The Media System and Co-operative Regulatory Systems in the Media Sector of Malaysia

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THE MEDIA SYSTEM AND CO-OPERATIVE REGULATORY SYSTEMS IN THE MEDIA SECTOR OF MALAYSIA

Report by our correspondents

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and
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for the
Study on Co-Regulation Measures in the Media Sector

Study commissioned by the European Commission, Directorate Information Society Unit A1 Audiovisual and Media Policies, Digital Rights, Task Force on Coordination of Media Affairs

DG EAC 03/04
This report is part of the research that has been done for the study on “Co-Regulation Measures in the Media Sector”. The Study is commissioned by the European Commission, Directorate Information Society, Unit A1 Audiovisual and Media Policies, Digital Rights, Task Force on Coordination of Media Affairs (Tender No. DG EAC 03/04).

The above study aims at providing a complete picture of co-regulatory measures taken to date in the media sector in all 25 Member States and in three non-EU-countries, as well as of the research already done. The study will especially indicate the areas in which these measures mainly apply, their effects, and their consistency with public interest objectives. In this context, the study will examine how best to ensure that the development of national co- and self-regulatory models does not disturb the functioning of the single market by re-fragmenting the markets. This study started at the end of December 2004, the final report will be compiled by the end of December 2005.

Please note: This country report is intended to give a detailed description of co-operative regulatory systems in the different media sectors in the EU-member states and three non-EU-countries. Co-operative regulation is meant as a combination of non-state regulation and state regulation in such a way that a non-state regulatory system links up with state regulation. Such combination may be a co-operation of state and non-state organisations, an accreditation of a non-state regulatory organisation by the state, the incorporation of non-state regulation into state regulation, a ratification/taking-over of decision of the non-state organisation by the state, etc. Thus, it is not necessary that organisations as such are found on both, the state and the non-state level. (For more information on the definition on co-regulation in the meaning of this study, see the interim report).

The reports provide material for the next steps of the ongoing research. The conclusion given in this report cannot be seen as a decision of the contractor, on whether the respective system is a co-regulatory system in the meaning of the study or not. The contractor will perform the selection based on the reports.

Hereafter, an impact assessment of selected systems will be conducted in autumn 2005.

More information on the study can be found at http://co-reg.hans-bredow-institut.de

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Introduction to the regulatory regime in Malaysia

Development of the regulatory regime of Malaysia’s convergence media

1908 - Fusion of the Post and Telecommunication Departments
1946 - Foundation of the Department of Telecommunications Malaysia (JTM).
1946 - Establishment of the Radio Broadcast's Department in Singapore
1948 - Radio broadcast services were expanded during the outbreak of the communist period
1950s - Expansion of radio broadcast transmission throughout Malaysia
1960 - Start of advertising via radio broadcasting
1963 - Promulgation of the Constitution of the Ministry of Transport and Communications
1963 - Start of television broadcasting
1968 - Incorporation of the Departments of Post and Telecommunication of Sabah and Sarawak into the Department of Telecommunications (JTM)
1969 - Promulgation of the Constitution of the Ministry of Public Works, Post and Telecommunications
1969 - Transmission of television moves to its new premises at the Angkasapuri Complex
1969 - Department of Broadcasting under the Ministry of Information becomes responsible for broadcasting of radio and television
1976 - Promulgation of the Constitutions of the Ministry of Energy, Telecommunications and Posts
1984 - Start of transmission of the first private free-to-air television channel
1987 - Beginning of deregulation of the communication-industry by the corporatisation of Telekom Malaysia. The Department of Telecommunications (JTM) as a regulatory agency is reorganised
1989 - Liberalisation of customer equipment and value-added services

1990 - Liberalisation of the market aligning with an increase in the number of market players

1994 - Integration of a new industry development policy in the National Telecommunications Policy

1995 - Enforcement of competition by introducing interconnection agreements

1996 - Launch of the first phase of tariff-realignment, incl. new tariffs and rates

1997 - Rationalisation of the industry by introducing a policy of encouraging consolidation among market players

1998 - Formulation of the Communications and Multimedia (Convergence) Policy under the New Development Policy. Promulgation of the Constitution of the Ministry of Energy, Communications and Multimedia. The Communications and Multimedia Commission was established as the regulatory agency for the industry

1999 - Enhancement of the competition policy through the introduction of "Equal Access" (Call by Call) and creation of an interim Model for Universal Service Obligation

Legislative changes in the convergence media sector

1950 – The Telecommunications Act 1950 (revised 1970) governing the telecommunications industry is introduced. The Act is then repealed by the Communications and Multimedia Act 1998

1985 – The Telecommunications Services (successor company) Act 1985 comes into force to enable the corporatisation of the telecommunications services, previously an agency under the Ministry of Energy Telecommunications and Post


1988 – The Broadcasting Act 1988 is overruled. The broadcasting legislation is repealed by the Communications and Multimedia Act 1988
1996 - The Telephone Regulations P.U. (A) 256/96 are passed by the minister.

1997 – The Cyberlaws, i.e. the Digital Signature Act 1997, the Computer Crime Act 1997 and the Copyright (Amendment) Act 1997 come into force


2000 - The ATUR Regulation 1986 is revoked by P.U. (A) 282/2000, the Telecommunications (Automatic Telephone Using Radio Services) (Revocation) Regulations 2000

2002 - The Telephone Regulations 1996 is revoked by P.U. (A) 79/2002, the Communications and Multimedia (Rates) Rules 2002

**Historical background**

To understand the media regulatory system in Malaysia an overall knowledge is required of its background as a fast developing country with a pluralistic society. Malaysia has a total population of 26.13 million. Malaysia has a pluralistic society, mainly consisting of three races: Malays, Chinese and Indians and other minority groups which include native inhabitants of eastern Malaysia. Situated at the southern tip of East Asia with Singapore as her southern neighbour, she is close to the international regional economy-, finance- and media-centres. Her multi-racial society-sensitivities and development-policies have shaped the regulatory environment of the media. Malaysia’s history of race-relations at various periods before and after independence tempered the fears of the government of the possible repercussions of media activities.\(^3\)

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2. Based on the 2000 Census the Department of Statistics, Malaysia reported that out of the total population 94.1% were Malaysian citizens. Of the total Malaysian citizens, Bumiputera comprised 65.1%, Chinese 26.0% and Indians 7.7%. In Sarawak, the predominant ethnic group was the Ibans 30.1%, followed by the Chinese 26.7% and the Malays 23.0%. While in Sabah the predominant ethnic group was the Kadazan Dusun with 18.4% which were followed by Bajau (17.3%) and the Malays (15.3%).
3. During the Japanese occupation the Chinese community was oppressed by the Japanese occupiers while the Malay community was co-opted to inform on the activities of the former. After the end of occupation, many Chinese joined the underground communist party and committed sabotage on the returning British administration and economic interests to enforce the issue of independence that led to the Emergency. The
Malaysia gained independence in 1957\(^4\) and inherited the British legal and administrative systems. During the colonial period the British introduced laws regulating the media to protect their vested interests and in response to the demographic, social and political changes that occurred at the time. The population of Malaysia changed with the arrival of immigrant Chinese and Indian labour added to the indigenous Malay people and native inhabitants. Besides licensing, controls over the press as counter insurgency measures, the Sedition Ordinance 1948 and Printing Presses Ordinance 1948 were enacted during the communist period which ran from 1948-1960. Radio broadcast of anti-communist messages were made to the general populace.\(^5\) These laws remained after the British left and in fact further gained strength as time went on, restricting media independence of news reporting and analysis of issues.

**The Constitution**

The Malaysian Constitution guarantees the exercise of the freedom of speech in Article 10(1a). Parliament is however authorized to impose restrictions on freedom of speech on the basis of Articles 10(2a), 10(4), 149 and 150, if it considers it necessary or expedient. The Parliament’s satisfaction of the necessity or expediency of restriction is not open for question.\(^6\) The restrictions are based on the following 14 grounds\(^7\):

2. Friendly relations with other countries;
3. Public order (Sedition Act 1948, Police Act, PPPA);
4. Morality (Film Censorship Act, PPPA, Finas )

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\(^4\) Malaysia or parts of, at various times, was a former colony of Portugal, the Netherlands and Britain.


\(^6\) Article 4(1b) Federal Constitution of Malaysia.

\(^7\) Shad, Saleem and Sankaran (1998) 14-16.
5. Privileges of parliament or of any legislative assembly;
6. Contempt of court;
7. Defamation;
8. Incitement of offence;
9. Rights to citizenship under Part III of the Constitution;
10. Status of the Malay language;
11. Position and privileges of the Malays and the natives of Sabah and Sarawak;
12. Prerogatives of the Malay Sultans and the Ruling Chiefs of Negeri Sembilan;
13. Legislative action designed to stop or prevent subversion, organized violence and crimes prejudicial to the public (Internal Security Act 1960);
14. Legislative action required by reason of emergency.

In the aftermath of the bloody 1969 race riots, the Malaysian government instituted a series of amendments to the Federal Constitution which widened the narrow window of discourse allowed to the media. A broad definition of "seditious tendency" was inserted in the Sedition Act which does not require actual harm to be caused by the acts or speeches in question. These included a tendency to bring into hate or contempt or to excite disaffection against any ruler, the government or the administration of justice. There is also a tendency to raise discontent or disaffection amongst the citizens of Malaysia. The privilege to debate in the Dewan Rakyat afforded by members of the parliament is also curbed by the new clause 63(2) in the Federal Constitution. It has been declared that in Malaysia speech is free as long as it does not offend the law. In Public Prosecutor v Ooi Kee Sait\(^8\), Raja Azlan Shah J (as he was called back then) said:
"The right to freedom of speech is simply the right which everyone has, to say, write or publish what he wants as long as he does not breach the law. The effect of the speech-guarantee along with the laws protecting the various overriding interests is that there is freedom of speech but there is no freedom after speech."

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\(^8\) [1971] 2 MLJ 108.
The mass media in Malaysia

After independence the mass media in Malaysia were perceived by the government as ‘vital agents of social change’. The mass media were an important instrument to motivate people to change their attitudes and traditions that have hindered their own socio-economic progress. In the 1970s the structures and functions have been altered to support national development and integration complying with the objectives stated in the Second and Third Malaysia Plans and the Rukunegara national ideology. The Radio Televisyen Malaysia, the state television and radio broadcaster is the main government mouthpiece. Its task is the ‘promoting of national unity, developing of civic consciousness and providing of information and entertainment’. Other government departments and agencies such as the Department of Information, Filem Negara Malaysia (National Film Malaysia) and BERNAMA (Malaysian National News Agency) within the Information Ministry also play a major role in transmitting government policies and current information and emphasizing development-oriented programs.

The Ministry of Information regulated the broadcast media before the enactment of the Communications and Multimedia Act 1998 (‘CMA’). The Ministry now maintains its regulation of government information over the broadcast media. There are five departments and agencies under its auspices. These are the Broadcasting Department of Malaysia (‘Radio Televisyen Malaysia’), Department of Information Malaysia (‘Jabatan Penerangan Malaysia’), the National Film Malaysia (‘Filem Negara Malaysia’), Malaysian News Agency (‘Bernama’) and the Special Affairs Department (‘Jabatan Hal Ehwal Khas’). The jurisdiction over the broadcast, satellite, online services and telephony

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10 Schramm, Wilbur and Lerner, Daniel (eds.) (1967), Communication and Change in the Developing Countries, Honolulu, Hawaii: East-West Center.
is under the new Ministry of Energy, Water and Communications.\textsuperscript{13} An agency called the National Film Development Corporation Malaysia (‘Finas’) is under the auspices of the Ministry of Culture, Arts and Heritage.

The press in Malaysia includes the New Straits Times Press (‘NSTP’) group that publishes the English dailies New Straits Times, Malay Mail, Business Times, the national language dailies such as the Berita Harian and Harian Metro, and the Chinese language daily, Shin Min Daily News. They also publish the weekend editions of New Sunday Times, Sunday Mail and Berita Minggu. Another press organisation is the Utusan Melayu (Bhd) group. It publishes in the national language the Utusan Malaysia and Utusan Melayu dailies and their weekend editions, the Mingguan Malaysia and Utusan Zaman. These two major press groups are owned by UMNO, the main component party in the ruling Barisan Nasional party.

Beginning in the 1980s the privatization policy of the Mahathir administration deregulated the media industry. Private television networks and radio stations and later on satellite subscription services began to operate independently from the television and radio stations owned and run by the government. TV3, a company owned by entities linked to the parties of the ruling government was the first recipient of a free-to-air private television license. Later, other private stations followed suit with varying success such as Metrovision (free-to-air in 1995), Mega TV (cable subscription in 1995), ASTRO (satellite subscription in 1996) and NTV7 (free-to air in 1998). Hoping to be a step ahead with advances in communication, information and entertainment (CIE) media and services, together with the rise of the internet, Malaysia enacted the Communications and Multimedia Act (CMA), the first converged legislation covering all the media, except print. The Broadcasting Act 1988 and the Telecommunications Act were repealed by the CMA and a period of transition started for all the existing licensees to migrate to the new regime.

\textsuperscript{13}Previously it was under the Ministry of Communications and Multimedia.
A series of discussions with key industry players in the media industry, namely in the broadcast, telephony and online sector have been undertaken before and throughout the phasing in of the CMA. It was a big transition as the separate media were now identified by the type of license they held and not by the medium or platform they were operating. The government introduced the Communications and Multimedia Commission (‘CMC’) to regulate the converging multimedia industry. The introduction of the current media regime is part of the country’s development project, the Multimedia Super Corridor (‘MSC’) conceptualised by the Mahathir administration in 1996, aimed at propelling the country forward to a developed nation status until 2020.\textsuperscript{14} The project started with a physical corridor of 750 square kilometers spreading from the Kuala Lumpur city centre to Sepang in the south, close to the Kuala Lumpur International Airport. An overall strategy to digitalise the country by the development of the information communication technology (‘ICT’) was pursued by the Mahathir administration by its "Vision 2020" plan. Former Prime Minister Mahathir stated that one of the challenges of "Vision 2020" is to establish a scientific and progressive society, being innovative and looking forward.\textsuperscript{15}

I. Co-operative Regulatory Systems in the television and internet sector

1. Part I: The co-operative regulatory system

\textit{a) Development of the regulatory system}

Since 1999 the regulation of broadcasting, telecommunication and online media has been gradually combined\textsuperscript{16} under the framework of the Communications and Multimedia Act 1998 (‘CMA’).\textsuperscript{17} A regulatory body named the Malaysian Communications and Multimedia Commission (‘MCMC’) was also created under the Communications and

\textsuperscript{14} The MSC constituted a part of the Malaysian government’s key initiative to expand the country’s information infrastructure network and services under its Seventh Malaysia Plan (1996-2000).


\textsuperscript{16} The Broadcasting Act 1988 and the Telecommunications Act 1950 were repealed.
Multimedia Commission Act 1998 (‘CMCA’). The government initiated the legal convergence of the media sectors, appreciating the technological advances made in the evolving industry. The enabling legislation has a clear set of policy objectives of:

- Promoting the national policy objectives for the communications and multimedia industry;
- Establishing a licensing and regulatory framework to support the national policy objectives for the industry;
- Establishing the powers and functions for the Malaysian Communications and Multimedia Commission (CMC);
- Establishing the powers and procedures for the administration of the CMA.\(^\text{18}\)

The government intended the legislation to be long term-oriented and visionary, setting a clear direction for the industry and providing a basis for the achievement of economic, social and industry objectives.

The development of the regulatory regime of a converged communications and multimedia industry in Malaysia is essentially a top-down mission\(^\text{19}\) without opening widespread public inquiries or inviting debate on the proposals.\(^\text{20}\) The "Multimedia Super-corridor Project" and the cyberlaws\(^\text{21}\) were enacted to create the adequate environment for the development of the communications and multimedia industry. It was also intended to position Malaysia as an important centre for the communications and multimedia information and content services.


\(^\text{18}\) Section 3(1) CMA.

\(^\text{19}\) The changes were made to assist the Malaysian government’s plans to propel the country into developed nation status by 2020 through the embrace of knowledge-based economy. A briefing of the CMA was given to members of the industry by the Commission in 1999.

