

REGULATION OF THE INTERACTIVE DIGITAL MEDIA INDUSTRY IN SINGAPORE

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INTRODUCTION

The latest “buzz” in Singapore is interactive digital media (IDM), a diverse industry that includes technologies such as video games and interactive advertisements. In January this year, the Singapore government announced that it would target the IDM sector as one of the key growth areas for the future, and provide the infrastructure for Singapore to be educated in and exposed to this new technology.¹ The Singapore government has openly committed to setting aside S\$500 million over the next five years to develop this industry.² And to deal with the social, technical, legal and regulatory implications of this industry, on 1 April 2007, the Singapore government also set up a high level advisory council which will make recommendations to the

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¹ Alfred Siew, “Digital media: Singapore to fund research in 3 niche areas”, *Straits Times*, 11 January 2007.

² Alfred Siew, “Digital media: Singapore to fund research in 3 niche areas”, *Straits Times*, 11 January 2007.

government on how these issues will be managed while keeping pace with the development of this industry in Singapore.³ While the Advisory Council on the Impact of New Media on Society⁴ studies and deliberates on the issues, the existing legal and regulatory framework that continues to apply to new media has been described as based on a “light touch” approach. This paper seeks to summarise the existing position in Singapore, and tries to describe the policies and philosophies behind the “light touch” approach as elucidated from the laws and regulations in Singapore.

THE OVERARCHING LEGISLATIVE FRAMEWORK – THE BROADCASTING ACT

There is currently no separate legislation to deal with new media in Singapore. The existing framework to deal with new media has largely evolved out of existing legislation.⁵ This evolution is not necessarily erroneous or bad, since new media has turned out to be quite a chameleon, as it is capable of taking on various forms, ranging from digital broadcasting to digitized films, from electronic newsrooms and portals to digital publications. In fact, if at all, the regulatory model is characterised by the use of an all-encompassing piece of legislation that seeks to place all Internet transmissions under the purview of the regulator, the then Singapore Broadcasting Authority (SBA) (subsequently reconstituted as the Media Development Authority (MDA)). As the then Minister for Information and the Arts, BG George Yeo explained, when he moved the second reading of the Singapore Broadcasting Authority Bill:

³ Ministry of Information, Communications and the Arts, “High Level Advisory Council Will Study Implications Of IDM Sector” (Press Release, 26 March 2007) <http://www.mica.gov.sg/pressroom/press_0703261.htm> at 27 July 2007.

⁴ Ministry of Information, Communications and the Arts, “High Level Advisory Council Will Study Implications Of IDM Sector” (Press Release, 26 March 2007) <http://www.mica.gov.sg/pressroom/press_0703261.htm> at 27 July 2007.

⁵ For a general review of the legal and regulatory framework in Singapore see: Jane Ittogi and Suhaimi Lazim, “Media and Telecommunications: Singapore Law and Regulatory Framework” (October 2004) *Law Gazette*.

The SBA Act spells out the regulatory framework for the broadcasting industry. Broadcasting plays an important role in informing, educating and entertaining the public. While we want the regulatory environment to be conducive to broadcasters, we must also ensure that the public interest is protected. A good framework will enable us to do both. We want foreign broadcasters to operate here and to use Singapore as a regional broadcasting hub. But we also want Singapore to remain a wholesome society.

We must take into account rapid technological developments. Conventional methods of regulating television and radio based on modes of transmission are no longer adequate. For this reason, many countries are moving towards a broader definition of broadcasting. We will do the same. In the SBA Act, broadcasting is defined in terms of programme transmission to all or part of the public without reference to the particular means used.

This wider definition enables SBA to regulate broadcast content in the face of new technological realities. It enables SBA to regulate not only nationwide radio and television services, but also in-house movie systems in hotels, private clubs and condominiums, video-on-demand services, audiotext services and computer information services. Such breadth is necessary to catch new forms of ‘narrowcast’ programme dissemination.⁶

Thus “broadcast” receives a broad definition in the Broadcasting Act as “a service whereby signs or signals transmitted ... comprise... any [visual, sound or visual and sound] programme capable of being received”⁷. But the type of communications which actually constitutes a “broadcast” is never actually defined in the legislation, leading the National Internet Advisory Committee (NIAC), a government advisory body, to define it as “the transmission of signals to a wide audience (all or part of the public) where the information broadcast is uniform and

⁶ Singapore, *Second Reading, Singapore Broadcasting Authority Bill*, 26 August 1994 (BG George Yong-Boon Yeo - Minister for Information and the Arts), Parliament No 8, Session 2, Vol 63, Sitting No 6, Hansard Cols 563-4.

⁷ Singapore *Broadcasting Authority Act 1994* s 2(1) (definition of “broadcasting service”); Singapore *Broadcasting Act* (Cap 28, 2003 Revised Edition), s 2(1) (definition of “broadcasting service”).

everyone receives the same information, whether or not at the same time.”⁸ This broad definition, coupled with the definition of a “programme” as “any matter the primary purpose of which is to entertain, educate or inform all or part of the public; or ... any advertising or sponsorship matter, whether or not of a commercial kind”⁹ means that a person who provides any “licensable broadcasting service in or from Singapore” requires a broadcasting licence granted by the SBA/MDA.¹⁰

Application to the Internet

How does this definition apply to the Internet? Although the Internet is not specifically referred to in the Broadcasting Act, the Internet as a platform does serve as a means of “broadcasting”. Websites, as collections of web pages, images, videos and other digital assets which are generally publicly accessible (although some require a subscription) to users and visitors¹¹ seem to be uncontroversially classified by the SBA/MDA as “broadcasts”¹² even though the traditional TV and radio broadcasts are based on a “push” model where content is propagated from the source, whereas users “pull” digital information from websites.

Some websites and services such as Internet radio¹³ and TV simulcasts¹⁴ are clearly broadcasts, although these are more accurately described as “webcasts”¹⁵ in Internet parlance. Other sites may use technologies such

⁸ National Internet Advisory Committee (NIAC), *7th National Internet Advisory Committee Annual Report 2003*, [4.10] at <http://www.mda.gov.sg/wms.file/mobj/mobj.552.Report_NIAC_2003.pdf> at 2 August 2007. This report will hereafter be referred to as the *NIAC 2003 Report*.

⁹ Singapore *Broadcasting Authority Act 1994* s 2(1) (definition of “programme”); Singapore *Broadcasting Act* (Cap 28, 2003 Revised Edition) s 2(1) (definition of “programme”).

¹⁰ Singapore *Broadcasting Authority Act 1994* s 20(1); Singapore *Broadcasting Act* (Cap 28, 2003 revised edition), s 8(1).

¹¹ “Website” *Wikipedia* <<http://en.wikipedia.org/wiki/Website>> at 31 July 2007.

¹² See for example SBA’s approach to the Internet <<http://www.sba.gov.sg/work/sba/internet.nsf/ourapproach/1>> at 27 May 1999.

¹³ “Internet radio” *Wikipedia* <http://en.wikipedia.org/wiki/Internet_radio> at 1 August 2007.

¹⁴ “Simulcast” *Wikipedia* <<http://en.wikipedia.org/wiki/Simulcast>> at 1 August 2007.

¹⁵ “Webcast” *Wikipedia* <<http://en.wikipedia.org/wiki/Webcasting>> at 1 August 2007.

as Really Simple Syndication (RSS)¹⁶ or streaming¹⁷ to “push” or “feed”¹⁸ content to users. But nonetheless, the interactive nature of Internet access which requires users to “pull” or “download” content, such as is the case with “podcasts”,¹⁹ and the use of dynamically-generated user content and web pages, especially with the use of server-side scripting languages²⁰ such as Microsoft’s Active Server Pages,²¹ Java Server Pages²² and PHP²³, do change the paradigm of what constitutes a “broadcast”. Content is no longer static and the same uniform content is no longer distributed to many people simultaneously.²⁴ In fact, in this day and age of Internet communications, delivering customizable and highly interactive dynamic content to make every user’s experience different will be what keeps the users coming.

In retrospect, the uncritical regulatory acceptance of Internet content as “broadcast” appears to be based on a 1990s conception of what makes up the Internet. This approach is clearly too narrow and not in keeping with technological advances and user expectations. To bring substantive Internet content under the ambit of a “broadcast” seems to call for alterations to existing paradigms about the very nature of a “broadcast”.

¹⁶ “RSS” *Wikipedia* <http://en.wikipedia.org/wiki/RSS_%28file_format%29> at 1 August 2007.

¹⁷ “Streaming media” *Wikipedia* <http://en.wikipedia.org/wiki/Streaming_media> at 1 August 2007.

¹⁸ RSS is a web feed format – a protocol for automatically serving users with frequently updated content. See “Web feed” *Wikipedia* <http://en.wikipedia.org/wiki/Web_feed> at 1 August 2007.

¹⁹ Even Wikipedia is split in its definition of podcasts. In the entry for “Internet radio” <http://en.wikipedia.org/wiki/Internet_radio> podcasts are described as “not broadcasts”, but in the entry for “podcasting”, it is described both as a “download”, an “automatic mechanism” as well as a “direct download or streaming” of content. See “Podcast” *Wikipedia* <<http://en.wikipedia.org/wiki/Podcast>> at 1 August 2007.

²⁰ “Server-side” *Wikipedia* <<http://en.wikipedia.org/wiki/Server-side>> at 1 August 2007.

²¹ “Active Server Pages” *Wikipedia* <http://en.wikipedia.org/wiki/Active_Server_Pages> at 1 August 2007.

²² “JavaServer Pages” *Wikipedia* <http://en.wikipedia.org/wiki/Java_Server_Pages> at 1 August 2007.

²³ “PHP” *Wikipedia* <<http://en.wikipedia.org/wiki/PHP>> at 1 August 2007.

²⁴ Cf *NLAC 2003 Report* [4.10].

Private Communications

However, a broadcast is ultimately about communicating to the public. The Broadcasting Act defines a “broadcast programme” as “any matter the primary purpose of which is to entertain, educate or inform all or part of the public” or “any advertising or sponsorship matter” and also defines “part of the public” to include communications between “residents in a particular place, employees of any firm, company or organisation, occupiers of a particular building or part thereof and members of any profession, club or society”.²⁵ This definition is potentially over-reaching as it ostensibly covers all forms of communications, of which broadcasting is but only one species. Since the focus of the Broadcasting Act is in protecting the public communications, a specific exception to exclude private, domestic, intra-business, Government or organization communications as “private communications” has to be specifically enacted.²⁶ Thus telephone calls,²⁷ short message system (SMS) messages and fax messages as point-to-point communications would not be regulated as they are private communications or “telecommunications”.²⁸ Likewise, emails will presumably be “private communications” and not be regulated.²⁹ Other Internet resources such as message or bulletin board services (BBS) and Usenet newsgroups³⁰ are not really “broadcasts” but are more

²⁵ Singapore *Broadcasting Authority Act 1994* s 2(2); Singapore *Broadcasting Act* (Cap 28, 2003 Revised Edition) s 2(2).

²⁶ Singapore *Broadcasting Authority Act 1994* s 2(1) (definition of “programme”); Singapore *Broadcasting Act* (Cap 28, 2003 Revised Edition) s 2(1) (definition of “programme”).

²⁷ Cf NIAC, *NLAC 1996-1997 Report* [6] <<http://www.sba.gov.sg/internet.htm>> at 13 June 1999. This report will hereafter be referred to as the *NLAC 1996-1997 Report*.

²⁸ In the Singapore *Telecommunications Act*, a “telecommunication service” is defined as “any service for telecommunications but excludes any broadcasting service”. The term “broadcasting service” is in turn defined with reference to the *Broadcasting Act*. See Singapore *Telecommunications Act* (Cap 323, 2000 Revised Edition) s 2 (definition of “telecommunication service”).

²⁹ *NLAC 2003 Report* [4.12]-[4.13].

³⁰ SBA, *SBA Industry Guidelines on SBA's Internet Policy* (1997) [18], [23] and [24] <<http://www.sba.gov.sg/work/sba/internet.nsf/91af552ca4d2e5>> at 13 June 1999. These Guidelines will hereafter be referred to as the *SBA Industry Guidelines 1997*; MDA, *Internet Industry Guidelines* (2004) <http://www.mda.gov.sg/wms.file/mobj/mobj.980.internet_industry_guide.pdf> at 2 August 2007. These Guidelines will hereafter be referred to as the *MDA Internet Industry Guidelines 2004*.

appropriately analogized as multiparty conversations, which could explain why the NIAC felt uncomfortable bringing them under the ambit of SBA/MDA.³¹ It would not have been appropriate for the heavy hand of government regulation to reach into private communications. This point was not lost on SBA. In its Industry Guidelines on SBA's Internet Policy, SBA explained:

SBA's purview only covers the provision of material to the public. We are not concerned with what individuals receive, whether in the privacy of their own homes or at their workplace. Corporate Internet access for business use is also outside the scope of our regulations, as is private communications e.g. electronic mail and Internet Relay Chat (IRC).³²

However, this in turn exposes one fundamental weakness in this regulatory model – whether or not content is regulated depends on the nature of the communications, rather than on the parties to the communications. What constitutes a regulable communication turns on a valid but arbitrarily difficult distinction between public and private communications. Certainly, private parties are more likely than not to engage in private communications. But the power of modern communications tools makes it just as easy for private communications to be multiplied and sent to a much larger audience. Emails can be circulated via mailing lists or “spammed”,³³ SMSes can be widely circulated,³⁴ and even unsolicited faxes can litter fax machine inboxes. The line as to when an individual ceases to be engaging in “private or domestic” communications and starts to require a broadcasting licence

³¹ *NLAC 1996-1997 Report* [6(c)]. No reason was offered as to why individual mail and sites and newsgroup discussions should be “kept out of the purview of SBA's regulations”.

