5 June 2020

To
Major General (Ret.)
Amir Azeem Bajwa,
Chairman, Pakistan Telecommunication Authority (PTA)

Subject: Industry Submission on Pakistan Citizens Protection (Against Online Harm) Rules 2020 Consultation

Dear General Bajwa,

The Asia Internet Coalition ("AIC, us, we") and its members express our sincere gratitude to the Government of Pakistan and Pakistan Telecommunication Association ("PTA") for the opportunity to submit our comments and recommendations on PTA's survey questionnaire regarding the **Pakistan Citizens Protection (Against Online Harm) Rules 2020 ("Rules")**.

As an introduction, AIC is an industry association that promotes the understanding and resolution of internet policy issues in the Asia Pacific region. Our members are Airbnb, Amazon, Apple, Expedia Group, Facebook, Google, LinkedIn, LINE, Rakuten, Twitter, Yahoo (Verizon Media), and SAP. We have worked closely with the governments around the region in relation to the development of national digital policies and legislation. In doing so, we have witnessed first-hand the potential for such policies and legislation to effectively protect the rights of citizens and foster innovation and technological advancement. AIC has been actively engaging with the Government of Pakistan on several proposed draft policies such as the Draft Data Protection Bill 2020, Pakistan Electronic Media Regulatory Authority Regulation on Web TV and Over the Top TV as well as Pakistan's Digital Taxation Framework, to which we have submitted recommendations and best practices, ensuring that the industry voice is reflected in the regulatory approach.

Pakistan is a fast-growing digital economy. The number of internet users more than doubled from 15.5 percent to 35 percent between 2017 and 2020[1]. Social media is rapidly expanding in the country with 2.4 million new users added between April 2019 and January 2020[2]. This will contribute to further development of the digital economy and IT exports, which depend on active use of social media for communication and business operations.

Social media serves an important role in communication, education, entertainment, commerce and social development. It serves as a key driver that can propel the actualization of the Government of Pakistan's Digital Pakistan initiative. With the ongoing Covid-19 pandemic, where individuals and businesses are increasingly moving online, digital platforms and tools have proven to be a vital tool to work remotely, sell products and services within Pakistan as well as abroad, and empower small- and large-scale businesses. As we

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[1] According to Digital 2020: Pakistan report by Datareportal
[2] https://datareportal.com/reports/digital-2020-pakistan

understand, the rules proposed by the government intend to play a vital role in enabling digital platforms to serve the interests of Pakistan's citizens while ensuring their safety.

However, as stated in our previous letter addressed to Prime Minister Imran Khan, the Rules in the form previously published would significantly alter the landscape for digital platform companies and make it extremely difficult for them to provide their services to citizens and businesses in the country. As such, we welcome the Government of Pakistan's decision to open up consultation on this very crucial policy and extend our sincere thanks to PTA for extending this invitation to AIC for comments.

We also appreciate that the Federal Government, through multiple public statements, has committed that the Rules stand suspended. However, given that the Rules were framed by the Federal Cabinet, we request that the Rules formally be withdrawn through the same process to allow for a constructive multi-stakeholder consultation.

We feel that this important topic necessitates a credible, wide-ranging and transparent consultation process. In addition to publishing a survey questionnaire, we strongly recommend that PTA and the Government of Pakistan put in place a comprehensive framework for the consultation, including a paper or exposure draft that outlines details on the government's proposed regulatory approach. A consultation paper should seek extensive public policy input, which will inform the development of a holistic public policy approach to deal with the issues at hand, and if needed, ask about and inform the contours of any future additional regulatory or legislative framework. We hope to engage constructively in this consultation to help fulfill this joint ambition. As PTA was recently recognized as a 4th Generation Regulator, we are confident that it will be well-positioned to lead this process.

