

21 September 2018

Mr. Nguyen Thanh Lam
Director-General
The Authority for Broadcasting and Electronic Information (ABEI)
115 Tran Duy Hung, Cau Giay, Hanoi

Dear Director-General Nguyen Thanh Lam,

Comments from Asia Internet Coalition on the Draft Decree to amend Decree No. 06/2016

The Asia Internet Coalition (AIC) is an industry association comprising leading internet and technology companies, with members being: AirBnB, Amazon, Apple, Expedia, Facebook, Google, Line, LinkedIn, Rakuten, Twitter and Yahoo (Oath). The AIC seeks to promote the understanding and resolution of Internet policy issues in the Asia Pacific region.

AIC is grateful for the opportunity to share our comments with the government of Vietnam in this consultation on proposed amendments to Decree No. 06/2016/ND-CP on management over, provision and use of, radio and television services (“Draft Decree”). We commend the Government of Vietnam for inviting industry views as part of this consultation, as we believe this will allow lawmakers to consider important technological developments in internet platforms and on-demand services and the role these will play in Vietnam’s economic transformation journey. The regulatory approach taken in important areas such as broadcast video and music, will have serious implications if not aligned with the development and success of Vietnam digital economy, in terms of local growth and opportunity, innovation, investment and jobs.

In that light, we feel that the extension of broadcasting regulation to online services is disproportionate and not helpful to support the growth of Vietnam’s digital economy. The proposed reforms seek to bring more online services within the scope of the country's broadcasting legislation. But online services, including Internet television and radio services and on-demand services, are functionally and technically distinct from legacy broadcast services. As a result, broadcasting regulation is not appropriate for regulation of online services, for reasons we discuss below.

It is important to note that traditional consumer behaviour around music and video has changed significantly, with users now employing the service-on-demand model, delivered via a streaming service. Compared to the traditional broadcast model, customers today have choice and control over when and how they consume content, whether they purchase content individually (music services by song or album, for example), or choose subscription-based services instead, none of which are possible through traditional broadcasting service. Consumer choice also allows for personalisation and on-demand delivery, which makes streaming fundamentally different to radio, with subscribers completely in control of content consumption. The reality of today’s consumer behaviour and demand make it clear

that trying to apply traditional broadcasting regulations and licensing requirements to online-based services, is a big step backwards, rather than an effort modernize Vietnam's regulatory environment.

We also recommend removing or revising advertising restrictions (Article 14: Clause 6 and Article 17: Clause 6a, b). Advertising is an essential revenue stream for creating and distributing video content. The existing and proposed restrictions on advertising (in Article 14: Clause 6 and Article 17 Clauses 6a and b) will continue to inhibit the development of Vietnam's media market and prevent industry from meeting consumer demand. The Vietnamese media industry is under increased pressure from new competitors and illegal pirate services. With low monthly ARPUs, pay TV players and paid video services are increasingly relying on advertising revenues. As a result, any ban or overly strict regulations on advertising will reduce the incentives of foreign companies to invest in Vietnamese content, reduce consumer choice and will prevent Vietnamese companies from growing and competing.

Barring services that require a subscription fee from advertising, or forcing certain services to carry local ads only, is also inconsistent with international standards and limits platform flexibility to deliver the highest quality content to consumers at the lowest possible price. The media and entertainment industry and the Government are no doubt aligned on wanting to locally relevant advertising for viewers. A better way to achieve the shared goal of more local ads is therefore to permit business model flexibility in order to provide sufficient revenue that supports the delivery of the full range of advertising relevant to consumers. We also recommend the implementation of a reliable audience measurement infrastructure (such as the Nielsen measurement metric) for local ads to be sustainable.

To the extent that regulation of online services is necessary, we instead propose that the Ministry should develop tailor-made regulation for online services that is fit-for-purpose, while also considering opportunities for deregulation of traditional services.

The Draft Decree would impose various obligations that are inappropriate or ill-suited to online service providers considering the market and technical differences between traditional broadcasting services and online services.

Provided here are a few examples:

- The Draft Decree would require online services to “propagate....nationwide”, especially in remote areas, distant areas, the frontier, islands and extremely disadvantageous areas.” Decree No. 06/2016/ND-CP Article 9 Clause 1. Online service providers cannot be expected to comply with this requirement because they do not control the underlying broadband infrastructure and cannot provide service to a customer unless that customer already has Internet access provided to them by an Internet service provider.

