Industry Submission on Taiwan's Draft Internet Audiovisual Service Management Act ("Draft Act")

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	Submission format	Word (both in English – Page 3 and Chinese Translation – Page 11)

19 September 2020

Mr. Yaw-Shyang Chen
Chairperson
National Communications Commission
No.50, Sec. 1, RenAi Rd.,
Taipei City 10052, Taiwan

Subject: Industry Comments on Taiwan's Draft Internet Audiovisual Service Management Act ("Draft Act")

Dear Chairperson,

The Asia Internet Coalition (AIC) appreciates the opportunity to submit its views regarding the National Communications Commission's (NCC) draft Internet Audiovisual Service Management Act ("the Act, Draft IASMA or the Draft Act").

The AIC is an industry association composed of leading Internet and technology companies. AIC seeks to promote the understanding and resolution of Internet and ICT policy issues in the Asia Pacific region. Our members are Airbnb, Amazon, Apple, Cloudflare, Expedia Group, Facebook, Google, SAP, Grab, LinkedIn, LINE, Rakuten, Twitter and Yahoo (Verizon Media), and Booking.com.

First and foremost, we commend the NCC for their efforts on drafting the Draft Internet Audiovisual Service Management Act which is seen by many as the world's first Over The Top Services (OTT) regulation. We believe the draft builds upon the conclusions of the Commission's Communications Policy White Paper released earlier this year, and we applaud certain areas of the Commission's measured regulatory approach. While we support the NCC's intention, we would also like to express our concerns on this draft Act. We understand that one of the draft's main objectives is to prohibit mainland Chinese streaming services, however we are concerned that the implementation of this act may effectively end the light touch regulatory environment for OTT services in Taiwan.

We are also grateful to the NCC for upholding a transparent, multi-stakeholder approach in developing this Act. We look forward to a productive dialogue with the NCC regarding our shared goals of encouraging growth and consumer choice in the digital content and applications markets in Taiwan. As such, please find appended to this letter, detailed comments and recommendations (both in English – Page 3 and Chinese Translation - Page 11), which we would like the NCC to consider when preparing the draft act.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact me directly at Secretariat@aicasia.org or +65 8739 1490. Thank you for your time and consideration.

Sincerely,

Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

Detailed Comments and Recommendations on Taiwan's Draft Internet Audiovisual Service Management Act

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1. The Commission Appropriately Distinguishes between OTT TV Broadcast and Subscription-based Video Services from Platform Applications that Support User-Generated Content

The Draft Act takes into account the diverse and evolving nature of the online video marketplace – comprising providers of subscription video on demand (VOD), free VOD, platforms for user-generated content, and other revenue and business models. In this environment, any regulation deemed necessary for certain services may be ill suited for different applications or providers. In addition, regulations designed for broadcasters and cable providers are particularly inappropriate for user-generated content apps, and extending legacy regulations to those apps could have numerous and serious unintended consequences.

In that regard, we are pleased that the Commission's draft differentiates OTT TV subscription-based video services from platform applications that support user-generated content. The draft law acknowledges the unique characteristics of platforms that support user-generated content. Platforms that host predominantly user-generated content typically do not exercise the degree of editorial control over content traditionally asserted by broadcast and cable providers. Instead, these applications not only give users significantly more choice and freedom, these platforms also empower users themselves to play a more central role in expressing diverse ideas and opinions through the production and publication of video content. The simplicity with which users can produce and publish their own content creates new opportunities to reach expanded audiences more easily and broadly, thereby giving rise to more diverse, local, niche content offerings and exchanges of ideas.

We believe differentiating OTT TV applications with subscription-based video services from platforms that host predominantly user-generated content will continue to allow user-generated content apps to generate enormous benefits for Taiwanese consumers, content creators, and businesses. Regulations designed for applications such as subscription-based video services, broadcasters, or cable providers are ill-fitted for services hosting predominantly user-generated content. These regulations could fundamentally alter the openness and freedom of democracy, thereby depriving users of a positive source of creativity, learning, and access to information, and make it more difficult for people and ideas to find their audiences.

Against this backdrop, we recommend defining relevant terms clearly and narrowly to provide regulatory certainty to stakeholders and to avoid unnecessarily burdensome regulations that could have negative consequences for the Taiwanese economy and content industry. We also encourage the Commission to clearly identify the categories of services and entities that are within scope, bearing in mind that it may not be appropriate to apply the same regulatory approach to all applications or providers.