We note that PTA has outlined some preliminary objectives for the Rules on its website, including that they should meet the statutory requirement of framing Rules under Section 37 (2), PECA 2016. We strongly encourage PTA to ensure that any Rules adhere closely to its parent legislation. The statute requires the rules to facilitate only the powers enumerated under Section 37 (1), which are to remove or block access to information under certain circumstances. As such, topics such as data localization, access to user data, misinformation and data breach notification requirements should fall outside the scope of this consultation. In fact, we strongly encourage PTA to frame the Rules specifically in relation to the matters specified in Section 37 (2) of PECA, 2016. Namely, safeguards, transparent processes, and effective oversight mechanisms for the exercise of powers under Section 37 (1). We note that these crucial elements were completely absent in the previously published version of the Rules and hope that the PTA takes this opportunity to address this omission.

Looking around the world for global practices, as suggested in the questions provided, there is indeed much interest in ensuring a safe online environment. Yet, it is useful and important to recognise that many of the ambitious conversations in this area are the subject of in-depth, evidence-based, and lengthy policy research and exchanges, where a panoply of policy solutions are being explored rather than a single legislative route or limited set of questions.

In the UK, for example, the Online Harms White Paper was released over a year ago, following months of early exploration by civil servants and the stakeholder community. The UK government released on 12 February 2020 its response to the consultation on the White

Paper, which clarified a number of points, starting with an emphasis on the respect of fundamental human rights such as freedom of expression, the importance of transparency, and clarity and certainty for business. Rather than rushing to legislate at this stage, the UK Government is recommending a series of further studies, to ascertain the methods to tackle online harms most effectively in practice.

We would therefore respectfully suggest that the present initial questionnaire be followed or accompanied soonest by the initiation of a thorough consultative policy process, to which we look forward to contributing in depth. In light of the foregoing, we have appended the following materials to this letter:

A. **Suggestions for Effective Government Consultations:** We would appreciate PTA's feedback on these recommendations, along with confirmation and additional details on the consultation framework and process for any draft rules or regulation.

B. **Inputs and recommendations on Pakistan Citizens Protection (Against Online Harm) Rules 2020:** We have provided key thematic areas that we would recommend PTA to consider in framing the consultation. We developed these comments and recommendations keeping in mind the questions posted on PTA's website at feedback.pta.gov.pk. The key issues covered are:

   1. The Challenges of Online Content Governance
   2. Addressing specific types of harmful content
   3. Compliance with local laws and principles of international human rights and best practices
   4. Balancing Freedom of Expression against other values, i.e, Safety, Privacy, Dignity.
   5. Accountability Framework for Global Platforms
   6. Issues specific to Citizen Protection Against Online Harm Rules

The issue of storage of citizen data and breach notifications is currently being addressed in Pakistan's Draft Data Protection Bill 2020 that governs the collection, processing, use and disclosure of personal data. In order to avoid a regulatory overlap, related questions on data protection, including questions around data storage and government access to user data, should not be included within the scope of this consultation. Instead we suggest this aspect to be reviewed and assessed as part of the ongoing data protection consultation led by the Ministry of Information Technology and Telecommunication (MOITT), to which AIC is aiming to submit comments and recommendations.

As always, AIC Members are excited about the opportunities that digital platforms create for the Pakistani economy and society, and we look forward to working collaboratively with the Government of Pakistan on a regulatory framework that supports Pakistan's continued digital growth and transformation.

Should you have any questions or need further clarification, please do not hesitate to contact me directly or our Secretariat Mr. Sarthak Luthra at Secretariat@aicasia.org or +65 8739 1490.

Please accept, Mr Chairman, the assurances of our highest consideration.