³² *SBA Industry Guidelines 1997* [para 3(c)]; *MDA Internet Industry Guidelines 2004* [3(c)].

³³ *SBA Industry Guidelines 1997* [para 3(c)]; *MDA Internet Industry Guidelines 2004* [3(c)]. Witness the notorious incident involving an obscene email circulated by Norton Rose lawyers that eventually achieved world-wide circulation. See also ‘Obscene email puts lawyers in trouble’, *BBC News* 15 December 2000

<<http://news.bbc.co.uk/1/hi/uk/1073244.stm>> at 30 July 2007.

³⁴ SMS post on bomb (retrieve).

for providing “broadcast data services” is simply unclear, if not non-existent.³⁵

For instance, a company may maintain, as part of its content and knowledge management system, an electronic repository of digital resources, of which the critical portions are accessible only by company staff. The company intranet is built on exactly the same concepts and technologies of the Internet.³⁶ Would the intranet be regulated in the same manner as the company’s Internet resources? What about extranets³⁷ in which the otherwise private versions of the intranet are made accessible by the company for business purposes to its suppliers, customers and other approved parties? Are these considered “private” or “public” communications? Likewise, on the Internet, an individual can just as easily engage in public communications *e.g.* by having a Facebook entry of themselves (or their characters or avatars), by maintaining a publicly-accessible blog, or by posting their video blog onto one of many video aggregation websites such as YouTube. They may in turn limit access to his entry through closed user lists or entries which are password protected. Would this have the effect of converting his public communications which would otherwise fall within the province of the broadcasting regulations into the realm of private communications?

The SBA/MDA appears to be cognizant of this issue. In its Industry Guidelines, the SBA drew a similar distinction between postings available on websites for the public to access, which are regulated, and

³⁵ See for example the statement by Dr Balaji Sadasivan, Singapore, Parliamentary Sitting, Question 424 for Oral Answer and Response from the Senior Minister of State for Information, Communications and the Arts, Parliament No 10, Session No 2, Volume 81, Sitting 11, 3 April 2006, that emails and SMSes “within the realm of private communication [for which] the Government has no wish to intrude into people’s privacy. However, if [an individual] is still seeking to use mass email and mass SMS as tools to influence people or to affect the outcome of an election he should realise that he is still governed by the laws of the land, and this includes libel. They should not assume the fact that emailing or SMSing information gives them the licence to say anything they want. So the laws of the land apply, but SMSes and emails are generally considered as private communication, and we do not want to intrude on it.”

³⁶ “Intranet” *Wikipedia* <<http://en.wikipedia.org/wiki/Intranet>> at 1 August 2007.

³⁷ “Extranet” *Wikipedia* at <<http://en.wikipedia.org/wiki/Extranet>> at 1 August 2007.

business or professional closed user-group discussions, which are not.³⁸ But other distinctions that are drawn in the Guidelines are hard to explain. For instance, Usenet newsgroups do not seem to be regulated, even though they are publicly accessible.³⁹ Conversely, chat groups, which appear to be principally private, appear to fall on the wrong side of the line,⁴⁰ because the same Industry Guidelines call for their regulation. The public/private distinction is a crucial one because it *prima facie* represents the divide between government regulated content and personal content. Unfortunately, this arbitrariness in the public/private sphere detracts from the “light touch” approach encapsulated in the Internet regulatory regime.

The Class Licence Regime

In its actual application, the Broadcasting Act does not appear to draw such a nuanced distinction. Based on the definition of “broadcasting” elucidated above, the Broadcasting (Class Licence) Notification was promulgated which provides that “computer on-line services that are provided by Internet Content Providers (ICPs) and Internet Service Providers (ISPs)” are licensable broadcasting services which are subject to a licence from the SBA/MDA.⁴¹ An ISP is an entity that is licensed to provide Internet access services pursuant to a telecommunications licence, or who provides Internet services to all or part of the public.⁴² An ICP is defined as:

- a. any individual in Singapore who provides any programme, for business, political or religious purposes, on the World Wide Web through the Internet; or
- b. any corporation or group of individuals (including any association, business, club, company, society, organisation or partnership, whether registrable or incorporated under the laws of Singapore or not) who provides any programme on the World Wide Web

³⁸ *SBA Industry Guidelines 1997* [23].

³⁹ *SBA Industry Guidelines 1997* [18].

⁴⁰ *SBA Industry Guidelines 1997* [24].

⁴¹ Singapore *Broadcasting (Class Licence) Notification* (N1, 2004 Revised Edition) reg 3. This Notification will hereafter be referred to as the *Broadcasting Notification*.

⁴² *Broadcasting Notification* reg 2 (definitions of “Internet Service Provider”, “Localised Internet Service Reseller” and “Non-localised Internet Service Reseller”).

through the Internet, and includes any web publisher and any web server administrator;

Several observations may be made here. Firstly, the Notification applies to all ISPs: as providers of Internet access services, they are classified as Internet Access Service Providers (IASPs) or Internet service “resellers” (ISRs). Singaporeans will be familiar with the three main local IASPs: SingNet, Pacific Internet and Starhub Internet. ISRs include schools, public libraries, cybercafés and other value-added service providers such as Singapore Network Services and National Computer Services.⁴³ ISPs themselves have to be licensed as telecommunications operators under the existing telecommunications licensing regime in the Telecommunications Act as Public Internet Access Services (PIAS) Services-Based Operators (SBOs).⁴⁴ ISPs operating in Singapore thus have to secure both a PIAS licence with the Infocommunications Development Authority of Singapore (IDA) as well as a broadcasting licence with the MDA. This schism in regulatory responsibility is explicable on the basis that the SBO licence is as regards the telecommunications infrastructure or hardware that the ISPs have set up, whereas the MDA broadcast licence is as regards the content that the ISPs deliver.

Secondly, in addition to ISPs, the Notification applies to ICPs as providers of any “programme” on the World Wide Web through the Internet. If the reference to “programme” is the same as “broadcast programme” in the Broadcasting Act,⁴⁵ the rules in the Notification will apply to all ICPs who produce content whose “primary purpose of which is to entertain, educate or inform all or part of the public” as well as “any advertising or sponsorship matter”. This encompasses web authors, web editors, web publishers and web server administrators.⁴⁶ The breadth of the definition of “programme” means that the provider of almost every type of communicable content accessible via the Internet will be an ICP. The only condition appears to be that the

⁴³ *MDA Internet Industry Guidelines 2004* [7].

⁴⁴ See IDA, *Guidelines for Submission of Application for Services-Based Operator Licence* <http://www.ida.gov.sg/doc/Policies%20and%20Regulation/Policies_and_Regulation_Level2/SBOLicence/SBOLic16Apr07.pdf> at 2 August 2007).

⁴⁵ See Singapore *Interpretation Act* (Cap 1, 2002 Revised Edition) s 21.

⁴⁶ *MDA Internet Industry Guidelines 2004* [8].

content has to be accessible via the World Wide Web protocol as a system of interlinked, hypertext documents.⁴⁷ This presumably means that content distributed via other protocols falls outside of the Notification and thus the SBA/MDA regulatory regime. This result contrasts starkly with the technologically neutral definition of “broadcast”.

Thirdly, the ICP is defined to mean “any individual in Singapore” or “any corporation or group of individuals... whether registrable or incorporated under the laws of Singapore or not” who provide any programme on the World Wide Web. As regards the former, it is regrettable that the expression “any individual in Singapore” is bereft of further explication. When is an individual said to be “in Singapore”? Does it mean that the individual is “residing” in Singapore?⁴⁸ Or does it encompass a tourist who happens to be in Singapore temporarily and who sets up a blog on Blogger to chronicle his holiday adventures? What if he happens to describe some political activities in his blog (representing content that requires him to register his blog, as will be explained further)? Perhaps it is with this in mind that only “individuals in Singapore” providing any programme “for business, political or religious purposes” fall within the definition of ICPs. So whether or not an individual’s site falls within the purview of the Notification depends on a characterization of its content. Mr/Mrs Tourist who chronicles his holiday adventures will be in the clear, but Mr/Mrs Tourist who reports on a political gathering while visiting Singapore may not be.

As regards corporations and bodies of individuals, the definition of ICPs under the Notification opens up the possibility that entities outside of Singapore or having no connection with Singapore fall within the purview of the Notification. This is because the definition deliberately

⁴⁷ “World Wide Web” *Wikipedia* <http://en.wikipedia.org/wiki/World_Wide_Web> at 2 August 2007. WWW content is distributed via the Hypertext Transfer Protocol (HTTP). Curiously, this means that content distributed via other protocols such as email (Post Office Protocol or POP, Simple Mail Transfer Protocol or SMTP and Internet Message Access Protocol or IMAP), File Transfer Protocol (FTP) or Usenet (Network News Transfer Protocol or NNTP) would not be WWW content.

⁴⁸ If an expression such as “in Singapore” is intended to mean “residence in Singapore”, a definition such as that used in the Singapore *Copyright Act* s 8, can be used, to distinguish between those individuals resident in Singapore and those who are only in Singapore on a temporary purpose.

removes the Singapore locus requirement for corporations. (At least there is a locus requirement for individuals to be “in Singapore”.) Under international law, a statute generally operates within the territorial limits of the Parliament that enacted it, and is not to be construed to apply to foreigners outside its dominions.⁴⁹ “It is a presumption of a jurisdiction’s territorial sovereignty that its legislation is intended to all persons, things and events within the boundaries of the enacting jurisdiction and is not intended to apply extraterritorially to persons, things or events outside the boundaries of the enacting jurisdiction.”⁵⁰ Although legislative provisions can be framed to cover all acts independently of the harmful consequences in Singapore, and thus evince Parliament’s clear intention to enact provisions with extra-territorial effect,⁵¹ *prima facie* the definition of ICPs does not seem to be clearly expressing Parliament’s intention to impose obligations and liabilities, even upon persons not within its allegiance. Evidence to the contrary can however be found in MDA’s Internet Industry Guide, which emphasizes that its regulatory emphasis is “on issues of concern to Singapore”.⁵² Examples such as the case of racial and religious materials “which may incite racial or religious hatred among the races in Singapore” were cited,⁵³ which presumably include trans-national materials. This in turn suggests that what the regulator actually intended to apply was an “effects-based” approach to encapsulate conduct outside its borders that has consequences within its borders which the state reprehends.⁵⁴ But MDA’s Internet Industry Guide also states that “Internet Content Providers who are not targeting Singapore as their principal market will not be subject to Singapore’s standards unless they are primarily in the business of distributing pornography.”⁵⁵ A statement to this effect suggests that (i) all ICPs who distribute pornography and (ii) all other (non-pornography) ICPs who

⁴⁹ *Public Prosecutor v Tan Cheng Kong* [1998] 2 SLR 410; [1998] SGCA 37.

⁵⁰ Driedger, *Construction of Statutes* (3rd ed, 1994) 334.

⁵¹ See for example Singapore *Prevention of Corruption Act* s 37(1).

⁵² *MDA Internet Industry Guidelines 2004* [3(d)].

⁵³ *MDA Internet Industry Guidelines 2004* [3(d)].

⁵⁴ See *Meyer Heine Pty Ltd v China Navigation Co Ltd* (1966) 115 CLR 10, 38–9; *Treacy v DPP* [1971] AC 537, 562; *United States v Aluminum Co of America*, (1945) 148 Fed Rep 2d 416.

⁵⁵ *MDA Internet Industry Guidelines 2004* [21]. All in, this statement appears to be a statement of administrative indulgence, since curiously, the statement goes on to state that “movie sites which are hosted in Singapore can promote and carry movie clips, even those which do not meet Singapore’s standards.”

target Singapore as their primary market will be subject to the Notification. This appears to contradict the observation above that an “effects-based” approach is adopted. In fact, there is nothing in the Notification which distinguishes between pornography ICPs and other ICPs.

Of course, the removal of the Singapore locus could be intentional, as a reflection of the borderless nature of the World Wide Web. But that notwithstanding, international comity and the rules of international law would certainly strongly encourage a regulator not to abandon the locus requirement completely. And a locus requirement can be chosen to reflect the regulator’s “effects-based” approach to regulatory jurisdiction, whatever the effects that may be prescribed.

The Operation of a Class Licence

Under the Notification, computer on-line services provided by an ISP or ICP are licensable broadcasting services that are subject to a “class licence”. A class licence is a regulatory licence that is “automatically applicable” to a category of licensees. It is “automatically applicable” because the provision of “computer on-line” services is “subject to” such conditions as are prescribed in the class licence.⁵⁶ Thus the conditions of the class licence will apply to the provider of “computer on-line” services as a “licensee” independently of the service provider actually registering with, or applying for and obtaining a licence from the regulator.⁵⁷

Notwithstanding the “automatic” nature of class licences, there are two broad types of licensees: licensees who are required to register with the regulator, and non-registrable licensees. ISPs are registrable licensees, and so are some classes of ICPs. Registration entails registering with the regulator “in such form and manner as the Authority may determine” and providing the regulator “with such particulars and undertakings as the Authority may require in connection with the provision” of such services.⁵⁸ In addition, ISPs are required to pay licence fees of up to S\$1000 per annum for the provision of Internet access services.

