

Asia Internet Coalition (AIC) Industry Submission on Draft Implementing Rules and Regulations on Republic Act No. 11967 or the Internet Transactions Act of 2023

14 March 2024

To the Department of Trade and Industry (DTI)
Government of the Philippines

On behalf of the [Asia Internet Coalition](#) (AIC) and its members, I am writing to express our recommendations on the [Draft Implementing Rules and Regulations \("IRR"\) on Republic Act No. 11967 or the Internet Transactions Act](#) ("ITA") of 2023. 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 also provided detailed comments and recommendations on the Philippines Internet Transaction Act (ITA) Bill 2023. Below are some of the key issues and recommendations, followed by details comments in each of the section.

In context of Take Down Orders, we suggest that in the exercise of compulsory powers of the Department of Trade and Industry (DTI), as well as other government agencies, these agencies be made to conform to a format for the issuance of orders and subpoenas. This format should aim to simplify and help platforms and e-marketplaces identify problematic content, confirm the authority of the issuing agency, and assess the legal basis of the request so as to expedite the data request / data removal process.

"With due notice and hearing" we recommend that DTI provide a procedural safeguard that ensures the affected party is given the opportunity to present arguments and defences before any decision is made on the take down. In addition, we recommend that the takedown order expressly indicate if the goods or services to be taken down are prohibited by law, imminently injurious or dangerous.

A mechanism that allows platforms to likewise request for an extension to review requests should likewise be built into the implementing rules. While we understand that the public's welfare is the primary concern of the Honorable Department, there should be time accorded to platforms to review requests (especially voluminous ones) to ensure that the proper action is taken, and no participant in the digital ecosystem (whether an e-retailer, a developer, etc.) is unduly prejudiced by miscalls due to haste. We thus suggest that the IRR include a provision to read:

Section xx. Department of Trade and Industry, in the exercise of its compulsory powers under Sections 13 to 15 of the Act, subpoenas, compliance orders, and take down orders issued by the Department shall include the following details:

1. *Name and position of the officer making the request,*
2. *Name of the government agency represented,*
3. *If the content is located online, exact URLs of the pages where the subject content exists,*
4. *Specific provision of the law(s) violated by the said content, and an explanation of, or reasons therefor,*
5. *If the content is a video, specific timestamps of the content where the supposed illegal material appears,*

6. *If the content is not a video, where the supposed illegal content appears in the content flagged,*
7. *Specific online products affected*

In case of incomplete details, Online Platforms, E-Retailers, and E-Marketplaces may ask the requesting department for the complete set of information. Online Platforms, E-Retailers, and E-Marketplaces' duty to comply with the compliance order, subpoena, or take down order does not arise until the submission of the complete set of details as outlined above. Online Platforms, E-Retailers, and E-Marketplaces may request for additional time to comply with any particular order should the request be voluminous (i.e, involves multiple content) or is of a considerable length (in the case of videos), which extensions may not exceed a total of 72 hours.

In this regard, we are humbly submitting below detailed section wise positions and recommendations, for the DTI to consider:

Section	Issues	Recommendations
Sec. 2.c. Consumer-to-consumer transaction	<p>The IRR expanded the definition of the consumer-to- consumer transaction by providing limitations on the number of transactions, whether goods and services, including payment transactions on personal banking or e-wallets.</p> <p>This will limit the opportunity for an individual who wants to try to start a business. The risk of starting a business, which includes high capital and resources, will force an individual to register as a business despite the lack of capacity. There are also cases when an individual needs to sell more than 10 items, i.e. a person leaving his current place to another. Thus, providing limitations on listings create more issues and concerns not just for the sellers, but also for the government and platforms in the implementation of the ITA.</p>	<p>Option 1 (preferred option): Retain the definition: "Consumer-to-consumer (C2C) Transactions refer to transactions between end-users done for personal, family, or household purposes and not done in the ordinary course of business, <i>notwithstanding that information on the transaction was exchanged using a digital platform;</i>"</p> <p>Option 2: We propose to add the following: Consumer-to-consumer (C2C) Transaction refers to transactions between end-users done for personal, family, or household purposes and not done in the ordinary course of business, regardless of the platform used. What constitutes C2C Transactions depends on the value, frequency, and volume of sale. For purposes of the Act and these Rules, C2C Transactions shall include the sale of products, services, and sale of personal items, for a limited period; <i>Provided, however, That the C2C Transactions do not provide multi-quantity and evergreen listing.</i></p>

