22 May 2020

His Excellency Nguyen Manh Hung,
Minister of Information and Communications,
Ministry of Information and Communications (MIC)
18 Nguyen Du Street
Hanoi, Vietnam

Subject: Joint Industry Submission on Decree 72 of 2013 on the management, provision and use of Internet services and online information (Amendment) ("Decree No. 72/2013 / ND-CP" or "the Draft Decree" or "Decree No. 72")

The Asia Internet Coalition (AIC), American Chamber of Commerce Hanoi (AmCham Hanoi) and Japan Electronics and Information Technology Industries Association (JEITA), (**"us, we"**) and its members express our sincere gratitude to the Government of Vietnam and Ministry of Information and Communications (MIC) for the opportunity to submit our comments and recommendations on **Decree 72 of 2013 on the management, provision and use of Internet services and online information (Amendment) ("Decree No. 72/2013 / ND-CP" or "the Draft Decree" or "Decree No. 72").**

Our associations comprise of the world's most innovative companies, representing every part of the technology sector. Many of our companies are indigenous to Vietnam, and we are substantial contributors to a vibrant Vietnamese information and communication technology (ICT) sector. For all of us, Vietnam is an essential market.

We seek to represent the Internet industry and promote stakeholder dialogue between the public and private sectors, sharing best practices and ideas on information and communications technology and the digital economy. To further its mission of fostering innovation, promoting economic growth, and empowering people through the free and open Internet, we would like to present our inputs on the planned amendments to the **Draft Decree**. During these exceptionally challenging times globally for individuals, governments, and businesses, we appreciate that the current priority of the Government of Vietnam, and of governments around the world, must be to mount the strongest possible economic and public health response to the outbreak of COVID-19.

We understand that the MIC is presently considering bringing amendments to the Draft Decree and believe that it is in pursuance to this consultation that the Ministry has reached out to stakeholders to present their thoughts on the proposal to amend the Draft Decree. However, as the country presently battles the unprecedented crisis in the form of the COVID-19 pandemic, in our opinion, this time is not suited to bring in any major legislative changes. The pandemic has unleashed a range of novel issues for the digital industry which is presently directing all its efforts to provide effective communication, entertainment, logistics, telemedicine and tele-education services to Vietnamese citizens nationwide. At the same time, online service providers are trying to build solutions in these areas to ensure there is no compromise to users' security and privacy. However, the extreme nature of the requirements in the Draft Decree will

certainly force some service providers to limit offerings to Vietnam, depriving consumers and businesses of critical options and dampening competition and innovation. Therefore, more deliberation and consultation with the industry would be recommended if MIC's intention is also to regulate the Internet using the amended Decree 72.

Against this backdrop, we would like to share our inputs on the issue of amending the **Draft Decree** with the MIC and set out our views on the matter. As such, please find appended to this letter detailed comments and recommendations, which we would like MIC and other relevant agencies to consider. We are grateful to MIC for upholding a transparent, multi-stakeholder approach in developing the Draft Decree.

Should you have any questions or need further clarification, please do not hesitate to contact Secretariat (AIC) at Secretariat@aicasia.org or +65 8739 1490 or +84 35 839 0988. Furthermore, 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 for the advancement of Vietnam's digital economy goals.

Sincerely,

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Comments and Recommendations

A. Introduction

We believe that the Internet has an immensely positive impact on society and supports the development of a transparent legal framework that would promote its continual contribution to Vietnam's growth. Clear and consistent regulatory frameworks are highly likely to support the growth of Vietnamese technology enterprises and will ensure Vietnam's commitment to international trade. To this end, we would like to offer our comments and recommendations on some of the key principles that would make for an effective regulatory framework with respect to the Draft Decree.

1. Have Rule of law and Legal clarity

It is important to clearly define what companies can do to fulfill their legal responsibilities, including content removal obligations. A company that takes other voluntary steps to address illegal content should not be penalized - also referred to as "Good Samaritan" protection. Conversely, a lack of ***clarity in the definitions, procedures, and restrictions*** placed on companies will hinder efforts to implement and comply with regulations (e.g. due to misinterpretations of vague rules), and also cause undue increase in the cost of doing business for local, as well as, international developers and service providers.

2. **Regulatory framework should have sufficient flexibility to accommodate new technology**
   While laws should accommodate relevant differences between platforms, given the fast-evolving nature of the ICT sector, laws should be written in technology-neutral ways that address the underlying issue rather than focusing on existing technologies or mandating specific technological fixes.

3. **Promote fairness and transparency**
   Laws should support companies' ability to publish transparency reports about content removals and provide people with notice and an ability to appeal removal of content. They should also recognize that fairness is a flexible and context-dependent notion.

B. Detailed comments and recommendations

1. Definitions

1.1. The Definition section of the Draft Decree contains new definitions regarding official news sources. However, these new definitions do not feature in any of the amendments to the Draft and so it is unclear why they have been included.

Recommendation:
Inclusion of the definitions should be clarified to ensure that cross border internet services, especially those not the subject of the regulation, are not impacted.

