

May 26, 2016

Mr. HE Rudiantara
Minister of Communications and Informatics
Ministry of Communication and Informatics
Jalan Medan Merdeka Barat No. 9
Jakarta Pusat 10110
Jakarta, Indonesia

RE: Kominfo's Draft Regulation, Number ____ of 2016, Provision of Application Services and/or Content over the Internet (OTT)

Dear Minister Rudiantara:

ACT | The App Association writes to the Ministry of Communication and Informatics (Kominfo) on its recently released *Draft Regulation of the Minister of Communications and Information of the Republic of Indonesia, Number ____ of 2016, concerning Provision of Application Services and/or Content over the Internet (OTT)*. As explained below, we believe that the proposal will create an overly burdensome regulatory environment in a number of ways that will hamper economic growth for Indonesia, including Indonesia's burgeoning mobile app developer business community. We also explain below the difficulties posed by specific provisions. We respectfully request that Kominfo refrain from implementing this regulation and engage in further consultation with affected stakeholders to allow for meaningful and win-win solutions to concerns that Kominfo may have in seeking to regulate OTT services.

ACT | The App Association represents more than 5,000 small- and medium-sized app development companies and technology firms around the globe. As the world has quickly embraced mobile technology, our members have been creating innovative solutions that drive the global digital economy by improving workplace productivity, accelerating academic achievement, and helping people lead more efficient and healthier lifestyles.

In existence less than a decade, the mobile app industry has experienced explosive growth alongside the rise of smartphones. As the most rapidly adopted technology in human history, these devices have revolutionized the software industry. We urge you to review ACT | The App Association's recently-released *State of the App Economy* report,¹ which provides further information and statistics on this innovative industry that

¹ <http://actonline.org/2016/01/04/act-the-app-association-releases-latest-app-industry-report/>.

continues to grow while creating jobs and revolutionizing how consumers work, play, and manage their health. We also note that small companies and startups have thrived in the mobile marketplace. They currently represent 82 percent of the top app makers, dominate the revenue rankings, and drive innovation in the mobile economy.

Today, billions of people around the world – and hundreds of millions of Indonesians – use internet-enabled apps to do business, work, learn, and connect. The free flow of information across borders is crucial across the economy by providing access to international markets, decreasing operational costs through the use of global computing resources like cloud-based services, and enabling a diversity of novel and inventive business models.

Kominfo's Proposed Provisions Related to a Local Presence Requirement for OTT Service Providers

In its proposed regulation, Kominfo proposes to require a physical presence in Indonesia by OTT service providers (e.g., Article 4 and Article 8). ACT | The App Association urges Kominfo to work further with all stakeholders through bilateral dialogues to find better solutions to address Indonesian consumer protection.

Small business app makers want to make their innovative products and services available, in compliance with Indonesian law, to consumers in Indonesia. These app-based products and services have the potential to advance the lives of millions of Indonesian consumers by improving all facets of life, from health to education to labor efficiencies and beyond. However, these small businesses simply can neither afford to open local offices in every market in which they offer their services, nor can they afford to dedicate resources to establishing partnerships with a local conglomerates. Should Kominfo move forward and put into place the onerous local presence and information contact center requirements on all OTT service providers (as well as the overly burdensome filing and paperwork requirements proposed), it will create a cost burden to market entry that is untenable for small businesses, particularly in the case of attaining licensing from the Investment Coordination Board (BKPM). As a result, Kominfo will effectively prohibit Indonesian consumers from accessing the larger digital economy, save the select few incumbent OTT service providers who may have the resources to comply.

We therefore urge Kominfo to reconsider the implementation of local presence requirements on OTT companies that do business in Indonesia. We encourage Kominfo to hold future dialogues with all affected stakeholders, including ACT | The App Association, dedicated to addressing its interests underlying this proposal.

Kominfo's Proposed Provisions Related to OTT Service Provider and Telecommunication Provider Cooperation

In Article 7 of its proposed regulation, Kominfo proposes mandatory partnerships between OTT service providers and telecommunication providers. These proposals are extremely expensive for all OTT service providers (as defined by Kominfo), and they are particularly onerous for small app makers. This requirement will create an overwhelmingly strong disincentive to entering the Indonesian market for OTT service providers at large.

Kominfo's Proposed Provisions Related to the Localization of Data

In its proposed regulation, Kominfo proposes several provisions that would require the localization of data storage or processing. Specifically, Article 3(g), Article 5, and Article 9 would, among other actions, cause OTT service providers to:

- Use national payment gateways that are legally incorporated in Indonesia, specifically for paid OTT [services];
- Use an Indonesian internet protocol number and place part of the server in data centers in Indonesia; and
- Store data for a minimum of three (3) months, or longer should law enforcement request it.

