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### ONLINE BROADCASTING IN MALAYSIA: AN ANALYSIS OF LEGAL AND REGULATORY FRAMEWORK AND FUTURE REFORMS

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#### ABSTRACT

This paper examines the legal and regulatory framework governing online broadcasting in Malaysia. The purpose of this study is to explore and analyse the existing legal system concerning online broadcasting services in Malaysia with a view to identifying the loopholes and suggesting recommendations for possible solution. The study uses a legal and doctrinal research methodology followed by an analytical approach. In identifying and interpreting data both primary and secondary legal sources are considered. The study reveals that the current legal framework regulating online broadcasting services in Malaysia is not well structured and, in most cases, the online broadcasting contents do not comply with the existing laws and regulations of Malaysia. Hence, a comprehensive legislation is indispensable for Malaysia to regulate the online broadcasting services diligently and efficiently.

#### INTRODUCTION

Broadcasting means the dissemination of audio or video content to a widespread audience through any electronic mass communications medium, generally using the electromagnetic spectrum or radio waves, in a one-to-many model (Peters, 1999). Broadcasting evolved from its use as the agricultural method of sowing seeds in a field by casting them broadly about (Douglas, 2008). It was later adopted for describing the widespread distribution of information by printed materials ("The Hand-Book of Wyoming And Guide to the Black Hills and Big Horn Regions: For Citizen, Emigrant And Tourist:

Strahorn, Robert E. (Robert Edmund): 9781504200684: Amazon.com: Books,” n.d.) or by telegraph.(“Amazon.com: Troy H. Middleton: A Biography (9780807100677): Price, Frank James: Books,” n.d.). Nowadays, a variety of methods are used for broadcasting electronic media audio and video to the general public, such as, radio broadcasting, television broadcasting, cable radio and television broadcasting, satellite radio and television broadcasting, webcasting or online broadcasting etc. Among all these, online became most popular method for broadcasting nowadays due to the advent of internet and its availability throughout each corner of the world. Online broadcasting is the presentation of a media content that is distributed through internet using specific streaming technology by which a content from single source can be sent to many simultaneous listeners or viewers. Online broadcasting can be streamed live or may be accessed on demand (Navaz, 2019).

Over the past few decades, the evolution of internet and its necessity for even the most basic daily tasks have significantly increased its usage. This trend is further enhanced due to the affordability of electronics products on one side, and the availability of data and content on the other side. Nowadays, the usage of internet and the devices are completely and inalienably dependent on the overflow of contents. Previously known only within the domain of television sets and video rental stores; the broadcast media has now begun to stream directly to electronic devices in any corner of the world without any restriction or censorship (Islam & Anzum, 2019). The difficulty in monitoring all the content broadcasted online as well as the tools used to bypass different firewalls kept in place under the laws and regulations, regulating online broadcast media has become a never-ending challenge. Historically, different governments have put up laws and regulations to control the broadcast media within the scope of the laws. This allowed for media products created in different regions of the world to be made compliant to the laws of the targeted countries for broadcasting purposes. Whilst some countries monitor the broadcasts and censor them strictly, other countries are relaxed in their censorship. Yet the common factor among all these countries are that they all have some form of regulations in place regarding the broadcast media, either online or traditional one. Along comes the internet with broadcast media websites, allowing content created in one place to be broadcasted to anywhere in the world without any restrictions (Benhadj & others, 2019). The content created for these cyber-broadcasters often are not vetted despite having internal policies within most of these platforms. The opportunity to have content broadcasted to a worldwide audience and the opportunity for monetizing the content has led to independent content creators to distribute millions of broadcast material every single day. Contents which are universally considered antithetical to modern societies, such as fake-news, racist materials, conspiracy theories, specially targeted to a demographic of a place to affect the minds and behaviours of individuals are being funded and created independently and are distributed freely on these online broadcast platforms.

In the era of globalisation, the necessity of digital media and information & communication technology is increasing day by day. As one of the economic and tech giants of southeast Asia, Malaysia had to enter into a new era of knowledge creation in the media sector known as online broadcasting. This

trend has obscured the boundaries between the broadcasting and computing industries in a long run in relation to their powers, functions, roles, and economic insights as the contents of these services can be streamed and accessed from any part of the world. This technological advancement in broadcasting sector have posed threats to the culture, religious faith and practices of people of each country. Malaysia is not also an exception to that. These types of broadcasting services may affect the current legal and regulatory media approach and technology acceptance in harmonizing digital intellectual property, market power, content values, and diversion of cultures (Syed, Alsagoff, Abdullah, & Hassan, 2011).