\(^\text{20}\) Closed door consultations for feedback from the industry were made with the main operators from the broadcast and telephony groups (Interview with officer of policy planning division in Ministry of Information).

b) Subject-matter of the regulatory system

The legislation introduced the regulation for the new online media and also dealt with other forms of media, i.e. of the broadcasting and the communications sector. Four areas are targeted at in the new regulatory environment: economic regulation, technical regulation, consumer protection and "social regulation". The CMA states the national policy objectives for the multimedia and communication industry which are:

- to establish Malaysia as a major global centre for communications and multimedia information and content services;
- to promote a civil society where information-based services will provide the basis for continuous enhancements to quality of work and life;
- to grow and nurture local information resources and cultural representation that facilitate the national identity and global diversity;
- to regulate the long-term benefit of the end user;
- to promote a high level of consumer confidence in services provided by the industry;
- to ensure an equitable provision of affordable services over ubiquitous national infrastructure;
- to create a robust applications environment for end users;
- to facilitate the efficient allocation of resources such as skilled labour, capital, knowledge and national assets;
- to promote the development of capabilities and skills within Malaysia's convergence industries; and
- to ensure information security and network reliability and integrity.22

The processes and decisions regulated in the CMA cover:


22 Section 3(2).
• Licensing of various activities, including to draw up rules and guidelines on anti-competitive conduct;\(^{23}\)
• Provision of access to infrastructure and services;\(^{24}\)
• Determination of technical standards;
• Promotion of universal service provision;
• Guidelines for content of services;
• Resolution of consumer disputes\(^{25}\)

Part V of the CMA\(^{26}\), dealing with the powers and procedures of the MCMC, lists the tasks of the regulator. They are:

• to issue written directives regarding compliance or non-compliance of license conditions, including the remedy of breaches of license condition, and provisions of the CMA or its subsidiary legislation;\(^{27}\)
• to determine any matter specified in the Act as being subject to the Commission’s determination;\(^{28}\)
• to hold public inquiries of any matter of general nature related to the administration of the CMA, or its subsidiary legislation;\(^{29}\)
• to investigate any matter of a civil or criminal nature, if directed by the Minister or if there is a probable cause for an offence against the Act or its subsidiary legislation;\(^{30}\)
• to gather information;\(^{31}\)

\(^{23}\) Sections 133 to 144 of the CMA.
\(^{24}\) Sections 145 to 156 of the CMA.
\(^{25}\) Part VIII of the CMA.
\(^{26}\) Sections 51 to 125 of the CMA.
\(^{27}\) Section 51 to Section 54 of the CMA.
\(^{28}\) Section 55 to Section 57 of the CMA.
\(^{29}\) Section 58 to Section 67 of the CMA. The inquiry is conducted in response to a Ministerial directive or in response to a written request from a person or on the Commission’s own initiative if it is convinced that the matter is of significant public interest or relevant to current or prospective licensees. Section 58(2).
\(^{30}\) Section 68 – Section 72 of the CMA.
\(^{31}\) Section 73 to Section 80 of the CMA.
• to maintain a physical and electronic register of all matters, which have to be registered under the Act or its subsidiary legislation;\textsuperscript{32}
• to resolve disputes;\textsuperscript{33}
• to register agreements;\textsuperscript{34}
• to designate industry forums and supervise the compliance of the voluntary industry codes with the laws in force;\textsuperscript{35}
• to determine mandatory standards for the industry;\textsuperscript{36}
• to manage registered undertakings;\textsuperscript{37}
• to forbear from applying any provision of the Act or its subsidiary legislation upon the Minister’s directive to a licensee or a class of licensees;\textsuperscript{38}
• to review all rules and regulations made under the Act;\textsuperscript{39}
• to monitor all significant matters relating to the performance of network facilities providers, network service providers, applications service providers and content applications service providers and to report to the Minister at the end of each financial year.\textsuperscript{40}

The CMA establishes a formal structural framework of co-regulation of the industry by providing forums for industry members to create and manage codes of conduct for the industry.\textsuperscript{41} In the explanatory statement of the CMA it is said that the provisions are set out to allow the intervention of the state in case of failure of the industry self-discipline. The new regime introduced provisions for safeguarding against anti-competitive conduct and to promote fair and sustainable competition in the industry and specific transitional safeguards.\textsuperscript{42} In the operation of the CMA regime, section 3 provides that nothing in the

\textsuperscript{32} Section 81 of the CMA.
\textsuperscript{33} Section 83 to Section 89 of the CMA.
\textsuperscript{34} Section 90 to Section 93 of the CMA.
\textsuperscript{35} Section 94 to Section 103 of the CMA.
\textsuperscript{36} Section 104 to Section 109 of the CMA.
\textsuperscript{37} Section 110 to 116 of the CMA.
\textsuperscript{38} Section 117 and Section 118 of the CMA.
\textsuperscript{39} Section 122 of the CMA.
\textsuperscript{40} Section 123 to Section 125 of the CMA. The report made by the Commission shall be published as soon as practicable after conveying the report to the Minister.
\textsuperscript{41} See Part V of the CMA.
\textsuperscript{42} See Sections 133 to 144 and 276 to 282 of the CMA.
Act shall be construed as permitting the censorship of the internet. However other laws relating to public order such as the Internal Security Act 1960, Sedition Act 1948, Official Secrets Act 1972, Police Act 1967 and even the CMA itself may impose restrictions on online content post-publication. Repercussions may occur as a result of the publication of material or discussions which are deemed as injurious to the national interests.43 The CMA is not intended to encroach on existing legislation which governs traditional media and content services. According to the explanatory statement it does however overrule some specific provisions relevant to traditional media which would otherwise have a limiting or counterproductive impact on the development of the communications and multimedia industry.44 There are four categories of licensable activities which may fall either under an individual or a class type license, depending on the degree of regulatory control for the different activities.45 The categories are:

- Network facilities provider (NFP);
- Network service provider;
- Applications service provider;
- Content applications service provider (CASP).

Network Facilities Providers (NFP) are owners of facilities such as earth stations/base stations, broadband fibre optic cables, telecommunications lines and exchanges, radiocommunication - transmission equipment, mobile communication- base stations and broadcasting transmission towers and equipment. Network Service Providers (NSP) are the providers of basic connectivity and bandwidth to support a variety of applications. Network services enable connectivity or transmission between different networks. A

43 The alternative online newspaper MalaysiaKini and the online organ of an opposition party Harakahdaily was warned by the government to be responsible for its content and not to abuse the freedom stipulated under the Multimedia Super Corridor Bill of Guarantee. This is reported by Beh Lih Yi, ‘Be careful, we are watching’, in MalaysiaKini, Oct 16, 2003 accessed on July 13 2005 at http://www.malaysiakini.com/news/17473, in her coverage of the parliamentary answer by the Energy Communications and Multimedia Parliamentary Secretary. Publishers were warned that their operations as a company may be affected, although they are not scrutinised under the CMA as licensees.
network service provider usually also owns the network facilities. But it is also possible to operate a connectivity service by using the infrastructure of another provider. Applications Service Provider (ASP) provide particular functions such as voice services, data services, content-based services, electronic commerce and other transmission services. Applications services deliver the function capabilities to end users. Content Applications Service Provider (CASP) cover traditional broadcasting services and online services that provide content such as online publications and information services. The CASPs include broadcasters, online service providers that provide content on the Internet, closed circuit broadcasting services and also local and wide area networks. The Communications and Multimedia (Licensing) Regulations 2000 provides the standard conditions for all licenses, and special license conditions for each category of individual licenses.

There are a total of 398 licensees (190 individual licensees and 208 class licensees). The total revenue contribution of the communications and multimedia industry totals RM24 billion.

The MCMC is obliged to investigate any matter in regard to the administration of the CMA or subsidiary legislation. Either it is instructed to do so by the relevant Minister or the CMC believe that an offence against the CMA has or will be committed or upon a complaint by any person. The CMA requires MCMC to provide guidelines for the procedure, i.e. the receipt, handling and resolution of complaints. The guidelines for complaints handling came into force in September 2004. They include the complaints procedure, as well as provisions relating to communication and confidentiality. An appeal of MCMC’s decision can be brought before an Appeal Tribunal. The CMA provides that the Minister may draw up regulations regarding the operating procedures of

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45 Malaysian Communications and Multimedia Commission.
46 Section 205(1) states that no one shall provide a content applications service without a valid license.
47 P.U.(A) 129.
48 Sections 68 and 69.
49 Section 196.
51 See paragraph (f) Supervision of the System.
the Tribunal, although no such regulations have been prepared yet. The High Court is the last instance.

c) Basis of the co-operation

The previous co-regulatory arrangement of the industry operated through industry-based advisory committees and consultative processes. The new communications and media legislation established the industry self-regulation regime and supported it by having fallback provisions administered by the MCMC. The CMA strongly promoted the new co-regulatory system through its regulator. The pull factor to form themselves into industry bodies is to formulate their own rules and guidelines rather than to be imposed and forced upon them. However it is still a new concept for the industry players hence the MCMC plays a big role to encourage participation by all parties involved. A self-regulatory body – an industry body – which is called a ‘forum’ is constituted when it is designated or appointed. This will be the case if the MCMC is certain that the following criteria have been fulfilled:

- The membership of the body is open to all relevant parties;
- The body is capable of performing as required under the CMA; and
- The body has a written constitution.

In addition, the MCMC will only register the body as an industry forum if the body agrees in writing to be such an industry forum. The designated forum may then prepare a voluntary industry code either on its own initiative or upon request by the Commission.

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52 Section 24.
54 See Part V Chapter 9 of the CMA and also sections 94, 152 on Access Forum, 184 on Technical Forum, 189 on Consumer Forum, and section 211 on Content Forum.
55 Section 94(1).
56 Section 94(2).
57 Section 95(1).
d) Institutions involved in the system

aa) The state regulator for the communications multimedia industry is the **Malaysian Communications and Multimedia Commission** (‘MCMC’). Its functions are:

- to advise the Minister on all matters concerning the national policy objectives for communications and multimedia activities;
- to implement and enforce the provisions of the communications and multimedia laws;
- to regulate all matters relating to communications and multimedia activities not provided for in the communications and multimedia laws;
- to consider and recommend reforms to the communications and multimedia laws;
- to supervise and monitor communications and multimedia activities;
- to encourage and promote the development of the communications and multimedia industry including the area of research and training;
- to encourage and promote self-regulation in the communications and multimedia industry;
- to promote and maintain the integrity of all persons licensed or otherwise authorized under the communications and multimedia laws;
- to render assistance in any form to, and to promote cooperation and coordination amongst, persons engaged in communications and multimedia activities; and
- to carry out any function under any written law as may be prescribed by the Minister by notification published in the *Gazette*.

bb) The **existing industry forums** in the co-regulatory system are the **Access Forum**, the **Technical Standards Forum**, the **Consumer**, and the **Content Forum**. The primary function of a designated industry forum is to formulate and to implement voluntary industry codes which should serve as a guide for the industry to operate. The membership of the forums has to represent fairly and adequately the supply and the demand side of the relevant communications sectors. This is ensured by the MCMC prior to their designation.
by scrutinizing their memorandum of association and articles of association. The Communications and Multimedia Content Forum has categories of membership.\(^58\) One representative of each category participates in the Council of the forum and also in the Complaints Committee. The Commission allocates an annual grant in form of gratis payment to the forums to cover their operational costs as submitted by the forums. This is reviewed regularly and based on priority.

The industry codes may be developed on the forum’s own initiative or upon request by the MCMC.\(^59\) The Code will come into force after its registration.\(^60\) The MCMC is empowered to refuse registration if there is no opportunity for public consultation during the development of the Code.\(^61\) In this context, the MCMC is obligated to register the code if it is consistent with the objects of, relevant instruments under, and provisions of the CMA.\(^62\) Compliance with the voluntary industry code is not mandatory but may be used as a defence against prosecution in relation to a matter dealt in the Code.\(^63\) Because

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\(^{58}\) The categories of membership in the CMCF are as follows:
- **Advertiser:** means any person, partnership, company, corporation or society carrying on or directly involved in advertising as part or the whole of its business or activity and shall include an advertising agency.
- **Audiotext Service Provider:** a person who provides an application service which enables a caller by dialling a "600" short code or such other codes as may be decided by the Commission from time to time, to receive a recorded message or interact with a programme for the purposes of receiving information.
- **Broadcaster:** means a person who causes to be transmitted any sign or signal through a broadcasting station whether for audio or visual reception or both, and includes any music, theatrical or other entertainment, concert, lecture, speech, address, news and information of any kind so transmitted for reception by the general public.
- **Civic group:** means any organisation whose objects are exclusively to promote the interests of community issues which shall include but not limited to consumer interests, women's issues, children's issues, youth issues and religious harmony issues and which is registered as a society under the Societies Act 1966 or as a company limited by guarantee under the Companies Act 1965.
- **Content Creator / Distributor:** means those who are involved in any one of the following activities:
  (a) the creation of content including but not limited to online content creators, aggregators, scriptwriters, production houses, post-production agencies but excluding advertisers; or
  (b) the distribution of content (excluding those who make available and/or distribute such content directly to consumers of content via the medium of broadcasting, internet services, audiotext).
- **Internet Access Service Provider** means those who are involved in providing access to internet services and applications in conjunction with either a dial-up or direct connection.

\(^{59}\) Section 95(1).
\(^{60}\) Section 95(2).
\(^{61}\) Section 95(3).
\(^{62}\) Section 95(4).
\(^{63}\) Section 98.
the compliance with a (voluntary) code is not mandatory, it will be the task of the courts to interpret the Codes when judging about a complaint.

Another form of cooperation is knowledge-sharing between the regulator and industry experts in the form of **technical working groups**. Important technical matters such as the regulation of spectrum, standards and numbering and electronic addressing technology are addressed by technical working groups comprising experts from the industry. Reports from these working groups are compiled and presented in the national committees before bringing them to the international level.\(^{64}\) There is also the **Information Sharing Forum (ISF)** formed in June 2004, comprising various internet service providers (ISP) and other agencies in order to address the information and network security issues in Malaysia. Besides obtaining cooperation among the industry players, the forum enables sharing of experience and expertise. The MCMC is the Chairman of the ISF. The setting up of the ISF supports the national objective of ensuring information security and network reliability and integrity.

(1) **The Communications and Multimedia Content Forum of Malaysia (‘CMCF’)**

The CMCF\(^{65}\) was established in February 2001 and designated\(^{66}\) by the MCMC in April 2001. The forum is administered by a constitution. The management of the CMCF rests with a chairman and 18 council members, elected from 6 “ordinary” member categories for a term of two years. The 6 ordinary member categories are - advertisers, audiotext service-providers, broadcasters, content creators/distributors, internet access service providers and civic groups.

Among the CMCF’s objectives are the following: to establish Malaysia as a major global centre for communications and multimedia information and content services, to promote


\(^{65}\) Their website address is [http://www.cmcf.org.my](http://www.cmcf.org.my). The site was last updated on March 7, 2005.

\(^{66}\) Section 212 of the CMA provides that the MCMC designates an industry body to be a content forum.
national policy as in the CMA, to prepare a Code on content\(^67\), and to provide a complaints procedure.

The CMCF’s website describes the body as a “society” (see [http://www.cmcf.org.my](http://www.cmcf.org.my)), i.e. presumably a society registered under the Societies Act 1966. Under this act a society is not obliged to publicly disclose its annual return or balance sheet. The MCMC gives a grant to the CMCF for its funding, to cover the operational costs. The rationale for the grant is the "relationship" between the MCMC and the CMCF, latter being a "product" of the former. The Commission ought to ensure the basic function of the forum, therefore the grant does not cover extravagance.\(^68\) Also subscription fees are a source of fund for the CMCF. The fees breakdown is as follows:

<table>
<thead>
<tr>
<th>Ordinary Member</th>
<th>Associate Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other than civic group</td>
<td>Other than civic group</td>
</tr>
<tr>
<td>Entrance fee: RM1,000.00</td>
<td>Entrance fee: RM1,000.00</td>
</tr>
<tr>
<td>Annual Subscription: RM2,000.00</td>
<td>Annual Subscription: RM300.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Civic Group</th>
<th>Civic Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Subscription: RM60.00</td>
<td>Annual Subscription: RM60.00</td>
</tr>
</tbody>
</table>

The Content Code covers all content provided over the electronic networks including radio, television and online services.\(^69\) During the development of the Content Code the

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\(^{67}\) Section 213 states that a content code prepared by the content code or by the Commission shall include model procedures for dealing with offensive or indecent content.

\(^{68}\) Interview with a senior MCMC executive.

\(^{69}\) There are other relevant legislations besides the CMA and the Content Code that licensees need to be aware of in preparing their content. These are:

- Accountants Act 1967 (revised 1972)
- Children & Young Persons (Employment) Act 1966 (Revised 1988)
- Consumer Protection Act 1999
- Copyright Act 1969
- Defamation Act 1957
- Dental Act 1971
- Film (Censorship) Act 2002
- Geneva Conventions Act 1962
- Indecent Advertisements Act 1953
- Internal Security Act 1960
Broadcasting Guidelines and the Advertising Code, developed by the Ministry of Information, were still in force. The Ministry of Energy Water and Communications is also formulating a National Content Policy to develop and control local content. Under the Eighth Malaysia Plan the Malaysian Government allocated RM10million at the Ministry of Energy Water and Communications to develop the local content industry.\textsuperscript{70} After the registration the Content Code came into force in September 2004. As the Content Code includes also provisions in regard to advertisement, broadcasting, online and other content, the former guidelines and codes are overruled now.

