

Asia Internet Coalition (AIC) Industry Comments on Taiwan's Draft Cyber Security Management Act Amendment

20 November 2023

To

**The Agency of Cyber Security (ACS)
Ministry of Digital Affairs (MODA)
Government of Taiwan**

The [Asia Internet Coalition](#) (“AIC or We”) expresses our sincere gratitude to the Ministry of Digital Affairs (“MODA”) for the opportunity to submit comments on the [Draft Cyber Security Management Act Amendment](#). Our comments and recommendations are provided both in **English and Chinese (see page 3)**. The AIC is an industry association of leading Internet and technology companies. AIC seeks to promote the understanding and resolution of Internet and ICT policy issues in the Asia Pacific region.

First and foremost, we commend the MODA for your efforts on drafting new measures to strengthen cybersecurity protections for critical infrastructure. While we support these efforts, we believe that the bill's current lack of a definitive scope on key definitions involving Critical Infrastructure Providers as overly broad, and without fundamental legal protections on designations.

The AIC is generally supportive of bolstering cybersecurity across the economy, but is concerned about regulatory burdens, as well as the lack of due process and transparency within the designation process. Further, in order for AIC and its member companies to provide meaningful comments and raise critical concerns, we believe that the Taiwan government will benefit from further engagement with stakeholders to better communicate the scope of Critical Infrastructure Provider designation.

We would like to raise potential concerns regarding Taiwan's Draft Cyber Security Management Act Amendment, in particular the lack of rigid codification of process and procedure in critical infrastructure designation. The AIC supports the Taiwan government's effort to strengthen cybersecurity protections for critical infrastructure, however, our member companies have also collectively expressed concerns over potential overreach of Critical Infrastructure Provider designations, which may result in severe negative consequences on the digital economy.

Digital platforms are important contributors to Taiwan's local economy and society, with a shared interest in ensuring a safe and secure experience for its users that stretches across the globe. Voluntary practices on cyber security is already a well-established norm among the

most established platform businesses.

1. **Commitment to Cyber Security:** AIC's member companies follow international security standards that require robust measures to be put in place that ensure the integrity and availability of our products and services. Members often partner with local governments in sharing and exchanging cyber security information and best practices. Digital platform companies also strive to meet expectations through external assessments to ensure cyber security protocols continue to work properly.
2. **Truly Essential Services::** Ultimately, our firm position is that digital platforms are not critical to the functioning of the economy and society, to the same degree as actual operators of critical infrastructures (energy, banking, transport, etc.). Digital services are delivered through an information structure, but are not in themselves critical infrastructure. A true Critical Infrastructure Provider provides a service in which a switch is made impossible. Therefore, popularity (whether measured in user size or brand recognition) is not a convincing metric in determining critical infrastructure designation.
3. **Range of Alternatives:** When considering whether a service is critical to the functioning of society or the economy of Taiwan, the key consideration is whether users can actually substitute the service. The availability and existence of a temporary or permanent alternative alone satisfies the condition of substitution. For digital platforms, rarely is the case that there is no via substitution to enable the functioning of society or the economy. The unavailability of the users' "favorite" service does not have the same consequences as an unswitchable service.
4. **Significant Uncertainty:** As currently proposed, Taiwan's Cyber Security Management Act Amendment is unclear as to the procedures and context for designations (Article 19). This has the potential to significantly undermine due process, while potentially posting significant negative consequences to our member companies. Without further context being shared on the amendments, we urge the Taiwan government to articulate its intent, purpose and limits of the designation process in its draft amendments, and to focus on truly essential services that are unswitchable and without clear alternatives.
5. **Global Competitiveness of Taiwanese Digital Sphere:** We strongly believe that possible overregulation that could stifle digital innovation and growth in the digital market in Taiwan. Imposing a heavy compliance burden would hinder the global competitiveness of Taiwanese digital industry in the long run. Instead we would like to advocate a collaborative approach with the Taiwan government between the government and digital platforms to address cybersecurity concerns. In order to achieve this and strengthen global competitiveness of Taiwanese Digital Industry, We believe in the importance of partnerships with industry associations and digital companies. We are ready to facilitate the dialogue going forward.

We are grateful to MODAs efforts for upholding a multi stakeholder approach in developing this code. We further welcome the opportunity to offer our inputs and insights, directly through meetings and participating in official consultations.

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 for your time and consideration.

