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## **Content Regulation in Malaysia Unleashing Missiles on Dangerous Web Sites[\*]**

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### **Introduction**

When Malaysia embarked into its gigantic multimedia super-corridor project in 1995, the equivalent to the US Silicon Valley, one of her promises to her foreign counterparts is that there will be no censorship on the Internet. This assurance was embodied in section 3 (3) of the Communication and Multimedia Act 1998 that states “nothing in this Act shall be construed as permitting the censorship of the Internet”.

However, the open and democratic nature of the internet facilitates all kinds of abuses. Obscenity, hatred speech, defamatory messages, indecent content and other type of harmful contents flourish in the Internet. For this reason, many countries are now regulating speech on the Internet, just like what they have traditionally done on all other types of mass media. To claim that the Internet must be left free from the shackles of law and regulation would not just create a lawless wild-wild-west but also channels all forms of illegal conduct and speech to migrate to the ‘unregulated’ Internet.

Reflecting these concerns, many countries and regions are now re-examining their stand on Internet. The European Parliament Council has set an important precedent by publishing a report on ‘illegal and harmful content on the Internet’ [1]. One of the most important suggestion with regards to illegal content is to maintain consistency: What is illegal offline remains illegal online. As the report clearly advocates, the presence of illegal and harmful content on the Internet has direct repercussions on the workings of the Internal Market. The report has further identified types of harmful content according to its effect; such as those that affects national security, safety of minors, protection of human dignity, economic security, information security, protection of reputation and intellectual property.

The same trend is now seen in Malaysia. Despite all the assurance that the government will not censor the Internet, it is beginning to be accepted that leaving the Internet absolutely free from the dictates of state control will not only be undesirable but it may also frustrate the national information policy. Dato’ Rais Yatim, the Law Minister, for example has once announced that the government will unleash another set of missiles on Internet publications that threatens the country’s security [2]. Citing the increase of ‘hate messages, seditious writings and e-mail advocating religious dissent and others as examples of such publications, the Minister lamented that certain quarters are taking advantage of the government’s no censorship policy.

In keeping with these aspirations, a content Code was recently drafted which sets out the guidelines and procedures for good practice and standards of content disseminated to audiences by service providers in the communications and multimedia industry in Malaysia. This comprehensive Code,

seeks to identify what is regarded as offensive and objectionable while spelling out the obligations of content providers within the context of social values in this country. The code, which is a blueprint of self regulation, enables the government to keep up with its promises to steer away from intruding into the Internet.

This paper will examine the content of the Code vis a vis other type of state form of control such as the Printing, Presses and Publications Act 1984 and the Sedition Act. Secondly, the effectiveness of the Code to iron out all the abuses mentioned also leaves a lot to be desired. This can be seen from the recent events whereby several persons have been taken in under the Internal Security Act for alleged circulation of e-mails of terrorist attack on some popular shopping malls in Malaysia. The paper will also examine the scheme of control in other relevant countries, in particular Australia, as it has been quoted as a potential 'example' for Malaysia to emulate. The Singapore Code of Conduct for the Internet is also an interesting example of a more stricter regime and thus will also be highlighted for purposes of comparison[3].

Whatever the method of control, the most important thing is that it must reach its target. The recent arrest of Internet rumour mongers under the draconian Internal Security Act pose a challenge to the idea of adopting a self-regulation regime. If the idea was to create certainty, stability and responsibility in the industry, they must be allowed to control the game with their own referees. Perhaps, when the security of the nation is at stake, it is a different ball game altogether and the policemen will have to come in.

### **Self regulation – the Malaysian style.**

It has to be acknowledged that the rigid system of censorship as practised in the case of broadcasting, printing press and publication is not suitable in the cyber-world[4]. Internet is a pull medium and not a push medium, therefore online users choose what they want to see, read and hear on the Internet and therefore to a certain extent, contribute to online content in their own personal capacity. Responsibility of the content therefore lies primarily with the creator of the content. Moreover, in practical terms, it is not only impossible to filter all messages that run through the Internet but the cost involved would be prohibitive as well.