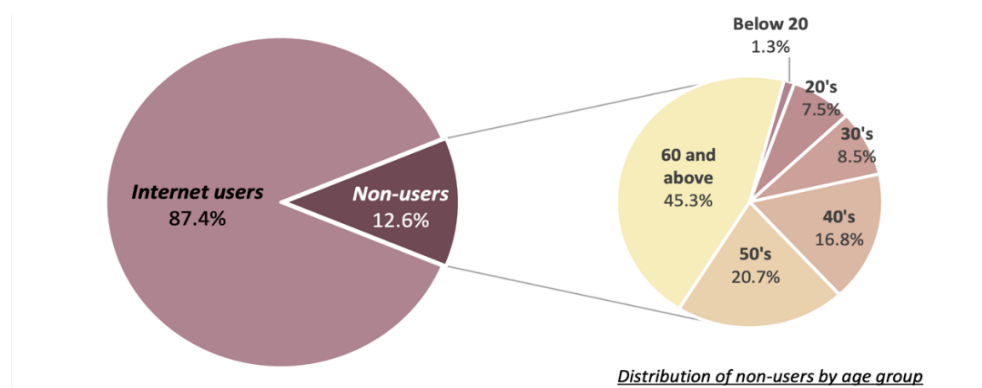
There are several factors that motivate the current study. Firstly, there is a dearth of research on legal and regulatory framework relating to online broadcasting in Malaysia. Secondly, there are overlapping and self-contradictory provisions in the laws that govern online broadcasting in Malaysia. Finally, there is a dire need of harmonisation and modernisation of the existing laws regulating online broadcasting in Malaysia to meet the demand of twenty-first century.

From the above discussion, it is apparent that Malaysia has legal framework regulating broadcasting media, whether online or print. These laws seem enough to regulate print broadcasting media though they choke in regulating online broadcasting media. The main reason is that most of these laws were enacted before the advent of internet and were amended periodically to meet the demand of online broadcasting services. As a result, these laws remained ambiguous, complex, contradictory and sometimes inconsistent. This study is an attempt to identify these problems in a holistic way so that a full-fledged solution can be suggested. This study examines the development of online broadcasting in Malaysia and analyses the laws and regulations that control online broadcasting in a critical manner and identifies loopholes. Finally, it suggests some recommendations in order to establish a complete and effective legal and regulatory framework governing online broadcasting in Malaysia.

### **EVOLUTION OF ONLINE BROADCASTING IN MALAYSIA**

Today, Malaysia is considered to be one of the industrialized countries of the world having population of about 32.7 million (Malaysian Communications and Multimedia Commission, 2018) and a land area of approximately 330,000 km (Wok & Mohamed, 2017). Malaysia is a unique country blessed with diverse cultural and religious population. Internet is not a new thing for Malaysia (Daud, M. & Zulhuda, S., 2020). As per a recent survey of the Malaysian Communications and Multimedia Commission (MCMC), the total internet user in Malaysia was 76.9% in 2016 and in 2018 the rate increased 10.5% to reach 87.4%. Approximately, there were 24.5 million internet users in Malaysia in 2016 which increased to 28.7 million in 2018, (“Department of Statistics Malaysia Official Portal,” n.d.).

**Figure 1:** Internet users & Non-users in Malaysia



**Source:** MCMC(Malaysian Communications and Multimedia Commission, 2018)

The survey also identified that 70.0% of Internet users have spent time streaming and/or downloading online videos and TV in 2016, that increased to 77.6% in 2018. Watching video in online platform has now become more popular than shared videos on YouTube or Facebook only. Users are now streaming video content through Over-the-Top (OTT) platform as well, such as Netflix, Iflix Pandora, Amazon Prime Video, Hotstar, Hulu, Tonton etc. Furthermore, streaming platforms are also attracting consumers to watch a series, view pre-release content, and enjoy the content with minimal or zero advertisement. 46.8% of Internet users listen downloaded online music and radio. It was also found that more than half of the internet users (56.3%) read online publication namely e-book, online magazine, newspaper or journal (MCMC, 2018).

After introduction of internet in 1995, the government of Malaysia took numerous strategic steps to accelerate the usage of internet among different classes of people. Special projects were launched to set up computer labs in public schools, tax exemption scheme was introduced for purchase of laptops and internet connections and most important of all, a multimedia university was established to produce Internet-savvy graduates (Bunnell, 2004). All Public and private institutions were instructed to include IT related subjects in their curriculum. The IT Policy of the Government instructed that all government offices must operate online and go paperless by 2015. A one-stop portal for Malaysians to deal with government services such as the payment of taxes and general summons, known as My e-Government (myEG) was launched by the government in 2010. Furthermore, Internet became an important and integral part of Malaysian life after the introduction of broadband in 2007. This resulted a rumble in e-commerce, online businesses and online broadcasting because of faster and quality Internet access. From then, Malaysians could also gather more facilities from the Internet, especially better quality and faster broadcasting of media content. Besides that, more Malaysians started to share their life more and more on internet. When Malaysians learnt to maintain individual media and social networking sites, they started to create and contribute ideas, information, and life stories through online broadcasting (Wok & Mohamed, 2017).

