

15 February, 2025

Office of the Council of State  
Via email: nr0913@ocs.go.th

**RE: Comments on the Draft Platform Economy Act (PEA)**

I write to you on behalf of the Asia Video Industry Association (AVIA). 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. AVIA is the interlocutor for the industry with governments across the region and leads the fight against video piracy as well as publishing reports and hosting industry conferences. Its aim is to support a vibrant video industry for the benefit of all stakeholders.

AVIA welcomes the opportunity to comment on the Draft Platform Economy Act (PEA) as proposed by the Ministry of Digital Economy and Society (MDES). Further, we note that the draft Act is intended to supersede the 2022 Royal Decree on Digital Platform Service Business. In addition, the stated aim of this regulation is to enact a law governing the digital economy, aiming to regulate digital platforms where needed and ensure fair competition and consumer protection.

However, the broad definitions in the draft PEA require further clarification to ensure business continuity and support ongoing investment in Thailand's digital sector. To ensure legal certainty and an effective regulatory environment, we seek the following clarification:

**Definitions - Definitions of "Digital Intermediary Service" and "Digital Platform Service"**

The issue of primary concern to our members is the broad scope of the definitions used. Currently, based on a translation of the Decree which has been shared with AVIA, the two key definitions noted in the introduction are:

- **"Digital Intermediary Service"** means services provided via computer networks, the internet, or telecommunication networks that act as intermediaries between senders and receivers of information, including:
  - (1) Data transmission services (Mere Conduit);
  - (2) Temporary data storage services (Caching);
  - (3) Data storage services (Hosting);
  - (4) Other services as prescribed in ministerial regulations.

- **“Digital Platform Service”** means a digital intermediary service of the data storage type that matches different types of users to enable transactions or interactions between them, whether or not a service fee is charged.

The ordinary definition of an “intermediary” is a third-party link between people (or businesses) in order to act as a conduit. Our members include Online Curated Content providers (OCCs). While OCC’s deliver their digital content via a computer network, as envisaged by the definition of digital platform service, arrangements between end customers and OCC’s are based on a direct, contractual relationship solely between these two parties – content is provided by the OCC to the end customer in exchange for consideration, whether that is through the payment of a fee or through the grant of consideration in lieu (the viewing of advertising). There is no intermediary service within this two-party content provision relationship, and OCC cannot be seen as a gateway linking consumers and business users. Other jurisdictions, such as the European Union, are clear that OCCs are not intermediaries and should not be regulated as digital platforms as they do not have the characteristics or potential market power of platforms.

Throughout this draft (Section 6, Section 7, etc), the text continues to refer to both digital intermediary services and digital platform services. However, the initial definition of digital platform service states that it means a digital intermediary service. It was our understanding, following discussions around the earlier Royal Decree on the Supervision of Digital Platform Service Business (2022 Decree), which this Act replaces, that the definition of Digital Platform Service was intended to cover those platforms which provide a medium for users and third-party providers of services and/or goods to connect and transact.

We would urge the MDES to clarify within the Act (e.g. through the definition of Digital Platform Service) that legitimate online services which do not act as intermediaries to connect users and third-party service providers (e.g., OCCs), but instead have direct contractual arrangements with users, are explicitly excluded from this definition and, consequently, from the scope of the PEA. Specifically, we recommend adopting the 2022 Decree’s definition for greater clarity and business continuity. To be clear, the 2022 decree defined “Digital Platform Service” as:

*“The provision of electronic intermediary services that manage data to facilitate the connection through computer networks, between business users, consumers, or users with a view to concluding an electronic transaction, regardless of whether remuneration has been charged.*

*This excludes digital platform services intended solely for offering goods or services by a single platform operator or its affiliated company acting as an agent, whether those goods or services are offered to third parties or affiliated companies.”*

We would also like to seek clarification on whether a business must first be classified as a Digital Platform Service provider before being designated as a gatekeeper under Section 36 of the Act.

A clearer distinction between these two classifications would help businesses better understand their obligations and ensure compliance with the regulatory framework.

Lastly, Section 36 designates 10 core services as gatekeepers, but further clarity is needed. Specifically, in Section 36, we request that the definition of “video-sharing services” be clarified to ensure that this provision is aimed at platforms which host video-sharing services and not at those, such as OCCs, which provide a direct, transactional contract with the consumer to provide curated video content. Clearer definitions and a well-defined scope would help businesses understand whether their digital services fall under this category. Greater transparency will support compliance and provide certainty for service providers in the digital ecosystem.

We recognise the PEA’s role in fostering trust in digital platforms and supporting Thailand’s digital economy. However, the broad definitions in the draft PEA require further clarification to ensure regulatory certainty, business continuity, and sustained investment in Thailand’s digital sector. We appreciate the opportunity to share these comments and are open to providing further feedback. We're happy to answer any additional questions or meet with you to discuss this further.