Thus it is not surprising that some countries opt for self regulation and Industry Code as an indirect means of regulating content. Instead of imposing on industry players to proactively tracks down illegal and harmful material, the basis of liability rests upon complaints forwarded either by individuals or other industry players. The advantage is that there is no single authority that has been entrusted with the task of screening the Internet of any possible harmful, illegal and unlawful content. Such approach will dispel any possibility of individuals, governments or organisations that seek to obtain too strong an influence on either the control or the provision of information services [5].

In Australia for example, with the amendment of the Broadcasting Act[6], the government has set up a Complaints Bureau under the aegis of the Australian Broadcasting Authority (ABA) that determines complaints on prohibited content[7]. Based on this model, the Communications and Multimedia Content Forum of Malaysia recommended for the establishment of a similar set-up; a Malaysian Complaints Bureau. This Bureau comprises of an appointed Chairman and six members of the Forum, one each representing Advertisers, Audiotext Service Providers, Broadcasters, Civic Groups, Content Creators/Distributors and Internet Access Service Providers. Detailed guidelines on the procedure of complaints are laid down in the Code. The most important is that all complaints received from the public must be made in writing. If possible, the part of the Content Code that has been breached together with supporting documents or details of the alleged misconduct should be made clear to the Bureau. In exercising its duty, the Complaints Bureau may also hold an inquiry to determine the merit and legitimacy of a complaint. In such inquiry, the Bureau has power to request not only documentary evidence but also witnesses to support the complaint[8].

In comparison, the particulars that are needed to support a complaint in Australia[9], is by far more detailed. They include:

- identification of the Internet content; and
- set out how to access the Internet content (for example: set out a URL, a password, or the name of a newsgroup); and
- if the complainant knows the country or countries in which the Internet content is hosted, to set out the name of that country or those countries; and
- set out the complainant's reasons for believing that the Internet content is prohibited content or potential prohibited content; and
- set out such other information (if any) as the ABA requires.

Another interesting comparison is that the Australian Broadcasting Authority (ABA) may also investigate matters on its own initiative. This marks the major difference between the Malaysian approach and her Australian counterpart as in Malaysia, the Malaysian Complaints Bureau may only act upon complaint.

### **The Malaysian style of content regulation**

The Content Code is a model of self regulation among industry and is drafted by members representing all the key industries. Although compliance is voluntary, as it is the industry's own regulation, there is no perceived problem of lack of bindingness as this Code is drafted by the industry players to bind themselves. Compliance with the Code brings a number of benefits e.g. it will be a defence against any prosecution, action or proceeding of any nature, whether in court or otherwise[10]. As the likelihood of industry players of being sued or charged for hosting illegal or unlawful content is clear, taking note of their obligation under the Code will prove to be a wise choice.

The Code sets out guidelines on approved and prohibited content in Malaysia, especially with respect to broadcasting, online, audiotext hosting services, and closed content guidelines. As far as printed materials are concerned, the present guidelines under the Printing Presses and Publications Act 1984 will still be applicable.

Several general principles have been spelt out in the Code. These principles are reflective of the present national and policy objectives on our national information infrastructure. With such policy statement, it is clear that whatever policy objectives that we have with respect to traditional forms of mass communication, they are equally applicable to the Internet. To a certain extent, this is reflective of the EU approach that whatever is illegal offline is illegal online. These principles are:

- There shall be no indecent, obscene, false, menacing or offensive content.
- The need to maintain a balance between the desire of viewers, listeners and users to have a wide range of content options and access to information on the one hand, and the necessity to preserve law, order and morality on the other.
- The need to respect cultural, ethnic and religious, gender, socio-economic status diversity in Malaysia.
- Particular attention is to be given to content that is created for children and in which children are portrayed[11].

Under the Code, the term content is defined as "any sound, text, still picture, moving picture or other audio-visual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically[12]. The definition draws its origin from the definition of the term 'cyberspace message' in the Communication and Multimedia Act 1998[13].

