

REGULATING THE SPREAD OF FALSE CONTENT ONLINE IN MALAYSIA: ISSUES, CHALLENGES AND THE WAY FORWARD

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ABSTRACT

It has been witnessed that the boomerang of digital technologies had stimulated positive impact towards usage of social media. Although this has been fruitful for the country especially in the age of digital economy, it is also disturbing to note that social media has turned into a ‘nesting ground’ to spread lies and rumours. False content had caused confusion and misunderstanding – especially when public interest is at stake. Some tarnishes the good name of not only country’s leaders but also government officials. Hence, this paper analyses legal framework on regulation of false content online in Malaysia and selected jurisdictions. In particular, three recent initiatives were also highlighted, namely (1) introduction of a website – ‘Sebenarnya.my’ designed to verify authenticity of news; (2) emplacing liability on WhatsApp group administrator to monitor false content; and enactment of the Anti-Fake News Act 2018. The extent of how far these new initiatives to effectively curb the spread of false content is yet to be seen. Nevertheless, the paper records some key observations, issues and challenges concerning the three initiatives. In gearing towards a healthier, dynamic and progressive digital society, it should be reminded that proactive measures taken must be balanced with constitutional right to freedom of expression within specified boundaries set by the laws.

Keywords: False information; Social media; Content regulation; Freedom of expression.

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1. THE DEVELOPMENT OF BROADBAND INFRASTRUCTURE IN MALAYSIA

Malaysia is a unique country blessed with diverse cultural and religious population. To say that the Internet is a new thing for the country would be an understatement. In fact, Freedom House in its 2009 – 2017 *Freedom of the Net* reported a steady growth in the Malaysian access to the Internet and mobile phone. Surveys conducted by International Telecommunication Union (ITU) reported more than half of Malaysian population have access to the Internet. The number of Internet access increases since some households have more than one broadband or mobile Internet subscription,

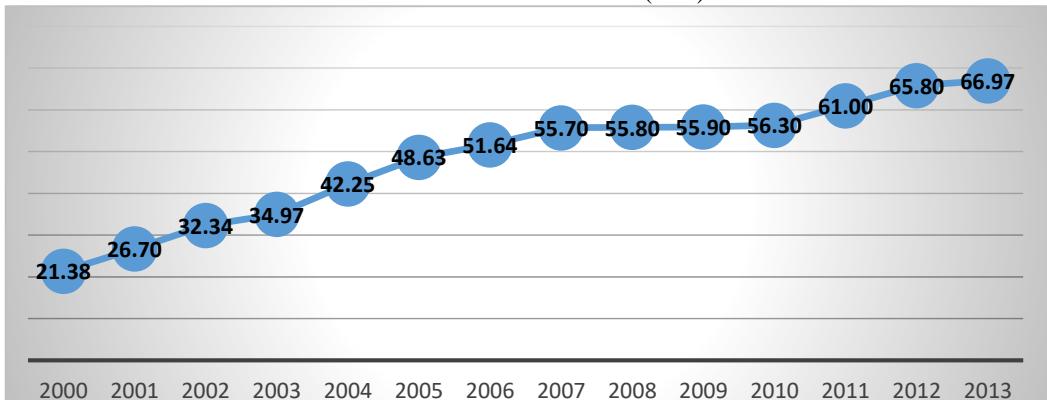
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making Internet penetration rate as of 2013 measured at 67% - which one of the highest percentage in Asia. As of 2016, ITU reported that Malaysia has reached 71% Internet penetration, making it labelled as “excellent for the region” (The Star Online, 2014c). Malaysians can gain easy access to Internet through business, home or mobile Internet subscriptions offered by ISPs such as Telekom Malaysia, Celcom, DiGi and Maxis. In fact, most public cafés and food outlets in Malaysia provide free Wi-Fi services for their customers, thus making Internet access wider and easier. However, higher penetration rate focused at the urban areas whilst remains low in less populated states in East Malaysia (China Daily, 2014; The Star Online, 2014a, 2014b).