⁵⁶ Singapore *Broadcasting Act* s 9.

⁵⁷ *Broadcasting Notification* [3]-[5].

⁵⁸ *Broadcasting Notification* [2] and [6].

Under the Broadcasting Notification, ICPs, even those who are required to register, are not required to pay any licence fees,⁵⁹ which would otherwise constitute an obstacle to free communications, particularly to bloggers engaged in social communications. However, those ICPs who are required to register may be required to identify themselves and be required to provide satisfactory undertakings to the regulator before they can operate.⁶⁰ In particular, two classes of ICPs *are required* to register with the regulator:

- political parties registered in Singapore providing any programme, and bodies of persons engaged in the propagation, promotion or discussion of political issues relating to Singapore, on the World Wide Web through the Internet,⁶¹ and
- bodies of persons engaged in the propagation, promotion or discussion of religious issues relating to Singapore on the World Wide Web through the Internet.⁶²

The Notification identifies three other classes of ICPs who *may be required* by the regulator to register with the regulator.⁶³ These are:

- businesses providing on-line newspapers for a subscription fee or other consideration through the Internet,⁶⁴
- individuals providing any programme for the propagation, promotion or discussion of political issues relating to Singapore, on the World Wide Web through the Internet,⁶⁵ and
- individuals providing any programme for the propagation, promotion or discussion of religious issues relating to Singapore, on the World Wide Web through the Internet.⁶⁶

⁵⁹ There is *per se* no scheme for ICPs to pay any licence fees under the *Broadcasting Notification*.

⁶⁰ *Broadcasting Notification* [6].

⁶¹ *Broadcasting Notification* [3]-[4].

⁶² *Broadcasting Notification* [4].

⁶³ The regulator will make this request in writing, presumably to the administrator or party identified by the regulator to be “providing” the said programme. See *Broadcasting Notification* [5].

⁶⁴ *Broadcasting Notification* [5(a)].

⁶⁵ *Broadcasting Notification* [5(b)].

It is to be acknowledged that the scheme outlined above in the Notification seeks to draw a nuanced distinction between organized “programming” of political and religious Internet content, and similar “programming” by individuals. The former class of ICPs *shall register* with the regulator, whereas the latter class of ICPs only need to register *if required* by the regulator. This presumably seeks to accord individuals who happen to be operating popular sites or discussion groups with political or religious content more leeway than organizations such as political parties, religious bodies and other similar entities.

However, when an individual’s site ceases to become a non-registrable licensee and becomes a registrable one because of the nucleus of political and religious content can itself be a turning point for the site. In one instance, Sintercom (Singapore Internet Community), a popular forum discussion site on politics and current affairs, was shut down by its founder in July 2001 because the Singapore regulator sought to have the website registered as a political website.⁶⁷ Although the founder objected to having the site so registered because he feels that registration would mean that “I have to be responsible for everything posted on the website”,⁶⁸ that did not seem to have stopped another individual from setting up NewSintercom.org, which contains numerous blog entries with political commentaries.⁶⁹ The requirement to register may seem like an attempt on the part of the regulator to censor or control Internet content, or to hold the ICP responsible (even though the regulator imposes only a minimal level of responsibility on the ICP). But the greater objection seems to be that whether an individual’s site is “for political or religious” purposes or “providing any programme, for the propagation, promotion or discussion of political or religious issues relating to Singapore” is often set by the tone and topics selected by the forum contributors, over which the site administrator may have little control or responsibility. And if it is the regulator who decides whether

⁶⁶ *Broadcasting Notification* [5(b)].

⁶⁷ See “Speaking your mind online without fear”, *Computer Times*, 22 August 2001 <<http://www.singapore-window.org/sw01/010822ct.htm>> at 5 August 2007.

⁶⁸ “Speaking your mind online without fear”, *Computer Times*, 22 August 2001 <<http://www.singapore-window.org/sw01/010822ct.htm>> at 5 August 2007.

⁶⁹ It is unclear at the time of writing this paper whether newsintercom.org has been registered with the MDA. But see Sintercom, “About Us” <<http://www.geocities.com/newsintercom/aboutus.html>> at 6 August 2007.

to classify the site as being “for political or religious” purposes under the Notification,⁷⁰ with there being limited room for appeals⁷¹ or judicial review,⁷² concerns may be objectively felt about whether this classification by the regulator is a prelude to its exercise of control or censorship over the contents of the site. When confronted with the requirement to register, ICPs may choose to remove the online forum in order to remove the possible political or religious content or abandon the site completely.⁷³

Obligations of a Class Licensee

As spelt out in the Notification, the main substantive obligation imposed on an ISP or an ICP as a class licensee is to use its “best efforts” to ensure that its services comply with the Internet Code of Practice [the Code],⁷⁴ and that its services are “not used for any purpose, and does not contain any programme, that (i) is against the public interest, public order or national harmony; or (ii) offends against good taste or decency”.⁷⁵ However, not all breaches of its substantive obligations will trigger sanctions. As the regulator, MDA has described its “light-touch” approach towards ISPs and ICPs, which is that “licensees found to be in breach of regulations will be given a chance to rectify the breach before the Authority takes action.”⁷⁶

⁷⁰ *Broadcasting Notification* [5](b).

⁷¹ Appeals to the Minister from any decision of the regulator are possible. But the decision of the Minister is final. See Singapore *Broadcasting Act* s 59.

⁷² This is because the decisions and determinations made by the regulator do not seem to be amenable to judicial review. See Singapore *Media Development Authority of Singapore Act* (Cap 172, 2003 Revised Edition) s 11(3) “Nothing in this section shall be construed as imposing on the Authority, directly or indirectly, any form of duty or liability enforceable by proceedings before any court to which it would not otherwise be subject.” Of course, courts generally take a dim view of ouster clauses and would still seek to apply the *Wednesbury*’s unreasonableness test to such matters within its jurisdiction. See also *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KBD 223.

⁷³ See for example the episode involving the Think Centre website, as documented in Cherian George, *Contentious Journalism and the Internet: Towards Democratic Discourse in Malaysia and Singapore* (2007).

⁷⁴ MDA, *Internet Code of Practice* (1 November 1997 edition) [4]. This Code of Practice will hereafter be referred to as the *Internet Code*.

⁷⁵ *Broadcasting Notification* [13].

⁷⁶ *MDA Internet Industry Guidelines 2004* [3(f)].

The Code contains a further elucidation of what these objectionable materials are. Described as “prohibited material”, it is material “that is objectionable on the grounds of public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singapore laws.”⁷⁷ The Code goes on to set out seven factors which are to be taken into account to determine what is prohibited material:

- a) whether the material was calculated to titillate,
- b) whether there was sexual violence, coercion or non-consent,
- c) whether the sexual activity was explicit,
- d) whether the material depicts sexual activity of a minor under 16 years of age,
- e) whether the material advocates homosexuality, lesbianism, incest, paedophilia, bestiality and necrophilia,
- f) whether the material depicts acts of extreme violence or cruelty; or
- g) whether the material glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance.⁷⁸

The Code also requires a further consideration based on the factors of whether the material has intrinsic medical, scientific, artistic or educational value.⁷⁹ A licensee who is in doubt as to whether any content would be considered prohibited may refer such content to the regulator for its decision.⁸⁰ If the ISP or ICP is informed by the regulator that the whole or any part of a programme included in its service breaches the Code as prohibited content or the standards of good taste or decency, it is required to remove or prohibit the broadcast of such programme content.⁸¹ Thus it has been noted in Parliament that MDA had issued take-down notices to ISPs in Singapore to block

⁷⁷ *Internet Code* [4(1)].

⁷⁸ *Internet Code* [4(2)].

⁷⁹ *Internet Code* [4(3)].

⁸⁰ *Internet Code* [4(4)].

⁸¹ *Internet Code* [16].

friday.com and floutboy.com as websites that depict incest and paedophilia.⁸²

Even though strictly speaking, third party content does not constitute an ISP's or ICP's content, that the rules apply to third party content is clear when it is noted that ISPs and ICPs have to exercise their "best efforts" to remove such an offending programme "included in its service".⁸³ It was on this basis that Google's Blogger site removed two blogs that featured racist comments, after MDA received a complaint from a trainee teacher.⁸⁴ Likewise, an ICP that sets up a forum on the World Wide Web has to use its "best efforts" to ensure that contributions by its forum contributors conform to the Internet Code of Practice.⁸⁵

That it may seem too onerous to hold an ISP or ICP liable even for offensive third party content is ameliorated by somewhat by the statement in the Notification that "[i]f any doubt arises as to whether a licensee has used its best efforts in compliance with the conditions of this licence, the licensee shall be treated as having used its best efforts if it satisfies the Authority that it took all reasonable steps in the circumstances."⁸⁶ In other words, the standard of the duty that the Notification holds the ISPs and ICPs to is not a strict-liability but a "best efforts" standard. Even then, a distinction can and should be drawn between the obligations of an ISP and an ICP. An ISP is ultimately more analogous to a common carrier, in which its systems are generally configured to passively retransmit every message that gets sent through it. And to hold ISPs generally liable for all such transmissions will mean implicating each and every ISP owning routers and servers implementing systems that are essential for Internet communications that act without any human intervention beyond the initial setting up of the system.⁸⁷

⁸² Singapore, Oral Answers to Questions, Posting of Lewd Photographs on Blogs, 3 April 2006 (Dr Balaji Sadasivan for the Minister for Information, Communications and the Arts), Parliament No 10, Session 2, Vol 81, Sitting No 11, Hansard Col 1710.

⁸³ *Internet Code* [16].

⁸⁴ "Racist blogs taken offline", *Today*, 25 September 2007, <<http://www.todayonline.com/articles/213129.asp>> at 10 December 2007.

⁸⁵ *Internet Code* [14].

⁸⁶ *Internet Code* [17].

⁸⁷ Statement paraphrased from *Religious Technology v Netcom* (1995) 33 IPR 132, 140 (DC Cal), per Whyte DJ.

As such, the Internet Code of Practice distinguishes between the obligations of an ISP and an ICP. The Code provides that an ISP discharges his obligations:

- if he denies access to sites notified to him by the regulator as containing prohibited material,
- if he refrains from subscribing to any newsgroup that, in his opinion, is likely to contain prohibited material, and
- if he unsubscribes from any newsgroup that the regulator may direct.⁸⁸

The regulator has acknowledged that pursuant to its duty to take a moral position on various issues in Singapore, it has directed ISPs to limit access to 100 high-impact websites which it has identified.⁸⁹ This limitation of access has been variously described as “symbolic”.⁹⁰ In Parliament, the Minister explained that this does not imply that MDA will proactively monitor websites, take objection to them and start investigations. Instead, the Minister has clarified that as part of its “light touch” approach, MDA will act only upon complaints made by “a Singaporean” to the police.⁹¹

The Code also provides that where the ICP as a web publisher or administrator can exercise editorial control over content,⁹² he discharges his obligations:

- if he chooses discussion themes which are not prohibited material for private discussion fora such as chat groups hosted on his service,

⁸⁸ *Internet Code* [3(2)].

⁸⁹ “Regulating the Net: A history”, *Straits Times*, 17 June 2006. The article describes the 100 sites as “pornographic sites” but some tests show that radical and religious extremist sites are also blocked. See Berkman Centre for Internet and Society, “OpenNet Initiative Finds that Singapore’s State Control Over Online Content Blends Legal and Technical Controls” (Press Release, 17 August 2005) <http://cyber.law.harvard.edu/home/newsroom/pressreleases/oni_singapore_report> at 28 August 2007.

⁹⁰ “Regulating the Net: A history”, *Straits Times*, 17 June 2006.

⁹¹ Singapore, Oral Answers to Questions, Posting of Lewd Photographs on Blogs, 3 April 2006 (Dr Balaji Sadasivan for the Minister for Information, Communications and the Arts), Parliament No 10, Session 2, Vol 81, Sitting No 11, Hansard Col 1710.

⁹² *Internet Code* [3(5)].

- if he denies access to any prohibited material contributions by third party contributors that he discovers in the normal course of exercising his editorial duties, or is informed about, and
- if he ensures that all other programmes on his service do not include material that would be considered prohibited material.⁹³

It is interesting to note that the Code states that where the ICP is unable to exercise any editorial control over content, the obligations outlined above do not apply to him.⁹⁴ However, both the Code and the Notification require an ICP to remove or deny access to material notified to him by the regulator which is considered to be prohibited.⁹⁵ Presumably the Code qualifies the obligation of the ICP as regards third party content, because, for the same reasons as explained above in relation to ISPs, an ICP is more culpable for its own content over which it has a greater measure of control than for the content of third parties. However, as the measure of control that an ICP can have over third party content is often a function of how the site is designed and the features chosen, this qualifier in the Code permits ICPs to absolve themselves of liability under the Code by deliberately electing not to exercise any form of editorial control over the contributions by third parties. Since the policies are clearly intended to encourage editorial control or self-regulation of content rather than its total absence, this qualifier should not stand as it is unless there are technical or operational circumstances that make it impractical or infeasible for any form of editorial control to be exercised.

On the same policy of self-regulation, the Internet Code of Practice shifts part of the regulator's burden of "policing" the Internet upon the ISPs and ICPs. Outside of sites and materials identified as prohibited which the regulator will require ISPs and ICPs to deny access, ISPs and ICPs are required to "exercise judgment" as to what newsgroups, discussion themes and third party contributions to allow and what content to deny.⁹⁶ For instance, the Internet Industry Guide talks about

⁹³ *Internet Code* [3(3)].