1.2. Section 2 Supplement Clauses 29, 30, 31 and 32 to Article 3

Application distribution store [app store] is a website or an application platform used to distribute computer software or online applications to users of mobile electronic devices…"

Recommendation:
The expansion of these definitions captures App stores, placing the liability to take down on the App store and not the developer. It also places liability for all sectors. This new requirement is inconsistent with international practices in Europe, US and Asia.

We would like to reiterate that while companies ensure the integrity of Apps, but according to the international legal practices it is the responsibility of the Developer to comply with the regulations of the country in which they conduct business.

Further, given the sheer number of apps submitted on a weekly basis, it is impossible for App Stores to enforce every country's regulations.

We, therefore, recommend deleting expansive definitions from the Draft Decree.

2. **Section 3 Amend and supplement Clause 2, Article 11 as follows:**

"2. The National Internet Exchange (VNIX) is an Internet exchange under the Vietnam Internet Center established by the Ministry of Information and Communications to:

Recommendation:
The National Internet Exchange (VNIX) to be established by MIC implies that there are additional security controls downstream on how customers will be obligated to route their existing network traffic through VNIX for the purposes stated in Clause 2, Article 11. The impact to foreign service providers who are interested to host public sector workloads will also have to meet this regulatory obligation subsequently.

We Recommend further clarification from MIC on the expectations, intended regulatory obligations and the technical specification (i.e. is the VNIX specification planned to ensure minimal network performance degradation in situations when domestic and foreign telecom networks malfunction and switched to VNIX? Is MIC operating this VNIX or is this going to be contracted to a third-party vendor?) and scope of this VNIX

on foreign service providers.

3. **Section 5 Amend and supplement Article 20 as follows:**

"Article 20. Website classification

Article 20 Clause 5 and 6 mentions that:
"5. Specialized websites are websites of agencies, organizations and enterprises that provide services in the fields of telecommunications, information technology, radio and television, commerce, finance, banking, culture, health care, education, and other fields.

6. Social networking site is a system of information that provides its users with services such as storage, provision, use, search, sharing, and exchange of information, including the provision of private websites, forums, online chats, audio and video sharing, and other similar services.

Multi-service social networking is a social networking that integrates other specialized services on the same platform to use shared user data to optimize business activities and services on this platform."

Recommendation:
Other countries in Asia, like Singapore, have different and specific regulations to govern Internet service providers, Internet content providers, e-commerce websites etc. Having different types of services being provided by websites, e.g., radio and television, commerce or education, captured under one website classification does not address any needs to governance purpose and can be confusing to websites operators.

As "*specialized services*" are not clearly defined in the Draft Decree, such general definitions can lead to different interpretations on which procedures, obligations and responsibilities service providers are required to adhere to.

We recommend for the scope of specialized services in the Draft to be clarified. We would also like to emphasize that the overseas media content and service providers should not fall under these website classifications.

The social networking definition should make clear that services performing the functions listed in a manner that is ancillary to the primary business line are not included.

4. **Section 6 Amend and supplement Article 22 as follows:**

"Article 22. Providing public information across the border

Article 22 Clause 2.b of the Draft Decree mentions that:

"2. The state competent agencies of Vietnam have the right to take necessary measures to ensure the implementation of policies on development and management of online information as prescribed in Clauses 4 and 5 Article 4 of the Decree in the following cases:

a)…;

b) Foreign organizations, enterprises and individuals do not cooperate with the Ministry of Information and Communications in handling information violating the provisions in Clause 1 Article 5 of this Decree."

Recommendation:

We are of the view that companies operating in Vietnam are cognizant of the rules and laws, which are abided seriously. That said, it needs to be noted that in some cases Vietnam needs to take into account that other regulations in countries may represent a challenge for companies to navigate. Further, it would not be practicable or enforceable for Vietnam to exercise extra-territorial effect of Vietnamese laws on foreign companies. In line with global laws on privacy or electronic transactions, we propose that the regulation should apply only to entities formed or recognized under the laws of Vietnam.

As Vietnam takes steps to leverage its competitive advantage in the digital economy, it needs to recognize that over regulation can hurt Vietnam's digital economy aspirations. The proposed draft will discourage companies from operating in Vietnam.

We recommend revising Section 6 (Article 22 Clause 2.b) to the following:

"2. The state competent agencies of Vietnam have the right to take necessary measures to ensure the implementation of policies on development and management of online information as prescribed in Clauses 4 and 5 Article 4 of the Decree in the following cases:

a) …;

b) Foreign organizations, enterprises and individuals do not cooperate with the Ministry of Information and Communications in handling information violating the provisions in Clause 1 Article 5 of this Decree, provided such collaboration doesn't cause foreign organizations to be in violation of the laws of their own jurisdictions."

5. Section 6 Amend and supplement Article 22 as follows:

"Article 22. Providing public information across the border

Article 22 Clause 5.a

"5. Principles, measures and procedures for coordinating to handle violating online information

a) The Ministry of Information and Communications shall base on the provisions in Clause 1 Article 5 of this Decree to identify violating information required to be removed or blocked from access by users in Vietnam.

