

RESEARCH ARTICLE



OPEN ACCESS

Received: 09.04.2021

Accepted: 25.04.2021

Published: 03.05.2021

Citation: Islam MZ, Mokhtar KAB, Afandi NHBMB, Anzum R (2021) Regulating Online Broadcast Media against Offensive Materials in Malaysia. Indian Journal of Science and Technology 14(15): 1233-1238. <https://doi.org/10.17485/IJST/v14i15.595>

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Funding: International Islamic University Malaysia (IIUM)

Competing Interests: None

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Published By Indian Society for Education and Environment ([iSee](#))

ISSN

Print: 0974-6846

Electronic: 0974-5645

Regulating Online Broadcast Media against Offensive Materials in Malaysia

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Abstract

Nowadays, online broadcasting services such as, Hotstar, Hulu, Netflix, Iflix Pandora, Amazon Prime Video etc are very popular in Malaysia for original video contents. Due to the rapid growth of online broadcasting services in Malaysia, it is necessary to examine the legal and regulatory framework governing the contents of online broadcasting services. **Objectives:** The basic objective of this study is to scrutinize the efficacy and applicability of the Communications and Multimedia Act (1998) and other relevant laws of Malaysia in regulating online broadcasting services with special concentration on offensive materials and hate speeches. It also tries to identify the major weaknesses of the Malaysian Communications and Multimedia Commission (MCMC), the main regulatory body in dealing with this specific matter. **Methods:** Legal and doctrinal research methodology is applied in this study followed by an analytical approach. Relevant data are collected after analyzing both the primary and secondary legal sources. **Finding:** Findings of the study reveals that the contents of online broadcasting services do not frequently violate the relevant laws and regulations of Malaysia and sometimes their agreement with consumers are made in such a way as to avoid legal responsibility for the contents provided. Hence, it is recommended that the online broadcasting services and its contents should be made subject to a special legal framework by enacting new laws and introducing a special regulatory body.

Keywords: Regulating; Offensive materials; hate speech; online broadcasting; overthetop (OTT)

1 Introduction

Online broadcasting refers to the exhibition of a media content that is circulated through internet using specific streaming technology by which audio or video contents from single source can be directed to countless concurrent listeners or viewers⁽¹⁾⁽²⁾. Online broadcasting can be streamed live or may be accessed on demand⁽³⁾. The dawn of

internet and the substantial escalation of its usage during the last two decades has changed the lifestyle of human civilization. Today, the use of internet and the gadgets are entirely and indisputably reliant on the overflow of contents. Broadcasting media which was contained within the domain of television sets and video rental stores, has now evolved as the biggest entertainment industry in the world \$. Now we can stream directly to electronic devices in any corner of the world without any restriction or censorship⁽⁴⁾. This massive development in content sharing without censorship has also given rise to the risk of publishing offensive materials and hate speeches that can cause serious harm to a person, to a community, to a religion as well as to a country.

It has become an endless challenge for each and every country to monitor and regulate the contents of online broadcasting services that is circulated worldwide as the culture of one country differs from other⁽⁵⁾. As a result, online broadcasting service providers always try to avoid and evade the regulations imposed by a particular country. Different governments have enacted laws and regulations to control the broadcast media created in different regions of the world to be made compliant to the laws of the targeted countries for broadcasting purposes⁽⁶⁾. Sometimes, the content created by online broadcasters are not vetted despite having internal policies. As a result, contents which are universally considered antithetical to modern societies, such as fake-news, racist materials, conspiracy theories, specially targeted to a demographic of a place to affect the minds and behaviors of individuals are being distributed freely on these online broadcast platforms⁽⁶⁾.

Malaysia is one of the very few countries of the world gifted with a range of cultural and religious populace. Claiming the internet to be a new phenomenon for Malaysia would be nothing but an irony⁽⁷⁾. Already established as an economic and tech giant of southeast Asia, Malaysia entered into a new era of knowledge creation by introducing internet in the country in 1995. The proliferated need for digitalization and development in ICT sector in a competitive world inspired Malaysia to jump to a new age in media sector known as online broadcasting. This technological advancement in broadcasting sector have posed threats to the culture, religious faith and practices of people of each country through offensive materials and hate speeches. Malaysia is not also an exception to that⁽⁸⁾. Malaysia has specific legal regime to regulate broadcasting services. These laws seem sufficient to deal with regular media but cannot be equally effective to face the challenges posed by online broadcasting media due to certain limitations. Thus, the basic object of this study is to identify the limitations of legal and regulatory framework of Malaysia in dealing with offensive materials and hate speeches circulated through online broadcasting in a holistic way so that a comprehensive mechanism can be recommended to deal with these. At the end, it suggests some recommendations so that a complete and effective legal and regulatory framework can be established to regulate online broadcasting in Malaysia.