We strongly encourage the Commission to further clarify that intermediary platform applications hosting predominantly user-generated content are explicitly excluded from the scope of the Act due to the fundamental differences between these applications and traditional broadcasters and subscription-based video services. These differences include the level of editorial control exercised by providers, the degree of consumer choice over specific content and control over the manner in which it is consumed, and the role that users play in the production and publication of user-generated content. Expanding the scope of the Act to include intermediary platform applications hosting predominantly user-generated content would create significant regulatory burdens that would harm Taiwan's freedom of expression, creativity and innovations, deprive consumers of valuable content and ideas, eliminate a valuable mechanism for Taiwanese content creators to reach new audiences, and stifle the broader social and economic benefits that these applications enable in Taiwan.

We further would suggest to strengthen this clause accordingly by: (i) explicitly indicating this exclusion in Article 3, not only in the explanation notes, and (ii) changing the term "UGC social media" used in the explanation column of Article 3 to "predominantly UGC platform", in line with the explanation column stating that this Act will not apply to "platform which provides user generated contents and information sharing" (提供使用者原創內容之平台).

2. The Commission Appropriately Refrains from Automatically Extending Legacy Broadcast and Cable Regulations to OTT Applications

The OTT industry in Taiwan is still at an early development stage, and has great potential to become a leading player in the global content production business. Open innovation is the key that drives Taiwan's creativity in content production in the first place. Creating and implementing certain sections of this regulation would not prove to be an effective way to promote Taiwan's culture and value, nor to encourage Taiwan's OTT businesses to further develop or invest in the future.

More generally, we applaud the Commission's understanding to refrain from automatically extending legacy broadcast and cable regulations to OTT TV applications. Regulations designed for traditional broadcasters and cable providers are inappropriate for OTT TV applications because of the technical and operational differences between those services and OTT TV applications.

Broadcasters deliver service to customers using spectrum, a valuable and regulated resource. Because spectrum is limited and barriers to entry are high, the number of broadcasters that can operate in any market is also necessarily limited. By contrast, the high capacity of broadband networks, lower barriers to entry, and global nature of the Internet mean that a virtually unlimited number of competing OTT TV providers can deliver digital content and applications to customers. Broadcasting regulations were also designed for traditional, linear services on which consumer choice in content is limited. For OTT TV, particularly video on demand, users are in control and can consume the content they want anytime, anywhere.

Cable service providers are similarly distinct from OTT TV. Cable service providers own and control the underlying network infrastructure and connection to the customer's premises, and consumers may have limited choices in their cable provider and may have costs associated with switching providers. Cable regulations have been structured with those considerations in mind. By contrast, OTT TV providers do not control the underlying access infrastructure, and operate in a highly competitive market in which it is easy and often cost-free for consumers to switch between competing apps. Thus, the rationale underpinning most legacy broadcast and cable regulations does not apply to OTT TV.

This is why we welcome that the Commission seeks to minimise unnecessary compliance burdens thanks to registration being on a voluntary basis (Article 5) and having a minimum threshold for compliance (Article 6): this is particularly helpful in the interest of competition and innovation. Conversely, for the same reasons we would caution against applying to OTT applications the sort of legacy obligations detailed in Article 13 on content removals and ratings classification, as well as Article 14 on self-regulation, which are not very detailed and thus unclear, and would seem potentially unsuited and very burdensome for a whole range of OTT TV applications that do not require the same regulatory oversight as legacy broadcast services because they provide such fundamentally different services and user / consumer expectations.

For these reasons, we strongly encourage the Commission to maintain its light-touch regulatory approach for OTT TV and append below our specific reservations and comments on the Draft Act.

2.1. "Voluntary" registration system (Articles 5, 6 and 8)

Article 5 of the Draft Act stipulates that an Internet audiovisual service provider may apply for registration with the NCC on a "voluntary" basis. However, the Draft Act does not give Internet audiovisual service providers any incentives to file such applications. Furthermore, we are of the view that registration is unnecessary for OTT services which do not utilize a scarce resource such as spectrum. Such requirements would lead to unnecessary administrative burden.

Article 6 of the Draft Act stipulates that the NCC may require a certain Internet audiovisual service provider to register with the NCC according to certain self-prescribed criteria (number of users,

turnover, clicks, traffic volume, market impact or other material public interests, etc.). This remains an ambiguous definition that is based on NCC's own discretion which could create market distortions.

Additionally, before a service provider "voluntarily" registers with the NCC and then makes regular reports to the NCC on its operations in accordance with Article 8 of the Draft Act, it is unclear how the NCC obtains such information and on what basis the NCC determines that a certain service provider has the obligation to file such application. It seems to be an arbitrary decision by the regulator and is inconsistent with the nature of a "voluntary" registration system.