The Ministry of Information and Communications shall send requests for handling of violating information in writing or via electronic means to foreign organizations, enterprises and individuals regarding violating information prescribed in Clause 1 Article 5 of this Decree for handling.

After receiving a request from the Ministry of Information and Communications, within 24 (twenty-four) hours, organizations, enterprises and individuals that provide public information across the border shall identify violating information and handling as requested.

After the above-mentioned period, if foreign organizations, enterprises and individuals fail to handle the violating information as requested or respond, the Ministry of Information and Communications will send a second notification. If after 24 hours the Ministry of Information and Communications sends the second notification, the foreign organization, enterprise or individual continues failing to handle the violating information or respond, the Ministry of Information and Communications will take necessary technical measures to prevent the violating information."

Recommendation:

Generally, the regulation should not attempt to compel foreign companies to take down customer content hosted on their systems where such content is hosted on equipment outside of Vietnam (and may be lawful content in the country in which it is hosted). Requests to remove unlawful content and law enforcement requests in relation to content should be directed to the entity responsible for publishing that content, not an intermediary hosting that content.

The Article 22 Clause 5.a stipulates processes for content takedowns request, with a specific turnaround time. Under the proposed amendments, the public information provider is required to identify the violating information that has been reported and take appropriate action within 24 hours.

24 hours for the first notice is an insufficient amount of time for content to be reviewed. Specific turnarounds such as 24 hours is neither reasonable nor considers the realities of business models and abilities to remove content. It does not take into consideration of refresh times, that vary between companies due to technical systems, for the change to be reflected to the public. Most providers rely on a combination of machine and human reviews to balance between accurate and fast actions.

Some take-down requests can be complex and necessarily take time to assess thoroughly. This may include that a complaint may not initially provide sufficient information; also, context often matters when determining whether content is illegal,

and there may possible exceptions created by the material being shown for educational or documentary purposes; or simply the difficulty of assessing whether material has crossed the line of impropriety in the often-nuanced cases that we face in present days, among other issues; each of which can take time to resolve and can only be accommodated by a flexible requirement.

We submit that this provision causes an undue operational burden on providers. By setting an arbitrary timeline which does not account for the realities of operations management, providers are dis-incentivised from developing processes and protocols to achieve legal compliance. More importantly, companies of all sizes, large and small, have established takedown processes to ensure due process and the claims are accurate.

Content decisions are made in headquarters and require analysis and participation by multiple stakeholders. Communicating with international teams, time zone differences make a 24 hour takedown time impossible. Developers may also be able to make changes that remedy the illegal activity – developers should be given the opportunity to remedy rather than have their apps removed from sale.

Decisions to remove a game or an app from an app store is not taken lightly. There are many considerations at play, and factual research that will help all sides make the right decision. Putting a 24 hour timeline on that process is artificial and irrelevant to the important considerations for all stakeholders. Taking down content in a reasonable time period is the best way to balance these concerns.

We recommend amending the timeline from 24 hours to 72 hours, which is in accordance to the international standards like EU-GDPR or practices followed by the government of Singapore, that also advocates 72 hours timeline in their latest amendment to the Personal Data Protection Act. We also suggest that the timeline for non-urgent escalations be amended to 1-week.

No government, including China or Russia, requires a company or platform to a 24 hour time limit on takedowns. The proposal by the government does not reflect the reality of how the global digital economy operates. The proposal as drafted makes Vietnam appear as a platform-hostile jurisdiction, that could lead to diminished focus and investment.

We understand this is not the intention of the Vietnamese government, with this in mind ***we recommend revising Section 6 (Article 22 Clause 5.a) to the following:***

"5. Principles, measures and procedures for coordinating to handle violating online information

a) The Ministry of Information and Communications shall base on the provisions in Clause 1 Article 5 of this Decree to identify violating information required to be removed or blocked from access by users in Vietnam.

The Ministry of Information and Communications shall send requests for handling of violating information in writing or via electronic means to foreign organizations, enterprises and individuals regarding violating information prescribed in Clause 1 Article 5 of this Decree for handling.

After receiving a request from the Ministry of Information and Communications, within a commercially reasonable period of time (72 hours for urgent escalations and 1 week for non-urgent escalations), organizations, enterprises and individuals that provide public information across the border shall identify violating information and handling as requested.

After the above-mentioned period, if foreign organizations, enterprises and individuals fail to handle the violating information as requested or respond, the Ministry of Information and Communications will send a second notification. If after the Ministry of Information and Communications sends the second notification in which a timeframe is specified, the foreign organization, enterprise or individual continues failing to handle the violating information or respond, the Ministry of Information and Communications will take necessary technical measures to prevent the violating information.

We also request further clarity on the "necessary technical measures" in the clause.

6. Section 6 Amend and supplement Article 22 as follows:

"Article 22. Providing public information across the border

Article 22 Clause 6 on Rights and obligations of telecommunications enterprises and enterprises that lease digital storage in Vietnam

Recommendation:
Enterprises that lease digital storage in Vietnam" is not defined. That term should be clarified to make clear that it does not apply to service providers that do not ordinarily exercise control of, or have visibility into, customer content on their systems (and therefore could not comply with some of the obligations that Article 22 seems to impose on such enterprises).

