

**Asia Internet Coalition (AIC) Industry Submission on the
Philippines Internet Transaction Act (ITA) Bill 2023**

13 September 2023

To,

Hon. Senator Juan Miguel "Migz" F. Zubiri
President of the Senate of the Philippines

Cc:

- *Senator Joel Villanueva, Majority Floor Leader*
- *Senator Koko Pimentel, Minority Floor Leader*
- *Senator Mark Villar, Chairman, Committee on Trade*
- *Senator Pia Cayetano*

On behalf of the [Asia Internet Coalition](#) (AIC) and its members, I am writing to express our recommendations to the Senate of the Philippines as it is currently undergoing interpellations and recent amendments on the Internet Transaction Act (ITA) Bill. 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.

As one of the priority bills of President Ferdinand Marcos, Jr., we understand that the bill is an effort to increase consumer confidence and consumer protection. However, we are hoping that the Senate will reconsider our recommendations to ensure that the ITA bill will be a more responsive and innovative regulation to e-commerce in the Philippines.

In this regard, we are humbly submitting below our position and recommendations, for the Senate to consider:

I. Submission of merchants' lists to the government does not adhere to regional and global standards.

Recommendation: Delete Section 21.c. on mandating platforms to maintain a list and submission to the Bureau.

- 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.

- Encourage platform to do an education campaign to encourage merchants to register in the OBR and for consumers to use the OBR as part of their own validation when purchasing online

Requiring online merchants to register and submit themselves into verification to e-commerce platforms and to the government is a good concept to consider to ensure consumers are protected, but is practically challenging to implement both for the platforms and the government. However, requiring submission of online merchants' lists of the platform to the government might raise several privacy issues and concerns. This is not in line with international best practices on data privacy and data minimization, wherein the data controller (in this case the e-commerce platform) should limit the collection of personal information that is only required to fulfill a specific purpose.

We understand that many governments in the Asia Pacific region have regulations that require online merchants to register to the government for supporting and monitoring. However, we have not seen any regulation as onerous as this, requiring platforms to submit their list and data outside legal investigation. Moreover, the Regional Comprehensive Economic Partnership (RCEP) Agreement, of which the Philippines is one of the signatories, recommends that in the development of its legal framework for the protection of personal information, each Party shall take into account international standards, principles, guidelines, and criteria of relevant international organizations or bodies.

Consumer safety and fighting scams online requires a more holistic and multi-sectoral approach. Thus, it is important to carefully consider technical and technological capacities of the platforms and the government, and the information known to the consumers and users. This provision might require creating new processes to collect and verify information legally, which could be a huge administrative, lengthy, and costly burden to the platforms. Verification is also not a silver bullet solution to consumer safety issues. There are several examples on how the private sector and the government work together closely to address a social issue without compromising capabilities of the platforms, i.e. safety and anti-online sexual abuse of children.

In addition, it is important to consider carefully how responsibilities should be allocated in any updated regulatory framework. The primary responsibility for ensuring registration and validation of sellers data should lie with sellers who have control over the listing. Platforms can encourage them to register or penalize them by restricting or removing their access. But this is minor compared to the types of sanctions only governments can impose, through this law, to ensure bad sellers obey the guideline and local laws, like criminal or civil penalties. Moreover, platforms are also willing to support the government by encouraging online merchants to register with the government without assuming the responsibility of data gathering on behalf of the government.

II. Imposing Solidary Liability dilutes the principle of safe harbor and challenges the investment narrative of the country.

Recommendation: Delete the following provisions in Section 26

~~THE MERE EXISTENCE OF IMMINENTLY INJURIOUS, UNSAFE, OR DANGEROUS GOODS OR SERVICES ON ITS PLATFORMS ARE PRIMA FACIE EVIDENCE OF SOLIDARY LIABILITY ON THE PART OF THE DIGITAL PLATFORMS OR E-MARKETPLACES.~~

We humbly request for the Senate to consider how responsibilities of different stakeholders should be allocated in creating a regulatory framework for e-commerce. This provision puts an unreasonable burden on platforms and future emerging platforms that wish to operate in the Philippines. It also negates the good faith and safe harbor provisions of the ITA, which has been adopted in many regional and international regulations on online content moderation.

Online merchants have the primary responsibility of ensuring that the goods and services they sell online are within the bounds of the law. Platforms, on the other hand, can build systems, policies, and guidelines that online merchants need to abide by, and can restrict or remove listings or even access, if found violating.

The abovementioned provision assumes that platforms can proactively prevent listings at the point of creation, real time. Platforms do not have visibility on the quality of the goods and services because they do not have control over what happens offline with merchants' inventory.

Ensuring consumers safety and integrity of the platforms are critical and important in its operations. Aside from the policies and guidelines, enforcement mechanisms, detection, and proactive and reactive strategies are in place to protect the users and keep their communities safe. As with any technological advancement, the systems are not yet perfect and are improving over time as bad actors evolve their tactics. Thus, flexibility, collaboration with government agencies and civil society organizations help improve that system, as well as in responding to violating content online and new tactics through building local partnerships and direct reporting channels.

Lastly, we believe that this provision might result in unintended consequences for the consumers. Since platforms will be required to be overly cautious on listings and content, this will result in over-enforcement and potentially censorship. This may also raise issues on privacy, depending on which features of the platforms are affected by the regulation.

III. Vague and all-encompassing definitions can lead to overreach and overregulation

Recommendations:

- Section 3. Scope and Coverage should only focus on business-to-business and business-to-consumer internet transactions, and ensure that online media and digital goods and services are descope from the ITA bill.
- We also recommend that ITA focuses on physical goods and services sold or leased online and discuss a separate regulation on digital goods and services, and online media.

We strongly recommend the adoption of global standards when creating definitions and defining the coverage of the ITA. Vague and all-encompassing definitions and scope to regulate may lead to overreach and premature or over- regulation, which can lead to deterring innovation. This may lead to limiting the potential of the whole digital economy in the Philippines.

For example, the current definition of digital goods and services also covers digital content and online media.

Digital goods and services, by global standards, are products that can only be purchased, transferred, and delivered online. As a result, they lack physical presence, thus, are intangible. Regulating digital goods and services similar to physical goods and services sold online is a one-size fits all approach that creates uncertainty and disproportionate obligations. In addition, digital goods and services are being consumed online by the users through different digital platforms with completely different business models from e-commerce.

Moreover, treating online media consumption similar to internet transactions sends inaccurate and misleading signals to consumers and merchants with potential unintended consequences.

For online media, for example, 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.

As responsible stakeholders, we appreciate the ability to participate in this ongoing discussion and the opportunity to provide further inputs into the policy-making process in the Philippines. 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)