- The Draft Decree would specify that “the content of a free broadcasting service includes . . . National and local channels serving essential political propagation [and] Other Vietnamese channels.” Decree No. 06/2016/ND-CP Article 13 Clause 1. Such a limitation on the content available to online service providers would be unreasonable to providers and harmful to Vietnamese consumers. Allowing online service providers to transmit any lawful content encourages competition and diversification amongst providers, promotes content creation particularly of niche and independent content, and benefits consumers by enabling them to access a wide variety of content.
- The Draft Decree would also provide that consumers “have the right to complain about the service quality” of online services to state regulatory authorities. Decree No. 06/2016/ND-CP Article 8 Clause 1. Assuming that this requirement refers to strength of signal and technical quality of signal reception, we would note that online service providers do not own or control the networks over which their services are transmitted and do not control what network is chosen by the consumer. As a result, online services cannot provide any guarantees or remedy any issues regarding quality of service provided.
- The Draft Decree would require online services to ensure that contents are consistent with information content regulations “prescribed in laws on the press.” Decree No. 06/2016/ND-CP Article 9 Clause 4. However, such regulations would be inappropriate for online services that do not exercise editorial control over the content that appears on their platform, such as platforms that host user-generated content. Such services cannot reasonably be held responsible for vetting and ensuring the compliance of all content that appears on their platforms.
- Meeting consumer demand for local as well as non-local content is essential to attracting consumers and sustaining the business case to provide them with the content they demand. The best way to meet this demand is to have multiple services innovating and investing to meet consumer demand. Competition for distribution on VOD services creates incentive for video producers to create high-quality content that consumers want to watch. Content quotas distort this competition by creating artificial demand. In a quota system, a minimum amount of content must be licensed by VOD services every year. This discourages content producers from producing high-quality audio-visual programming and limits the ability of VODs to be selective in terms of price and quality.
- Applying quotas to on-demand internet services is an inefficient way to promote the creation of locally relevant content, as it restricts the ability of content creators to freely participate in an increasingly competitive and global media market. Delivering locally relevant content to consumers is a shared goal between on-demand service providers and the government but expanding quota requirements to new platforms

will limit the ability of industry, and specifically the local content market, to meet this goal. Some likely (unintended) consequences of applying quotas are that on-demand services will obtain low quality content to meet the requirement or just reduce the amount of non-local content to achieve the prescribed ratio. Both outcomes lead to poor consumer experiences and represent an artificial distortion of the market that would otherwise be responding to consumer demand. On a technical front, quotas do not make sense for online services which do not have a restricted 24-hour window for broadcasting, not to mention the fact that online services have unlimited shelf space. We instead urge the government to focus on supporting and developing local content creators, so that talented Vietnamese can create engaging content, not just for the local audiences, but for sharing with a global audience of millions who have access through the Internet.

- Article 19 of Decree No. 06 (as amended) requires that 100% of the content of reporting programmes, films, documentaries, cartoons, reality shows and game shows on foreign channel programmes on 'pay' radio and television services must be translated into Vietnamese. With on-demand services providing more choices for consumers, a significant increase in the volume of content will continue to become available on the Internet. Article 19 will therefore place heavy burdens on both the government and on companies, local and foreign, to ensure the quality and/or compliance of on-demand services on the Internet. We believe this will result in unhealthy competition conditions and consequently unreasonably high costs of editing and translating foreign programme content. Enforcement wise, it will be impossible for the government to meet the high demand for approvals under the revised decree.

The above are only a few examples of regulatory requirements contained in Decree No. 06/2016/ND-CP that are ill-suited for online service providers. We urge the Ministry to closely review the proposed requirements and ensure their applicability to online service providers taking into account the various differences between traditional broadcasting services and online services.

The Ministry should, at a minimum, clarify that the requirements discussed above, do not apply to online service providers.

More generally, imposing prescriptive requirements undermines the incentive for Internet companies to continue to innovate and distinguish themselves amongst their competitors as 'best in practice', risking a degradation in quality that would negatively impact consumers. The flexibility to pursue voluntary measures and build tools incrementally is important to innovation in a dynamic online environment.

We are also concerned that, if passed, the Draft Decree might set precedent for other countries to impose reciprocal regulations on online services, one effect of which would be to build regulatory barriers for Vietnamese businesses trying to expand beyond Vietnam's

borders. Prime Minister Nguyen Xuan Phuc has said that Vietnam is striving to become one of the top 10 global suppliers of digital content by 2020. Hanoi Times, Vietnam to enter top 10 suppliers of software outsourcing and digital content (Jan. 20, 2017), [available here](#). Passing the Draft Decree could interfere with the Prime Minister's vision.

