the E-Commerce Bureau can require merchants to provide OBR registration number or link on any platform they will use to sell.</li> </ul>
<p>Section 28. Liability from Complaints Involving Products and Services Purchased Online</p> <p><i>Main concern: Imposing Solidary Liability sends an unsafe signal to target companies on the conduct of their business in the country. It dilutes the principle of safe harbor and challenges the investment narrative of the country.</i></p> <p><i>Subsidiary Liability would be the workable direction.</i></p>	<ol style="list-style-type: none"> <li>1. It is disproportionate to hold intermediaries solidarily liable for the acts or omissions of merchants, consumers or any other users of its platform.</li> <li>2. Holding intermediaries solidarily liable will lead to over enforcement on merchants, as intermediaries will be wary of incurring penalties and/or fines.</li> <li>3. Imposing the same responsibilities and liabilities onto platforms and sellers not only reconceptualizes the role played by a platform as an intermediary, but also significantly dilutes the internationally recognized principle of safe harbor.</li> </ol> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>- We suggest retaining the subsidiary liability and good faith clause.</li> </ul>
<p>Section 11. Online Business Registry (OBR)</p> <p><i>Main concern: Not clear who should register to OBR.</i></p> <p><i>For its purpose to validate transactions and legitimacy of</i></p>	<p>It must be emphasized that the OBR is meant mainly to provide online consumers a platform to verify and validate the authenticity and legitimacy of online merchants and e-retailers.</p> <p>The current version mentions “online business entities”, however, there is no definition of online business entities in Section 3.</p> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>- We recommend changing <i>online business entities</i> to <b>online merchants and e-retailers</b></li> </ul>

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<p><i>retailers and merchants, the coverage must be made clear in the provision.</i></p>	<p><i>For reference:</i></p> <p>Sec. 11. <i>Online Business Registry (OBR).</i> — Within a period of one (1) year from the effectivity of this Act, the Bureau shall, in coordination with the DICT, establish, manage and maintain an OBR that shall provide government and online consumers access to data and information of <u>registered online merchants and e-retailers business entities</u> for purposes of verifying the validity, the existence of and other relevant information pertaining to such business entities.</p> <p>The DTI, in consultation with the DICT, the National Privacy Commission (NPC), the Philippine Competition Commission (PCC), the Securities and Exchange Commission, the Cooperative Development Authority, and other concerned agencies, shall issue the rules and regulations to govern the development, management, operation, and maintenance of the OBR.</p>
<p>Section 8. Functions of the E-Commerce Bureau</p> <p><i>Main concern: Section 8.b. mentions that DTI E-Commerce Bureau will require digital platforms, online merchants, or anyone else who engages in internet transactions to register their business.</i></p>	<ol style="list-style-type: none"> <li>1. Requiring digital platforms, specifically those considered as non-resident foreign corporations (NRFC), is not feasible since they do not have local representatives and/or registered local offices in the PH.</li> <li>2. If the purpose of requiring digital platforms to register is to ensure the business operator is accountable in areas of integrity, then it should be sufficient for the operator to provide a contact channel and not registration, which would be onerous. The costs involved would serve as a barrier for all platforms, including startups, to access the country. Such a requirement for digital platforms would restrict economic growth by artificially creating a market that may not be best served by additional pressures to register with OBR, due to market size or infrastructure.</li> <li>3. Against international trade norms: By pressuring non-resident foreign corporations (NRFC) to register their business with OBR, this deviates from established international trade norms and practices, that promote free trade, by erecting unnecessary barriers to cross-border services trade. Furthermore, there is a risk that countries may reciprocate and impose similar requirements - impacting the growth of both local and international SMEs. General free trade agreements (RCEP, CPTPP) commit to provide access to a market in a non-discriminatory way.</li> </ol> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>- We recommend removing <i>digital platforms</i> and change to <b>online merchants and e-retailers ONLY</b>, especially since</li> </ul>

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	<p>the purpose of the OBR and registration to the Bureau is to confirm legitimacy and authenticity of merchants (sellers).</p> <p><i>For reference:</i></p> <p>(b) Build trust between online consumers and sellers by <u>requiring digital platforms</u>, online merchants and e-retailers, <del>or anyone else who engages in internet transactions</del> to register their business with the Bureau and provide information as determined by the DTI E-Commerce Bureau for policy-making and program development purposes;</p>