

Asia Internet Coalition (AIC) - Industry comments on the Amendment - Removal and Blocking of Unlawful Online Content (Procedure, Oversight and Safeguards) Rules

28 June 2021

Honourable Mr. Syed Amin UI Haque
Federal Minister for Information Technology and Telecommunication
Ministry of Information Technology and Telecommunication (MoITT)
7th Floor, Kohsar Block, Pak Secretariat, Islamabad

Dear Minister Syed Amin UI Haque,

On behalf of the Asia Internet Coalition (AIC) and its members, I would like to express our gratitude to the Ministry of Information Technology and Telecommunication (MoITT) for the opportunity to provide feedback on the [latest draft of the Removal and Blocking of Unlawful Online Content \(Procedure, Oversight and Safeguards\) Rules](#).

While some less significant concerns outlined in our earlier submissions have been adopted in part, the most problematic provisions remain unchanged in the latest draft of the Rules and have, to an extent, regressed in comparison with previous versions. It is particularly worrying that large portions of the Rules go beyond the scope of the parent act (PECA 2016). In particular mandatory local incorporation requirements, instead of being removed for these reasons, appear to have been expanded with a requirement to have a dedicated grievance officer based in-country.

AIC and its member companies continue to have concerns on various aspects of the rules, including decryption of data, fixed turnaround times for blocking content, local presence requirements including data localization, and the ability of government agencies to make confidential content removal requests, among others.

In [our letter of 4 February, 2021](#) we sought the government's assistance to ensure that the basic principles of meaningful consultation were upheld in the drafting of the Rules. The latest draft, which replicates the previous draft with only minor changes, shows that the consultation process was not undertaken with a view towards substantive changes. We remain committed to working with the government on meaningful consultation towards balanced regulation. The adoption of balanced rules that incorporate industry feedback is an opportunity for Pakistan to set itself apart from the rest of the South Asia region and position itself as a world leader in digital transformation and regulation.

Below please find an overview of our key concerns and recommendations regarding the latest draft.

1. **Fixed turnaround times for blocking content - Rule 6(2):** While the turnaround times have doubled from 24 to 48 hours and 6 to 12 hours, respectively, we continue to maintain that the exact time frame for complying with a notice is not something that should be stipulated in the Rules. The time needed to review requests will vary from case to case, depending on the complexities and volume of content under consideration. As an alternative, we would propose that social media companies be required to *acknowledge* the Authority's requests within 24 hours and process the request within a reasonable timeframe.

2. **Definition of “emergency” - Rule 3(1)(vi):** We appreciate that the latest draft includes a definition of the term “emergency,” under which content must be removed within 12 hours. However, we are concerned about the broadness of the definition, which includes vague and unclear terms like “security or integrity of Pakistan.”
3. **Requirement to establish a permanent office and local registration - Rule 8(6)(a) & (b):** As stated in our prior correspondence and submissions, the effectiveness with which social media companies moderate online content does not depend on having local presence or local registration, but rather on having well established processes and product-specific policies, clear local laws to guide the process, and properly informed and valid requests for takedowns. Importantly, most AIC members are entities registered under US laws, and any forced requirement for such entities to establish permanent offices would entail several unintended implications in the form of conflict of laws, taxation, apart from a high degree of business uncertainty. As the requirement for a physical office and local registration is fundamentally unrelated to the issue of content moderation, this provision falls outside the scope of the parent legislation, namely section 37 of PECA, which tasks PTA to develop rules on safeguards, transparent processes, and effective oversight mechanisms for the exercise of its powers to block certain types of content.
4. **Requirement for a locally based authorized compliance officer - Rule 8(6)(c):** Similar to the physical office requirement, the appointment of a compliance officer based in Pakistan would not facilitate content removal. To the extent there is a requirement for improved coordination between a social media company and the Authority, a dedicated point person can be appointed without a requirement for the person to be locally based.
5. **Requirement for a “dedicated grievance officer” - Rule 8(6)(d):** The scale of content uploaded to Social Network Services is tremendous. Appointing a single grievance officer is not a scalable or practical solution. Furthermore, publishing the name and contact information of the grievance officer would likely subject this person to an immense deluge of extraneous communications, and even harassment. Instead, social media companies should establish clear and transparent frameworks and processes for review and removal of content. Lastly, the requirement to be locally based is misguided since support teams of global platform providers are based across different offices and any forced local presence of such officers is unnecessary.
6. **Requirement to provide user data in decrypted format – Rule 8(4):** The rules empower Pakistani law enforcement authorities to exercise their powers extraterritorially, contrary to established procedures of international law, including treaty-based and other diplomatic procedures, to seek disclosure of user data held by the global social media companies. Requests for user data made to foreign-based service providers outside the proper, legitimate international channels may create conflicts with foreign law. Pakistan should follow international norms, standards, and treaties when seeking user data. Since the regime for user data production is already outlined extensively under PECA, this provision is superfluous and should be removed from the Rules.
7. **Ability for state agencies to make confidential content removal requests - Rule 5(1)(ii) & 5(5):** The rules allow a broad range of state agencies to make confidential