7. Section 6 Amend and supplement Article 22 as follows:

"Article 22. Providing public information across the border

Article 22 Clause 7 a (ii) on Rights and obligations of relevant agencies, organizations and individuals in Vietnam

Recommendation:
The regulation should not obligate organizations and individuals to notify foreign organizations of information that they believe violates Vietnamese law. Foreign organizations would often be unable to act on such notifications, as they may be unfounded or based on a subjective or erroneous interpretation of law. Organizations and individuals should instead direct such notices to the Ministry of Information and Communications.

8. **Section 7 Amend and supplement Article 23 as follows:**

Article 23. Managing the establishment of websites and social networks states that:

- Clause "3. Personal websites and internal corporate websites must comply with the regulations on the registration and use of Internet resources and relevant provisions in this Decree.
- Clause 4 b) Internal corporate websites and specialized services websites must obtain an aggregated information website license before they can provide aggregated information."
- Clause 5.b and 5.c of Article 23, it is stated that "only licensed social networks are allowed to collect service fees in any form and provide livestream services".
- Clause 5 "dd) In the event that [owners/operators of] internal corporate websites and specialized applications websites want to set up a social network, they must notify in writing to competent regulatory agency and obtain confirmation in writing from such agency of their notice (applicable for social networks with little user interaction) or apply for a license to set up a socia*l* network with a large volume of user interaction."

In regard to these provisions we submit the following:

5.1. On operating license:

a. In the Draft Decree, it is unclear whether offshore platforms will need a business license in Vietnam. The application of licensing requirements to social networks in Article 23 and other online services is inconsistent with international standards. Licensing of traditional communication services (telecom, broadcasting, cable) is typically predicated on a model where the service provider also controls the underlying access infrastructure, is granted spectrum - a valuable and scarce resource, or public rights of way, which all contribute to effectively limiting the number of communication service providers in a market.

b. Many of the licensing justifications as represented in the Draft Decree do not exist in the context of online services. Competition in digital and online spaces is fast-paced, multi-faceted, and continuously evolving, with low barriers to entry and where multi-homing is a commonplace across a range of digital products and services.
c. Licensing requirements for online services would hurt both consumers and industry by creating a new barrier to entry. Low barriers to entry, the open nature of the Internet, and rich interactions and experiences that online services enable are key to the continued growth of Vietnam's digital economy. While licensing obligations could make it untenable for some companies to provide online services to the country.

Recommendation:
Firstly, licensing provisions do not substantiate a value economic justification for the regulation. MIC should provide formal clarification that licensing provisions for social networks only apply to local service providers**.**

Should this requirement remain in place, the Amendment should make clear that licensing requirements will not otherwise create a taxable presence for the foreign provider in Vietnam, which may result in a double tax situation.

5.2. On registration of websites:

a. No country in the world requires companies to register internal corporate websites for use only by employees and not intend for public consumption. This represents an intrusion on proprietary and company specific policies. Further extension of registration for internal corporate websites is inconsistent with international practices.
b. Global companies have one global internal website that ensures that all employees receive the same information. Licensing or creating a specific site for Vietnam only will negatively impact the information available to employees and disadvantage Vietnamese employees over their global counterparts.

Recommendation:
Consistent with international practices we recommend deleting expansion to internal corporate sites.

5.3. In Section 7 (to supplement Clause 12), App stores are required to proactively check that apps are licensed before distribution

Experience across jurisdictions shows that pre-approval requirements hinder innovation and slow down growth of the app economy. There are millions of apps available online. Pre-approval requirements will lead to limited availability of apps in Vietnam, impacting Vietnamese consumer choice and imposing barriers for trade in digital services. Such digital

trade barriers could invite reciprocal treatment from other markets, thereby stifling the potential of the promising Vietnamese app developer community to export their products globally. In addition, adopting a pre-approval approach will make Vietnam become an outlier globally, as no other country other than China follows a pre-approval approach due to low enforceability.

9. **Section 8 Amend and supplement Article 23a as follows:**

"Article 23a. Conditions for organizational structure and human resource for aggregated information websites and social networks

1. Conditions for personnel in charge of content management.

a) For aggregated information websites:

- Have at least 01 staff member in charge of information content management who is a Vietnamese national or who is a foreign national with a temporary residence card issued by a competent [Vietnamese] agency which is still valid for at least another 06 months in Vietnam from the time of application [for the License];

- Have an information content management unit.

Recommendation:
As drafted, the above condition requires companies to be forced on shore to provide services. This new requirement ignores different business models and the benefits of global app stores for all companies local and international. Most companies centrally manage content from one location. The benefit is to leverage one system and ensure that due process is met. An in-country point of contact will not fast track the long-standing takedown policies that many companies have established. The proposed requirement artificially changes business models that may not reflect actual market demand.