However, not all content will be subjected to the Industry Code. With respect to online content, the following is excluded:

- Ordinary private and/or personal electronic mail other than bulk or spammed electronic mail;
- Content transmitted solely by facsimile, voice telephony, VOIP and which is intended for private consumption; or
- Content that is not accessible to the public whether freely, by payment of a fee or by registration, including (but not limited to) content made available content applications serviceable by way of a closed content application service or a limited content applications [14].

From the above provision, it is evident that bulk e-mail will also be subjected to the Code, in particular with respect to guidelines for advertisement. Arguably, bulk e-mails may be classified as private communication. As a result, direct marketers would have to be bound by industry guidelines on advertisement regardless of the format they use. In contrast, under the Australian Broadcasting Act, the term 'Internet content is defined to mean:

Information that:

- is kept on a data storage device; and
- is accessed, or available for access, using an Internet carriage service; but does not include:
- ordinary electronic mail; or
- information that is transmitted in the form of a broadcasting service[15].

As there is no specific exclusion for bulk e-mails, which are essentially online advertisements, they will be left out from the dictates of control.

## Prohibited Content

The Code has classified 'prohibited content' into 9 categories; they are

1. Indecent Content
2. Obscene Content
3. Violence
4. Menacing Content
5. Bad language
6. False Content
7. Children's Content
8. Family Values
9. People with Disabilities[16]

From a careful reading of these various categories of content, several observations can be made. Firstly, they all relate to three category of content; i.e. content that affect human dignity, protection of minors and within the wide rubric of morality and ethical values[17]. In comparison, the European Union through its report, Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, identifies a wide range of illegal, unlawful and harmful content which includes:

- . national security (instruction on bomb-making, illegal drug production, terrorist activities);
- . protection or minors (abusive forms of marketing, violence, pornography)
- . protection of human dignity (incitement to racial hatred or racial discrimination)
- . economic security (malicious hacking);
- . protection of privacy (unauthorised communication of personal data, electronic harassment)
- . protection of reputation (libel, unlawful comparative advertising)
- . intellectual property (unauthorized distribution of copyrighted works, e.g. software or music)[18].

Such narrower coverage is understandable, as explicit in the Code itself, other Malaysian laws on sedition, pornography, defamation, protection of intellectual property and other related legislation are to be complied with. However, it is unfortunate that those content were left out from the ambit of the Code as the notice and take down procedure can be an effective means of policing the Internet. What more, in this instance, the notice and take down procedure has not been adopted in any of these types of content, leaving the types of remedies available to the aggrieved party limited to the traditional remedies specified under their specific legislation.

## **Indecent Content**

Indecent Content is material which is offensive, improper and against current standards of accepted behaviour. This category is divided into two further grouping:

- Nudity and
- Sex and nudity.[19]

In a country where nudity is not something which is tolerated by the public, it is not surprising that nudity comes first in the list of prohibited content. As explained in the Code itself the reason why nudity is forbidden is because it offends accepted standards of decency. Some justifications have been drawn, in particular in the context of works of art, the culture of a particular society, for educational purposes or in the course of science or medicine.

In relation to portrayal of love scenes, it is acknowledged that love and passion are central theme to a significant portion of popular entertainment. However, only discrete portrayal of nudity is allowed when it is absolutely necessary to the story line or content context. The allowance of sexual scene is considered to be in extremely exceptional situation as even sexual innuendo and suggestive behaviour are restricted to the extent that it does not provoke disgust or cause shock and distress.

## **Obscene content**

By far, this category of content is far more objectionable than those under the category of 'indecent content'. Obscene content has been described as content that gives rise to a feeling of disgust because of its lewd portrayal and is essentially offensive to one's prevailing notion of decency and modesty. The test of obscenity is whether the content has the tendency to deprave and corrupt those whose minds are open to such communication. Among the classes of content that falls within this category are:

- Explicit sex acts/pornography.
- Child pornography, and
- Sexual degradation[20].

