

REGULATING ONLINE NEWS PORTALS IN THE ERA OF IR 4.0 - SHOULD MALAYSIA CONSIDER SELF-REGULATION?

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Abstract: Globally, all activities and industries have been affected by the Fourth Industrial Revolution (IR4.0), which is ascribed to the fusion of the physical, digital, and biological worlds. Whether they are in printed or digital form, the media business must embrace the new revolution and is not an exception. Since they were already well-established in the electronic environment before the introduction of I.R. 4.0, online news portals are presently leading the way compared to print media. In addition, their operators are not currently required to hold a license authorization (individuals or class) under the Communications and Multimedia Act of 1998 or a publishing permit under the Printing Presses and Publications Act 1984, which both govern the operation of printing presses and publications. In order to ascertain why the current legal frameworks do not apply to online news websites, the study will employ qualitative research by analyzing the extant statutory laws governing the print media, the new convergent communications and multimedia, as well as secondary sources. Additionally, it will examine the self-regulatory framework established by the Multimedia and Communications Content Forum as well as the possibility of employing self-regulation to control print media and perhaps even online news portals. In conclusion, it is proposed that the self-regulatory style could be used to best cover the gap in the country's regulation of online news portals and other websites. With the creation of the proposed media council, which employs the same self-regulatory style to oversee all media industries in Malaysia, the same regulatory framework might be broadened as well to conventional coverage.

Keywords: Online News Gateways, Print television, Self-Regulation, Malaysia, IR 4.0.

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1. INTRODUCTION

The Fourth Industrial Revolution (IR 4.0), which has fused technologies across the physical, digital and biological world, has a significant impact on all activities, industries and economies throughout the world (Schwab, 2017). The media industry, including the traditional print and the new media, will also be left with no other options but to embrace the phenomenal development of IR 4.0 as it has and will continue to revolutionise the communication and dissemination of information and news in the coming years. Because they were already well-established in the electronic world before IR 4.0, new media like online news portals and other online publications have an advantage over print media.



The popularity of the new media and their wide reception has been reflected in the Reuters' Digital News Report 2019 which recorded that 86 per cent of the Malaysians preferred news from online news portals, such as Malaysiakini, The Star Online, Free Malaysia Today and many others, and information circulated and shared in the social networking sites, such as Facebook, Twitter, WhatsApp and many others, over the traditional print media (Newman et al., 2019). With the consistent increase of household access to the internet as well as individuals' use of the internet to 90.1 per cent and 81.2 per cent respectively in 2019 (Department of Statistics Malaysia, 2020), it is very much anticipated that the new media will continue to dominate the media landscape in the country in years to come.

On the contrary, the circulation and popularity of the traditional print media among the members of the public have continued to fall since the past decade (Lee, 2020). The downtrend is inevitable as the print media industry has been labelled as a 'sunset industry' primarily due to the rapid development of the internet and widespread migration of readers to online platforms (Pandiyan, 2017). The digital media has facilitated the publication and dissemination of news through a non-linear mode of communication, which gives total freedom to the readers to determine when and how they want to consume the news (Višňovský & Radošinská, 2017). The shift in media consumption has led to a massive decline in newspaper sales and advertisement revenues. This trend has consequently resulted in the cessation of operation of four local printed newspapers, namely; Utusan Malaysia, Kosmo!, Malay Mail and Tamil Nesan over the last two years (Azman, 2019). As such, Yang (2020) argued that the traditional print media companies could no longer rely only on the print versions and have to reinvent their operations by offering online news portals or utilising other digital platforms in order to remain relevant in the industry.

Nonetheless, though a number of the print media have already marked their presence in the digital world via online news portals, such as The Star Online, Berita Harian Online and many others, Mahmood (2017) submitted that advertisers have continued to stay away from the online news portals operated by the print media companies and preferred to invest in the independent online news portals due to the quality of their content. It was observed that the content of the mainstream news media appears to be more homogeneous, pro-status quo, and distant from the audience as compared to the content of the independent media that often highlights the voices of diverse, marginalised, and disadvantaged people (Rauch, 2016). On a similar note, Ahmad & Buyong (2017) observed that the majority of the public preferred independent online news portals such as Malaysiakini, Free Malaysia Today and many others over the mainstream media as these new media offer alternative news and balanced coverage.