To support the government's objective to have a point of contact we recommend that a point of contact or portal that can be contacted regardless of the location.

Should this requirement remain in place, the Amendment should make clear that assignment of local representative will not otherwise create a taxable presence for the foreign provider in Vietnam, which may result in a double tax situation.

10. **Section 11 Amend and supplement Point a and Point b, Clause 1, Article 23c as follows:**

"a) For aggregated information websites: Store aggregated information content for at least 90 days from the time of posting; keep logbook for handling posted contents for at least 2 years;

Must be connected to the monitoring system of the Ministry of Information and Communications to serve the tracking of news articles posted on the aggregated information website and the counting of user visits.

b) For social networks: Store for a minimum of 02 years information about user accounts, login times, logout times, user IP addresses, and a logbook for handling posted contents;

Have solutions to ensure only members of the social network whose accounts are protected by two-factor authentication (verified with real name and phone number) could interact [with the network] (write articles, post comments, livestream, give away gifts, etc.);"

Recommendation:
Firstly, we would like to seek further clarification on the technical functionalities of the "monitoring system of the MIC" as mentioned in 11 "a) where "*Must be connected to the monitoring system of the Ministry of Information and Communications to serve the tracking of news articles posted on the aggregated information website and the counting of user visits.*" Having visibility into the technical functionalities of the monitoring system will allow service providers to assess and feedback if there will be any performance degradation in making sure the impact of connecting with such monitoring system does not affect our customers.

Secondly, because providers are subject to global data privacy laws, most would be unable to retain the information contemplated by Section 11, particularly for users who have asked to have their accounts deleted. While many providers encourage and incentivize enabling two-factor authentication for all registered users, this is often not a requirement for all users, especially for those who may minimally engage such services. Requiring all users to enable 2FA, regardless of how they use the services, would inhibit the ability to attract new users without adding a meaningful security layer.

11. Section 20 Amend and supplement Article 25 as follows:

"Article 25. Rights and obligations of organizations and enterprises establishing social networks

Article 25 Clause 11 and 12 of the Draft Decree mentions that:

11. Social networks must display in real time contents posted by users and must not commission users to produce contents in the form of journalistic products or arrange user generated contents in fixed sections.

12. Have a solution for reviewing the content before it is posted on the social network so as not to allow users to publish articles with content presented as journalistic products (sourced from newspapers or written by the users themselves);

Recommendation:
Content restrictions that prohibit providers from having any "journalistic" content and from having content organized into interest-based categories are overly prescriptive. It is not possible for many providers to monitor content in real time to prevent journalism, especially for services that are not primarily intended to share news. Further the ability to arrange content is a critical way that service providers help users discover content. This should not be unnecessarily limited. In order for users to find the games, sports, and other types of content available, many providers organize content into categories. Eliminating these categories would critically inhibit usability of such services while failing to provide much benefit, if any, to the public. Finally, it should be recognized that not all social media services have a core journalistic feature, so blanket regulation of social media is not necessary.

12. Section 23 Amend and supplement article 28 as follows:

"Article 28. Rights and obligations of organizations and enterprises providing information services on mobile networks

Article 28 Clause 2 of the Draft Decree mentions that:

"Providers of information services on mobile networks shall have the following rights and obligations:

1. …..

2. Have at least 01 server system in Vietnam serving the inspection, storage, and provision of information at the request of state authorities, and settlement of customers' complaints about the service provisions in accordance with regulations of the Ministry of Information and Communications;"

Recommendation:
This requirement resorts to forced onshoring and is unreasonable and inconsistent with international practices. Installation of servers in a country should be dependent on market conditions and demand for the service provided.

Firstly, we request clarification on the meaning of "providers of information services on mobile networks". We also seek clarification on what Vietnam means "server system".

Secondly, we recommend deletion of the Article 28 Clause 2.

13. Section 23 Amend and supplement Article 28 as follows:

Article 28 Clause 4 of the Draft Decree mentions that:

"4. Ensure that only information contents complying with the relevant laws are provided to service users; prevent or remove information contents that violate the

provisions in Article 5 of this Decree within 3 (three) hours after the request from the state authorities."

Recommendation:
Specific turnarounds such as 3 hours is not reasonable and does not consider the realities of business models and abilities to remove content. It also does not take into consideration of refresh times, that vary between companies due to technical systems, for the change to be reflected to the public.

We would like to reiterate that large global companies have established takedown processes to ensure due process and the claims are accurate and not a misunderstanding.

We recommend revising the Section 23 (Article 28 Clause 4) to the following:

" Use its best commercial practice to ensure that only information contents complying with the relevant laws are provided to service users; prevent or remove information contents that violate the provisions in Article 5 of this Decree within a reasonable period of time after the request from the state authorities."

14. Section 23 Amend and supplement Article 28 as follows:

Article 28 Clauses 2, 4, 7&10 of the Draft Decree mentions that:

"7. Services provided periodically (on a daily, weekly, monthly, quarterly or annual basis, etc.) may be provided only after confirmation of service users by SMS and a feedback via SMS with the following information: "You have successfully registered "service name", service code, service number, charge cycle, charge rates, cancellation method, support call center.

