

# Legal updates in ITC Law

Decree No. 72

Social Media – Opportunities and Constraints

Vietnamese Legal Trends

Andrew Fitanides – Baker & McKenzie

This presentation has been prepared for clients and professional associates of Baker & McKenzie. Whilst every effort has been made to ensure accuracy, this presentation is not an exhaustive treatment of the area of law discussed and no responsibility for any loss occasioned to any person acting or refraining from action as a result of material in this presentation is accepted by Baker & McKenzie.

Baker & McKenzie (Vietnam) Ltd., a limited liability company, is a member firm of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organisations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

© 2013 Baker & McKenzie (Vietnam) Ltd.



## Decree No. 72

- Decree No. 72/2013/ND-CP, “On management, provision and use of Internet services and online information”
- Part of a larger effort by Vietnamese authorities to develop policies and regulations for the Internet in Vietnam
- Perceived by many in business and the foreign press as onerous and impractical



## Decree No. 72

- Major elements of Decree No. 72
  - 1) Cross-border supply of “public information”
  - 2) Local server requirements for: online social networks, general information websites, mobile telcoms network-based services and online games services.
  - 3) Online games – Cross-border supply is not allowed
  - 4) Licensing requirements – online social networks, general information websites and “G1 type” online games services



## Decree No. 72

- Major elements of Decree No. 72 (continued)
  - 5) Registration requirements for: mobile telcoms network-based services and certain online games services
  - 6) Licensing/registration requirements contemplate that companies are established in Vietnam
  - 7) Online social network service suppliers must collect accurate personal information before allowing users to create personal sites (blogs) or post information on social networks
  - 8) “Private information” protected

# Affected industries and requirements

Affected industries	Local server requirements	Local entity requirements	Licensing requirements	Registration requirements	Prohibition on cross-border supply?
Online social networks	X	X	X		
General information websites	X	X	X		
Mobile telecoms network-based services	X	X		X	
Online games services	X	X	X <sup>1</sup>	X <sup>2</sup>	X

1. Applies only to “G1 type” online games services
2. Applies only to “G2, G3, and G4 types” online games services



## Decree No. 72

- 1) Cross-border supply of “public information”
  - Requires foreign entities that supply “public information” on a cross-border basis to comply with the “relevant rules” of Vietnamese law.
    - “public information” defined broadly
    - “relevant rules” not defined
    - tasks the Ministry of Information and Communication (MIC) with developing detailed regulations



## Decree No. 72

- 2) Local server requirements for: online social networks, general information websites, mobile telcoms network-based services and online games services.
  - An entity must locate at least one server in Vietnam to:
    - establish an online social network
    - establish a general information website
    - supply content services on a mobile telcoms network
    - provide online gaming services
  - Unclear whether applicable to off-shore providers

## Decree No. 72

### 3) Online games – local entity requirement

- Foreign entities must establish a local enterprise
- Defines “online game service supplying enterprises” as entities established in Vietnam
- May amount to a prohibition on the cross-border supply of online games
- Enforcement against users or non-compliant off-shore gaming services providers (blocking access, etc.)
- Tasks MIC with developing regulations for “virtual items”





## Decree No. 72

- 4) Licensing requirements – online social networks, general information websites and “G1 type” online games services
  - Application to off-shore providers unclear for online social networks, general information websites



## Decree No. 72

- 5) Registration requirements for: mobile telcoms network-based services and certain online games services
  - Categorizes types of online games and registration procedures for each of them



## Decree No. 72

- 6) Licensing/registration requirements contemplate that companies are established in Vietnam
- In order to fulfil the licensing and registration requirements, an applicant must be established in Vietnam
  - As a result, it is unclear whether an off-shore entity must create an entity in Vietnam before providing social network services or general information to users in Vietnam



## Decree No. 72

- 7) Online social network service suppliers must ensure that users provide accurate personal information before allowing them to create personal sites (blogs) or post information on social networks
  - Unclear whether suppliers must verify the accuracy and completeness of personal information before or after accepting new members

## Decree No. 72

### 8) “Private information” protected

- creates categories of “private information” and “public information” with corresponding responsibilities for data custodians
- Private information is defined as including: “online information that a person or **an organization** does not publicize or only publicizes to a group of recipients that are identified.”

# Decree No. 72

## – Controversies:

- 1) Perceived prohibitions on the posting of “general information” on “personal websites”
  - “General information is information collected from multiple sources about politics, economics, culture and society.” (Art. 3.19)
  - “Personal websites” are defined to include those “established via social networks” and that do not “post general information.”(Art. 20.4)
  - According to the MIC - distinguishes between personal and de facto, and unlicensed, news websites

# Decree No. 72

- Controversies:
  - 1) Cross border provision of “public information” which is accessed by Vietnamese people or people in Vietnam must comply with Vietnamese law
    - Very general
    - Tasks the MIC to specify regulations on the cross-border provision of “public information”