2.2.Repetitive regulations (Articles 6, 7, 10, 12 and 13)

The Draft Act repeats regulations of a number of existing legislations such as the Business Tax Act, Regulations Governing the Company Registration, Consumer Protection and the Act Governing Relations between the People of the Taiwan Area and the China Area and the Children's and Youths' Welfare and Rights Protection Act. The repetitive regulations not only cause legislative intent to go in different directions but also likely will impose unnecessary burden to offshore OTT service providers.

2.3.Burdensome reporting and information disclosure requirements (Articles 5 through 11)

Articles 5 through 11 of the Draft Act impose extensive reporting and information disclosure obligations on registered Internet audiovisual service providers, which are equivalent to almost all reporting requirements under Taiwan law and are likely heavier than those imposed on Type II telecom carriers under the Telecommunications Act. Furthermore, Article 8 of the Draft Act requires a registered Internet audiovisual service provider to make regular reports to the NCC on the number of users, turnover, clicks, traffic volume, etc. However, all said information is typically regarded by companies as information that is sensitive due to economic and competitive reasons. Once the NCC announces that certain Internet audiovisual service providers have to apply for registration and thus be subject to the above-mentioned information disclosure obligations, it is possible that such service providers would feel obliged to choose to cease providing services to Taiwanese consumers rather than disclose such market-confidential information.

2.4.Cybersecurity risks (Articles 8 and 10 of the Draft Act)

Article 10 of the Draft Act requires registered Internet audiovisual service providers to disclose the place where their servers and storage devices are located. However, according to the common cybersecurity practices, Internet service providers and data center operators have to conceal such information for security reasons. Disclosing such information (especially where their user data is retained) would cause huge and unnecessary cybersecurity and other risks, which may discourage service providers to continue operating/investing in Taiwan and cause a chilling effect on the local economy.

2.5. Potential local presence requirement (Articles 6, 8 and 10)

Articles 6, 8 and 10 of the Draft Act require a registered Internet audiovisual service provider to produce local content, make regular reports on its operations in Taiwan, etc., all of which may trigger the local presence requirement under the Company Act that would obligate service providers to establish branch offices in Taiwan, which may not be intended by the Draft Act.

2.6. The Commission should clarify and minimise the restrictions affecting cloud and app store services (Article 12)

According to Article 12, International Data Centres (IDCs), content delivery network (CDNs) services, and cloud service providers will not be able to provide services to certain "Internet audiovisual service providers in the mainland area or their agents" and shall stop the services after receipt of notice from the authority. A similar obligation seems to apply to app stores in providing the ability to access and download certain applications.

Although we appreciate the Commission's measured regulatory approach, we do not support the extension of Article 12 requirements to service providers other than Telecommunications enterprises or Public Switched Telecommunications Network (PSTN) entities, to include service providers like Internet data center services, content delivery network services, cloud services, or any internet services composed of connection services, caching services, high performance computing services and information storage services. Telecommunications enterprises or Public Switched Telecommunications Network entities located in Taiwan are best positioned to address the Commission's rules regarding the provision of service and action upon notice from the competent authorities. Extending these same requirements to service providers that generally do not receive these types of notices, may not have mechanisms to address them, and may not be located in Taiwan would both minimally advance enforcement of the Act, and has the potential to cause significant confusion in how the Act is to be enforced.

Further, it is unclear to what extent and how IDCs, CDNs, and cloud service providers as well as app stores would be required to do their due diligence (e.g. to ascertain whether a contracted party may be an 'agent' of these mainland companies).

We would recommend deleting this clause, at least until proper and thorough consultation has taken place on what could have wide-ranging implications, including for the ability of a range of companies to do business, in Taiwan and in other jurisdictions. AIC advises against the blanket prohibition of certain applications from app stores. Any such prohibition would need to be subject to thorough examination and subject to the appropriate judicial due process.

At the very least, we would request NCC to clarify this issue, specifically how data centers, CDNs and cloud services are supposed to comply with this rule.

We would also request NCC to clearly state that it is not the Commission's intention to request app store services to remove applications that are not registered with the Taiwan government.

2.7.Penalties (Chapter 4)

The Act also introduces penalties up to 5 million TWD (Chapter 4 Penalty), contrary to the legislative intent to promote OTT development, the act does not provide any specific encouraging OTT development measures. In fact, it is clearly far from the "light touch" regulation as NCC originally claimed.

2.8.Self-regulation (Article 14)

Recognizing that Internet audiovisual service providers are often unique by nature, the law should not force businesses to arbitrarily enter into a self-regulation organization when reputable businesses already have transparent policies available to the public. A self-regulation organization, for example, who has received funding from government agencies and has intimate work relationships with relevant authorities, may have a conflict of interest and not be well placed to represent appropriately the best interests of industry.

