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## AMCHAM ISSUE BRIEF

# KAZAKHSTAN ONLINE PLATFORMS AND MASS MEDIA LAW AMENDMENTS

### KEY ISSUES AND RECOMMENDATIONS

On December 4, 2025, the Ministry of Culture and Information published draft amendments to the Law on Online Platforms and Mass Media aimed at strengthening mechanisms to counter unlawful content and regulate audiovisual platforms. We are grateful for the opportunity to provide comments and recommendations prepared by the Digitalization Committee of the American Chamber of Commerce (AmCham) in Kazakhstan, whose members include the world's most innovative companies.

AmCham fully supports the objectives of protecting minors and ensuring information security. At the same time, several provisions, in their current form, may introduce unintended legal uncertainty and complexity for the digital platforms that undermine these objectives.

These measures could create operational challenges for global technology companies and affect Kazakhstan's progress in the presidential initiative to transform Kazakhstan into a digital state. Furthermore, ensuring that regulatory frameworks remain interoperable with those of leading digital jurisdictions is essential to maintain Kazakhstan's global competitiveness and reputation as a secure destination for investment.

In particular, while the draft amendments replicate certain mechanisms found in frameworks like the EU Digital Services Act, the proposed requirements may impose a more onerous compliance burden than exists in international best practices. Internationally recognized models for fostering digital innovation and growth suggest that rigid registration, authorization, or licensing requirements for audiovisual service providers can create unnecessary administrative bottlenecks.

Transposing complex and resource-intensive compliance regimes onto developing digital markets often leads to disproportionate barriers to entry or significant compliance costs that discourage the launch of new, advanced tools. As an alternative to rigid licensing and authorization models, AmCham suggests that Kazakhstan consider a "bespoke" approach that integrates the internationally recognized frameworks of leading digital leaders. Adopting these open-market standards would help secure Kazakhstan's digital space while solidifying its reputation as a competitive destination for global technology investment.

AmCham proposes to consider the following amendments to the draft law: to align with international best practices:



1. **Clarify Legal Presence Requirements:** Amend Article 9 to confirm that the appointment of a legal representative satisfies compliance obligations, without requiring the registration of a physical representative office or imposing strict “domestication” requirements. A representative office does not meaningfully alter the interactions between the state and a platform, but it does expose businesses to additional legal and tax risks in Kazakhstan and may discourage innovation. Instead of requiring a representative office registration, the law may clarify rights and obligations of the legal representative.
2. **Recognize Tech Safety Controls as the Primary Standard for Minor Protection:** Reconsider the blanket prohibition on user registration for individuals under 16. Instead, we recommend endorsing platforms developing relevant tech-enabled protection mechanisms, such as parental control tools, teen accounts, and restricted interaction features, and supporting digital literacy programs nationwide. The industry-led solutions offer more effective, practical protection for children than a state-driven age-gating, which poses significant technical and legal challenges to enforce, and denies children access to education and socialization opportunities online.
3. **Refine Audiovisual Platforms’ Definitions and Clarify Legal Presence Requirements:** The law should clearly distinguish between linear broadcasting, video-on-demand (VOD), and user-generated content (UGC) to reflect different business models and risk profiles. The law should explicitly exempt non-media entities (e.g., banking apps, corporate training sites) to ensure regulation is fit for purpose. In line with recommendation 1, requiring a local presence as opposed to a local representative is excessive regulation with no tangible benefit.
4. **Rationalize Verification & Liability:** From the perspective of digital platforms, some requirements may be impossible to meet due to legal and technological considerations. Therefore, the responsibility for any mandated content verification (including educational credentials and occult disclaimers) should be placed solely on content creators. Platforms must be shielded from liability for user self-declarations, and educational credentials should not be a precondition for posting except for regulated professions affecting public safety. A risk-based tiered approach should be considered, with strict verification for regulated professions and self-declaration for knowledge economy content.
5. **Provide a minimum six-month grace period:** To ensure proper implementation, this timeframe should be supported by consolidated guidelines containing clear definitions, workflows, and templates to assist with compliance.

We stand ready to share our international expertise and engage in a constructive dialogue with the Government of Kazakhstan. Establishing a structured consultation process with online platforms would help ensure that the amendments are technically feasible,

economically proportionate, and aligned with both national policy goals and global innovation standards.

## **PROBLEM STATEMENT**

On December 4, 2025, the Ministry of Culture and Information of the Republic of Kazakhstan published the draft law "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Issues of Online Platforms and Mass Media" for public discussion. This legislative initiative aims to implement the Presidential instructions of January 28, 2025, to establish a robust framework against unlawful content and regulate audiovisual platforms. Following a comprehensive review of the proposed legislation, the AmCham business community highlights multiple areas where refinement could enhance safety outcomes and the investment climate. A summary of these key concerns to be addressed follows below:

**1) Legal Presence and Investment Considerations:** The draft amendments to Art. 9 of the Law on Online Platforms introduce language requiring the appointment of a legal representative *"and (or)" the registration of a branch/representative office for platforms with over 100,000 average daily users*. This phrasing creates ambiguity regarding whether a full physical presence is mandatory.

