

Singapore, 17 February 2023

**HON.MARK A. VILLAR**

Senate Chairperson on Trade, Commerce and Entrepreneurship  
Senate of the Philippines

Dear Senator Villar,

Via email: [senatormarkvillar@gmail.com](mailto:senatormarkvillar@gmail.com)

Dear Sir

**Submission on the Proposed Senate Bill 612-Internet Transactions Act**

**About AVIA**

The Asia Video Industry Association (AVIA) is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. Understanding global trends in media, AVIA is focused specifically on addressing issues in the video markets of Asia.

AVIA is:

- the interlocutor for the video industry with governments across the region.
- dedicated to reducing video piracy and creating a more sustainable business environment for established as well as new video companies to innovate and grow.
- a leading resource for information and intelligence on trends and developments in the video industry in Asia, through publications, newsletters, conferences and seminars.

**Introduction**

On behalf of our members, AVIA would like to thank the Senate Committee on Trade, Commerce, and Entrepreneurship for the opportunity to provide our views on the proposed Senate Bill 612: Internet Transactions Act (ITA).

AVIA is supportive of the Philippine government's efforts to protect consumers in an increasingly digital world. AVIA and its members note that the Internet Transactions Act is a key priority of the Senate Committee on Trade, Commerce, and Entrepreneurship. As such, AVIA would like to offer its view on the measure, and recommendations that the association feels will best meet the government's objectives with the measure.

### Views and Recommendations

It is clear that the target of ITA is to prevent consumers from falling prey to fraudulent scams online, particularly in the e-commerce space. However, the broad scope of the law, as it is currently written, captures a wide swathe of digital goods and services, some of which have business models that are vastly different from that of e-commerce players. As such, AVIA seeks clarity on a number of provisions that have clear applications to e-commerce players, but unclear repercussions for other business models like subscription video-on-demand (SVOD).

Below are some provisions that our members have noted, and some recommendations on how to clarify and further refine the measure:

#### **Section 3. Definition of Terms.** - As used in this Act:

(j) *Digital Products* refer to goods and services produced and supplied in digital form such as, but not limited to, video, audio, applications, digital games, and any and all software that allows the consumer to create, process, download, store, or access digital content, or allows the sharing of the same, or any such other interaction with digital content provided by other users of the service;

(l) *Digital Platforms* refer to internet intermediaries or businesses such as, but not limited to, e-marketplaces, online delivery enterprises, transportation booking, tourism booking, entertainment website and services, music products and services, social media, advertising, education and learning products and services, health websites and applications, labor services, among others, that match, connect, or facilitate interactions and transactions by and between any two or more parties to enable them to sell, exchange, share, or transact in any convenient manner, non-financial goods, services and digital products;

As currently drafted, the ITA has extremely broad scope and covers matters unrelated to e-commerce, which is clearly inconsistent with the objective and scope of the ITA. The inclusion of “entertainment website and services” under the definition of *Digital Platforms*, and “video” in *Digital Products* means that subscription video-on-demand (SVOD) services will be subject to the scope of ITA. Unlike online marketplaces, or websites that stream user-generated content, SVOD services offer curated content. This means that users and subscribers are aware of and understand the nature of the content that will be made available and accessible to them and that the supplier of that service is known and accountable to the user for the content for which they subscribe. The risk of fraudulent scams that you see in online marketplaces or websites that stream user-generated content is highly unlikely considering the robust due diligence that SVOD services exert in curating the content on their platforms.

Pursuant to the ITA's Declaration of Policy, the objectives of the ITA are primarily to promote and maintain a robust electronic commerce (eCommerce) environment, establish secure and reliable eCommerce platforms, and ensure effective regulation of commercial activities through the internet or electronic means through fair competition and the protection of consumer rights and data privacy. Its objective is not to regulate online media content or online media providers. However, this is not clearly reflected by its current language.

Our concern is that this broad scope brings our members' VOD services within its remit, when it appears that the purpose of the ITA is to regulate e-commerce in a manner consistent with the e-Commerce Philippine 2022 Roadmap. This then creates regulatory uncertainty and provides scope for competing regulators' jurisdictions as well the potential for conflict of laws.

We suggest that the scope of application of the ITA be explicitly clarified to (i) exclude VOD providers and (ii) be limited to eCommerce transactions and eCommerce platform operators "whose business is to connect consumers and online merchants, facilitating sales of products, goods or services through the internet..." The definitions of "digital product" and "digital platform" should also be clarified to reflect the object of regulation is e-commerce by inserting "e-commerce" in front of "digital product" and "digital platform".

