

Client Alert

February 2017

MIC to Require Select Offshore Service Providers of Online Content to Comply with Local Content Restrictions, Elect Authorized Representative in Vietnam

On 26 December 2016, the Ministry of Information and Communications (MIC) issued Circular No. 38/2016/TT-BTTTT providing detailed regulations on the cross-border provision of public information ("**Circular No. 38**"). Circular No. 38 is one of the implementing circulars of Decree No. 72/2013/ND-CP on the management, provision, and use of internet services and online information ("**Decree No. 72**"). A separate alert on Decree No. 72 is available [here](#).

Circular No. 38 will likely apply to a number of offshore providers of online content into Vietnam. Specific requirements under Circular No. 38 apply to an offshore entity that provides cross-border public information into Vietnam and (a) has more than 1 million hits from Vietnam per month or (b) leases a data center to store digital information in Vietnam in order to provide its services ("**offshore service provider**"). Public information means the online information of an organization or individual which is made public to all entities. "Cross-border provision of public information" is the: "*act of offshore organizations/individuals using websites, social networks, online applications, search engines and other similar forms of services to provide public information that users in Vietnam may access or use (the users here include both organizations and individuals).*"

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Notification requirements

An offshore service provider must provide contact information to the MIC. Contact information must include:

- Registered name, business name, country of registration of the offshore service provider;
- Address of the offshore service provider's headquarters and the location of the main server that provides the service;
- The contact point of the offshore service provider and the contact point in Vietnam including: Name of the organization/individual, telephone number, e-mail address.


The offshore service provider may use one of the following forms of notification: by direct submission, by post or email report38@mic.gov.vn.

Cooperation requirements

Circular No. 38 specifically implements content restrictions provided under Article 5 of Decree No. 72, in which the use and provision of the internet should not, *inter alia*, oppose the Socialist Republic of Vietnam, threaten national security, incite violence, arouse racial and religious animosity, propagate pornography or contradict national traditions ("**infringing content**").

If the MIC identifies infringing content on a forum provided by an offshore service provider, then one of the following "takedown" situations may arise:





Should you wish to obtain further information or want to discuss any issues raised in this alert with us, please contact:

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- If the MIC determines such content threatens Vietnam's national interests, the relevant authority will execute a necessary technical measure immediately to prevent the proliferation of the content to users in Vietnam, and send a takedown request to service providers. The MIC will stop execution of their preventative measures once the offshore service provider has removed the infringing content; or
- If the MIC determines such content is infringing but does not pose an immediate threat to national interests, the MIC will send a takedown request to the offshore service provider to coordinate the removal of the content from the site. Upon receipt of the request from the MIC, the offshore service provider must respond to the MIC and remove the identified infringing content from the site. If, after 24 hours from the first request, the offshore service provider has not responded, the MIC will send a second takedown request. If after another 24 hours the offshore service provider has not responded to the MIC or does not remove the infringing content, the MIC may execute the necessary technical measures to prevent the proliferation of the infringing content in Vietnam.

Telecoms operators and onshore data center service providers are required to report infringing content by direct submission, post or email address report38@mic.gov.vn to the MIC within 3 hours of discovery. Upon MIC's request, telecoms operators must implement necessary technical measures discussed above and report to the MIC the volume of users in Vietnam accessing public information provided by the offshore service provider.

Onshore data center service providers must, either periodically or upon the MIC's request, notify the MIC of their service supply to offshore service providers.

Vietnamese users may report infringing content to the offshore service provider and the MIC by direct submission, post or email address report38@mic.gov.vn and may also bring a case to court if the infringing content affects their rights.

Circular No. 38 takes effect on 15 February 2017. Offshore service providers will have 90 days from the effective date to comply, i.e. from 15 February 2017.

Please do not hesitate to contact us with any questions.

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