2 Malaysia Online

Malaysians are regarded the most sociable people online in the world having the maximum number of friends in social networks in average. Instead of enjoying TV programs or radio broadcasting, Malaysians are more fond to spend time online⁽⁶⁾. As per a recent survey conducted by the Malaysian Communications and Multimedia Commission (MCMC), the total internet user in Malaysia was 87.4% in 2018 and in 2020 the rate increased 1.3% to reach 88.7%⁽⁹⁾. Malaysia is one of the leading countries of the southeast Asian region having maximum internet penetration rate.

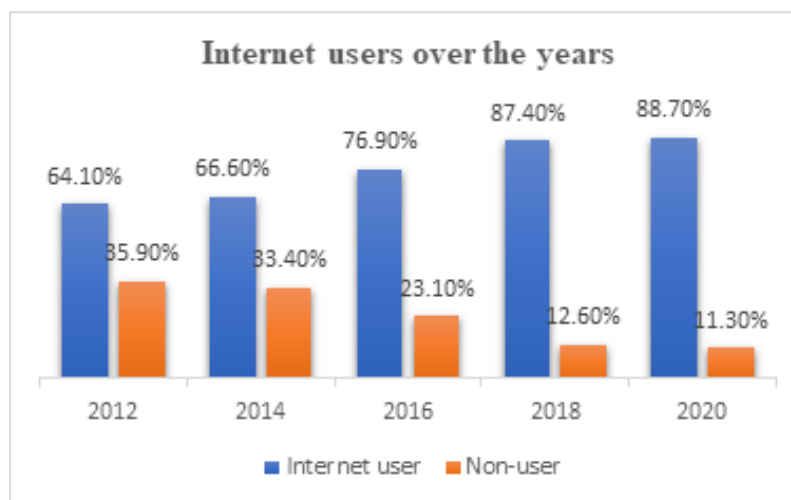


Fig 1. Internet users and non-users over the years in Malaysia. **Source:** Internet User Survey⁽⁹⁾

The survey also found that 87.3% of Internet users spent time streaming and/or downloading online videos and TV in 2020, which was 77.6% in 2018. Watching video in online platforms has now become more popular than videos uploaded on YouTube or Facebook only. Now, internet users are frequently streaming video content through Over-the-Top (OTT) platform as well, such as Hotstar, Amazon Prime Video, Iflix Pandora, Tonton, Netflix, Hulu etc. Furthermore, streaming platforms are also attracting consumers to watch web series, view pre-release content, and experience the contents with minimal or zero advertisement. 65.4% of Internet users listen downloaded online music and radio. The survey also discovered that the percentage of Internet users reading online publications rose to 68.3% in 2020 from 56.3% in 2018⁽⁹⁾.

According to the survey, the number of internet users who maintained social network accounts in Malaysia in 2020 is about 93.3%. Facebook remained the most widely used social networking site in Malaysia with 91.7% users having an active Facebook account, which is a significant decline from 97.3% users in 2018. However, other platforms like, YouTube, Instagram and Twitter have gained significant increase in their user community. For example, YouTube gained the most significant increase from 48.3% in 2018 to 80.6% in 2020. Instagram users climbed to 63.1% in 2020 from 57% in 2018, whereas Twitter users have risen to 37.1% from 23.8% in the same period⁽⁹⁾. This significant increase of internet usage in all aspects mainly owes to the Movement Control Order (MCO) in Malaysia in 2020 due to the surge of COVID-19.

3 Legal and Regulatory Framework

With a territory of almost 330,000 square kilometers and population of about 32.7 million⁽⁴⁾, Malaysia is recognized as one of the recent industrialized and modernized countries of the world⁽¹⁰⁾. Malaysia is one of the very few countries in the world with a highly developed internet infrastructure. Like most countries of the world, Malaysia has specific legal framework regulating online broadcasting services. But it is very difficult to implement these laws on over-the-top (OTT) service providers like Netflix as their services are borderless. Nowadays, OTT media providers such as Netflix, Hulu, Amazon Prime and Viu can easily be aired on the Internet indefinitely and users can fully access dramas or movies without any censorship. These uncensored films and dramas available for public viewing may contain offensive materials, hate speeches and other uncensored contents that can harm the society. As these unfiltered dramas and films are from a foreign country and culture, they may bring a negative impact to society, especially for teens and children⁽¹¹⁾.

