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Protecting Children against Exposure to Content Risks Online in Malaysia: Lessons from Australia

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ABSTRACT

Children are the most vulnerable group in any civil society. The rise of digital technology has made them more exposed to threats of content risks through exposure to illegal and harmful Internet content. To make matters worse, legal framework regulating the Internet in Malaysia i.e. self-regulation does not mandate service providers to implement technical measures that could help reduce children's exposure to content risks. Continuous exposure to content risk could lead to dilution of traditional values among younger generation. In order to reduce this outcome, all Internet stakeholders in Malaysia must take Internet regulation more seriously. This paper consists of three parts. The first part argues that content risks are a real threat to children in Malaysia as seen in previous studies. The second part of this paper presents the outcome of library research and focus group discussions with Malaysian Communications and Multimedia Commission (MCMC), selected Internet service providers in Malaysia and the Communications and Multimedia Content Forum (CMCF) on the regulatory measures practiced in the Malaysian self-regulation framework. This research finds non-censorship policy that does not mandate service providers to classify nor filter prohibited content to be problematic since it greatly exposed children to content risks. Furthermore, the Content Code, which guides the industrial self-regulation had no enforcement teeth, hence weakened the regulatory framework as a whole. In comparison, Australian co-regulation scheme has been focusing on protection of children online through classification and filtering measures. Lessons learnt from the Australian jurisdiction could be of reference to Malaysia in its effort to reduce children's exposure to content risks online – as addressed in the final part of this paper.

Keywords*: Internet content regulation, self-regulation, content risks, children, co-regulation.*

INTRODUCTION

The emergence of content risks means bad news especially towards children. The Organisation for Economic Co-operation and Development (OECD) described that 'content risks' emerged from access to illegal, age-inappropriate, and harmful content online. Websites offering pornographic, violent and hate speech content clearly fall under this context. However, what amounts to 'illegal content' differs across jurisdictions and subject to national interpretations (Byron, 2008, p. 48; The Organisation for Economic Co-operation and Development, 2012, p. 25). In the Malaysian context, content risks emerged from access to 'prohibited content' that are indecent, obscene, false, defamatory, offensive and menacing in nature (Sections 211 and 233 of the Communications and Multimedia Act 1998), (Herein CMA 1998). These vast categories of 'prohibited content' were considered illegal according to Malaysian law. However, it is fair to question how Internet regulation

should take place in light of protecting children when the categories of 'prohibited content' are so extensive.

EXPOSURE TO CONTENT RISKS - A REAL THREAT TO CHILDREN

The global community has expressed concern on children's exposure to content risks, particularly to online pornography. Declaration of the Rights of the Child emphasised that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth." Children spend about 8 hours per day on television, video games, watching DVDs, surfing the Internet and the hours spent on the Net increases with age (Gutnick, Robb, Takeuchi, & Kotler, 2011; The International Communication Union, 2009). Faster Internet connectivity and accessibility have intensified children's exposure to content risks.

The EU Kids Online surveyed children from 9 - 16 years old in 25 European countries and their parents. 55% of those children agreed that there were annoying online content. Pornographic content was listed as the top-disturbing content followed by violence and hate speeches (Livingstone, Kirwil, Ponte, Staksrud, & EU Kids Online Network, 2013). 14 % of the respondents have seen images online that are "obviously sexual – for example, showing people naked or people having sex." However, 33% from the respondents told a friend, and only 25% told a parent (Livingstone et al., 2013). Since there were no studies of similar nature in Malaysia or ASEAN countries, it is expected that the figures to be slightly equivalent.

Exposure to content risks amongst children in Malaysia is threating our national values (Kelly et al., 2013). Some of the effects of content risks have affected children and adolescence in real life as seen in previous studies. For example, Syed Shah Alam reported that young adults were the most obsessive Internet users in Malaysia. They accessed pornography, violent games, and online gambling due to Internet addiction (Alam et al., 2014). As a result, they have lesser social interactions with family members, wasted money for online gambling, excessive shopping, and sex addiction. Children's exposure to content risks increased along with the amount of time spent online (Hassan & Rashid, 2012).

