



4 August 2017

Dr. Pichet Durongkaveroj  
The Ministry of Digital Economy and Society  
Chaeng Watthana Government Complex,  
Building B, Chaeng Watthana Road,  
Lak Si District,  
Bangkok

Dear Dr.Pichet Durongkaveroj

The Asia Internet Coalition (AIC) appreciates the opportunity to share our comments on the recently passed implementing regulations to the Computer Crimes Act (CCA). AIC Members include Facebook, Google, Apple, Twitter, LinkedIn, Rakuten, Expedia, The Line, PayPal and Yahoo. We set out below our key comments and concerns regarding the implementation regulations and we are grateful for the opportunity to present these to you.

**NOTIFICATION RE: PROCEDURES FOR NOTIFICATION, CESSATION OF DISSEMINATION, AND REMOVAL OF COMPUTER DATA FROM COMPUTER SYSTEM**

While we applaud and support the Ministry for implementing a notice and takedown procedure for service providers to follow to enjoy exemption from penalty, we have some concerns about the perhaps unintended effect of the requirements and process.

**1. User notification requirements**

The Ministerial Notification allows users to submit notices to service providers without the need to obtain court order to support the claim. There is a significant difference between the type of notice required from the competent authority compared with notice from an individual user.

While the competent authority is required to have a court order to support its request, ensuring that due legal process has been successfully followed and requiring an



independent judicial authority to determine the veracity of a complaint, users can submit requests with merely a requirement to record their claim with a police officer. A police report is merely the start of a criminal claim, with no authoritative determination that the claim has merit. This is not reasonable as users cannot be expected to interpret laws or to determine whether content is legal or not - this needs to be done by a court.

Further, service providers should only be required to comply with matters that have already been considered and ruled on by a court, especially where the requests come from individual users.

We respectfully request that you reconsider this, and make it mandatory that a court order is obtained or reference to a competent authority to obtain a court order is required so user requests are treated on equal ground as requests from a competent authority.

## **2. Timeframes for response by service providers**

While there is a room for the competent authority to order a maximum of fifteen days for a service provider to comply with court orders, service providers would only have between 24 hours to 7 days to comply with user requests.

These prescribed timeframes and certainly the 24 hours turnaround time is not realistic and does not account for the possible volumes of requests and time zone differences when service providers may operate outside Thailand. It places an unreasonable burden on service providers to respond that would take away from the efficacy of the proposed notice and takedown regime.

Further, the prescribed timeframes for user requests are even shorter than the timeframe for takedowns by court order, for claims which at present would not yet be verified by any court or equivalent authority. It is far more likely that an individual user request would be based on an incorrect interpretation of law and regulation, be incomplete or missing the required information and thus would require a more thorough and more lengthy review, necessitating a longer timeframe for consideration of requests submitted by users as compared to requests by court order submitted by experienced competent officials.



We respectfully request that you reconsider the timeframes, and would recommend that the Ministry ask service providers to act within a “reasonable” period of time, accounting for volumes, exigency and international timezones.

### 3. Other comments and next steps

We respectfully request clarification of the following provision:

- Second part of Clause 5(3)(b) - provision reproduced as follows:

*“(b) immediately make a copy of the complaint, including details of the complaint that the complainant transmits to the service user, member, or person related who is under control/supervision of the service provider;”*

Could your Ministry clarify what a service provider needs to do apart from making a copy of the complaint?

We understand that your Ministry will be in charge of interpreting and implementing this Ministerial Notification and plan to set up a team of representatives from relevant government entities and private sector entities to jointly consider issues. We welcome this and recommend that this working committee to be led by the Permanent Secretary of your Ministry be set up soon and before this Ministerial Notification is enforced. We would encourage our members to actively join and participate in this working committee.

### Conclusion

We are happy to engage further with your Ministry on the above requests and our requests of our last letter of 26 July 2017 on these implementing regulations. We look forward to your response and stand ready to offer our participation as part of your Ministry’s working committee to implement these regulations.

Yours sincerely

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

Jeff Paine  
Managing Director, Asia Internet Coalition