As such, Article 14 should stipulate that "businesses should establish user policies or community guidelines promoting self-regulatory practices (such as those on child protection, privacy, or abusive behavior) that are accessible by the public." Further, only as an incentive measure, we recommend adding Article 15-1 to "encourage and incentivize businesses to establish or join a self-regulation organization, to further support and encourage member companies in establishing self-regulatory practices." These mechanisms will allow reputable global industry leaders a chance to lead the way in sharing international best practices, without excluding self-regulation methods by fellow industry members. We believe that these recommendations will be to the benefit of achieving the balanced development of OTT TV in Taiwan.

2.9 The Commission should continue to respect the diversity of content in Taiwan, while promoting quality local culture to domestic and international audiences

Taiwan's diversity is a direct result of its democratic success, and its promotion of public policies that encourage individual rights in freedom of choice and access to legitimate Internet content, services and applications.

This Act would be better served by providing guidance to ultimately achieve the goal of promoting local culture, and developing quality audiovisual content that reflects Taiwan's unique creativity and vibrant culture to domestic and international audiences. To take a position of "safeguarding" cultures of Taiwan, as mentioned in Article 1, could be seen as taking a protectionist approach to Internet audiovisual services that signals a lack of faith in Taiwan's free market, democratic society and against the open characteristics of a truly free Internet.

Further, in order to achieve the goal of promoting local culture domestically and internationally, the government should commit to promote and to further the development of Internet audiovisual services in Taiwan, while balancing the rights and interests of the individual and the public.

As such, the purpose of the Act should be amended to include the following wording: "to further the development of Internet audiovisual services in Taiwan, for the ultimate purpose of promoting local culture in Taiwan, while balancing the rights, freedoms and interests of the public".

2.10. Lack of necessity and urgency to pass the regulation, since Chinese OTT issues have been properly solved under the newly amendment

We understand there are demands and pressures for the NCC to provide solutions for issues concerning mainland Chinese streaming services. However, Taiwan Ministry of Economic Affairs (MOEA) has already enacted new regulation modifying the list of businesses that are off limits in Taiwan, took effect on 3rd September 2020. Chinese OTT provide streaming services in Taiwan have now officially contravened the Act Governing Relations Between the People of the Taiwan Area and the Mainland Area.

The Chinese OTT issues would therefore be properly solved under the current legislation framework following the MOEA's modification. Given this, there is no urgency for the NCC to expedite the implementation of the proposed Act. Without sufficient discussions with the industry and without accurate definitions, any implementations may adversely impact the current light touch approach to the world's first OTT TV regulations and will hinder industry's capacity to invest and innovate effectively.

3. Conclusion

Online applications – particularly those hosting predominantly user-generated content – increase consumer choice, productivity, and innovation. They give local businesses and content creators access to a global customer base, and they provide any individual with tremendous platforms for free expression and freedom of speech. This ultimately expands Taiwan's creative industry and overall economy, as well as personal freedoms. As the Commission finalizes the Internet Audiovisual Service Management Act, we recommend defining relevant terms clearly and narrowly to provide regulatory certainty to stakeholders and to avoid unnecessarily burdensome regulations that could have negative consequences for the Taiwanese economy and content industry. We also encourage the Commission to clearly identify the categories of services and entities that are within scope, bearing in mind that it may not be appropriate to apply the same regulatory approach to all applications or providers.

Therefore any further developments to the Draft Act should:

- **Maintain a true light touch regulatory framework on OTT services**. A light touch regulatory approach has proven to be effective. Enhanced dialogue with industry players and other stakeholders, would be sufficient to address issues while remaining practical. Proposing new legislation without considering current industry practices and complexities may only lead to the opposite of a light touch framework.

- **Encourage self-regulation**. Established industry players have often already developed self-regulating policies or even organizations to protect their customers, as well their own brand and reputation. A government-required self-regulation could create additional layers of regulatory burden, and may eventually lead to unnecessary formality or even unspoken rules.

- **Enable a partnership with industry to develop best practice and a balanced approach**. The advent of the digital economy has transformed business models at unprecedented speed and scale. We greatly appreciate the government's effort to collaborate with stakeholders to seek appropriate solutions; however, a one-size-fits-all regulatory model can no longer accommodate the ever-changing types of platforms. In order to create a fair and balanced framework, it is vital to have sufficient discussion with industry players to understand and cater for the latest practices and development. The Act should not be implemented before reaching a proper consensus with the industry.

