



16 September 2019

**To the Director
Structural Reform Division
The Treasury
Australian Government**

On behalf of the Asia Internet Coalition (“AIC”) and its members, I am writing to express our sincere gratitude to the Australian Treasury for the opportunity to submit comments on the Australian Competition and Consumer Commission (ACCC) [Digital Platforms Inquiry](#) (“Final Report”). AIC is an industry association comprised of leading Internet and technology companies in the Asia Pacific region with an objective to promote the understanding and resolution of Internet and ICT policy issues. Our current members are Airbnb, Amazon, Apple, Expedia Group, Facebook, Google, Grab, LinkedIn, LINE, Rakuten, Twitter and Yahoo (Oath), and Booking.com.

AIC would like to commend the ACCC for its thoughtful and comprehensive approach in developing the final report that acknowledges the benefits of digital platforms and the importance of protecting continued innovation and competition in Australia. AIC would like to respectfully present the following suggestions for the Government to consider:

Proposed Reforms to Australia Privacy Act

The final report rightly identified privacy as an important framework for consideration with regards to some categories of digital platforms. Given the global nature and reach of these platforms, the AIC suggests that the privacy obligations be aligned and harmonised with global standards such as the European General Data Protection Regulation (GDPR), or regional ones such as the APEC Cross Border Privacy Rules. These should also allow for local enforcement where appropriate. Any fragmentation of privacy rules may result in inefficiencies and affect the development of the global economy. The AIC therefore proposes to refer to global interoperability and harmonization standards, which can help prevent the fragmentation of privacy rules.

Domestically, given the potential impact on all businesses operating in Australia, we respectfully ask if the ACCC would consider a separate review regarding reforms to the Privacy Act by the Office of the Australian Information Commissioner (OAIC). This would provide the opportunity for broader feedback particularly from local businesses and the wider industry group.

While the AIC is supportive of attempts to improve transparency and clarity in notices to users, we would like to suggest that notice requirements allow for flexibility in implementation, which can vary with contexts and circumstances.



On the topic of consent, the AIC would like to suggest that trust and responsible industry benchmarks, such as privacy certifications be applied. This could help assess how consent is applied to the appropriate contexts without leading to the unintended consequences of a regulatory overreach. We acknowledge that consent is not a one-size-fits-all solution to privacy concerns, and different types of data processing need to be governed by a different set of standards. We also note that implied consent is widely used globally as a standard for lawful data processing when the actions of a person clearly indicate his/her consent to having his/her data processed regardless of whether he/she formally consented.

Where appropriate, we would like to suggest that ACCC kindly consider viewing legal mechanisms working in parallel with consent and increased transparency, as permissible practices for businesses, especially if these businesses are able to demonstrate accountability by design or accountability certifications endorsed by the government. This will encourage companies to seek pro-privacy solutions and approaches in a fair and competitive environment.

In new or emerging technology fields, the OAIC is well placed to provide guidelines or codes of conducts for specific contexts that has nothing to do with market failures (such as startups or research and development) but are favorable in terms of innovation, quality and choice for consumers.

With regard to the development of a privacy code by the OAIC, we suggest that the government kindly consider adopting and developing global best practices and standards through mechanisms of cooperation, such as co-regulatory frameworks, certifications or codes of conduct. We would also like to suggest that the government consider adopting general economy-wide standardisation or guidance, as the issues surrounding data privacy and the collection of personal information are not restricted to digital platforms. We also respectfully ask the ACCC to consider consolidating cross-agency oversight over privacy codes to help minimise regulatory fragmentation and confusion to businesses.

The AIC looks forward to engaging with the OAIC about such a code and welcomes the emphasis on an industry wide consultation.

Online content

The AIC shares the ACCC's intent to build a thoughtful regulatory framework around online content. In this regard, we would like to request for clarity around the types of companies that will be considered "designated digital platforms" and will have to provide codes of conduct to the ACMA. Given the complexities around the development of such codes of conduct, we appreciate the opportunity to work in close consultation with the ACCC in your deliberations.

With regards to recommendation 8, we respectfully suggest that any recommendation relating to Australia's take-down system take into account the existing notice and take down regime under the Copyright Act and previous inquiries into the area of online copyright infringement. We also suggest that the government consider extending the Copyright Act's Safe Harbour Scheme to online service

providers, as this would i) give rights holders an efficient way to seek removal of infringing content ii) reward online service providers for collaborating with rights holders by granting legal protection under the Scheme and iii) include protections for consumers who wish to challenge incorrect claims of copyright infringement.

On recommendation 15, we would like to reassure the government that we appreciate the importance of working together to address the harms arising from disinformation. AIC members are committed to working collaboratively with the news industry and the government to intervene upstream by enhancing digital and media literacy in Australia. Digital platforms are already increasingly investing in policies, procedures and product features that aim to prevent the spread of disinformation, while also balancing the complex interplay of this issue with the freedom of expression of their users.

Increased regulatory oversight

The AIC appreciates the ACCC's acknowledgement that more proactive regulatory oversight is required. To prevent imposing burdens on new entrants or smaller market participants, we suggest that the government focus on creating a regulatory environment that is founded upon principles-based standards over prescriptive measures.

Conclusion

The AIC would like to once again thank the Government for giving us the opportunity to submit comments on the Final Report. We share the Government's objectives to foster a strong and dynamic digital economy in Australia, founded upon a robust and thoughtful regulatory regime.

We welcome the opportunity to discuss our submission in detail and to play a proactive role in the policy-making and consultation process. We look forward to continuing being a constructive and collaborative partner and voice as you deliberate over one of the most important issues that forms the basis of digital economy development in Australia.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at Secretariat@aicasia.org or at +65 8739 1490. Importantly, we would also be happy to offer our inputs and insights on industry best practices directly through meetings and discussions and help shape the dialogue around effective ways of regulating digital platforms in Australia.

Sincerely,



Jeff Paine
Managing Director
Asia Internet Coalition