Respectfully,

Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

Cc.:
- *Mr. Syed Amin Ul Haque, Federal Minister (IT & Telecommunication), Ministry of Information Technology and Telecommunication (MoITT)*
- *Mr. Shoaib Ahmad Siddiqui, Federal Secretary, Ministry of Information Technology & Telecommunication (MoITT)*
- *Mr. Eazaz Aslam Dar, Additional Secretary, Ministry of Information Technology and Telecommunication (MoITT)*
- *Dr. Shireen M. Mazari, Federal Minister for Human Rights*
- *Ms. Tania Aidrus, Member of Strategic Reforms Implementation Unit, Prime Minister's Office, Islamabad*
- *Barrister Syed Ali Zafar, Chairman ILF Pakistan*
- *Dr. Arslan Khalid, Focal Person to the Prime Minister on Digital Media, Prime Minister's Office, Islamabad*

A. Suggestions for Effective Government Consultations

We acknowledge the useful role consultation plays in a modern democracy and its practical application. Guided by best practices deployed in Australia3, Canada4 and the UK, AIC has collated a number of recommendations for effective public consultations, based on which we submit below for the Government of Pakistan's consideration.

A holistic consultation process ensures that the Government has considered the real-world impact of the policy options. This will lead to better outcomes and greater acceptance in the community, particularly among any stakeholders who may be affected by the policy. These are the key steps we propose:

- Explain the purpose and objectives of the consultation;
- Outline a plan for conducting the consultation;
- Outline a strategy for the most efficient and meaningful consultation; and
- Summarise the major topics to be covered and what issues might be raised. This includes the publication of an exposure draft/concept paper (explained below) accompanied with relevant questions.

Key considerations:

i.   *Accessibility and transparency:* Consultation should ensure that all relevant stakeholders can readily contribute to policy development, regardless of geographical location. Involving relevant stakeholders from the earliest possible stage in the policy development process will promote transparent and comprehensive participation.

ii. *Timeframe:* It is important that consultations be conducted early, when the policy objectives and different approaches to regulation are still under consideration. Depending on the significance of the proposal, between 30 to 60 days is usually appropriate for effective consultation, which should be followed by open house discussions alongside internal and external workshops with the key stakeholders.

iii. *Consistent and flexible:* Consistent consultation procedures can make it easier for stakeholders to participate. They can also permit better coordination of regulatory quality initiatives across a wide range of policy areas. Where Ministers have made a commitment to a particular course of action, consultation can improve the design of the proposal and help ensure that it minimises the compliance burden on business and costs to the community.

iv. *Concept paper and exposure draft:* Consulting on and analysing implementation options is an important part of policy development. In the early stages it is

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3 https://www.pmc.gov.au/sites/default/files/publications/best-practice-consultation.pdf

4 https://www.tbs-sct.gc.ca/rtrap-parfa/erc-cer/erc-cer-eng.pdf

recommended to publish a concept paper and gather relevant information needed to help develop a policy. This concept paper can cover the rationale of the policy and key questions for consideration. Before accelerating the policy, we also suggest testing the details of complex regulations with relevant businesses. The government could also release exposure drafts of complex regulations for significant matters to allow businesses and other stakeholders to provide more detailed comments and advice on how the regulation will work in practice.

In addition, exposure drafts allow the Government to verify that stakeholders clearly understand how the law will apply to them, and their legal rights and obligations. Stakeholders may also be able to identify how aspects of the proposed laws can be simplified.

Lastly, publishing a consultation plan provides information to stakeholders about future consultation opportunities. This improves the transparency of policy development and gives stakeholders early warning so they can contribute more effectively to the process.

B. Comments and Recommendations for Harmful Content

AIC believes that an effective regulatory framework to address harmful content is needed, and must be guided by four key principles:

- *Shared Responsibility*: Tackling illegal content is a societal challenge—in which companies, governments, civil society, and users all have a role to play.
- *Flexibility* to accommodate new technology. Further, as currently drafted, the Rules provide for onerous obligations that do not take into account the financial situation of SMEs, the technical realities online platforms operate under or their jurisdictional presence.
- *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.
- *Rule of law and creating legal clarity*: It's important to clearly define what platforms can do to fulfill their legal responsibilities, including removal obligations. An online platform that takes other voluntary steps by use of automated technology to address illegal content should not be penalized and should not lose its safe harbour protection. This is crucial, as it allows companies to go above and beyond the requirements where appropriate, including such voluntary efforts.