Consequently, it was alleged that the mainstream media's blatant bias towards the ruling government is another crucial factor that has caused their downfall (Lee, 2020). For that reason, Omar & Ahrari (2020) submitted that the mainstream media must preserve their credibility in order to remain in operation and to avoid displacement by the new media. The importance of content has also been underlined by Coetzee (2016) as it was claimed that despite the availability of numerous types of online platforms for news in this era of IR 4.0, the public and the investors will always favour credible and trusted sources of information and news. As such, since the quality of news reportage is arguably to a large extent affected by the regulatory control imposed by the ruling authorities, it is therefore imperative to examine the existing statutory regulations that have been enacted to govern the print media as well as the communications and multimedia industry in the country.

2. METHODOLOGY

This study uses doctrinal research technique and is phenomenological in nature. Theological study was reported by Bhat (2019) as "entirely library-based research, relying on primary and secondary sources almost monotonously, and aiming at a coherent exposition of the law with diverse arguments drawn from theoretical perspectives and secondary materials on social experience". It was further elaborated that doctrinal research directs attention towards legal principles as formulated in judicial rulings, statutory provisions, as well as constitutional or international



doctrines, and causes coherence in the conceptual framework of the legal principle. Hutchinson & Duncan (2012) quoted the findings of the Pearce Committee (1987) which describes doctrinal research as a research that “provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future developments”.

The paper has examined the rules of the Publishing Presses and Publications Act of 1984 (PPA) and the Multimedia and Communications Act of 1998 using the empirical method. (CMA) as these two statutes are the primary laws that have explicitly been legislated by the Parliament to oversee and regulate the traditional media and the converging communications and multimedia industries in the country. Furthermore, the study has also examined relevant rules and other subsidiary legislation that may be applied to online publications in order to determine the existing style of regulation governing online news portals in the country. Apart from these statutory instruments, relevant judicial decisions on the subject matter reported in law journals have also been analysed in this study.

This study also used credible internet pages, educational materials, publications, lecture papers, and other secondary sources besides to the aforementioned primary sources. The majority of the information gathered for this study comes from published sources, which are then critically analysed to clarify the three primary goals of the study, namely; to examine the existing statutory regulations that have been enacted to govern the media industry in Malaysia, to explore the self-regulatory framework that the Communications and Multimedia Content Forum (CMCF) has approved, as well as to look into the possibility of expanding the self-regulatory framework to include print media along with online newspaper sites.

3. RESULT AND DISCUSSION

3.1 Development of Online News Portals

The debut of The in Malaysia is where online news portals first emerged. Star Online by the Star Publications in 1995. Subsequently, other mainstream media companies followed suit in 1997 with the publication of Utusan Online, Berita Harian Online and the New Straits Times Online (Kasim & Mohd Sani, 2016). These news portals have just however mirrored the print versions of their newspapers. Online news portals had only started to capture the attention and interest of the public when Malaysiakini was launched in November 1999 before the 10th General Election (Joo Chung et al., 2010). As the government has exerted strict controls over the mainstream media to the extent that they have indirectly become the ‘mouthpiece’ of the government, Malaysiakini, being the only independent online news portal at that time, has been the focal point and primary source for neutral and unbiased news (Nain, 2000). The increasing popularity and widespread readership of Malaysiakini have later inspired the rise of other autonomous online news outlets that only create and publish news on their own sites, such as Malaysian the Insider, Malaysian Insight, and many other media channels. (Chinnasamy, 2018).

3.2 Specific Laws on the Media in Malaysia

3.2.1 Printing Presses and Publications Act 1984 (PPA)

Concerning the current legislative framework for the media industry in Malaysia, the principal legislation is the PPA which has been primarily enacted to govern the traditional print media in the country. The crux of the regulatory control employed the PPA is the imposition of prior constraints via the compulsory acquisition of printing press licences and publication permits. Since the publication of news or other information on the online news portals or other online platforms does not involve the utilisation of any printing presses or printing machines, therefore the mandatory requirement to possess printing press licences under section 3 of the PPA does not arise at all for operators of online news portals or other online publishers.