Furthermore, social problems were getting rampant in younger generations (Chlen & Mustaffa, 2008; Liang, 2013; Rahman, 2009; Sinar Harian, 2012). Statistical reports from government departments revealed that, sexual intercourse between unmarried young couples, being rude to parents, cyberbullying, skipping schools, smoking, drug abuse and others are becoming norms in the society (Ahmad et al., 2008; Arsat & Besar, 2011; Jalil, 2015; Kasnoon, 2013; Mohamed, 2011; Seadey, 2009). These actions are considered as serious social ills among younger generations since they went against cultural, moral and religious values of the Malaysian society. The fast development of ICT was blamed for exposing negative influence to the society (Persatuan Pegawai Tadbir dan Ikhtisas Universiti Kebangsaan Malaysia, 2011).

It wasobserved that social harmony among races in Malaysia could be stirred through abusive use of social media. Publication of false news over social media with an attached doctored picture could simply cause public anger and stir social unrest (Thien, 2011). This has direct effect towards children when they too can access similar content online. Furthermore, threat of content risks online becomes more serious when it can be 'user-generated' (Cormode & Krishnamurthy, 2008; O'Reilly, 2006). Netizens can create and upload their own 'prohibited content' to social media that could be accessed by anyone including children. This makes Internet regulation more difficult when content can originate

from anywhere – not just content providers. These findings shown that exposure to content risks is a real threat to children both offline and online. More seriously, self-regulation scheme as practiced in Malaysia does not shade any hope into resolving the above issues, as seen in the next part.

INTERNET CONTENT REGULATION IN MALAYSIA – AN OVERVIEW

The CMA 1998 and the Content Code govern Internet content regulation in Malaysia. They embrace the self-regulation framework by virtue of Section 124 of the CMA 1998. Self-regulation is a governance scheme that "involves a group of economic agents, such as firms in a particular industry or a professional group voluntarily developing rules or codes of conduct that regulate or guide the behaviour, actions, and standards of those within the group" (The Organisation for Economic Co-operation and Development, 2006, p. 34). Self-regulation enables participating industry members to develop its own self-regulatory codes, conduct monitoring and compliance, develop accreditation standards and to enforce them voluntarily. The industry conducts self-discipline for the benefit of its own market through minimised governmental interference. However, this is not the case for Malaysia since the government (through MCMC) is strictly regulating its Internet industry through enforcement of the CMA 1998 and Content Code. This is to ensure service providers comply with the standards applicable in the communication and multimedia industry to transform Malaysia into major ICT hub in line with Vision 2020 (Mohamad, 1991; MSC Malaysia, n.d.).

Non-censorship guarantee – 'the roots of evil'

Despite the growing content risks, the self-regulation framework does nothing significant to reduce its exposure towards children. This is primarily because of the non-censorship guarantee adopted by the scheme based on Section 3(3) of the CMA 1998 and Part 7 of MSC Bill of Guarantee. One may argue that non-censorship has been making self-regulation stronger – and this is what self-regulation is all about – to self-discipline. However, in the context of reducing children's exposure to content risks, non-censorship does nothing proactive to assist. For example, Part 5 of the Content Code does not require Internet service providers (ISP) in Malaysia to provide any content rating systems, monitor netizens online activities, and retain any data in connection thereto. Similarly, ISPs are not required to filter online content. In contrast, other self-regulation regimes such the United States do not omit to impose obligations onto ISPs to filter illegal content. This shows that despite promoting online freedom, protection of children against exposure to content risks remains crucial.

However, there are exceptions to the above general rules. Section 263 of CMA 1998 provides that "a licensee shall *use his best endeavour to prevent* the network facilities that he owns or provides or the network service, applications service or content applications service that he provides *from being used in, or in relation to, the commission of any offence* under any law of Malaysia". Consequently, ISPs will only be required to filter and monitor online content upon receiving direction from MCMC. This usually relates to providing assistance in investigations and prosecutions. Unless required by the law, the ISPs have no active duty to monitor any prohibited content that passes through their domains. This is confirmed by the 'innocent carrier' provisions in Part 5 of the Content Code that does not place liability onto ISPs for hosting prohibited content since they were merely content conduits.

Consequently, the non-censorship guarantee has not reached its ultimate objective to promote self-discipline. Rather, Internet industry in Malaysia has taken the 'easy way out'. Active initiatives to develop specific measures to reduce children's exposure to content risks were absent. Hence, ISPs were not required to develop any classification scheme that could classify online content into specific categories suitable for children. The only classification scheme that is available at present is operated by Lembaga Penapis Filem Malaysia that simply applies to films (Ministry of Home Affairs, 2012). However, its scope does not cover content such as games, videos and online content that children access. Online videos streamed directly do not require classification nor censorship. This brings in new challenges to combat exposure to content risks. In comparison with Australia, all kinds of content are subject to its National Classification Scheme. This reduces the need to revise the scheme when new media surfaces (Australian Communications and Media Authority, 2008a).