The latter point is particularly important: the thoughtful framework of 'safe harbours' have helped create shared responsibilities, ensuring illegal content is defined, addressed expeditiously while preserving economic growth, free expression and the free flow of information, and other societal benefits. 'Safe harbour' laws guarantee that as long as an

online platform meets certain global thresholds or conditions, it is not liable for the acts of its users.

B.1. The Challenge of Online Content Governance

While AIC recognizes that harmful online content is a matter of serious concern, it's impossible to remove all harmful content from the Internet. The threats are evolving, research is limited and – most importantly – there is little consensus on what the most effective interventions are across each specific legal harm. Since people use dozens of different sharing services—with different policies and processes—any regulation should set baselines for what's prohibited and require companies to build systems and procedures for keeping harmful content to a bare minimum.

Furthermore, harmful online content is expansive in nature with no one-size-fits-all definition. Developing onerous and stringent regulations will be challenging for companies to plan for and, more importantly, for the desired impact to be had – particularly as new harms emerge and our understanding evolves. Any protection that a State may devise for citizens' protection should rest on international rights standards that provide for and protect constitutional freedoms. These protections must form the backbone of any State responses to hate speech, intolerance, discrimination and other immoral content.

Approaches to addressing illegal online content should be tailored to achieve clearly defined goals. Moreover, effective regulation that holds Internet companies accountable to their own policies and procedures has been shown to be a more effective tool in redressing the most harmful speech. Also, an alternative approach may be more beneficial – focused more on transparency on action being taken, rather than tying companies to specific requirements that may rapidly become outdated. This rings particularly true in the case of Pakistan as the country combats and mitigates sensitive content related to terrorism, extremism, hate speech, fake news, incitement to violence and national security.

Regulatory frameworks should encourage compliance and enforcement of existing relevant standards. Its raison d'être should be to hold platforms accountable to the public, ensuring they respect ethical standards. Such regulation models rely first and foremost on members' common understanding of the values and ethics that underpin their professional conduct.

Importantly, regulation that encourages companies to build mechanisms to take responsibility for the safety of their users also helps reduce the pressure on the regulator, courts and the judiciary[5]. As a significant number of cases can be dealt with in a quick and satisfactory manner, and at low cost, legal proceedings need only be initiated in the most severe of cases. Generally, companies are encouraged to innovate and mitigate problems through their respective policies, systems and procedures, the need for state sanctioned regulation is significantly minimized.

Lastly, countries have taken very different approaches in regulating harmful online content. In the case of Australia last year, the country made two amendments to existing legislation,

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[5] According to an article by Asia Foundation, nearly 1.7 million cases are pending in courts across Pakistan as of December 2019.

namely the Australia Privacy Act Amendment and New Social Media Law under Criminal Code Amendment. One potential problem with these legislative changes is the requirement for industry to notify the Australian Federal Police if they are aware their service can be used to access any particular abhorrent violent material. As Internet service providers provide access for consumers to everything on the Internet, this requirement is negatively perceived as turning the industry into a national surveillance network. In addition, these strict laws can lead to media censorship and potentially reduced investments.

New Zealand on other hand has taken a much more pragmatic stance as compared to its neighbour, Australia. To stop the spread of harmful online content, New Zealand leveraged existing laws rather than initiating a new legislation. New Zealand also introduced a collaborative "roadmap to action" through the Christchurch Call, which calls on both governments and tech companies to take a collaborative approach to curbing online extremist content. Moving forward, it seems that New Zealand will continue to pursue collaborative channels in addition to carefully looking at potential regulation.

B.2. Addressing specific types of harmful content

Regulation should take into account the severity and prevalence of the harmful content in question, its status in law, and the efforts already underway to address the content.