requests for content removal through the Authority, without any visibility on the source of the complaint. This appears to be entirely antithetical to values of transparency, the need for which has also been emphasized globally, as well as by local courts.

8. **Scope of powers conferred on the Authority:** Under the Rules, the Authority can take cognizance of any online content, make legally binding determinations on its lawfulness, and issue removal directions to social media platforms. The Authority has also been empowered to hear reviews against its own decisions. The absence of any transparency with respect to the Authority's actions or form of accountability is an important area of concern to us.
9. **Definition of Social Media or Social Network Service:** We are additionally concerned that the definition of "Social Media or Social Network Service" extends beyond those products and services which are generally considered to be user-generated content platforms (i.e., "social media") and could include any website, product, or service where users are able to share content, including those which are designed for engaging in commerce and assisting productivity.

These aspects, several of which were also [highlighted in our April 2021 "Analysis and Recommendations"](#) would make it extremely difficult for AIC Members to make their platforms, products and services available to Pakistani users and businesses. AIC hopes for the opportunity to work collaboratively with the Government of Pakistan on a regulatory framework that supports Pakistan's continued digital growth and transformation. In particular, we are committed to working together to arrive at an understanding around a workable set of rules.

As a next step, noting on the MoITT website that there will be further consultation, we would appreciate hearing from MoITT regarding the timeline and plans for the consultation process going forward.

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.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Paine".

Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

CC:

- Major General (Ret.) Amir Azeem Bajwa, Chairman, Pakistan Telecommunication Authority (PTA)
- Dr. Shireen M Mazari, Federal Minister for Human Rights
- Barrister Dr. Muhammad Farogh Naseem, Federal Minister for Law and Justice

- Dr. Muhammad Sohail Rajput, Federal Secretary, Ministry of Information Technology and Telecommunication
- Barrister Maleeka Ali Bukhari, Parliamentary Secretary for Law and Justice
- Sardar Ahmad Nawaz Sukhera, Cabinet Secretary
- Barrister Senator Ali Zafar
- Dr Arslan Khalid, Focal Person on Digital Media to the Prime Minister
- Babur Sohail, MoITT Member Legal
- Mr. Khalid Jawed Khan, Attorney General of Pakistan

SECTION WISE COMMENTS AND RECOMMENDATIONS

No.	Rule	Proposed Revision	Feedback in support of Proposed Revision
Right to Free Speech (Article 19)			
1.	4	Remove the phrase “without prejudice to the generality of the powers in Section 37(1) of the Act.”	<ul style="list-style-type: none"> • Rule 4 grants the Pakistan Telecommunication Authority (the “PTA”) the authority to remove and block access to online content for the glory of Islam, integrity, security and defense of Pakistan, public order, and decency and morality “without prejudice to the generality of the powers in Section 37(1) of the Act.” • As drafted, Rule 4 would allow the PTA to proscribe any online content without reference to either a specific statutory provision, or any concrete provision of the Rules themselves. For example, the PTA would be able to direct the removal of Online content in the interest of the “glory of Islam” even if the content did not violate the Pakistan Penal Code. • Granting the PTA unchecked, unfettered power to define illegal online content is an unreasonable restriction on the freedom of speech guaranteed by Article 19 (free speech) of the Constitution of Islamic Republic of Pakistan, 1973 (the “Constitution”). Such unfettered discretion amounts to excessive delegation. The PTA should only be allowed to direct the removal of online content if the content violates a specific statute, or constitutes a legal offense. This constraint would protect the rights of citizens, by requiring the PTA to meet statutorily defined standards. • The purpose for rules to be created under Section 37(1) of the Act is to create limitations and safeguards for PTA’s exercise of powers under Section 37(1). Rule 4 undermines this legislative intent by expanding PTA’s powers to curb the rights