Non-censorship guarantee also made ISPs complacent because there is no active duty to filter prohibited content at the network level. Subsequently, access to prohibited content becomes easier. ISPs merely advised its customers to subscribe to filtering software available online at a fee should they want extra protection. It is submitted that this should not be the case since the duty to protect children lies on all. The importance of awareness campaigns is not denied. Nevertheless, higher level of technical initiatives should also be in place. The Internet industry in Malaysia should develop our own filtering software that is in line with Malaysia values – because we know what is best for our society. In turn, it could help the industry to boost its research and development to drive innovation. It is submitted that non-censorship is still the main 'stumbling block'. The effort to filter prohibited content is shouldered by the MCMC to block illegal websites upon notice. Although there was no provision in the CMA 1998 that calls for blocking as specific measure to reduce content risks, the MCMC is taking such initiative under the broad provision of Section 263 of CMA 1998. Consequently, this effort was heavily criticised by human right lawyers. Some argued that the MCMC has stretched its powers too far (Leong, 2015). Despite such *lacuna* in the law at this point, the MCMC continues to double its effort to combat dissemination of illegal content online (Bernama, 2016).

The next part highlights notable issues on the Content Code that made self-regulation framework weaker hence directly increases children's exposure to content risks.

'Toothless' Content Code

The Content Code was enacted in 2001 by the CMCF. Established by virtue of Section 94 of the CMA 1998, the Content Code prohibits ISPs, Internet content hosts, online content developers, online content aggregators and link providers in Malaysia (herein 'Code subjects') to provide illegal content, some of which were indecent, obscene, menacing and offensive in nature. Ordinary Internet users were not part of the Code subjects since the Content Code was designed for industry self-regulation. Nonetheless, Internet users were expected to practice good Internet etiquettes as promoted by the Content Code – following the self-regulation framework (Daud, 2016).

However, it should be noted that Content Code was not enacted as an enabling legislation, but merely as a guideline. Industrial compliance to the Content Code is therefore not mandatory, as provided in Section 92 of the CMA 1998. Had the Content Code been enacted as legislation, compliance is undoubtedly mandatory with full force of the law. Nevertheless, industrial compliance with the Content Code could serve as *legal defence*

"against any prosecution, action or proceeding of any nature, whether in a court or otherwise" as stated in Section 98 (2) of the CMA 1998.

According to the CMCF, this 'legal defence' could act as a 'safeguard' for industry players in secondary liability claims. ISPs and other Code subjects were always prone to legal actions for their likelihood to host third party illegal content. Most of the time, third party illegal content were stored inside their domains without knowledge. Since chasing for the real culprit may be technologically burdensome, copyright and content owners sue ISPs and Code subjects to claim liability for copyright infringement, defamation and etc.

In the above scenario, should anyone takes legal action against Code subjects for an alleged breach of the Code, then they can *respond* (in any inquiry or proceeding) that they have abide by the provisions of the Code. However, such 'safeguard' does not grant complete immunity against secondary liability. Neither the CMA 1998, which was enacted as legislation, had any provisions to grant immunity hence cannot act as 'safety net' for the Code subjects in secondary liability claims (Daud, 2016). This goes into stark contrast with the internationally accepted practice as seen in the EU E-Commerce Directive 2000 and the US Digital Millennium Copyright Act 1998 regimes. These regimes have long established complete immunity against civil and criminal liability after ISPs' fulfilling certain conditions (Edwards, 2011).

In this regard, it is argued that the extent of 'protection' accorded by Section 98 (2) is vague. Section 98 does not provide immunity against civil or criminal liability towards Code subjects despite having adhered to the rules of the Content Code. No Code subjects in Malaysia have come forward to challenge this provision in any court of law – hence have not shed any light to this issue. In this regard, it is submitted that the Content Code has been neglectful to 'reward' its subjects due to its non-mandatory status. More protection to Code subjects is thus required to ensure higher business confidence for Internet industry members. It is submitted that incentives in terms of exclusion from liability should also be in place to ensure the industry to continue to self-regulate voluntarily. This also promotes enhances corporate social responsibility among industry members.

On the other hand, Australia is practicing a co-regulatory model that requires government, service providers and Internet users to participate actively in the scheme. Due to active participation by all stakeholders, this made co-regulation in Australia more comprehensive in regulation of content risks online for protection of children as seen in the next part.