Nowadays social media plays an important role in our daily lives i.e. for linking people with each other, creating different communities, expressing one's opinions, creating online business market, posting advertisement etc. A survey found that there were around 24.6 million social network accounts in Malaysia

in 2018. Out of these, the most preferred social networking platform was the Facebook that contributed 97.3% of the total. The other preferred accounts were Instagram, YouTube, Google+, Twitter and LinkedIn, contributing respectively 57.0%, 48.3%, 31.3%, 23.8% and 13.3% of the total amount (Malaysian Communications and Multimedia Commission, 2018). Currently, Malaysians are the most sociable people online in the world having the highest average number of friends in social networks. For an example, each Malaysian Facebook user has 233 friends on average whereas the global average is only 130. Rather than watching television or listening to the radio, Malaysians are more fond to spend time online. With 80% of Internet users stream online video content each month, online video streaming became the most favourite online activity in Malaysia. It is pertinent to mention that 51% of internet users in Malaysia have an active YouTube account (Kemp & We Are Social, 2016). Another study shown that in Malaysia, social network sites are viewed 14 billion times every month of which 67% are viewed in YouTube (Lalitha & Balakrishnan, 2013).

## **LEGAL FRAMEWORK OF ONLINE BROADCASTING IN MALAYSIA**

In 1995, at the time of commencement of the enormous multimedia super-corridor project, equivalent to the US Silicon Valley, the government of Malaysia made a promise to the foreign partners that they will not impose censorship on the Internet (Sani, Ahmad & Wahid, 2016). Later on, the Communication and Multimedia Act 1998 also enacted the same commitment in Section 3 that states “nothing in this Act shall be construed as permitting the censorship of the Internet” (C. Lee, 2002). But we all know that open and democratic nature of internet facility facilitates obscenity, hatred speech, defamatory messages, indecent content and other type of harmful contents. Because of this, most countries of the world now started regulating the contents of the Internet like mass media (C. Lee, 2002). Malaysia is also following the same footstep despite all of her assurance about no censorship on internet. Now everybody is beginning to accept that internet without any censorship or state control is not only be detrimental but it may also disturb the national information and communication policy (Islam & others, 2020).

Malaysia is one of the few countries in the world having a highly developed internet infrastructure. In order to mitigate the major issues posed by modern technological advances, Malaysia has put in place a number of laws. Malaysia enacted more than ten major legislations governing the internet and made some significant amendments to existing legislations relating to cyber offences and cyber security issues (C. Lee, 2002).

### **The Federal Constitution of Malaysia**

In Malaysia, regulation of internet is part of general law inserted in the Federal Constitution under the term of freedom of speech. Freedom of speech is guaranteed by Part II of the Federal Constitution under Article 10(1) (Masum & Desa, 2014). According to Article 10(1), every citizen has the right to freedom of speech and expression. However, Parliament may limit this right under certain circumstances, i.e. for the interest of the security of the state, for maintaining friendly relations with other countries, for public order or morality and any other restriction to protect the privileges of Parliament or of any

Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence (Islam & Anzum, 2019). Article 10(4) of the Constitution explains the reasons imposing such restrictions on freedom of speech. In addition to the justification for restricting freedom of speech, Article 149 under Part XI lists subversive conducts and activities in detail. It empowers the parliament to enact law to mitigate subversive actions with or without declaring a state emergency (Masum & Desa, 2014). In *Sivarasa Rasiah vs Badan Peguam Malaysia & Anor*, (MLJ, 2010) the Court of Appeal held that a close scrutiny of Article 10(1) subject to clause (2-4) clearly reveals that all the rights mentioned therein are not absolute rights because they are qualified by the clauses mentioned (ISLAM, 2019).

So, online broadcasting right may be categorised as the freedom of speech and expression under the Federal Constitution of Malaysia subject to the restrictions imposed. However, the government of Malaysia did not impose blocks or filters on websites with an exception for sites that violate national laws governing pornography. The absence of sufficient clear legal provision for the filtering of internet content should not be linked with complete freedom of online speech. This is because the state may rely on other laws or adopt different methods of censoring opinion expressed by online broadcasting (Sani, Ahmad, & Wahid, 2016).