While love scenes that depicts discreet portrayal of nudity is tolerated, any explicit sexual scene is prohibited. As the Code reports, any portrayal of sexual activity that a reasonable adult considers explicit, and pornography is prohibited. One may wonder then if the two; explicit and pornography; are synonymous. With the current broadcasting and mass communication standard practised in Malaysia, no amount of explicit sexual content would be tolerated, even if they are short of pornographic. What more if the sexual scenes are combined with violence and sex crimes such as rape, statutory rape, bestiality; these are strictly prohibited. The portrayal of such scene through animation is equally prohibited.

Another major no-no is child pornography. The prohibition would include any form of sexual exploitation of children including 'the depiction of any part of the body of a minor in what might be reasonably considered a sexual context, and any written material or visual and/or audio representation that reflects sexual activity, whether explicit or not, with a minor.

The Code goes further to prohibit the portrayal of anybody as mere sexual objects or demean them in any such manner.

These prohibitions, as strict as they may be, would have to be seen in the context of the national policy on mass communication i.e. the need to preserve the social values and ethical fabric of the society, especially that the Eastern values are far more conservative and value laden than their Western counterparts.

## Violence

Depictions of violence are common in popular culture. To prohibit violence totally would be out of touch with reality. Thus, the Code allows the portrayal of violence as long as they are portrayed responsibly, and not exploitatively. However, certain violent content are prohibited within four broad groupings:

- Offensive violence,
- Imitable violence,
- Sexual violence, and
- Violence and young vulnerable audiences[21].

Portrayal of violence would be considered as offensive when such portrayal, whether physical, verbal or psychological, can upset, alarm and offend viewers. Portrayal of violence in the context of news reporting, discussion or analysis and in the context of recognized sports events are justifiable as these are depictions of the truth and not done for the sake of entertainment.

Imitable violence, meanwhile, refers to acts of violence that are imitated in real life. It is hard to distinguish this category from the rest that falls within the classification of violence content, as surely, most depictions of violence are culpable to imitation.

Sexual violence has been covered earlier on under the category of obscene content and its recurrence within this category shows how offensive such material is in the eyes of the Malaysian public.

The last category does not seem to be an independent category. Instead it repeats the rationale to the prohibition of violent content i.e. to protect the young audience from being influenced from portrayals of violence especially so that they are more vulnerable than adult .

## Menacing Content

The type of content that falls within this category is content that causes annoyance, threatens harm or evil, encourages or incites crime, or lead to public disorder. This includes hate propaganda which advocates or promotes genocide or hatred against an identifiable group or information which may be a threat to national security or public health and safety[22].

A good case to illustrate on this point is *Licra Et Uejf vs Yahoo! Inc and Yahoo France*, a decision of the Superior Court of Paris, which was rendered on May 22, 2000. In this case, the French Court has ordered a US sites from removing Nazi's souvenir item from its auction site. In France, any kind of glorification of Nazi would constitute a crime or illegal nuisance within the meaning of articles 808 and 809 of the New Code of Civil Procedure. The Court was of the opinion that the US corporation is in a position to identify the geographical origin of the site which is coming to visit, based on the IP address of the caller. Further it was the view of the Court that the US corporation will be able to prohibit surfers from France, by whatever means are appropriate, from accessing the services and sites the visualization of which on a screen set up in France.

This category is comparable to that of content which is likely to 'alarm public opinion' or 'is likely to be prejudicial to public interest or national interest under the Printing, Presses and Publication Act 1984. It will be interesting to see in the future how this provision will be invoked to control hate speech and anti government propaganda that is now flourishing in the Internet. In particular, whether the kind of control prescribed by the Code will be effective enough to iron out such content from the Internet.

## Bad language

The restriction against bad language includes expletives and profanity. Explicit within this category are:

1. offensive language,
2. crude references,
3. hate speech, and
4. violence[23].

The worst of the three, especially in the Malaysian context of multilateral society would be hate speech. In this instances, hate speech refers to any portrayal (words, speech, pictures, etc.) which denigrates, defames, or otherwise devalues a person or group on the basis of race, ethnicity, religion, nationality, gender, sexual orientation, or disability.

Violence occurs again within this section, again, reflecting the overall concern over the excessive use of violent scene and languages in popular entertainment.