CONTENT REGULATION IN AUSTRALIA – AN OVERVIEW

Australia adopts co-regulation as an Internet regulatory framework. Guided by the Internet Industry Associations (IIA) Content Codes of Practice, Australia enforces its own National Classification Scheme administered by the Attorney General's Department to rate all media content including the Internet. The Australian National Classification Scheme contains three legislative instruments i.e. the Classifications (Publications, Films and Computer Games) Act 1995, the National Classification Code and the Guidelines for the Classification of Publication and Guidelines for the Classification of Films and Computer Games. These legislations formed an integral part of the co-regulation scheme in Australia.

Co-regulation scheme is about "joint responsibility of all affected parties" where the public sector is the "final authority" with ability to provide corrective measures should private self-regulation has failed to serve its purposes. It is a "process of creating private

spaces for free interaction. This is not about giving 'new responsibilities' to providers and users. It is about returning to them the responsibility that was originally theirs within a system that places its trust in market forces while still remaining true to the notion of social responsibility." (Machill, Hart, & Kaltenhauser, 2002, pp. 41–42) Technically, "states, and stakeholder groups including consumers, are stated to explicitly form part of the institutional setting for regulation…It is clearly a finely balanced concept" (Marsden, 2011, p. 46). Co-regulation is a legal framework that empowers all Internet stakeholders including governments, industry actors, and Internet users to perform social responsibilities towards safer online experience.

THE AUSTRALIAN EXPERIENCE

The Australian Communications and Media Authority (ACMA) is the media regulator in Australia that supervises the Australian co-regulation of the Internet (Marsden, 2011). Co-regulation of Internet should consist of the following legal and technical mechanisms (Bartle & Vass, 2005, p. 22):-

1. Strong partnership between government, industry actors, and Internet users.
2. Internet industry develops its own code of practice, accreditation, or content rating schemes with legislative backing from government.
3. The co-regulatory scheme is supported by government enforcement and statutes.

In this regard, Australia designed its Internet co-regulatory model to subscribe to the above characteristics. The Australian co-regulatory scheme is very specific and relevant towards regulation of content risks online. It has increasingly becoming a preferred model of Internet regulation where Australia became a benchmark for the implementation of co-regulation in the European Union.

Co-regulation in Australia comprises of *regulatory* and *non-regulatory measures* for broadcasting and online content supplemented with complaints-based mechanism for assessment of content(Australian Communications and Media Authority, 2008a; Australian Law Reform Commission, 2012a). *Regulatory measures* include administrative mechanisms to remove prohibited content from Australian servers. Further, measures extend to enactment of criminal provisions on illegal online activities, such as child pornography, grooming, and exploitation. *Non-regulatory measures* focused on education and awareness initiatives, which is relatively common in many countries including Malaysia (Lindsay, Rodrick, & Zwart, 2008).

ACMA takes charge of a hotline specifically tailored for complaints regarding potentially prohibited Internet content, a similar effort to Malaysia. Potentially prohibited contents are likely to be classified as Restricted to Adults (X18+) or Refused Classification (RC) by the Classification Board. If prohibited content is found hosted in Australia, the National Classification Code shall require ACMA to issue direction to the content host for removal of such content. However, if such content host is situated in an offshore server, ACMA shall inform the suppliers of accredited Internet filters under the Internet Industry Association's (IIA) Content Codes of Practice and filters under the Australian National Filter Scheme for content removal (Australian Communications and Media Authority, 2008b).

Where illegal contents fall under the 'sufficiently serious' category – such as child pornography - shall be treated with highest concern. Upon receipt of complaint, ACMA shall refer the matter to law enforcement agency (such as the Australian Federal Police) for criminal investigation. If such content is hosted abroad, ACMA will refer the matter to INHOPE member countries for it to be taken down (International Association of Internet

Hotlines, n.d.). However, if such content is hosted in a country that is not a member of INHOPE, then ACMA will refer the matter to Australian Federal Police where Interpol shall further pursue it. The ACMA has signed formal agreements with law enforcement agencies across Australia for assistance in investigations in 'sufficiently serious' cases. ACMA works collaboratively with other supranational regulators and does not regulate the Internet on its own. Meanwhile, the MCMC works as sole regulator of the Internet in Malaysia. With non-censorship guarantee, MCMC's responsibilities have multiplied and the effectiveness of self-regulation could be questioned.