Please refer to the next page for translated version of the Submission

TRANSLATION

2020 年 9 月 19 日

陳主任委員耀祥
國家通訊傳播委員會（NCC）
10052 臺北市中正區仁愛路一段 50 號
臺北市台灣

主題：《網際網路視聽服務管理法》草案內容之建議。

陳主委 鈞鑒：

Asia Internet Coalition (AIC）希望有機會就國家通訊傳播委員會（NCC）的《網際網路視聽服務管理法》草案（以下簡稱該草案）提出意見。

AIC 是由領先的網際網路和技術公司組成的行業協會。AIC 致力於促進對亞太地區網際網路和通信技術政策問題的理解和解決。我們的會員包括Airbnb、Amazon、Apple、Cloudflare、Expedia Group、Facebook、Google、SAP、Grab、LinkedIn、LINE、Rakuten、Twitter、Yahoo (Verizon Media) 及 Booking.com等企業。

首先，我們肯定 NCC 在為制訂該草案所付出的的努力，這部 OTT TV 法被稱為是全球第一部管理網際網路相關產業的法規。草案內容以NCC今年早些時候（二月）發表的《傳播政策白皮書》的結論作為根據，我們非常肯定NCC對於其他傳播領域的治理所作的貢獻。我們理解NCC制訂草案的用意，然而對於草案的內容，我們表達深切的疑慮。據我們瞭解，草案的主要目標之一為禁止中國的網際網路視聽服務業者進入台灣市場，但我們憂心 OTT TV 法的實施可能會完全扼殺台灣 OTT 服務的輕觸監管環境。

另外，我們感謝NCC在制定草案時堅持透明、顧及多方利益關係人權益的做法。我們期待有機會與NCC就台灣數位市場如何達成增加消費群眾的目標進行有效性的對話。因此，特別致函NCC並隨函檢送附件一份，詳細提列本協會意見與建議，如蒙NCC參酌，不勝感激。

如果您有任何問題或建議，請不吝與我聯繫 Secretariat@aicasia.org 或 +65 8739 1490。再次表達我們的感謝。

敬頌 政安

Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

台灣《網際網路視聽服務管理法》草案詳細意見和建議

1. 建議NCC 明確區分 OTT 付費影音服務和使用者原創內容平台的差異性

NCC　日前公告的草案版本基於網際網路市場的多樣性和演變性，考量包括付費隨選視訊（VOD）、免費數位隨選視訊系統、使用者原創內容（User-Generated Content）平台以及其他營業模式和商業模式。在此產業中，專為某些服務所需而制定的法規，不一定適用於其他應用服務。此外，為廣播及有線電視所設計的法規，也不一定適用於使用者原創內容，若是勉強套用，極有可能帶來預料外的嚴重後果。

在此方面，我們感到高興的是，NCC 擬定的草案將 OTT 網際網路付費影音服務與使用者原創內容平台作區分，顯示NCC　理解提供使用者原創內容平台業務的獨特性。平台主要的功能是做為訂閱用戶分享原創作品之用，並無類似廣播或有線電視服務商所行使的編輯

或內容管制行為，這些使用者原創內容平台反而為用戶觀看上提供了更多選擇與自由，同時讓用戶透過製作和發佈創作，以表達多元理念及意見的過程中，擔任更核心的角色。簡化的過程，為用戶在製作和發佈作品上創造了新的機會，更容易接觸更廣大閱聽眾，並帶來更多樣化、具本土特色、令人愉悅的內容、以及理念的交流。

我們相信，將 OTT TV 付費影音服務平台與使用者原創內容平台明確作區分，將有助於推廣用戶生成內容的應用，為台灣廣大的消費群、內容創作者和企業帶來巨大的益處。為監管付費影音服務、廣播或有線電視服務商所設計的法律，並不適合用於使用者原創內容平台服務。對使用者原創內容採取上述的規管密度，將根本性地影響民主社會的開放性和自由性，從而剝奪使用者獲得創造力、學習和汲取資訊的來源，致使民眾和理念失去分享的管道。

在此背景下，我們請求NCC　確切清楚定義草案相關條款，提供利害人關係人遵循準則，避免形成不必要與過度監管情形發生，而危害台灣的經濟與數位內容產業。同時，我們建議NCC　明確界定草案監管範圍及服務項目，並極力避免以同一條款監管所有的網際網路服務提供者。

同時，我們強烈建議NCC　進一步釐清以分享使用者原創內容為主的中介平台和傳統提供網路影音頻道與付費隨選視訊服務的基本差異性，將平台排除於草案納管範圍。而上述所指之差異性涵蓋平台服務對於編輯內容的管控程度，以及消費者對於特定內容的選擇自由度與原創者製作與發佈作品的方式等。擴大草案監管範圍，強行將提供使用者原創內容的分享平台納入管理，無疑形成監管過度氾濫，損害台灣的思想表達、創意及創新的自由，且剝奪消費者接收寶貴內容與創意的機會，活生生摧毀台灣創作者接觸觀眾的機制，並抹煞了這些應用服務為台灣帶來的社會功效與經濟利益。