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		<i>Instead of limitations mentioned in Section 2(c) 1-3, we suggest adding a condition that sales should not exceed PHP 250,000 per taxable year, i.e., the threshold for taxable income.</i>
Sec. 2.e. E-commerce	This defined term is not used in any of the provisions of the IRR. Notably, the extra-territorial application of the ITA under Section 5 of the law and Section 6 of the draft IRR only refers to those "who avails of the Philippine market", without using the term "purposeful availment".	Delete peer-to-peer transactions.
Sec. 2.p. Purposeful Availment	This defined term is not used in any of the provisions of the IRR. Notably, the extra-territorial application of the ITA under Section 5 of the law and Section 6 of the draft IRR only refers to those "who avails of the Philippine market", without using the term "purposeful availment".	We suggest deletion of this definition.
Sec. 18. Subpoena	<p>The DTI clarified during the round table discussion last February 8, 2024 that the subpoena power is only in relation to administrative investigations.</p> <p>For criminal actions, the DTI should coordinate with law enforcement for the application of a cyber warrant.</p>	<p>We propose adding the following paragraphs:</p> <p>We suggest providing language in the IRR to ensure clarity on:</p> <ul style="list-style-type: none"> • The scope and purpose of the subpoena • The effect of failure to comply with the subpoena • The extent of applicability of the Rules of Court on Subpoena and Contempt proceedings • The process of objecting to the subpoena, including the specific form required by the DTI, acting in its capacity as a quasi-judicial body, and the period prescribed for the filing of objections.

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		<p>“Section 18. Subpoena. – In the exercise of its powers under the Act, the DTI Secretary, or motu proprio, shall have the power to issue summons, subpoena ad testificandum, and subpoena duces tecum to alleged violators or witnesses to compel attendance and the production of documents in investigations or proceedings before the Bureau. Failure to comply with the subpoena ad testificandum and subpoena duces tecum shall authorize the Bureau to file a case for contempt under the Rules of Court.</p> <p>A subpoena duces tecum is valid if it:</p> <p>(a) is issued on matters within the jurisdiction of the DTI under the Act, (b) is reasonably relevant to the subject matter under investigation, and (c) designates or describes the information or document sought to be produced, allowing it to be identified.</p> <p><i>In compliance with paragraphs (a), (b) and (c), the subpoena shall include the purpose and particulars of the investigation or proceeding in relation to which the information or document is sought to be produced, to enable the alleged violators or witnesses to determine the relevance of the information or document.</i></p> <p><i>The information collected pursuant to a subpoena shall be used only in administrative proceedings for violations under the ITA.</i></p> <p><i>Nothing in this section shall be read as suspending the need of a warrant or cyberwarrant that may be required by applicable law.”</i></p>

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Section 19.	Authority to Issue Compliance Order	We suggest outlining the process involved in issuing a compliance order, and clarifying the scope of authority vested in the DTI Secretary to issue such orders. This would involve detailing the procedural requirements that must be followed before a compliance order can be issued (including providing prior notice to the concerned party, conducting an investigation, and affording the party an opportunity to present evidence or arguments in their defense). This clarification of procedures and powers would provide transparency and guidance to all parties involved, ensuring that compliance orders are issued in a fair, and consistent manner.
Sec. 20. Authority to Issue Takedown Order	<p>The IRR should require that the takedown order contain:</p> <ul style="list-style-type: none"> • A statement that it is issued pursuant to Section 15 of the ITA (to clarify which laws/rules apply); • The specific law or rules violated; • The specific internet address or URL of the listing or offer; • Such other facts which clearly show that any of the circumstances under Section 15(a) to (d) are present. • Reasonable timeline for the online platform operator to take action. <p>Unless the takedown order complies with the requirements above, the period for complying with the takedown order should not commence and the person or entity subject of the takedown order may avail of the 48- hour</p>	<p>We suggest adding the following paragraphs:</p> <p>We suggest to add to this enumeration an express indication or statement if the goods or services to be taken down are prohibited by law, imminently injurious or dangerous.</p> <p>"Authority to Issue Takedown Order. - The DTI Secretary, after investigation or verification, <i>and with due notice and hearing</i> may issue an ex parte takedown order directing the removal of a listing or offer on a webpage, website, platform or application, regardless of the intended nature of the transaction, when any of the following is present:</p> <p>xxx Such takedown order may be issued motu proprio or upon the application of other regulatory government agencies seeking the removal of an online listing or offer</p>