# Social Media – The Opportunities and Constraints

- Degrees of social engagement:
  - Presence – static presence and promotion
  - 1-way push – active gains (“likes” and “recommends”)
  - 2-way interactive – increased personalization and recall
  - Engagement – dedicated CRM, feedback, monitoring
  - Big Data and Behavioural Analysis – data mining and social analysis

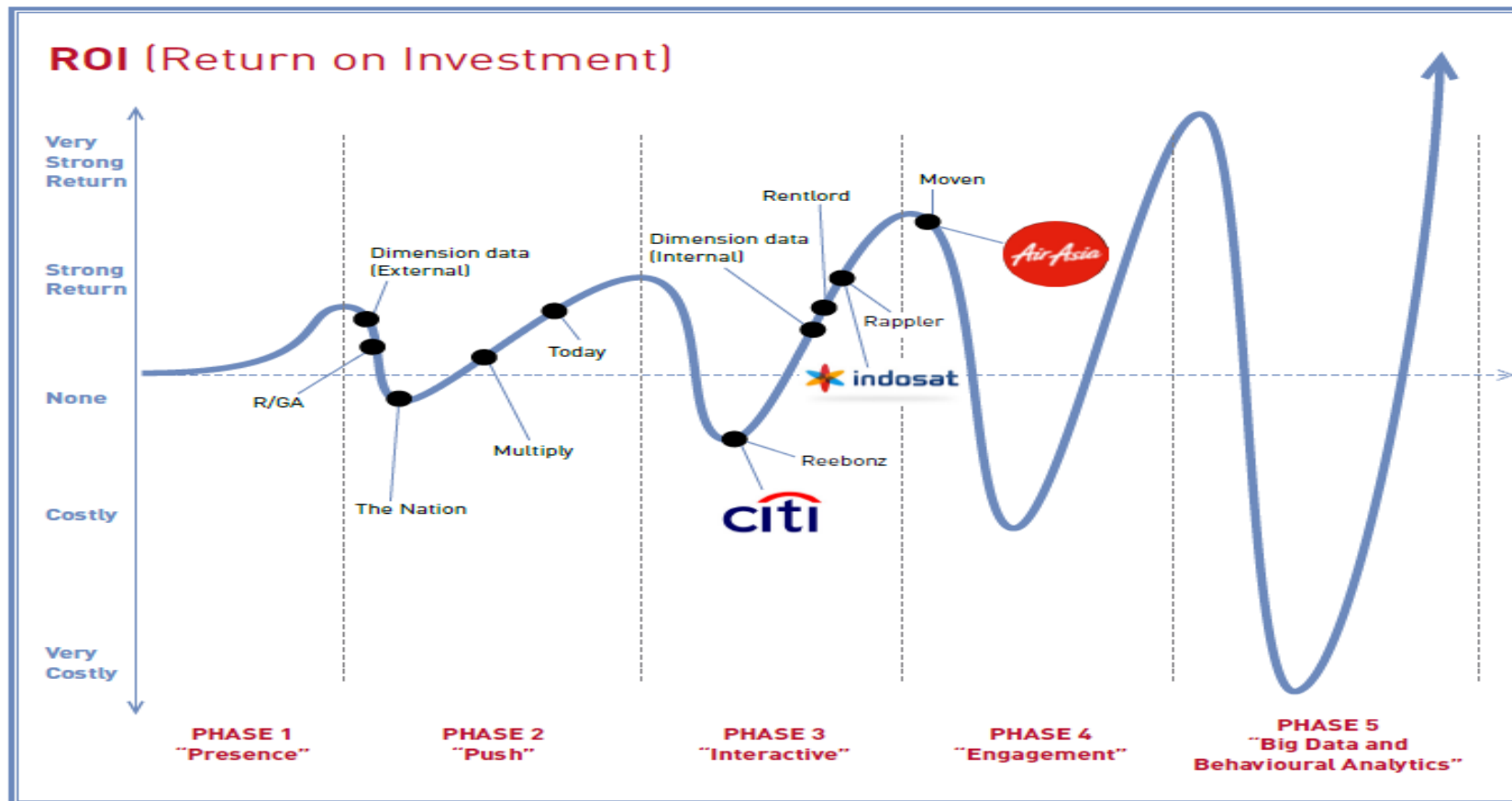




# Social Media – The Opportunities and Constraints

- Return on Investment (ROI) of social media
  - Not abstract, can be measured
  - ROI proportional to investment and commitment

# Social Media – The Opportunities and Constraints





# Social Media – The Opportunities and Constraints

- As level of engagement increases, so do rewards and risks
- In Vietnam, as laws and regulations catch up, compliance costs and legal risks will as well
- Need for a well thought out strategic investment in social media that matches business needs



# Vietnamese and Regional Trends

- Vietnamese governmental interests driving ICT law trends.
  - Vietnamese commercial and tax authorities want to regulate and tax the large and growing e-commerce, online gaming and social networking ecosystems, that are (frustratingly for Vietnamese authorities) often conducted on an off-shore basis.
  - The Ministry of Information is tasked with monitoring and controlling the content and security of information on networks - including the Internet.
  - The E-Commerce Decree and the Draft Law on Information Security are each characteristic of these motivations.