

11 March 2025
Hong Kong

RE: Draft Amendments to the Tobacco Hazards Prevention Act

On behalf of the Asia Video Industry Association (AVIA), we welcome the opportunity to comment on the Draft Amendments to the Tobacco Hazards Prevention Act, as proposed by the Ministry of Health and Welfare (MOHW). 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, leading the fight against video piracy, as well as publishing reports and hosting industry conferences. It aims to support a vibrant video industry for the benefit of all stakeholders.

AVIA notes that the Tobacco Hazards Prevention Act (“the Act”) has been amended four times since originally enacted in 1997. We welcome the MOHW decision to amend the current Act to include a number of amendments, especially to address the issue of ‘e-cigarettes’ and related products. And we note that the stated aim of this current amendment is to “effectively eliminate the use and circulation of such illegal items, quickly address related illegal items, clearly define illegal activities on the internet, and specify the obligations and responsibilities of internet-related businesses.”

Whilst we welcome the opportunity to input comments into this consultation, given the wide-ranging scope of the amendments and potential impact on businesses, a consultation period of only 7 days is insufficient to properly assess the implications in order to fully offer comments. We would therefore strongly urge the MOHW to allow the legally mandated consultation period of 60 days to be reinstated to enable businesses to fully engage.

In the meantime however, we offer the following limited comments based on the perspective of the online curated content (OCC) industry. If a subsequent extension is granted to this consultation we reserve the right to offer additional comments.

In considering these Amendments to the Act, we would urge the MOHW to ensure that relevant terms are clearly stated and defined so as to ensure that the scope of the regulations are as intended. In particular, AVIA would recommend that the definition of ‘Ads’ needs to be clarified so that both businesses and regulators are clear on the scope and their obligations thereunder. We note that the term ‘Ads’ is not currently defined, leading to business uncertainty and brings a risk that companies could inadvertently breach the regulations.

The original Act was originally written before the substantial growth in the online economy and, even with the subsequent amendments, fails to clearly distinguish between the various types of digital services (e.g., e-commerce marketplace, social media, online advertising, online curated content etc.) Indeed, we note that the current draft simply refers to “Internet platforms” and mandates self-reporting and local legal representation for foreign operators, along with site blocking for illegal websites. Without clear definition as to what is

meant by “internet platforms” there is a risk of inadvertent onerous regulatory burdens being applied to the online curated content industry, which currently operates in a light-touch, self-regulatory environment. The online curated content industry has actively taken steps to ensure consumers are equipped tools and mechanism to make informed choices for the content that they choose to view.

We would therefore recommend that the Ministry follow a similar approach to definitions that is taken by the Anti-Fraud Act which clearly states that “Online Advertising Platform Operators” refers to “the final online advertising platform operators that provide services to post or disseminate advertisements, collect considerations, and have contact with citizens through online platforms or spaces.” Similarly, they also clearly state other service definitions such as e-commerce and online gaming operators. We strongly urge the MOHW to include similar definitions to ensure clarity going forward.

In conclusion, AVIA would recommend that any draft text should be clear on the intended scope and definitions of key terms. A focus on defining the term “ads” and defining other relevant terms clearly and narrowly to provide regulatory certainty to stakeholders and will avoid unnecessarily burdensome regulations that could have negative consequences for the Taiwanese creative economy and content industry.

We would welcome the opportunity to provide further, more considered input as needed.