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	<p>period within which to be heard on the same.</p> <p>The IRR should also clarify that:</p> <ul style="list-style-type: none"> Other regulatory agencies do not have takedown powers and all requests for takedown of a listing or offer in internet transactions must be coursed through the DTI, for efficiency and monitoring. Any of the persons / entities to whom / which the takedown order is directed should have an opportunity to be heard on the validity of the takedown order, not merely the “violating entity.” Online platforms should likewise be given the opportunity to question the takedown order, considering that they may be subject to blacklisting or administrative penalties if they fail to comply with the same. Any pending challenge of the takedown order (including but limited to its validity) should operate as a stay of the order. Consistent with Section 24 of the ITA, which requires exhaustion of the internal redress mechanism of the digital platform, the DTI should, at the first instance, utilize the tools provided by the platforms for the purpose of takedown of content (especially for platforms based abroad). 	<p>in violation of laws, rules or regulations under their jurisdiction.</p> <p><i>The takedown order shall contain:</i></p> <p><i>(a) a statement that it is issued pursuant to Section 15 of the Act;</i> <i>(b) the specific provision of law or rule alleged to have been violated;</i> <i>(c) the internet address or URL of the listing or offer (this should also include the specific listing or offer with sufficient information to identify the brand, name, model, version, and/or product line;</i> <i>(d) facts clearly showing that the circumstances under Section 15 are present;</i> <i>(e) the period when the takedown order shall remain effective, which shall be for a maximum period of thirty (30) days unless otherwise extended or made permanent by a judicial order or decision;</i> <i>(f) the period when the takedown order should be complied with, which in no case shall be less than seven (7) business days;</i> <i>(g) a statement that the goods or services to be taken down are prohibited by law, imminently injurious or dangerous if it is as such; and</i> <i>(h) such other facts as may assist in identifying the contend to be taken down and the grounds therefor.</i></p> <p><i>The takedown order must likewise be signed and dated by the DTI Secretary.</i></p> <p>The takedown order shall be directed against the e- retailer or online merchant, and the owner or operator of the e-marketplace or digital platform. Copies of the order shall likewise be served on entities whose cooperation would be required for its enforcement such as, but not limited to, the duly registered internet service provider</p>

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		<p>involved, related payment gateways, and other government agencies.</p> <p><i>The e-retailer or online merchant, and the owner or operator of the e-marketplace or digital platform shall comply with the takedown order within the period indicated therein, which shall not be less than seven (7) business days. For the avoidance of doubt, the aforementioned period of seven (7) business days shall only begin to run when all the information set out in Section 15.2 above is fully provided in the takedown order and subject always to Section 15.5 below.</i></p> <p><i>In accordance with Section 24 of the Act, appropriate tools and mechanisms provided by the e-marketplaces and platforms for regulators shall be utilized exclusively to effect the service and enforcement of the takedown order.</i></p> <p>The order shall remain in effect for a maximum period of thirty (30) days unless otherwise extended or made permanent by a judicial order or decision.</p> <p>Nothing herein shall preclude the appropriate agency from exercising its regulatory authority, including the issuance of orders directly to the erring person or entity, to prevent or stop the sale of goods or services under its jurisdiction. <i>The issuance of the appropriate order by a regulatory agency to prevent or stop the sale of goods or services under its jurisdiction, shall preclude the DTI from issuing a takedown order against the same online listing or offer.</i></p>

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		<p>The violating entity shall be given an opportunity to be heard within forty-eight (48) hours from the issuance of a takedown order; Provided, such entity has the burden of proving before the Secretary that there is substantial admissible evidence that the grounds for the issuance of the takedown order are not present.</p> <p><i>The owner or operator of the e-marketplace or digital platform shall likewise have an opportunity to be heard within the same period from the issuance of the takedown order, on the ground that it will not be able to effectively implement the takedown because the procedural requirements under Section 20 have not been complied with.</i></p> <p><i>If the violating entity or the owner or operator of the e- marketplace or digital platform questions the validity of the takedown order, the period to comply with the takedown order shall be tolled and shall begin to run from written notice of the decision of the DTI Secretary upholding the validity of the takedown order."</i></p>
Section 45. Subsidiary Liability of E-marketplaces or Digital Platforms.	The obligation of the digital platform and e-marketplace, consistent with items (b) and (c) shall only apply in case of failure to comply with notices or orders from Philippine government agencies, without cause and should be without prejudice to the right to be heard on the TDR under Section 15 of the ITA .	<p>The last paragraph shall be reworded, as follows:</p> <p><i>"Digital platforms or e-marketplaces shall not be held liable for their reliance in good faith on an online merchant's representations, warranties, or submitted registration documents if such information or documents are submitted in good faith and that reasonable effort was exerted to ascertain and maintain the accuracy, authenticity and veracity of the documents or information submitted. "</i></p>

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		<i>The draft IRR's Section 45 has clarified that the subsidiary liability is owed only to the online consumer, and not the IP rights holder. Hence, the potential issue of expanding exposure to liability from IP rights holder is no longer material.</i>

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)