



October 17, 2016

Legal Department
Vietnam Chamber of Commerce and Industry
No.9, Dao Duy Anh Street
Dong Da District
Hanoi, Vietnam

Re: Formal comments on the Draft Decree Amending Decree 72 on the Management, Provision and Use of Internet Services and Information Content Online (Decree 72/2013-ND-CP)

Dear Sir/Madam,

The Asia Internet Coalition (“AIC”) is an industry association formed by Apple, Expedia, Facebook, Google, LINE, LinkedIn, Paypal, Rakuten, Yahoo! Incorporated, and Twitter that seeks to promote the understanding and resolution of Internet policy issues in the Asia Pacific region.

AIC would like to express its thanks to the Vietnam Chamber of Commerce and Industry (“VCCI”) for their willingness to incorporate AIC member companies’ comments regarding relevant provisions within the Draft Decree Amending Decree 72/2013-ND-CP on the Management, Provision and Use of Internet Services and Information Content Online (“Draft Amendment Decree”). The AIC remains supportive of Vietnam’s economic progress and believes that an implementable and supportive policy framework for the development of the domestic ICT sector is a critical aspect of that progress.

AIC recognizes that the Draft Amendment Decree migrates conditions for management, provision and use of internet services and online information from existing relevant Circulars to the Decree level, and that this must be done to comply with the 2014 Law on Investment. In the spirit of the Law’s objective of simplifying business conditions, AIC would like to take the opportunity to contribute industry inputs and perspectives to the Ministry of Information and Communication in order to help build a supportive business environment for local ICT businesses and one that is conducive to both local and foreign investment.

After reviewing the Draft Amendment Decree released by VCCI on October 17, 2016, AIC would like to provide comments on several key provisions which we believe require further attention. Our full comments have been attached below.

We thank you for the opportunity to raise these points and your kind consideration. We look forward to future exchanges on this topic.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Hans W. Vriens', is written over a light blue horizontal line.

Hans W. Vriens

Secretariat
Asia Internet Coalition

OVERARCHING COMMENTS

- The business conditions set forth in this draft Decree fail to reflect the development needs of an emerging ICT “innovation hub” and the outward-looking ambition harbored by many Vietnamese SMEs to access foreign markets and integrate themselves within the global digital economy.
- The draft Decree’s requirements could negatively affect domestic SMEs’ ability to use the Internet to reach customers (both domestically and abroad), deliver digital products online, sell goods and services at home and overseas, and to attract capital investments from foreign and domestic investors.

SPECIFIC COMMENTS AND SUGGESTED REVISIONS

1) User Information Storage Requirements (Websites, Social Media and Games) - Regarding supplementation to Article 23c and Article 32b:

“23c 2.a) Information websites: Storing information content for at least 90 (ninety) days from the date of post; storing posted information processing logs for at least 02 (two) years;

23c 2.b) Social networks: Storing information about accounts, login and logout time, IP addresses of users and posted information processing logs for at least 02 (two) years;

23c 3.a) Performing registration procedures and storage of members’ personal information, including: Full name; date of birth; ID or passport number, date and place of issue; phone number and email (if any). In case an Internet user is under 14 years old and does not yet have a passport, the legal guardian will decide the registration of his/her own personal information according to the provisions of this paragraph to indicate his/her allowance and responsibility to the law for such registration;

23c 3.dd) Getting ready to connect and verify personal information with the electronic identification card database or the national personal identification code system as requested by competent authorities;

32b 1.a) The devices shall have ability to store and update players’ personal information including: Full name; Date of birth; Permanent place of residence; ID number or passport number, date of issue and place of issue; Phone number, mail address (if any). If the player is younger than 14 (fourteen) years old and has not obtained an ID card or passport, his/her guardian shall consider registering personal information to express his/her consent and shall take legal responsibilities for the registration”

- **AIC comment:** Such data retention requirements (as outlined in Article 23c, sections 2.a, 2.b, 3.a, 3.dd, and Article 32b, section 1.a) may pose significant burdens and competitive disadvantages for Vietnamese SMEs and would hinder the overall development of the Vietnam ICT sector as an innovation hub. Furthermore, due to the specificity of the personal information required for preservation (date of birth; passport number; place of permanent residence; etc.), these provisions will create unnecessary data exposure and could compromise the user/consumer privacy in the event of a data breach.

The appropriate data retention period should be determined on an enterprise-by-enterprise basis taking into consideration the specific nature and user information needs of such enterprises’ business and services.

AIC would recommend removing these provisions. However, if the Vietnamese government is determined to mandate data storage periods and to specify what kind of detailed personal information businesses must store, it should consult domestic private sector enterprises to determine the most appropriate and realistic requirements and to ensure that regulations do not stifle business growth.