			guaranteed by Article 19 beyond the reasonable restrictions envisaged by law.
2.	4	Limit Rule 4(1)(iii) to specific offences	<ul style="list-style-type: none"> • Rule 4(1)(iii) defines “public order” to include any content which constitutes an offence under Chapter XIV or which leads to the conduct described in Chapter XI of PPC. However, this definition also goes beyond the provisions of any specific offence by including “<i>any fake or false information that threatens the public order, public health and public safety</i>”. This goes beyond the scope of the offences established under PPC, creating a restriction on freedom of speech that exceeds the restriction created by statute.
3.	4	Remove Section 509 from Rule 4(1)(iv)	<ul style="list-style-type: none"> • Rule 4(1)(iv) defines “decency and morality” to include any content that constitutes an offence under Section 509 of the Pakistan Penal Code (“PPC”). Offences related to decency and morality are covered under Chapter XV of PPC. Section 509 of PPC, which relates to sexual harassment and insulting the modesty of a woman, is not part of Chapter XVI. The inclusion of Section 509 of PPC under the definition of “decency and morality” in the Rules goes beyond the scope of relevant offences established under PPC. This creates a restriction on freedom of speech that exceeds the restriction created by statute.
4.	4	Identify specific Pakistan Penal Code provisions in Rule 4(1)(v)	<ul style="list-style-type: none"> • Rule 4(1)(v) defines “glory of Islam” to include any content that constitutes an offence under Chapter XV of PPC. This would suggest that Chapter XV relates exclusively to the glory of Islam and does not contain offences related to other religions. However, Chapter XV appears to establish several offences that are not necessarily related to Islam and may also relate to other religions.
Ultra vires			
5.	5(6)	Remove 5(6).	<ul style="list-style-type: none"> • Rule 5(6) empowers the PTA to “take cognizance of any unlawful Online content” “on its own motion” and “pass appropriate directions.” • This grants powers in excess of those conferred by the Prevention of Electronic Crimes Act (“PECA”). There is no provision in PECA that allows the PTA to act on its own accord to take cognizance of unlawful Online content and pass appropriate directions. Hence, Rule 5(6) improperly grants powers to the PTA that extend beyond the authority of PECA, and should be removed. • Importantly, taking cognizance of unlawful conduct <i>suo moto</i>, in the absence of a complaint, is a power

			<p>that is exercised by the judiciary in public interest matters. Such a broad-ranging power where PTA is both the complainant and the decisionmaker may be seen as an exercise of a judicial power, in excess of the authority conferred on PTA by law.</p>
6.	6(4)	Remove 6(4).	<ul style="list-style-type: none"> • Rule 6(4) provides that the PTA may, while issuing blocking orders, direct social media companies to “secure such information including traffic data, as the case may be, for such period of time as the Authority may deem appropriate.” • Data preservation is governed by Section 31 of PECA, which provides that an authorized officer of the Investigation Agency, subject to control by the relevant Court, has the relevant powers to direct data retention. Rule 6(4) <u>directly contradicts</u> Section 31 of PECA—PTA is not the “Investigation Agency” and cannot exercise the powers PECA reserves for the Investigation Agency. No order for the preservation of any online content can be passed except in conformity with Section 31 of PECA. Rule 6(4) is thus <i>ultra vires</i> of PECA. • To the extent that Rule 6(4) extends the obligation to retain “traffic data” to “users,” it contradicts Section 32, read with Section 2(xxviii) of PECA, as the latter places this obligation on “service providers” alone. • PECA 31 allows data to be preserved for only 90 days. The proposed rule 6(4) allows PTA to order the preservation of data for any period of time it deems appropriate, and thus is <i>ultra vires</i> of PECA 31 and should be removed from the Rules.
7.	8(3)	Remove 8(3).	<ul style="list-style-type: none"> • Rules 8(3) imposes positive obligations on service providers and social media companies, including the deployment of mechanisms for identifying Online content deemed impermissible by the PTA, and an obligation to not host, publish, edit or store such content. • To the extent that Rules 8(3) might obligate social media companies or service providers to proactively monitor content, they are in contravention of provisions of PECA.
8.	8(6)	Remove 8(6).	<ul style="list-style-type: none"> • Rule 8(6) requires service providers and social media companies to (a) register with the PTA, (b) establish a physical office in Pakistan, (c) appoint an authorized compliance officer based in Pakistan, (d) a grievance officer based in Pakistan and (e) comply with data localization provisions. • There is no provision under PECA which could form the basis of these obligations. The Rules have been

