



April 30, 2024

BSA COMMENTS ON THE DRAFT PLATFORM ECONOMY ACT

Submitted electronically to: The Office of the Council of State

BSA | The Software Alliance (**BSA**)¹ welcomes this opportunity to provide our comments to the Office of the Council of State (**OCS**) regarding the draft Act on the Platform Economy (**Draft Act**). BSA is the leading advocate for the global software industry. Our members are enterprise software companies at the forefront of developing cutting-edge services, including cloud storage and data processing services, customer relationship management software, human resource management programs, identity management services, cybersecurity services, and collaboration systems.

In the past few years, BSA has followed with great interest developments in Thailand related to personal data protection,² artificial intelligence,³ and cybersecurity.⁴ We hope to be a resource for the OCS as you develop a Platform Economy Act that is interoperable with international best practice and supports the growth of a vibrant and innovative digital economy.

Exclude Enterprise Services

From the legislative rationale of the Draft Act to “protect consumers and those who have an interest or involvement in an appropriate and fair manner,”⁵ and the proposed requirements within, it appears that the Draft Act is expected to apply primarily to consumer-facing services that directly interact with individual end-users. Consequently, BSA recommends that services primarily designed for enterprise

¹ BSA's members include: Adobe, Alteryx, Altium, Amazon Web Services, Asana, Atlassian, Autodesk, Bentley Systems, Box, Cisco, Cloudflare, CNC/Mastercam, Dassault, Databricks, DocuSign, Dropbox, Elastic, ESTECO SpA, Graphisoft, Hubspot, IBM, Informatica, Kyndryl, MathWorks, Microsoft, Nikon, Okta, Oracle, PagerDuty, Palo Alto Networks, Prokon, Rockwell, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, TriNet, Twilio, Workday, Zendesk, and Zoom Video Communications, Inc.

² Most recently, BSA comments on Draft Notifications on the Protection of Personal Data Transferred to a Foreign Country Pursuant to the Personal Data Protection Act 2019, November 10, 2023 at <https://www.bsa.org/policy-filings/thailand-comments-on-draft-notifications-on-the-protection-of-personal-data-transferred-to-a-foreign-country-pursuant-to-the-personal-data-protection-act-2019>, and BSA Comments on the Draft Notification on Rules and Methods of Personal Data Breach Notification under the Personal Data Protection Act 2019, November 22, 2022 at <https://www.bsa.org/policy-filings/thailand-bsa-comments-on-the-draft-notification-on-rules-and-methods-of-personal-data-breach-notification-under-the-personal-data-protection-act-2019>.

³ BSA Comments on Draft Bill on Promotion and Support of National Artificial Intelligence Innovation, August 18, 2023 at <https://www.bsa.org/policy-filings/thailand-bsa-comments-on-draft-bill-on-promotion-and-support-of-national-artificial-intelligence-innovation>.

⁴ Most recently, BSA Comments on Dec 2018 Version of Thailand's Personal Data Protection and Cybersecurity Bill, Jan 30, 2019 at <https://www.bsa.org/policy-filings/thailand-bsa-comments-on-dec-2018-version-of-thailands-personal-data-protection-and-cybersecurity-bill> and BSA Comments on Nov 2018 Version of Thailand's Cybersecurity Bill, Nov 29, 2018 at <https://www.bsa.org/policy-filings/thailand-bsa-comments-on-nov-2018-version-of-thailands-cybersecurity-bill>.

⁵ Draft proposal to the meeting of the relevant authorities on Tuesday, 23 January 2024, Draft Act on the Platform Economy, Introductory paragraph.

customers and which are not typically used by individual consumers should be expressly excluded from the scope of the Draft Act.

Enterprise, or business-to-business (**B2B**), services enable the operations of a wide range of organizations around the world, including small and medium enterprises and large companies, local and central governments, hospitals, schools, universities, and non-profit organizations.⁶ Unlike consumer-focused services, which are provided directly to individual end-users, enterprise services are intended for organizations of all sizes and across all industries to help them operate safely and efficiently, improve productivity, enhance product and service development, and increase opportunities for them to innovate and grow. As a result, enterprise service providers work closely with the enterprise customers using their services, sometimes serving as intermediaries facilitating transactions between enterprise customers and individual end-users, but typically do not interact with the individual customers or end-users served by those businesses and therefore do not have direct control over the actions of either party.

The Draft Act imposes obligations on operators of digital platform services, including requirements to remove or block the transmission of illegal content. However, many enterprise service providers, including enterprise focused cloud service providers, are not well-placed to take on such obligations because they have limited access to their enterprise customers' data, including individual consumer identities or contact details. For example, an enterprise service provider's access to and knowledge of such data is frequently limited by privacy and security controls built into enterprise products and enforced by contractual terms between the provider and its enterprise customers. This is essential for ensuring a trusted enterprise software ecosystem where enterprise customers know that their data is secure and private. Imposing legal obligations on enterprise service providers for duties or responsibilities beyond their control would disproportionately burden them with responsibilities that are more appropriately borne by their enterprise customers or individual end-users.

Furthermore, it is the enterprise customer (not the enterprise service provider) that typically holds the relationship with individual end-users. To consider enterprise service providers as operators of digital platform services, and subject them to the Draft Act would not only be technically and practically infeasible, but it could also place them in breach of their contractual and other legal obligations.

Regulations in other jurisdictions that seek to govern content moderation tend to distinguish between consumer versus enterprise services. For example, Singapore's Online Safety Act⁷ includes a code of practice dealing with Social Media Services, where there is a direct relationship between the platform and consumers. Australia's Online Safety Act⁸ also follows a similar approach, and through codes of practice distinguishes between enterprise and consumer services.

Although Section 12 of the Draft Act provides exceptions for an operator of a digital platform service if "proof or evidence can be made or shown to the court that said digital platform service solely provides the service relating to transmission and receipt of information as an intermediary, without storage thereof; or the operator cannot access the information of the users, or any other information, transmitted through the platform", these exceptions are not sufficient to reflect the realities and limitations of enterprise service providers.

Therefore, **BSA recommends explicitly excluding enterprise service providers from the definition of an "operator" of a "digital platform service"**. This could be achieved by amending the definition of a "digital platform service" to specify that enterprise services are excluded and adding a new subsection to Section 4 of the Draft Act stating that the Act shall not apply to an organization if it provides digital platform services primarily designed for and used by enterprise customers. For example, if a digital platform service is used by another organization to manage or operate the organization's services, it would be out of scope of the Platform Economy Act.

⁶ How Enterprise Software Empowers Businesses in a Data-Driven Economy, Jan 19, 2021, <https://www.bsa.org/policy-filings/how-enterprise-software-empowers-businesses-in-a-data-driven-economy>.

⁷ Singapore Online Safety (Miscellaneous Amendments) Act 2022, Dec 21, 2022, <https://sso.agc.gov.sg/Acts-Supp/38-2022/Published/20221221?DocDate=20221221>.

⁸ Australia Online Safety Act 2021, Jan 23, 2022, <https://www.legislation.gov.au/C2021A00076/latest/text>.

Conclusion

BSA appreciates the opportunity to provide our comments and recommendations on the draft Platform Economy Act. We look forward to continued dialog with the OCS and other Thai government agencies on the development of the Platform Economy Act. Please do not hesitate to contact the undersigned at waisanw@bsa.org if you have any questions or comments regarding our suggestions.

Yours faithfully,

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