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

Sincerely,
Jeff Paine
Managing Director
Asia Internet Coalition (AIC)
<https://aicasia.org/>

Chinese Translation

「亞洲網路聯盟」(Asia Internet Coalition ; AIC)

對於數位發展部給予機會就《資通安全管理法》修正草案表達意見，我們深表誠摯感謝。

亞洲網路聯盟 (AIC) 是由網路及科技公司組成的產業協會。

旨在促進亞太地區網路及資通訊科技 (ICT) 政策議題的推進。

首先，對於數位發展部為加強關鍵基礎設施資安保護所做的努力，AIC

由衷地表示敬佩。雖然我們認同這些努力，但同時認為該法案目前缺乏針對如何指定關鍵基礎設施提供者的定義及明確範圍，也因其範圍過於寬泛，且在指定程序上沒有考量基本的法律規範原則。

整體而言，AIC

贊同數位發展部對於整體經濟網路安全資安的強化與保護，但對監管負擔以及指定過程中缺乏正當程序和透明度感到擔憂。例如：指定數位平台為關鍵基礎設施將會對社會發展影響甚鉅，使得台灣數位轉型進程落後於國際。此外，為了讓 AIC

及其會員公司有機會提供有意義的產業意見及關鍵問題，我們相信台灣政府如能與利害關係人有更多的事前接觸及溝通，能更好傳達關於關鍵基礎設施之範圍定義。

我們希望透過這封信來表達我們對於這次資通安全修正草案的擔憂。特別是在針對如何指定關鍵基礎設施的過程中，缺乏嚴謹的修法程序。AIC

支持台灣政府希望強化保護關鍵基礎設施資安保護所做的努力，然而 AIC

的企業會員集體表達了對「指定關鍵基礎設施提供者」可能逾越行政權的擔憂，這樣的狀況可能會對數位經濟產業發展產生嚴重的負面影響。數位平台對於台灣經濟社會的數位轉型提供了重要貢獻，

同時，對於數位平台而言，確保為全球用戶提供安全可靠的體驗為其核心宗旨。自發性的網路安全規範已是多數數位平台業者行之多年的既定規範。

針對資安保護的承諾：

AIC

的企業會員已遵循國際安全標準，這些規範標準要求採取必要措施以確保企業會員公司的產品和服務是正直、誠信且可使用的。企業會員也經常與當地政府合作、分享網路安全資訊趨勢和經驗。數位平台企業也透過外部第三方評估來努力滿足大眾的期待，以確保網路安全協定繼續正常運作。

關注真正關鍵基礎設施及服務：

事實上，AIC

堅定的認為，數位平台對於經濟和社會的運作方式在層次上並非像能源、銀行、運輸業等真正關鍵基礎設施那樣至關重要。我們希望可以確保在指定重要民生服務的程序及辦理可以更流暢及合理，而不是擴大該範圍。數位平台業者透過資訊結構提供服務，但其本身並非關鍵基礎設施。真正關鍵基礎設施提供者所提供的服務應是關鍵且無法任意置換。

因此，我們認為以產業規模（無論是以使用者多寡或是品牌知名度）來衡量是否為關鍵基礎設施，並非是一個令多數人信服的標準。

潛在的替代方案：

在考慮一項服務是否對台灣社會或經濟運作至關重要時，關鍵在於考慮使用者是否有其他能取代該服務的替代方案。只要有暫時或永久的替代方案，既可滿足替代條件。就數位平台而言，其服務並非不可替代，也不會應缺乏而影響社會或經濟運作。

使用者無法使用「最喜歡或最熟悉」的數位服務與使用者無法取得不可替代的關鍵基礎服務，不會產生相同的後果。產業規模 不應作為指定程序的標準。

結論：

目前台灣《資通安全管理法》修正草案，
在第十九條針對關鍵基礎設施的指定程序和背景尚不明確時修法，可能會造成程序上的疑慮，
同時可能為我們的企業會員帶來重大負面影響。此外，非必要的行政負擔會對未來經濟投資意願產生負面影響，以及是否應提供強化資安保護的產品。因此，
在沒有就修正草案提供更多背景的情況下，我們敦促台灣政府在修正草案中闡明其指定關鍵基礎設施的意圖、目的和限制等流程，並著重關注不可置換且沒有明確替代方案的真正關鍵基礎設施。

台灣數位產業的全球競爭力：

我們堅信，過度監管可能會抑制台灣數位產業市場的數位創新和成長。從長遠來看，沉重的法律遵循負擔將阻礙台灣數位產業的全球競爭力。相反地，我們希望提倡與台灣政府在政府與數位平台之間採取合作方式來解決網路安全問題。為了實現這一個目標並增加台灣數位產業的全球競爭力，我們相信與產業協會和數位經濟企業建立夥伴關係的重要性。我們期待未來能有更多的互動與溝通。

我們由衷的感謝數位發展部在草案起草過程中，為了與多方利益相關者溝通所做的努力。我們也期盼有機會能直接透過會議或官方磋商以提供產業意見和看法。

如果您對 AIC 的意見有任何建議或疑問，需要 AIC 進一步說明，歡迎隨時透過 Secretariat Mr. Sarthak Luthra at Secretariat@aicasia.org or at +65 8739 1490 或直接與我聯繫。誠摯的感謝您。

敬祝

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