			<p>drafted under the authority of Section 37(2) of PECA which has a limited scope: Section 37(2) allows the PTA, with prior approval of the Federal Government, to prescribe rules pertaining to the PTA’s power to remove or block (or issue directions to remove or block) access to information transmitted through information systems. PECA 37(2) does not authorize the PTA or Federal Government to prescribe registration requirements or other obligations upon social media companies or service providers. While Rules may be enacted to prescribe procedures, they cannot create new obligations and consequences that have not been established by their parent legislation. There is also no legislative basis, whether in PECA or any other law, to impose any extraterritorial local registration or local office requirements to social media companies with no legal presence in Pakistan. Therefore, Rule 8(6) is <i>ultra vires</i> of the rule making powers granted by Section 37, and should be removed.</p> <ul style="list-style-type: none"> • Rule 8(6)(e) imposes a requirement to comply with any potential data privacy and data localization requirements under a data protection law. This requirement is predicated on the promulgation of a legislation that is not currently in force. This is extraordinary and inappropriate. • Rule 8(6)(f) mandates specific practices and technologies that must be adopted by social media companies to proactively moderate content. This is not only <i>ultra vires</i> of PECA, but also violates its provisions. • Local office decisions are driven primarily by commercial interests and not policy or content regulation reasons. Our members are digital businesses and do not have offices in every country where their services are available, as this is not feasible from a financial or operational standpoint. • We understand that the aim of requiring local office/rep is to help PTA and other government stakeholders better hold social media companies accountable and facilitate better collaboration. This can be better achieved with a Dispute Consultation Forum, where social media companies are able to bring their range of experts to the table for more meaningful discussions on evolving threats and issues and how to solve for them.
9.	8(4)	Remove 8(4).	<ul style="list-style-type: none"> • Rule 8(4) provides that social media companies shall provide the Investigation Agency designated or established under Section 29 of PECA, “any information or data.”

			<ul style="list-style-type: none"> To the extent that Rule 8(4) negates the need for a court warrant when requesting information from service providers and social media companies, as is required by Section 34 of PECA, it is <i>ultra vires</i>.
10	8(7)	Remove 8(7).	<ul style="list-style-type: none"> Rule 8(7) provides that the PTA may impose fines of up to Rs. 500 million for non-compliance with any provisions of the Rule 8, PECA, or any direction by the PTA. However, there is no provision in PECA that allows the <u>PTA</u> to impose fines, and therefore Rule 8(7) is <i>ultra vires</i> of PECA. PECA only provides for criminal punishments and fines in relation to specific offences, which are imposed by a <u>court</u> following a criminal trial. Furthermore, the maximum fine in PECA for violation of a directive is Rs. 10 million. Hence, Rule 8(7) is also <i>ultra vires</i> of PECA in that it provides for a higher penalty.
Right to Due Process (Article 10A)			
11	3(1)(v i), 6(2) and 7	The time provided in the should be extended, and the PTA should be required to provide a written justification for an emergency order, and the definition of “emergency” should be limited to content which poses a direct risk of physical harm.	<ul style="list-style-type: none"> The second and third paragraphs of Rule 6(2), and Rule 7 require a service provider or social media company subject to a takedown request to comply within 48 hours (and only 12 hours in case of emergency). The time limits provided are unreasonably short and unworkable, and amount to an unreasonable restraint on freedom of trade, which is guaranteed by Article 18. Mechanisms for reversion of a content removal request may not always be available to the PTA in case of an error, a change in circumstances or a revocation of a complaint. It is therefore imperative that both PTA and the social media companies act carefully and without haste, in the absence of an actual emergency, to ensure that due process under Article 10-A and the right to information under Article 19-A of the Constitution of users in Pakistan are adequately safeguarded. The broad definition of “Emergency” under Rule 3(1)(vi) does not comport with the general notion of an emergency that would pose a direct risk of physical harm.
12	5(1)	Remove 5(1)(ii)	<ul style="list-style-type: none"> Rule 5(1)(ii) enables different government authorities, including intelligence agencies and law enforcement agencies, to submit complaints with respect to online content. There is no legislative basis, whether in PECA or any other law, for such authorities to undertake the role of a complainant in