⁹⁴ *Internet Code* [3(5)].

⁹⁵ *Internet Code* [3(4)]; *Broadcasting Notification* [16].

⁹⁶ See also *Internet Industry Guide* [17]-[18] (newsgroups), [19] (web content) and [22]-[23] (for postings and discussion themes).

ISPs “taking their own initiative against offensive content through their own Acceptable Use Policies”,⁹⁷ which are clearly directed at the ISPs’ subscribers. It also refers to ICPs exercising “editorial judgment”⁹⁸ and taking “discretionary action” against the abusers of chat channels.⁹⁹ Unfortunately, this may give rise to ISPs and ICPs practicing “self-censorship”, in an attempt to limit their possible exposure to liability under the Code. When in doubt, ISPs and ICPs may prefer to deny access to questionable materials, rather than to seek clarification from MDA.¹⁰⁰ This may in turn limit access to content in unpredictable and uncertain ways. For instance, this author has personally experienced the case of an ISP limiting access to websites which have keywords such as “Kazaa” and “Napster” in them, even though these websites are news websites that are reporting developments about such P2P software. Presumably the ISP is seeking to limit its possible exposure to actions for facilitating copyright infringement and thus denying access to any possible Internet material that may lead the user to these P2P software. There is ostensibly no government sanctioned censorship, but arbitrary, capricious, opaque self-censorship of Internet content operating at a private organizational level is possibly worse as this may lead to a denial of access to legitimate information.

Other obligations imposed on ISPs and ICPs include keeping and furnishing to the regulator all relevant information, records, documents, data and other materials concerning its services as the regulator may require.¹⁰¹ In addition, an ISP and an ICP is legally obliged to assist the regulator in any investigation into any breach of its licence or “any alleged violation of *any laws* committed by ... any other person”, and produce all such relevant information as may be required for the investigation.¹⁰² Such wide powers arrogated to the regulator certainly raise concerns relating to possible breaches of privacy and issues of lack of data protection. Even the parent act itself (the Broadcasting Act) affords the regulator the power to requisition information only “for the

⁹⁷ *Internet Industry Guide* [16].

⁹⁸ *Internet Industry Guide* [22].

⁹⁹ *Internet Industry Guide* [23].

¹⁰⁰ Cf *Internet Industry Guide* [19].

¹⁰¹ *Internet Code* [12].

¹⁰² *Internet Code* [9].

purposes of this Act”.¹⁰³ It does not empower the regulator to investigate all and any alleged offence. Even investigative agencies such as the police who are empowered to collect evidence for criminal investigation and prosecution purposes,¹⁰⁴ have investigative powers that are carefully circumscribed by procedural requirements such as requiring the officer to show “reasonable cause”. As such, the wide investigative powers given to the regulator in the regulations seem at odds with public statements issued by the regulator that “[t]he MDA does not monitor or track users' access to any sites on the Internet and does not interfere with what individuals access in the privacy of their homes.”¹⁰⁵

As regards the standards of content censorship that are to be practiced by ISPs and ICPs, when considered with the other prohibited programming spelt out in the Notification, such as games and lotteries, gambling, fortune telling, solicitation of prostitution and other immoral activities, unlicensed professional advice, uncensored films, video recordings and sound recordings, all which are applicable to the traditional data broadcasting services such as audiotext, videotext and teletext, the rules that are applicable to the Internet do seem more liberal.¹⁰⁶ At first glance, the more relaxed rules for Internet content seem like a reflection of the *prima facie* unregulable nature of Internet content, the ease of Internet publication and the difficulty of finding a locus or point of control for such Internet content. However, observance of the content regulation rules in the Notification does not exempt ISPs and ICPs from complying with other legal requirements.¹⁰⁷ This means that while ISPs and ICPs may not be obliged to ensure that their Internet services do not contain such offensive content under the

¹⁰³ *Broadcasting Act* s 50(1).

¹⁰⁴ Singapore *Criminal Procedure Code* (Cap 68, 1985 Revised Edition) s 125A.

¹⁰⁵ MDA, *Policies and Guidelines* (12 July 2007) <http://www.mda.gov.sg/wms.www/1001qns.aspx?sid=165&fid=62&v1=True#HtmlAnchor_Anchor> at 7 August 2007. These Policies and Guidelines will hereafter be referred to as the *MDA Policies and Guidelines*.

¹⁰⁶ *Broadcasting Notification* [15] which sets out the various prohibitions, is not applicable to ISPs and ICPs. See also *Broadcasting Notification* [15] which is only applicable to “licensable broadcasting service referred to in paragraph 3(a) to (e) of this Notification”. Paragraph 3(f), which refers to “computer on-line services provided by ICPs and ISPs”, is not specifically referred to. This is not a deliberate oversight but an intentional omission.

¹⁰⁷ *MDA Policies and Guidelines* [18].

Notification, they may nonetheless be obliged to do so pursuant to the other written laws of Singapore.

In summary of the regulatory framework for ISPs and ICPs, the existing legal regime governing the broadcast of Internet content is governed by the Notification and the Internet Code of Practice. It is a minimal set of rules designed to ensure that users in Singapore continue to have access to all materials available on the Internet, and at the same time recognizing that some controls are necessary to “allay the concerns of parents for children gaining easy access to websites containing pornographic and other potentially harmful content.”¹⁰⁸ According to MDA, the approach that is taken is for the regulator to encourage the industry to assume greater responsibility in managing harmful material, without pre-censoring content on the Internet or requiring ISPs to monitor the Internet.¹⁰⁹

For the sake of completeness, this paper will embark on a non-exhaustive brief review some of these written laws, namely films and censorship laws, election campaigning and reporting, religious and racial matters and copyright. The discussion of other laws, such as newspapers,¹¹⁰ Internet gambling and gaming, cyberterrorism and anti-terrorism measures, the provision of unlicensed professional advice via the Internet and regulated advertising, will be deferred to another paper.

FILMS, PORNOGRAPHY AND CENSORSHIP

The possession of films is regulated under the Films Act. Section 21 of the Films Act provides that any person who possesses, exhibits, distributes or reproduces any film without a valid certificate, approving the exhibition of the film, shall be guilty of an offence. In other words, all films possessed by any person in Singapore have to be submitted for censorship and certified for approval by the Board of Film Censors (BFC).¹¹¹

¹⁰⁸ *MDA Policies and Guidelines*, see footnote 105.

¹⁰⁹ *MDA Policies and Guidelines*, see footnote 102.

¹¹⁰ Newspapers are regulated under the *Newspaper and Printing Presses Act* (Cap 206, 2002 Revised Edition).

¹¹¹ Singapore *Films Act* (Cap 107, 1998 Revised Edition) s 14.

If so, would this mean that it is an offence to watch any movie or film downloaded from a movie clip portal such as YouTube.com or even from news websites such as CNN? And would these foreign companies need a valid licence in order to carry on the business of “importing, making, distributing or exhibiting films” under section 6 of the Films Act? It has been contended that to bring these provisions are archaic and have no relevance to films freely downloadable from the Internet. In the case of *Ng Chye Huay and Anor v PP*,¹¹² the Honourable Chief Justice Yong (as he then was) took the view that the Films Act applied to all films available and freely downloadable on the Internet. “If such an argument were accepted, then everything available on the Internet would be excluded from the BFC’s purview. This could not have been Parliament’s intention in passing the Films Act, as it would render the BFC otiose and allow undesirable films into our society through the back door.”¹¹³

This dictum in *Ng Chye Huay* would have been more persuasive if there had been an analysis of the legislative history of the Films Act, given that the original version of the Films Act was a piece of legislation that predated the Internet. The Films (Amendment) Act 1998¹¹⁴ amended the 1981 Films Act “to address deficiencies in the law arising from technological developments”¹¹⁵ by introducing new definitions of “film”, “electronic transmission”, “supply” and “obscene”. As explained in Parliament by the then Minister for Information and the Arts, when moving the second reading of the Films (Amendment) Bill 1998, electronic transmissions of obscene films or videos sent via email were sought to be brought under the Films Act, to “enable enforcement action to be taken when individuals complain of obscene films sent to them via e-mail”¹¹⁶ and to deal with the transmission, packaging and dissemination of films over the Internet, especially with broadband.¹¹⁷

However, a careful reading of the legislative amendments will raise some doubts as to whether this is a valid conclusion. Under the Films Act, a

¹¹² [2006] 1 SLR 157, [2005] SGHC 193.

¹¹³ *Ng Chye Huay and Anor v PP* [2006] 1 SLR 157, [2005] SGHC 193 [67].

¹¹⁴ No 10 of 1998.

¹¹⁵ Explanatory Statement, Films (Amendment) Bill 1998 (No 2 of 1998).

¹¹⁶ Hansard (27 February 1998) Parliament No 9, Session 1, Vol 68, Sitting No 4, Col 475.

¹¹⁷ Hansard (27 February 1998) Parliament No 9, Session 1, Vol 68, Sitting No 4, Col 476.

licence is required for the “distribution” of a film, and “distribute” is defined in the Films Act to mean “to sell, hire out and supply”. “Supply” is defined in the recently revised Films Act to include “supply not only in its physical form but also by means of the electronic transmission of the contents of the film” and “transferring, reproducing or enabling another to transfer or reproduce by electronic transmission” electronic copies of a film. “Electronic transmission” is in turn defined to “include facsimile transmission, electronic mail or other similar kinds of communication *but excludes broadcasting*.” If an ICP like YouTube or CNN provides videos for downloading or streaming, is it “broadcasting” or is it engaged in “electronic transmission”? If several people are able to receive a distribution of an electronic film online, is that “distribution” and thus “electronic transmission” or is that dissemination via broadcasting and not “distribution”? What is the difference between “electronic transmission” and “broadcasting”? Would it be based on the distinction drawn above between private and public communications? Unfortunately, the Parliamentary debates seem to be focused on the discussions about party political films and do not bear much on this issue of electronic disseminations of films.¹¹⁸ If such online disseminations to the public are indeed considered “broadcasts”, then Parliament has indeed created, albeit inadvertently, a back door via which films can be sent and received over the Internet (email distributions excepted). On the other hand, if online disseminations are not “broadcasts” but “electronic transmissions”, this renders otiose the reference to “broadcasting” in the definition of “electronic transmission”. If the former is indeed Parliament’s intention, then all

¹¹⁸ Cf Singapore, *Second Reading, Singapore Films (Amendment) Bill*, 27 February 1998 (Dr Toh See Kiat), Hansard, Parliament No 9, Session 1, Vol 68, Sitting No 4, Col 494. In his reply, the Minister, BG George Yeo, seemed to confirm that “broadcasts” include TV and radio broadcasts as well as Internet broadcasts. See Hansard (27 February 1998) Parliament No 9, Session 1, Vol 68, Sitting No 4, Col 516-517. But later, the Minister referred to “films and its variants, videos and new mutants on the Internet.” See Hansard (27 February 1998) Parliament No 9, Session 1, Vol 68, Sitting No 4, Col 521. Yet later, the Minister refers to “films, about people coming together for a group exhibition being moved together one way or another”, which suggests that he is not referring to Internet films (which are accessed privately) as such. See, Hansard (27 February 1998) Parliament No 9, Session 1, Vol 68, Sitting No 4, Col 476. In a subsequent part of his speech, the Minister also referred to the freedom for political parties, including opposition parties, to use the Internet as a channel of communications for free speech. See Hansard (27 February 1998) Parliament No 9, Session 1, Vol 68, Sitting No 4, Col 522.

online video distribution sites will need censorship clearance from the BFC, unless it falls within one of three very narrow exceptions in the Films Act:

- any film sponsored by the Government;
- any film, not being an obscene film or a party political film or any feature, commercial, documentary or overseas television serial film, which is made by an individual and is not intended for distribution or public exhibition; or
- any film reproduced from local television programmes and is not intended for distribution or public exhibition.¹¹⁹

Likewise, will a person accessing one of these “uncensored” films provided by an ICP be deemed to be “importing” a film,¹²⁰ or be found liable for having in his “possession” any film without a valid certificate¹²¹?

Ultimately, which is the correct interpretation will depend on the government’s express policy of whether to regulate online films and video clips, especially those emanating from foreign sites and foreign ICPs, in the same way as cinematographic films made in the traditional way involving the use of physical media. It will be impractical to subject electronic media to BFC censorship, particularly since online films and video clips are so easily accessible without the need for intermediaries such as film distributors and cinemas to exhibit these films. The advent of modern electronics such as personal camcorders, cameras and even video-enabled cellphones has turned every one into his own movie director, cinematographer and producer,¹²² and the Internet has made

¹¹⁹ *Films Act* s 40(1).

¹²⁰ *Films Act* s 6(1) (an offence to carry on any business, whether or not the business is carried on for profit, of importing films).

¹²¹ *Films Act* s 21(1)(a) (an offence to have in one’s possession, any film without a valid certificate, approving the exhibition of the film). This does not look like an offence of possessing an uncertified film per se; there seems to be a need to “approve of the exhibition of the film” or intent to make it available for exhibition or distribution. This is because all films made by individuals and “not intended for distribution or public exhibition” fall outside of the ambit of the Films Act. See *Films Act* s 41(1)(b).