## False Content

This would definitely be the most difficult type of content to be contained in the Internet. Such content has been described as content which contains false material and it likely to mislead, possibly due sometimes to incomplete information. The measures which the content providers would have to take to reduce false content are outlined in the code itself. Only two exceptions are drawn out of this category:

- satire and parody;
- where it is clear to an ordinary user that the content is fiction[24].

## Children's content.

Children here means those who are 14 years and below. Two important concerns are raised in respect to children's content:

- violence, and
- safety, security and imitable acts[25].

Considering such rigorous standards for children, it is questionable how the industry players are complying their parts to ensure that such contents are left out of children's reach.

## Social and ethical fabrics of the society.

The last two categories reflect that concern; i.e. the need to maintain and preserve family values; in particular with respect to gender issues. An explicit example is given with respect to women and men participating on equitable basis in the society[26]. The same concern applies with regard to disabled people. It is pointed out in the Code that reference to disability should only be included where necessary in the context and patronising expressions replaced by neutral terms[27].

## Specific Online Guidelines

The standards of liability depend on the degree of control one has over the complained online content. As made clear by the Code, a Content Subject is responsible when he/she has:

1. full knowledge of the substance of the content; and
2. control over the substance of such content[28].

The prohibition applies to those who ‘knowingly’ provide online prohibited content[29]. However, it is not immediately apparent what the standard of knowledge here means? Is it actual or constructive knowledge? What would the industry have to prove in order to dispel any allegation of knowledge or control?. Would the simple receipt of complaint on a certain content be indicative of knowledge? It would be interesting to see the approach taken by the Malaysian authorities in this issue.

To whom is the Code applicable to? Most of the industry players in the cyberspace would be subjected to the code, including but not limited to:

- Internet Service Providers
- Internet Access Service Providers
- Internet Content Hosts
- Web Page Developers
- Access providers of webcast and streamed content
- Online Content Aggregators
- Link Providers[30].

Inclusive in the list is a host of intermediaries that serve the Internet. Applying the policy that the degree of standard depends on the degree of control, it is evident that those who have little control over the content would have less stringent obligations under this Code, which includes Internet Access Service Providers, Online Content Aggregators and Link Providers.

To this end, the Code acknowledges that some providers may be innocent parties[31]. These parties are not responsible of the content that they carry but they are still expected to adhere to the measures outlined in the Code. From here, it is evident that two major defences that can be put up by the Code Subject includes:

- it is an innocent carrier; or
- it has complied with both the general and specific measures specified in the Code[32].

### **Measures expected of the industry players.**

At the outset, the Code reflects the concern that the measures which are recommended should be:

- i) technologically neutral;
- ii) fair; and
- iii) widely affordable and not adversely affect the economic viability of the communications and multimedia industry[33].

Generally, two types of measures are expected of the Code subject, depending on their degree of control; i.e. general measures and specific measures.

The general measures primarily revolves around the type of information that need to be provided:

- the types of tools available to assist users in filtering or controlling Online content
- User ethics in accessing and providing content over the Internet;
- Responsibilities of adult users over children under their care in relation to Internet use;
- Measures which can be taken by parents, guardians and teachers to control children’s access to Online content;
- Content provider ethics;
- This content code; and
- The appropriate channel to which a complaint regarding online content may be made, and the

procedures by which such a complaint is to be made[34].

These general measures only outline the kind of information and notice that are expected from the Code subject. It is part of the educational role the industry players play in assisting Internet users in making their choice and selection in terms of content and the technological tools that are available to filter content.

The Specific measures meanwhile covers:

- the duty of the Internet Access Service Provider (IASP) to impose conditions on their subscribers as to the suitability of their content; and their right to withdraw access, block or remove content in cases of violation of the Code. The latter right; i.e. block and removal can only be done in accordance with the procedures mentioned in the Code. This obligation is reflective of the notice and take down approach that has been adopted in the EU and the US.

Generally, the IASP will have to take down the prohibited content within a period of 2 working days from the time they receive notification from the Complaints Bureau.