To curb the digital divide between urban and rural areas in Malaysia, one of the initiatives taken by the government was to introduce the wireless WiMax technology in 2008, which helps to bring broadband to areas difficult to reach through cables. As of mid-2013, there are already four WiMax providers across the nation (The Star Online, 2014e). Further, the government has stressed on improving broadband infrastructure where in 2010, the National Broadband Initiative was launched in collaboration with the nation’s largest ISP, Telekom Malaysia (also known as TM). The National Broadband Initiative aims at accelerating broadband and mobile network expansion through the implementation of five projects - Rakyat Internet Centers (*Pusat Internet Rakyat*) and Mini Community Broadband Centers, 1 Million Netbook Initiative to distribute notebooks to poor students’ nationwide, setting-up of E-Kiosks, CBC to the Home and Expansion of Cellular Coverage (The Star Online, 2014d).

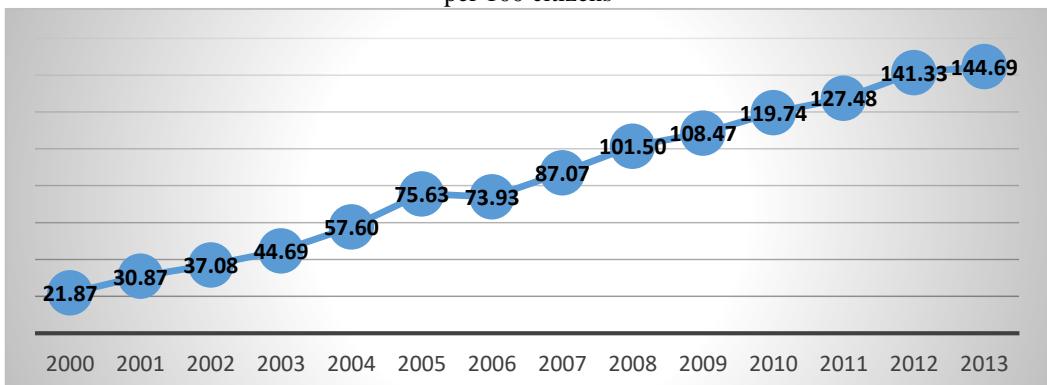
The Ministry of Information, Communication and Culture Malaysia reported in 2011 that about 250 Community Broadband Centers were set-up throughout the country and nearly 500,000 netbooks were circulated to students and low-income citizens in rural and suburban areas. The initiative is further expanded by introducing the 1Malaysia Broadband Affordable package for as low as MYR38 per month offered in five states (i.e. Sabah, Sarawak, Kelantan, Pahang, and Terengganu) with lower Internet penetration rate (Freedom House, 2012). The government provides more incentives to instil the growth of broadband by introducing tax rebate for individual broadband subscription (Freedom House, 2009, 2011, 2014; Kelly et al., 2013). At the same time, the expansion of Internet access and infrastructure also contributes positively to the usage of mobile phone. In 2011, the mobile phone usage exceeds the total population and interestingly in 2012, mobile penetration was reported to be at 141 per cent. This is because some subscribers had more than one mobile subscription (Freedom House, 2016). It was also reported by Freedom House that most Malaysian aged 20-24 accessed the Internet via mobile phones in 2011 (Freedom House, 2013) – thus narrowing the digital divide that the government aims to close. Figure 7 shows an increasing percentage of individuals having Internet access in Malaysia as reported by ITU from 2000 – 2013. Figure 8 illustrates mobile-cellular subscriptions in Malaysia which similarly displaying a steady increase annually. This circumstance positively contributes towards stimulating digital expression in Malaysia not only via personal computers, but also via also mobile gadgets.

Figure 1: Percentage of Individuals using the Internet in Malaysia reported by the International Telecommunication Union (ITU)



Source: ITU (International Telecommunication Union, 2014)

Figure 2: ITU report on Mobile-cellular subscriptions in Malaysia from 2000 - 2013 in Malaysia per 100 citizens



Source: ITU (International Telecommunication Union, 2013)

The Government of Malaysia continues to contribute more public funds into its High-Speed Broadband (HSBB) Project to expand Internet connectivity to sub-urban and rural areas. MCMC reports that the HSBB project costs a total of RM11.3 billion where RM2.4 billion is funded by the government whilst the remaining RM8.9 billion is contributed by Telekom Malaysia, the largest broadband operator in the country. The HSBB has entered is Phase 2 in 2014 where more efforts to increase Internet speed in major towns, suburban and urban areas are doubled. The government also has allocated an extra of RM 1.8 billion for this matter and an addition of RM1.6 billion will be invested to increase Internet speed in suburban areas to between 4Mbps and 10Mbps which in turn shall benefit more than 2 million Internet users (Yunan, 2011). The on-going efforts to upgrade Internet access and infrastructure is expected to bring high speed Internet

connectivity to government offices, private businesses, public and private higher learning institutions, schools and the public at large. This has placed Malaysia in the 10th place having fastest Internet connectivity across Asia Pacific in 2017, as reported by Akamai – an international content delivery network service provider (Bernama, 2017a). In fact, Freedom House has repeatedly tracked high volume of digital activism in Malaysian society in their yearly reports – which significantly proved increased volume of digital expression in Malaysia (Daud, 2016; Hoong, 2014).