10. The service advertisement must include the following information: service name, service code, service number, enterprise name, registration method, charge cycle, charge rates, refusal method and support call center.

For subscribers who have registered to use the services periodically, the service provider must send SMS to users notifying the automatic renewal of the services in accordance with the following provisions:

a) Notification information: service name, service code, service number, charge cycle, charge rates, cancellation method, support call center.

b) Time and frequency of sending notifications: Every 7 days from the date of successful registration for daily and weekly services; every 30 days from the date of successful registration for monthly and yearly services. The time of sending notification is from 07:00 to 22:00 every day.

In case the subscriber sends SMS with the syntax to cancel the services, the service provider must send a message notifying the processing result of the cancellation request."

Recommendation:
The requirements under Clause 7 and10 are extremely burdensome on service providers and to the customers. It is not consistent with international best practices. Each company has developed specific communication channels with consumers based on business models. This requirement will significantly artificially distort business models and the most efficient manner for each company.

Best practice followed by all countries is, before selling a subscription or an app, developers are required to disclose the price and duration of the subscription and provide information regarding how to cancel. This information is repeated in the purchase information and reiterated again in a subscription confirmation email that is sent within hours and some cases minutes of the purchase

The proposal in the law is duplicative of information that most companies already provide today. While duplicative it is too proscriptive in setting additional country specific requirements that will prohibit companies from innovating and refining their customer service. It would require companies entirely reengineer new a subscription back end for a single storefront rather than leveraging their current systems.

We, therefore, suggest deletion of all these clauses.

15. Section 25 Supplement Article 29a as follows:

"Article 29a: Settle complaints about content services on mobile telecommunication networks

Article 29a Clause 2 of the Draft Decree mentions that:

2. The provider of information content services shall take the prime responsibility for resolving complaints. In case of detecting charges for using content services in contravention of regulations, the provider of content services and the telecommunication enterprise shall refund the collected service charges to users within 3 (three) days after having the resolution results.

Recommendation:
Resolution of customer complaints is a key issue for companies to ensure that the customers are satisfied with the service provided. If customers are unhappy with the process they will shift to other services.

Article 29 Clause 29a 2 artificially sets a deadline to resolve complaints. Some customer complaints can be resolved but others are more complicated and take longer depending on the compliant and refunding the payment tool used by the customer.

The international best practice is to allow a minimum of 15 working days at least. This recognizes not all complaints are straightforward.

We recommend revising the Section 25 (Article 29 Clause 29a. 2 to the following:

2. The provider of information content services shall take the prime responsibility for resolving complaints. In case of detecting charges for using content services in contravention of regulations, the provider of content services and the telecommunication enterprise shall refund the collected service charges to users within 15 working days after having the resolution results.

16. Section 25, Article 29a Clause 4 of the Draft Decree mentions that:

4. Time limit for resolving complaints: Within 15 (fifteen) days from the receipt date of the comment or complaint.

Recommendation:
To the extent practicable, some complaints take longer than 15 days to resolve, for example in the case of fraud, which may require an investigation. If it is a complicated or serious fraudulent situation it may take up to 90 days to resolve. This is consistent with international practices to resolve complaints.

What does "resolve a complaint" mean? What if we deny the customer's request, whatever it is? We need to be able to account for fraud and meritless requests.

We recommend revising the Section 25 (Article 29 Clause 29a. 4) to the following:

4. Time limit for resolving complaints: Within 90 (ninety) days from the receipt date of the comment or complaint.

17. Section 27 to Section 40 on Licensing and registration requirements for Gaming and Applications

The app economy is an important part of the digital economy landscape and the developer community in Vietnam has benefited significantly from the opportunities created by the app economy. As the new requirements/restrictions in the Draft Decree could impact the ability of Vietnamese developers to participate in the growing global app economy, the Draft therefore should take into account practices of mobile game distribution.

Under provisions of Section 27 to Section 40 to amend and supplement Article 32 & 33 for licensing online G1, G2, G3 and G4 video games, enterprises may be licensed to provide video games online upon fully meeting certain conditions on financial, organizational, personnel and technical capabilities corresponding and ensuring suitable game storyline and script.

Broadly, we recommend that MIC reviews and revises the licensing framework for gaming and applications in order to streamline and simplify the licensing process and require only one license per company, rather than a license/certificate for each game. We also request MIC to adopt a removal approach to manage violating apps and shorten the appraisal timeline to facilitate the development of apps and the gaming market. MIC should clarify that app owners are responsible for obtaining applicable licenses as required under the local laws prior to distribution and are responsible for ensuring that true and accurate information/documentation is presented to the platform operators.

17.1. Amendment of the Article 31 (in Clause 2 and Clause 3) of the Draft Decree mentions that:

- "2. Enterprises may provide G1 video games after obtaining the License to provide G1 video games for every G1 video game.
- 3. Enterprises may provide G2, G3 and G4 video games after obtaining the Certificate of registration of G2, G3 and G4 video games provision for every game;"

Recommendation:
In Section 27, Section 30 and Section 36 on licensing online G1, G2, G3 and G4 video games, there are 4 licensing/certificate regimes for each game respectively.

