

12 March 2024

Honorable Minister, Ms Rekha Sharma
Minister of Communication and Information Technology,
Singha Durbar,
Kathmandu 44600,
Nepal

Subject: Industry Request for Moratorium on the Registration of Social Media Platforms in Nepal

Dear Honorable Minister,

On behalf of the Asia Internet Coalition (AIC), I am writing to request a moratorium on the registration of social media platforms in Nepal until the Social Media Bill is finalized. The request for a moratorium builds upon the [earlier letter shared](#) with the Honorable Minister and the Ministry of Communication and Information Technology (MOCIT) on the Social Media Bill in February 2024 and outlines our continued efforts to engage constructively in the legislative process. The AIC is of the view that the proposed legislation, in its present form, poses significant challenges that, if not addressed comprehensively, will render both the Directive and Social Media Bill unworkable and could undermine the potential growth of Nepal's digital economy.

While we acknowledge the Government of Nepal's efforts to regulate social media platforms, we have concerns regarding certain provisions outlined in the directive. We are disheartened to observe that, despite our constructive face-to-face engagement with representatives from MOCIT on 19 January 2024, and the assurances provided, the concerns AIC raised regarding the directive have not been addressed. Of significance, we believe that the directive extends beyond the powers granted to the government under the Electronic Transactions Act, 2006, making it ultra vires (beyond the scope of authority) granted to the government under law.

The proposed registration process for internet companies in Nepal presents significant administrative hurdles for our members, involving the submission of confidential documents detailing user statistics, platform activities, security measures, and tax information. Uncertainty surrounds how businesses will navigate compliance with the registration and renewal requirements outlined in the Directive or new Bill, resembling license-based models that experts warn can stifle competition and innovation, potentially deterring investments in Nepal and impeding its digital ecosystem's growth. These requirements, coupled with concerns regarding human rights - with unclear, broad definitions and lack of clear definitions for unlawful content categories, proactive monitoring obligations, fixed turnaround times for content removal as well as the absence of procedural requirements for the issuance of Take-Down Requests (TDRs) pose significant operational and logistical challenges for AIC Members (See Appendix I for summary of concerns).

Furthermore the AIC wishes to reiterate that mandating a local presence for internet companies could have unintended consequences, including increased operational costs, barriers to entry for smaller players, and limit innovation. Such a requirement contradicts the concept of "permissionless innovation" and diverges from international norms where many governments recognize the inherently global nature of the digital domain and refrain from insisting on local presence for internet companies, potentially restricting Nepalese citizens' access to global internet services.

Given the concerns highlighted above, we respectfully request a moratorium on the registration of social media platforms until the social media bill is finalized and comprehensive consultations with industry stakeholders are conducted. This will allow for the resolution of outstanding issues and the development of a regulatory framework that strikes a balance between promoting responsible platform behavior and safeguarding freedom of expression and innovation. The AIC stands ready to engage in constructive dialogue and provide input to support the development of a regulatory framework that benefits all stakeholders. Should you have any questions, please do not hesitate to contact me directly at Secretariat@aicasia.org or at +65 8739 1490.

Thank you for your time and consideration.



Sincerely,
Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

APPENDIX I

Summary of Concerns: Nepal 'Directive Relating to the Management of Use of Social Media' ('Directive')

- **Ultra Vires:** The Directive **goes beyond the powers granted to the Government of Nepal to enact implementing regulation under the Electronic Transactions Act, 2006**. Hence making the Directive *ultra vires* (beyond the scope of authority) granted to the Government under law.
- **Registration and Licensing:** Registration does not require establishing an entity in Nepal. Nevertheless, this could potentially limit any jurisdictional defences for non-compliance AIC Members may have in Nepal, and expose us to local court proceedings.
- **Local Employees/Office:** Social Media Platforms are given a choice to either: (i) establish an office in Nepal; or (ii) appoint a POC based in Nepal. If a POC is appointed, they will be responsible for (i) blocking unlawful content in accordance with the Directive; and (ii) to provide public information regarding the proper use of social media services. Additionally, for Social Media Platforms having more than 100,000 users in Nepal, a grievance officer must also be appointed to resolve any complaints against platforms.
- **TDR Authority:** The MOCIT will establish a Social Media Management Unit which will have legal authority to direct social media providers to remove content that is locally unlawful. The Directive does not impose any procedural requirements on the MOCIT when issuing such TDRs (for example, a notice to the user, duty to give reasons etc.). AIC Members would have limited arguments to push back on such TDRs based on due process grounds. Furthermore, the lack of procedural requirements means that the MOCIT would have to do very little due diligence on their part before sending us TDRs, creating a risk of high volumes being sent.
- **Fixed Turnaround Times:** Social Media Platforms will have to remove or block unlawful content reported to them within 24 hours of receipt of a TDR by the MOCIT.
- **Intermediary Liability:** The Directive is silent on intermediary liability/safe harbour for internet service providers. The sole provision concerning penalties for non-compliance states that the MOCIT will write to the Nepal Telecommunication Authority informing them that an offense has been committed under the prevailing laws of Nepal.
- **Categories of Unlawful Content:** 10 categories of content are deemed unlawful under the Directive. There are no clear definitions provided for many of the broad and vague terms in the Directive, which creates a risk of these provisions being misused to over enforce against legitimate speech, and creating definitional disputes between the government and companies.

- **Proactive Monitoring:** Platforms are required to implement systems that **prevent the publication and broadcasting** of unlawful content. Such an obligation, to exercise editorial control over new content, would be practically unfeasible for platforms to comply with as it would fundamentally alter the nature of the platform.
- **Risk & Penalties:** The only penalty provided in the Directive relates to a platform failing to register with the MOCIT. In which case, it may be immediately blocked. There is no penalty specified in the Directive for the violation of any other provision, however given that the Directive has been enacted under the Electronic Transactions Act, penalties under the ETA could be imposed. These range from a fine of up to 100,000 rupees (apprx 750 USD) or imprisonment of up to 3 years, or both. For companies with no physical presence in Nepal, traditional penalties like fines and criminal proceedings are not practically enforceable against it as the government of Nepal would have to file proceedings before a court in the US or home country to do so. As such, the government would likely focus its efforts on disrupting platforms' services within the country through actions like throttling servers or blocking platforms entirely.

Asia Internet Coalition Member Companies