2. THE SPREAD OF FALSE CONTENT ONLINE

The development of broadband infrastructure would undeniably grant better Internet access and connectivity to Malaysian netizens. There are more netizens online that contributes volumes of content to the cyber world. Unfortunately, some of the contents were illegal in nature, and this includes false content. The term ‘false content’ literally means any stories which were not true. Micro Trend in its 2017 research defines ‘fake news’ as “the promotion and propagation of news articles via social media. These articles are promoted in such a way that they appear to be spread by other users, as opposed to being paid-for advertising. The news stories distributed are designed to influence or manipulate users’ opinions on a certain topic towards certain objectives” (Gu, Kropotov, Yarochkin, Leopando, & Estialbo, 2017). In this manner, true stories may be misinterpreted to favour one side – which later reported as inaccurate. Unfortunately, there are also some netizens that blindly share contents that come through their screens – because they feel that they are Good Samaritans for doing so. This includes those netizens who love gossiping, and for that, share unverified news to satisfy such desire. As a result, it contributed to the spread of false content or fake news to the cyber world.

Although the difference between ‘false’ and ‘fake’ remains uncertain, they could effectively be disseminated when *three factors* were present – which Micro Trend calls as ‘The Fake News Triangle’. Figure 3 illustrates the ‘Fake News Triangle’ as follows: -

Figure 3: Fake News Triangle



The absence of social networks, motivation and / or necessary tools and services will make dissemination of false news more difficult, if not impossible. The reasons why social media is specifically suitable as platform to spread false news were due to (1) *costs*; (2) *anonymity* and (3) *credibility*. Dissemination process would not be very effective if traditional advertising was engaged since they were *costly*. In addition, social media allows users from any parts of the world to connect anonymously in order to promote fake news. *Anonymity* is a foreign concept to print media – as identity of the publishers can be easily found printed. Consequently, it is more difficult to circulate fake news via print media since liability over false publication can easily be attributed to. Hence, social media becomes an easier alternative. As regards to *credibility*, people tends to get more excited over ‘viral’ news disseminated by users as compared to advertisements, particularly involving celebrities and politicians. Micro Trend reveals that there are corporate companies which provide content marketing services – which include to spread false content for a fee (Gu, Kropotov, Yarochkin, et al., 2017). Other interconnected services also include: analytics services, social media promotion and content takedown. With these technologies, it is not surprising why fake news can easily be spread especially through the Internet.

Be that as it may, Internet and mobile communication particularly Twitter, Facebook, WhatsApp, short messages service and Instagram have become important tools of communication especially during emergency situation and natural disasters. They become instantaneous or ‘real time’ media platforms for sending, retrieving and sharing information. At time when disasters strike, such information sharing help to transform the shared information into formulating community action that enable preparation and response efforts including search and rescue to take place. The flood tragedy or calamities recently occurred in Malaysia has witness this development. In this regard, Internet access, social media and information communication technologies (ICT) played a significant role in assisting people either the victims, community and authorities to deal with emergency crisis.

Nevertheless, not all shared information during crisis were accurate. Information relating to certain help centre were found to be inaccurate thus giving false hope to the victims when it was forwarded or passed on to them by concerned family or friends who genuinely believe the existence of the help centre. Pictures sent include ‘doctored’ or ‘photo-shopped’ pictures that did not portray the real situation. Rumours, false news and misinformation continuously spread and became viral across different media and social media platforms. The worst of all is the existence of opportunist who take advantage of the victims’ mishaps to make illegal personal gain by seeking donation that will go to their pocket. This reveals a shocking truth that social media and ICT could be manipulated thus brought with it both opportunities and risks, as well as false hope particularly to the victims who need immediate and eminent help during the occurrence of the disaster (Suruhanjaya Komunikasi dan Multimedia Malaysia, 2014).