¹²² See *Films Act* s 12 (films made in Singapore shall, within 7 days after the making of the film, be deposited in a warehouse).

everyone a film distributor and exhibitor. The low cost and easy availability of software such as Adobe Premiere, PowerDirector and VideoStudio has enabled everyone to “rip, mix, burn”.¹²³ Interestingly, as the parent organization for the BFC, MDA seems to acknowledge this. In the Internet Industry Guide 2004, MDA states:

Internet Content Providers who are not targeting Singapore as their principal market will not be subject to Singapore's standards unless they are primarily in the business of distributing pornography. For example, movie sites which are hosted in Singapore can promote and carry movie clips, even those which do not meet Singapore's standards.¹²⁴

Pornography or obscene materials are dealt with in a number of pieces of legislation. The Films Act makes it an offence to make, reproduce, import, distribute or exhibit or have in his possession for the purposes of distributing or exhibition, or advertise for such purposes, an obscene film.¹²⁵ It is also an offence to possess an obscene film.¹²⁶ Where children or young persons are involved in the making, reproduction, possession or other forms of commercial dealings in the film, the penalties are aggravated.¹²⁷ An obscene film is not necessarily a pornographic film. “Obscenity”, in relation to a film,¹²⁸ is defined as a film “the effect of which ... is ... such as to tend to deprave or corrupt persons who are likely, having regard to all relevant circumstances, to see or hear the film.”¹²⁹

The Undesirable Publications Act prevents the importation, distribution or reproduction of “obscene”, “objectionable” and “prohibited” publications as undesirable publications (which could be any publication such as books, sound recordings, pictures, drawings or photographs, but

¹²³ See “List of Apple Inc Slogans” *Wikipedia* <http://en.wikipedia.org/wiki/List_of_Apple_Inc_slogans> at 7 August 2007.

¹²⁴ *MDA Internet Industry Guide 2004* [21].

¹²⁵ Singapore *Films Act* ss 29, 31.

¹²⁶ Singapore *Films Act* s 30.

¹²⁷ Singapore *Films Act* s 32.

¹²⁸ Video games and films accessed and downloaded from the Internet are also considered films. See Singapore *Films Act* s 2 (definition of a “film”).

¹²⁹ Singapore *Films Act* s 2.

not films)¹³⁰. An “obscene” publication is defined in the same way as an “obscene” film.¹³¹ An “objectionable” publication is one that deals with:

- (a) matters such as sex, horror, crime, cruelty, violence or the consumption of drugs or other intoxicating substances in such a manner that the availability of the publication is likely to be injurious to the public good; or
- (b) matters of race or religion in such a manner that the availability of the publication is likely to cause feelings of enmity, hatred, ill-will or hostility between different racial or religious groups.¹³²

A “prohibited” publication is one which the Minister proscribes its importation, sale or circulation as being contrary to the public interest.¹³³ Under the Undesirable Publications Act, it is an offence to import, publish or otherwise commercially deal with any prohibited publication.¹³⁴ Likewise, any person who makes, reproduces, imports, sells, or possesses for the purposes of any commercial dealings, in any obscene or objectionable publication, knowing or having reasonable cause to so believe it is obscene or objectionable contents, commits an offence.¹³⁵ The former attracts a fine of up to \$10,000 and imprisonment of up to 2 years or both, and the latter attracts a fine of up to \$5,000 and imprisonment of up to 12 months or both.¹³⁶

This area of the law has not received substantive legal comments. Aside from the case of Lai Chee Chuen who, in 1996, was fined S\$61,5000 on 62 charges of having obscene films he had downloaded,¹³⁷ several incidents highlighted how easy it would be to trespass these provisions.

¹³⁰ *Undesirable Publications Act* (Cap 338, 1998 Revised Edition) s 2 (definition of “publication”).

¹³¹ *Undesirable Publications Act* s 3 (meaning of “obscene”).

¹³² *Undesirable Publications Act* s 4 (meaning of “objectionable”).

¹³³ *Undesirable Publications Act* s 5 (power to prohibit importation, sale or circulation of publications).

¹³⁴ *Undesirable Publications Act* s 6. The penalty for this offence is a fine of up to \$2,000 or imprisonment for up to 12 months for the first offence, and up to 24 months imprisonment for a subsequent offence.

¹³⁵ *Undesirable Publications Act* ss 11 (offences involving obscene publications), 12 (offences involving objectionable publications).

¹³⁶ *Undesirable Publications Act*.

¹³⁷ “Man who faced 77 charges ‘Quiet and Courteous’”, *Straits Times*, 26 September 1996.

The media regulator SBA/MDA had to issue a public statement that Internet surfers would not be committing an offence if they visited pornographic sites. The CEO of the media regulator said “I would like to assure Netters that we do not interfere with what individuals access on the Internet in the privacy of their homes,”¹³⁸ an assurance which the MDA gave again in 2004.¹³⁹ Unfortunately, the issue is not merely about protecting the privacy of home users, but about how easy it would be to “possess” uncensored, obscene and objectionable publications and films through the Internet, either by way of automatic downloads, viruses, bots, spyware/adware/smutware, pop-ups, hidden windows or simply deliberately misleading hyperlinks.¹⁴⁰ The assurance given by the Police that only “saving pornography on your hard disk” amounts to an unlawful possession of such material¹⁴¹ seems to be an over-simplistic since any access to any pornographic or obscene material, whether intentional or inadvertent, triggers the Internet browser to save the material on the Internet cache on one’s hard disk.

After the completion and submission of the first draft of this Paper, in October 2007, Parliament passed the Penal Code (Amendment) Bill 2007. It revised the archaic section 292 of the Penal Code, which hitherto applied to the sale and commercial dealings in obscene books, and extended it to apply to “any other obscene object”, which “includes data stored in a computer disc, or by other electronic means, that is capable of conversion to images, writing or any other form of representation”.¹⁴² An export of production of an “obscene object” now includes its transmission by electronic means.¹⁴³ While these revisions would bring the existing provision in sync with modern technology, it is to be seen if these provisions truly reflect the observations made by one Member of Parliament that “[Singapore] society is such that the possession of obscene materials is considered morally wrong and the open display of them viewed as socially distasteful. People who do

¹³⁸ “Net Surfers at Ease after Privacy Assurance”, *Straits Times* 29 September 1996.

¹³⁹ “MDA: Surfing porn is not a crime, but...” *Today*, 1 March 2004.

¹⁴⁰ “Teacher’s porn conviction overturned”, *MSNBC* 6 June 2007 <<http://www.msnbc.msn.com/id/19074272/>> at 7 June 2007.

¹⁴¹ “Teacher’s porn conviction overturned”, *MSNBC* 6 June 2007 <<http://www.msnbc.msn.com/id/19074272/>> at 7 June 2007.

¹⁴² Penal Code (Amendment) Bill (Bill No 38/2007), cl 50(d) (introduction of s 292(2)).

¹⁴³ Penal Code (Amendment) Bill, cl 50(b), (c).

possess obscene materials of any kind tend to do so furtively and at their own risk of being found out and shamed.”¹⁴⁴ Yet the same Member of Parliament noted that the Government did not, “in practice, actively raid people’s cupboards for *Playboy* magazines nor conduct spot checks on computer hard disks” also claimed that by not being proactive in enforcing this law against the possession of obscene objects, the Government did not run the risk of making the provision redundant or bring the law into disrepute.¹⁴⁵ It could be observed that this is perhaps another “symbolic” law that is found in Singapore’s law books, but the recent introduction of such a provision misses the opportunity to address the observations made by the court in *Ng Chye Huay* that all accesses to online video content are “importations”.

This area of the law is clearly in need of an overhaul, because the policies pertaining to the regulation of objectionable materials via censorship measures are not practical and realistic in the era of the Internet. In particular, the public/private divide between public broadcasts, which are regulated because of public interest considerations, and private transmissions, which seem to be excluded from the reach of the Internet content regulations, seems to be blurred when it comes to the Films Act and the Undesirable Publications Act. Also, the penal provisions as worded are too broad and fail to take into account the ease with which content can be accessed and downloaded, whether accidentally, surreptitiously or intentionally, onto one’s computer.¹⁴⁶ Even if it could be argued that the recent “obscene objects” provision in the Penal Code would be judiciously enforced through the enlightening exercise of prosecutorial discretion,¹⁴⁷ this would still undermine the private/public

¹⁴⁴ Singapore, *Second Reading, Singapore Penal Code (Amendment) Bill*, 23 October 2007 (Ong Kian Min – Member of Parliament), Parliament No 11, Session 1, Vol 83, Sitting No 14, Hansard.

¹⁴⁵ Singapore, *Second Reading, Singapore Penal Code (Amendment) Bill*, 23 October 2007 (Ong Kian Min – Member of Parliament), Parliament No 11, Session 1, Vol 83, Sitting No 14, Hansard.

¹⁴⁶ See for example Thomas D Sydnor II, John Knight and Lee A Hollaar, “Filesharing Programs and “Technological Features to Induce Users to Share: A Report to the United States Patent and Trademark Office from the Office of International Relations” (November 2006), <http://www.uspto.gov/web/offices/dcom/olia/copyright/oir_report_on_inadvertent_sharing_v1012.pdf>, at 10 December 2007.

¹⁴⁷ On its face, there are two separate offences constituted in s 292(a): the offence of commercial dealings in obscene objects, and the offence of possession of obscene

philosophy that the Government enshrined in its “light touch” approach. Perhaps new regulatory and censorship policies are required, that would both balance the public interests in protecting minors from easy access to undesirable materials, and in ensuring that legitimate access to the Internet remains reasonably unhindered.

VIDEO GAMES

At present, there is no video game classification in Singapore. All MDA does is to issue content guidelines to video game importers disallowing the import of certain video games with content that exploits sex and violence or denigrates a race or religion.¹⁴⁸ An importer who is unsure if the content meets the guidelines should submit the game to MDA’s Licensing Services (Films and Publications) division for a decision.¹⁴⁹ In view of the similarity between films and video games, a video games classification system will be developed by the BFC and will be launched in 2008. In the interim, the existing games rating system developed by the industry will be used. The MDA explained that this classification system will “provide more choice for adults while protecting the young”.¹⁵⁰

Even before its introduction, the game classification system has caused some controversy. MDA initially banned the video game “Mass Effect” on the basis that the game had an “inappropriate” alien lesbian sex scene but subsequently retracted its decision and rated it M18 for release.¹⁵¹

objects. It can be contended that the “possession of obscene objects” offence is a strict liability offence, although the drug trafficking cases in Singapore suggest that there is an operative presumption of knowledge arising from possession. See for example *PP v Lee Ngim Kiat* [1993] 2 SLR 181, [1992] SGHC 335; *Tan Ah Tee & Anor v PP* [1978-1979] SLR 211, [1980] 1 MLJ 49.

¹⁴⁸ Ministry of Information, Communications and the Arts, *Report of the Censorship Review Committee 2003* (July 2003), at 43.

¹⁴⁹ MDA, Video Games, <<http://www.mda.gov.sg/wms.www/devnpolicies.aspx?sid=137>> at 10 December 2007.

¹⁵⁰ MDA, BFC announces interim measure to allow highly-anticipated video games into Singapore (16 November 2007), <<http://www.mda.gov.sg/wms.www/thenewsdesk.aspx?sid=836>> at 10 December 2007.

¹⁵¹ MDA, BFC announces interim measure to allow highly-anticipated video games into Singapore (16 November 2007), <<http://www.mda.gov.sg/wms.www/>

This would have made Singapore the only country to disallow its sale. BFC had previously banned two other video games, *God of War II* for nudity, and *The Darkness*, for violence and vulgarity.¹⁵² Clearly, the absence of a rating system that would have forced the regulator to either allow or ban a video game is hurting the gaming industry and the user community in Singapore. Unlike films, video games cannot be easily “censored” or have their offending portions excised. But it is also telling that moving forward, the MDA has chosen not to rely simply on the existing games rating system already developed by the gaming industry.¹⁵³ It would be interesting to see how the BFC will “review” a computer game (with its “non-linear” format and story-line) and do so independently of declarations about gaming content by the game developers, publishers and distributors. It would also be interesting to see how this review system will apply to online and on-demand video games,¹⁵⁴ which obviates the need for distributors and, in their absence, the necessary representations to the BFC. As on-demand games replace the distribution of games on physical media, the classification system for games may have to be merged into the Class Licence Scheme.

ELECTIONS AND POLITICS

The regulation of political content is quite well addressed in Singapore. Aside from the rules in the Notification and the Internet Code of Practice, it is principally regulated by two pieces of legislation: the Films Act and the Parliamentary Elections Act. The difference between these two legislations is that the latter applies only in the event of elections: it deals with what is permissible and impermissible Internet content during the campaigning period leading to the elections.

thenewsdesk.aspx?sid=836> at 10 December 2007. See also “MDA lifts ban on game with same-sex love scene”, *Straits Times*, 16 November 2007.

¹⁵² “Mass Effect to come: MDA retracts earlier ban of Xbox game; it now gets an M18 rating”, *Today*, 17 November 2007.

¹⁵³ Perhaps MDA was influenced by the episode involving the Hot Coffee mod for the video game *Grand Theft Auto: San Andreas*. See “*Hot Coffee minigame controversy*”, *Wikipedia*, <http://en.wikipedia.org/wiki/Hot_Coffee_mod>, at 10 December 2007.

¹⁵⁴ “Gaming on demand”, *Wikipedia*, <http://en.wikipedia.org/wiki/Gaming_on_demand>, at 10 December 2007.

