

## Vietnam: New amendments to draft regulations on internet services, online information and online games

### In brief

On 22 November 2021, the Ministry of Justice published the latest version of the Draft Decree amending Decree No. 72/2013/ND-CP<sup>1</sup> on the management, provision and use of internet services and online information ("**Draft Decree**") submitted for its final legal assessment. There is no exact deadline for this round of consultation.

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### Key takeaways

Compared to the previous draft released in July 2021 ("**July version**"), the Draft Decree has several notable changes, as follows:

- Governing scope now includes data center services.
- New definitions introduced include online game top-up card, community group and online platform.
- The list of prohibited acts (i.e., illegal content on the internet) from the current Decree No. 72 remains unchanged.
- The reference to local office and data localization requirements under Article 26.3 of the Cybersecurity Law and relevant legal documents are removed for offshore service providers.
- New screen time limited at 60 minutes shall be imposed on players 18 years old and younger playing G1 games, and players 16 years old and younger playing G2, G3 or G4 games.

### In depth

The Draft Decree revises the current governing scope of Decree No. 72 to explicitly include data center services. The revised scope now covers the management, provision, use of internet services, online information, online games, data center services, and assurance of information safety and security; rights and obligations of organizations and individuals involved in the management, provision, use of internet services, online information, online games, data center services, and assurance of information safety and security.

Compared to the July version, the latest version of the Draft Decree ("**November version**") has revised and added certain key definitions, as follows:

July version	November version
<i>Aggregated information</i> is information quoted from news sources of Vietnamese press.	<i>Aggregated information available on aggregated information websites</i> is information <b>uploaded, issued on Vietnamese press and websites of the Communist Party and State agencies.</b>

<sup>1</sup> Decree No. 72.



July version	November version
<p><i>Social network</i> means an information service system established on a website or an online application that provides network user communities with services of <b>storage, provision, use</b>, search, sharing and exchange of information with one another, including the services, features of creating an account, content channel, personal website (including personal blog), forum, online chat, livestream, sharing of sound or images and other similar forms of services and features.</p>	<p><i>Social network</i> means an information service system established on a website or an online application that provides network user communities with services of <b>storage, use</b>, search, sharing and exchange of information with one another, including the services, features of creating an account, content channel, personal website (including personal blog), forum, online chat, livestream, sharing of sound or images and other similar forms of services and features.</p>
<p><i>Cross-border provision of information</i> is the act of organizations and/or individuals from overseas (hereby referred as "<b>foreign organizations/individuals</b>") using websites, social networks, online applications, search engines and other similar online forms of services to provide information that users in Vietnam can access or use the service.</p>	<p><i>Cross-border provision of information</i> is the act of organizations and/or individuals from overseas (hereby referred as "<b>foreign organizations/individuals</b>") using websites, social networks, online apps, search engines and other similar online forms of services <b>under their ownership</b> to provide information that users in Vietnam can access or use the service.</p>
<p><i>Provision of content services on mobile telecommunications networks</i> is the act of organizations and/or enterprises that set up equipment systems in Vietnam and connect them to the mobile telecommunications infrastructure to carry out the process of registration, cancellation and provision of paid content services to mobile phone subscribers via SMS, USSD and Livescreen via mobile telecommunications networks.</p>	<p><i>Content services on mobile telecommunications networks</i> are <b>services provided via mobile telecommunications networks attending to the transmission of information to mobile telecommunications service users via SMS, USSD, website (inclusive of website/WAP/apps).</b></p>
<p><i>Channel</i> is a website belonging to a social network created by a user account to share <b>content</b> and connect [other] users accounts for the purpose of exchanging comments and information.</p>	<p><i>Channel</i> is a website belonging to a social network created by a user account to share <b>information</b> and connect [other] users accounts for the purpose of exchanging comments and information.</p>
<p><i>Application</i> is a computer program created that allows the use of one or more features or services [available] in the network.</p>	<p><i>Application (in short, app)</i> is a computer program created that allows the use of one or more features or services [available] in the network.</p>
<p><i>Data center service business</i> is a commercial activity including server rental services, colocation services, data storage space rental services and cloud computing services.</p>	<p><i>Data center service business</i> is a commercial activity <b>[with the purpose of] providing the capacity of computing and technical infrastructure for storage</b>, including server rental services, colocation services, data storage space rental services and cloud computing services.</p>
<p><i>Server rental services</i> are services that provide <b>customers</b> with a server, equipment and information infrastructure belonging to the data center that are available for their own use.</p>	<p><i>Server rental services</i> are services that provide <b>service users</b> with a server, equipment and information infrastructure belonging to the data center that are available for their own use.</p>
<p><i>Colocation services</i> are services that provide <b>customers</b> with space allowing them to design and install their own server and/or other storage devices.</p>	<p><i>Colocation services</i> are services that provide <b>service users</b> with space allowing them to design and install their own server and/or other storage devices.</p>
<p><i>Data storage space rental services</i> are services that provide organizations and individuals with storage space.</p>	<p><i>Data storage space rental services</i> are services that provide organizations and individuals with storage space <b>that is set up by the service providing units.</b></p>
<p><i>Data center service subleasing business</i> is a [business] form where a trader leases services offered by an organization or enterprise being a data center's owner in order to provide such services to its <b>customers</b>.</p>	<p><i>Data center service subleasing business</i> is a [business] form where a trader leases services offered by an organization or enterprise being a data center's owner in order to provide such services to its <b>service users</b>.</p>
<p>N/A</p>	<p><i>Online game top-up card</i> (i.e., game card) is an internal card issued by an online game service provider, only used to top up lawful online electronic games owned by that online game service provider, or by other online game service providers in the same economic group, group of companies, parent and subsidiary companies (in short, "<b>Group of Companies</b>") of that online game service provider.</p>
<p>N/A</p>	<p><i>Community group ("group")</i> is a set of multiple social network [user] accounts having the scope and purpose of operation set by the subject who created the group, attending to the exchange and sharing of information within the group.</p>
<p>N/A</p>	<p><i>Online platform</i> is an information system that utilizes a website or an online app to provide network users with necessary infrastructure in terms of technology and services to connect, interact, share information [and] participate in transactions with each other.</p>