3. WHAT DOES THE LAW SAY?

Section 211 of Communications and Multimedia Act 1998 (CMA) categorises ‘false content’ under a general classification known as ‘offensive content’. In general, CMA prohibits communication of offensive content – including that of false content. Section 233 of the CMA further criminalises improper use of network facilities or network services for the purpose of (inter

alia) communication of false content. The CMA 1998 also noted that such prohibitions are general in nature and should be read together with the Content Code, as adopted by Communications and Multimedia Content Forum (CMCF)¹.

Article 7.0 of Content Code (the Code) expressly deals with false content online although arguably not in depth. The Content Code, which is meant for public and industrial reference was plainly worded for ease of understanding. This explains why the Content Code is not meant to be a statute but a mere self-regulatory industrial guideline (Daud & Jalil, 2017). The Code defines ‘false content’ as material “likely to mislead, due to amongst others to incomplete information”² where it has advised Internet users to avoid contents which are unverified and false. Article 7.3 provides for an exception where false content is not prohibited when it is satire, parody and fictional in nature. ‘Online speculations’ should be defined similarly as false content since speculations are likely to mislead people with unverified information (Daud, 2015).

From the above discussion, the law in Malaysia is strong to prohibit dissemination of false content or news online. However, legal framework alone is arguably deficient to reduce or resolve the problem, as more cases were reported on a daily basis. The following table summarises selected incidents where false news was spread through social media and blogs from 2014 – 2017 as tracked by the MCMC: -

Table 1: Summary of False News from 2014 - 2017

Year	Summary of False News
2014	Disappearance of Malaysia Airlines flight MH370 on 8 th March 2014. Wild theories and speculations such as possibilities of plane hijack, suicide, terrorism acts and more can be easily found on the Internet(Kelly et al., 2013).
2014	The spread of viral messages that the Ministry of Communications and Multimedia Malaysia is closing down all social media(Astro Awani, 2015).
2015	Viral messages were sent through phone apps that anyone who fills their cars’ gas tanks to full risks their cars getting burned(Murad, 2015).
2015	The spread of messages through social media that Malaysia is home to a highly wanted international mafia gang –K14(Aziz, 2015).
2016	The spread of messages through social media that Diphtheria disease was first detected in Putrajaya, Malaysia(MStar Online, 2016).
2016	The spread of false doctored picture through Facebook that a plane has crashed in Perlis, Malaysia(Alias, 2016).
2017	The spread of false WhatsApp messages that the Malaysian Communications and Multimedia Commission and the Ministry of Home Affairs were monitoring all phone calls and text messages of Malaysians(Ibrahim, 2017).
2017	The spread of false WhatsApp messages that Ransomware cyberattack has invaded into online banking and online retail platforms. All netizens were advised not to perform any online transactions to avoid from being victimized(The Star Online, 2017).

Source: Malaysian Communications and Multimedia Commission, 2017

¹ See Section 213 (1) and (2) CMA 1998

² See Article 7.1 Content Code

Despite thousands of fake news identified by the MCMC, not many were taken action against due to administrative, legal and/or technological barriers that sit as stumbling blocks. Some fake news relating to government agencies were verified through confirmation with the said agencies, but those involving private individual remains problematic. Even with such confirmation, fake news keeps coming up in social media – and past events (which were confirmed as fake) have been manipulated as recent happenings. Consequently, government agencies today are too occupied in having to respond to numerous fake news against them – perhaps more than their original responsibility to serve the public. On that note, the following part discusses on recent initiatives taken to reduce publication and dissemination of false content.

4. RECENT INITIATIVES ON REGULATION OF FALSE CONTENT

Since 2013 the statistics produced by the MCMC have shown that more than 1000 false news have been published in Malaysia (Bernama, 2017b). The number could be more than what had been reported since not all netizens took the initiative to report. This is rather alarming especially when public interest involving national security or public safety is at stake. Hence, this section will critically analyse recent governmental initiatives to regulate the spread of false content online, with the hope to curb its dissemination. The next part will discuss about the introduction of a web portal known as ‘Sebenarnya.my’.