Nonetheless, operators of online news portals may be required to possess publication permit as per stated in section 5(1) of the PPA before publishing any news on their news portals. With regard to the actual moment for a publication to take place, it was decided by Mahadev Shankar J in the case



of *Ling Wah Press Sdn Bhd v Pustaka Utama Pelajaran Sdn Bhd & 3 Ors* [1994] 3 CLJ 346 that “A document only became a publication when it was published i.e. made available for public consumption”. In relation to this, Ismail Nawang et al. (2020) submitted that online publisher and news portal owners are not required to obtain a publishing permit from the Department of the Ministry of Home Affairs before publishing any news or information in the cyberspace. The justification for such argument is founded upon the interpretation of the word ‘publication’ in section 2 of the PPA which provides that “publication includes –

- (a) a document, newspaper, book and periodical;
- (b) all written or printed matter and everything whether of a nature familiar to written or printed matter or not containing any visible representation;
- (c) anything which by its form, shape or in any manner is capable of suggesting words or ideas; and
- (d) an audio recording.”

Nonetheless, there is still a minor issue with the inclusion of the phrase ‘audio recording’ within the scope of ‘publication’ in subsection (d) of section 2 of the PPA as it may indirectly impose an obligation on the operators of online news portals to acquire publication permits if they wish to publish audio recordings in their platforms. It was suggested that in order to ensure clarity and avoid possible conflicts with other laws, the term “audio capture” should ideally be removed from the meaning of “publication” (Ismail Nawang & Mustaffa, 2017). Additionally, it should be noted that the PPA was initially enacted to govern the print media and therefore, audio-visual services should be better regulated by other related statutes. In relation thereof, only the publishers of printed materials such as newspapers, books, magazines and many others will be bound by section 5(1) of the PPA that necessitates the acquisition of publication permits before they could print, publish, sell, circulate or distribute any newspapers printed in Malaysia or Singapore. As such, operators of online news portals or publishers of other online publications will not be subjected to the regulatory control of the PPA that mandates the prior acquisition of printing presses licences and publication permits before commencing their operations.

Owing to that position, some proposals were made to amend the provisions of the PPA including the extension of its remit to online publications, but the proposed expanded statutory interpretation of the word ‘publication’ in section 2 to cover online media was excluded (Leong, 2014). Further, the PPA (Amendment) Act 2012 that was passed in June 2012 by the Parliament has effectively abolished a few statutory provisions of the PPA that may have hindered or affected the media freedom in the country. This could be best illustrated with the replacement of the twelve-month validity period with a one-off licence or permit that is no longer subjected to annual renewal and will remain valid unless revoked by the Minister. Another major transformation is the elimination of the ouster clause that has in the past prevented any judicial review of the Minister’s decision to grant, refuse, revoke or suspend a licence or permit under the PPA. Furthermore, a right to be heard is accorded to the holders of any licence or permit before the Minister could decide whether to revoke or to suspend their licence or permit.

Despite the fact that the PPA does not apply to online news portals and other new media platforms, it would be erroneous to assume that the internet is a legal vacuum. The internet, which was initially declared as an independent and anarchic space of expression outside the bounds of the state (Barlow, 1996), is not technically and legally free from any shackles of rules and regulations as the offenders may be traced and prosecuted by the authorities even if they choose to remain anonymous in the cyberspace (Ismail Nawang, 2017). Apart from applying the existing laws to the new digital world such as the Penal Code, the Defamation Act 1957, the Sedition Act 1948 and many others, the authorities have also legislated several specific statutes including the CMA and other appropriate cyber laws in order to deal with novel issues arising out of the phenomenal development of the internet and information and communication technologies (ICTs) in the late 1990s.



3.2.2 Communications and Multimedia Act 1998 (CMA)

Generally speaking, the first set of cyber laws, which consisted of the Computer Crimes Act of 1997, the Electronic Signatures Act of 1997, and the Telemedicine Act of 1997, were introduced before the CMA was passed alongside the Malaysian Communications and Multimedia Commission's Act of 1998 (MCMCA) in 1998. The CMA was specifically legislated to accommodate the coming together of previously separated and distinct industries of broadcasting, telecommunications, and information technology. This is reflected in its preamble which expressly provides that the CMA is "to provide for and to regulate the converging communications and multimedia industries, and for incidental matters". With 282 sections, the CMA could be considered a comprehensive statute that was primarily intended to keep pace with the phenomenal development of communications and multimedia technologies (Hussein, 2000).