## 1. List of prohibited acts unchanged

The Draft Decree removes all the proposed amendments to Article 5.1 of Decree No. 72 on prohibited acts under the July version. If passed, the list of prohibited acts under Article 5.1 of the existing Decree No. 72 will continue to be the main legal grounds for the issuance of takedown requests by competent authorities against those that violate online information.

## 2. New categorization of online information website

The Draft Decree categorizes online information websites into the following types:

- Electronic newspapers, electronic magazines
- Aggregated information websites, which are defined as websites of organizations/enterprises providing aggregated information on the basis of quoting the full and exact text from the sources of the Vietnam press or websites of the Communist Party or State agencies in accordance with intellectual property laws and the provisions of Decree No. 72
- Internal websites
- Personal websites established by an individual under the forms of a website or social network account that share and exchange information of such individual and do not provide aggregated information
- Professional websites of agencies, organizations, enterprises, individuals providing specialized services (e.g., telecommunications, IT, television, e-commerce or other specialized industries)
- Websites providing social network services

## 3. Cross-border provision of information and content takedown

In line with the July version, the Draft Decree imposes the same general principle where offshore organizations and individuals providing information on a cross-border basis that have users in Vietnam or have access from Vietnam ("**offshore information providers**") are subject to Vietnam laws. However, there are certain significant changes as follows:

### a. Broader legal basis for applying measures of information management

Vietnam authorities are entitled to apply necessary measures to ensure only lawful information is accessible in Vietnam. The amended Article 22.2 provides for cases where such measures will be applied when an offshore information provider:

- i. Violates the laws of Vietnam
- ii. Fails to cooperate with the Ministry of Information and Communications (MIC) to handle the violating information set out in point (a) above

Instead of specific references to Article 5 of Decree No. 72, Article 8.1 of the Cybersecurity Law<sup>2</sup> or Article 28 of the Intellectual Property Law<sup>3</sup> as under the July version, the Draft Decree now generally refers to violation of Vietnam laws.