The MCMF began its task on the premise that there was a need to protect the interests of the consumers by maintaining accepted community standards in content. The need to balance the freedom of speech and the need of protection in regard to potentially offensive and harmful material, and the need to ensure appropriate protection of fairness and privacy, have also been taken into account.\textsuperscript{71} The central basis for the Code is as envisaged by section 211(1) of the CMA that states: No content applications service provider or other person using a content application service shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.

- Medicine (Advertisement and Sale) Act 1956
- National Anthem Act 1968
- Penal Code
- Pesticides Act 1974
- Poisons Ordinance 1952
- Poisons (Sodium Arsenite) Ordinance 1949
- Printing Presses and Publications Act 1984
- Private Higher Educational Institutions Act 1996
- Private Hospitals Act 1971
- Sale of Drugs Act 1952 (Revised 1989)
- Sale of Food Act 1983
- Food Regulations 1985
- Securities Industry Act 1983
- Sedition Act 1948
- Trade Description Act 1972
- Trade Marks Act 1976
- Women and Girls Protection Act 1973

\textsuperscript{70} The fund is called the Local Content Development Fund.

\textsuperscript{71} Speech by Chairman of the Communications and Multimedia Content Forum at the launch of the Content Code and CMCF website on October 21, 2004, accessed on July 14, 2005 at http://www.cmcf.org.my/HTML/cmcf_events1.asp.
The matters addressed by the Code include:

- Restrictions on the provisions of unsuitable content;
- Methods of classifying content;
- Procedures for handling public complaints and for reporting information about complaints to the Commission;
- Representation of Malaysian culture and national identity;
- Public information and education regarding content regulation and technologies for the end user control of content and;
- Other matters of concern to the community.⁷²

Besides a Complaints Bureau the CMCF is setting up a Content Advisory Centre (‘CAC’). Its objectives will be to:

- provide a resource whereby clarification can be obtained in regard to the interpretation of the Communications and Multimedia Content Code prior to production and/or dissemination;
- provide a trustworthy and respected, fair and balanced interpretation of the Communications and Multimedia Content Code;
- provide a broad advisory service for networked content;
- provide a reasonable level of assurance that materials will not require expensive withdrawal or correction;
- execute all of the foregoing in a timely and efficient manner.

The CAC would be a service, being aware of the business needs of the content industry. The advisory process will endeavour to provide advice as helpfully, constructively and swiftly as possible.⁷³

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⁷² Section 213(2) of the CMA.
⁷³ Information on CMCF website last updated October 20, 2005.
(2) The Communications and Multimedia Consumer Forum of Malaysia (‘CfM’)

The Communications and Multimedia Consumer Forum was designated by the MCMC in March 2001. It is made up of 48 members from various segments of the communications and multimedia industry. It has an elected council of 13 members, the majority of whom are representatives from industries such as service providers, telecommunication companies and broadcasting stations (described as the supply side). The other representatives are from non-governmental organisations and public interest groups (the demand side). The CfM’s objectives and purposes are to:

- promote national policy objectives as stated in the CMA;
- draft, develop and prepare codes that protect consumers’ right pursuant to the provisions of the CMA;
- amend, develop, modify, review and update the codes;
- undertake research on matters within the jurisdiction of the forum and collect, prepare and distribute statistics beneficial for the forum’s objectives;
- provide access to complaint procedures, disputes and grievances;
- recommend inexpensive and practical alternative dispute resolution procedures;
- recommend procedures for compensation and/or any other mode of action to the consumer for breaches of the code;
- invite, collect and collate public opinion and views on consumer matters and to promote and create public and industry awareness of the codes and their compliances;
- provide the possibility to disseminate information to the public and in regard to education about consumer rights, regulations and technologies for the consumer;
- administer sanctions on breaches of the codes by members;
- monitor service delivery of the communications and multimedia industry concerning consumer interests in order to ensure compliance with the codes;

74 Pursuant to Section 189 of the CMA.
• promote and encourage high standards of service, conduct and performance throughout the communications and multimedia industry and to develop consumer confidence;
• update the Commission regularly on the progress of the forum.

The CFM has four working committees assisting it in meeting its objectives. These Working Committees are:

• The Code Drafting Committee that drafts, develops, prepares, amends, modifies, reviews and updates the Codes.
• The Education and Promotions Committee whose tasks are to promote and publish the activities and objectives of the forum and to provide avenues for dissemination of public information and education in regard to consumer rights.
• The Complaints Handling Committee that operates as a channel for complaints relating to consumer matters and to provide procedures for such complaints and grievances.
• The Membership Committee enlists and updates the membership list of CFM.

The legal status of the CfM is not clear; on its website (http://www.CfM.org.my) it is described as a national organisation. The CfM receives a grant from the MCMC to cover its operational costs. It also receives subscription fees from its members. The fee breakdown is given below.

<table>
<thead>
<tr>
<th>ORDINARY MEMBER</th>
<th>ASOCIATE MEMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fee type</td>
<td>public interest group/non-governmental organisation/institutions of higher learning</td>
</tr>
<tr>
<td>commercial organisation</td>
<td></td>
</tr>
<tr>
<td>Entrance</td>
<td>RM1,000.00</td>
</tr>
<tr>
<td>Annual Subscription</td>
<td>RM3,000.00</td>
</tr>
</tbody>
</table>
The General Consumer Code of Practice (‘GCC’) of the CfM has been registered on 17 October 2003. The GCC is seen as a kind of commitment that has to be provided by the service providers. There will be a ‘one-stop’ shop for consumers to file complaints. The objectives of the GCC are to provide model procedures for:

- Reasonably meeting consumer requirements;
- The handling of customer complaints and disputes;
- The creation of an inexpensive mediation or process other than the court and procedures for compensation of the customers in case of a breach of the consumer code;
- The protection of consumer information;
- To support the achievement of the relevant national policy objectives of the CMA;
- To provide benchmarks for the communications and multimedia service providers for the benefit of consumers;
- To promote a high level of consumer confidence in service delivery from the industry;
- To provide guidelines for self-regulation among the industry.

The GCC binds all licensed service providers in regard to their licensed activities and all non-licensed service providers who are members of the Consumer Forum. The Code becomes part of the license conditions. The CfM administers all codes and sub-codes developed by them.
In June 2005 the CfM released the Internet Access Service Provider (‘IASP’) Sub-Code\textsuperscript{75} identified as an important sub-code for the Consumer Forum.\textsuperscript{76} The IASP Sub-Code is applicable\textsuperscript{77} to IASPs, persons or class of persons directed by the MCMC and members of the Consumer Forum. The IASP Code has to be read in addition to the GCC. The GCC governs all sub-codes. The general rules for Service Providers and code of practice covered in the IASP Code are:

- The IASP Code Guiding Principles
- Protection of personal information
- Provision of information
- Provisioning of services
- Anti-spam measures
- Policy on information network security
- Content
- Billing
- Protection of minors
- Handling of customer complaints and disputes

The IASP Sub-Code states that service providers should address concerns about spam and consider methods of managing such issues in order to ensure the protection of consumers’ interests. The sub-code includes the following general principles which have to be implemented as contractual conditions in agreements between the service providers and their customers:

- The customer shall not engage in sending spam messages;

\textsuperscript{75} The IASP Code is developed pursuant to Clause 6.2, Part 1 of the GCC to address the specific needs of the Internet services industry.

\textsuperscript{76} Its objectives were to:
- Promote the free-flow of information and communications over the Internet;
- Set out a code of practice for Internet Access Service Providers;
- Improve the standard of conduct within the industry.

\textsuperscript{77} Sub-code means codes that are developed to address specific industry needs. The IASP Code comes into effect upon its registration by the MCMC. The Code may be downloaded at the CfM website at http://www.cfm.org.my/indexenglish.jsp?page/welcome2.htm.
• Any infringement shall result in the suspension and/or termination of the
customer account. The customer may appeal for reactivation of the said account
in accordance with the service provider’s prevailing policies and procedures;
• Service providers should provide specific guidance (in the form of an Acceptable
Use Policy (AUP)) about the sanction or suspension and termination of an
account. The Acceptable Use Policy should impose an obligation on the customer
to ensure that all commercial emails sent out by the customer are accompanied by
or include the following information:
  ▪ Header information that is not false, deceptive or misleading
  ▪ A valid return e-mail address
  ▪ Functional unsubscribe facility (i.e. “opt out” facility)
  ▪ Identity of sender
  ▪ Message has to be clearly labelled as commercial communication (eg
    [ADVERTISEMET] for advertisements, [COMMERCIALS] for
    commercials etc.)

For the purpose of this provision, “commercial electronic message” shall mean any
electronic message that is send in order to advertise, to highlight, to promote, to sell
and/or to offer goods, property, service and/or business or investment opportunity. The
Service Providers should also provide their policies and procedures in reactivating the
services due to violation of the AUP.

The sub-code required service providers to implement technical measures to curb spam
and present a written procedure for handling incidents of spam. It must be publicly
available either in print or on a website. The service provider is also required to make
available on its website information on anti-spamming measures regarding its
customers.78 The sub-code requires service providers to ensure that post-paid internet

78 Such information may include IP addresses, suspended and/or blocked by the Service Provider and / or
any anti spamming monitoring bodies such as Spamhaus and Soamcip. The said information shall be
updated on a weekly basis.
access accounts are not provided to children without the consent of a guardian.\textsuperscript{79} It also states that service providers should take reasonable steps to provide customers with:

- Information on supervising and controlling a child’s access to internet content;
- Procedures with which guardians can control a child’s access to internet content, including the availability, use and appropriate application of internet content filtering software.
- Notifying the customers: “if you are below 18 years of age – prior consent of a guardian is required before you are allowed to subscribe to a post-paid Internet access account” prior to the sale of the service.\textsuperscript{80}

Concerning the handling of customer complaints, disputes and compensation the sub-code states that reference should be made to the relevant provisions in the GCC. The CfM is also working on the Content Hosting Service Providers Sub-Code, Mobile Service Provider and Fixed Line Service Provider Codes.\textsuperscript{81}

\textbf{(3) The Malaysian Access Forum Berhad (545160-D) (‘MAFB’)}

The Malaysian Access Forum Berhad (545160-D) (“MAFB”) is a company limited by guarantee and was incorporated on 17 April 2001.\textsuperscript{82} The first meeting of the board of directors was held on 16 June 2001. The main objective of the MAFB is to formulate codes based on the officiated Access List for proposal to the MCMC.\textsuperscript{83} The members are representatives of the telephony providers. It has been formally designated as the Access Forum by the MCMC in March 2003. The major activities of the MAFB to date include

\textsuperscript{79} This obligation is not applicable to pre-paid Internet access services. See paragraph 9.1 of the IASP sub-code.
\textsuperscript{80} Paragraph 9.2 of the IASP sub-code.
\textsuperscript{81} Information obtained from the MCMC website at http://www.mcmc.gov.my/mcmc/consumer/consumer.asp
\textsuperscript{82} Accessed on 15 July 2005 at http://www.mafb.com.my/. The website indicated that it was a temporary website until the MAFB is officially designated by the MCMC. It was updated on May 22, 2003.
\textsuperscript{83} Section 153 of the CMA.
industry business dialogues, different workshops, industry gatherings, and the draw up of a voluntary access codes in June 2005.\footnote{See the CEO’s Dialogue with the Malaysian Communications and Multimedia Commission on January 31, 2005, at \url{http://www.cmc.gov.my/what_we_do/licensing/pdf/CEOs%20Dialogue%20310105-Report.pdf}.}

Added to the role of the Access Form, the MCMC also released a determination on the access list in 2001 - the Commission's Determination on Access List 1/2001. The MCMC also released several public inquiry and consultation reports concerning access. These are:

- A report on a public inquiry under Section 55 of the Communications and Multimedia Act 1998 on Access List Determination 12 March 2001 (PIR/AL/1/01)
- A consultation paper on local access funding 13 May 2002
- A consultation paper on access funding 13 May 2002 MCMC/IDD/IRA/LAF/No. 4 of 2002
- A consultation paper on access pricing 13 May 2002 MCMC/IDD/IRA/AP/No.3 of 2002
- A report on a public inquiry under Section 65 of the Communications and Multimedia Act 1998 on Access Pricing 31 July 2002 (PIR/AP/2/02)
- A report on a public enquiry under Section 65 of the Communications and Multimedia Act 1998 on Local Access Funding 31 July 2002 (PIR/LAF/4/02)
- Public inquiry paper on draft mandatory standard on access 30 April 2003 (MCMC/IDD/PRID/MS(ACCESS))/No.1 of 2003
- A report on a public inquiry under Section 65 of the Communications and Multimedia Act 1998 on Mandatory Standard on Access 30 July 2003 (PIR/MSA/1/03)
- A report on public consultation on effective competition in the Access Network 18 November 2003 (MCMC/IDD/PRR/ANE/PCR/No.1 of 2003
A report on a public inquiry: Review and Expansion of Access List Determination

In the absence of a voluntary industry code or mandatory standards on access, the industry is currently guided by the:

- The General Framework for Interconnection and Access, May 1996;
- The Statement on the Implementional Plan of Equal Access and Cost-Based Interconnection Pricing in Malaysia, issued by the Minister of Energy Telecommunications and Post on 10 April 1998;
- Telecommunications Regulatory Determination – Customer Access Arrangements
  24 May 1998 (TRD 001/98);
- Determination of Cost Based Interconnect Prices and the Cost of Universal Service Obligation, 15 July 1998 (TRD 006/98);
- Ministerial Direction on Equal Access 23 March 2001;
- Commission Determination on Access List, 24 March 2001;

The industry players also have their own access agreements which are required to be registered by the MCMC.\(^{85}\) The Commission also made two other determinations on access. These are:


\(4\) Malaysian Technical Standards Forum Berhad (‘MTSFB’)

The Malaysian Technical Standards Forum Berhad is a company limited by guarantee, which is responsible for the establishment and maintenance of the standards, technical codes, interoperability of networks and operation issues. The MTSFB is also responsible

\(^{85}\) Section 150 of the CMA. See the register of access agreements on the MCMC website at
for the development, recommendation, modification, update and such of the registration of technical codes from the MCMC.\textsuperscript{86} The MTSFB was officially designated on 27 October 2004. The management of the MTSFB rests with the board of directors headed by a chairman and 13 directors. The board members comprises of:

- 8 members who are licensees;
  - 2 from NFP category (1st by highest Annual Revenue & 2nd by ballot)
  - 2 from NSP category (1st by highest Annual Revenue & 2nd by ballot)
  - 2 from ASP category (1st by highest Annual Revenue & 2nd by ballot)
  - 2 from CASP category (1st by highest Annual Revenue & 2nd by ballot)
  - 2 members who are Profit Organisations (1st by highest Annual Revenue and 2nd by ballot)
- 2 members who are Non-Profit Organisations (both by ballot);
- 1 member from the National Standards Agency category (by ballot).

The objectives of the MTSFB as a company limited by guarantee are:

- To actively promote a co-operative environment to address in a timely manner national or international issues involving technical standards, technical codes and development of operational guidelines for the Malaysian communications and multimedia industry;
- To take all measures that may appear to be incidental or conducive to the development of the object thereto;
- To establish and maintain technical standards, technical codes, network interoperability and operational issues affecting the Malaysian communications and multimedia industry;
- To develop, recommend, modify, update and seek the registration of technical codes from time to time for the communications and multimedia industry;
- To promote the dissemination of relevant information on the technical codes and standards to the public and the education thereof;

\textsuperscript{86} There is no further information regarding the technical codes developed by the MTSFB or their activities and schedule on its website.
• To monitor technical code compliance and administer sanctions for breaches of the technical codes;
• To engage in activities that would facilitate industry regulation;
• To generally do all such things as may appear to be incidental or conducive to the development of the object thereto including operating as a recognized standard writing organisation for the development of Malaysian standards in accordance with the Standards of Malaysia Act 1996 where the Board deems appropriate;
• To be an information resource to its members and participants and other interested parties;
• To work closely with government and non-governmental bodies, voluntary associations or individual persons in order to facilitate the development and growth of the communications and multimedia industry;
• To promote the development of standards and the safety of network facilities.

