



December 9, 2016

Ad Hoc Committee on the Computer-related Crime Act B.E. ... of the National Legislative Assembly  
National Legislative Assembly  
U-Thong Nai Road  
Dusit, Bangkok  
Thailand 10300

Your Excellency,

The Asia Internet Coalition (AIC) appreciated the opportunity to share our comments on the draft amendments to the Computer-related Crime Act (CCA) at the public forum organized by the National Legislative Assembly (NLA) on November 23, 2016.

We are honored to resurface AIC's comment letter submitted to the Committee on June 22, 2016 outlining our concerns in greater detail, and make additional comments below.

*Internet intermediaries drive economic growth*

As mentioned at the public forum, AIC member companies are among the many online platforms that Thais use today. We can call these platforms, including Thai ones like Tarad.com, Pantip, Kapook and Sanook, intermediaries in that they *facilitate* interactions between people and businesses.

Internet intermediaries are an important part of the digital economy and drive broader economic growth. They support employment, lower barriers for businesses and reduce costs for consumers.

*Internet intermediary regime important for industry to thrive*

As it stands, it is AIC's view that the intermediary liability regime outlined in the draft CCA will have a detrimental impact on Thailand's goal of becoming a regional digital economy hub, particularly on the growth of home-grown start-ups and SMEs.

- An uncertain intermediary liability regime will have a negative impact on investor appetite in Thailand and harm the growth of start-ups and SMEs.
- A Fifth Era report released in January found that 71% of investors surveyed would be uncomfortable investing in markets where intermediaries could be held liable for third party actions or content.
- An Oxera regional report released in 2015 found that, among the countries studied, Thai start-ups are held up the most by the existing intermediary liability regime. Conversely, the success rate of Thai start-ups could increase by as much as 24% with increased and clear liability protection. We enclose the report for your reference.

*Main concerns in draft CCA*

First and foremost, AIC is greatly concerned about the lack of clarity on what constitutes illegal content and how the law would be applied. Section 14 does not provide clear guidance on definitions on types



of illegal content, and Section 20 provides a “content screening committee” significant leeway to interpret the law in this respect.

Second, AIC is greatly concerned by the continuing lack of clear liability protection for intermediaries. We note, in particular, the absence of any safe harbor provision in both Section 15 and the act’s attendant notifications. In principle, intermediaries should not be held liable for illegal activity and content put up by their users.

#### *An enabling safe harbor regime for Internet intermediaries*

An enabling safe harbor regime balances the need to address abuses on the Internet by individuals, while affording clear protections to intermediaries:

- A safe harbor regime needs to apply broadly to intermediaries across the Internet, including mobile. Limiting safe harbors to specific types of intermediaries prevents the law from keeping pace with the speed of innovation, which creates new products and services that bridge across different types, creating uncertainty about how laws apply to intermediaries and major enforcement barriers.
- A safe harbor regime must clearly define the degree of protection levied across all circumstances. This includes a complete limitation on monetary liability and injunctions, which would have a major chilling effect on new investment and impede the growth of start-ups.
- A safe harbor regime should not require any monitoring obligation or other requirement to actively look for illegal content from intermediaries. Given the volume of content produced online, it would be practically infeasible for all content to be monitored and would have a dramatic chilling effect on new investment and startups.
- Any takedown obligations must be narrowly tailored with appropriate checks and balances, including a counter-notice system. (A counter-notice system is one in which users have the opportunity to challenge the removal and recover damages and penalties if wrongfully accused; and where intermediaries that receive a counter-notice are permitted to reinstate the disputed content and have no liability for the content unless a court order is issued for its removal.) These checks are necessary to prevent abuse of the system that would impede innovation online.

There are good international best practices of balanced intermediary liability regimes in place.

- Canada’s [Copyright Modernization Act](#), which came in full force in January 2015, creates a “safe harbor” provision through a notice-and-notice regime. In this regime, online intermediaries (who are not the publishers of the content in question) are protected from being held responsible for unlawful or inappropriate publications made by third parties, provided that upon receiving a request to remove such content, they notify the content creator of that removal demand, and the content creator then has the obligation to take an appropriate action.
- Under the EU [E-Commerce Directive](#) and US [Digital Millennium Copyright Act](#)’s (DMCA) notice and takedown regime, an intermediary’s safe harbor is conditioned on removing or blocking access to particular content on the basis of a complaint. For such a system to work well, the statute should outline certain requirements related to the complainant sending the notice;



the intermediary responding to it; and the ability of the accused to respond. The DMCA also provides a model counter-notice process.

- Closer to the region, [Singapore's Administration of Justice \(Protection\) Act 2016](#) provides Internet intermediaries with multiple defences from online content published by authors that amount to contempt of court. Under this regime, the Attorney-General may direct the publisher of such content to refrain from or cease publishing the matter only upon receiving leave of the High Court, and provides for the right of appeal. In addition, the Act provides for Internet intermediary liability protection in terms of "innocent publication or distribution": publishers (not being the author) will be exempted if the publishing and distributing of any matter was done without the person's authority, consent or knowledge, and without any want of due care or caution on that person's part.
- The 2015 [Manila Principles](#), put together by a diverse group of civil society activities from around the world, also provide useful guidelines on intermediary liability and model notice-and-takedown provisions, stipulating appeals processes and transparency requirements.

### *Conclusion*

With a number of Southeast Asian countries competing to be the hub for digital investment and innovation, an onerous intermediary liability regime and uncertainties about enforcement could set Thailand back in its ambitions.

Should the committee want to discuss in detail some international best practices, the AIC stands ready to offer our assistance.

Yours sincerely,

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

Hans Vriens  
Secretariat  
Asia Internet Coalition