我們進一步提出以下修正建議，俾使草案更臻完備：（一）於第三條條文中明定上述排除範圍，而非僅於第三條之說明欄中表示，並（二）建請將目前第三條說明欄

中使用之「使用者原創內容社群媒體」一詞，修正為「以提供使用者原創內容為主之平台」，並明確註明《網際網路視聽服務管理法》不適用於「以提供使用者原創內容為主之平台」。

2. NCC 避免將治理傳統廣播電視和有線電視的法規擴大應用於監管 OTT 產業

台灣 OTT 產業目前仍處於早期發展階段，但潛力無窮，極有可能成為全球內容創作產業的領導者。開放創新是提升台灣的創造能力，將內容製產業推向世界高峰的至為關鍵的要素。但可惜的是，草案中制訂的某些章節無助於有效地推廣台灣文化與價值，更遑論有助於未來提升OTT 產業的發展與投資。

廣泛地來說，我們肯定NCC 的理解，避免將傳統廣播電視和有線電視的法規擴大應用於 OTT 產業。專為傳統廣播電視和有線電視提供者量身訂做的法規完全不適合用來監管 OTT TV 業務，因為這兩種電視業務與 OTT 電視服務之間的技術和與實務操作差異甚大。

廣播電視使用頻譜，係一種具經濟價值且需要高度監管的資源，而頻譜有總量的限制，進入的門檻高，因此廣播電視的營運數量也是理所當然的。相較之下，高容量的寬頻網路行業，進入門檻低，而不受邊界侷限的虛擬網路電視服務，可能有成千上萬的競爭對手為客

戶提供數位內容服務。廣播電視法規的立法目的為規範傳統線性電視業務之用。業務模式與 OTT TV 大相逕庭，尤其隨選視訊，完全是由消費者掌控，依其個人意願選擇觀賞節目的內容。

有線電視的處境與 OTT TV 類似卻又有相異之處。有線電視業者擁有並完全掌控與客戶住處連接的地下電纜設施的所有權，而消費者對於有線電視業者提供的內容選擇是受限制的，而消費者在轉換有線電視服務頻道供應商時，也會有相關費用產生。有線電信法制訂時將這些因素列入考量，相形之下，OTT 電視業者並不直接掌控連結用戶的基礎設施，而市場競爭激烈的情況下，消費者基於應用服務的考量，換 OTT 電視訂閱頻道不僅方便，而且又是免費的。因此，規範傳統廣播電視與有線電視的法規對於管理 OTT 電視是極為不適用的。

基於上述原因，我們非常樂意看到NCC 設法減輕不必要的法令負擔，採自願登記制（第 5 條），並有最低門檻的限制（第 6 條）：這二項規定對於競爭力的提升與創新有非常大的助益。反之，基於相同理由，我們特別提醒NCC 不要如第 13 條所列強制 OTT TV 服務業者屢行內容分級之防護措施，如同第 14 條要求 OTT TV 業者共同成立或加入自律組織。相關條文不夠詳細又不明確，OTT 產業提供完全不同於傳統廣播電視服務，同時面對消費者/使用者不同的期待，因此不應用管理傳統廣播電視服務的規範來監管網際網路視聽服務產業，這幾項監管機制不僅無必要性，又可能造成過度監管。

綜合上述理由，我們強烈建議NCC 維持對 OTT TV 採取輕度管理方式。並如下文附上我們對於草案的具體意見與建議。

2.1. 「自願」登記制度（第5、6和8條）

草案的第5條規定，網路視聽服務提供者可以「自願」向NCC申請登記。但是，草案並沒有提供任何誘因讓網際網路視聽服務提供者申請登記。

此外，依草案第6條的規定，NCC 可能根據某些自我設立的訂定之標準（使用者數量，營業額，點擊數，流量，市場影響或其他重大公共利益等）要求特定網路視聽服務提供者登記。標準的模糊定義，在認定上恐流於NCC 恣意，可能導致市場上之不公平競爭。

此外，在服務提供商尚未「自願」向NCC 登記，並依據草案第8條向NCC 定期報告其運營之前，不清楚NCC 如何獲取上述資訊，以及NCC 在什麼基礎上確定某個服務提供者有義務提出上述申請。這似乎取決於監管機構的任意決定，與「自願」登記的性質不一致。