While legislation should clearly define what types of harmful content would be deemed unlawful, applying those definitions in order to achieve uniform enforcement is not always a straightforward process. For instance, hateful speech, bullying, and threats of self-harm are often expressed through a lexicon of words that fall in and out of favor or evolve over time. Therefore, ensuring that these definitions are consistent, transparent, practically operable at scale and, most importantly – expressly tied to clear definitions under the criminal code – is vital to effective enforcement.

Moreover, regulation should develop an understanding of the capabilities and limitations of technology in content moderation and allow Internet companies the flexibility to innovate. An approach that seems to work for one particular platform or type of content may be less effective (or even counterproductive) when applied elsewhere.

To tackle this challenge, mutual collaboration between Government, civil society and the industry must be sought. We foresee that PTA could work with the industry and civil society to facilitate cross-sector collaboration and sharing, which will equip industry with technical information on best practices on content moderation. This will allow Pakistan to maintain a light touch regulatory framework whilst empowering the industry to curb online offenses. Collaboration can be in the form of:

- Holding regular conversations between the PTA, civic society and the industry through teleconferences on quarterly basis;
- Explore a self-regulatory approach with users by educating and empowering users through self-serve tools (i.e. parental controls, restricted search filters, etc).

- Industry can provide the PTA with publicly available data to better understand the proactive measures that are already being undertaken to combat harmful content;
- PTA and civil society can share local perspectives on terms that constitute hate speech, harrasment, terrorism, etc. to help improve current industry policies; and
- PTA can share data and reports to keep industry abreast to current trends that are developing in the country.

B.3. Compliance with local laws and principles of international human rights and best practices

The fight against harmful and objectionable content is an ongoing challenge that all social media companies face in every country they operate in. Both platforms and governments have certain responsibilities when it comes to addressing this challenge.

The duty of governments is to respect, protect, promote and fulfill human rights. That duty includes ensuring that national laws, regulations and policies (including rules) are consistent with international human rights laws and standards on freedom of expression and privacy, including the *Universal Declaration of Human Rights* ("UDHR"), the *International Covenant on Civil and Political Rights* ("ICCPR") and the *International Covenant on Economic, Social and Cultural Rights* ("ICESCR") which have been ratified by Pakistan.

Online platforms have a responsibility to be specific, transparent and consistent in assessing government restrictions and demands that impact freedom of expression or the right to privacy, including restrictions of access to content or restrictions of communications.

For example, social media platforms who are members of the Global Network Initiative undergo an independent audit every two years and have a responsibility to comply with all applicable local laws while respecting internationally recognized human rights, wherever they operate. In cases where national laws, regulations and policies do not conform to international standards, social media platforms are expected to minimize the adverse impact of government demands, laws, or regulations, and seek ways to honor the principles of internationally recognized human rights to the greatest extent possible.

Under various policies and community guidelines, social media platforms remove content promoting violence or hatred against individuals or groups based on attributes like race, religion, gender, and ethnicity, pursuant to the same being notified.

Some key efforts taken by AIC members include:

- Leveraging on technology such as artificial intelligence and machine learning to flush out the most harmful content.
- Undertake action that is effective, proportionate and scalable. This is done by employing both a preventive (education and user empowerment) and corrective (collaborate with enforcement agencies) approach to managing user behaviour.

- Maintain a committed channel of communication to collaborate with regulators such as the PTA.
- Companies have also increased human capital resources for the region and conducted capacity building programs with local partners.
- Establish local partnerships to promote public awareness. Among them includes leveraging local social media influencers to push digital literacy programs. For example:
  - Ehtiyat Corona[6] is one such initiative that was predominantly citizen-led and conducted using social media platforms to reach common people with credible information related to coronavirus.
  - The group of 200 digital influencers worked directly with the Prime Minister's Office (PMO) to channel authentic information to citizens, create awareness about the disease and spearhead the public campaign to encourage people to 'stay at home'.
- Promote a cyber-wellness approach and offer assistance to empower user responsibility through fact-checking and 'how to define false news' programs.

The Government should ensure that the fight against harmful and objectionable content is conducted in a manner that is compatible with international human rights principles and best practices. Integrating transparency and due process provisions in the Rules will ensure accountability in decision-making.

