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November 29, 2018

Your Excellency,

RESPONSE TO PROPOSED AMENDMENTS TO THE NETWORK ACT AND THE TELECOMMUNICATIONS BUSINESS ACT

On behalf of BSA | The Software Alliance (www.bsa.org)¹, we wish to raise our concerns regarding the proposed amendments to the Act on the Promotion of Information and Communications Network Utilization and Information Protection, etc. (**Network Act**), and the Telecommunications Business Act (**TBA**), proposed by H.E. Byun Jae-il and H.E. Kim Kyung-jin.

We understand that the proposed amendments are intended improve the quality of user experience and service, protect breached personal information, and provides powers for extraterritorial application of the respective pieces of legislation.

However, we are concerned that adopting the proposed amendments would cause significant operational difficulty and place unnecessary and impracticable compliance burden on software companies, both domestic and foreign, who are heavily invested and contributing positively to the advancement of Korea's ICT industry as well as the Korean economy at large. Such regulations would have a chilling effect on innovative services and technologies, hindering the Moon Administration's agenda of innovative growth in the era of Industry 4.0. for Korea. Furthermore, if such regulations have, in fact, discriminatory effects on foreign companies, would cause unnecessary tensions with Korea's trading partners.

Overall, in our view, the existing Network Act and TBA already provide effective consumer protection while also encouraging the delivery of innovative products and services. Therefore, we respectfully urge the Korean Government to reconsider the proposed amendments and continue to engage in consultations with potentially affected stakeholders, including BSA member companies. We are confident that together we can identify better solutions if we more clearly understand the concerns of the government and the bills' proponents.

In this regard, we write in support of the opinions presented herein by AMCHAM. We also draw particular attention to the proposed revisions that are of greatest concern to our members:

¹ BSA | The Software Alliance (www.bsa.org) is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 60 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy.

BSA's members include: Adobe, Akamai, Amazon Web Services, ANSYS, Apple, Autodesk, AVEVA, Bentley Systems, Box, CA Technologies, Cadence, Cisco, CNC/Mastercam, DataStax, DocuSign, IBM, Informatica, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, SAS Institute, Siemens PLM Software, Slack, Splunk, Symantec, Synopsys, Trend Micro, Trimble Solutions Corporation, and Workday.

- a. **Proposed Amendment 16112**: Rep. Jae-il Byun's Bill to Partially Amend the Network Act;
- b. **Proposed Amendment 15471**: Rep. Kyung-Jin Kim's Bill to Partially Amend TBA; and
- c. **Proposed Amendment 15469**: Rep. Kyung-Jin Kim's Bill to Partially Amend the Network Act.

We reiterate the concerns expressed by AMCHAM, namely that the proposed amendments are disproportionate, places undue compliance burden on value-added telecommunications service providers (VTSPs) and introduces *de facto* data and server localization requirements. Furthermore, proposals for extraterritorial application of Korean legislation would be challenging to enforce given that both the Network Act and the TBA reflects Korea's unique licensing system and lacks the universal applicability required to gain broader consensus from other jurisdictions.

In particular, *Proposed Amendment 16112's* imposition of obligations on VTSPs to install domestic servers to secure the stability of "information communication networks" is inappropriate and not technically feasible. This is because the factors related to maintaining connection quality or speed for users is entirely unrelated to the location of the VTSPs servers. In addition, the imposition of an administrative fine of up to 3% relevant revenue is disproportionate given the lack of control VTSPs have over the quality of service delivered via information communication networks.

Furthermore, the non-installation of a local server as a *per se* violation, without consideration for whether the lack of a domestic server harmed users is improper or unfair. This would constitute significant limit on the VTSPs freedom to conduct business and would be effectively imposing an absolute requirement for data and server localization – as VTSPs would need to install domestic servers.

The introduction of any server or data localization requirements would have a negative impact on Korea's digital ecosystem and curtail its ability to participate effectively in the global digital economy. Data and server localization requirements raise the cost of providing services in the country to which the requirements apply, potentially increasing costs for end consumers as well. Data localization requirements would also inhibit competition and the choice of technology available to end-users and procuring entities, including start-ups and government agencies. Even where a particular provider has hosting facilities in Korea, because of how such platforms are configured, it is likely that some features or functionality will be inhibited. In many cases, it is not possible to process all data locally with the same quality of service as could otherwise be achieved – for example, with respect to certain fraud detection services. More broadly, data and server localization policies will also negatively affect Korea's economic competitiveness and server localization impede the development of innovation and the introduction of certain ICT services such as security or fraud monitoring, and data analytics services.

Furthermore, localizing and concentrating data and servers in country, introduces cybersecurity vulnerabilities by increasing the 'attack surface' for bad actors to target, while decreasing the security of networks and systems by creating barriers to threat visibility, slowing response times when time is of the essence in preventing or containing attacks. Data security is ultimately not dependent on the physical location of the data or the location of the infrastructure supporting it. Companies consider many factors when deciding where to locate digital infrastructure, and security is a function of the quality and effectiveness of the mechanisms and the controls maintained to protect the data in question. Effective cybersecurity defenses rely on having timely access to global sources of ongoing threat information and the ability to synthesize the collected information into actionable intelligence for security products and services. The undue restrictions on the flow of data will limit the types of information that can be drawn on for

analysis and correlation and leave end users more vulnerable to new attacks that continue to surface on a daily basis.

BSA's members are at the forefront of data-driven innovation, including cutting-edge advancements in data analytics, machine learning, and the Internet of Things, among others. To ensure consumers and businesses alike can trust in and reap the maximum benefits from these innovations, our members remain deeply committed to maintaining a high quality of service across their platforms and services. Laws and regulations that create a flexible policy environment will produce significant, positive results as these technologies evolve.

BSA has worked closely with governments around the world in relation to the development of consumer protection, data protection, and cybersecurity policies and legislation. In doing so, we have witnessed first-hand the potential for such policies and legislation to effectively encourage innovation whilst still protecting the interests and rights of consumers.

We would be glad to discuss this issue with you in more detail. Please do not hesitate to contact me at Geunk@bsa.org for any further information on this submission.

Sincerely,

Geun Kim
Country Manager – Korea