The Malaysian laws and regulatory bodies that deal with censorship of the contents of online broadcasting in relation to offensive materials and hat speeches are summarized below.

3.1 The Communications and Multimedia Act (1998)

The Communications and Multimedia Act, 1998 plays the basic role to control, regulate and censor the contents of online broadcast media in Malaysia. Although the Act guarantees the Constitutional spirit of freedom of speech online in Section 3(3) which states that as “nothing in this Act shall be construed as permitting the censorship of the Internet”, there are several provisions in the Act that define, prohibit and penalize certain conduct as offensive materials in online broadcasting.

Section 211(1) of the Act prohibits the content applications service providers or other persons to provide offensive, obscene, indecent, menacing or false contents using a content application service with an objective to abuse, threaten, annoy or harass any person⁽¹²⁾. As per Section 211(2), any person liable for doing the acts mentioned in Section 211(1) will be fined up to RM50,000 or jailed up to 1 year, or both; and he shall also be subject to an additional amount of fine of RM 1000 for every day till the offence is continued after conviction⁽¹²⁾. Furthermore, Section 233 provides that if any person using any network facilities or network service or applications service intentionally initiates the transmission of, any request, suggestion, comment or other communication that is offensive, indecent, false, obscene or menacing in character with an objective to threaten, abuse, annoy or harass another person, will be fined up to RM50,000 or jailed up to 1 year, or both and he shall also be subject to an additional amount of fine of RM 1000 for every day till the offence is continued after conviction⁽¹²⁾.

Although some argue that Sections 211 and 233 of the CMA is contradictory to the basic objective of the Act and Government's promise of 'no censorship on internet', these provisions actually are not supposed to be the tools of the Government to do internet censorship. Nowadays, it is impossible for any Government to fully censor the contents of online broadcasting as there are number of ways to bypass those restrictions. Basically, Sections 211 and 233 are incorporated in the CMA not for censorship purpose but to protect people from offensive materials. There are provisions related to censorship, namely Section 263 (2), of CMA 1998, the Commission can direct any service provider to block the IP address in order to curb inappropriate content via Internet. This is consistent with spirit of CMA 1998 in its one of 10 National Objectives to ensure the benefit to the end user (LTBE).

3.2 The Malaysian Communications and Multimedia Content Code (2001)

Drafted by members representing all the key stakeholders, the Malaysian Communications and Multimedia Content Code is a standard of self-regulation of the service providers. Although it is mentioned in the code that compliance is voluntary, apparently there is no problem in abiding it as this Code is drafted by the stakeholders with an objective to compel themselves by it. The Code prescribes specific guidelines on approved and prohibited contents with respect to online broadcasting, audiotext hosting services, and closed content guidelines⁽¹³⁾. In Part I, Section 2, one of these guidelines states that there shall be no obscene, indecent, offensive, false or menacing contents⁽¹⁴⁾.

3.3 The Film Censorship Act (2002)

Established by the Film Censorship Act and under the prerogative of the Home Ministry, the Film Censorship Board regulates the censorship of all kinds of films in Malaysia. For this purpose, a rating system is imposed on all TV programs and films aired in Malaysia by the Board. In censoring a film, the Film Censorship Board considers three sensitive issues namely, religious, cultural, and moral values⁽¹⁵⁾. The Film Censorship Act also prohibits and provides punishments for offensive materials and obscene contents in a film. Section 5 of the Act prohibits the ownership, custody, possession, or control; or exhibit, distribute, circulate, display, produce, manufacture, sell or hire, any film or film-publicity material which is obscene or is otherwise against public decency. The Section further states that any person who contravenes these, shall be liable to a fine of minimum RM 10000 and maximum RM 50000 or to imprisonment for a term not exceeding five years or to both⁽¹⁶⁾.

3.4 Malaysian Communications and Multimedia Commission (MCMC)

Established under the Malaysian Communications and Multimedia Commission Act (1998), the Malaysian Communications and Multimedia Commission (MCMC) is a regulatory body that is assigned to promote and regulate the communications and multimedia industry including online broadcasting media. MCMC has the power to approve, amend, or revoke broadcasting and other licenses. The MCMC is also entrusted with the power to implement and promote the national policy objectives of the Government for the communications and multimedia sector including online broadcasting in accordance with the national policy objectives set out in the Communications and Multimedia Act 1998⁽¹⁰⁾. On 9 January 2016, after two days of launching of Netflix in Malaysia, the then Communications Minister of Malaysia Datuk Seri Salleh Said Keruak said that movies and television series to be streamed online by Netflix would still have to comply with Malaysian Communications and Multimedia Commission's (MCMC) content standards. He made this statement in response to a statement of a Netflix staff published in Malay Mail Online where he claimed that there will be no censorship of television series and movies made available in Netflix. The Minister also mentioned that MCMC can take action against Netflix as per the existing laws if it makes obscene, indecent or offensive contents available in Malaysia and breaches content standards of the MCMC⁽⁹⁾.