Section 33 of the Films Act makes it an offence to import, make, distribute or exhibit, or possess for the purposes of distribution and exhibition, any “party political film”. A person found guilty shall be liable on conviction to a fine of up to S\$100,000 or to imprisonment for a term of up to two years. A “party political film” is defined as:

“a film —

- (a) which is an advertisement made by or on behalf of any political party in Singapore or any body whose objects relate wholly or mainly to politics in Singapore, or any branch of such party or body; or
- (b) which is made by any person and directed towards any political end in Singapore;”¹⁵⁵

A film is held to be “directed towards any political end in Singapore” if it:

- contains any matter intended or likely to affect voting in any election or national referendum in Singapore; or
- contains either partisan or biased references to or comments on any political matter, including matters such as:
 - an election or a national referendum in Singapore;
 - a candidate or group of candidates in an election;
 - an issue submitted or otherwise before electors in an election or a national referendum in Singapore;
 - the Government or a previous Government or the opposition to the Government or previous Government;
 - a Member of Parliament;
 - a current policy of the Government or an issue of public controversy in Singapore; or

¹⁵⁵ Singapore *Films Act* s 2 (definition of “party political film”).

- a political party in Singapore or any body whose objects relate wholly or mainly to politics in Singapore, or any branch of such party or body.¹⁵⁶

However, a film made solely for the purpose of reporting of current events or informing or educating persons on election or referendum procedures or polling times is not a party political film.¹⁵⁷ Likewise, any film sponsored by the Government, such as a promotional film by a government ministry, will not be a party political film.¹⁵⁸ In similar vein, a “podcast” as the provision of a mere audio feed will not be a film and does not fall within the prohibitions of a “party political film” in the Films Act.¹⁵⁹

The rationale behind this prohibition arose from a rejected application in July 1996 by an opposition party in Singapore to sell party political video tapes. The reason for this rejection was explained by the Minister for Information and the Arts, BG George Yong-Boon Yeo, as follows:

Government rejected the application because political videos are an undesirable medium for political debate in Singapore. In a political video, political issues can be sensationalised or presented in a manner calculated to evoke emotional rather than rational reactions. Videos also do not allow for effective rebuttals. There is also a risk that political debates on serious matters will be reduced to a contest between advertising agencies, as indeed has already happened in some countries. Our intention is to keep political debates in Singapore serious and not have them become like the selling of soap. The Films Act will therefore include a provision to disallow the distribution and exhibition of party political films in Singapore. The

¹⁵⁶ Singapore *Films Act* s 2(2).

¹⁵⁷ Singapore *Films Act* s 2(3).

¹⁵⁸ Singapore, *Second Reading, Singapore Films (Amendment) Bill*, 27 February 1998, (BG George Yoon-Boon Yeo – Minister for Information and the Arts), Hansard, Parliament No 9, Session 1, Sitting No 4, Col 516 presumably referring to Singapore *Films Act* s 40(1)(a).

¹⁵⁹ Podcasts with political content were allowed in the lead up prior to the 2006 Singapore General Elections. However, they were curbed under the *Parliamentary Elections (Election Advertising) Regulations 2001*. See the subsequent discussion in the text regarding the *Parliamentary Elections (Election Advertising) Regulations 2001*. See also, “Opposition parties slam podcast ban rule”, *Straits Times* 5 April 2006.

penalty for those infringing this provision is set at a maximum of \$100,000.¹⁶⁰

In the Second Reading of the Films (Amendment) Bill, concerns were expressed by various Members of Parliament regarding the width of the prohibition and the possibility that such a prohibition may discourage civic participation, restrict free speech and limit discussions about current events and issues.¹⁶¹ In fact, just last year, this prohibition in the Films Act was exercised and led to the withdrawal of a political film made by a third party film-maker about opposition politician Chee Soon Juan.¹⁶² Nevertheless, the same film is available on YouTube and judging by the number of views it has accumulated, its audience does not seem to have been crimped in any way.¹⁶³ The Minister Mentor Lee Kuan Yew had actually suggested that the prohibition in the Films Act may be reviewed, a position affirmed by the Ministry of Information, Communications and the Arts, “taking into consideration changes in our society, the impact of globalisation, free flow of ideas in an open society, as well as the influences and impact of technology and communications”.¹⁶⁴ In fact, the Internet and its culture of free access to information coupled with the necessity for a discerning attitude towards information may actually be contributing to the maturing of Singapore society and its move towards a more participatory-style of Government that involves more people at all levels in order to create a thinking nation.¹⁶⁵ This may actually not be a bad development at all.

And the growing maturity of Singapore’s political culture and society mean that sites and blogs that contain political satire and commentaries such as mrbrown.com, talkingcock.com, ridzwan.com and

¹⁶⁰ Singapore, *Second Reading, Singapore Films (Amendment) Bill*, 27 February 1998, (BG George Yoon-Boon Yeo – Minister for Information and the Arts), Hansard, Parliament No 9, Session 1, Vol 68, Sitting No 4, Col 477.

¹⁶¹ Singapore, *Second Reading, Singapore Films (Amendment) Bill*, 27 February 1998, (Dr Yaacob Ibrahim) Col 492, (Mr Simon SC Tay - Nominated Member) Cols 487-8, (Dr Toh See Kiat) Col. 498.

¹⁶² “Film-maker let off with warning for Chee film”, *Straits Times*, 8 August 2006.

¹⁶³ YouTube, Singapore Rebel, <http://www.youtube.com/watch?v=f_DRoUOcupo> at 7 August 2007.

¹⁶⁴ “No date set yet for review of Films Act” *Straits Times*, 10 December 2005.

¹⁶⁵ Singapore, *Second Reading, Singapore Films (Amendment) Bill*, 27 February 1998 (Dr Yaacob Ibrahim) Parliament No 9, Session 1, Vol 68, Sitting 4, Hansard Col 492.

thevoiddeck.org have been left alone. Civil society websites such as thinkcentre.org¹⁶⁶ and free flowing newsgroups and discussion fora such as FindSingapore.net,¹⁶⁷ LittleSpeck,¹⁶⁸ RedBeanForum,¹⁶⁹ SammyBoy,¹⁷⁰ SingaporeAlternatives,¹⁷¹ SingaporeReview,¹⁷² SingaporeWindow,¹⁷³ SgForums¹⁷⁴ and SgPolitics¹⁷⁵ also seem to be operating in an unimpeded manner. The existence of these sites is widely reported by the mainstream media such as The Straits Times¹⁷⁶ and ZaoBao¹⁷⁷, and speaks well of the political awareness of Internet-savvy Singapore citizens and the environment in which they operate.

Nonetheless, a different set of rules are in place for Internet content during the sensitive phase of the conduct of parliamentary elections. The Parliamentary Elections Act¹⁷⁸ (PEA) and the Parliamentary Elections

¹⁶⁶ There are suggestions in the Parliamentary debates that Think Centre has been “gazetted as a political site”. See Singapore, *Parliamentary Elections (Amendment No 2) Bill*, 13 August 2001, (Mr Wong Kan Seng – Minister for Home Affairs) Parliament No 9, Session 2, Vol 73, Sitting 17, Hansard Col 2029.

¹⁶⁷ Find Singapore.Net is a forum that hosts various posts about Singapore news <<http://www.findsingapore.net/forum/index.php>> at 6 August 2007.

¹⁶⁸ LittleSpeck is a site that seeks to “contribute to a better-informed society by reporting and explaining major trends” <<http://www.littlespeck.com/>> at 6 August 2007.

¹⁶⁹ Red Bean Forum is a forum “for concerned Singaporeans and friends who are interested in the affairs of Singapore and developments around the world” <<http://redbeanforum.com/portal.php>> at 6 August 2007.

¹⁷⁰ Sammyboy.com’s Alfresco Coffee Shop, a forum discussion about Singapore issues <<http://forums.delphiforums.com/sammyboymod>> at 6 August 2007.

¹⁷¹ Singapore Alternatives is a site to highlight the political struggle of Mr Goh Meng Seng <<http://singaporealternatives.blogspot.com/>> at 6 August 2007.

¹⁷² Singapore Review or Sg_Review is a newsgroup hosted under the Yahoo groups <http://groups.yahoo.com/group/Sg_Review/> at 6 August 2007. Its postings are also mirrored at <<http://www.sgreview.org/>> at 6 August 2007.

¹⁷³ Singapore Window is a site that seeks to “seek, impart and exchange information and analysis about Singapore” <<http://www.singapore-window.org/>> at 6 August 2007.

¹⁷⁴ Singapore’s Online Discussion Network <<http://www.sgforums.com/>> at 6 August 2007.

¹⁷⁵ Singapore Politics or SgPolitics is a news archive database hosted under the Yahoo groups <<http://groups.yahoo.com/group/sgpolitics/>> at 6 August 2007. It is a members’ only site.

¹⁷⁶ “Mocking water ads draw surfers”, *Straits Times*, 31 July 2003.

¹⁷⁷ “与大选相关的网站”, *Zaobao.com*, 17 April 2006 <<http://www.zaobao.com/special/singapore/ge2006/pages/ge060417c.html>> at 6 August 2007.

¹⁷⁸ Cap 218, 2007 Revised Edition.

(Election Advertising) Regulations¹⁷⁹ (PEEA Regulations) together set out the rules and restrict the manner in which during the election period,¹⁸⁰ the Internet can be used for election advertising¹⁸¹ and canvassing, on websites, emails, short message system (SMS) messages, chat rooms and discussion fora.¹⁸² The operative principle is that there has to be proper attribution of the political party or candidate as the origin or source for these messages,¹⁸³ and that during the election period, only political parties, their candidates and their election agents may conduct prescribed election advertising activities on the Internet.¹⁸⁴ These are enumerated in what is known as the “positive list” of election advertising, wherein any other type of unspecified advertising is disallowed.¹⁸⁵ The regulations also specify that there is a total election

¹⁷⁹ RG3, 2003 Revised Edition.

¹⁸⁰ *Parliamentary Elections Act* s 78A(3) defines the “election period” as “period beginning with the day the writ of election is issued for an election and ending with the close of all polling stations on polling day at the election.” This means that outside of the election period, the aforesaid rules are not operative. It should be noted that while s 78(1)(a) makes no reference to an “election period” and thus its operation does not seem to be limited to the “election period”, it refers to “election advertising” in s 61(1)(c), which is in turn limited to “the period beginning with the day the writ of election is issued for an election and ending on the eve of polling day at the election.”

¹⁸¹ *Parliamentary Elections Act* s 2(1) (defined to mean “any poster, banner, notice, circular, handbill, illustration, article, advertisement or other material that can reasonably be regarded as intended — (a) to promote or procure the electoral success at any election for one or more identifiable political parties, candidates or groups of candidates; or (b) to otherwise enhance the standing of any such political parties, candidates or groups of candidates with the electorate in connection with any election, and such material shall be election advertising even though it can reasonably be regarded as intended to achieve any other purpose as well and even though it does not expressly mention the name of any political party or candidate, but excludes any button, badge, pen, pencil, balloon and any other thing prescribed by the Minister by notification in the Gazette”).

¹⁸² *Parliamentary Elections Act* s 78A(1)(b), read with *Parliamentary Elections (Election Advertising) Regulations* rgs 3-5.

¹⁸³ *Parliamentary Elections Act* s 78A(1)(a), read with *Parliamentary Elections (Election Advertising) Regulations* rg 3, described in the *Regulations* as “relevant particulars” (comprising the name and address of the publisher and name and address of every person for whom or at whose direction the election advertising is published).

¹⁸⁴ *Parliamentary Elections (Election Advertising) Regulations* rg 4 (positive list of election advertising), contrasted with rg 6 (no election advertising by relevant persons).

¹⁸⁵ For instance, an opposition party SDP sought permission from the Elections Department to put up podcasts, comprising some audio files such as an audio clip from its Secretary-General Chee Soon Juan from its website. It was ordered to take them down since the “positive list” in the *Parliamentary Elections (Election Advertising) Regulations* did not

advertising ban on polling day,¹⁸⁶ a ban on the publication of the results of any election survey during the election period,¹⁸⁷ and a ban on the exit polls on polling day.¹⁸⁸ These rules apply on top of the requirement for political parties operating sites to register with the regulator under the Class Licence Scheme, as set out above. The Minister explained the rationale for these rules as follows:

We encourage the free flow of information and exchange of views within our political system. However, for political debates and discourse to be constructive and taken seriously, people have to take responsibility for what they say and should not remain anonymous. Facts must be ascertainable and arguments examined.

Voters can then consider the issues calmly and rationally with a view to the impact on their future, and not get carried away by emotions in the heat of the moment. This is the basis on which we run elections and politics in Singapore, and this is how we have crafted our rules.¹⁸⁹

Aside from the political parties, candidates and their election agents, the language of the PEEA Regulations suggests that no “relevant person” is

specify podcasts. See for example “Party removes all podcasts from website”, *Straits Times*, 26 April 2006. See also, “Opposition parties slam podcast ban rule”, *Straits Times*, 5 April 2006. It has been queried if social networking platforms fall within the “positive list” of permissible election advertising. See Cheria George, *Election Regulations vs Social Networking* (12 September 2007), <<http://singaporemedia.blogspot.com/>> at 10 December 2007. To the extent that these platforms work on the basis of web sites and emails, they should be allowed, subject to the prohibition in the *Parliamentary Elections (Election Advertising) Regulations*, rg 4(2)(b) that the email “shall not contain any statement or matter requesting, appealing to or encouraging (expressly or otherwise) the recipient of the electronic mail message, advertisement or material to forward, re-transmit or further publish on what is commonly known as the Internet the electronic mail message, advertisement or message to any other person”. This will limit the viral quality of social networking platforms.