Similarly, with reference to Chapter 3 (Supervision of E-Commerce) of the ITA, Sec. 12. on the Authority to Issue Take Down Order should be clarified to read "...the DTI Secretary...shall...have the power to: (a) Issue an order, directing that an e-commerce website, webpage, online application, social media account, or other similar platforms, be taken down..."

The insertion of the word "e-commerce" in in front of any reference to "website, webpage, online application..." makes it clear that the only e-commerce websites are in scope, consistent with Chapter 3's intended objective of supervising e-commerce transactions on e-commerce websites.

The intention of the State to regulate only e-commerce under the ITA is clearly evidenced by the fact that Sec 4(c) on Scope and Coverage in the more recent draft ITA Senate Act amends "Online media providers" to "Online media", thereby reflecting the intention to govern only online media transactions between businesses and merchants or consumers and to excluded online media providers. Thus, it should be made explicit that online media providers are excluded from the scope of the ITA's application. The ITA is intended to cover e-commerce platforms and e-retailers, but not online service providers nor was it intended to regulate online media content.

**Section 7. Creation of E-Commerce Bureau** – The Bureau shall have the following powers and functions:

- (a) Implement, monitor and ensure strict compliance with the provisions of this Act and the E-commerce Act of 2000.
- (b) Build trust between consumers and sellers by requiring digital platforms, online merchants or anyone else who engages in internet transactions to register their business with the Bureau and *provide information as determined by the DTI E-commerce Bureau* for policy making and program development purposes;
- (c) Formulate policies, plans and programs.....
- (d) Identify regulatory gaps affecting the e-commerce sector that are not sufficiently addressed by this Act or by existing laws or regulations, and recommend appropriate executive or legislative measures, including those that can be undertaken by the DTI on its own, that foster the growth of the sector;
- (e) Act, as a virtual central unit tasked with receiving and addressing consumer complaints on internet transactions, facilitating the speedy resolution of business and consumer complaints against online merchants.....and tracking complaints referred to or initiated by them to ensure speedy and appropriate action by the agency to which such matters have been referred.....
- (f) Co-ordinate with, compel or petition, wherever appropriate, any entity, government agency or instrumentality to take action on any matter that may impede e-commerce;
- (g) Investigate, *motu proprio*, and file the appropriate case for violations of any provision of this Act;
- (h) Intervene or participate, in a manner as may be appropriate, in cases initiated or pending with other regulatory agencies involving e-commerce or violations of any provision of this ACT;.....

The powers under Section 7 are broad and would enable the Secretary of Trade and Industry to compel the delivery of any information which it determines it requires for policy-making purposes. No restrictions are placed on the type of information that could be required nor are any exemptions granted in terms of the protection usually afforded to data subjects. In addition, the provisions of this Section 7 would permit the Secretary of Trade and Industry to not only act as an arbiter in any e-commerce disputes (as originally envisaged by the supporters of this Bill), but also to (i) initiate action as it sees fit without any formal complaint having been lodged and (ii) intervene in cases involving other regulatory agencies without any clear parameters as to when and to what extent it is able to impact the action (or indeed, inaction) of another regulatory body. Such all-encompassing powers would only generate regulatory uncertainty and would very likely stifle the innovation it is so determined to foster. It is also imperative to note that online curated content providers already provide their users with clear and

transparent feedback mechanisms to lodge and process complaints in a timely manner and have pro-actively put into place internal processes to address any such feedback.

### **Section 9. Subpoena**

In the exercise of its powers under this Act, the Director of the Bureau shall have the power to issue summons, *subpoena ad testificandum* and *subpoena duces tecum* to alleged violations or witnesses to compel their attendance and the production of documents in investigations or proceedings before the Bureau.

A certification duly issued by the Bureau that a respondent to the *subpoena ad testificandum* and *subpoena duces tecum* refuses to comply with the same, despite due notice, shall be sufficient evidence to authorize the Regional Trial Court to cite the respondent with contempt.

These powers to authorise a court to, in turn, cite a responder for contempt without due examination by that court of the circumstances and reason for the respondent's refusal to comply with the subpoenas, is not a power ordinarily offered to an executive regulatory body. International practice tends to recognise that there is a clear division between the executive and the judiciary and that it should be incumbent upon the judiciary to examine all the facts of a particular case prior to making its finding. The provisions in this Section 9 would seem to defy what many markets have come to acknowledge as best practice and we would strongly recommend that this provision be deleted.

