



Regulating Online Broadcast Media in Malaysia: Legal Study of Compliance and Regulatory Enforcement in Relation to Hate Speech and Offensive Materials

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Abstract

Online Broadcasting services are increasing dramatically without any proper regulatory framework and affecting local traditional broadcaster. Nowadays, online broadcasting services are popular to the customer for online movie sites like Netflix, Iflix Pandora, Amazon Prime Video, Hotstar, Hulu. These types of online video sites broadcasting original video content without any censorship which makes film censorship board useless. This purpose of this study was to analyse the effectiveness and enforceability of the Malaysian Communications and Multimedia Act (1998) on complying online media broadcast services to the laws and regulations of the country. The paper analyses the two major online media broadcast services in the country and looks in to their terms and conditions of service agreement between their customers and the controversial content made available through their services. The paper also identifies the inadequacies of legal action by the legally mandated enforcement agency, the Malaysian Communications and Multimedia Commission (MCMC). This study will use a legal and doctrinal research methodology. Data collection will be based on content analysis from the primary and secondary legal sources. This study found that the content provided by the service providers did not comply with the laws and regulations of Malaysia and in some instance they were not only uncompliant but have designed their service agreements with their customers in a manner to avoid legal responsibility for the nature of the content they provided.

Introduction

The advent of internet and the near impossibility of abstaining from its usage for even the most basic daily tasks has exponentially increased its usage among all walks of life within the past few decades. This drive is further fueled by the affordability of consumer electronics on one side of the spectrum, and the flood of data and content created for its users on the other side. Today the usage of internet and its connected devices are completely and inalienably dependent on the deluge of content designed to hook its users. Malaysia, seen as a beacon of religious and social harmony and one of the most prosperous nations in South-Asia is at peril having being bombarded with unwanted internet broadcasted misinformation and offensive materials counter-productive and detrimental to its society. Hate content, islamophobia, extremist content, explicit imagery unsuitable and foreign to the culture of Malaysia are broadcasted and made available through government licensed online operators within Malaysia.



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Methods and Materials

This study will use a legal and doctrinal research methodology. Data collection will be based on content analysis from the primary and secondary legal sources.

Analysis and Discussion

Legal framework in Malaysia regarding the broadcast media is of dual nature where Ministry of Home Affairs deals with Free to Air broadcast channels whilst Malaysia Communications and Multimedia Commission has the mandate for regulating satellite television (Kee, 2015). MCMC is conducted in accordance to the Content Code and under the Malaysian Communications and Multimedia Commission Act (1998). The film censorship board or LPF in Malaysia is under the mandate of the Ministry of Home Affairs under the virtue of the Film Censorship Act (Kee, 2015). The Communications and Multimedia Conduct Forum of Malaysia, established under the Communications and Multimedia Act 1998 under the purview of SKMM, with the objective of promoting media content that is conducive to civil society whilst avoiding content of indecent, obscene, menacing, abusing, threatening false and harassing in nature. Its general principles also includes the prohibition of any form of indecent obscene, or material that is discriminatory in terms of race, religion, gender, civil status etc. The content code is set to be the authorative code of content creation for all mediums of broadcast in Malaysia. Namely all the Applications service providers who provides voice services, data services, e-commers and other transmission services. The code further goes on to interpret the meaning of ‘content’ by defining it as ‘any sound, text, still picture, moving picture or other audio-visual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically.’ The code mentions that the subjects of the Code shall not provide any prohibited content knowingly. The internet access services provider or the IASP is also bound to follow the laws and regulations of Malaysia, and is bound to block any content and material in contravention to Malaysian Law. (Lee, 2002 & Daud, 2017). Looking at the terms of use agreement by Netflix, it can be seen that Netflix has the control to select the programs which could be made available based on geographic location. Yet it goes on to establish that the customers using Netflix are the ones to use their services ‘in accordance with all applicable laws, rules and regulations or other restrictions on use of the service or content therein.’ The terms of use agreement further eliminates the possibility of claiming damages by the customer as well as having the customers going for class action. According to the terms of use agreement of Netflix, it mentions that it will be governed by the laws of Netherlands.

Conclusions

It has been found from this study that the major online media broadcast service providers do not comply to the full extent of the Malaysian regulatory laws and the regulatory body, Malaysian Communications and Multimedia Commission is seen in particular controversial instances, to be ineffective in enforcement of the laws and regulations it is legally mandated to uphold.



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