### **The Broadcasting Act (1988)**

When Malaysia initiated the privatization of broadcasting media under the leadership of the then Prime Minister, Dr Mahathir Mohamad, the Broadcasting Act was enacted to control the emerging private broadcasting channels (Wok & Mohamed, 2017). The act was both strict and inflexible at the same time and it gave immense powers to the government to decide what types of television programmes shall be made available to the public. One of the controversies of the Broadcasting Act was the absence of specific scope or parameters of operation or implementation of the Act. The Act gave the Minister of Information absolute powers to determine who will and will not broadcast and what will be the nature of the contents to be broadcasted. In 1995, by using this arbitrary power, the then Information Minister, Mohamed Rahmat, introduced a strict censorship campaign against the broadcasting media to suppress media's excessive portrayal of Western images and counter-culture values, as per his opinion which later on gave rise a lot of criticisms (Mohd Sani et al., 2016).

Under the Broadcasting Act, before commencing broadcasting, a potential broadcaster had to obtain a license from the Minister. Furthermore, part III, section 10, subsection (1) of the act (emphasis added), stated that the licensee had to ensure the compliance of all the directions given by the Minister from time to time (Abdul Latif, Wan Mahmud, & Salman, 2013). However, with the evolution of the Internet and new media, the Broadcasting Act became unable to cover the scope of the expanding broadcast and Internet media. As a result, the government repealed the Act in 1998 and enacted the Communications and Multimedia Act to cover all kinds of broadcasting media under a single umbrella of laws (C. Lee, 2002).

### **The Communications and Multimedia Act (1998)**

To control and censor the internet and online broadcasting, the Communications and Multimedia Act (CMA) was enacted by the Malaysian government in 1998. The CMA substituted the Broadcasting Act 1988 and allow the government to regulate all matters of broadcasting under a single piece of legislation. The CMA contains some unique provisions to protect freedom of expression online, such as “nothing in this Act shall be construed as permitting the censorship of the Internet” (C. Lee, 2002). However, for prevention of abuse of Internet, the government has imposed some restrictions on broadcasting contents in the CMA. Such as, Section 211 provides that a content applications service provider, or other person using a content application service, shall not provide content which is indecent, obscene, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass any person (Syed et al., 2011). The punishment for violation of this provision is fine up to RM50,000 or jail up to 1 year, or both (Azmi, 2003). According to Section 233, if any person using any network facilities or network service or applications service intentionally commence the transmission of, any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive for other person; or try to communicate with other person using any applications service with or without disclosing his identity and with an intention to annoy, abuse, threaten or harass that person, he will be fined up to RM50,000 or jailed up to 1 year, or both. He shall also be subject to a further fine of one thousand ringgit for every day if the offence is continued after conviction (C. Lee, 2002).

In 2009, some individuals were charged under Sections 211 and 233 of the CMA for posting comments insulting the Sultan of Perak. On the grounds of social disharmony and racial tensions, the Malaysian Communications and Multimedia Commission (MCMC) several times instructed news portals and websites to remove certain contents from their websites (Woogara, 2005). However, questions are raised frequently whether Sections 211 and 233 of the CMA are contradictory with “no internet censorship” policy of the government. Actually, the objects of Sections 211 and 233 of the CMA are not to impose internet censorship. In fact, no Government or regulatory body in the world can effectively regulate the online broadcasting considering today’s technological advancements. There are many ways to avoid those restrictions imposed by the government for accessing websites. In addition to that, if a government takes any attempt to censor the internet, it will attract public protest resulting more harm than good to the Government. Freedom of speech and expression guaranteed by the Federal Constitution is not an absolute right. The Constitution also empowers the Parliament to impose restrictions to protect national security, public order or morality, and such right is subject to the law governing contempt of court, defamation, or incitement to any offence. Thus, purpose of inserting Sections 211 and 233 in CMA is noble; that is, to safeguard people from any form of abuse on the Internet (C. Lee, 2002).

### **Malaysian Communications and Multimedia Commission (MCMC)**

In the mid-1990s, the growth of a new convergent communications and multimedia industry in Malaysia necessitated a new approach in media policies and regulation. As a result, Malaysia adopted a new convergence regulation model in November 1998. Under this model, two legislations were enacted; the Communications and Multimedia Act (1998) that prescribes for a new

regulatory licensing framework for the industry; and the Malaysian Communications and Multimedia Commission Act (1998) that oversees the new regulatory framework to accommodate the convergence of telecommunications, broadcasting and on-line activities (Shariff & Kosmin, 2015). It establishes a new regulatory body called the Malaysian Communications and Multimedia Commission (Syed et al., 2011). The basic function of the MCMC is to promote and regulate the communications and multimedia industry and to enforce the communications and multimedia laws in Malaysia. Thus, The MCMC is empowered to approve, amend, renew or revoke broadcasting and other licenses. As per the national policy objectives contained in the Communications and Multimedia Act 1998 (CMA), the MCMC also implements and promotes national policy objectives for the communications and multimedia sector including online broadcasting (C. Lee, 2002). In 2008, the MCMC reprimanded a popular website 'Malaysia Today' on the ground of insensitive incitement. At that time the Information Minister affirmed that section 263 of the CMA empowers the Ministry to take action on the ground of public safety and national security. However, because of public demand the actions against the website were revoked on the next day (Bunnell, 2004).