2.2. 重複性規定（第6、7、10、12和13條）

該法草案重複了《營業稅法》、《公司登記辦法》、《消費者保護法》、《臺灣地區與大陸地區人民關係條例》、《兒童及少年福利與權益保障法》等一系列現有立法的法規。重複的法規不僅導致立法目的朝向不同方向發展，而且很可能對境外OTT服務提供者帶來不必要的負擔。

2.3. 繁重的報告和資訊揭露要求（第5至11條）

草案的第5至11條對已登記的網路視聽服務提供者施加了廣泛的報告和資訊揭露義務，這些義務幾乎集結台灣法律下的所有報告要求，比《電信管理法》對第二類電信事業的要求還要重。此外，草案第8條要求已登記的網路視聽服務提供者定期向NCC報告用戶數量，營業額，點擊數，流量等資訊。但是，公司通常將所有上述資訊視為因經濟和競爭原因而無法共享之資訊。一旦NCC宣佈某些網路視聽服務提供者必須申請登記並因此要承擔上述資訊公開義務後，這些服務提供者很可能會選擇停止向台灣消費者提供服務，而不是此類機密信息。

2.4. 網路安全風險（法律草案第8條和第10條）

草案的第10條要求已登記的網路視聽服務提供者揭露其伺服器和存儲設備的位置。但是，根據網路安全慣例，出於資訊安全原因，網路服務提供商和數據中心運營商必須隱藏此類資訊。揭露該資訊（尤其是儲存其用戶數據的設備位置）將帶來巨大且不必要的網路安全風險，這可能使服務提供商不願繼續在台灣經營/投資，並給當地經濟帶來寒蟬效應。

2.5. 潛在的本地據點要求（第6、8和10條）

草案的第6、8和10條要求已登記的網路視聽服務提供者製作本地內容，對其在台灣的業務進行定期報告等，所有這些都可能觸發《公司法》規定中的本地據點要求，這將要求服務提供商在台灣設立分支機構，這可能不是草案的本意。

2.6. 建議NCC 應清楚說明並盡量減少影響雲端及應用程式商店服務的限制（第 12 條）

根據該法草案第 12 條，網路資料中心、內容傳遞網路及雲端服務提供者將無法向特定「大陸地區網際網路視聽服務提供者或其代理人」提供服務；如收到主管機關通知，則必須停止服務。在訪問和下載特定應用程式時，類似義務似乎適用於應用程式商店。

我們對NCC 採取有節制的監管措施表示欽佩，但我們不認同將第 12 條涵蓋範圍擴大至電信企業及公用交換電話網路（PSTN）外的服務提供者，包括網路資料中心服務、內容傳遞網路服務、雲端服務，或其他利用連線服務、快速存取服務、高效能運算服務及資訊儲存服務組成之網際網路服務者。就NCC 規範於接獲主管機關通知後採取的服務變更和行動，在台灣設立的電信企業或公用交換電話網路業者是最適合的因應對象。將相同要求擴大到一般不會收到此類通知、未設有此類通知處理機制、或未設立在台灣的服務提供者，對於相關執法的推動極度有限，且可能對於法案的執行方式造成嚴重混淆。

此外，目前也仍不清楚網路資料中心、內容傳遞網路及雲端服務提供者，以及應用程式商店，所被要求履行的盡職調查程度與作法（例如：查明簽約方是否為大陸地區網際網路視聽服務提供者的「代理人」）。

我們建議刪除該條款，至少在適當及完整諮詢可能產生的廣泛影響前，包括評估各式公司在台灣和其他司法管轄區開展業務的能力。我們不建議以偏概全的全面禁止從應用程式商店訪問特定應用程式。任何此類禁令都應該經過徹底審查和適當的司法程序。

就此議題，我們希望 NCC 最少能夠說明網路資料中心、內容傳遞網路及雲端服務提供者應該如何遵循此條款。

我們也希望NCC 說明並無意要求應用程式商店服務刪除所有未在台灣註冊申請的應用程式。

2.7. 罰則（第4章）

草案制定違者將處高達新臺幣500萬新臺幣的罰鍰（第4章罰則），此與促進OTT發展的立法目的背道而馳，相較之下，該法案中並沒有提供任何具體的扶持鼓勵OTT發展措施。事實上，這顯與NCC最初聲稱的「輕度管理」法規相差甚遠。

2.8. 自律規範（第14條）

基於認知網際網路服務視聽服務業者各有其獨特性，法律不應強迫企業加入自我監管組織，尤其是信譽良好且已向大眾提供透明政策的企業，更不應被強制加入自律組織。反而是強制性的自律組織，假設從政府機構獲得資金，或與相關單位有密切關係時，可能造成利益衝突，導致更難以代表維護整體產業權益。