### **Content Aggregator and Internet Content Host Providers**

Content aggregators are also expected to incorporate the specific measures indicated above[35]. Content aggregators are those who aggregates and/or purchase content. However, if they have editorial rights over the substance of content, they will be personally liable over the content. The same expectation is placed on the Internet Content Host Providers.

### **Link Providers**

Link providers are expected to remove link to sites containing prohibited content within 24 hours of notification by the Complaint Bureau[36].

As made clear by the Code, certain measures are not required. These include:

- provide rating systems for Online content;
- Block access by their users or subscribers to any material unless directed to do so by the Complaints Bureau,
- Monitor the activities of users and subscribers; or
- Retain data for investigation unless such data is rightfully requested by the relevant authorities in accordance with Malaysian law[37].

The uniqueness of the Malaysian style is that the industry players are not expected to adopt some kind of rating system or similar technological measures to ensure compliance with the Code. Action is only taken based upon Complaint. This is a fairer system as it is not subjecting any industry players to any kind of active pre-screening that inhibits freedom of expression and hampers the speed in which message travels in the cyberspace.

Despite that, adopting a classification or a rating system would assist the authorities in policing the Internet. In Australia, a classification system, equivalent to that adopted to broadcasting is adopted. For content hosted in Australia, it is considered to be prohibited if:

- the content has been classified RC (Refused Classification i.e. material that is illegal in any medium) or X (Sexually explicit material) by the Classification Board;
- the content has been classified R (material considered unsuitable for people under 18 years of age because of violence, language, sexual content, adult themes or for some other reason) by the Classification Board and access to the Content is not subject to a restricted access system

[38].

For content hosted outside Australia, the prohibited materials include RC (Refused Classification) and X (sexually explicit material) by the Classification Board. This difference takes into account the fact that if the content originates from Australia itself, there is a possibility of taking it down, while foreign content, the best method to deal with it is either to block it or use filtering devices. If the material is sufficiently serious (for example, illegal material such as child pornography), the ABA will refer the material to the appropriate law enforcement agency.

The Australian Broadcasting Authority (ABA) is also considering to adopt an Internet content labeling schemes compatible with the Platform for Internet Content Selection (PICS). Developed by the World Wide Web Consortium, PICS is a platform that has been recommended by the European Union in their communication paper[39]. In this respect, it is wise that the Malaysian authorities emulate the same classification system as this would enable greater cooperation in content control across the region.

Stemming the outflow of 'unsuitable content' requires the cooperation of all parties. From the illustrations given on this, the Content Code requires that that all parties must do their part. No one can claim that it is not within his/her control to do so, he/she is expected to do whatever is possible within his/her control. The last example is illustrative of this point:

Scenario 3:

If Z (an ISP) receives a notification from the Complaints Bureau, it must notify X (Content Host) to remove the content within a period ranging from 1 to 24 hours. The period prescribed is at Z's discretion. In this instance, Z gives X 12 hours to remove the content. X may either remove the prohibited content itself or direct W (third party content providers) to remove the content.

If the prohibited content is not removed within 13 hours, Z can suspend or terminate X's access to the Internet.

If X is not Z's subscriber, Z will not be required to take any measures[40].

However, in all three examples given, all the parties involved are Malaysians. The main weakness of the Content Code is that it does not regulate foreign parties. The Code, unlike the Australian system, does not stipulate the event of foreign content hosted by Malaysian industry players, nor local content hosted in foreign lands. In this manner, the Code fails to take into account of the borderless nature of the Internet. Nor is the Code considering the fact that Net-proprietors often forum shop in the Internet and place their server in locations out of reach of local laws and regulation.

## Caching.

Despite the earlier observation that the Code generally regulates content that affect borders on human dignity, protection of minors and within the wide rubric of morality and ethical values, one exception can be found in the context of caching. Caching is an act of reproduction and storage of content on a system or network by persons in the Internet industry to increase the efficiency of content transmission[41].

The Code provides that a person who undertakes to cache shall have a defence against copyright infringement by an act of reproduction and storage content of a system or network where:

- the content was made available online by a third party;
- the content is transmitted through the system or network to a user; and
- the reproduction and storage is part of an automatic technical process for the purpose of making the content available to users of the system.