As physical borders for mobile game distribution do not exist, licensing requirements should be simplified to make it feasible for global developers to comply with, thus strengthening the possibility to enforce these rules. Global game developers should also be allowed to distribute their games in Vietnam. This is also in line with the Resolution No 68/NQ-CP dated May 12, 2020 to simplify business regulations to create favorable conditions for enterprises and promote their development as a driver for socio-economic growth.

Given the fast-growing gaming environment, a priori, the licensing requirement for G1 games and the requirement for G2-4 games to receive a certificate of registration has been a challenge for Vietnam authorities to implement and enforce. One of the main challenges is the lengthy registration process that requires a joint venture or forced on shoring of enterprises that provide gaming resources. If Vietnam seeks to understand the types of games available in their country, we recommend a simpler and seamless notification process through an online mechanism that app developers can easily access and are not forced to establish an enterprise or enter a joint venture in Vietnam.

We, therefore, recommend removal of the licensing and certification of registration requirements. Should this requirement remain in place, the Amendment should make clear that licensing requirements will not otherwise create a taxable presence for the foreign provider in Vietnam, which may result in a double tax situation.

17.2. Amend and supplement Article 32(h) and Amend and supplement article 33a as

Article 32h. Procedures for issuance of the license to provide G1 video games

Article 33a. Application for certificate of registration to provide G2, G3 and G4 video games

Recommendation:
The timeline for MIC's appraisal for G1 video games is 25 days and G2, G3, G4 video games is 15 days. As the apps market is competitive and fast moving, a lengthy timeline for review and appraising apps and games will hinder business competitiveness and hamper the development of apps/game developers.

17.3. Supplement Clause 13 to Article 34 of the Draft Decree mentions that:

"13. Providers of online video games must develop plans to produce and provide educational games (on knowledge and healthy life skills) with a minimum share of 10% of the released games. Educational games (developed by Vietnamese enterprises) will be prioritized for trial release for 03 months to evaluate the effectiveness and adjust to meet the market demands."

Recommendation:
The requirement to provide local educational content is an outlier among global governments and we recommend deleting this requirement. This assumes that all developers have education expertise outside of the games provided. This provision imposes an artificial requirement on developers that will fall short providing poor quality games that do not meet the objective.

17.4. Supplement Article 34b of the Draft Decree mentions that:

"Article 34b. Player's personal information

1. When creating a G1 video game account, the player must provide the following personal information:

a) Full name;
b) Date of birth;
c) Permanent residence address;
d) ID Card number or passport number, date of issue, place of issue;
dd) Phone number, email address (if any).

Where a player is younger than 14 years of age and has not obtained an ID or passport, his/her legal guardian's decision to use their personal information to register on behalf of the minor represents the guardian's consent and liability for such registration;

2. G1 video game providers must keep player's personal information during the player's use of services and for 06 (six) months after they stop using the services; G1 video game providers must deploy equipment systems ready to connect with the national identity card database or national personal identification system to authenticate players."

Recommendation:
These conditions require collecting more information of users and more intervention on each user generated content which can give a huge workload for service providers and affect data privacy regulations. At the same time, this could pose as privacy challenges for data privacy protection.

Many companies minimize the collection of personal information to protect users' rights and to prevent harm to individuals. To single out one category of apps for more personal data to be collected runs contrary to core privacy principles. Given the global nature of platforms that provide a wide range of Apps, requiring personal information collected only for G1 games is impractical and represents engineering challenges that global platforms will not be able to design only for Vietnam. We recommend deleting this requirement.

17.5. Section 2 (Article 3 Clause 32) of the Draft Decree mentions that:

"32. Payment services in video games are all supporting activities carried out for electronic game service providers to collect money from players, including intermediary payment services, payment services via banks and other forms of payment as prescribed by law."

Recommendation:
In most countries, various payment services forms are adopted to support transactions between internet service providers, game services providers and end customers, like in the US, European countries, Japan, and China. Vietnam should refer to such international best practices and allow flexibility to the extent possible.

We recommend revising Clause 32 to "Payment services in video games are all supporting activities carried out for electronic game service providers to collect money from players, including intermediary payment services, payment services via banks, including international and domestic banks, and other forms of payment as prescribed by law."

17.6. Section 48 (Article 34d) of the Draft Decree mentions that:

"Article 34d. Rights and obligations of server hosting providers, server hosting location providers; telecommunication enterprises, and Internet service providers

"1. Proactively refuse, suspend or discontinue connection with video game providers with a license to provide G1 video games online or a certificate of eligibility to provide G2, G3, G4 video games online as prescribed in Clause 2 and Clause 3 Article 31 of this Decree."

2. Comply with the request by the competent regulatory agency to suspend or discontinue connection with video game providers without a license to provide G1 video games online or a certificate of registration to provide G2, G3, G4 video games online as prescribed in Clause 2 and Clause 3 Article 31 of this Decree.