因此，建議修正第 14 條條文如下：「企業應制定使用者政策或社群規範，以積極推廣使用者自我管理的準則。」；自我管理項目應包括兒童保護、個人隱私、不當行為等。此外，關於激勵措施，我們建議在第 15-1 條增加：「鼓勵並獎勵企業建立或加入自律組織，並進一步支持和鼓勵成員公司建立自律的機制。」。這些機制將促成全球知名產業領導者分享國際最佳實務的機會，同時也不會將其他行產成員的自律作法排除在外。我們相信，上述建議將有利於台灣 OTT 產業的均衡發展。

2.9. 建議NCC 持續維護對於台灣網際網路內容多樣性的尊重，同時在國內和國際市場加強推廣優質的台灣本土文化

台灣文化的多樣性來自成功的民主體制與公共政策的落實，民眾被鼓勵依自由意願選擇網路上的合法內容、服務和應用。

我們相信透過提供明確遵循準則的方式推廣本土文化，以達成實現發展優質影音內容的最終目標，並向國內外觀眾推廣具有台灣原創性及豐富多樣的內容，將更能發揮《網際網路視聽服務管理法》的立法成效。草案第一條闡明的「保護台灣文化」的立場可能被視為台灣對網際網路視聽服務採取保護主義的態度，顯露政府對台灣的自由市場、民主社會素養缺乏信心，更是與網際網路獨具的自由開放特性背道而馳。

此外，為了實現促進國內外本土文化推廣的目標，政府應致力於推動台灣網際網路視聽服務的發展，同時平衡個人和公眾的權利及利益。

因此，建議應修正草案立法目的如下：「為實現推廣本土文化發展的目標，積極提升台灣網路影視服務的發展，同時平衡民眾個人權益、自由及公眾利益，特制定本法。」。

2.10. 由於中國 OTT 問題已得到妥善解決，因此缺乏通過該條例的必要性和緊迫性。

我們明白NCC 受有解決中國 OTT 在台服務的壓力，為有關中國串流媒體服務的問題提供解決方案。不過，根據經濟部於 2020 年 9 月 3 日修訂生效在台灣從事商業行為禁止事項項目表，已將中國OTT 及相關商業服務納入禁止範圍。中國OTT 在台灣提供串流服務，現已直接違反《台灣地區與大陸地區人民關係法》之規定。

因此，在經濟部的行政命令生效後，中國 OTT 問題已在現行立法框架下得到適當解決。有鑒於此，NCC 並無迫切需要加快執行擬議中的法案。如果未與業界進行充分討論，沒有準確的定義和實施，可能會對目前全球首部 OTT TV 法的輕觸方法產生負面影響，並阻礙行業有效投資和創新的能力。

結論。

線上應用程式（尤其是那些託管主要由使用者生成的內容的應用程式）可提高消費者的選擇、生產力和創新。它們為當地企業和內容創作者提供了全球客戶群，並為任何個人提供了言論自由，也提供了實踐言論自由的巨大平台。這最終擴大了台灣的創意產業和整體經濟，以及個人自由。在 NCC 敲定《網際網路視聽服務管理法》時,我們建議明確而狹義地界定相關條款，為利益相關者提供監管確定性，避免對台灣經濟和內容產業產生負面後果的不必要的繁瑣監管。我們還鼓勵 NCC 明確確定屬於範圍內的服務和實體類別，同時銘記，可能不宜對所有應用程式或服務提供業者採用同樣的監管辦法。

因此，對法律草案的任何進一步發展應：

在 OTT 服務上保持真正的輕觸監管框架

輕觸式監管方法已被證明是有效的。加強與行業參與者和其他利益攸關害關係人的對話，將足以解決問題，同時保持實際。在不考慮當前行業慣例和複雜性的情況下率爾提出新立法，只會導致輕觸框架的反面不良效果。

鼓勵業界自律

成熟的行業參與者往往已經制定了自我監管政策，甚至組織來保護他們的客戶，以及他們自己的品牌和聲譽。政府要求的自律可能會造成額外的監管負擔，最終可能導致不必要的形式，甚至不言自明的潛規則。

與業界建立合作夥伴關係，以發展最佳實踐和平衡的方法

數位經濟的出現以前所未有的速度和規模改變了商業模式。我們高度讚賞政府努力與利益相關者合作，尋求適當的解決方案：然而，一刀切的監管模式已經無法適應不斷變化的平

台類型。為了建立一個公平和平衡的框架，必須與行業參與者進行充分討論，以瞭解和迎合最新的做法和發展。在與業界達成適當共識之前，對該法之立法與執行應謹慎為之。