The above provision can be found its origin from the US Digital Millennium Copyright Act 2000. [42] The inclusion of caching into the ambit of the code is commendable. However, such an exception does not exist in our Copyright law which leaves one to wonder whether this provision would be effective or not. Another apparent weakness of the Code is that it does not impose on the Code Subject the obligation to take down materials that are infringing copyright, unlike the position in the European Union.

## Conclusion

As promised by the government[43], the Code of Conduct consist of rules to regulate ‘offensive’ Internet content but it will not infringe on no-censorship policy. However, it remains to be seen whether these rules actually constitute those promised ‘unleashed missiles on dangerous web sites’ or not. Several reasons can be accounted for this. Firstly, unlike the Australian style, there is no mandatory reporting to the enforcement agencies and other regulatory bodies on illegal material (such as child pornography). In Australia, there are established procedures to report to the relevant authority in Australia and also overseas with the assistance of Australian police as a matter of urgency.

Secondly, the power of the Bureau is also very restrictive. In fact, in terms of sanction, the Bureau is empowered with the imposition of fines and other penalties (which are not specified under the Code). The Bureau does not have power to decree imprisonment for any breach of the Code. Other than that, the Bureau may refer the offending party to the Communications and Multimedia Commission for further appropriate action. In that sense, the Bureau does not play a watchdog to the appropriate authorities for other types of illegal and harmful content besides those classified under the prohibited content, when they are in the position to do that. The need for intra agency cooperation to iron out all unsuitable content is crucial.

The Code introduces the notice and take down procedure to stem out prohibited content. The list of prohibited content, however, is not as comprehensive as that recommended by the European Report. The EU approach is commendable in this instance for their horizontal approach, where all types of content will be subjected to the same notice and take down procedure.

Another major weakness of the Code is that there is no exemption for civil and criminal liability for anything done in compliance with the duties under Code unlike the stand taken by Australia.[44] In order to ensure that all parties exercise their duties without fear and favour, they should be exempted from any potential legal liability, especially in relation to anything done in compliance with the Code. The parties are also exposed to criminal liability, such as in relation to:

- the collection of information or material; or
- the possession of information or material; or
- the distribution of information or material; or
- the delivery of information or material; or
- the copying of information or material; or

the doing of any other thing in relation to information or material;[45]

Thus, it is important that all parties involved in the procedure are exempted from criminal liability. In Australia, all parties related to ABA that are involved in the process enjoy such exemption[46].

Despite all the inherent weaknesses, the Code reflects a concerted effort towards making the Internet a better information engine than what it currently offers. For that, the Multimedia and Communication Forum deserves a hearty praise for its commendable role in this effort.

[\*] the words used by the Law Minister, Dato' Rais Yatim. [\*\*] Ph.d (Lon), LL.M (Cantab), LL.B (IIUM).

[1] 'Illegal and harmful content on the Internet, Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions', available at <http://europa.eu.int>.

[2] Malaysiakini.com; an online journal. Thursday July 5, 2001.

[3] For a more detailed analysis on the Singapore Internet Code of Conduct, see Samtani Anil, legislation Comment, The Revised Internet Code of Practice, Asia Business Law Review, No. 20, April 1998, p.55.

[4] See the Printing Presses and Publications Act 1984, the repealed Broadcasting Act 1988. For an earlier writing on this see, Regulation of Malaysia's Information Superhighway, Asia Business Law Review No 23 (1999), 48-56.

[5] See Stephen Saxby, "A Jurisprudence For Information Technology Law", 2 International Journal of Law and Information technology, No. 1 (1994).

[6] The Broadcasting Services Amendment (Online Services) Act 1999.

[7] The ABA's complaints online hotline has been operational since 1 January 2000, the date on which its power to investigate complaints commenced. For more detail analysis see Hojn Corker et al, Regulating Internet Content: A Co-Regulatory Approach, University of NSW Law Journal, austlii database.

[8] S 8.11 of the Code.