There are several working groups (‘WG’) within the MTSFB:
• WG on IMG-2000 Systems and Beyond Mobility
• WG on Networks
• WG on Broadband Multimedia
• WG on Interoperability Requirements for CPE
• WG on Public Mobile Radio (PMR)
• WG on Wireless Access/Local Loops

According to the MTSFB the key benefits for joining the MTSFB are that:87
• it is a forum where relevant parties such as telecommunication operators, vendors, academic, government and non-government agencies, local authorities, voluntary association or individuals come together. Therein they could formulate and present ideas on the technical standards, technical codes, network interoperability and operational issues in order to ease interoperability;

87 See the MTSFB website at http://www.mtsfb.org.my/.
• it provides a platform to discuss and get feedback on Research and Development findings;
• it has the ability to propose to MCMC on test parameters, type of equipment, and benchmark standards for all technical tests;
• is a possibility to share and discuss information with the participants and other interested parties for the enhancements of the current standards.

For a fee breakdown of the MTSFB, Schedule 1 of the M & A is referred below.

<table>
<thead>
<tr>
<th>Membership</th>
<th>Annual Revenue (RM)</th>
<th>Initial Fee (RM)</th>
<th>Fee (RM)</th>
<th>Annual Fee (RM)</th>
<th>Fee (RM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Ordinary Members</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Licensees</td>
<td>100 million and above</td>
<td>3,000</td>
<td>50,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Above 50 million to 100 million</td>
<td>3,000</td>
<td>30,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Above 10 million to 50 million</td>
<td>1,000</td>
<td>15,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Above 5 million or less</td>
<td>1,000</td>
<td>3,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Profit organisation</td>
<td>100 million or above</td>
<td>3,000</td>
<td>30,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Less than 100 million</td>
<td>1,000</td>
<td>3,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Non-profit organisation</td>
<td>All</td>
<td>1,000</td>
<td>3,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Members of the MTSFB are e.g. Maxis Communications Bhd (MAXIS), MEASAT Broadcast Network System Sdn Bhd (MBNS), Telekom Malaysia Berhad (TELEKOM), Digi Telecommunications Sdn Bhd (DIGI), SIRIM Berhad and TIME DotCom Berhad.\(^{88}\)

\(e\) Functioning of the system

The licensees under the CMA are obliged to comply with the provisions of the Act and their licenses. The individual license under the CMA could be suspended or cancelled if the licensee:

- fail to pay any amount required under the act of the individual license;
- fail to comply with the CMA or the terms and conditions of the individual license;
- contravene the provisions of any written law relevant to the communications and multimedia industry;
- fail to comply with any instrument issued, made or given by the Minister or the Commission; or
- if the suspension or cancellation is in the public interest.\(^{89}\)

Class licensees may be de-registered upon recommendation of the Commission to the Minister if the licensee:

- fails to pay any amount required by the act or the license;

\(^{88}\) An assembly of MTSFB members were held on November 25, 2004.

\(^{89}\) Section 37 of the CMA.
• fails to comply with the provisions of this act or the terms and conditions of the license;
• contravenes the provisions of any written law relevant to the communications and multimedia industry;
• fails to comply with any instrument issued made or given by the Minister or the Commission; or
• the de-registration is in the public interest.90

The term ‘public interest’ has not been defined in the CMA. Regarding content, CASPs are required to provide content which is not indecent, obscene, false, menacing, or offensive in character with the intent to annoy abuse, threaten or harass any person.91 Otherwise they commit an offence with a penalty of RM50, 000 maximum or jail of one year maximum with a further fine of RM1,000 for every day the offence is continued after conviction.92 The Content Code’s provisions on classification are based on the permissible content provision in section 211. The classification of content is categorised into:

U: Universal viewing [can be shown at any time of the day]
PG – 14-: Parental Guidance for Under 14 [can be shown at any time of the day]
PG – 18-: Parental Guidance for Under 18 [can be shown any time after 7.30pm]
18 & Above: Adult viewing [can only be shown after 10.00pm]

There are two general guidelines on permissible content to be broadcasted. Under Part 4: Specific Broadcasting in the Content Code paragraphs 3.5 and 3.6 states:

3.5 Broadcasters must endeavour to provide content that, as far as possible, caters to the various tastes and expectations of Malaysian viewers and listeners. This is in view of the varied of tastes of the Malaysian public.

3.6 Broadcasters must ensure, to the best of their ability, that their content contains no abusive or discriminatory material or comment on matters of, but not limited to, race, religion, culture ethnicity, national origin, gender, age, marital status, socio-

90 Section 47 of the CMA.
91 See Appendix 2 on Classification of Content.
economical status, political persuasion, educational background, geographic location, sexual orientation or physical or mental ability.

Before the forum codes became effective the MCMC used the Ministry of Information’s Advertising Code and Broadcasting Guidelines to regulate the advertising and broadcasting sectors. As mentioned before these guidelines are overruled now.

The Content Code and General Consumer Code of Practice are voluntary industry codes and are only effective if they are registered by the Commission. It is not mandatory to comply with the code requirements although it constitutes a defense against any prosecution, action or proceeding whether in court or otherwise if a person complies with the code. However it must be explained that not complying with the industry forum codes may be considered as a failure to comply with the CMA or the terms of the individual license. Thus although it is not mandatory to comply with the codes however the conditions of the license and primary legislation obligates the licensees such as online content providers and broadcasters to comply with it. The MCMC is obliged to undertake enforcement action under the law. The Commission may direct individuals or class of persons to comply with a registered voluntary industry code. Non-compliance with the Commission’s direction to comply with the code will be followed by a maximum fine of RM200,000 to the Commission.

92 Section 211 of the CMA.
93 The advertising industry also has its Malaysian Code of Advertising Practice.
94 Part 4 of the Contents Code.
96 Section 6 and 213 of the CMA.
97 Section 95(2) of the CMA. See the Complaints Code paragraph 6.1.
98 Section 98(1) of the CMA.
99 Section 98(2) of the CMA.
100 For example when renewing license under section 34(3) the MCMC could recommend to the Minister not to renew the license; MCMC may recommend to the Minister to suspend or cancel an individual license under section 37. The MCMC may also recommend to deregister a class licensee under section 47.
It must also be remembered that all television broadcasters as well as public screenings of films are governed by the Film Censorship Act.\textsuperscript{102} If a programme does not have a censorship certificate issued by the Censorship Board, it is also a breach of the license condition under the CMA.\textsuperscript{103} The special license conditions for the CASPs individual license include special requirements and privileged terms. These are:

- The requirement to provide a certain percentage of local content (including special content categories such as: particular language content requirements, particular categories of local production such as film, advertising, etc.)
- Specific undertakings with respect to the levels of investment, specific activities and operations;
- Specific rights and privileges agreed between the licensee and the Government which are conditional upon the undertakings entered into by the licensee;
- Other special conditions and matters as declared by the Minister or provided in any subsidiary legislation under this act.

Complaints

There are layers of redress for the consumer under the co-regulatory system and for different types of complaints. The \textbf{Guidelines for Dispute Resolution} were issued in July 2003 as required under Section 85 of the CMA. It contains principles and procedures for the resolution of disputes or a class of disputes by MCMC in relation to any matter under the CMA or its subsidiary legislations. There is also the Guidelines for Complaints Handling (‘Complaints Guidelines’)\textsuperscript{104} issued by the MCMC as required under the CMA.\textsuperscript{105} The guidelines are limited to licensees under the CMA and the Commission.

\textsuperscript{102} Refer to the study on the regulation of films in Malaysia.
\textsuperscript{103} The Schedule of the CMA provides the standard license conditions for the Content Applications Service Provider individual license states:
- The licensee shall comply with the provisions of any subsidiary legislation made, or other instruments, guidelines or regulatory policies issued, under this Act;
- The licensee shall comply with any consumer codes registered under this Act which are relevant to the activities of the licensee;
- The licensee shall indemnify the Minister and the Commission against any claims or proceedings arising from any breaches or failings on the part of the licensee.
\textsuperscript{104} Issued on July 1, 2003. See section 196 of the CMA.
\textsuperscript{105} The Commission may use its powers to resolve consumers’ complaints relating to customer service and consumer protection including but not limited to, the failure of a licensee under the Act to comply with a consumer code prepared under Chapter 1 Part VIII of the Act. See section 195 of the CMA.
may only act against licensees.\textsuperscript{106} The guidelines are in addition to and not in derogation of the Commission’s existing powers and functions under the act. Any person may still refer complaints relating to civil or criminal offences committed by non-compliance with the provisions of the act or its subsidiary legislation to the Commission. Paragraph 8 of the guideline says the Commission may deal with those other complaints according to a separate guideline or as the Commission deems fit.\textsuperscript{107} This guideline is construed to allow bringing further appeals from decisions on adjudications of the industry forums.

An appeal tribunal may review any matter on appeal, from a decision or direction of the Commission but not from a determination by the Commission. Its decisions are final and binding on the parties to the appeal and are not subject to further appeal.\textsuperscript{108} It could be argued that the finality of the tribunal’s decision can still be challenged by invoking the High Court’s inherent power to exercise a judicial review. But there have been only a few occasions in which a court has exercised its powers of judicial review. More importantly, the courts have tended to defer to the Executive in giving effect to administrative decisions.\textsuperscript{109}

The CMCF (Communications and Multimedia Content Forum Malaysia) has established a **Complaints Bureau** which determines complaints on prohibited content. This bureau consists of a chairman and 6 members. The procedure on complaints is described in detail in the Content Code. The Content Code is based on the prohibition of offensive content in the CMA, i.e. content which is “indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person”.\textsuperscript{110} The Complaints Bureau for content matters deals with all complaints of general or specific nature. The complaint has to be lodged in writing within two months after its occurring, and it is deemed as admissible when there is a reasonable basis and the complaint is not

\textsuperscript{106} Paragraph 6 of the Complaints Guidelines.
\textsuperscript{107} Paragraph 8 of the Complaints Guidelines.
\textsuperscript{108} Section 18.
\textsuperscript{110} Section 211(1) provides the penalty of a fine of RM50,000 or a maximum imprisonment of one year and liable for RM1,000 for every day offence is committed.
frivolous. Complaints that are subject of legal proceedings do not fall under the jurisdiction of the Complaint Bureau. There have been two complaints regarding obscene content in 2005 and is being looked into by the Complaints Bureau which has started operation. Additional powers need to be given to the forums before they can impose sanctions on their decisions. The Complaint Bureau may issue a written reprimand, impose fines up to RM50,000 require removal of the offensive content and order a cessation of the offending act but this is only as provided in the Content Code. Pending the issuance of bye-laws their sanctions do not have the force of law. The Content Advisory Centre is also now working although both these bodies have not released any publicity regarding their advice and adjudication.

The Content Code provides that the Complaints Bureau of the CMCF may refer the complainant to the Commission if further appropriate action is required. The CfM’s General Code of Consumer Practice (‘GCC’) requires the service providers to implement complaint procedures for consumers in the communications sector. This does not constraint any rights or remedies for consumer, i.e. to take legal actions before the courts or benefit from other forums to resolve disputes. The GCC provides that the customer should be informed by the service provider about the right to refer a complaint to the Commission.

There is no information on the decision-making processes of the industry forums available so far. However the CfM and CMCF provide complaint forms on their websites for the submission. The MCMC, CfM and CMCF have provided actively guidelines to industry members regarding the regulation of content and consumer issues under the new

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111 Paragraph 3.3 of the Contents Code.
112 See appendix 1 for complaints procedure.
113 Personal interview with senior MCMC executive.
114 An outstanding matter for the MCMC and the Ministry of Energy Water and Communications is to draft and gazette the bye-laws pertaining to the powers of these industry forums. Information obtained from personal interview with a senior MCMC executive.
115 Paragraph 8.2 of Part 8: Code Administration in the CMCF Content Code.
regulatory regime. They have also promoted the public awareness in regard to the existence of the codes. The CMCF organised road shows during 2005 to educate and inform the public. The lack of information on and from these industry forums may be attributed to a lack of commitment by the industry to the new system. Under the former system the industry has been guided only by legislation, prevalent religious values and social mores of the society. The industry has still to get used to the formalised organisation guided by the CMA and the MCMC, which requires planning, expenditures as well as time and effort.

\[f)\] Supervision of the system

The key responsibility for the overall supervision rests upon the MCMC. It designates industry forums, determines the draw up of voluntary codes and the administration by such forums, sets standards to be complied with, and has the powers to withdraw designation of industry forums and revoke a code. It also has various enforcement powers. However the industry forums are gradually receiving more responsibilities to carry out their tasks within the regulatory system.

The CMA provides for the establishment of an Appeal Tribunal, directed by the relevant minister. Such tribunal may be established “as the Minister considers necessary or expedient for good cause and in the interest of justice, or to assist in the performance of the Commission's functions, or in the public interest”. The decision of the tribunal may be enforced in the same manner as a judgment or order of the High Court.

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119 Some of the forums have yet to recruit full time permanent staff delaying further the operations of these forums. The regulator assists them by providing financial support and including them in activities of the commission to raise their public profile. Personal interview with a senior MCMC executive.

120 Sections 94, 101, 211-213.

121 Section 17.

122 Section 23A.
The MCMC will monitor the full implementation of the Code of Content and will take strict actions against any breaches of the code. The minister stated that in case of multiple infringements, licensees risk their license.\textsuperscript{123} 

There is a regular interaction between the MCMC and the industry to attend current matters of concern to the industry.\textsuperscript{124} A briefing on regulatory matters was held on 8 March 2004. In January 2005 a dialogue was held with the CEOs of the industry. The objective of the 2005 dialogue between the MCMC with the industry CEOs is:

- to listen to the presentations of the industry – to provide value added information on the industry for effective planning;
- to inform members of the industry of the initiatives and plans for 2005 and to update the activities of 2004;
- to have a dialogue which enables industry to raise questions and to explain issues regarding the concerns of the market and matters relating to the Commission; and
- to foster greater networking spirit.

\textit{g) Impact assessment}

Currently the industry forums and codes are still young, as they have been designated and registered within the past two years. There are no annual reports of their activities released yet and the information on the forums’ websites is limited. There is no opportunity to assess their impact yet because of the lack of information on their operations. However, due to the annual dialogue with the MCMC, certain information on the performance of the CfM is available. Complaints received by the CfM were mainly received online (46.7%); the main topic of complaints was the inadequate internet connection (32.9%) and billing disputes (29.6%).\textsuperscript{125}


\textsuperscript{125} Ibid.
The MCMC publishes statistics on content complaints in their annual report although they receive various kinds of complaints, handled by different departments. The 2004 annual report has not been released yet. In 2004 the MCMC did an impact survey of holders of individual and/or class licenses issued under the CMA. The main objective of the exercise was to assess the impact of licensable activities under the CMA in regard to the communications and multimedia industry in Malaysia. The Commission also regularly conducts a consumer satisfaction survey. The last one was in 2004.

2. Part II: Leading Cases

No cases have been reported yet which were handled under the co-regulatory system by the various institutions. However, it is noted that online content is monitored by the authorities other than the MCMC.

In January 2003 the premises of the alternative newspaper published online *Malaysiakini* have been searched and their PCs and servers were confiscated, following a police report in regard to a controversial letter sent by a reader. The police have investigated because of a news report posted by the paper, which claimed that the report was meant as an April fool joke. A linked story in the paper had stated that the report about top politicians, which should be charged with corruption, was an April fool prank. In July 2005 the police confiscated the computers belonging to the editor of another online publication and interrogated the editor over alleged seditious reports on a Malaysian royal family.

From time to time during the question time in the Parliament, the issues of media content, which bear indecent and offensive depictions, offending religious and racial sensitivities,

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126 The date of the report was 6 January 2005.
129 The letter entitled ‘Similarities between ‘new Americans’ and bumiputera’ was investigated under the Sedition Act 1948. The police officially closed its investigation on the case which went on for two years and returned the computers. See ‘Petrof case closed, no action against Malaysiakini’ in *Malaysiakini*, July 12, 2005.
or may harm the development of minors are raised. Different ministers from various ministries such as the Information Ministry, Culture Arts Heritage and Tourism, or the Minister in charge of Islamic matters in the Prime Minister’s Department indicated their concerns and proposed recommendations publicly to repress such content in the media. The Ministry of Information is in charge of the regulation of public broadcasting. The Culture and Heritage Ministry oversees and is the custodian of the arts and heritage. There is a platform to express their concerns over these overlapping issues at a committee called the “Coordination and Monitoring of Broadcasts by Public and Private Stations Broadcasts Committee” or in Malay is titled Jawatankuasa Penyelarasan Pemantauan Siaran Stesen TV Awam dan Swasta (‘JKPPSTRAS’).