### **The Malaysian Communications and Multimedia Content Code**

The Malaysian Communications and Multimedia Content Code was drafted by members representing all the key industries as a self-regulation model among industries. Although the compliance of the content code is voluntary, almost everybody binds themselves with this. The Code enacted specific guidelines to identify approved and prohibited contents in Malaysia, especially in the field of broadcasting, audiotext hosting services, and closed content guidelines. These guidelines are familiar with the present national and policy objectives of the national information infrastructure of Malaysia. The content code clearly mentions that all the policy with respect to traditional forms of broadcasting will be equally applicable to online broadcasting. Somehow, this approach is similar to the EU approach that whatever is illegal offline is also illegal online (Ponnan & Ali, 2015). The basic principles of the content code are as follows:

- Any indecent, obscene, false, menacing or offensive content cannot be broadcasted;
- Broadcasters will consider the desire of viewers, listeners and users to have a wide range of content options. Access to information and the necessity to preserve law, order and morality must be considered together.
- Broadcasting content must respect cultural, ethnic and religious, gender, socio-economic diversity in Malaysia.
- Particular attention must be given to content that is created for children and in which children are portrayed (Azmi, 2003).

### **The Film Censorship Act (2002)**

Malaysian Ministry of Home Affairs controls film censorship matters through the Film Censorship Board. As per the Film Censorship Act, all films must first be certified by the Film Censorship Board. The Film Censorship Board introduced a rating system on all TV programs and films screened in Malaysia. Under this rating system, films and TV programs are categorized based on different types of audiences. The categories are as follows:



U : “U” is for general viewing. It means that films under this category can be watched by audiences of all ages and can be screened at any time.

PG-13 : Films under the category of “PG-13” require parental guidance for audiences under the age of 13. These types of movies can only be screened from 6:00 to 10:00 PM on every weekday and from 6:00 to 12:00 pm on weekends.

18 : This category includes films that can be watched by audiences who are aged 18 and above. These movies can only be screened from 10.00 pm to 6.00 am daily (Islam & Rahman, 2019).

Almost all the films of Malaysia have to deal with three sensitive issues which are religious, cultural, and moral values. Political ideology also plays an important role in film censorship in Malaysia. Any film that illustrates Malaysia negatively are usually banned. For example, the Ben Stiller-directed film “Zoolander” was banned in Malaysia for portraying Malaysia as an impoverished and underdeveloped country in the film. In the past decade alone, almost 100 local and imported films have been banned from Malaysian cinemas due to this reason (Rao, 2013). On July 2013, Alvin Tan and Vivian Lee, two Malaysian bloggers were charged for producing and sharing pornographic contents in their blog. On October 2012, they posted their sex photographs in their blog and uploaded their sex video on YouTube. Section 5(1) of the Film Censorship Act 2002 states that a person cannot have in his possession, custody, control or ownership; or circulate, exhibit, distribute, display, manufacture, produce, sell or hire any film or film-publicity material which is obscene or is otherwise against public decency (Islam & Rahman, 2019).

Nowadays, the effectiveness of film censorship board is under a huge threat because of massive growth of online broadcasting of motion pictures. These types of services are spread all over the Internet and is easily accessible through subscription. Some of such well known services are Netflix, Iflix Pandora, Amazon Prime Video, Hotstar, Hulu etc. A paid user can have access to these sites directly from any place through Internet broadband connection under easy subscription rules. They can enjoy original programmes regardless of any form of censorship. The Malaysian government is yet to establish any specific legal and regulatory framework for such contents. As these types of contents reside in a computer on the other side of the world, it becomes very tough and challenging to regulate such contents if seems illegal. Furthermore, global online broadcasters consider that compliance with the CMA 1998 and Censorship Act 2002 are not mandatory for them because of Section 3 of the CMA 1998 that ensures ‘no censorship on the Internet’. Thus, without any proper legal and regulatory framework, these online broadcasting services are posing a threat to Malaysian society, culture and religious faith. The formulation of a proper legal and regulatory framework in order to control online broadcasting services is the time demand in Malaysia (Islam, n.d.).