3. Coordinate with the competent regulatory agency to ensure information safety and security, and investigate and prevent violations of law relating to the provision and consumption of video games."

Recommendation:

Service providers that have no visibility of their customer's content cannot "proactively decline, suspend or discontinue connection with video game providers" for carrying on certain activities (of which the service providers would have no knowledge) without a license. Those responsibilities properly lie with the relevant regulator.

We suggest revising Section 48 (Article 34d Clause 1) to the following:

"1. Refuse, suspend or discontinue connection with video game providers with a license to provide G1 video games online or a certificate of eligibility to provide G2, G3, G4 video games online as prescribed in Clause 2 and Clause 3 Article 31 of this Decree upon authority's request."

18. Section 52 Amend and supplement Article 44 as follows:

Supplement Article 44a as follows:

"Article 44a. Deploying measures to ensure network information safety and security on telecommunication networks and Internet

Recommendation:
It is unclear to whom this Article applies. The Article should be clarified to make clear

it does not apply to service providers that have no visibility of their customers' content. In the absence of such a clarification, the broad scope of the regulation could effectively make technology providers legally responsible for ensuring their users' content is lawful. Technology does not exist to automatically identify and take down the broad categories of prohibited content included in the regulation, and human review is not realistic. Technology providers cannot be held legally responsible for ensuring the lawfulness of users' content. Screening such content would undermine the privacy and security of service customers.

19. Section 52 Amend and supplement Article 44 as follows:

Supplement Article 44c as follows:

"Article 44c. Contractual obligations to ensure information security in agreements on provision and use of Internet services or data center services

Article 44c of the Draft Decree introduces new and unspecified requirements on organisations and individuals (which presumably includes foreign online services) entering into agreements for the provision of telecom services, Internet services or data center services to comply with the laws on assurance of information security. Such requirements would be a deterrent for foreign online services to enter into commercial agreements with local service providers. In some cases, service providers and foreign online services voluntarily and mutually agree to enter into agreements with the aim of providing service efficiently to the benefit of consumers. However, if the Draft Decree were to introduce onerous requirements which inevitably dis-incentivises such arrangements, it would likely cause insufficient network capacity, network congestion and increase network costs for the local internet ecosystem, impeding Vietnam's economic and digital progress.

Recommendation:
There should be no legislative requirements that regulate the substance of such contracts beyond commercial terms mutually agreed by the parties.

We request the removal of this wording in Art 44c: *"discontinue service for organizations and individuals that violate the regulations on information security."* Alternatively, we request for the clarity that a service provider may only discontinue services following a court judgment confirming that the applicable customer violated the regulations on information security. Vietnam should not force a service provider to discontinue services merely due to allegations or a subjective opinion that a service provider has violated the regulations.

20. Appeal mechanism

The current TDR framework does not lay out an appeals mechanism for users or Foreign Public Information Providers (FPIPs) to dispute whether content referenced in a TDR does in fact violate Vietnam laws. When there is an ambiguity over whether content violates Article 5 Clause 1 (Article 5.1), it would be unfair to penalise a user or an FPIP for that content.

Recommendation:

We would propose a mechanism that requires FPIPs to respond to MIC within 72 hours with a summary of the actions taken and reasons to explain why it is unable to take action on certain pieces of content. In the event that the FPIP has not taken action against content that has been reported by MIC because it has assessed that the content does not violate Decree 72, either the FPIP or MIC should be entitled to refer this matter to a neutral third party, such as the Ministry of Justice, for a legal assessment on whether the content violates Decree 72. The Ministry of Justice's assessment should be taken as the final and binding assessment of whether the content is unlawful.

Many of the provisions within Article 5.1 are vague and leave too much room for interpretation. Furthermore, there is no guidance on how to interpret these provisions, and the generality of these provisions can lead to arbitrary application by law enforcement authorities and ministries.

The Draft Decree should provide clearer guidelines in determining when content violates Article 5.1 of Decree 72.

21. Existing proposals and legal framework thereunder

There are several impending regulatory changes that have been subject to detailed and lengthy public deliberation and presently await the approval of different ministries and the government. For instance, **the Law on Cybersecurity ("LOCS")** has provisions on content restrictions and takedown requests from relevant authorities (mainly Ministry Of Public Security and MIC), which overlap with the current provisions under Decree No. 72 and Circular No. 38/2016/TT-BTTTT. The Draft Decree is based mostly on regulations on Circular No. 38, regulating the provision of cross-border public information. After moving management of cross-border information to the amended Decree, we suspect that MIC will issue a Circular to guide the regulations in the amended Decree. We would appreciate receiving some expected scope or framework for future Circular.

Recommendation:

- The new amendments of Decree No. 72 should aim to create a consistent and effective framework, so as to avoid regulatory obscurity. We recommend that the amendments to Decree No. 72 clarify (i) how LOCS and the Decree No. 72

are intended to function in parallel, and (ii) what are objective and plans of MIC to issue future circulars on Decree No. 72. ● The new amendments of Decree No. 72 should clarify how the LOCS and Decree No. 72 is intended to function in parallel.