3. Part III: Assessment according to the criteria for determining which types of regulation are covered by the study

a) The non-state regulatory part of the system

The communications and multimedia industry has set up designated industry forums which are deemed to represent the industry and to develop codes of conduct on specific areas. These codes are registered to take effect over the licensees under the CMA and the members of the industry forums. However, the Commission may refuse to register the code if there wasn't sufficient public consultation during the development of the voluntary industry code.

b) The link between the non-state part and state regulation

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131 The commission issued a direction to cease the transmission of a news programme in one of the private free-to-air stations deemed to be too sensational for local consumption. See the direction at http://www.mcmc.gov.my/mcmc/registers/cma/comdirect/pdf/NTV7.pdf.
132 Kuek Ser Kuang Keng, ‘Govt to rein in Astro’, in Malaysiakini, July 5, 2005 accessed on July 15, 2005 at http://www.malaysiakini.com/news/37643. The Minister described some of Astro’s programs as repulsive and announced the satellite television service provider will be brought under the control of domestic laws.
133 Personal interview with senior MCMC executive.
The forums of the communications and multimedia industry which carry out self-regulation were set up with clear objectives of upholding the national policy objectives of the CMA. These objectives of the CMA are reflected in the substance and procedures of the codes. The system created under the CMA, i.e. the co-operative rulemaking functions, aim at achieving public policy goals and social processes.

The non-regulatory system is influenced by the state regulator that uses the resources of providing funds, "carrot and stick measures" provided by the CMA, as well as the publication of consultation papers, making inquiries etc. The system as such leaves room for discretionary power for the non-state part component. But on the other hand there is a strong influence in areas such as content from other state branches and other laws. This situation might be confusing.

**Conclusion:** In our opinion, the Malaysian communications and multimedia regulatory system is a co-regulatory system within the meaning of the study.
Appendix 1: Extract from Content Code Part 8 Code Administration paragraphs 4.0 – 11.7

[Unofficial translation with editorial changes made for clarity by the compiler of the study. The original texts could be downloaded on the website of MCMMC http://www.mcmc.gov.my]

4.0 Procedure for General Public Complaints

4.1 Any complaint received from the public must be made in writing, specifying, if possible, the part of the Content Code that has been breached together with supporting documents or details of the alleged misconduct.

4.2 The complaint will be referred to the Chairman for his consideration. If the chairman judges the complaint as frivolous or that it is *prima facie* lacking in merit or the issue falls outside the scope of the Code, he will notify the complainant that no further action is being taken and the reasons therefore.

4.3 If the Chairman is of the opinion that the complaint warrants further investigation to determine its validity, the complaint will be forwarded immediately to the defendant asking for a response within two working days.

4.4 After two working days, the Chairman will review the complaint and the response, if any. If the Chairman feels there are insufficient grounds for upholding the complaint, the chairman will circulate to Bureau members his views together with the complaint and the response, if any, within 4 working days of the receipt of the complaint.

4.5 Within three working days, if the majority of the members agree with the view of the Chairman, the Bureau will write to the complainant stating that there are insufficient grounds to uphold the complaint.

4.6 If the Chairman is of the view that the complaint has merits, then copies of the complaint together with the response of the defendant will be circulated to members for their views within two working days and:

(a) If the views of the members are unanimous, the Bureau will inform the parties involved of the decision.

(b) If there is a difference of opinion, the Bureau will convene a meeting within three working days to deliberate the matter.

5.0 Procedure for Industry Complaints

5.1 Any complaint that a member or a person from the industry will lodge, should first be raised with the alleged offending party in writing, specifying the part of the code which is concerned, one copy should be send to the Complaints Bureau.
5.2 If within two working days, the complaint is not resolved, then either of the parties shall in writing inform the Complaints Bureau which will then circulate copies of the complaint to its members for their views within two working days and:
(a) If views are unanimous, the chairman will instruct the Secretaries about the action that should be taken.
(b) If there is a difference of opinion, the Bureau will convene a meeting within three working days to deliberate the matter.

6.0 Inquiry Proceedings

6.1 In adjudication of all cases, the Bureau may require the parties concerned to provide evidence in support of or against the complaint and for this purpose may request:
(a) A written submission with documents, recordings or transcripts of the relevant content from the complainant and respondent;
(b) The presence of the complainant and respondent and their respective witnesses at the inquiry;
(c) The presence of any party to provide clarification on a document submitted as evidence; and
(d) The presence of any outside independent party for further information or further evidence.

6.2 The Bureau will specify the time at which or within which the complainant, respondent, their witnesses and any other affected parties are required to be present at the inquiry.

6.3 The provision as to the time within which any party is required to act or respond shall be strictly observed. However, all time limits set out may, in the Bureau’s discretion, be extended if it is considered that its strict application may cause injustice.

7.0 Decisions of the Bureau

7.1 The ruling of the Complaints Bureau, on any matter and at any given time, shall be decided upon by a majority of votes of its members and rendered in writing.

7.2 The parties concerned will be notified in writing of the decision and of the subsequent action that is recommended or to be taken.

7.3 In the event that after the decision any of the parties concerned comes into possession of evidence not earlier available, it may request the Bureau for reconsideration of its earlier decision. Such a request will be accompanied by a fee to be determined by the Bureau and any decision upon such reconsideration will be final.

8.0 Sanctions
8.1 The Bureau, after the adjudication and upon finding that there has been a breach of the Code, may impose fines and other penalties permitted by virtue of this code. The Bureau may upon finding that there has been a breach of the Code:
(a) Issue a written reprimand;
(b) Impose a fine not exceeding fifty thousand (RM50,000.00); and/or
(c) Require removal of the content or cessation of the offending act.

8.2 The Bureau may also refer the offending party to the Communications and Multimedia Commission for further appropriate action, if required.

9.0 Publication of Decision

9.1 The Complaints Bureau will report to the Forum’s Council the outcome of its mediation efforts or the ruling made, and whether or not the defendant has complied with or the party in breach has agreed to comply with the ruling.

9.2 The Bureau shall publish its findings within 30 days of the conclusion of the inquiry. The report shall not include:
(a) Any material of a confidential nature; or
(b) any disclosure or personal information about any individual that is not relevant to the complaint.

10.0 Composition of the Complaints Bureau

10.1 The Complaints Bureau comprises an appointed chairman and six members of the Forum, each of them representing: advertisers, audiotext service providers, broadcasters, civic groups, content creators/distributors and internet access service providers.

10.2 The appointed chairman shall be a retired judge or judicial officer or anyone the Council deems fit. The chairman may be appointed for several times and for different time periods, which is in the power of the Council. The members of the Complaints Bureau shall be appointed for a two-year term at the annual general meeting of the Content Forum. A member is eligible for reappointment but only for two successive terms.

10.3 A Complaint Bureau’s member is entitled to appoint another member of the forum from the same category he/she represents, as an alternate and shall notify the Forum Secretary in writing.

10.4 A formal inquiry convened by the Bureau shall be made up of the chairman and at least three members. If the chairman is not able to attend such a scheduled inquiry, it must nonetheless be convened by at least three Bureau members, one of who will be elected to be the chairman of the inquiry.

10.5 In ensuring a fair hearing of a complaint, a Complaint Bureau's member must disclose to the chairman, as soon as possible, any interest, direct or otherwise, in any
particular matter related to the complaint. If the chairman deems it necessary, all parties involved in the inquiry must be informed of such disclosure to determine whether the member may continue to execute his duties as a member of the Complaints Bureau in relation to that matter. If none of the parties objects, the member may then continue. If there is an objection, the member cannot proceed in his capacity as a member of the Complaints Bureau in relation to that matter.

10.6 If any vacancy in the Complaints Bureau occurs before the annual general meeting of the Forum, the position may be filled by a member of the Council until the next annual general meeting. The exercise of powers or the performance of the functions of the Complaints Bureau shall not be affected by a possible vacancy.

10.7 The Chairman or any member of the Complaints Bureau may, at any time, resign his office by giving a written notice to The Board of Directors/Council.

10.8 The Council may, at its discretion, suspend any member of the Complaints Bureau on the ground of inappropriate behaviour or incapacity or any other reasons which make him unfit to be a member of the Complaints Bureau.

11.0 Development, Amendment and Review of Content Code

11.1 Any proposal for the development, the addition, the amendment, or the review of the Content Code required or necessary shall be referred to a working group comprising the six categories, namely advertisers, broadcasters, audiotext service providers, content creators/distributors, internet access service providers and civic groups.

11.2 Any proposal for the development, the addition to, the amendment of, or the review of the Content Code shall be considered and formulated by the members of the working group and shall, if approved by a resolution of a simple majority of the members of the working group (whereupon it shall be referred to as the Recommendation), be made available to members of the society for their input.

11.3 The Working Group shall consider and deliberate on the input received from members and decide the extent to which the recommendation is to be revised. If two thirds of the members agree on the Recommendation whether in its original form or as revised, the Recommendation shall be submitted to the Council.

11.4 As long as the Council by simple majority of its members presents and the voting approves the recommendation, the Council shall make available such recommendations for public comment (public consultation) for a reasonable period.

11.5 The Working Group shall consider the results of the public consultation and then forward the recommendation in its original or amended form by a simple majority to the Council.
11.6 After receiving such a recommendation in regard to the Content Code, the Council shall forward the same to the Malaysian Communications and Multimedia Commission for registration.

11.7 The Malaysian Communications and Multimedia Commission must be notified of any amendment or modification to the Content Code, like to any code. Only after this registration the amended code could come into force.

Appendix 2: Extract from Content Code Parts 4 – 7 [Classification of Content]

PART 4 SPECIFIC BROADCASTING

1.0 Scope and Coverage

1.1 This part serves as a guideline for content that is broadcasted through the following media:
(i) Direct to Home (DTH) subscription broadcasting and/or video on demand services, whether via satellite or cable; and
(ii) Terrestrial Free-to-Air TV and Radio; collectively known as “Broadcasters”.

1.2 This part excludes content available online [see part 5].

2.0 Objectives

2.1 The objective of these specific broadcast guidelines is to ensure continued reliable standards of content disseminated by broadcasters in accordance with expectations of audiences and internationally recognised good practice of electronic media and journalism.

2.2 This code is a manifestation of a paradigm change brought about by technological developments in the broadcasting industry. It is acknowledged that compliance with the Content Code enables to set standards for content.

2.3 Malaysian Broadcasters recognise that the "creative freedom" obliges to take the responsibility to ensure minor protection in particular, as well as the protection of viewers and listeners in general. Therefore they guarantee to respect ethical and professional standards in their conduct of business operations in order to fulfil this social responsibility.

3.0 Specific Guidelines

3.1 In extension to the general principles and the general guidelines laid out in Part 1 and Part 2 of this Code respectively, the following specific guidelines take also into account the particular conditions under content could be broadcasted. Such condition might be the special audience or -as for the free-to-air broadcast- the time of the day:
Classification

3.2 Viewers need to be informed in an adequate way, enabling them to choose the programming conform to their taste and standards. Therefore broadcasters (radio operators excluded) will provide different signs for the different kind of content, indicated by the following classification. The broadcasters should display the adequate sign in regular intervals of the programme:

U: The programme is intended for a broad general audience and is suitable for viewers of all ages. The programme contains little or no violence, no strong language and little or no sexual dialogue or situation.

PG-14: Parental guidance is needed in order to allow children under the age of 14 to view this programme. The programme may contain mild physical violence, comedic violence, comic horror, special effects, fantasy, supernatural elements or animated violence. It may also contain some suggestive dialogue and mild sexual situations and innuendo, but depictions will be infrequent, discreet and of low intensity.

PG-18: Parents/guardians are strongly cautioned to exercise discretion before allowing young persons under the age of 18 to view this programme without supervision. The programme may contain sophisticated themes, some sexual content, discreet sexual references, suggestive language and in some sections strong and coarse language and violence which are dominant elements of the storyline and justifiable within the context of theme and character development. The programme may also contain and deal with mature themes and societal issues in a realistic and candid manner.

18 & above: For those older than 18 years. The programme is intended for an adult audience and may contain one or more of the following issues which are considered integral to the development of the plot, character or themes: intense violence and depictions of violence, graphic horror images, graphic language, mature themes, intense sexual situations and suggestive dialogue.

Scheduling

3.3 The scheduling of programmes which were classified is applicable to free-to-air broadcasters (excluding radio operators) as follows:

- U and PG-14 – Can be shown at any time of day
- PG-18 – Can be shown any time after 7.30 p.m.
- 18 – Can only be shown after 10.00 p.m.

3.4 Promotion content, which contains scenes of excessive violence, or adult material intended for adult audiences must not be transmitted before 10.00 p.m. Broadcasters are required to have their own content control unit which is responsible for the classifications and scheduling.

General Content
3.5 Broadcasters have to provide content that, as far as possible, caters to the various tastes and expectations of Malaysian viewers and listeners. This is in view of the varied tastes of the Malaysian public.

Non-Discrimination

3.6 Broadcasters must ensure, to the best of their ability, that the content contains no abusive or discriminatory material or comment on matters of, but not limited to, race, religion, culture, ethnicity, national origin, gender, age, marital status, socio economic status, political persuasion, educational background, geographic location, sexual orientation or physical or mental ability.

News and Current Affairs

3.7 Broadcasters recognise the fundamental importance of news dissemination and current affairs content in a democracy. They inform the public about actual events and enables people to understand affairs that may affect them as members of the community so that they may form their own conclusions.

3.8 "Current affairs Content" means content focusing on social, economic or political issues of current relevance to the Malaysian community.

3.9 Broadcasters will ensure that content of news and current affairs programmes are presented:
   (a) Accurately, fairly and objectively at any time. They should not be manipulated, i.e. there should not be a distortion between the presentation of the content and its original context. The circumstances of the presentation should be taken into account (e.g. live coverage).
   (b) Having in mind the likely composition of the viewing audience at the time of broadcasting.
   (c) With sensitivity in the case of material likely to cause some distress to a substantial number of viewers such as images or interviews with victims of traumatic incidents. Such material should only be used when deemed editorially essential, and if so, sparingly.
   (d) With due respect to the cultural differences in the Malaysian community.
   (e) With appropriate respect to the rights of any individual group of persons who should not be portrayed in a negative light by placing gratuitous emphasis on matters pertaining, but not limited to, race, religion, culture, ethnicity, national origin, gender, age, marital status, socio economic status, political persuasion, educational background, geographic location, sexual orientation or physical or mental disability.
   Where in the opinion of a broadcaster it is in the public interest, it may report events and broadcast comments in which such matters are raised.
   (f) With due respect to privacy of an individual. However, in the public interest, an intrusion into an individual’s privacy may be justified such as in detecting or exposing crime or a serious misdemeanour, protecting public health or safety and preventing the public from being misled by some statement or action of an individual or organisation.
   (g) The presented content should be presented by taking into account that news materials and current affairs are always in line with government’s principles. This is to avoid confusion and misunderstanding among the people and also other countries. Materials
received from foreign countries must also be ensured that they don’t contradict with national foreign policies.

3.10 Reasonable efforts must be made to correct significant errors of fact at the earliest opportunity.

Violence and Bad Language
3.11 In strictly adhering to the general guidelines on violence and bad language set out in Part 2 of this code, all broadcasters will:
(a) Exercise appropriate editorial judgment in the reporting of audio and audiovisual presentation of violence, aggression or destruction within their content.
(b) Exercise caution and appropriate discretion in the selection of, and repetition of, content which depicts violence.
(c) Exercise appropriate discretion in the use of explicit or graphic language related to stories of destruction, accidents or sexual violence which could be disturbing for family viewing.
(d) Warning viewers in advance of scenes of extraordinary violence, or graphic reporting on delicate subject matters.

Religious Content
3.12 By dealing with religious content, broadcasters shall have regards to Islam as the official religion of the country and the constitutional rights to freedom of religion of all other communities.

3.13 Religious broadcasts are aimed at respecting and promoting spiritual harmony and to cater to the varied religious needs of the community. Broadcasters must ensure that its religious content is not used to convey attacks upon any race or religion or is likely to create any disharmony.

3.14 All religious programming on Islam must be approved by the relevant religious authorities prior to transmission. Advice from the appropriate religious authorities should be obtained in relation to content relating to other religion.

3.15 However, the propagation of any religion other than Islam whether directly or indirectly is not permitted.

3.16 Content that is wrongful, fanatical, critical and insulting against any religion shall not be permitted.

Exploitation
3.17 No audio and audiovisual content should condone the exploitation of women, men and children. Negative or degrading content on the role and nature of women, men or children in society must be avoided.

3.18 Television content that degrades either sex by negative portrayal such as implied lewd conduct through modes of dress or camera focus on areas of the body is not
allowed. Similarly, the degradation of children through improper portrayal or behaviour is not acceptable.

