

Singapore  
25 June, 2021

**His Excellency Phạm Minh Chính**  
**Prime Minister**  
**Socialist Republic of Vietnam**  
**1 Hoang Hoa Tham, Ba Dinh, Hanoi, Vietnam**

**RE: LATEST DRAFT OF DECREE 6**

Your Excellency,

Following our most recent letter of 7 May 2021, I once again write to you on behalf of the Asia Video Industry Association (AVIA). As you may recall, AVIA is the trade association for the video industry and ecosystem in Asia Pacific.

I express appreciation to the Ministry of Information and Communications (MIC) and the Authority for Broadcasting and Electronic Information (ABEI) for their continued engagements with industry on Decree 6. In previous communication on Decree 6, we urged you to call for further consultation on the proposed onerous requirements for licensing, local office establishment and censorship. It was our submission that the Vietnamese Investment Law, Central Production Classification codes and by corollary, the WTO Agreement on Trade in Services, do not classify audio and video contents as broadcast or radio or television services and that the online curated content (“OCC”) industry should therefore not be subject to the same regulatory approach as the broadcast industry. Nonetheless, these proposed requirements would cause the-then current draft to fall short of the criteria of Decree 6 being “modern, in line with international best trends and best practices, facilitating industry development, meeting digital transformation needs and focusing on ex-post control” as set out in the Office of Government memo 105/VPCP-KGVX dated 1 January, 2020.

We understand that the stakeholder consultation and review process for Decree 6 has now been completed. We understand that proposed new requirements for censorship of films have now been removed from the latest draft of Decree 6. In our view, this is a positive step, and we look forward to working with the Ministry of Culture, Sports and Tourism to ensure that planned revisions of censorship procedures under the Cinema Law are practical and aligned with international trends and best practices. It is further our understanding that at present there are two options for consideration for censorship procedures under the Cinema Law – pre-distribution censorship and post-distribution review and (if warranted) take-down. We would urge you to adopt the latter option given the large investments that OCC providers have made to review and rate their own content and to enable the consumer to make an informed decision on content selection for themselves and their families.

While our members are pleased with the reported latest steps on film censorship in Decree 6, they are disappointed to see the retention in the latest draft of the two requirements which constitute huge barriers for foreign participation in this new sector: licensing and local office establishment.

In previous communication on Decree 6, we raised the concern that the licensing restriction is likely to raise the market entry cost and place unreasonably high barriers to market entry. At the same time, such a requirement would act as an impediment to growth for the already established content providers, which offer consumers responsible, curated and legitimate services. Currently, other than China, no Asian government requires a formal government grant of licence to an OCC service as a condition for operating in a market. Instead, the trend across the Asia region appears to favour the implementation of a light-touch, registration-type system, as evidenced in countries like Singapore (automatic class licences) and South Korea (notification only). The imposition in Vietnam of a such an onerous regulatory burden is likely to deter foreign investment and impede the growth of the creative and digital economy in Vietnam.

Similarly, and related to the licensing issue, the requirement for OCC providers to have a local presence when there already are a multitude of OCC providers providing content to Vietnamese consumers, will introduce too high a barrier for smaller providers and again penalise the legitimate services which pose less of a threat than pirated services. Vietnam is gradually changing its procedures to accommodate international businesses; we understand for example that the Law on Tax Administration, passed in 2019, no longer requires a local permanent establishment for offshore businesses to provide services or pay tax in Vietnam. The promulgation of this legislation shows a trend toward converging with international norms. We would propose that the local presence requirement in Decree 6 be removed to ensure that it is drafted in a manner that is consistent with the approach adopted in the Law on Tax Administration.

OCC is growing exponentially around the globe. OCC providers offer consumers choice, control and access to legitimate content at a time and device of their choosing. OCC providers invest in local content ecosystems to drive local production and offer a global platform for distribution. AVIA and its members are committed to operating in a responsible manner in Vietnam and across the Asia-Pacific region. To this end, in November 2020 AVIA issued a Governance Framework (copy attached) in promotion of co-operative activities between government and industry to achieve industry development and meet digital transformation needs. We are confident that this Governance Framework sets out a clear statement of responsibility and accountability, incentivises investment and provides a platform for ongoing dialogue between government and industry. A regulatory approach that is fit for purpose given the type of service OCC provides, will drive investment and the growth of the digital economy in Vietnam. Most significantly, it will be in line with the sentiments expressed in the Office of Government memo 105/VPCP-KGVX dated 1 January, 2020.