### **The Defamation Act (1957)**

Although the vital role of broadcasting medias in a democratic society is undeniable, they can also create conflict in the society resulting serious consequences. Unprofessional works of online broadcasters may cause serious

harm to individuals, organizations, societies and the world at large (Azmi, 2003). Defamation Act 1957 is a law that can be applied against those unprofessional online broadcasters. Libel and slander are two categories of offence that fall under the Act. Because of Section 12(1), the mass media are somewhat protected from the operation of the Act. As per this Section a media report is considered privileged if proved that it is generally fair, accurate, and is made without bad intentions. However, online broadcasting media are not protected by Section 12(1) of the Act because the contents of online channel like personal blog, YouTube, Facebook etc. is considered to be a personal opinion, hence may be libellous (Ahmad et al., 2011).

### **The Evidence Act (1950) (As amended in 2012)**

Amended in 2012, the Evidence Act 1950 can be used to make online broadcasters responsible for generating seditious content posted on their platforms (Hassan, Abdelhameed, & Ismail, 2018). The Act states that the presumption for publishing or republishing a content lies on the owner, administrator, host, editor, subscriber of network or website, or owner of a computer or mobile device (Mohd Sani et al., 2016). This mean that hosts of websites, online platforms, social media accounts, news outlets, blogs, and even internet service providers (ISPs) can be held responsible for contents that are published in their platform or network even though they might not be the author (Ahmad et al., 2011).

### **The Penal Code**

In Malaysia, the victim can file a criminal case in a court of law against a libellous publication in ordinary or online media as libel is not only considered a tort, but also it is treated as a crime. Section 499 of Malaysian Penal Code deals with the cases where defamation is taken place whereas, Section 500 provides for punishment for defamation, Section 501 for printing or engraving matter known to be defamatory and Section 502 provides for punishment for sale of printed or engraved substance containing defamatory matters. The main purpose of the Penal Code to impose these punishments for defamation cases is to protect the reputation of a person i.e. from being harmed or destroyed. Thus, all kind of media whether offline or online should by all means avoid irresponsible reporting since it can cause irreparable personal harm both to private and public figures (Nazeri, 2010).

### **The Sedition Act (1948)**

The Sedition Act can be used as an exception for restricting freedom of expression in case of online broadcasting. A person can be prosecuted under Sections 3 and 4 of the Act for making any statement online if such statement contains seditious contents that might bring hatred, or excite disaffection against any Ruler and Government; or promote feelings of ill will and hostility between different races or classes of the population of Malaysia; or question any matter, right, status, position, privilege, sovereignty (Love et al., 2016). As per Section 4(1) of the Act, the punishment for publishing, distributing or reproducing any seditious publication or importing any seditious publication is imprisonment for a term of not less than three years but not exceeding seven years; (Niza & Shariff, n.d.). And if as a result of such act any bodily injury or damage to property is done, the punishment would be imprisonment for a term of not less

than five years but not exceeding twenty years (Niza & Shariff, n.d.). The punishment for possessing any seditious publication is fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding eighteen months or to both for the first offence, and for a subsequent offence, not more than three years imprisonment. In all cases, the seditious publication shall be forfeited and may be destroyed or otherwise disposed of as per the direction of the court (Niza & Shariff, n.d.). A 2015 amendment of the Sedition Act empowers the court to issue an order directing an authorised officer under the Communications and Multimedia Act to prevent access to such publications if the perpetrator is not identified (Niza & Shariff, n.d.).

#### **The Official Secrets Act (OSA) (1972)**

Under the Official Secrets Act (OSA), a person guilty of wrongful collection, possession or communication of secret official information in any manner including online broadcasting may be punished for life imprisonment. Under this Act, any public officer can declare any material as an official secret and such a certification cannot be questioned in court. Under this Act, a suspect can be arrested and detained without a warrant, and the burden of proof always lie on the accused. It states that any activity proscribed under the Act will be presumed to have been done for a purpose prejudicial to the safety or interests of Malaysia, until contrary is proven (Ridzuan, Azman, Azman, & Mahat, 2008).

#### **The Personal Data Protection Act (2010)**

Personal data collected in Malaysia is protected by the Personal Data Protection Act to prevent misuse of the data by the user in any manner. According to the Act, for the purpose of collecting personal data or sharing it with third parties, the data collector or sharer must obtain the consent of data subjects. For a valid consent, data collectors must issue a written notice to the data subjects mentioning the purpose of data collection, their rights to request or correct their data. Data collector will also mention what class of third parties will have access to their data, and whether or not they are required to share their data, and the consequences if they don't (Jemilohun, 2019). The punishment for violations of the data protection principles is fine not exceeding three hundred thousand ringgit or imprisonment for a term not exceeding two years or to both (Leong, Lumpur, Malaysia, Lee, & 2010, n.d.).