ACT | The App Association wishes to express its appreciation to Kominfo for its decision to delay of the implementation of a data localization requirement under Government Regulation 82 of 2012 ("GR82") by three years. We believe that Kominfo's decision in that separate matter reflects an understanding that policies which impede the cross-border flow of information will hinder Indonesia's further integration into the global digital economy, ultimately harming Indonesian consumers and businesses by raising costs and reducing consumer choice. We note, however, that the present data localization requirement that Kominfo has put forward in Article 5(e) appears inconsistent with its approach on GR82, and this creates a large amount of uncertainty for innovative companies considering offering their products to Indonesian consumers.

Generally, government mandates to store, route, process, or otherwise use data within the territory of a country contribute to the fragmentation of the digital economy and the internet. The Organisation for Economic Co-operation and Development (OECD) has recently published a detailed study establishing that localization requirements cause serious declines in imports and exports, reduce an economy's international competitiveness, and undermine domestic economic diversification.² In addition, the European Centre for International Political Economy (ECIPE) has determined that a data localization requirement in Indonesia would cause a gross domestic product (GDP)

² Stone, S., J. Messent and D. Flaig (2015), "Emerging Policy Issues: Localisation Barriers to Trade", OECD Trade Policy Papers, No. 180, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5js1m6v5qd5j-en>.

loss of -0.7 percent.³ In Indonesia, data localization requirements would be particularly damaging to small- and medium-sized businesses that need unfettered access to the global digital economy to grow. Further, data localization requirements such as the proposed provisions in Article 5(d-e) are likely in direct conflict with the mission of key international organizations including the Asia-Pacific Economic Cooperation (APEC) forum, as well as key international agreements to which Indonesia is a signatory, including World Trade Organization regulations prohibiting the imposition of customs duties on electronic transmissions⁴ and provisions of the Trans-Pacific Partnership.⁵

We therefore respectfully request that Kominfo reconsider its regulatory proposal and, at minimum, delete Article 3(g) and Article 5 (d-e). We also encourage Kominfo to work with affected stakeholders, such as ACT | The App Association, through further dialogue and public consultation to ensure that concerns underlying its data localization proposal are sufficiently addressed.

In conclusion, the global app economy that ACT | The App Association represents offers incredible benefits and great opportunity to countless Indonesians. This includes Indonesian app developers who may require access to global products and services as inputs to their own innovative online products and services. It is our view that taken individually and together, the proposed provisions discussed above will lead to a significant disincentive and possibly even prevent foreign service providers from providing their products and services in Indonesia. This would stymie the level of innovation and market competition within Indonesia, resulting in a significant weakening of the Indonesian economy as a whole and its competitive position in the global digital economy and ultimately harming Indonesian businesses and consumers. Such policies also set a harmful precedent: if other countries were to adopt similar requirements, then Indonesia's app developers and businesses would face barriers to offering their services in new markets.

Based on our discussion above related to several key aspects of the Kominfo's proposed regulations on OTT service providers, we recommend that Kominfo refrain from implementing its OTT regulatory proposal until an adequate path forward can be determined based on further detailed consultations with impacted stakeholders. ACT | The App Association wishes to express its willingness to meet with you about these

³ Bauer, et al (2014), "The Costs of Data Localisation: Friendly Fire on Economic Recovery", ECIPE Occasional Paper, No. 3/2014, available at http://www.ecipe.org/app/uploads/2014/12/OCC32014_1.pdf.

⁴ WTO, *The Geneva Ministerial Declaration on global electronic commerce*, WT/MIN(98)/DEC/2, 25 May 1998 (98-2148), available at https://www.wto.org/english/tratop_e/ecom_e/mindec1_e.htm; see also WTO, *Work Programme on Electronic Commerce*, WT/MIN(15)/42 — WT/L/977, 19 December 2015, available at https://www.wto.org/english/thewto_e/minist_e/mc10_e/l977_e.htm (noting that "[WTO] Members will maintain the current practice of not imposing customs duties on electronic transmissions until our next session which we have decided to hold in 2017").

⁵ Trans-Pacific Partnership, Article 14.13: Location of Computing Facilities, available at <https://ustr.gov/sites/default/files/TPP-Final-Text-Electronic-Commerce.pdf>.

issues and pledges its support of a bi-directional dialogue with Kominfo to find ways to ensure that the goals of protecting Indonesian consumers and enabling the Indonesian economy are met.

If you have any concerns or questions, please do not hesitate to contact ACT | The App Association using the information below.

Sincerely,

A handwritten signature in black ink that reads "Morgan Reed". The signature is written in a cursive style with a light grey rectangular background behind it.

Morgan Reed
Executive Director
ACT | The App Association
1401 K St NW (Ste 501)
Washington, DC 20005
United States of America
+1 202-420-7481
mreed@actonline.org

cc: Thomas Trikasih Lembong, Minister of Trade
Robert O. Blake Jr., Ambassador, U.S. Embassy Jakarta, Indonesia