### b. Obligations of offshore information providers<sup>4</sup>

Offshore information providers that (i) use data storage space rental services in Vietnam or (ii) have 100,000 or more regular unique visitors (UV)<sup>5</sup> within one month (statistics for six consecutive months) have the following obligations:

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<sup>2</sup> Article 8.1 of the Cybersecurity Law provides for prohibited acts as to cybersecurity.

<sup>3</sup> Article 28 the Intellectual Property Law provides for conducts constituting infringement of copyright.

<sup>4</sup> Articles 22 and 23, Decree No. 72 as amended by the Draft Decree.

<sup>5</sup> The Draft Decree specifically refers to the number of regular visitors in Vietnam as "Unique Visitor."



- i. Notify the MIC of their contact information by in-person submission, by post or by electronic means within 60 days from the moment its UV count reaches 100,000. The notification should include the following particulars:<sup>6</sup>
  - Name of the provider, transaction name; enterprise code (if any); headquarter address, register operation place; location of the main server system providing the service; location of the main server system in Vietnam (if any)
  - Contact point: name of representative organization/individual based in Vietnam, email address, phone number

The MIC is responsible for issuing a written or electronic confirmation acknowledging such notification within 10 days as from the receipt of the same.

- ii. Block, take down information and/or services in violation of Vietnam laws within 24 hours upon receiving takedown requests (TDR) from the MIC.<sup>7</sup>

The time lines for complying with each TDR vary depending on the types of content at issue or the frequency of violations:

- Violating livestream videos are to be blocked and/or taken down within three hours upon receiving the TDR.
- User accounts, fan pages, groups and/or channels regularly providing violating contents (i.e., being subject to the MIC's TDRs at least (i) five times in 30 days or (ii) 10 times in 90 days) are to be temporarily locked within 24 hours upon request from the MIC. The duration of a temporary lock is from seven to 30 days, depending on the severity of violation.
- Violating apps are to be blocked/removed from app stores within 24 hours from the MIC's TDR.

In case of noncompliance with a TDR within the prescribed time line, the MIC will deploy their own preventive measures to block the violating content, service and/or application in question. In other cases where the violating content is considered affecting the national security of Vietnam, competent State agencies will immediately implement their own preventive measures to block such content. The preventive measures will only be lifted after the violating content is handled.

- iii. Implement a content cooperation agreement with a Vietnamese press agency when providing information cited from the Vietnamese press on the basis of copyright regulations.
- iv. Have specialized departments to handle (i) the authorities' requests and (ii) Vietnamese users' complaints.
- v. Handle Vietnamese users' complaints within 48 hours (previously 24 hours in the July version) as from receipt of such complaints. The content in violation of Article 8.1 of the Cybersecurity Law, Article 5.1 of Decree No. 72 and regulations on intellectual property must be blocked or deleted. The reasons for content deletion will be notified to the person uploading such content.
- vi. Activities generating revenues in all forms (excluding e-commerce activities) on (offshore) social networks can only be made available for account users, fan pages, groups and channels that have notified the MIC of their contact information.
- vii. Publicize policies and procedures to support customers in handling network safety and security that are prepared in a concise, clear, intuitive and easy-to-understand manner.
- viii. Prepare annual reports (before 31 December every year) or ad hoc reports when so requested by the MIC (ABEI) using Form No. 04 enclosed with the Draft Decree.

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<sup>6</sup> Article 22.4, Decree No. 72 as amended by the Draft Decree.

<sup>7</sup> Article 22.5, Decree No. 72 as amended by the Draft Decree.