The Australian National Classification Scheme

Australia had moved away from direct censorship by government into classification of broad media content prior to 1970s. The Australian Law Reform Committee argued that classification is better than censorship since it "provides prior information to prospective consumers as to the nature of media content." (Australian Law Reform Commission, 2012b, p. 48) Administered by the Attorney-General's Department, the National Classification Scheme stipulates four key principles, namely:-

a) adults should be able to read, head and see what they want;
b) minors should be protected from materials likely to harm or disturb them;
c) everyone should be protected from exposure to unsolicited material that they find offensive; and
d) there is a need to take account of community concerns about:
    i. depictions that condone or incite violence, particularly sexual violence; and
    ii. the portrayal of persons in a demanding manner.

The four key principles stated above are the underlying principles governing classification of content in Australia. The National Classification Scheme adopted content classification that provides descriptions of content consumed by Australians as stated in the Classification Act. The following explains content classification, descriptions, categories and logos of content in Australia.

There are seven categories of classifications under this scheme as provided in Clause 2, 3 and 4 of the Australian National Classification Code:

Classification	Details	Categories	Logo
'G' (General)	Suitable for everyone	Advisory (no restriction)	
'PG' (Parental Guidance)	Parental guidance required. Content should be mild or of lower impact, however may contain content that confuses or upsetting towards children.	Advisory (no restriction)	
'M' (Mature)	Content may be of moderate impact and recommended for teenagers aged 15 years and above.	Advisory (no restriction)	
'MA 15+' (Mature Accompanied)	Material is classified to have strong content and legal access is only granted to	Restricted category for films, computer	

Classification	Details	Categories	Logo
	teenagers 15 years and above. Prior to purchasing or viewing content of this category, consumers may need to show proof of age. Children under the age of 15 shall only be allowed to view under the supervision of adult or parents	games and publications	
'R18+' (Restricted)	Content is only restricted to adults where proof of age shall be required to be asked. Materials may contain sex scenes and drug use that are high in impact.	Restricted category for films, computer games and publications	
'X18+' (Restricted for Adults)	Content is restricted to adults and contain sexually explicit content, that is, actual sexual intercourse and other sexual activities between consenting adults.	Restricted for adults[1]	
'RC' (Refused Classification)	Content is banned for sale or distribution in Australia. RC content contain materials which:- a) Depicts, express or otherwise deals with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or b) Describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child	Prohibited	No logo

[1] This category can be divided into Restricted Category 1 and Restricted Category 2. For Category 1, the content portrays "sexualised nudity and must be distributed in a sealed wrapper. Their covers must be suitable for public display". Category 2 portrays "actual sexual activity between consenting adults and may only be displayed in premises that are restricted to adults". See (The Classification Board, 2015)

Classification	Details	Categories	Logo
	under 18 (whether the person is engaged in sexual activity or not); or c) Promote, incite or instruct in matters of crime or violence (National Classification Code, Clause 2,3 and 4)		

The Australian government regulates content risks by expanding the applicability of the National Classification Scheme to all media content in Australia including the Internet. The National Classification Scheme created the Classification Board, an independent statutory body that decides classification categories for contents. Parties dissatisfied with classification decisions made by Classification Board may appeal to the Classification Review Board for further reviews.

CONCLUSION

The above findings suggest that co-regulation as practiced in Australia is organised towards regulation of content risks online through classification. It is timely for the Malaysia to mandate content and service providers to classify online content into specified categories. Future works should also involve development of a national classification scheme. Australian co-regulation should be studied in detail as promising legal framework regulating the Internet in Malaysia. Internet Industry should look into possibility to design a certified national filter. Such filter should be pre-installed onto computers upon purchase. If all parties concerned play more proactive roles, regulatory burden on the MCMC could be reduced. This would allow more Internet stakeholders (such as parents and ISPs) to play more effective roles towards reducing children's exposure to content risks.

In the context of reducing children's exposure to content risks, the non-censorship guarantee was discovered to be the main obstacle. Hence, this provision should be amended to allow censorship of prohibited content. Similarly, the Content Code needs to be upgraded to an enabling legislation similar to the Australian approach. This would enable the rules stated in the Code to be enforced more effectively. MCMC should also consider widening its collaboration with international hotlines such as INHOPE and Interpol similar to the Australian approach. When Malaysia has broader collaboration and networking with international networks, efforts to reduce children's exposure to content risks shall be intensified. Eventually, the society will become highly responsible netizens that care for children online safety.

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