### **Section 12. Authority to Issue Take-Down Order.**

By its own initiative or upon petition of a consumer or other concerned party, that the online sale of goods, services or digital products is violative of this Act, the “*Consumer Act of the Philippines*”, or any other related laws, the DTI Secretary, in order to abate any further violations, after due notice and hearing, shall have the power to:

- (a) Issue an order directing that a website, webpage, online application, social media account, or other similar platforms, be taken down, made inaccessible in the Philippines, or otherwise be rendered commercially inoperative, to abate any further violations. Provided that for websites, webpage, online applications, or similar platforms with payment portals, only the e-commerce features of the platform shall be the subject of the takedown order; and
- (b) Issue an advisory on the takedown order of any violating entity to ensure that the latter shall be rendered commercially inoperative.

Provided that, the DTI Secretary may immediately issue a provisional take-down order to prevent grave and irreparable injury to the public, when the following conditions are present:

- (a) When the DTI Secretary finds that a good, service or digital product is imminently injurious, unsafe, or dangerous; or
- (b) When the seller under investigation has been previously penalized under this section.

The takedown powers under Section 12 are broad. The bill does not include a definition for a “digital product that is imminently injurious, unsafe, or dangerous”. AVIA would urge lawmakers to revisit this provision in an attempt to offer clarity on what is currently a measure based purely on a subjective assessment, the result of which has the potential to grant undue censorship powers to the DTI.

Further, it is provided that under certain circumstances a ‘provisional order’ can be passed immediately without due process. The party affected by such an order will be given an opportunity to be heard within 48 hours from the issuance of such provisional order. In the meantime, copies of the provisional order are furnished to ISPs who could block the entire digital product rather than just the online content which has potentially breached the laws of the Philippines. Additionally, if the provisional order is subsequently vacated, there is no provision to immediately notify the ISPs to unblock the digital product. This will in effect allow the provisional order to last for 30 days. This is excessive and onerous for the digital platform owners and operators.

The section goes on to say that the order has a maximum validity of 30 days “unless otherwise extended or made permanent by a judicial order or decision”. No clarity has been provided within the proposed legislation as to the basis on which an extension can be ordered and there are also no clear timing guidelines with regard to the “notice and hearing” requirement which has to be fulfilled prior to the issuance of such an order. It is also unclear whether any opportunity to rectify the alleged violation prior to the imposition of an order, is to be extended. We would urge the Senate Committee to revisit these provisions with a view to implementing a process that is clear, transparent and most importantly, objectively ascertainable, in order to offer service providers within the Philippines the regulatory certainty they require to maintain their business operations and continue to contribute to “a robust electronic commerce environment in the country”.

### Conclusion

AVIA supports any attempt to protect users and consumers. AVIA believes that a balanced approach that clearly defines expectations of players in the digital economy, nuanced specifically to the challenges that each unique business model faces is key in ensuring that consumers are protected while still promoting the growth and development of the sector.

AVIA, together with its members, are more than willing to meet with your staff, and other members of the Committee on Trade, Commerce, and Entrepreneurship to discuss these recommendations in further detail. AVIA has engaged regulators and governments

across the Asia-Pacific region, and would welcome the opportunity to share its expertise and best practices from other markets.

Again, we are grateful for the opportunity to share our perspective on the proposed measures and look forward to working with you further.

Sincerely yours,



Louis Boswell  
Chief Executive Officer  
Asia Video Industry Association

#### **About the Asia Video Industry Association (AVIA)**

AVIA is the non-profit trade association for the video industry and ecosystem in Asia-Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. AVIA is the interlocutor for the industry with governments across the region, leads the fight against video piracy and provides insight into the video industry to support a vibrant industry ecosystem. AVIA evolved from CASBAA in 2018.

AVIA's leading members include: AsiaSat, Amazon, Astro, BBC Studios, The Walt Disney Company, Warner Brothers Discovery, NBCUniversal, Netflix, now TV, SES, Disney Star India, TrueVisions, Turner International, TV5MONDE, ViacomCBS Networks International, A&E Networks, Baker McKenzie, BARC, beIN Asia Pacific, Bloomberg Television, Blue Ant Media, Brightcove, Canal +, Cignal, CMS, Dolby, Eutelsat, France 24, Globecast, Globe Telecom, Irdeto, Intelsat, La Liga, Kantar Media, Measat, Media Kind, Media Partners Asia, Motion Picture Association, NAGRA, NBA, NHK World, Nielsen, Premier League, Singtel, Skyperfect JSAT, Sony Pictures Television, Starhub, Synamedia, Telstra Global, TMNet, TV18, TVBI, Verisite, Viaccess, Viacom18, and Zee TV