- **Administrative and Tax Burdens:** If imposed, a mandatory requirement to register a representative office creates administrative burdens and additional legal and tax exposure. This is economically redundant, as foreign platforms already comply with VAT obligations for electronic services. Similarly, registration of a representative office does not add any substantive value to the communication with the state authorities. For instance, content takedown and moderation requests are handled by distributed global teams, whereas a local representative office only adds a compliance burden and exposes platforms to additional legal and tax risks in Kazakhstan. In this regard, we believe that instead of demanding a representative office, the law may clarify rights and obligations of the legal representative.
- **Market Attractiveness:** The decision to establish a local presence is typically driven by market maturity and companies' business needs. Strict "domestication" mandates may introduce legal liabilities that are incompatible with global technology platforms' operating models. When compliance costs and risks become disproportionate to market potential, global technology companies might consider deprioritizing the market for new product launches and updates. This, in turn, could risk delaying the launch of advanced tools that Kazakh businesses rely on to compete globally.
- **Institutional Ambiguity and Sovereign Risk:** The draft grants the "Authorized Body" broad powers to monitor platforms and restrict access based on administrative discretion. In our view, without objective legal criteria for what constitutes a violation, this creates unpredictability. For global investors, this ambiguity represents a

"Sovereign Risk," the concern that business operations can be halted by a subjective administrative decision rather than a transparent judicial process.

**2) Prohibition of Registration for Minors (Under 16):** Global experience with age restrictions on social media users has already demonstrated that such measures have extremely limited effect on user safety. A complete ban on registration for users under 16 (with the exception of instant messaging services) not only creates technical and legal difficulties but also has obvious negative consequences:

- **Potential Adverse Safety Effects:** Strict bans for U16s risk creating a more dangerous digital environment. Incentivized to bypass controls through VPNs or misrepresent age, many minors may migrate to less established, unregulated platforms that lack robust content moderation. Crucially, for those who remain on regulated platforms by falsifying their age, the ban effectively strips away built-in protections: these "hidden" minors will be treated as adults. Parents and users themselves will lose access to critical safety tools, age-appropriate filters, and parental supervision, thereby increasing their exposure to unsuitable content.
- **Impact on Human Capital Development:** Research suggests that adolescents benefit from graduated digital autonomy to build resilience, media literacy, and creative skills. Rigid restrictions may impede the development of essential digital competencies that are increasingly critical for participation in the modern workforce. Instead of attempting to shield those under 16 from the digital age entirely, the common objective of regulators and the industry should be to proactively prepare them for it through collaborative digital literacy campaigns.
- **Procedural Uncertainty in the Definition of "Cyberbullying":** In our view, the requirement to remove content deemed to be cyberbullying within 24 hours (Art. 18-1) lacks procedural clarity, as it does not specify which body is to determine content as cyberbullying and on what basis. Assigning this quasi-judicial function to the regulator could create liability risks for platforms, forced to comply with administrative orders without due process.

**3) Broad Definition of "Audiovisual Platforms" and Licensing Mismatch:** The new definition of "Audiovisual Platform" (Art. 1, sub-para 3-2 of the Law on Mass Media) appears overly broad, covering any software used to organize the distribution of "audiovisual channels" or "online cinemas." That said, the definition does not explicitly distinguish between linear broadcasting services, video-on-demand (VOD) services, and user-generated content (UGC) platforms, despite their fundamentally different architectures, business models, consumption behavior and risk profiles.

- **Risk-based Approach and the "Accidental Media" Trap:** The definition and subsequent requirements fail to explicitly distinguish between linear broadcasting,



video-on-demand (VOD), and user-generated content (UGC). This lack of a "Proportionality Test" risks capturing standard corporate websites, banking apps, and internal training portals. For example, a bank app hosting video tutorials could be classified as an "Audiovisual Platform," triggering mandatory government registration. This creates a massive administrative burden for the government to oversee thousands of "accidental" media entities and discourages digital innovation. Beyond this "accidental media" trap, the draft lacks acknowledgment of differences in media services themselves. Linear broadcasting, specifically when using scarce spectrums, VOD and UGC services provide different business models, consumption behavior, and risk profiles. International benchmarking proved that any level of regulation may only be informed by the scarcity, public interest and pervasiveness rationale and the risk a particular service and business model might come with. International benchmarking particularly shows that prior authorization, registration or licensing is not required to provide safe and lawful services.