			<p>relation to online content. Moreover, it would be extraordinary for an intelligence agency or a law enforcement agency to, as an institution, act as a complainant in a criminal matter.</p>
13	5(5)	Remove 5(5)	<ul style="list-style-type: none"> • Rule 5(5) allows the PTA to maintain the confidentiality of both the online content and the identity of the complainant if sharing of the online content or the identity of the complainant may (i) result in the proliferation of the online content (ii) result in the harming, harassing or defaming the complainant (iii) invasive of the complainant's privacy (iv) relate to the modesty of the complainant. • This has a direct impact on the due process rights of the opposing party. An individual cannot exercise their right to a fair trial and due process under Article 10-A of the Constitution unless they are informed about the specific content complained of and the identity of the complainant. There are no similar provisions under Pakistan criminal law that allow a complainant to remain confidential, and in most cases, the accused have an opportunity to confront and cross-examine the complainant in criminal proceedings. • Since the Rules also envisage that various government authorities, including law enforcement agencies and intelligence agencies, can act as complainants, the ability for such authorities to maintain their confidentiality would also violate the right to information under Article 19-A of the Constitution. • Several other provisions in the Rules are principally inconsistent with Rule 5(5). For instance, Rule 7(1)(vii) prevents PTA from entertaining any complaint if the complaint is anonymous or pseudonymous. Rule 9 and 10 enable any person aggrieved by PTA's content removal orders to file a review and an appeal respectively, though it is unclear how this right can be exercised where an individual is unaware about the identity of the complainant.
14	6(2)	Amend to provide opportunity of hearing to all potentially aggrieved persons	<ul style="list-style-type: none"> • Rule 6(2) allows PTA to only provide an opportunity of being heard to persons against whom a complaint has been filed, in addition to any other person who "in the opinion of PTA is likely to be adversely affected". This language provides PTA with unbridled discretion to determine which individuals are entitled to an opportunity to be heard, while denying this right of due process under Article 10-A of the Constitution to

			any others who may potentially be aggrieved by a content removal direction.
Right to Privacy			
15	8(4)	Remove 8(4)	<ul style="list-style-type: none"> • Rule 8(4) requires a service provider or social media company to provide to the Investigation Agency “any information or data or content or sub-content” in a “decrypted, readable and comprehensible format.” Rule 8(4) does not require the Investigating Agency to go through any legal or judicial procedure to make such a request, or even notify a court on the seizure of any information. • As drafted, the provision gives total control to the Investigation Agency not only over content being shared on public digital platforms but also on content being exchanged through private communication networks. This is contrary to the procedures and safeguards that are applicable to the Investigation Agency for similar investigative measures under PECA. The Rule does not distinguish between traffic and content data, allowing the Investigating Agency to request a broad category of data. Citizens have a reasonable expectation of privacy for the contents of their conversations and communications. Granting the Investigation Agency the broad authority to request any data from any service provider or social media company, without restraint, violates their right to privacy. • PECA does not envisage the exercise of investigative measures with respect to service providers that are not in Pakistan. Any such extraterritorial application of domestic procedural provisions would also be contrary to established international legal processes with respect to mutual assistance in criminal matters.
Other Definitions			
16	3	Clarify the definition of Service Provider	<ul style="list-style-type: none"> • The definition of the term ‘Service provider’ is absent in the draft rules. We request clarification in defining a Service Provider.
17	3(x)	Clarify the definition of Online Information System	<ul style="list-style-type: none"> • Online Information System definition is too broad, and we request further clarification on why “cloud based content distribution services” defines Online Information System.
18	3(xiii)	Recommend amending the	<ul style="list-style-type: none"> • “Social Media or Social Network Service” means a website, application or mobile web application,

		definition of Social Media or Social Network Service	<p>platform or communication channel and any other such application and service that permits a person to become a registered user, establish an account, or create a public profile for the primary purpose of allowing the user to post and share user-generated content through such an account or profile or enables one or more users to generate content that can be viewed, posted and shared by other users of the such platform but shall not include the licensees of Authority unless they specifically provide Social Media or Social Network Services.</p>
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