4.1 Sebenarnya.my

The Ministry of Communications and Multimedia Malaysia and the MCMC have launched a web portal known as ‘Sebenarnya.my’ on 14th March 2017. According to the Minister-in-charge, Datuk Seri Dr Salleh Said Keruak, the government has taken the initiative to develop *Sebenarnya.my* to ensure only genuine news and information to reach the Malaysian public (Bernama, 2017c). News – whether online or print will be collected, analysed and confirmed and published on the portal for public information. False news which went viral online will also be treated similarly. In the process of analysing and confirming a particular news, the MCMC has collaborated with relevant ministries in-charge. This ensures that news genuinely came from the right authority.

The initiative could be considered as proactive where the government plays its educational role to ensure netizens receive genuine content. As will be seen in the subsequent part of this paper, other governments have similarly introduced websites to monitor and clarify any reported false information on social media that concerns their administrations. However, one may criticise that such move upholds only one side of the truth i.e. from the government. Other people may have their own version of truths that is contrary to the one supplied by the government and hence, which version of truths shall prevail? (Allcott & Gentzkow, 2017a). In this digital era, it is no longer relevant for one to simply depend on one source of information – since more are available in just one click. The answer remains contentious however it elucidates why constitutional right to free speech and expression must be complemented with the right to information – so that responsible speech may be articulated.

The second initiative to regulate false content online was introduced by the MCMC in 2017. This move is rather unique which imposed legal liability onto WhatsApp Group Administrator to monitor false content as discussed below.

4.2 Impose liability on WhatsApp Group Administrator to Monitor False Content

The MCMC has also taken an advanced step to curb dissemination of false content online through online advisory warnings, especially towards group administrators of mobile apps such as WhatsApp. There is no specific explanation why the Internet regulator has chosen WhatsApp, as false content could be found across all social media platforms. However, it is submitted that the MCMC Advisory Warnings stated in Table 2 (below) may apply similarly to other social media platforms. On that note, the MCMC has issued an advisory warnings to group administrators reminding them the Do's and Don'ts of social media communications. The advisory warning is reproduced in the following table: -

Table 2: MCMC Advisory Warnings

Do's	Don'ts
Inform the members the reason for setting up the group and consider setting basic ground rules	Be an absent administrator
Be mindful of rules / conditions of use by platform provider	Breach community standards / guidelines set by the platform provider (e.g. Facebook, WhatsApp, Telegram)
Comment on posts to ensure discussions stay on track	Encourage, incite or abet inappropriate posts
Check posts regularly (possibly with a moderator)	Allow discussions to wander off topic
Consider removing or blocking those who persist in making inappropriate posts	Be afraid to deal affirm with trolls or individuals who continuously breach the ground rules
Cooperate in investigations by law enforcement agencies	Hinder / obstruct investigations by law enforcement agencies

Source: The Malaysian Communications and Multimedia Commission, 2017

According to Deputy Minister-in-Charge, Datuk Jailani Johari, actions may be taken against group administrators under the Communications and Multimedia Act 1998 for various offences including dissemination of false content. Group administrators “need to be more responsible for the content appearing within their groups, and that they were the gatekeepers against the spread of fake news” (Lowyat.NET, 2017). This approach was considered after taking into consideration India whom face issues on dissemination of false content online. However, it remains unclear whether this move has benefitted India in curbing the spread of false content online. On the other hand, such move has clearly imposed legal responsibilities on Group Administrators to monitor digital interactions in their respective WhatsApp groups. The Chairman of Kuala Lumpur Bar Committee, Foong Cheng Leong opined that Ministry’s dependence on the CMA 1998 (in particular Section 233) would overstretch the law since two of its important elements establishing the offence do not apply to group administrators. One would only be attributed to liability under Section 233 if he “knowingly make or initiates the offensive communication” and “with intent to annoy, abuse, threaten or harass another person”. If a group admin does not initiate such communications with the necessary intentions, liability cannot be attributed to him (Leong, 2017).