#### **The Printing Presses and Publications Act (PPPA) (1984)**

Under the PPPA, for a printing license and publishing permits one must get the approval of the Minister of Home Affairs. Before publishing a newspaper or a magazine, the publisher must obtain a publishing license from the Ministry. The publisher needs to apply for a new license every year. Foreign publications available in Malaysia are also the subjects to the provisions of the PPPA. Foreign publications are required to pay a large deposit for their license and it can be forfeited if they are found guilty of publishing contents prejudicial to the national interest. Mainly the Malaysian print media is controlled by the PPPA (Abdul Latif et al., 2013). However, Section 2 of the PPPA expanded the scope and definition of publications and included anything which in any manner capable of suggesting words or ideas, i.e. online broadcasting media (Kim, 2001).

### **The Copyright Act**

The application and implication of Copyright is apparent in online broadcasting since it deals with the transmission of text, images, photos and sounds (Abdul Ghani Azmi, 2009). It is a general misconception that, the contents on the Internet is public and can be copied without any consent from the author or owner converting the Internet a global piracy industry. Everyday Millions of people are simultaneously reading digital contents on internet and they can also steal it. This is happening because of inadequacy of the existing legislation worldwide (Abdul Ghani Azmi, 2009). The contents of internet should also be subject of copyright laws. Since the setting up of the Multimedia Super Corridor (MSC) project in Malaysia in 1995, Malaysia has refurbished its copyright law to provide legal protection to online contents and to support the information and communication industry (Azmi, n.d.). Copyright Laws in Malaysia are governed by the Copyright Act 1987 and the Copyright (Amendment) Act 1997. The Copyright Act provides a comprehensive set of moral rights required by Article 6 of the Berne Convention. Unauthorised transmission of copyrighted works over the Internet is treated as an infringement of copyright by the Copyright (Amendment) Act 1997. Any attempt to circumvent any effective technological measures set up for restricting access to copyright works is also treated as an infringement of copyright. However, for copyright infringement in Malaysia, criminal prosecution is very rare. The trend of copyright violation in internet will not change suddenly. For this, government must take initiatives to educate people rather than prosecuting them. It is necessary for Malaysian authorities to increase copyright protection in cyberspace by enacting new legislation (Azmi, n.d.).

### **The Internal Security Act (ISA) (1960)**

Freedom of expression and freedom of the press guaranteed by the Federal Constitution of Malaysia can be restricted by some provisions of the ISA. Under this law any person may be arrested and detained by an order of the Home Minister for the purpose of preventing him from any activity prejudicial to the safety and security of Malaysia. Such detention may extend up to two years (T. Lee, 2002). The Act further allows the Minister to impose restrictions on a person's freedom of movement, freedom of association and freedom of expression if such restrictions are necessary. Furthermore, it empowers the Minister to ban the printing and circulation of publications on the ground that it is prejudicial to security and public order (T. Lee, 2002). Besides, Malaysia has a strict policy for journalists in reporting the news against the government policy and political instability in the country. In November 2002, the then Sarawak police chief Mohd Yusoff Jaafar threatened to use the ISA against those who posted 'seditious' messages on a popular website, 'Sarawak Talk' on the ground that it could stir up racial and religious hatred (Kim, 2001).

### **The Sexual Offences against Children Act (2017)**

In Malaysia, making, producing, directing child pornography or using child in such acts have been strictly prohibited by the Sexual Offences against Children Act 2017 (Cooray, Jamaluddin, & Tahir, 2020). Publications of such pornography in any manner including online broadcasting media is also made punishable under this Act. The punishment for exchanging, publishing,

printing, reproducing, selling, distributing, exhibiting, advertising, transmitting, promoting, importing, exporting, conveying any child pornography; or obtaining, collecting or seeking any child pornography; or engaging in business for making profit out of child pornography is imprisonment for a term not exceeding fifteen years and not less than three strokes of whipping (Rosli, Hani, Zubaidi, & Dusuki, 2019).

From the above discussion it is found that the laws that govern the broadcasting environment are fairly established but scattered in Malaysia. However, the convergence of media technologies and the entry of new broadcasting media have made it necessary for the inclusion of new laws as custodians to online broadcasting media as well (Cooray et al., 2020).