**c. Notification requirements for subjects on cross-border social networks**

The following subjects on cross-border social networks must notify the MIC using Form No. 05 enclosed with the Draft Decree:

- i. Account users, fan pages, groups and channels that have a large number of followers/subscribers
  - For account users, a large subscriber count is from 10,000 or more.
  - For fan pages, groups and channels, a large subscriber count is from 100,000 or more.
- ii. Account users, fan pages, groups and channels that participate in activities generating revenues in all forms<sup>8</sup>

**d. Removal of the local office and data localization requirements**

The November version removes the reference to localization requirement under Article 26.3 of the Cybersecurity Law and relevant documents.

**e. Child protection requirements**

In line with the July version, onshore and offshore social network providers that have 1,000,000 or more UV from Vietnam are required to:

- Show a warning that says: Content not suitable for children.
- Have a feature where content harmful to children and child abuse acts can be reported; publicize the handling process for such content; share the statistics about the total number of complaints and handling of results with the MIC (AIS) on a quarterly basis.
- Block and filter out content harmful to children and user accounts with child abuse acts.
- Implement age registration in case of user account registration and take measures to help parents and caregivers monitor the activities of users who are children.

**4. Online game regulations**

There are no significant changes to provisions on online game services under the July version, however, below are the key provisions under both versions:

**a. Age rating**

There is a new class of games for players 16 years old and older: 16+. <sup>9</sup> Online games under the 16+ class will contain armed combats without pornographic/erotic acts, images, sounds, languages, dialogues, characters and close-ups that draw attention to sensitive parts of the human body.

Games under the 18+ class are redefined to cover games in which armed and violent combats take place continuously but pornographic/erotic acts, images, sounds, languages, dialogues are absent. <sup>10</sup>

**b. License term for G1 games**

The Draft Decree proposes that the term of license for publishing a G1 game online will not exceed five years. <sup>11</sup> The current limit of license term for G1 games is 10 years.

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<sup>8</sup> Article 23.6.g, Decree No. 72 as amended by the Draft Decree.

<sup>9</sup> Article 31a.1(b), Decree No. 72 as amended by the Draft Decree.

<sup>10</sup> Article 31a.1(a), Decree No. 72 as amended by the Draft Decree.

<sup>11</sup> Article 32c.2, Decree No. 72 as amended by the Draft Decree.



**c. Screen time management**

The new screen time management provision applicable to online game service providers proposed under the November version does not apply to players 18 years old and older. The screen time restriction from 12 am to 12 pm every day is now as follows:

- For G1 games, playing time of players 18 years old and younger must not exceed 60 minutes for each game.
- For G2, G3, G4 games, playing time of players 16 years old and younger must not exceed 60 minutes for each game.

**d. New provisions on game card issuance**

The November version has a new article, Article 34d, on the issuance of game cards that sets out the following provisions:<sup>12</sup>

- Game cards can only be used to top up licensed online games. The use of game cards for nonlicensed games or other purposes is prohibited.
- Online game service providers must issue internal regulations on the issuance of game cards to be used within their systems. For nonphysical game cards, there must be material documenting the process to open/suspend game cards, transaction process, risk management, scope of use, etc.
- The quantity, par value of each game card and revenue generating from the issuance of game cards must be periodically notified to the MIC.
- Online game service providers must notify the MIC of the number of game cards issued, the number of game cards used for top up, the number of game cards in inventory, par value of each game card and total revenue generating for the issuance time 15 days before discontinuing the issuance of game cards.

**5. Provisions on cross-border data center services (including cloud computing services)**

Data center service providers doing business on a cross-border basis are required to notify, either directly in writing or via the Information Portal of the MIC, the following information to the MIC:

- Name of the representative
- Contact information (phone number or email)
- The types of data center services to be provided on a cross-border basis

There is also a requirement to store data of data center service users who are Vietnamese organizations/individuals within Vietnam under Article 44k of the Draft Decree. However, it is unclear whether cross-border data center services are subject to Article 44k, or if they are only subject to Article 44h, which contains provisions on cross-border data center services.

We hope the above are informative. For further information and to discuss what this development might mean for you, please contact us.

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<sup>12</sup> Article 34d, Decree No. 72 as amended by the Draft Decree.



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