¹⁸⁶ *Parliamentary Elections Act* s 78B.

¹⁸⁷ *Parliamentary Elections Act* s 78C.

¹⁸⁸ *Parliamentary Elections Act* s 78D.

¹⁸⁹ “New Media, same rules – An interview with Singapore's Minister for Information, Communications and the Arts about the government's stance on blogs, podcasts and videocasts”, *Straits Times* and *AsiaMedia*, 15 April 2006 <<http://www.asiamedia.ucla.edu/article.asp?parentid=43361>> at 8 August 2007.

allowed to engage in election advertising.¹⁹⁰ The language of the rule, however, is somewhat unclear, because a “relevant person” is in turn defined to mean “any person or group of persons ... [who] provides any programme on the World Wide Web ... and [who] is required ... to register with the MDA [for] engaging in or providing any programme for the propagation, promotion or discussion of political issues relating to Singapore”¹⁹¹ under the Class Licence Scheme as explained above. Would this imply that persons who are *not required* to register with MDA may engage in election advertising? Prior to the General Elections in 2006, the Government, during Parliamentary Question time, noted that:

Private or individual bloggers can discuss politics. However, if they persistently propagate, promote or circulate political issues relating to Singapore, they are required to register with the MDA. During the election period, these registered persons will not be permitted to provide material online that constitutes election advertising.¹⁹²

The operative effect of this scheme is that where Mr/Mrs Blogger persistently engages in the propagation, promotion or discussion of political issues, he or she would be asked to register under the Class Licence Scheme and would be barred under the PEA and the PEEA Regulations from conducting “election advertising”. This became known in Internet circles as the “persistently political podcast” test, a test which bloggers took it upon themselves to apply during the period of the May 2006 General Elections in Singapore. By all accounts, bloggers were supposed to avoid discussing political issues and election rallies. But in a surprising turn of events, even the Singapore government acknowledged that the May 2006 elections were a watershed as Singapore’s “first Internet election” with reports, photos and videos of the election proceedings and various commentaries posted online.¹⁹³ Presumably the Government drew a line between the “neutral” reporting of election

¹⁹⁰ *Parliamentary Elections Act* s 78A(1)(b), read with *Parliamentary Elections (Election Advertising) Regulations*, rg 6.

¹⁹¹ *Parliamentary Elections Act* s 78A(3).

¹⁹² Parliamentary Sitting 3 April 2006, statement by Dr Balaji Sadasivan, see also footnote 35.

¹⁹³ “From light to lighter, to no touch?”, *Straits Times*, 17 June 2006.

activities, which is allowed, and the promotion of electoral success,¹⁹⁴ which is disallowed, as a distinction inherent in the definition of “election advertising”. No action was taken against any of these sites to require them to register, and the Minister for Information, Communications & The Arts even commended one blogger, Mr Brown, for making a wildly popular parody regarding a nomination day incident leading to the elections.¹⁹⁵ The Singapore government has since pledged to consider an “even lighter touch” to regulating the Internet, although the Minister was also quick to note that netizens do have a part to play to help bring objectivity, responsibility and balance in public discourse in cyberspace.¹⁹⁶ However, a schism remains, wherein the Government seems to take greater objection towards publications in the mainstream media than on the Internet,¹⁹⁷ even if the piece, written by the aforesaid blogger Mr Brown, in his capacity as a newspaper columnist was meant to be a satire, and the same piece of writing was freely accessible on Mr Brown’s website.¹⁹⁸

In summary, the advent of the Internet and the power of individual bloggers to influence the public and mainstream media are matters not to be ignored. While political parties and bloggers continue to test the legal boundaries relating to content regulation on the Internet, this

¹⁹⁴ The “self-restraint” has been documented by Cherian George. See Cherian George, *Looking for Patterns in 10 Years of “Light Touch” Regulation* (23 August 2007) <<http://journalism.sg/2007/08/23/looking-for-patterns-in-10-years-of-light-touch-regulation/>> at 10 December 2007.

¹⁹⁵ This is the Bak Cho Mee podcast by Mr Lee Kim Mun over an incident involving Mr James Gomez, who was embroiled in a controversy regarding his minority candidate certificate. See “WP’s Gomez detained over Elections Department complaint”, *Channel News Asia*, 7 May 2006 <<http://www.channelnewsasia.com/stories/singaporelocalnews/print/207083/1/.html>> at 7 August 2007. See also SingaporeAngle, *Top Fifteen Socio-Political Events of 2006* (3 January 2007) <http://www.singaporeangle.com/2007/01/top_fifteen_sociopolitical_eve_1.html> at 7 August 2007.

¹⁹⁶ Dr Lee Boon Yang - Minister For Information, Communications & The Arts, 5th Annual PR Academy Conference on “New Media: The New Frontier In Communications and PR”, 31 May 2006 <[≥](#)> at 7 August 2007.

¹⁹⁷ “Distorting the truth, mr brown? Letter from K Bhavani, Press Secretary to the Minister for Information, Communications and the Arts”, *Today*, 3 July 2006. More information about the incident can be found at “mrbrown” *Wikipedia* <<http://en.wikipedia.org/wiki/Mrbrown>> at 8 August 2007.

¹⁹⁸ Mr Brown, “S’poreans are fed, up with progress!” 3 July 2006 <http://www.mrbrown.com/blog/2006/07/today_sporeans_.html> at 8 August 2007.

process has also lent greater urgency to the need for a critical review as to the relationship between old and new media, and a more consistent regulatory model to deal with both types of media.

RELIGIOUS ISSUES AND RACIAL SENTIMENTS

The maintenance of religious and racial harmony is one of the key tenets of Singapore society.¹⁹⁹ This view, engrained into the Singapore psyche, stemmed largely from the horrific race riots which took place in July 1964.²⁰⁰ And these sentiments have been replicated in the various pieces of legislation that deal with these issues. The Maintenance of Religious Harmony Act²⁰¹ seeks to provide for the maintenance of religious harmony and empowers the authorities to issue restraining orders against officials or members of religious groups, institutions or other persons for inciting, instigating, or encouraging any religious group or religious institution to cause feelings of enmity, hatred, ill-will or hostility between different religious groups, to promote a political cause, carry out subversive activities or excite disaffection against the President or the Singapore Government under the guise of propagating any religious belief.²⁰² All such orders will be referred to an inter-religious council, known as the Presidential Council for Religious Harmony, which will make recommendations to the President to cancel or confirm the restraining order.²⁰³

The Internal Security Act²⁰⁴ (ISA) is another piece of legislation enacted to empower the authorities to detain, without trial, individuals suspected of subversion and for the suppression of organized violence against persons and property which is prejudicial to the security of the country.²⁰⁵ Where the President is satisfied that preventive detention will

¹⁹⁹ “Racial Harmony Day” *Wikipedia* <http://en.wikipedia.org/wiki/Racial_Harmony_Day> at 8 August 2007.

²⁰⁰ “1964 Race Riots” *Wikipedia* <http://en.wikipedia.org/wiki/1964_Race_Riots> at 8 August 2007.

²⁰¹ Cap 167A, 2001 Revised Edition.

²⁰² *Maintenance of Religious Harmony Act* ss 8, 9.

²⁰³ *Maintenance of Religious Harmony Act* ss 11, 12.

²⁰⁴ Cap 143, 1985 Revised Edition.

²⁰⁵ *Internal Security Act* Long Title.

prevent a person from acting in any manner prejudicial to the security of Singapore or to the maintenance of public order or essential services, the Minister may make an order directing that the person be detained or impose restrictions on his movements and activities.²⁰⁶ Judicial review of such orders is limited to questions relating to the compliance with any procedural requirements of the ISA governing such acts or decisions.²⁰⁷ In June of 2007, the ISA was exercised by the government to detain a young Muslim Singapore law graduate for planning militant activities. The details that were released showed that he was influenced by radical ideas and extremist propaganda on the Internet.²⁰⁸ This recent episode shows that despite being a pre-Internet piece of legislation, the ISA still wields a healthy bite to deal with modern day issues and problems exacerbated by the Internet.

The last piece of instrument, the Sedition Act,²⁰⁹ is a post-World War II British colonial law enacted in 1948. Prosecutions under the Sedition Act for acts or words which have a “seditious tendency”, defined to mean exciting disaffection against the Government or the administration of justice in Singapore, raising disaffection or exciting the residents in Singapore to procure the unlawful alteration of any matter, or promoting feelings of ill-will and hostility between different races or classes of the Singapore population, are very rare. However, given the breadth of the scope of “seditious tendencies”, and the ease with which individuals express their opinions on the Internet, particularly through acts of “flaming”,²¹⁰ it was only a matter of time before prosecutions were brought under the Act.

Thus matters came to a head in September 2005, when racist remarks were made by various parties on Internet fora and discussion groups in response to a letter written by a Muslim woman and published in the Straits Times regarding the issue of whether taxi drivers should allow uncaged animals to be transported in their cabs, since there were

²⁰⁶ *Internal Security Act* s 8.

²⁰⁷ *Internal Security Act* s 8B.

²⁰⁸ “‘Self-radicalised’ law grad, 4 JI militants held”, *Straits Times*, 9 June 2007.

²⁰⁹ Cap 290, 1985 Revised Edition.

²¹⁰ “Flaming (internet)” *Wikipedia*

<http://en.wikipedia.org/wiki/Flaming_%28Internet%29> at 8 August 2007 (the hostile and insulting interaction between Internet users).

religious concerns in Islam about whether the seats could be dirtied by dog saliva or their paws. This led to a verbal exchange on the Internet. Particularly vociferous were dog lovers, some of whom posted various anti-Malay and anti-Muslim remarks on blogs and discussion fora. Authors of three of these particularly bad remarks were charged in court for offences of sedition “to promote feelings of ill-will and hostility between different races or classes of the population of Singapore”. All three accused pleaded guilty. In his judgment, Senior District Judge Richard Magnus in *PP v Kob Song Huat Benjamin*²¹¹ pointed to the seriousness of propagating feelings of racial and religious hostility, and referred to the especial sensitivity of racial and religious issues in Singapore’s multi-cultural society. The court found particularly disturbing that both were young Singaporeans who had short memories about the sensitivities of race and religion, and had hidden behind the anonymity of cyberspace to pen diatribes against another race of religion. The judge went on to say:

The right to propagate an opinion on the Internet is not, and cannot, be an unfettered right. The right of one person’s freedom of expression must always be balanced by the right of another’s freedom from offence, and tampered by wider public interest considerations. It is only appropriate social behaviour, independent of any legal duty, of every Singapore citizen and resident to respect the other races in view of our multi-racial society. Each individual living here irrespective of his racial origin owes it to himself and to the country to see that nothing is said or done which might incite the people and plunge the country into racial strife and violence. These are basic ground rules. *A fortiori*, the Sedition Act statutorily delineates this redline on the ground in the subject at hand. Otherwise, the resultant harm is not only to one racial group but to the very fabric of our society.²¹²

The court imposed a deterrent custodial sentence of one month’s imprisonment for one the bloggers, in view of the fact that he had made particularly inflammatory and insulting remarks against the Muslim religion, together with his totally insensitive parody involving the Muslim

²¹¹ [2005] SGDC 272 (Singapore District Court).

²¹² [2005] SGDC 272 [8].

halal logo. The second accused was sentenced to a nominal one day imprisonment and a maximum fine of S\$5000, with the third accused sentenced to 24 months supervised probation.²¹³

Even though the prosecution of the bloggers under the Sedition Act received widespread support,²¹⁴ it was nonetheless perceived that the Government was using the Sedition Act as a sledgehammer to crack the “nut” in the form of the individual activities of these bloggers. In October 2007, Parliament passed the Penal Code (Amendment) Bill 2007, which both revised and introduced new provisions in the Penal Code to create new offences relating to religion or race, such as the offence of uttering words with deliberate intent to wound the religious or racial feelings of any person²¹⁵ and knowing promotion of enmity between different groups on grounds of religion or race and doing acts prejudicial to maintenance of harmony.²¹⁶ At the same time, a scheme for applying enhanced penalties (of up to one and a half times the original amount of the punishment) for racially or religiously aggravated offences was also introduced into the law.²¹⁷ As explained by the Minister, these provisions were introduced to ensure that there is an alternative to prosecuting bloggers under the Sedition Act, which is considered a high signature prosecution.²¹⁸ These provisions received overwhelming support from Members of Parliament at the parliamentary debates, with one member asking if the provisions go far enough to deal with such activities committed “innocently, ignorantly or under the guise of freedom of expression without deliberate intention to

²¹³ See “Third racist blogger sentenced to 24 months supervised probation”, *Channel News Asia* <<http://www.channelnewsasia.com/stories/singaporelocalnews/view/180127/1/.html>> at 8 August 2007.

²¹⁴ Cherian George, *Looking for Patterns in 10 Years of “Light Touch” Regulation* (23 August 2007) <<http://journalism.sg/2007/08/23/looking-for-patterns-in-10-years-of-light-touch-regulation/>> at 10 December 2007.

²¹⁵ Singapore *Penal Code* (Cap 224, 1985 Revised Edition), s 298.

²¹⁶ *Penal Code*, s 298A.

²¹⁷ *Penal Code*, s 74.