2) Local Server Requirements - Regarding supplementation to Article 23c

“2.e) Ensuring that there is at least 01 (one) server system located in Vietnam, serving the inspection, storage, and provision of information at any time on all information websites and social networks owned by the organization and enterprise in accordance with provisions in points a, b, c, d and dd, Clause 2 of this Article.”

- **AIC Comment:** As a general point, AIC members believe that server location should not be a condition for the provision of an online/digital service. Vietnamese SMEs will benefit from the ability to choose between a diverse selection of servers, ensuring that they have access to secure, high quality database options.

The benefits of outward cross border data flow are realized through the use of servers all over the world. As domestic SMEs look to do business beyond Vietnam’s borders, they increasingly partner with foreign service providers, such as global e-commerce platforms, to access overseas markets – many such foreign service providers do not have servers in Vietnam. The requirement to invest in establishing a proprietary server, or to invest in the use of a domestic server service provider, will create additional costs to Vietnamese businesses and may compromise such businesses’ service quality.

Ensuring the security of domestic information can be achieved by means other than data localization requirements for physical servers, including through harmonized multi-national legal frameworks for privacy protection such as the APEC Cross Border Privacy Rules system (CBPRs).

3) Content Takedown Requirements - Regarding supplementation to Article 23d:

“1.c) Putting in place a coordination mechanism to instantly remove the information violating Clause 1, Article 5 of this Decree no later than 03 (three) hours after self-detection or receipt of requests from competent state authorities (by writing, by phone, by email);”

- **AIC comment:** Online service providers are intermediaries and should not be made responsible for the possible illegal behavior of users. In order to effectively assess the veracity of violating content, service providers will need adequate time to process take-down requests, especially if there are conflicts in interpretation of content. In this context, a strict 3-hour requirement would be extremely difficult to satisfy. If common international industry positions on intermediary liability are not observed in Vietnam, such requirements will place an undue “instant response” legal burden on Vietnamese businesses, which may stifle their growth and expansion.

4) Requirements for Game “Devices” – Regarding supplementation to Article 32b

Entire Article

- **AIC Comment:** AIC members would suggest that language referring to game “devices” be clarified. Does “devices” refer to hardware technology (e.g. Sony Playstation, Microsoft Xbox, desktop and laptop computers, smartphones, etc.), non-hardware-specific online and digital game software, or both? The feasibility and enforceability of many of the provisions contained within Article 32b will depend on the nature of the term “devices”. We would recommend that game “devices” be defined in specific narrowed terms as hardware, excluding game software.

5) Requirements for Foreign Game Providers – Regarding supplementation to Article 33

“1.) Being an enterprise established according to the Vietnamese laws, with online game service business line having been listed in the National Business Registration Gateway;

3.) Personnel conditions for providing games services include: a) Having a head office with determined address and phone number;”

- **AIC comment:** If the above provisions are intended to cover foreign game service providers (as defined in Article 31.4 of Decree 72 – “Foreign organizations and individuals that provide online game services for Vietnamese users must establish enterprises in accordance with Vietnam’s law and in accordance with this Decree and the laws on foreign investment” – which is not subject to amendment by this draft Decree), there would appear to be clear conflicts with TPP¹ and WTO² commitments regarding prohibition of local presence requirements.

We would recommend that MIC include a revision to Article 31.4 within the Draft Amendment Decree in order to comply with its existing TPP and WTO commitments with regards to foreign game service providers.

6) Local Payment Support Service Requirements - Regarding supplementation to Article 32b. and Article 33

“1.b/5.a) Payment management system of the games (if any) must be located in Vietnam and connected with Vietnamese payment support service providers to ensure accuracy, sufficiency and enable players to look up the detailed information about their payment accounts;”

- **AIC comment:** According to Decree 101/2012/ND-CP and Decree 80/2016 on Non-Cash Payment; and Circular 39/2014/TT-NHNN Payment Services, “payment support services” is an intermediary payment service that includes: bill collection and bill payment services; support service for wire transfer; and e-wallet services”.

As domestic SMEs, including game developers, look to access international markets beyond Vietnam’s borders, they will need to rely on global payment support services, which normally provide solutions for account holders to manage their accounts and to link to local payment service providers (local bank accounts). Forcing them to connect with local payment support services would limit businesses’ ability to access international markets and place undue limitations on growth potential. Requiring that game providers’ payment management systems be located in Vietnam will create practical operational challenges and deter much needed investment into the domestic game developments sector.

We also recommend that MIC synchronize its definition of “payment support services” with those in Decree 101, Decree 80 and Circular 39 in order to avoid confusion or legal inconsistencies.

¹ Trans Pacific Partnership, Chapter 10 – Cross Border Trade in Services, Article 10.6: Local Presence: “No Party shall require a service supplier of another Party to establish or maintain a representative office or any form of enterprise, or to be resident, in its territory as a condition for the cross-border supply of a service.

² WTO-GATS, Article XVI.2.e: In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as: measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service;