### **“NO CENSORSHIP ON THE INTERNET”: THE MALAYSIAN EXPERIENCE**

Malaysia embarked into a new era of digitalisation after announcing its gigantic Multimedia Super Corridor project in 1995 which was equivalent to the US Silicon Valley. During the promotion of the MSC Malaysia to a group of foreign investors in California in 1997, the fourth Prime Minister of Malaysia, Tun Dr Mahathir Mohamad first guaranteed the concept of no censorship of the Internet (Steele, 2007). Later on, this policy was incorporated into the Communications and Multimedia Act 1998 (Wok & Mohamed, 2017). Actually, the no censorship guarantee was the part of Malaysia's selling points to attract investments in the MSC Malaysia. In reality, the open and censorship free internet accelerates all kinds of abuses. If internet is kept free from any censorship, obscenity, hatred speech, defamatory messages, indecent content and pornography etc. will flourish in the internet. For this reason, all countries of the world are now regulating the contents of the Internet, the same way it was done for the mass media. Broadcasting contents that are left free from the shackles of laws and regulations would not only create a lawless wild-wild-west but also will facilitate all forms of illegal conduct (Azmi, 2003). Moreover, it would be a mockery not to censor online broadcasting medias where all the printing and other medias are subject to such censorship.

Nonetheless, the no censorship guarantee of the Internet resulted in an assumption in the mind of the broadcasters that their online contents are free from any statutory or legislative controls. Such a belief is entirely bogus and baseless as the explanation accompanying the MSC Malaysia Bill of Guarantees (BoGs 7) clearly states that there will be no differential treatment between the physical world and online environment. That means, if an act is illegal offline, the same will also be illegal online. Laws prohibiting dissemination of indecent, obscene or other illegal materials will continue to apply in case of online materials the same way they apply in physical world (C. Lee, 2002). Furthermore, section 3(3) of the CMA does not exclude the application of existing laws for online broadcasting such as defamation, sedition, or even the provisions of the CMA. So, it is completely erroneous to assume that the Internet is a lawless space. All the existing laws are equally applicable to the Internet. In addition, all internet users of Malaysia should remember that they cannot easily shield their true identities by using pseudonyms or anonymous accounts because of Section 114A of the Evidence Act under the 2012

amendment where the owner of the site is made responsible for publishing a content in the site (Hassan et al., 2018).

### **FINDINGS AND RECOMMENDATIONS**

Detailed analysis of the legal framework of broadcasting media in Malaysia shows that it is impracticable for online broadcasting or other online publications to be governed by the current statutory requirements since the provisions of most of the current laws are pre-internet and were drafted to regulate mainly print and electronic media. These laws were enacted long before the convergence era in the late 1990s. Regarding the licensing system, section 6 of the CMA clearly mentions about online publications, including online broadcasting medias, to be within the remit of content applications services. Nonetheless, operators of online broadcasting services are required for any licences since they are explicitly exempted by the Communications and Multimedia (Licensing) (Exemption) Order 2000. Thus, online news portals or other web-based publications are free to publish any online materials without obtaining licences or permits. This is somehow consistent with the guarantee of no censorship of the Internet (Nawang, 2017). It is highly undesirable to leave online broadcasting not bound by any specific legal regime because these new media may potentially be exploited to disseminate hatred and spread lies in cyberspace (Nawang & Mustafa, 2017). This may affect the internal peace, security and social, religious and political harmony of the country in a long run. So, it is recommended that the Malaysian government would take necessary steps promptly to enact specific legislation and a code of conduct incorporating the scattered laws and including contemporary legal provisions in order to govern and regulate online broadcasting in a holistic way.

### **CONCLUSION**

In summary, detailed analysis of the laws and regulations governing broadcasting media indicates that online broadcasting in Malaysia is not bound by an organised legal regime currently. This is because of the fact that most of the broadcasting laws in Malaysia were drafted before the advent of the Internet. Furthermore, the promise of no censorship guarantee on the internet has also made it difficult for the regulatory authorities to exercise effective control over online broadcasting media regarding licensing and other things like print media. Nevertheless, it is strongly suggested that leaving online broadcasting not subjected to any specific legal regime is highly undesirable as online broadcasting media is prone to disseminate lies and hatred. Thus, with such a highly developed internet infrastructure, Malaysia currently is at serious risk of unwanted internet broadcasted misinformation and offensive materials that are counter-productive and detrimental to its society. Due to absence of specific legal regime hate content, islamophobia, extremist content etc. are broadcasted and made available through online very often. Furthermore, it is also unfair to not treating online broadcasting media and print broadcasting media equally as the latter is strictly regulated in Malaysia. That is why it is recommended that online broadcasting in Malaysia should not be treated differently and must be subjected to a specific legal regime. For this, Malaysia need to enact a single piece of legislation governing online broadcasting compiling the existing laws and importing contemporary legal provisions.

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