

# Regulating Online Content

By Izwan Iskandar Ishak

(This article was published in the New Straits Times on 30<sup>th</sup> April 2007)

One of the key points mentioned in the Malaysian Cyber Law is that there will be no censorship of the Internet. This can be seen from Section 3 of the Communications and Multimedia Act 1998 (CMA 1998) where it says "Nothing in this Act shall be construed as permitting the censorship of the Internet".

However, this does not mean that the Internet is above the law and the users may use it by all means. It is, despite the freedom it gives to the people, subject to the laws and regulations of the country, especially when it is contrary to the local society's norms and acceptable practices.

TRADITIONAL VERSUS CYBER LAWS. One of the measures taken by the Malaysian Government in regulating Internet content is imposing the Internet service provider (ISP) and the telecommunications companies to have optional filtering services for its users. This step, however, should not be construed as contravening the law, as it is definitely not censoring. It is only an option coming from the users to choose what they want to view.

The established traditional laws are always applicable to online content whenever the case permits. Such laws are designed to cater to the subject matter regardless where it is committed - online or in the real world.

For instance, the Seditious Act 1948 and the Defamation Act 1957. The former Act provides punishment of sedition. It restricts any action which has seditious tendency, be it words or publications. It empowers the authority to initiate a legal proceeding if the circumstance requires.

Similarly, Defamation Act 1957 relates to the issue of libel, slander or malicious falsehood. It is humbly submitted so that it can be used to regulate online defamatory content as well. Although traditional laws may be used to regulate online content, it is advisable to look at our own cyber laws because they were designed to handle the specific issues emerging from the Internet.

An example would be the CMA 1998. It is an Act to regulate the communications and multimedia industries in Malaysia.

When discussing about content, it is important to look at section 6 of the CMA 1998, where it states that content means any sound, text, still picture, moving picture, audio-visual or tactile representation, which can be manipulated, stored, retrieved or communicated. Further, in regulating online content, section 211(1) of the Act says: "No content applications service provider, or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person".

By virtue of section 211(2) of the same Act, any person who contravenes the abovementioned section shall commit an offence and if convicted, shall be liable to a fine not exceeding RM50,000 or to imprisonment for a term not exceeding one year or both.

The Act further empowers a Content Code to be drafted to deal with offensive or indecent content. The Content Code will provide guidelines, standards and procedures of content by service providers through self-regulation. However, compliance to this code is voluntary.

According to the Content Code, a subscriber shall not provide a prohibited content online as this is contrary to the terms and conditions of the Internet access service provider's (IASP's).

In the event where a subscriber refused to follow the terms and conditions of the Web site by providing prohibited content as defined by the Code, the IASP has the right to withdraw or block the subscriber's access or even to remove the prohibited content. This must be done with the procedures laid down by the Code.

It is encouraged that the IASP should first ask the subscriber to remove the prohibited content by giving notice before terminating the subscriber's access account.

WHAT OTHER COUNTRIES ARE DOING. In Australia, prohibited content shall be classified as such by a classification board. The development towards

monitoring online content is also done by self- regulation, where the country develops her own code of conduct for Internet industries.

A rather strict approach may be observed in China where it implements access control for ISPs, Internet content providers, Internet subscribers and cybercafe users. It has always been part of China's Internet filtering system to supervise the Internet. Under the State Council Order No 147, a regulation governing Internet use was prepared. It is called the Computer Information Network and Internet Security, Protection and Management Regulations.

Under this regulation, Article 4 prohibits individual from using the Internet to harm Internet security, disclose state secret, harm the interest of the state or society or of a group, or to take part in criminal activities.

One of the challenges in regulating online content relates to the borderless nature of the Internet itself.

The effect of legislation and regulations are territorial in nature. An act done outside the jurisdiction may not be controlled effectively.

Among the ways to overcome this is to have collaboration at the international level so that regulating online content can be more efficient. International regulations should be able to cover the weaknesses of the territorial effects of national regulations.

CONCLUSION. Regulating Internet content may be one of the ways to deter the people from doing wrongful act in the cyber world, but the most important measure is to educate the society to use the Internet wisely. The Internet should be used for the greater good of the society, and not be a platform to post illegal materials or information offensive to others.

(c) 2007 New Straits Times.

---

This article is available online at  
<[http://www.redorbit.com/news/technology/918615/regulating\\_online\\_content/index.html](http://www.redorbit.com/news/technology/918615/regulating_online_content/index.html)>