If passed and other countries then impose similar regulations, it may be difficult or impossible for Vietnamese digital content and information technology providers to export or expand internationally. The net outcome of such regulations would harm both businesses, which would face prohibitive costs and regulatory and administrative burdens and be deterred from offering their services in Vietnam, and consumers, who would as a result not have access to the same innovative services and diverse array of digital content offered elsewhere in the world.

We encourage the Ministry to instead consider opportunities for deregulation of the existing broadcasting sector. Globally, many lawmakers and policymakers recommend a cautious approach to extension of existing regulation to new services that also considers opportunities for deregulation of traditional services.

- For example, in a joint letter to the European Commission (EC) regarding reform of the European Union's telecoms framework, the governments of 10 European countries cautioned against “automatically extending” regulation to online services, urging the EC to “consider deregulation of traditional telecoms services.” See Joint Letter from Belgium, Czech Republic, Denmark, Estonia, Ireland, Finland, Lithuania, Poland, Sweden, United Kingdom to Vice-President Ansip and Commissioner Oettinger, European Commission, at pp. 1-2 (2016), [available here](#).
- Similarly, the Nordic National Regulatory Authorities recommended “a cautious approach to regulation” of online services and that “possibilities to simplify, modernize and lighten existing regulation should be pursued.” Nordic NRAs, The EU telecommunications legislation for the Digital Single Market, The Nordic NRAs' viewpoints (July 4, 2016), [available here](#).

Regulators and lawmakers are also actively reconsidering existing broadcast regulatory frameworks in light of changes in the marketplace.

- For example, Hong Kong's Commerce and Economic Development Bureau (CEDB) has initiated a review of its broadcasting regulatory framework “with the aim of relaxing obsolete statutory requirements.” (See Hong Kong Commerce and Economic Development Bureau, Review of Television and Sound Broadcasting Regulatory Regimes, Consultation Paper, at 15 (Feb. 2018). The CEDB did not propose to extend existing obligations for traditional audiovisual services to OTT services in part because “[t]hough OTT and other Internet TV and radio programme

services are gaining their prominence, traditional media . . . are still highly pervasive and accessible to all in the family, young and old.” Id. at 46.

- In November 2017, the US Federal Communications Commission (FCC) eliminated or revised several of its broadcast ownership rules to “reflect the present, not the past” of the media landscape. The FCC concluded that updating those rules – which principally limits single entity ownership of multiple media outlets – would afford broadcasters and local newspapers “a greater opportunity to compete and thrive in the vibrant and fast-changing media marketplace.” (See FCC, 2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al., MB Docket No. 14 et al., Order on Reconsideration and Notice of Proposed Rulemaking, (Nov. 20, 2017), [available here](#).)

Lastly, we would like to recommend that the Draft Decree clearly defines terms such as “internet applications”; “Value added content”; “Value-added services”.

Over-the-top (OTT) services, including video streaming, are an essential—and increasingly important—element of the broadband value chain. Innovation in OTTs has led to a rich and diverse Internet, and has stimulated consumer demand for broadband Internet access, which in turn is a key driver for network operators to upgrade and expand their networks. Any attempts to impose additional regulation on OTTs would create business uncertainty and lower economic growth and investment. Ambiguous, unnecessary or misapplied rules will harm innovation and pose significant jurisdictional challenges for enforcement.

AIC has recently launched two OTT studies in Indonesia and Thailand, which would be of interest to you. The [Indonesian report](#), examines the value of RIA (Real Interactive Applications) or OTT, to the Indonesian economy, specifically on jobs, GDP and income, especially its impact on SMEs and key sectors of healthcare, education, tourism and employment. The [Thai report](#), examines the impact and value to the Thai economy coming from Video-on-Demand (VOD services), specifically on income, GDP impact and job creation. We hope you find these useful as references on the potential impacts of this sector on the whole economy value chain.

We are mindful that the Draft Decree is not final, and we are thankful for this opportunity to share our concerns and feedback with you.

Earlier this year, AIC had the valuable opportunity to share our views on digital economy regulations with Prime Minister Nguyen Xuan Phuc in Singapore. We hope to continue this dialogue so that Vietnam can work towards a long-term economic development strategy that is future-looking and forward thinking, ensuring that its citizens can prosper from national IR 4.0 ambitions.

Thank you.

With regards,



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