4.0 Advertisements

4.1 Broadcasters are responsible for the acceptability of advertising material transmitted and must ensure that:
(a) All advertisements are in good taste and conform to applicable laws and regulations.
(b) There is no influence by advertisers, or the perception of such influence, on the reporting of news or public affairs which must be accurate, balanced and objective, with fairness and integrity being the paramount considerations governing such content.

5.0 Information, Advice and Warnings

5.1 Broadcasters must ensure that classification details and other information announcements have a helpful role in enabling viewers to make appropriate choices at all times.

5.2 Broadcasters should consider if any element or programming might disturb viewers, in particular younger children. Appropriate information, advice and or warnings should be provided at the beginning of any programme or news report which might disturb younger children.

5.3 Broadcasters have to ensure the employment of clear and specific warnings, especially after 10.00 p.m. There is a probability after 10 p.m. that some viewers may find the programme disturbing or offensive. This does not reduce the responsibility of broadcasters in regard to sensitive scheduling of programmes, in order to reduce the risk of offence to the minimum.

PART 5 SPECIFIC ONLINE GUIDELINES

1.0 Scope and Coverage

1.1 In adhering to this and the relevant parts of this code, no action by code subjects should, in any way, contravene Section 3(3) of the Act, which states that “Nothing in this Act shall be construed as permitting the censorship of the Internet”.

1.2 Code subjects in this Part are providers of online content or those who provide access to online content through present and future technology. These include, but are not limited to:
(a) internet access service providers;
(b) internet content hosts;
(c) online content developers;
(d) online content aggregators; and
(e) link providers.
1.3 “Online” is defined as a networked environment that is available via a connection to a network service whereby content is accessible to or by the public whether for a fee or otherwise and which originated from Malaysia. Content, for the purposes of this part, means content as defined in the Act but does not include:
(a) Ordinary private and/or personal electronic mail other than bulk or spammed electronic mail;
(b) Content transmitted solely by facsimile, voice telephony, VoIP and which is intended for private consumption; or
(c) Content that is not accessible for the public whether freely, by payment of a fee or by registration, including (but not limited to) content made available by way of a closed content application service or a limited content applications service as defined under Sections 207 and 209 of the Act respectively.

2.0 Concept of Innocent/unliable? Carrier

2.1 Code Subjects providing access to any content without having neither control over the composition of such content or any knowledge of such content, is deemed an innocent carrier for the purposes of this code. An innocent carrier is not responsible for the content provided. Nonetheless, this does not exempt such access providers from adhering to the general measures as outlined in Part 6.0 of this part where it expressly applies to them.

3.0 Objectives

3.1 The online environment vastly differs from other existing traditional mediums which are addressed to the public where the use and dissemination of content is concerned.

3.2 The online users are able to choose to access, read or digest various online materials at any time. They are also, by certain applications, able to contribute online content in their own personal capacity.

3.3 There is a great benefit due to this medium. But the possibility to use it is accompanied by the possibility of abuse.

3.4 Online content providers are committed to take a responsible approach in regard to the provision of content. This should be done by implementing reasonable, practicable and proportionate measures to avoid abuse to provide an adequate mechanism if prohibited material or illegal activity is identified. End users should retain responsibility for the content they place online, whether legal, or illegal.

3.5 The online environment is not a legal vacuum. In general, if something is illegal "off-line", it will also be illegal "on-line", i.e. the relevant laws apply also.

3.6 Responsible content providers must, therefore, be guided by the commitment to reassure consumers and businesses that online content to inform, educate, entertain and facilitate commerce is safe and secure. Hence, the purpose of this part is to:
(a) recommend guidelines and procedures relating to the provision of online content through self-regulation by the industry in a practical and commercially feasible manner and at the same time foster, promote and encourage the growth and development of the online services industry;
(b) promote the education of users in making an informed selection of the content they consume; and
(c) keep update with international as well as national standards, trends and cultural sensitivities of the general Malaysian public when applying and reviewing this Part.

4.0 Principles

4.1 The following principles shall guide the parties who review, administer, apply, are affected by and/or are subject to this part of the Code:
(a) There shall be no censorship of the internet as provided in section 3(3) of the Act.
(b) Responsibility for content provided online by Code Subjects primarily rests with the creator of the content.
(c) In acknowledging that in the fast-changing online environment, it is very often impractical, costly, difficult and ineffective to monitor content, Code subjects will nonetheless fulfil, to the best of their ability the requirements of the Code.
(d) Users are responsible for their choice and utilisation of online content.
(e) As users are able to exercise independently the choice on whether to access, read or digest and consume various online materials, the application of the Code, by Code Subjects under this Part shall take cognisance of this fact.
(f) Any measures relating to content which is recommended by this part from time to time shall be:
   • Technologically neutral;
   • Fair; and
   • Widely affordable and not adversely affect the economic viability of the communications and multimedia industry.
(g) Any guidelines that apply to the provision of online content should not unduly restrict the growth of the industry but serve to enhance a conductive environment to encourage and stimulate the Malaysian communications and multimedia industry.

5.0 Online Guidelines

5.1 Code Subjects shall apply the guidelines set out in Part 2 of this code in determining whether content is indecent, obscene, menacing or offensive save where expressly provided in this part.

Prohibition
No Code subject shall knowingly provide online prohibited content
False content
Content that is not truthful and likely to mislead is prohibited except in any of the following circumstances:
   • Satire and parody;
   • Where it is clear to an ordinary user that the content is fiction; and
• Where it is preceded by a statement that the content found on the web site is not factual.

6.0 Measures – General and Specific

6.1 It is recognised that it is impractical, difficult and ineffective to monitor or control the user’s access to online content. Only the user decides about the nature of content he consumes and the tools to use in order to control the content.

6.2 The Content Forum will assist users by informing about the type of tools that are available for users to control access to online content. Such information can be provided on the Content Forum’s website which may be updated from time to time in order to reflect the evolving technology. The Content Forum’s website shall contain information on:
(a) The types of tools which are available to assist users in filtering or controlling online content;
(b) User ethics in accessing and providing content over the internet;
(c) Responsibilities of adult users over children under their care in relation to internet use;
(d) Measures which can be taken by parents, guardians and teachers to control children’s access to online content;
(e) Content provider ethics;
(f) This content code; and
(g) 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.

6.3 The information provided on the website is intended to assist online users and the Content Forum is not responsible for any tools recommended or advice rendered.

6.4 Apart from the foregoing general measures the following specific measures as set out in Parts 7.1 – 10.2 must be complied with depending on the degree of control that a Code Subject may have over the online content.

7.0 Internet Access Service Provider (IASP)

7.1 An IASP shall comply with and incorporate terms and conditions in the contracts and legal notices as to terms of use with subscribers of their services. This shall include the following terms:

(a) Subscribers will comply with the requirements of Malaysian law including, but not limited to, the Code and shall provide neither prohibited content nor any content in contravention of Malaysian law;
(b) The IASP will have the right to withdraw access where a subscriber contravenes the above; and
(c) The IASP shall have the right to block access to or remove such prohibited content provided such blocking or removal is carried out in accordance with the complaints procedure contained in the Code.
7.2 The existence of terms and conditions will be displayed on the IASP’s website in a manner and form easily accessible by its subscribers by way of a link or other similar methods.

7.3 Once an IASP is notified by the Complaints Bureau that its user or subscriber is providing prohibited content and the IASP is able to identify such subscriber the IASP will take the following steps:
(a) Within a period of 2 working days from the time of notification, inform its subscriber to take down the prohibited content.
(b) Prescribe a period within which its subscriber is to remove the prohibited content, ranging from 1 to 24 hours from the time of notification.
(c) If the subscriber does not remove such prohibited content within the prescribed period, the IASP shall be entitled to suspend or terminate the subscribers’ access account.

7.4 An IASP will place on its website a hyperlink to the Content Forum website to enable subscribers to obtain the information specified above. If an IASP does not have a website, it will provide its subscribers with the Content Forum website address.

8.0 Content Aggregator

8.1 A Content Aggregator being a person who aggregates and/or purchases content shall incorporate terms and conditions in the contracts and legal notices as to terms of use with users, subscribers and content providers of their services. This shall include the following terms:
(a) Users, subscribers and content providers will comply with the requirements of Malaysian law including, but not limited to, the Code and shall provide neither prohibited content nor any content in contravention of Malaysian law; and
(b) The Content Aggregator will have the right to remove such prohibited content where a user, subscriber or content provider contravenes the preceding (a) above provided the removal of such prohibited content is in accordance with the complaints procedure contained in the Code.

8.2 Upon a Content Aggregator being notified by the Complaints Bureau that its user, subscriber or content provider is providing prohibited content and the Content Aggregator is able to identify such subscriber, user or content provider, the Content Aggregator will take the following steps:
(a) Within a period of 2 working days from the time of notification, inform the user, subscriber or content provider to take down the prohibited content.
(b) Prescribe a period within which the user, subscriber or content provider is to remove the prohibited content, ranging from 1 to 24 hours from the time of notification.
(c) If the user, subscriber or content provider does not remove such prohibited content within the prescribed period, the Content Aggregator shall have the right to remove such content.
8.3 A Content Aggregator will place on its website a hyperlink to the Content Forum website to enable users and subscribers to obtain the information specified above.

8.4 Where a Content Aggregator has editorial rights over the substance of content, it shall comply with Part 2 (Guidelines on Content) of the Code.

9.0 Link Provider

9.1 A person who provides links to other sites containing prohibited content shall remove the link to such sites within 24 hours of being notified by the Complaints Bureau of the continuing existence of prohibited content on such site.

10.0 Internet Content Hosting Provider (ICH)

10.1 An ICH being a person in its capacity of merely providing access to content which is neither created nor aggregated by itself but which is hosted on its facilities shall incorporate terms and conditions in the contracts and legal notices as to terms of use with users and subscribers of their services. This shall include the following terms:
(a) Users and subscribers shall comply with the requirements of Malaysian law including (but not limited to) the Code and shall provide neither prohibited content nor any content in contravention of Malaysian law;
(b) The ICH shall have the right to withdraw its hosting services where a user or subscriber contravenes (a) above; and
(c) The ICH shall have the right to remove such prohibited content, provided such removal is in accordance with the complaints procedure contained in the Code.

10.2 Once an ICH is notified by the Complaints Bureau that its user or subscriber is providing prohibited Content and the ICH is able to identify such subscriber or user, the ICH will take the following steps:
(a) Within a period of 2 working days from the time of notification, inform the user or subscriber to take down the prohibited content.
(b) Prescribe a period within which the user or subscriber is to remove the prohibited content, ranging from 1 to 24 hours from the time of notification.
(c) If the user or subscriber does not remove such prohibited content within the prescribed period the ICH shall have the right to remove such content.

10.3 An ICH will place on its website a hyperlink to the Content Forum website to enable users and subscribers to obtain the information specified in Parts 7.1 – 10.2 above.

Examples in Applying Specific Measures
X, who is based in Kuala Lumpur, provides an online lifestyle magazine which can be accessed by anyone from any part of the world. X’s portal is hosted on Y’s servers. Y’s servers are located in Penang.

X provides his own content and third party content. In his arrangement with the third party content providers, he does not have the rights to edit the content. Most third party
content is pushed onto his site automatically without X having the opportunity to view the content beforehand.

X is a subscriber of Z’s internet access services.
In this instance:
X is both a content provider and content aggregator
Y is an ICH
Z is an IASP
The Complaints Bureau receives a complaint that one of the web pages of X’s online magazine contains content which is obscene as defined in the Guidelines on Content contained in Part 2 of the Code.

Scenario 1:
If X receives a notification from the Complaints Bureau it must:
(a) where X has provided the content, remove the prohibited content.

(b) where the content is provided by a third party W, inform W to remove the content within a period ranging from 1 to 24 hours. The period prescribed is at X’s discretion. If W fails to remove the prohibited content, it shall be removed by X.

Scenario 2:
If Y receives a notification from the Complaints Bureau, it must notify X to remove the content within a period ranging from 1 to 24 hours. The period prescribed at Y’s discretion. In this instance, Y gives X 4 hours. X may either remove the prohibited content itself or direct W to remove the content. If the prohibited content is not removed within 4 hours, it shall be removed by Y.

Scenario 3:
If Z receives a notification from the Complaints Bureau, it must notify X 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 to remove the content. If the prohibited content is not removed within 12 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.

11.0 Measures not required

11.1 IASPs, ICHs and Content Aggregators shall not be required to undertake any of the following:
(a) Provide rating systems for online content;
(b) Block access by their users or subscribers to any material unless directed to do so by the Complaints Bureau acting in accordance with the complaints procedure set out in the Code;
(c) Monitor the activities of users and subscribers; or
(d) Retain data for investigation unless such retention of data is rightfully requested by
the relevant authorities in accordance with Malaysian law.

12.0 Definitions

12.1 For the purposes of interpretation, should there be any inconsistencies between the
definitions in this Part and definitions elsewhere in this code, those in this part shall
apply. In this part, unless the context otherwise requires —

**Access**
means its ordinary meaning i.e. a means of entering; a means or a right of using, reaching
or entering. It is not the definition in section 6 of the Act;

**Content**
for the purposes of this Part, means content as defined by the Act transmitted through a
variety of technology but does not include:
- a) ordinary private and/or personal electronic mail other than bulk or spammed electronic
  mail;
- b) Content transmitted solely by facsimile, voice telephony, VOIP and which is intended
  for private consumption; or
- c) Content which is not accessible to the public whether freely, by payment of a fee or by
  registration, including (but not limited to) content made available by way of a closed
  content application service or a limited content applications service under Sections 207
  and 209 of the Act respectively;

**Content Aggregator** means a person who aggregates and/or purchases content;

**Internet Access Service Provider** means a service provider who provides users with
access to the internet including (but not limited to) the world wide web;

**Internet Content**

**Hosting Provider** means a provider in its capacity of merely providing access to content
which is neither created nor aggregated by itself but which is hosted on its facilities;

**Link Provider** means a person who provides links to other sites;

**Online** means a networked environment which is available through a connection to a
network service wherein content is accessible to and/or by the public whether for a fee or
otherwise;

**Online Content Developer** means a code subject who develops files of content for the
code subject or on behalf of others to be made accessible online;

**Prohibited content** means such content expressed to be prohibited under Part 2 of the
Code and Part 5.1 of this part;
Provide in relation to content means for a Code Subject to make available online content where the Code Subject has:

a) full knowledge of the substance of the content; and
b) control over the substance of such content.

To the extent it does not conflict with the above definition, the following activities are excluded from the ambit of the above definition:

- the enabling of access including (but not limited to) by way of providing connectivity or links to such content;
- the aggregation of such content; and
- the hosting of content online;

User a person accessing online content; and web page/web site/site means files of content accessible on the world wide web by a requested URL.

PART 6 SPECIFIC AUDIOTEXT HOSTING SERVICES GUIDELINES

1.0 Scope and Coverage

1.1 An Audiotext Hosting Service is defined as a service provided pursuant to a license issued by the Commission, such service being accessed by utilising a telephone or any other future communication tool, and having access via numbers beginning with the prefix 600 or any other number/mode determined by the Commission.

Objectives

1.2 The major purpose of these specific guidelines is to allow Audiotext Hosting Service Providers to self-regulate themselves in the best interest of users generally and in accordance with internationally recognised practice and national policy.

Principles

1.3 The following principles shall guide Audiotext Hosting Service Content providers who are affected by and/or are subject to this part of the code:

(a) Audiotext Hosting Service Content providers shall apply the guidelines set out in Part 2 of this code in determining whether content is indecent, obscene, menacing or offensive unless otherwise defined in this part.
(b) No Audiotext Hosting Service provider shall knowingly provide prohibited content.
(c) Any content provided must not be misleading, likely to mislead or essentially out of date.
(d) Guidelines will be adhered to on a self-regulatory basis in a manner that would encourage the development of content and the positive growth of the industry.
(e) While recognising the importance of the positive growth and commercial viability of the industry, Audiotext Hosting Service providers shall at all times abide by all relevant laws and consider the views and interest of the general public.
(f) Where live Audiotext Hosting Services are offered, at least one adequately trained
employee must be assigned and present at all times to moderate, facilitate and monitor
the service to ensure that all activities within the service remain healthy. The service must
provide facilities for the trained employee to immediately remove callers who misuse and
abuse the service.

2.0 Specific Guidelines

Rating Classifications
2.1 All Audiotext Hosting Services must be classified according to the following
rating classification below and displayed clearly in all advertising materials.
(a) "U" - Information or entertainment services suitable for all ages. However, callers
below 18 years of age must obtain permission from the person making payment for the
use of the Audiotext Hosting Services.
(b) "18+" - Services for the general public 18 years and above.

Specialist Information
2.2 "Specialist Information" is defined as information or advice provided by
professionals, corporations, the government, government agencies or any other persons
who is appropriately qualified or an expert or specialist in relation to the area of
expertise.