It is also interesting to consider if liability to monitor content can be attributed through application of Section 114A of the Evidence Act 1950. Section 114A assumes any names appearing on a certain publication to be its *publisher*, unless the contrary is proved. Leong argued that imposing group admin to shoulder responsibility to monitor content on their groups would not be appropriate as “a group chat admin is not a publisher of their member’s message” (Leong, 2017). In this regard, it is important to consider this question. Can we consider the *WhatsApp service provider* as an ‘Internet intermediary’? How does one qualify to be ‘Internet intermediary’, which the law assumes to have technical capability to monitor Internet content? The following table summarises the definitions of ‘Internet intermediaries’ for ease of reference: -

Table 3: Definitions of Internet Intermediaries

Agencies	What is an ‘Internet intermediaries’	Who are they?
The Organisation for Economic Co-operation and Development(The Organisation for Economic Co-operation and Development, 2010)	Organisations or companies who “bring together or facilitate transactions between third parties on the Internet. They provide access, host, transmit and index content, products and services originated by third parties on the Internet or provide Internet-based services to third parties.	<ol style="list-style-type: none"> 1. Internet access and service providers (ISPs); 2. Data processing and web hosting providers, including domain name registrars; 3. Internet search engines and portals; 4. E-commerce intermediaries, where these platforms do not take title to the goods being sold; 5. Internet payment systems; and 6. Participative networking platforms, which include Internet publishing and broadcasting platforms that do not themselves create or own the content being published or broadcast.
ARTICLE 19(ARTICLE19, 2013)	Internet intermediaries are groups of Internet service providers, Web hosting providers, social media platforms and search engines, but excludes content providers	<ol style="list-style-type: none"> 1. Internet service providers 2. Web hosting providers 3. Social media platforms and 4. Search engines

The above table clearly stated that Internet intermediaries are those who provide online service to which they are the ‘middle man’. In no circumstances do they provide content to netizens. This is also similar to WhatsApp service whereby it is merely a social media platform that enables netizens to connect to each other. It does not provide any content whatsoever. As such, it may be correctly

argued that WhatsApp itself is an Internet intermediary which is entitled for safe harbour protection against liability for hosting 3rd party content (Edwards, 2011). This is also confirmed if reference to Part 5 of the Content Code is made where Internet intermediaries (which includes Internet Service Providers) are entitled for safe harbour protection.

Nevertheless, what is the position of a *WhatsApp group administrator* – who is an Internet user that contributes online content and at the same time, administers online chat groups. Would it be fair and reasonable to equate him to a *publisher* and impose liability to monitor content in his group – failing which, may lead to legal consequences? In this regard, perhaps it is prudent to reconsider who is a ‘publisher’ in this context? Section 114A of the Malaysian Evidence Act 1950 is relevant on point: -

“114A. (1) A person whose *name, photograph or pseudonym appears* on any publication depicting himself as the **owner, host, administrator, editor or sub-editor, or who in any manner facilitates** to publish or re-publish the publication is presumed to have published or re-published the contents of the publication **unless the contrary is proved**.
(2) A person who is registered with a network service provider as a **subscriber of a network service on which any publication originates** from is presumed to be the person who published or re-published the publication unless the contrary is proved.
(3) Any person who has **in his custody or control any computer on which any publication originates** from is presumed to have published or re-published the content of the publication unless the contrary is proved [emphasis added]”.

If we were to consider the meaning of ‘publisher’ from Section 114A, a WhatsApp group administrator is arguably in the position to host, or becomes an administrator, or may indirectly facilitates to publish or re-publish content. However, he is not in the position to edit nor sub-edit the content that is contributed in the WhatsApp group that he administers. The best technical measure to prevent the spread of false content which a WhatsApp group admin may do is to delete any false or illegal content communicated by his group members. This may also be a self-regulatory instrument designed by WhatsApp to empower users to prevent false content from circulating further, which is a timely effort. Nevertheless, this does not absolve the admin from liability under Section 114A, to which he must then prove to court that he has taken initiative to delete or takedown the false content – to avoid from being presumed as a publisher under this pretext.

Figure 4: WhatsApp instruction on deleting messages containing mistake or false information

The screenshot shows a mobile web browser displaying the WhatsApp help center. The top navigation bar includes the WhatsApp logo, links for 'WHATSPAPP WEB', 'FEATURES', 'DOWNLOAD', and 'SECURITY'. The main content area has a teal header with the text 'You can delete messages for everyone or just for yourself.' Below this, a section titled 'To delete messages for everyone' provides instructions. It states that deleting messages for everyone allows you to delete specific messages sent to a group or individual chat, particularly useful if a message was sent to the wrong person or contains a mistake. It also notes that successfully deleted messages are replaced by a placeholder in recipients' chats. The instructions then guide the user through three steps to delete messages for everyone: opening WhatsApp, tapping and holding the message, and finally tapping the 'Delete' icon at the top of the screen to select 'Delete for everyone'.