Transparency is not only one of the subjects outlined in Section 37 (2) of PECA 2016 on which Rules are to be framed – it is also a requirement of the fundamental right to information granted under Article 19A of the Constitution of Pakistan. This can be achieved by ensuring that the Government takes certain measures such as publishing regular reports detailing the amount of content that was removed over a period of time along with the reasons for removal. This will help to create an environment of trust and openness around PTA's regulation, which is a necessary element for any regulation.

The importance of due process has been underscored within Section 37 (2) of PECA 2016, which speaks of drafting Rules regarding an effective oversight mechanism. In order for an oversight mechanism to be effective, it must be independent and include a mandate to assess the Government's compliance with due process and efforts to preserve freedom of speech as it seeks to curb prevalent harmful content.

B.4. Balancing Freedom of Expression against other values, (i.e., Safety, Privacy, Dignity)

All human rights are interdependent and interrelated: the enhancement of one right facilitates advancement of the others; similarly the deprivation of one right adversely affects others. Freedom of expression and privacy are thus an explicit part of this international framework of

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[6] EhtiyatCorona: Pakistan's digital influencers fight virus misinformation - Pakistan

human rights and are enabling rights that facilitate the meaningful realization of other human rights.

Platforms have the responsibility to respect and promote the freedom of expression and privacy rights of their users. Social Media has the potential to enable the exchange of ideas and access to information in a way that supports economic opportunity, advances knowledge and improves quality of life. Social media platforms can work to protect, promote and support human rights through responsible decision-making, shared learning and multi-stakeholder collaboration.

Any regulation should protect the individual rights of freedom of expression and privacy. The best way to ensure a free and open Internet is to continue the important policy of safeguarding the open architecture of the Internet.

Removing content deemed detrimental is a necessity. However, determining what constitutes "objectionable" content cannot fall upon a single party. Instead it requires the synergy and understanding of regulators, industry and users. Only then will the freedom of expression be safeguarded.

A case in point can be observed in Taiwan. Taiwan garnered a victory in the fight against disinformation during the presidential elections earlier this year, thanks to a concerted, open and multi-stakeholder process. This example demonstrates that to ensure the upkeep of the digital ecosystem, continuous joint effort among the government, technology companies, and civil society groups is needed.

As in other countries[7], the fake news problem in Taiwan takes advantage of complex, deep-rooted ideological, cultural and political rifts among Taiwan's population of 24 million, and it demonstrates that fake news isn't just a technology or media literacy problem, but also one that needs to be examined from a social psychological perspective.

Much of the work, however, is being done by social media companies, volunteers and private citizens: organizations like the Taiwan FactCheck Center, a nonprofit that does not receive funding from the government, political parties or politicians. In July 2018, the group began collaborating with social media companies, where posts flagged as containing false information bring up a screen with a link that takes users to a Taiwan FactCheck Center report before they are allowed to view the content. Another interesting approach is Correct the Record, an initiative by Avaaz, a global advocacy group, intended to prevent the spread of fake news on Facebook and Twitter. Under this initiative, social media companies need to make sure that all users who see false information on their feeds are later presented with fact checks. This can be either in the form of a notification or a link to a verified organization.

More synergy can be possible between the government and social media companies by means of identifying false information and publishing reliable information, as observed in the case of the United Kingdom (UK). Currently, the UK does not have a legislation that governs fake news, however, the government has been investigating the impact of fake news in order to ensure that citizens have access to accurate information. The recently published whitepaper

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[7] https://www.poynter.org/ifcn/anti-misinformation-actions/

titled *Online Harms₈* emphasizes the need for governments to work with companies by incentivizing compliance and making sure that requests are technically possible to implement. Moreover, proportionality is recommended in actions as too much regulation can stifle innovation and have a significant impact on the economy. Any form of social media regulation, thus, is required to be designed in such a way that it creates a level-playing field for companies and does not penalize them disproportionately.