[9] S 21(3) of the 1999 Broadcasting Act..

[10] see s 1.9 of the Code explaining the legal status of the Code.

[11] S 1.5 of the Code.

[12] S 1.10 of the Code.

[13] S 3 of the Communication and Multimedia Act 1998.

[14] S 5.1 of the Code.

[15] S 3 of the 99 (A) Broadcasting Act. [16] Part II of the Code. The list of prohibited content in Malaysia is comparable to that the Singapore Internet Code of Conduct. Section 28 enables the SBA to issue directions to Internet Service Providers and Internet Content Providers requiring them to take action to comply with the Internet Code of Practice. Clause 4(2) provides an array of prohibited materials. They are :

- whether the material depicts nudity or genitalia in a manner calculated to titillate;
- whether the material promotes sexual violence or sexual activity involving coercion or non-consent of any kind;
- whether the material depicts a person or persons clearly engaged in explicit sexual activity;
- whether the material depicts a person who is, or appears to be, under 16 years of age in sexual activity, in a sexually provocative manner or in any other offensive manner;
- whether the material advocates homosexuality or lesbianism, or depicts detailed or relished acts of extreme violence or cruelty; or
- whether the material glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance.

[17] Within the category of prohibited content under Section 7(1) and (2) of the Printing, Presses and Publication Act 1984 which reads:

- If the Minister is satisfied that any publication contains any article, caricature, photograph, report, notes, writing, sound music, statement or any other thing which is in any manner

prejudicial or is likely to be prejudicial to public order, morality, security, the relationship with any foreign country or government, or which is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion by order published in the Gazette prohibit, either absolutely or subject to such conditions as may be prescribed, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned.

- In the case of a publication originating in any country outside Malaysia, an order under subsection (1) may, of the order so prescribes:
- prohibit the importation of any or all publications whether before or after the date of the order, subject to such conditions as may be prescribed therein;
- in the case of a periodical publication, prohibit the importation of any past or future issues thereof;
- in the case of a publication which has been issued or appears or purports to have been issued from any publishing house, agency or other source specified in the order, prohibit the importation of any other publication which may at any time whether before or after the date of the order has been, or appears or purports to have been, issued from the specified publishing house, agency or other source.

[18] *Infra*.

[19] S 2.2 of the Code.

[20] S 2.3 of the Code.

[21] S 2.4 of the Code.

[22] S 2.5 of the Code.

[23] S 2.6 of the Code.

[24] S 2.7 of the Code.

[25] S 2.8 of the Code.

[26] S 2.9 of the Code.

[27] S 2.10 of the Code.

[28] The meaning of the term 'provide' under s 5.10.

[29] s 5.4(i) of the Code.

[30] S 5.1 of the Code.

[31] S 5.1 (i) of the Code.

[32] S 5 (iii) of the Code.

[33] s 5.7 of the Code.

[34] S 5.5 of the Code.

[35] S 5.6 (ii) of the Code.

[36] S 5.6 (ii) of the Code.

[37] S 5.7 of the Code.

[38] S 2 of the Broadcasting Services Act 1992, Schedule 5 on Online Services.

[39] PICS is supported by a wide coalition of hardware and software manufacturers, access providers and online commercial services, publishers and content providers. It is now included as a standard feature in the latest generation of Internet browsers such as Microsoft Explorer 3.0 and Netscape 3.0, and is supported by a number of filtering packages.

[40] S 5.8 of the Code.

[41] S 5.9 of the Code.

[42] See s 512(b) of the Digital Copyright Millennium Act 1998. Such exception is also found in Amended Proposal for A European Parliament and Council Directive on the Harmonisation of Certain Aspects of Copyright and Related rights in the Information Society, Brussels, 21.05.99, COM (1999) 250 final. [43] The statement by the executive chairman of the Malaysian Development Corporation, Dr Othman Yeop Abdullah, available at [www.malaysiakini.com](http://www.malaysiakini.com), Thursday June 28, 2001.

[44] See s 88 of the Act

[45] See section 89 of the 1999 Broadcasting (A) Act .

[46] *ibid*.