4 Findings

In Malaysia, broadcast media is regulated by dual authorities. While Film Censorship Board (LPF) regulates Free to Air broadcast channels, Malaysian Communications and Multimedia Commission (MCMC) is mandated to regulate satellite television. MCMC operates in accordance with the provisions of the Malaysian Communications and Multimedia Commission Act (1998) and the Content Code whereas the LPF runs under the direction of the Film Censorship Act 2002 and the Ministry of Home Affairs⁽¹⁷⁾.

Now, let's have a look on two most popular broadcast media in Malaysia to find out the level of effectiveness and implementation of the existing laws and also the level of compliance by them. 'Astro' with a subscription base of over 23 million is the main broadcast content provider in Malaysia. Astro provides thousands of hours of contents live and on demand for its customers from all around the world. The million-dollar question is whether this giant broadcast media conforms with all the media laws and regulations of the country. Astro indemnified itself by inserting a clause in their service contract that they are not liable for the contents they broadcast through their platforms. This stance of Astro can be construed as disingenuous at best and illegal at worst⁽²⁾. Previously, Astro was found to circulate through its channels, controversial contents, depiction of sex and drugs, and racist materials⁽¹⁸⁾. With a subscriber base of over 158 million worldwide, Netflix has made available all of their media content without any restrictions to Malaysia. It is pertinent to mention that some of the content of Netflix are controversial and extreme. For instance, the Netflix show named "The First Temptations of Christ" sparked controversy for its portrayal of Jesus Christ as a homosexual. Despite its contravening depictions against the teachings of all mainstream religions including Islam, it is still available for viewing on Netflix Malaysian application. Also shows such as 'Sex Therapy' promoting promiscuity and incestuous relations among adolescents are broadcasted for anyone on the Netflix platform in Malaysia. This

proves that the inclusion of these programs is intentional by Netflix. It has to be noted that broadcast of such materials is against the laws of Malaysia⁽²⁾.

Thus, despite all the laws and regulations and the regulatory bodies, the online broadcasting service providers in Malaysia are still streaming offensive materials on the ground that the government cannot impose censorship on the internet. Due to inadequate enforcement mechanism, these laws are proved to be incomplete and ineffective.

5 Conclusion and Recommendations

This study reveals that online broadcasting services in Malaysia are regulated by the same laws that govern the traditional broadcasting services. Some of these laws are old enough to combat the challenges of 21st century. These online broadcasting contents are spread over the Internet without any restrictions and are also easily accessible by anyone, and they are being broadcasted without of any form of censorship. These broadcasting medias ensure that users can access their sites directly from any place through internet broadband connection. The government is yet to establish any separate and specific legal and regulatory framework for regulating the contents of online broadcast media such as Hotstar, Hulu, Netflix, Amazon Prime Video, Ilix Pandora and Prime Video etc. It is nearly impossible for the existing laws to control and censor content that seems illegal when that specific content is actually saved in a computer on the other side of the world. Furthermore, Government's assurance of 'no censorship on the internet' under Section 3 of the CMA 1998 is another reason for non-obedience with the CMA 1998 and Film Censorship Act 2002 by the online broadcasting service providers. As a result, without any proper legal and regulatory framework, these online broadcasting services are mounting rapidly, and posing a threat to Malaysian society, culture and religious faith through their offensive materials, hate speeches and so-and-so. Thus, introduction of a legal and regulatory framework specifically for online broadcast media is the time demand in Malaysia.

At the end, it is recommended that Malaysia should enact specific and special laws for censoring online broadcasting services and establish a special regulatory body to control, govern and regulate offensive and illegal materials in online broadcasting with a view to protect their society, culture, religious faith and thousands years old tradition from the aggression of western media in the name of globalization.

Acknowledgements

The authors acknowledge that this study is funded by the International Islamic University Malaysia (IIUM) under the IIUM Flagship Research Initiative Grant Scheme (IRF). Project ID: IRF19-021-0021

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