In Pakistan's case, this would involve any regulation of social media to be in accordance with Article 19 of the Constitution of Pakistan, 1973. As the PTA is aware, Article 19 states that restrictions on freedom of expression must be "reasonable" under the circumstances, and must be in aid of one of the legitimate state interests given in the text of Article 19 ("in the interests of the glory of Islam, integrity, security, or defence of Pakistan…"). These are also the conditions given in Article 19 of the ICCPR for the restriction of speech. The protection of free expression therefore requires governments to make decisions that are proportionate to the harm they seek to avoid.

As such, any legislation that seeks to regulate free expression must have safeguards in place that make it mandatory upon regulators to take the principles of *necessity* and *proportionality* into account before making a decision regarding the removal of any online content. This decision-making matrix ensures that regulation focuses only on the most prevalent harmful content.

Furthermore, in order for any restriction on speech to be necessary and proportionate, regulation should clearly define terms such as 'in the interests of security, or defence of Pakistan', 'public order,' 'decency', and 'glory of Islam.' By keeping these terms vague, significant discretionary authority lies with regulators to restrict speech, while also making it difficult to put systems in place to handle any such 'inappropriate' content in a practical and scalable manner. Additional definitional clarity on these terms would be appreciated to better understand the aim, impact, and application of these provisions, as well as to avoid any inadvertent or unintended violations.

By utilizing established free speech standards such as necessity and proportionality, regulators would not be starting from scratch; they would be expounding and adding regulatory effects to previous efforts of governments, civil society, and industry. For example, the Global Network Initiative Principles and other civil society efforts have helped create baselines for due process and transparency linked to human rights principles.

B.5. Accountability Framework for Online Platforms

Media landscapes and the diversity of roles fulfilled by technology companies have been evolving rapidly and will continue to do so. Democracy now requires that we engage in a collective learning process to organize online content moderation in a manner compatible with the requirements of international standards on freedom of expression. From this perspective, the need for a mechanism capable of ensuring an effective public supervision of content moderation on social media platforms is increasingly recognized on all sides.

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8 Online Harms White Paper

Regulation can best enhance accountability by ensuring that internet content moderation systems are consultative, transparent, and subject to meaningful independent oversight. Procedural accountability regulations could include, at a minimum, requirements that companies publish their content standards, provide avenues for people to report to the company any content that appears to violate the standards, respond to such user reports with a decision, and provide notice to users when removing their content from the site.

Enforcement

In terms of an accountability framework, regulators can look to examples such as the Global Network Initiative, which has created an incentive structure for compliance. Similarly, the European Union Code of Conduct on Countering Illegal Hate Speech Online has created a framework that has led to all eight signatory companies meeting specific requirements for transparency and due process.

Effective regulation should not measure performance based on removal of individual pieces of content; rather, it should holistically look at the requirements for good systems. Performance should then be measured based on a number of factors, notably the overall effectiveness of the system and improvements in the system. Sanctions should only be employed if there is a systemic failure.

Factors to consider may include the 'prevalence' and severity of content that violates platform policies. Regulators should also assess whether companies are striving to make reasonable efforts to ensure that the prevalence of violating content remains below certain levels, in line with the specificities of each platform. Generally speaking, some kinds of content are harmful only to the extent that they are actually seen by people. A regulator should care about stopping a hateful post that will be seen by millions of people rather than 10-20 such posts that will only be seen by one person. Only if prevalence and scale continue to remain insufficiently addressed in the case of repeated systemic failures should companies face possible sanctions. The regulator should also allow for flexibility, taking into account the inherent difficulties that may arise with different types of malicious activity, including the fact that abusers often use sophisticated measures to evade content moderation efforts.

For this reason, regulators (and platforms) will likely be best served by a focus on reducing the prevalence of views and wide dissemination of harmful content.