Hence, on this point, the question on how far liability for WhatsApp group admin remains unsettled due to absence of judicial precedent on point. However, it may be argued that WhatsApp group admin remains exposed to liability as ‘publisher’ of false content due to broad nature of Section 114A of the Evidence Act 1950. If we were to associate such heavy burden with how Internet intermediaries were completely immune under safe harbour provisions (after compliance with certain procedures), it would never proportionate hence leaving WhatsApp group admin in an unnecessary legal dilemma.

The next section discusses on the enactment of the Anti-Fake News Act 2018, which is the most recent initiative by the Parliament of Malaysia in curbing the spread of fake news or false content, both offline and online.

4.3 *Enactment of the Anti-Fake News Act 2018*

The Anti-Fake News Act 2018 was perhaps one of the hastiest legislation ever made in the history of Malaysia. The Bill was tabled on 27th March 2018 and it only took two weeks for it to be debated, passed and gazetted, i.e. on 11th April 2018. For purposes of interpretation, Section 2 of the Fake News Act 2018 defines ‘fake news’ as “any news, information, data and reports, which is or are wholly or partly false, whether in the form of features, visuals or audio recordings or in any other form capable of suggesting words or ideas”. The word ‘publication’ was also defined as to include

any written or digitally or electronically produced publication. However, it is unclear whether the meaning of ‘publication’ under Section 2 has to be read together with Section 114(A) of the Evidence Act 1950 – hence suggesting a *lacuna* on point. Section 3(1) of the Act grants extra-territorial application whereby any person (regardless of his nationality) may be liable and dealt with as if the offence is committed within Malaysia. Section 3 (2) further extends the jurisdiction of the Act where such person may be accountable if he publishes fake news concerning Malaysia or Malaysian citizen.

The Anti-Fake News Act 2018 provides categories of offences, which carries maximum fine of RM500, 000 or ten years imprisonment. The Act lacks justification why such severe punishments were imposed – as if it is equivalent to crimes against state. Section 4 (1) of the Act criminalises any act of “creating, offering, publishing, printing, distributing, circulating, or disseminating any fake news or publication containing fake news”. However, one must knowingly commit the said acts in order for him to be found guilty under this provision. If one does not know or unaware that the information he shares online is false, then he shall not be guilty of an offence under Section 4.

The 2nd category provides that anyone who renders financial assistance to facilitate offence under Section 4, whether directly or indirectly, may also be found guilty under Section 5. Section 6(1) further imposes a duty to remove publication containing fake news and failure to do so amounts to an offence. In this situation, the Sessions Court may order for the removal of any publication containing fake news under Section 7. To facilitate service of court orders, Explanation to Section 7 provides that such service may be made (other from the standard postal services) – to the offender’s email address or social media account. However, no provisions in the Anti-Fake News Act 2018 stipulates any specified time for the alleged offender to take down fake news. If cross-reference to the Content Code is made, prohibited content should be removed within 1 - 24 hours from the time takedown notice was sent. This suggests that the Content Code was more detailed in its removal procedures so that clear guidance can be provided to remove prohibited content. On the contrary, should anyone receiving such removal order fails to remove any fake news, Section 9 of the Anti-Fake News Act 2018 empowers the Court to direct the police or the MCMC to take any necessary measures to remove the said publication. However, such measures were not defined or suggested by the Act.

Nevertheless, if anyone receiving the removal order, believes that the alleged fake news publication in his possession do not amount to fake news, he may make an application to the Court to set aside such order. Nonetheless, if the removal order was obtained by the government under Section 7, Section 8(3) provides that no application for setting aside of such order may be made by any person. This is in particular, when the fake news contains information which are prejudicial to public order or national security – hence government is given a special privilege by the Act to remove such fake news. In the first month of its enactment, a Danish citizen was prosecuted under the Anti-Fake News Act 2018 for “maliciously publishing fake news in the form of a YouTube video under the user name Salah Sulaiman and was sentenced to a week’s jail and fined RM10,000” (Tariq, 2018). After the recent winning of Pakatan Harapan in the 14th Malaysian General Election, the Minister of Information and Communication Technology, Mr. Gobind Singh Deo promised to abolish the newly enacted Anti-Fake News Act 2018. However, it is submitted that more time should be granted to the ‘infant’ Act to allow more discussions to be initiated, so that the time spent enacting was not wasted. Certain legal issues or *lacuna* may be addressed by simply amending or consolidating the Act, leaving out the need to abolish it.

