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## RCEP: Model E-Commerce Language

The Asian Trade Centre (ATC) has been promoting e-commerce in RCEP across multiple negotiating rounds. The overall platform highlights the importance of e-commerce and digital trade to small companies across Asia. Negotiators need to consider the importance of the sector across RCEP chapters to ensure that e-commerce and digital trade provisions provide the best possible foundation for trade, jobs and growth to flourish across the region in the future.

RCEP includes multiple flexibilities for member states. Hence, e-commerce and digital trade provisions should be as strong as possible.

It now seems appropriate for ATC to suggest some model language to convert our existing policy proposals into concrete actionable language for use in RCEP texts.

We suggest the following provisions be included in RCEP:

*RCEP parties should commit to avoid interfering with the movement of information across the Internet, including the free transfer or access to electronic information -- except where necessary to achieve legitimate public policy objectives such as data protection and consumer protection:*

- No Party may prevent a service provider of another Party from transferring information outside the Party's territory, including personal information.

- Parties shall prohibit any requirements to use or locate computing facilities within a country as a condition for doing business in that country.
- Each Party shall adopt a legal framework that provides for the protection of the personal information of the users of electronic commerce.
- Each Party shall adopt consumer protection laws to prevent fraudulent and deceptive commercial activities that cause harm to consumers engaged in electronic commerce.

*RCEP parties should provide full market access and national treatment for the cross-border supply of all digital-related services:*

- Each Party shall accord to services and service suppliers of another Party treatment no less favourable than that it accords, in like circumstances, to its own services and service suppliers, or to services and service suppliers of any other Party or a non-Party.
- Parties shall provide full coverage of Mode 1 and all other online services to all Parties.
- No Party shall require a local presence for the provision of services.
- No Party shall accord less favourable treatment to digital products created, or first made available, in the territory of another Party than it accords to other



like digital products.

- RCEP parties should recognize the value and legitimacy of different online payment methods, regardless of the country of the consumer, merchant or intermediary:
- Each Party shall accord to payment service suppliers of another Party treatment no less favourable than it accords, in like circumstances, to its own payment service suppliers, or to payment service suppliers of any other Party.
- Each Party shall apply equal enforcement of any rules pertaining to corporate governance, data privacy, data security, or consumer protection to payment service suppliers of another Party, no more thoroughly than that it applies to its own payment service suppliers.

*RCEP parties should create an environment that promotes the growth of new online services and markets by refraining from imposing complex licensing requirements on these services, and by forbearing from the application of legacy telecom infrastructure regulations on online or "over-the-top" services:*

- Each party shall allow consumers in their territories to access and use services and applications of a consumer's choice available on the Internet, and to connect end-user devices of a consumer's choice to the Internet, provided that such devices do not harm the network.
- Each party shall refrain from imposing unnecessary or legacy regulatory and licensing requirements on providers of online services and applications.

*RCEP parties should adopt limitations on intermediary liability that will enable SMEs and Internet platforms to host user reviews and feedback, which is necessary for building trust in sellers on the Internet:*

- Each Party shall ensure that a supplier or user of an interactive computer service is not liable for information stored, processed, transmitted, distributed, or made available by the service at the direction of a third party, except to the extent the supplier or user has, in whole or in part, created or developed the information.
- A Party may hold a service provider liable if: (i) the provider has actual knowledge of illegal activity or information, or is aware of facts or circumstances from which illegal activity or information is apparent; and (ii) upon obtaining such knowledge or awareness, fails to act expeditiously to remove or to disable access to the information.

The Asian Trade Centre (ATC) is the premier regional thought leader, advocate and educator for trade in Asia. ATC works directly with both governments from around the world, companies, think tanks, foundations, non-governmental organizations, aid agencies and serves as the resource for trade-related activities in Asia.

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*Annex: ISP Safe Harbor Provisions*

1. The Parties recognise the importance of facilitating the continued development of legitimate online services operating as intermediaries. Accordingly, each Party shall establish or maintain appropriate safe harbours in respect of online services. This framework of safe harbours shall include limitations in its law that have the effect of precluding monetary relief against Internet Service Providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf.

2. The limitations described in paragraph 1 shall include limitations in respect of the following functions:

- (a) transmitting, routing or providing connections for material without modification of its content or the intermediate and transient storage of that material done automatically in the course of such a technical process;
- (b) caching carried out through an automated process;
- (c) storage, at the direction of a user, of material residing on a system or network controlled or operated by or for the Internet Service Provider; and
- (d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

3. A Party may prescribe in its law additional conditions for Internet Service Providers to qualify for the limitations described in paragraph 1(b).

- (a) With respect to the functions referred to in paragraph 2(c) and paragraph 2(d), a Party may condition these limitations on Internet Service Providers expeditiously removing or disabling access to material residing on their networks or systems upon obtaining actual knowledge of the copyright

infringement or becoming aware of facts or circumstances from which the infringement is apparent, such as through receiving a notice of alleged infringement from the right holder or a person authorised to act on its behalf.

- (b) An Internet Service Provider that removes or disables access to material in good faith under subparagraph (a) shall be exempt from any liability for having done so, provided that it takes reasonable steps in advance or promptly after to notify the person whose material is removed or disabled.

4. Each Party shall provide a system for counter-notices, which shall include a requirement that the Internet Service Provider restore material subject to a counter-notice, unless the person giving the original notice seeks judicial relief within a reasonable period of time.

5. Each Party shall ensure that monetary remedies are available in its legal system against any person that makes a knowing material misrepresentation in a notice that causes injury to any interested party as a result of an Internet Service Provider relying on the misrepresentation.

6. Eligibility for the limitations in paragraph 1 shall not be conditioned on the Internet Service Provider monitoring its service or affirmatively seeking facts indicating infringing activity.

7. The Parties understand that the failure of an Internet Service Provider to qualify for the limitations in paragraph 1(b) does not itself result in liability. Further, this Article is without prejudice to the availability of other limitations and exceptions to copyright, or any other defences under a Party's legal system.