Additionally, concerning timeframes, we would point out that fixing turnaround times in a regulation or notice are not appropriate as they do not support legitimate variation between different technologies, different types of businesses, and different contexts. Social media companies need a reasonable period of time in which to assess the take down request once all the required information has been provided by the requesting individual. The exact time frame is not something that should be stipulated in legislation, as it will vary from case to case, depending on the complexities and volume of content under consideration. As an example, Violent Extremism content that is clearly inappropriate in general may be legitimately used in the course of, for instance, news reporting or educational purposes. Moreover, fixing timeframes may lead to over-removal by online companies so as to reduce risk. Inclusion in primary legislation adds complexity (e.g. stopping/starting the clock to clarify a notice) and inflexibility, should technologies change. Instead of inflexibly defined

timeframes, requests should be responded to as soon as reasonably practicable, or "without undue delay," or "expeditiously", upon receipt of a clear and specific notice.

Local Presence

While we understand the intention behind requiring the local presence of companies, localization obligations unnecessarily discriminate against foreign businesses, and poses a non-tariff barrier to trade. This is particularly stark in view of the nature of the services provided through the internet, which can be provided on a cross-border basis without the need for physical presence. By instituting local presence requirements, Pakistan will be deviating from established international trade norms and practices, and erecting unnecessary barriers to cross-border services trade.

Similar to data localisation requirements, local incorporation requirements also increase compliance costs for foreign companies, leading them to reconsider offering their services in Pakistan, and thereby reducing the host of services available to consumers and the local private sector within the country. Local incorporation and physical offices will also have huge repercussions for foreign firms with respect to taxes, foreign direct investments and other legal perspectives which will negatively impact economic growth.

Further, mandating that all social media companies must necessarily have a registered presence in Pakistan, would mean that certain established social media companies that are conducting their business in compliance with applicable local laws may now fall foul of restrictions under such Rules and may be forced to reconsider their service offerings. This would have a detrimental economic impact on the ease of doing business in Pakistan for other industries that heavily rely on global online platforms, especially in the post-COVID context.

Instead regulation should seek transparency and accountability from online platforms to ensure existing platform policies take local language and context into account in their decision-making.

B.6 Issues specific to Citizen Protection Against Online Harm Rules 2020

We also observe that certain provisions of the Rules are in violation of the provisions of PECA 2016 and the Constitution of Pakistan. These include the following:

- Requirements such as local incorporation, proactive monitoring, and data localisation are beyond the scope of powers conferred under both the Pakistan Telecommunication Act (PTA) and PECA.
- The creation of an entirely new authority known as the 'National Coordinator' is beyond the scope of powers granted in PECA.
- Provisions that allow the Office of the National Coordinator to search and seize data without proper legal oversight is contrary to the scheme of PECA 2016 under which only PTA may seek removal of unlawful online content and agencies authorised under Section 29 PECA may seek user data.

- An obligation to issue fake news corrections is beyond the scope of powers granted in PECA. PECA does not envision the creation of entirely new categories of unlawful content through delegated legislation such as the Rules.
- It is concerning that 'extremism' has been defined under the Rules in a vague manner, contrary to permitted restrictions on speech under Article 19 of the Constitution of Pakistan. Inclusion of the below parameters goes beyond the reasonable restrictions on speech under Article 19:

  - Fundamental values of Pakistan
  - Rule of law
  - Individual liberty

- Considering the comprehensive definition of 'cyber terrorism' under Section 10 of PECA, there is no need for a separate definition under the Rules. If there must be a separate definition, it is important that the definition aligns with the grounds of permissible reasonable restrictions on speech under Article 19 of the Constitution of Pakistan.
- Proactive filtering of obligations sought to be imposed under Rule 4(4) are contrary to Section 38(5) of PECA 2016, which expressly rejects imposition of any obligation on intermediaries or service providers to proactively monitor or filter material or content hosted, transmitted or made available on their platforms.
- The grounds for removal of social media accounts under Rule 5(e) are beyond the permissible reasonable restrictions on speech provided under Article 19 of the Constitution of Pakistan.