In addition to engaging with MIC and ABEI on the proposed amendments to Decree 6 as set out above, in our letter of 7 May 2021, we also addressed the industry's concerns with certain provisions of Decree 6, as currently in force. These were as follows: -

1. Restrictions placed on foreign pay TV channels. Specifically, the current Decree 6 states that foreign channels on pay-television services should not account for more than 30 percent of the total number of channels the service carries. Vietnam also requires that foreign pay-television providers use a local agent to translate into Vietnamese all movies and programming on science, education, sports, entertainment, and music before they are screened. Foreign content providers are also required to secure the services of a local editing company for post-production work, including translation, content review, and payment of a placement fee for advertisements to be approved for placement in a Vietnamese broadcast. We encourage the Government to review these burdensome requirements on foreign channels with a view to establishing fit-for-purpose regulations suitable for a modern media ecosystem and alleviating compliance costs to business.
2. The requirement for each and every foreign advertisement to be inserted locally. This significantly increases broadcasters' compliance costs and diminishes the viewer experience. The requirement that foreign advertisements cannot be pre-inserted abroad and only press agencies licensed for editing are able to insert advertisements locally necessitates manual intervention during broadcast, which is complex in all cases. It also unnecessarily delays when advertisements may air, which could cause delays in programming and potentially may lead consumers to turn to illegitimate means of obtaining content. The same goal could be accomplished by empowering the licenced press agencies to preview and pre-clear advertisements whilst permitting actual insertion of those ads by the broadcaster (which may take place outside of Vietnam). This solution will meet the regulatory objective of ensuring commercials are compliant, while improving viewing experience, operational efficiency, and ease of doing business.

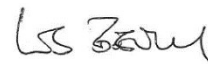
In conclusion, we would urge you to consider the removal of the licensing and local establishment requirements in the proposed amendments to Decree 6. Given that audio and video content transmitted online does not fall within the current local and international definitions of broadcast, radio or television, OCC should not be subject to the same regulation as that adopted for the broadcast industry. Instead, we would recommend that Vietnamese policy makers should consider developing a separate decree on the provision and utilisation of OCC services instead of regulating these under Decree 6. We would also request that industry's concerns with the current Decree 6, be considered and addressed.

In 2019, the Vietnamese government issued Resolution 02/NQ-CP on duties and measurements to improve the business environment and enhance national competitiveness, the expectation being that onerous business conditions and licensing would be eliminated or significantly reduced. We would urge you to revisit both the current version and proposed amendments to Decree 6 as well as any proposed revisions to the Cinema Law, to ensure that

these are in line with government policy to create a more attractive investment and business environment.

Thank you very much for your consideration and we stand ready to engage with the Minister of Culture, Sport and Tourism on the draft Cinema Law revisions.

Sincerely yours,



Louis Boswell  
Chief Executive Officer  
Asia Video Industry Association

CC: H.E. Minister Mai Tien Dung, Chairman of the Office of the Government  
H.E. Nguyen Manh Hung, Minister of Information and Communications  
H.E. Nguyen Hong Dien, Minister of Industry and Trade  
H.E. Nguyen Van Hung, Minister of Culture, Sports and Tourism  
H.E. Le Thanh Long, Minister of Justice  
H.E. Nguyen Chi Dung, Minister of Planning and Investment  
H.E. Ho Duc Phoc, Minister of Finance

### **About AVIA**

The Asia Video Industry Association (AVIA) was formerly known as CASBAA (Cable and Satellite Broadcasting Association of Asia). Headquartered in Hong Kong and working in 17 Asian countries and regions, AVIA is the non-profit association of the international video industry in the Asia-Pacific region. AVIA is dedicated to the promotion of multi-channel pay-television via cable, satellite, broadband and wireless video networks. Our member companies provide television programming and curated over-the-top content to over 600 million homes in Asia and Australasia. In addition to the multinational television networks and programmers, our members also represent leading corporations who are telecom companies, suppliers and manufacturers of cable, satellite and broadband video technology, related business service providers, and new media service providers.