²¹⁸ Singapore, *Second Reading, Singapore Penal Code (Amendment) Bill*, 22 October 2007 (Associate Professor Ho Peng Kee – Senior Minister of State for Law), Parliament No 11, Session 1, Vol 83, Sitting No 14, Hansard.

provoke nor knowledge that it will lead to disharmony.”²¹⁹ However, the Minister was quick to add that these provisions set a high bar for the offences, and that freedom of expression and religion are preserved. However, these freedoms are not unfettered, for “in multi-racial and multi-religious Singapore, Singaporeans should recognise the sensitivities of other religious groups. It is one thing to preach to a person who is interested to hear your views. However, it is quite another to try to convert a person to your religion by denigrating his religion, especially when he has no desire to be converted.”²²⁰

In summary, laws regulating content relating to race and religion pre-date the Internet. But the issues and considerations do not differ, regardless of the use (or abuse) of the Internet and its intercession. This short review here shows that the freedom of speech as spelt out in the Singapore Constitution is heavily qualified,²²¹ and is subject to restrictions such as the Maintenance of Religious Harmony Act, the Internal Security Act and the Sedition Act, which are restrictions deemed necessary and expedient in the interests of public order. All these Acts remain highly relevant and pertinent in the Internet era.

COPYRIGHT INFRINGEMENT

Intellectual property laws that deal with the digital media industry are particularly up-to-date, because of the dual pressures of international intellectual property treaties such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1994 and the WIPO Copyright Treaty (WCT) and the WIPO Performers and Phonograms Treaty (WPPT) of 1996, as well as Singapore’s implementation of its free trade agreement with the United States, the United States Singapore Free

²¹⁹ Singapore, *Second Reading, Singapore Penal Code (Amendment) Bill*, 23 October 2007 (Ong Kian Min – Member of Parliament), Parliament No 11, Session 1, Vol 83, Sitting No 15, Hansard.

²²⁰ Singapore, *Second Reading, Singapore Penal Code (Amendment) Bill*, 22 October 2007 (Associate Professor Ho Peng Kee – Senior Minister of State for Law), Parliament No 11, Session 1, Vol 83, Sitting No 14, Hansard.

²²¹ *Constitution of the Republic of Singapore* (1999 Revised Edition) art 14(1)(a), read with art 14(2).

Trade Agreement (USSFTA). Of particular relevance to the digital media industry are Singapore's laws relating to copyright protection.

An exhaustive review of all the changes and updates made to Singapore's copyright laws is not possible in this paper. Thus, only a summary of the most salient provisions will be given. Computer programs are protected as literary works in the Copyright Act,²²² as are multimedia works (as "compilations").²²³ Other types of works (artistic, dramatic and musical as "authorship works", sound recordings, cinematographic works, broadcasts, cable programme services and published editions as "entrepreneurial works") are also protected accordingly. The duration of protection has been extended to life of the author plus 70 years for authorship works,²²⁴ and 70 years for sound recordings²²⁵ and cinematographic works.²²⁶ Broadcasts, cable programme services and published editions receive protection for 50 years,²²⁷ 50 years²²⁸ and 25 years²²⁹ respectively.

The right of reproduction includes the right to convert a work into or from a digital or other electronic machine-readable form,²³⁰ and includes the making of a copy of a work which is transient or incidental to some other use of the work.²³¹ The right of "communication to the public", first introduced in 2004, encompasses the original rights of broadcasting and inclusion in a cable programme service. In addition, it also includes the new "making available" right.²³² This right, introduced via the WCT and the WPPT,²³³ recognises the right of the copyright owner to authorize any communication of his works to the public, by wire or wireless means, in such a way that members of the public may access these works from a place and at a time individually chosen by them.

²²² Singapore *Copyright Act* (Cap 63, 2006 Revised Edition) s 7A.

²²³ *Copyright Act*.

²²⁴ *Copyright Act* s 28.

²²⁵ *Copyright Act* s 92.

²²⁶ *Copyright Act* s 93.

²²⁷ *Copyright Act* s 94.

²²⁸ *Copyright Act* s 95.

²²⁹ *Copyright Act* s 96.

²³⁰ *Copyright Act* s 15(1B).

²³¹ *Copyright Act* s 15(1A).

²³² *Copyright Act* s 7(1) (definition of "communicate").

²³³ *WCT* art 8; *WPPT* arts 10, 14.

At the same time, various defences were introduced to protect network service providers, for any direct and indirect infringement of copyright arising from their provision of Internet services. These defences were adapted from the safe harbour provisions in the US Digital Millennium Copyright Act. In particular, these defences absolved the network service providers of fiscal liability for possible copyright infringement, for activities such as the transmission or routing of connections and any transient storage of works,²³⁴ for the caching of works,²³⁵ for the storage of infringing third party works on its network,²³⁶ and for linking to an infringing third party work (also known as the search engine or portal defence).²³⁷ In addition, both users and network service providers are also protected by a defence which exempts them from liability arising from any “transient and incidental electronic copy” of a work that is made as a result of viewing, listening or utilizing the work.²³⁸

Singapore law remains unclear as to the extent of secondary or indirect infringement of a party, arising from the provision of facilities or services which are used by a third party infringer. Unlike recent pronouncements from appellate courts such as the US Supreme Court in *MGM Studios v Grokster*²³⁹ and the Australian Federal Court in *Universal Music Australia Pty Ltd v Sharman License Holdings Ltd* (the *Kazaa* case),²⁴⁰ Singapore courts have yet to decide the issue. However, if the ruling of the Singapore Court of Appeal in *Lotus Development Corp v Ong Seow Pheng*²⁴¹ is any indication, developers or providers of facilities or services used for infringing purposes would not be held liable on the basis that they have no physical control over the infringer or their instruments of infringement and had no authority to authorize such infringements. This however does not mean that the infringer cannot be held liable. In August 2005, the police arrested three Internet users who had used the Internet to distribute 20,000 music files via an Internet Relay Chatroom. They were prosecuted under the revised section 136 of the Singapore

²³⁴ *Copyright Act* s 193B.

²³⁵ *Copyright Act* s 193C.

²³⁶ *Copyright Act* s 193D(1)(a).

²³⁷ *Copyright Act* s 193D(1)(b).

²³⁸ *Copyright Act* s 193E.

²³⁹ 125 S Ct 2764 (US Supreme Court).

²⁴⁰ [2005] FCA 1242.

²⁴¹ [1997] 3 SLR 137 (Singapore Court of Appeal)

Copyright Act,²⁴² and it remains to be seen whether the prosecutions will be under the provision that deals with a “significant extent of copyright infringement committed to obtain a commercial advantage”.²⁴³

NON LEGAL MEANS OF REGULATION

Aside from legislation and regulations, the Singapore regulator has always emphasized that there are two other components to the regulation of interactive digital media. The regulator has worked closely with the industry to promote industry self-regulation and encourage the industry to set its own standards.²⁴⁴ In 2006, the three mobile service operators in Singapore, in response to concerns expressed by the NIAC over undesirable mobile content, developed and adopted a voluntary industry content code which aims to protect users, especially the young, from undesirable and objectionable mobile content.²⁴⁵ Under this code, the mobile operators pledged to only offer images generally available in mainstream media.²⁴⁶ They also pledge not to offer any objectionable games (games which contain violence, denigrate any race or religion, have sexual content or are objectionable on moral, social or religious grounds)²⁴⁷ and to provide warnings for chat services that may be unsuitable for young persons and children.²⁴⁸ The mobile operators also undertake to apply the code to third party content operators that have a contractual arrangement with the mobile operators.²⁴⁹ The effectiveness of the code remains to be seen, since it is unlikely that mobile operators will themselves originate any objectionable code. If the bulk of the objectionable content is derived from third party content operators, these content operators do not seem to be privy to the code and the

²⁴² “Three Net users nabbed for sharing pirated music”, *Straits Times*, 18 August 2005.

²⁴³ Singapore *Copyright Act* s 136(3A).

²⁴⁴ Dr Balaji Sadasivan - Senior Minister of State for Information, Communications and the Arts, Parliament No 11, Session No 1, Volume 82, Sitting No 15, 3 March 2007).

²⁴⁵ M1, SingTel and Starhub, *Voluntary Code for Self-regulation of Mobile Content in Singapore*, 1 March 2006 <http://m1.com.sg/M1/about/regulatory/pdf/Self-Regulation_of_Mobile_Content.pdf> at 28 August 2007.

²⁴⁶ *Mobile Code* [2].

²⁴⁷ *Mobile Code* [3].

²⁴⁸ *Mobile Code* [4].

²⁴⁹ *Mobile Code* [5].

only mechanism for addressing any breach of the code in this regard is for the mobile operators to “notify and take-down” the undesirable content.²⁵⁰ In this regard, the sanctions, if any, appear thin, and there is no clear indication in the code as to whether the content operators will be fiscally sanctioned, or whether the mobile operators will themselves be held liable for such content. Certainly, the provisions and the language in the voluntary code can be further improved.

The Singapore regulator has also recognized the importance of education as a tool to promote media literacy and the discerning use of the media. A Cyber Wellness programme has been instituted, in which users are encouraged to understand the risks of harmful online behaviour, to be aware of how to protect himself and others from such behaviour and to recognize the power of the Internet to affect oneself and the community at large.²⁵¹ At the same time, the regulator and the NIAC also believe in empowering parents and families in managing their children’s use of the Internet.²⁵² In this regard, the regulator has also worked with the three main Internet Access Service Providers in Singapore to provide optional “family access networks” that parents can subscribe to for their children. This scheme was launched as early as 1998, largely through the efforts of the Parents Advisory Group for the Internet (PAGi). The “family access networks” seek to filter out pornographic as well as other undesirable sites and provide a hassle-free network solution to parents who are not familiar with the use of Internet filtering software but who want some measure of protection of their children from the undesirable elements of the Internet.²⁵³

²⁵⁰ See *Mobile Code* [5.2].

²⁵¹ These are described as the four core values of the Cyber Wellness vision - Balanced Lifestyle, Embracing the Net and Inspiring Others, Astuteness, Respect & Responsibility, which goes by the acronym BEAR. See MDA, *Internet* ²⁵¹ at 28 August 2007.

²⁵² MDA, *NIAC Calls for Greater Industry Self-regulation and Promotion of User Empowerment Tools*, 20 February 2001 <<http://www.mda.gov.sg/wms/www/thenewsdesk.aspx?sid=294>> at 28 August 2007.

²⁵³ See MDA, *Internet* at 28 August 2007.

CONCLUSION

Outside of the non-legal framework, a matrix of laws and regulations govern the regulation of interactive digital media in Singapore, each of which operates at a different level and in a different context. The most fundamental law that all ISPs and ICPs that contribute to the digital media industry have to observe in Singapore is the Class Licence Notification and the Internet Code of Practice. This law sets out the basic requirement, which is that the Internet services cannot be against the public interest, public order, national harmony or offend good taste and decency. There are attendant issues regarding the scope of this basic Class Licence scheme, particularly in its application to private and personal communications. But from an administrative standpoint, the regulator has elected not to apply these standards to ICPs who are not targeting Singapore as their principal market.²⁵⁴

However, there remain issue specific laws that apply to different contexts in the digital media industry. Where digital media is in the nature of films and other prohibited materials, censorship laws such as the Films Act and the Undesirable Publications Act may apply. Where digital media is used in elections or towards political ends, the Films Act and the Parliamentary Elections Act and their regulations apply, regulating the types of films which may be used and the types and nature of digital communications which may be deployed during the campaign process. Where there are concerns that religious and racial harmony will be strained, other pieces of legislation such as the Maintenance of Religious Harmony Act, the Internal Security Act and the Sedition Act may be deployed to prohibit the circulation of such material or the detention and punishment of persons responsible. Last but not least, where issues of copyright are involved in the use of such digital material, the provisions in the Copyright Act may be referred to for various remedies and defences.

As this paper illustrates, the law relating to the interactive digital media industry has developed in an incremental fashion. Aside from the Class Licence regime which is Internet specific, other laws that regulate the digital media industry have evolved from existing rules and restrictions.

²⁵⁴ *Internet Industry Guide* [21].

As a medium, the Internet is capable of much harm. But it is also capable of much good. Laws should not be hastily enacted to deal with the harm brought about by the Internet, without due consideration for its legitimate use by millions of law abiding users. In this sense, having a very basic, minimally invasive and “light” Class Licence regime coupled with the “heavy” laws that deal with public order and security issues has worked well for Singapore. Nonetheless, there is clearly room for improvement, for greater clarity and precision in our laws, and for greater consistency in the policies and approaches applicable across issues, as this paper seeks to illustrate. No one disputes the correctness of the conclusion that our laws have to evolve and be updated as the Internet situation evolves. But paradoxically, the continued evolution of the Internet and innovations within the digital media industry cannot take place without a foundation of certainty and predictability. Singapore’s experiences with regulation of the Internet have suggested that perhaps the way forward is to have a minimal set of clear proscriptions that encapsulate clear positions taken on various positions. We may wish to consider taking a strong stand against child pornography, unattributed political statements and representations made by political parties, seditious racial and religious communications and digital materials that blatantly infringe copyright. We may want to signal our respect for individual privacy and freedom of speech, for transparent investigations and due process and for innovation and creativity. These principles should be reflected consistently in all our laws, and across all our piecemeal legislation. The advent of the Internet affords us a unique opportunity to examine the rationale for all our laws carefully. Let us not miss this opportunity.