2.3 Audiotext Hosting Service content containing professional advice or opinion (e.g.
medical/dental/legal/financial services) must ensure that:

(a) The person is appropriately qualified in his area of expertise;
(b) The advice is prefaced with a disclaimer that such advice should not be acted upon
without first consulting a suitably qualified practitioner and be conveyed in a manner that
accurately reflects the seriousness of the subject matter; and
(c) Any advice involving scientific, statistical or other research data must indicate clearly
the source of such data.

2.4 An advertisement relating to an Audiotext Hosting Services containing specialist
information or endorsement must clearly indicate:
(a) The identity, current status and relevant professional qualification and experience of
the person(s) involved; or
(b) The identity of the professional association, statutory authority or government
department involved.

Content designed for children and young persons or dependent persons

2.5 Audiotext Hosting Services designed for, either wholly or mainly, and aimed at an
audience of children, young persons or dependent persons must not
(a) Include references to sexual practices, language or materials that are offensive to the
standards of decency prevailing among those likely to be exposed to them;
(b) Involve any information or noise or sound effect likely to alarm any child or young
person, or of other dependent person, having regard to special protection for such dependent persons; and
(c) Force or unfairly cause any of the above persons, mentioned in this paragraph to dial additional telephone numbers.

2.6 Advertisement of services aimed at young persons/children, must carry the following warning messages: “This call costs RMX.XX per minute/per call. Callers under 18 must seek parents’ or guardians' approval before calling”.

3.0 Copyright

3.1 Audiotext Hosting Services shall respect copyright ownership of recorded announcements or interactive content and shall not utilise part or all of the content from another medium without the permission of the copyright owner.

PART 7 SPECIFIC LIMITED CONTENT GUIDELINES

1.0 Scope and Coverage
Limited Content refers to programmes, advertisements and other related material conveyed through television, any networked medium or other means of transmission, which are displayed or communicated to a limited, specified or specific group of people or individuals. Providers of content for this part include:

(a) In-house TV and radio broadcasting;
(b) Electronic Boards (indoor/outdoor); and
(c) Any related networked medium.

1.2 Limited Content include, but are not be limited to, bus TV, rail TV, hotel TV and radio, airport TV, complex TV and radio broadcasting and Pay Per View TV.

1.3 Providers of all Limited Content Communications must abide by the provisions set out in this code especially those of Parts 2, 3 and 4 referring to the guidelines on content, advertisement and broadcasting respectively.
II. Co-operative Regulatory Systems in the press sector

1. Part I: The co-operative regulatory system

a) Development of the regulatory system

The press in Malaysia is regulated by several legislation restricting their operations and coverage of news. These laws date back to the British rule aimed at curbing press influence with the growth of the vernacular press, their influence over the population was seen by the colonialists as instigating dissent. During the Japanese occupation, the press was the main tool of the propaganda department of the Japanese Military. The Printing Presses Ordinance 1948 and the Sedition Ordinance 1948 imposing strict control over the press were enacted as one of the government’s counter insurgency measures during the Communist Period. Post 1969 race riots also led to a strengthening of press control which saw amendments to the Federal Constitution and the Sedition Act limiting the scope of free expression. The Printing Presses and Publications Act 1984 (‘PPPA’), which regulates the print organisations was amended in 1988 to preclude judicial review of the Home Minister’s decision to revoke or suspend a publication permit. The agency responsible for the regulation of the press is the Ministry of Internal Security.

There is no co-regulatory mechanism for the press although the idea of a media council had been mooted. Inisiatif Wartawan, a loose coalition of journalists had campaigned for self-regulation of the media in Malaysia. They proposed the introduction of a media council in the form of a self-regulated initiative with corresponding moves to repeal legislation that is inimical to the establishment of a council. In 1999 journalists had petitioned for a repeal of the Printing Presses and Publications Act especially the restrictive licensing provisions. This was however interpreted by the government as a call for more legislation and asked the group representing the editors, the Malaysian Press Institute (‘MPI’), to take action. The result was the ‘Draft Media Council Act 2001’ which

134 The state of Emergency due to the Communist insurgency was declared in Malaya in 1948 to 1960.
136 Its minister is the Prime Minister.
was overwhelmingly opposed by journalist groups. The Malaysian Human Rights Commission SUHAKAM then held a consultation on the issue and later appointed a Media Complaints Working Group. There are no proposed amendments to the Printing Presses and Publications Act (PPPA). The Malaysian press is also controlled informally by the state through the ownership structure of the media linking the media with business interests closely aligned to the ruling political parties, and its own practice of development journalism. Through the state investment arm Khazanah Nasional Berhad, the government also maintains a strong commercial interest in the media. There are no media cross-ownership rules in Malaysia except the provisions which prohibit anti-competitive conduct in the Communications and Multimedia Act 1998. After independence the media was co-opted by the State to assist in bringing development to the people by becoming the State’s mouthpiece. The media practiced development journalism, imparting information and disseminating government policies for the betterment of the population in general.

b) Subject matter of the regulatory system

The PPPA regulates the use of printing presses, the printing, production, reproduction and distribution of publications, and importation of publications from abroad. It consolidates the Printing Presses Act 1948 and the Control of Imported Publications Act

137 The Bar Council was asked by the MPI to approve the draft in 2003. They then met with journalists who pointed out problems with the proposed legislated Media Council.
139 For example Khazanah Nasional Berhad holds 21.6% in ALL ASIA NETWORKS plc (ASTRO), the monopoly satellite pay tv provider. See ASTRO website accessed on July 17, 2005 at http://www.astro.com.my/v5/footer/about/default.asp.
140 See Media Prima website at http://www.mediacom.my/AboutUs.asp.
141 See Part VI of the Act especially Sections 133-144.
1958 (which has since been repealed).\textsuperscript{143} Criminal sanctions are imposed on the media operators under the Act.\textsuperscript{144}

The act does not state its objectives however ostensibly it is to control the operations of the press organisations requiring them to comply with the provisions within, or risk prosecution, or worse lose their printing license and publication permit.

c) Basis of the co-operation

The basis for co-operation between the state and media could be found in legislation policing. There is also administrative control over the media through regular meetings between senior editors and the Ministry of Internal Security.\textsuperscript{145} Editors are advised of the repercussions of their coverage of particular issues.

d) Institutions involved in the system

The Print and Quranic Text Control Division in the Ministry of Internal Security is responsible for regulating the press.

There is the National Union of Journalists, an association for the members of the journalism profession. It has a code of ethics which declares the duty of the journalist to

\begin{footnotesize}
\textsuperscript{143} See also the Printing Presses and Publication (Importation of Publications) (Deposit) Rules P.U.(A) 119/85 and Printing Presses and Publications (Licenses and Permits) Rules 1984 P.U.(A) 305/84.
\textsuperscript{144} In section 4(1), such as using printing press for unlawful purpose for instance printing obscene (or against public decency) publications or printing publications which contains an incitement to violence against persons or property, counsels disobedience to the law or to any lawful order or which is or is likely to lead to a breach of the peace or to promote feelings of ill-will, hostility, enmity hatred, disharmony or disunity. Liability is also imposed for maliciously publishing false news of which malice is presumed in default of evidence showing that prior to publication, the accused took reasonable measures to verify the truth of the news. s.8A. Possessing prohibited publications without lawful excuse is an offence under s.8. Prohibited publications are, publications prohibited by the Minister in his absolute discretion which contain any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is other wise prejudicial to or is likely to be prejudicial to public interest or national interest. These prohibited publications may be refused importation into Malaysia. s. 9.
\textsuperscript{145} V.Gayathry and Yeoh, Seng Guan (2004),’Media Values, Media Ownership and Democratic Governance’, in Communicating the Future, Proceedings from the National Conference on the Future of Media in a Knowledge Society: Rights, Responsibilities and Risks Kuala Lumpur 2003, Kuala Lumpur: Kinibooks, 82. From time to time the editors are also called for meetings with other government bodies for
\end{footnotesize}
protect respect for the truth and freedom from interference by government and others. The union funds itself through membership fees and fundraising drives. However it was pointed out that the organisation lacks initiative in providing institutional support for press freedom and protection for journalists.146

e) Functioning of the system

Licenses147 and permits148 have to be obtained from the Home Affairs Minister149 for printing presses and for publishing newspapers150. These licenses and permits are required to be renewed annually. The issue of licenses and permits are at the absolute discretion of the minister who may at any time revoke or suspend such license or permit.151 The issuance of permits are not mere formalism but are mechanisms to suppress free press. A number of pro-opposition and independent publications have had their permits revoked (e.g. Esklusif, Detik, al-Wasila) or altered (Harakah’s circulation was reduced from twice weekly to fortnightly).

The control over printing presses under the Printing Presses and Publications Act (PPPA) through licensing requirements, the occasional exercise of ministerial powers to discontinue, revoke or suspend licenses/permits, or the mere threat to do the same, results in self-censorship. Printers and publishers are also charged for breaching the PPPA and Sedition Act adding to the fear of breaching the license conditions. The online independent newspaper Malaysiakini which was ranked 6th in the country’s top website

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147 Section 3 of the PPPA.
148 Section 5 and 6 of the PPPA.
149 Granted in his absolute discretion as stated in ss. 3(3) and 6(1). He also has absolute discretion to refuse an application for a license or permit. s. 12(2).
150 Newspapers defined widely as any publication containing news, intelligence, reports of occurrences or any remarks, observations or comments, in relation to such news, intelligence or occurrences, or to any other matter of public interest, or any magazine, comic or other forms of periodical printed in any language for sale or free distribution at regular or irregular intervals, but does not include any publication published by or for the Federal or any State Government or the Government of Singapore.
ranking was waiting for approval from the Internal Security Ministry for a permit to publish a print daily. The application was submitted in September 2002 and the Minister, who is also the Prime Minister, in his parliamentary written reply in June 2004 to an opposition MP questioning the status of the application said that:

Based on the application and (print) mock-up, as well as the track record of online daily, the ministry is of the opinion that *Malaysiakini* has a tendency of (highlighting) sensational and sensitive issues which could be prejudicial and jeopardize national security and public order. A print version that is provocative and exploitative would have negative implications when the newspaper is distributed and sold in the open market. The written reply by the Internal Security Minister did not confirm one way or the other whether the application for a print daily publishing permit has been rejected or not. The application for a print daily permit has to fulfil 3 criteria: submission of an application form, relevant documents about the applicant as a registered company and a mock-up of the proposed publication. The ministry will need to ensure that the publication of the newspaper will not have the potential to be harmful based on the criteria laid under s.7(1) of the PPPA. These criteria states content deemed to be undesirable are publications which is prejudicial or likely to be prejudicial to public order, morality, security or likely to alarm public opinion or likely to be contrary to any law or likely to be prejudicial to public interest or national interest. These criteria are quite vague and uncertain and results in the media being very cautious in what they publish. For instance in May 2002 a Malay tabloid’s permit was suspended for 3 months for publishing ‘sensational’ reports of the alleged sexual tendency of the head of *Puteri UMNO*, a women’s youth wing of the main component ruling party.

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151 Sections 3 and 6 of the PPPA.
At the Mass Media Conference 2005 held in July the Deputy Minister for Internal Security stated that the government will consider case by case applications for new publishing permits as the number of permits released in the country are already adequate. The ministry had given out 56 newspaper permits comprising 26 Chinese newspapers, 14 in Malay, 13 in English and 3 in Tamil. Those 56 permits covers 34 publications in Peninsular Malaysia, 13 in Sarawak and 9 in Sabah which according to the government is adequate.¹⁵⁵

The press regulatory system of policing license compliance is supported by administrative control through formal and informal communications and also restricting access to news through refusal of journalist accreditation to cover government functions. The Ministry of Information which controls outflow of government information via government press releases, press briefings or functions or broadcasts, issues accreditation tags through its information department to media organisations who cover their functions. It is a matter of too many gatekeepers to government information and anything deemed official. There are various departments and agencies administering different functions pertaining to the media and it is more complex for the controller when there is a converged media disseminating information to the public. Internet journalists are not issued accreditation because their operations fall outside the scope of traditional media and are not recognized by the Ministry of Information and Ministry of Internal Security which administers the PPPA.¹⁵⁶ Therefore the independent online newspaper Malaysiakini is indirectly prevented from covering government events. Journalists from Harakah the publication of the Islamic opposition party PAS is allowed to cover the parliamentary debates since they are registered with the Internal Security Ministry. According to the Parliamentary Secretary to the Prime Minister’s Department parliamentary sittings are not open to journalists without the proper accreditation or press


However this is not rigidly imposed for every event turning away non-accredited reporters. It depends on the current atmosphere between the government and the independent media. This acts as a show of reminding the media who is in control of information and the extent the media is allowed to operate. In 2001 the Information Ministry Parliamentary Secretary refuted claims by certain quarters that there was no freedom for journalists in this country to do coverage on ministers. The Senator said that it was not proper to make such claims merely because journalists from the internet portal Malaysiakini.com were not allowed to attend any press conferences involving Malaysian cabinet ministers.

"Malaysiakini (reporters) are barred from covering the press conferences not because they are critical of the government but because their credibility is doubtful," he said.  

\[f)\] **Supervision of the system**

There is no supervision of the system for regulating the press as under the PPPA the Minister has absolute discretion to revoke or suspend a license or permit. It is not permissible to question in court the decision, order or direction of the Minister.  

No right to be heard is afforded to a permit or license applicant or relating to the revocation or suspension of such permit or license.  

The National Union of Journalists (‘NUJ’) which is an organisation of working journalists representing their industrial, social and welfare interests.  

It was formed in 1962 and is the sole authority to determine the proper rates of remuneration and other terms and conditions of employment for journalists in the various publishing houses.


159 Section 13A PPPA.

160 Section 13B PPPA.

Sadly it has limited capacity to achieve their objectives because of the myriad of restrictive legislations, including PPPA, the Sedition Act 1948, Official Secrets Act 1972 and Internal Securities Act 1960. A major setback for the NUJ in defending the freedom of the press and dealing with the professional conduct of its members maintaining high ethical standards of journalism, is that it represents journalists a majority of them working for the mainstream media organisations which are governed by those legislation and owned by companies linked to the ruling party. These media companies are profit-driven and in their strategy to divert the audience’s attention from sensitive and controversial issue their coverage has concentrated on popular light lifestyle and entertainment which attracts circulation sales and therefore brings advertisement revenue. Courts have no authority to review the Minister’s discretionary use of his powers to grant licenses and permits which is unlikely to interfere with the exercise of executive powers and has tended to side with the authorities in many human rights cases. The National Commission on Human Rights (Suhakam) is a national body limited in their functions of overseeing the fundamental rights as guaranteed under the Federal Constitution and to receive complaints of human rights abuses. They can recommend to the government but cannot do more than highlight the irregularities. In their workshop on freedom of the media in August 2002 they recommended loosening up media laws and administrative procedures. Malaysia ratified the Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of the Child but has not ratified:

- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The International Covenant on Civil and Political Rights (ICCPR);

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162 It is argued that the extent to which a particular medium is free more often depends on its owners. See Moreira, Charles F., ‘Press freedom limits set by owners’, Malaysiakini, Aug 13, 2005 accessed at http://www.malaysiakini.com/print.php?id=29149.

163 See ‘Akademi Fantasia tops NEP debate in Malay dailies’, Malaysiakini, Aug 25, 2005 accessed at http://www.malaysiakini.com/news/39512. The editor -in -chief of a publishing house commented that Malay newspapers were more engrossed with making money and increasing their circulation when their coverage of the reality singing competition show was far above their reporting and analysis of the debate on the revival of the New Economic Policy, an economic restructuring policy which favoured the majority Malay ethnic group.