5. COMPARATIVE ANALYSIS

“Fake news may seem new, but the platform used is the only new thing about it. Propaganda has been around for centuries, and the internet is only the latest means of communication to be abused to spread lies and misinformation” (Daud, 2016). The spread of false content – or fake news online is not only happening in Malaysia, but is also a global problem. India is one of the examples to mention. India has been facing with issues on the spread of false news online. The Indian Information Technology (IT) Act 2000 criminalised the act of publishing or transmitting objectionable contents including sexually explicit and obscene material. Similar to other legal frameworks, illegal content may be removed through notice and takedown procedures – usually done with the assistance from Internet Service providers (Times, 2017). However, in cases involving false news disseminated through WhatsApp, the Electronics and Information Technology Minister Ravi Shankar Prasad noted that “instances of objectionable videos being uploaded through mobile phones and shared through WhatsApp have been noticed... the messages are end-to-end encrypted and they and any third party cannot read them. In other words, the messages are only seen by the sender and the receiver” (Allcott & Gentzkow, 2017a).

Further, “WhatsApp provides a feature to report any objectionable content. However, they also admit that since they do not have the contents of the messages available with them, it limits their ability to take action. A user can take screenshot of the content and share it with appropriate law enforcement authorities”. Hence, the government of India acknowledges that the new encryption technology introduced by WhatsApp poses a new legal challenge to curb the spread of false news online, since WhatsApp itself does not store any of such objectionable messages on its platform. This is different from the case of Internet service providers, since objectionable content flows through their servers and takedown may be instructed as necessary.

On the other part of the world, the United States have had their Presidential Election in 2016 which favours Donald Trump (Allcott & Gentzkow, 2017b). Behind this election, there were many fake news published online and offline – and most of them sided on Trump. United States government’s attitude in dealing with dissemination of false news have been a passive one – perhaps in honour of the right to free speech under the First Amendment of the US Constitution. As a result, studies confirmed that one of the factors leading to Trump’s winning the election was because of influence from fake news (Gu, Kropotov, & Yarochkin, 2017). Facebook and Google have made efforts to remove false content on their platforms for violating its policies on objectionable and illegal content. Further, Facebook users may flag any false content as ‘disputed by 3rd party fact-checker’.

Other governments such as the United Kingdom and Russia have set-up websites to list and verify any false content about the nations. Germany is preparing a bill to fight against the dissemination of fake news – including to fine social media sites for failure to promptly remove false content (Bentzen, 2017). Remarkably, Malaysia was ahead of Germany and other developed countries in passing fake news law, and in time, we will be able to make comparative analyses with their fake news laws and resolve on a certain benchmark in order to improve our present laws. On the other hand, the European Council established the European Union’s External Action Service (EEAS) to review ‘disinformation’ content on weekly basis (Tariq, 2018).

6. CONCLUSION

Coming to the end of this paper, it becomes pointless to reiterate that the spread of false content or fake news online is now a global threat. As seen in the discussions above, governments have taken measures - such as introducing websites to verify authenticity of news. Malaysian government in particular has been proactive in emplacing liability to WhatsApp group administrators to monitor false content online. To a significant extent, they are also under the duty to remind members of such group not to post illegal content (which includes false content). This duty has been derived from the broad provisions of the CMA 1998 and invited interesting criticisms from the members of the legal fraternity. Some said that this action has overstretched the law. Although such may be said, the wordings of CMA 1998 have been crafted in that it may cover a wider scope of applications, especially when new technologies surface. With such intention, it saves the Parliament's precious time to re-amend the law on point. The enactment of the Anti-Fake News Act 2018 was also a point to ponder whether such legislation requires more thinking onto its legislative purpose since the CMA 1998 itself is able to achieve the same objective to reduce access to prohibited content.

However, the authors wish to note that in view of the initiatives to regulate false content, we must ensure that constitutional right to freedom of expression under Article 10 is safeguarded. This of course, should not involve protecting those who spread false information – as false information is not a valid form of protected expression. When people use their rights of expression, they should be aware that such rights is granted within the boundaries of the law. Certainly, no one can shield themselves under Article 10 should they communicate false content, be it online or offline. Nevertheless, a balance must be struck between regulation and freedom in this sense, so that we will not be accused of committing censorship of information in the digital age.

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