In the CMA, terms like "network facilities," "network services," "application amenities," and "content application services" are used to define market and service operations in a generalized and non-specific manner. These words represent new media and market merger terminology. (Kitley, 2001), they have been deliberately designed to be technology and service neutral to embrace any prospective facets of technological convergence and future changes. With regard to the licensing scheme under the CMA, only providers of these four types of activities that are statutorily required to be licensed (either individual or class) namely; network facilities providers, network services providers, applications service providers and content applications service providers.

A thorough analysis of these licensable activities indicates that operators of online news portals or publishers of other online platforms may be regarded as content applications service providers under section 6 of the CMA. However, order 6 of the Communications and Multimedia (Licensing) (Exemption) Order 2000 states that "a person who provides any internet content applications services is exempt from holding an individual licence or registering under a class under the Act." Moreover, the phrase 'internet content applications services' is defined in order 2 as "a content applications service which is delivered by means of the internet". As such, it was argued that since online news portals and other online platforms publish content via the internet, their operators or owners are not subjected to the licensing scheme under the CMA (Ismail Nawang et al., 2020). The exemption seems to be in agreement with the no censorship guarantee of the internet in section 3(3) of the CMA which states that "Nothing in this Act shall be construed as permitting the censorship of the internet". This guarantee by the government is also contained in the MSC Malaysia Bill of Guarantees (BoGs) that are accorded to the MSC Malaysia status companies. Apart from the government's promise not to censor the internet, one of the cornerstones of the regulatory framework under the CMA is the adoption of self-regulation in governing the communications and multimedia industries in Malaysia.

3.3 Brief Account of Self-Regulation

There is uncertainty over the exact interpretation of the term 'self-regulation' as it varies from one scholar to another. However, the majority of authors on regulation consider the idea of self-regulation as a conscious act of forming a mutual relationship in the form of agreements (Polański, 2007). In layman's terms, self-regulation is simply the opposite of command and control regulation by the state that exercises its influence by imposing standards backed by criminal sanctions (Baldwin & Cave, 1999). Self-regulation emerges when a group of associations or individuals exercises control over its members and their conducts, and it is commonly identified in certain professions such as advertising, insurance and the press in the United Kingdom (Black, 2002). The controls by any self-regulatory body may be voluntary and quite informal compared to the state regulation, and may sometimes subject to specified degrees of supervision by the government and legislative restructuring (Baldwin et al., 2011). There are several advantages associated with the adoption of self-regulation including the self-regulatory body can typically command greater expertise and technical knowledge of practices within the dedicated area, lower costs for the formulation and interpretation of standards as well as for monitoring and enforcement of self-



regulation, and the processes and rules issued by the self-regulatory body are in general less formalised than the public regulatory regime (Ogus, 1998).

3.4 The Communications and Multimedia Industry in Malaysia

The communications and multimedia industry in Malaysia is statutorily regulated by the CMA and is placed under the supervision of the Malaysian Communications and Multimedia Commission (MCMC), the regulatory agency that has been established pursuant to the MCMCA. Notwithstanding the statutory regulations, the CMA has advocated the industry players to adopt self-regulation, and the development of such industry regulatory style shall be monitored and reported by the MCMC as per required by section 124 of the CMA. Of to date, the MCMC has designated four industry forums, namely the Access Forum, the Technical Standards Forum, the Consumer Forum and the Content Forum. Since the access, technical standards and consumer fora do not have a direct bearing on online news portals or other online publications, the discussion of this article will only be concentrated on the content forum.

3.4.1 The Communications and Multimedia Content Forum (CMCF)

The Communications and Multimedia Content Forum (CMCF) is a society that was founded in February 2001. Its six regular member categories are: Internet Service Providers, Radio and Television Broadcasters, Content Creators/Distributors, Marketers, and Suppliers of Audiotext Hosting Services for Children. CMCF was designated as an independent self-regulatory agency by the MCMC on 29 March 2001 pursuant to section 212 of the CMA. CMCF is expected to manage and self-regulate online content and related issues the Malaysian Multimedia and Communications Content Code is being put into practice (Content Code).