- **Unintended "Operator" Status:** By unintentionally classifying VOD catalogs and playlists as "channels," the law risks reclassifying streaming services as "Audiovisual Channel Distribution Operators" (Sub-para 3-4). This potentially imposes a broadcasting licensing regime on IT platforms, creating technical and compliance burden for digital platforms that may prevent companies from bringing their services to the market, supporting local digital economy. We believe that any level of regulation should correspond with the potential risk of a certain business model.
- **Contradictory Obligations:** The draft appears to create a potential conflict between the Law on Mass Media and the Law on Cinematography. The latter mandates that Online Cinemas appoint a Legal Representative, whereas the Mass Media Law classifies these same entities as "Operators" requiring a License. Since obtaining a distribution license in Kazakhstan typically mandates a local legal presence, foreign platforms are effectively deprived of the "Legal Representative" pathway and are instead compelled into full local incorporation, given the aforementioned risks associated with this approach.

**4) Operational Challenges of Content Verification:** The proposed amendments introduce multiple verification and liability requirements that, in their current form, are technically impossible to implement at the scale of modern digital platforms. By imposing vague definitions without clarifying the specific duty-holder, these provisions risk creating a compliance deadlock.

- **Educational Content:** The draft law requires that any "educational courses or teaching materials in one field or another" include the proof of creator's professional qualifications. This overly broad and legally ambiguous definition captures informal tutorials and peer-to-peer advice. That said, professional expertise, especially in



innovation, tech, and entrepreneurship, can come from practical experience and may not be reasonably linked to a particular “educational” background or diploma. We believe that the requirement conflicts with Article 37(2) of the Law on Education, which limits regulated “non-formal education” to activities issuing official certificates. Furthermore, there is no unified database for educational credentials in Kazakhstan that platforms could use to verify these claims and requiring platforms to validate the authenticity of diplomas for millions of users is operationally and technologically unfeasible.

- **Occult Services and Intermediary Liability:** The definition of "occult or similar services" lacks legal precision. The text does not specify whether the obligation to post disclaimers lies with the content creator or the platform. If interpreted as a platform obligation, this shifts liability to the intermediary for subjective content that cannot be reliably identified or categorized through moderation tools, imposing unnecessary technical and procedural burden on platforms.
- **De-anonymization and Data Clarity:** The requirement for users with over 5,000 subscribers to submit identifying information to the authorized body (Art. 16) lacks necessary legal certainty. The draft does not define the specific scope and types of data platforms would be required to collect or verify, raising significant conflicts with privacy standards and data minimization principles. While the draft implies that users register with the regulator, this creates a considerable secondary burden on platforms. Platform operators would be forced to process thousands of registration notifications and ensure that every single account of a registered user is accurately marked and labeled in real-time.

## PROPOSED RECOMMENDATIONS

To ensure the legislation achieves its safety and information security goals while maintaining a favorable investment climate, AmCham member companies recommend the following measures:

1. **Clarify Definition and Legal Presence Requirements:**
  - o To amend Article 9 of the Law on Online Platforms and relevant articles of AV regulation, including revising the ambiguous "and (or)" phrasing to explicitly confirm that it does not mandate a physical corporate presence ("strict domestication") for digital platforms. Given Kazakhstan's goal to become a regional digital hub and decentralized operating models of global technology companies, requiring a local representative office introduces unnecessary entry barriers.
  - o To replace subjective administrative monitoring rules with objective legal standards. Restricting platform access should be clearly defined as a "measure



of last resort" subject to judicial review, ensuring due process, remediation and appealing procedure, and reducing perceived sovereign risk.

**2. Recognize Embedded Safety Controls as the Primary Standard for Minor Protection:**

- To remove or reconsider the blanket prohibition on registration for users under 16 while endorsing online platforms implementing tech-enabled tools for child protection online.
- To cooperate with industry to formally recognize existing platform-led mechanisms, such as "Teen Accounts," robust parental controls, and restricted interaction features, as the primary standard for compliance.

**3. Refine Audiovisual Regulation:**

- To amend the definition of "Audiovisual Platform" to explicitly exclude internal corporate resources, banking apps, and SME professional sites where video is ancillary to the core service. This will ensure that regulation is targeted and proportionate, targeting providers of mass entertainment content.
- To clearly distinguish between linear broadcasting, VOD, and UGC. Explicitly exempt foreign online cinemas from the requirement to register a local legal entity provided compliance with the requirement to appoint a legal representative for interacting with the authorized body, resolving the conflict with the Law on Cinematography.

**4. Rationalize Content Verification and Liability:**

- To clarify that educational credentials are optional user information rather than a precondition for posting, except where credentials are legally mandated for regulated professions affecting public safety.
- Responsibility for verifying any mandatory credentials or labeling requirements should lie exclusively with the content creator, not the platform. Platforms must be shielded from liability for the accuracy of self-declared credentials or uploaded documents.

**5. Implementation and transition:**

- To provide a phased implementation timeline including a grace period of at least six months to ensure proper enforcement of the legal changes.
- To have the authorized body publish consolidated guidelines containing clear definitions, workflows, and templates to assist with compliance.