164 Many of these rights under Part II of the Federal Constitution as provided are limited by the provisions in the Constitution.
• The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
• The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families;
• The United Nations Convention Relating to the Status of Refugees 1951;
• The International Convention on the Elimination of all Forms of Racial Discrimination;

\textit{g) Impact assessment}

There is no regular documentation of the workings of the Publication Control Division of the Ministry of Internal Security responsible for the regulation of the press such as an annual report accessible to the public. The other method of informing the cumulative operations of the department is via the Minister or his Deputy of the ministry responsible who reports to the parliament. This is usually during the question and answer session. There is no annual tabling of the report of the department concerned to the parliament. Occasionally, reports of the banning or alteration of controversial publications are published in the media. A search of the websites of the respective ministries did not reveal extended information on the functioning of the regulatory system. Sometimes, the ministry website was totally inaccessible or possibly still under construction.\textsuperscript{165}

\section*{2. Part II: Leading Cases}

In April 2005 the Ministry of Internal Security banned eleven publications reminding the public of the consequences of printing, reproducing, publishing, selling, offering for sale, distributing of possessing those publications.\textsuperscript{166}

\textsuperscript{165} The website of the Ministry of Internal Security was not accessible on 11 July 2005.
\textsuperscript{166} Bernama, July 20, 2005. These publications are:
* Sheikh Nazim Al-Qubrusi, \textit{Mercy Oceans' Lovestream}, Turkey: Girne/Mersin 10;
* Parshall, Phil Parshall, \textit{The Cross and the Crescent}, Illinois: Tyndale House Publisher Inc.;
* Jeffrey, Grant R. Jeffrey, \textit{Messiah War in the Middle East & Road to Armageddon}, Ontario: Frontier Research Publications;
* Williams, John Alden, \textit{The Word of Islam}, London: Thames and Hudson Ltd;
Below, instances of interferences against the Malaysian media are listed. These excerpts are taken from the memorandum submitted to the Malaysian Human Rights Commission by Inisiatif Wartawan.167

- In December 2001, two journalists of The Sun were suspended by the board of directors – over the objection of two editors – for their part in exposing an assassination plot against the Prime Minister and his deputy. Several other journalists and editors were summoned to the police headquarters several times over a number of days to answer questions on editorial operations and the source of the news. The Prime Minister claimed the report would taint the country’s image abroad.

- In January 2002, Malaysiakini reported that two journalists from an English language daily had been rapped for their aggressive style of questioning and fearless coverage of the by-election in Indera Kayangan. One journalist was said to have been sent back to the newspaper’s headquarters in Kuala Lumpur because his news coverage had irked a senior Barisan Nasional state election campaign director.

- In March 2002, the The New Straits Times published a picture on its front page to illustrate sedimentation in piped water supply in parts of the Klang Valley despite being filtered. The Prime Minister condemned the newspaper for the report rather than order an investigation of the situation, alluding that such reports create a negative image of the country.

- In March 2002, journalists from the online news Malaysiakini and web radio RadiqRadio were denied access to the press gallery in Parliament to cover

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* Fatima Mernissi, Women and Islam, Oxford, UK: Blackwell Publishers;

proceedings on the basis that they had not been accredited by the Information Ministry.

Another example of media interference is discouraging reports on health statistics.\(^\text{168}\)

3. Part III: Assessment according to the criteria for determining which types of regulation are covered by the study

\(a\) The non-state regulatory part of the system

There is no established or formal non-state regulatory part of the system of co-regulation of the press media in Malaysia. The professional bodies that govern the media professions mainly deal with journalism training and product development, and the welfare of members.\(^\text{169}\) The non-state regulatory system for the press in Malaysia may be described as a practice of self-censorship by the media industry for fear of criminal and economic repercussions on the part of the media organisations and its employees.\(^\text{170}\) While the media producers fear creative clampdown if the stated national ideology and wholesome values is not adhered to.

\(b\) The link between the non-state part and state regulation

The link between the non-state part and state regulation is a rigid superior subordinate relationship.\(^\text{171}\) The press follows closely the national interest objective of maintaining peace and harmony and promoting state development policies, as well as the explicit and implicit rules of media reporting provided under the laws, regulations and directions from

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\(^{168}\) See ‘HIV/AIDS account annoys Shahidan’ in The Star Online, February 19, 2005. It was reported that a statement of the rising number of pregnant women in the state with HIV/AIDS to the media by the state health director had irked the chief minister of the state. The chief minister claimed that his role as the State Health Committee Chairman was disregarded and the statement was made without his knowledge. It was argued that such statements could create a negative perception of the state.


\(^{170}\) See report titled ‘Media must report on sensitive issues’ in The Star, May 6, 2004. It says the media must not run away from reporting sensitive issues such as race or religion and sweep them under the carpet. The statement was made by Bar Council treasurer Ragunath Resavan at the National Union of Journalists Malaysia (NUJ) Press Freedom forum themed: “Testing the Limits”.

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the various government authorities. There is also a fear of high defamation damages granted to high profile plaintiffs which creates a chilling effect on the media.

**Conclusion:** The regulatory system of the press in Malaysia is not a co-regulatory system within the definition of the study.

## I. Co-operative Regulatory Systems in the film sector

### 1. Part I: The co-regulatory system

#### a) Development of the regulatory system

All films screened in Malaysia are regulated and classified for release under the provisions of the Film Censorship Act 2002 (‘The Censorship Act’). The Censorship Board is under the purview of the Ministry of Home Affairs. There are two other government agencies dealing with films. Filem Negara Malaysia is under the jurisdiction of the Information Ministry and it produces short government information films and also provides facilities for film production. The National Film Development Corporation Malaysia (‘FINAS’) is under the purview of the Ministry of Culture, Arts and Heritage and is responsible for developing the local film and drama industry.

#### b) Subject matter of the regulatory system

The Perbadanan Kemajuan Filem Nasional Malaysia Act 1981 is an act (‘FINAS Act’) to promote, nurture and facilitate the development of the film industry of Malaysia. It also

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174 Act 620.

175 The ministry is headed by Minister Dato’ Azmi Khalid.
establishes the regulatory body for the film industry, the Perbadanan Kemajuan Filem Nasional Malaysia. The functions of FINAS are:

- to make recommendations to the Minister as to the policies, methods and measures to be adopted to promote, nurture and facilitate the development of the film industry;
- to develop, and stimulate the growth and maintain the standards of, the film industry by various means, including the provision of research and advisory services;
- to regulate and co-ordinate the activities of persons and bodies relating to matters pertaining to the film industry;
- generally to promote and assist, both inside and outside Malaysia, in the development of the film industry;
- to regulate and control the production, distribution and exhibition of films in Malaysia, and in relation thereto to provide for the issue of licenses; and
- to manage and control the maintenance and operation of places and equipment belonging to the Perbadanan for the purposes of subsection (2) (c).

The Censorship Act regulates the issuance of permits for imported films, and the censorship\textsuperscript{176} of films and publicity material. The unapproved possession, circulation, exhibition, distribution, display, manufacture, production, sale or hire of film or publicity material constitutes an offence under the Censorship Act.\textsuperscript{177} No film may be screened without a Censorship Board permit. Imported films and film-publicity material is detained by the customs officer until a permit or certificate of exemption is presented.\textsuperscript{178}

\textsuperscript{176} The owner of the film according to section 9(1) shall submit the film for censorship without any alteration or excision at his own risk and expense. Section 9(2) stipulated a penalty between RM5,000 and RM30,000 or imprisonment not exceeding three years or both if convicted of contravening section 9(1).

\textsuperscript{177} Section 6(2) provides the penalty between RM5,000 and RM30,000 for films and between RM1,000 to RM10,000 for film publicity material.

\textsuperscript{178} Section 7(1) and (2). Section 8(2) of the Censorship Act states a permit is issued by the Board subject to conditions, for the release of the imported film and is valid for the period specified in the permit. The time and place for submission for the film’s censorship is also stated on the permit. In section 8(3) a certificate of exemption is issued to applicants for films or film-publicity material imported into Malaysia—

(a) which the owner does not intend to exhibit in Malaysia, if the owner has notified in writing to the Board of his intent not to exhibit it in Malaysia and has supplied the Board with a full description of the film or film-publicity material;

(b) which the Board is satisfied is intended for private use; or
The objectives of the Film Control Division are to:

- Ensure films in Malaysia are censored and approved by the Censorship Board before released for screening;
- Ensure all films distributed and screened have the ‘B’ Certificate;
- Extinguish the illegal distribution of pirated and banned films;
- Educate film activists on the rules of film regulation;
- Ensure that film content does not contain negative elements that contradict with the approved censorship guidelines;
- Encourage the Malaysian society to watch films of quality and make films as a source of knowledge;
- Protect the country from the spread of films that could jeopardise public order and sympathise with the ideologies that contradict with the principles of Rukunegara (national ideology);
- Preserve the Malaysian society’s good behaviour suited to the nation’s character standing on wholesome values;
- Dignify the Film Censorship Board as an institution of integrity and accepted as the film authority;
- Increase censorship skills and the management of the Division through the use of latest technology;
- Mould the staff of the Division to have high discipline, responsibility, commitment, professionalism in carrying out their duties friendly towards each other and to their clients.

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(c) where such film has been made or produced in Malaysia by a local or foreign corporation or company with a view for worldwide distribution, other than Malaysia.


180 The Censorship Board issues a certificate known as ‘Certificate B’ for every duplicate copy made in accordance with section 16. The section relates to duplication of film and a person who intends to duplicate films certified under section 14 shall submit a statutory declaration stating-

- (a) his intention to make duplicate copies;
- (b) number of duplicate copies he intends to make;
- (c) that the duplicate copies are made from the original film approved and certified by the Board under sections 10 and 14.

181 The Rukunegara prescribes five beliefs (united nation, democratic society, just society, liberal society and progressive society) and five principles (belief in God, loyalty to king and country, upholding of the
c) Basis of the co-operation

The basis for co-operation with other non-governmental bodies is the legislation.

d) Institutions involved in the system

The Control of Films Division in the Ministry of Home Affairs provides the service of issuing permits for the theatrical release of imported and local films after going through classification by the Censorship Board. The members of the board are appointed by the Minister.\textsuperscript{182} The Minister is empowered to issue to the Board or Appeals Committee directions of a general character consistent with the Censorship Act and the Government’s policy on public exhibition of films and film-publicity material.\textsuperscript{183} The National Film Development Corporation Malaysia (‘FINAS’) consists of twelve members headed by a chairman. They are appointed by the Minister for a three year term and their remuneration is also determined by the Minister.\textsuperscript{184} Four members of the corporation are individuals connected with the film industry not being public officers. Other members are senior officers from the Ministry of Culture, Arts and Heritage, Ministry of Information and Ministry of Finance. The funding for the corporation is derived from various sources. Accordingly, a fund is established, administered and controlled by the corporation, into:

(a) which shall be paid:

- such sums as may be provided from time to time by parliament;
- such sums as may from time to time be borrowed by the Perbadanan for the purpose of meeting any of its obligations or discharging any of its functions and powers; (iii) all moneys earned by the Perbadanan;
- all moneys earned or arising from any property, investment, mortgage, charge or
- debenture acquired by or vested in the Perbadanan;

\textsuperscript{182} Section 4 of the Censorship Act.
\textsuperscript{183} Section 25 of the Censorship Act.
• any fees or other charges prescribed and collected by the Perbadanan; and
• all other sums or property which may in any manner become payable to or vested in the Perbadanan in respect of any matter incidental to its functions and powers;

(b) and out of which shall be defrayed –
• all expenditure, including capital expenditure, incurred by the Perbadanan in carrying out its functions and duties;
• moneys for the repayment of any loan made to the Perbadanan pursuant to its power to borrow; and
• any subsidy or credit facility granted by the Perbadanan pursuant to its powers under this Act.

e) Functioning of the system

The owner of the film submits his film or film-publicity material for censorship to the Censorship Board. The Board may approve the film for exhibition without alteration or approve the film for exhibition with some alterations. The film may also be refused approval. The owner has a right to appeal the decision of the Censorship Board to the Appeals Committee if he is aggrieved by the decision of the Board.¹⁸⁵

Film classification is as follows:

¹⁸⁴ Section 4 of the FINAS Act.
¹⁸⁵ Section 21 of the Censorship Act.
For public viewing
Appropriate viewing for all groups in society

For 18 and above
Film contains mild violence and horror scenes

For 18 and above
Film contains mild sex scenes

For 18 and above
Film contains elements that touches on religion, social and politics

For 18 and above
Film contains combination of two or more mild elements of violence, horror and sex or that touches on religion, social or politics

Film making activities from production, distribution and exhibition are governed by the FINAS Act which requires them to be licensed.\textsuperscript{186} The corporation has various powers of enforcement as authorised by the Minister including making arrests, search, seizure and conducting prosecutions.\textsuperscript{187}

\textit{f) Supervision of the system}

The Censorship Board’s decision is notified to the owner in writing providing reasons for requiring the alteration of the film or for the refusal of classification. The Appeal Committee consists of civil servants and members appointed by the Minister.\textsuperscript{188} The

\textsuperscript{186} See Section 21 of the FINAS Act, Part V of the FINAS ACT, the Perbadanan Kemajuan Filem Nasional Malaysia (Compounding of Offences) Regulations 1985 P.U.(A) 264/85, the Perbadanan Kemajuan Filem Nasional Malaysia (Film Charges) Regulations 1988 P.U.(A) 209/88, the Perbadanan Kemajuan Filem Nasional Malaysia (Licensing) Regulations 1983 P.U.(A) 546/83 and the Perbadanan Kemajuan Filem Nasional Malaysia (Mandatory Screening Scheme) Regulation 2005 P.U.(A) 232/2005.

\textsuperscript{187} Part VA of the FINAS Act.

\textsuperscript{188} Section 22 of the Censorship Act. There are fifteen members appointed by the Minister including the Chairman and the Vice-Chairman. Member of the Appeals Committee from the civil servants are:
- the Inspector General of Police, or his representative;
- the Secretary General of the Ministry responsible for matters pertaining to the censorship of films and film-publicity materials, or his representative;
decision of the Minister, Board or Appeals Committee under the Censorship Act or
regulations under it is not open to appeal or review by any court on any ground.\textsuperscript{189} The
officers of the Censorship Board are immune from legal action in their personal capacity
for any bona fide acts done under the Censorship Act.\textsuperscript{190}
There is no requirement to table the annual report on the activities of FINAS in
parliament. Under Section 29 of the FINAS Act, no information of the organisation,
business, finance, transactions and affairs of the Perbadanan or its committees is to be
disclosed except in certain circumstances. Penalty for contravening the restriction is
imprisonment up to two years maximum or fine of not more than RM5,000 or both.

g) \textit{Impact assessment}

There is no regular documentation of the workings of the two divisions responsible for
the regulation of the films such as an annual report accessible to the public. The other
method of informing the cumulative operations of the departments is via the Minister or
his Deputy of the ministry responsible who reports to Parliament. This is usually during
the question and answer session. There is no requirement of annually tabling the report of
the department concerned to Parliament. Information regarding films banned or restricted
is obtained through the investigation of journalists or interested individuals. Occasionally,
reports of the banning or alteration of controversial films are published in the media. A
search of the websites of the respective ministries did not find extended information on

\begin{itemize}
  \item the Secretary General of the Ministry responsible for matters pertaining to the regulation of
        broadcasting, or his representative;
  \item the Director General of Education, or his representative.
\end{itemize}

\textsuperscript{189} Section 48 of the Censorship Act.
\textsuperscript{190} Section 50 states:
No legal proceeding, prosecution or other form of litigation may be instituted or maintained against –
\begin{enumerate}
  \item any member of the Board;
  \item any member of the Appeal Committee;
  \item the Secretary or any Assistant Secretary;
  \item any Enforcement Officer, or
  \item any person employed in the office of the Board or the office of Appeal Committee,
\end{enumerate}
in his personal capacity in respect of any bona fide act, decision or statement done or made for the purpose
of or incidental to the implementation or proposed implementation of the provisions of this Act or
regulations made under this Act.
the functioning of the regulatory system or that the ministry website was totally inaccessible perhaps still under construction.191

2. Part II: Leading Cases

The best film winner of the Malaysian film festival, Sepet (means squinted), a film about multiracial romance between a Malay girl and a Chinese boy was originally banned for screening in Malaysia. It was finally allowed screening after nine cuts were made. The movie was shown in Singapore earlier before it was released in Malaysia due to the sensitive issues that were raised by the Censorship Board.

3. Part III: Assessment according to the criteria for determining which types of regulation are covered by the study

a) The non-state regulatory part of the system

The film industry is subject to the content controls as administered by the state regulator in the form of the Censorship Board. Both the Censorship Board and the board on the FINAS Corporation are government appointees and they are funded by the state. The non-state regulatory system for the press and films in Malaysia may be described as a strictly circumscribed within the confines of the legislation and regulations. A setback in preparing this report and making an assessment is the lack of up-to-date information on the workings of the departments and organisations involved.

b) The link between the non-state part and state regulation

The link between the non-state part and state regulation is a rigid superior subordinate relationship. The censorship and classification control of films process do not engage with the film maker community and impose conservative viewpoints on permissible

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191 The website of the Ministry of Internal Security was not accessible on 11 July 2005. The FINAS website was inaccessible and visitor was directed to a temporary website that provided information regarding the 18th Malaysian Film Festival at http://www.mff.com.my/laman_utama.asp.
content for public viewing. Severe limitations on the creative product hinder the development of quality films for the film industry contradicting the objects of FINAS.

**Conclusion:** In my opinion the Malaysian film regulatory system is not a co-regulatory system within the meaning of the study.