The Content Code was formulated by the CMCF based on section 213 of the CMA and was only effective upon registration by the MCMC on 1 September 2004. It represents self-regulatory guidelines and sets out standards of online content to be disseminated by the service providers in the communications and multimedia industry. Dissemination of materials which are regarded in Part 2 of the Content Code as “indecent content, obscene content, violence, menacing content, bad language, false content, children’s content, family values and persons with special needs” is outlawed. Additionally, the Content Code includes specific rules for those who provide people with access to online material, such as internet access providers, hosts of online content, creators of online content, aggregators of online content, and hyperlink providers. However, Azmi (2004) noted that the Content Code’s reach is somewhat constrained because it does not expand to include offences like slander and rebellion.

With regard to the legal status of the Content Code, section 98 of the CMA explicitly stipulates that it is not mandatory for industry players to comply with an industry code. On the same note, Item 6 of Part I of the Content Code provides that compliance with the Content Code is voluntary. Nonetheless, compliance with the industry code is beneficial to its subscribers as it shall act as a defence against legal actions under the CMA. In enforcing the Content Code, the CMCF houses a Complaints Bureau that is responsible for considering complaints on the alleged breach of the Content Code and adjudicates the matter accordingly. If a breach is proven, the Complaints Bureau is empowered by the Content Code to give sanctions which include the issuance of a written reprimand; the imposition of a fine not more than RM 50,000; and/or the request for the removal of the prohibited content or cessation of the unlawful act.

It is clear that online news portal operators or owners of other online platforms may be considered as content application service providers under the Content Code, making the Content Code relevant to online news or other online publications. The definition of “content application service provider” is given in Item 5.0 of Part 1 of the Content Code as “a person who provides a content application service”. Since the Content Code applies to content application service providers, it would be prudent for online news portals or other online publications to voluntarily adhere to the guidelines contained in the Content Code. Regardless of the voluntary status of the Content Code, it should be emphasised that Fall-back clauses overseen by the MCMC additionally endorse the industry’s

proclaimed "self-regulatory" style of online material (Halim & Salim, 2005). Therefore, any dissemination of unlawful content by online publishers may entail legal actions by the authorities. For this reason, Ismail Nawang (2015) argued that this style of the regulatory regime by the CMCF might be termed as co-regulation instead of self-regulation.

4. CONCLUSION

In this era of IR 4.0, the majority of the people are increasingly dependent on the internet up to the extent that Wellman & Haythornthwaite (2002) claimed that the internet had become an embedded part of their life. Though Leong (2014) argued that the idea is only applicable in certain countries with higher internet penetration and the internet access is affordable by the majority of the people, it is submitted that it would not be long for such scenario to occur in Malaysia. With the mounting surge in the usage and access to the internet and the availability of various online communication platforms, the past few years, the country's media landscape has shifted in Favour of new media, particularly social media platforms and online news websites.

Unfortunately, these online news channels are at current neither bound by the certifying scheme of the traditional print media under the PPA nor the converging communications and multimedia under the CMA. This situation, which seems to accord greater freedom to online publications in the cyberspace (Ismail Nawang, 2014), is perhaps due to the government's guarantee not to censor the internet as contained in the MSC BoGs and section 3 of the CMA. Further, the state or command and control style of regulation that has been adopted to govern the media industry is no longer feasible to control the new media as it can be easily circumvented in the cyberspace. Since the adoption of appropriate regulatory regime may affect the development and future of the traditional and new media in the country, it is submitted that the self-regulatory style, which is currently be resorted by the CMCF to control online content, could be the answer to the absence of regulatory regime for online news portals or other online publications. Further, the adoption of self-regulation by the print media as well could mean greater liberation for the traditional media as that currently enjoyed by the online media.


The proposed setting up of a new media council governing both the traditional and new media based on self-regulation is a good sign towards media freedom in the country (Chan, 2020). Though the development of the council is still at the infancy stage and much to be desired before the proposal to materialise, the establishment of an independent regulatory body that adopts self-regulatory style to regulate the traditional and new media is not common as it has long been practised in the UK since 1953 (Hunt of Wirral, 2017). At present, the media industry in the UK is subjected to the oversight by the Independent Press Standard Organisation (IPSO) which came into operation in 2014.


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