ARTICLE 19

CENTRE FOR INDEPENDENT JOURNALISM
Advocating Media Freedom and Access to Information

Social Media Licensing in Malaysia: What do you need to know?

The Malaysian government's announcement in July that social media companies will be required to obtain licenses under the Communications and Multimedia Act 1998 (CMA) raises profound freedom of expression concerns. The government claims that the regulation is necessary to compel social media companies to be more responsible in their moderation of "harmful" content on their platforms. However, ARTICLE 19, CIJ and others warn that this approach is a misguided attempt to increase control over online speech, with far-reaching implications for the right to freedom of expression, as guaranteed in the Federal Constitution of Malaysia. In these Questions & Answers, we explain why.

What regulatory changes did the government introduce?

The government has imposed licensing requirement on Internet messaging service and social media service providers in Malaysia. The new regulatory framework was introduced on 1 August 2024 and will take effect on 1 January 2025.

Internet messaging and social media service providers did not previously require licenses, but through amendment of two orders – the Communications and Multimedia (Licensing) (Exemption) Order 2000 and the Communications and Multimedia (Licensing) Regulations 2000 – these services providers are, as of since 1 August 2024, now subject to licensing if they have 8 million or more users in Malaysia. Service providers have a period of five months – until 1 January 2025 – to apply for the license. The application must be submitted by a locally incorporated company. Any license will be valid for one year.

As licensees, social media companies would be required to comply with the CMA and its subsidiary legislations.

Why do ARTICLE 19, CIJ and other non-governmental organisations oppose these changes?

The Proposal is dangerous for freedom of expression in Malaysia.

Requiring social media companies to comply with the provisions of the CMA through a licensing requirement is deeply problematic. Despite CMA stating that "nothing in the CMA shall be construed as permitting the censorship of the internet", a legal analysis by ARTICLE 19 warned that certain provisions of the CMA are inconsistent with international human rights standards. In particular, the content-related offences in Sections 211 and 233 which target "indecent, obscene, false, menacing, or offensive content" are fundamentally flawed.

These provisions do not meet the standards of legality, legitimacy, necessity, and proportionality required under international human rights standards, and we have called for their repeal.

In addition, ARTICLE 19 has argued that the liability of online intermediaries under the CMA should be clarified. Service providers should not be held criminally liable for content produced by users; instead, they should be granted immunity from liability – whether criminal or civil. Imposing liability on companies for content posted by users will only incentivize companies to over-remove content, including protected speech.

We have also repeatedly called out how Sections 211 and 233 have been abused over the years against those exercising their freedom of expression, including against human rights defenders and political opponents.

Why do ARTICLE 19, CIJ and other non-governmental organisations oppose these changes?

Additional issues arise from the process of granting and revoking licenses. The Act lacks clear criteria for license eligibility and permits the relevant Minister to impose additional requirements or conditions on licenses. We are also concerned about the excessive power that has been given to the Minister in charge to decide and reject license applications. The Act does not provide for any checks and balances to these elaborate powers. For example, the Minister has the power to draw up lists of persons or classes of persons who are ineligible to apply. They may also cancel existing licenses under a highly permissive "public interest" test or if the licensee has failed to comply with "any instrument issued, made or given by the Minister or the Commission".

These issues are compounded by the fact that the Minister and Commission are tasked with overseeing their licensing system, despite not being independent regulators.

The licensing system therefore effectively grants broad, largely unrestricted power to control the operation and use of nearly all media in Malaysia.

Finally, we highlight that there was no formal public consultation and lack of meaningful engagement with civil society actors such as digital rights or free expression organisations or women's rights groups.

The government says these regulatory changes are needed to address "harmful" content. Is this not an important objective to pursue?

We acknowledge the challenges to the information ecosystem in Malaysia and understand that the government wants to tackle problematic content online, including online abuse and harassment or hateful and inciting content. However, we believe the government's approach will do more harm than good.

First, it is problematic that the government keeps referring to "harmful" content, at times equating it with illegal content. For example, in its information paper the government states that "this regulatory framework will hold the Internet messaging service and social media service providers ("Service Providers") accountable in conducting their business operations in Malaysia including effectively managing illegal and harmful content".

The equation of illegal and harmful content is problematic. We have criticised the Malaysian government for criminalizing speech that should be protected under international freedom of expression standards (for example, the content-based offences of Sections 211 and 233 of the CMA described above).

The government says these regulatory changes are needed to address "harmful" content. Is this not an important objective to pursue?

Yet focusing on "harmful" content as a separate category from illegal content that must be restricted is deeply problematic. It goes against the fundamental principle that the same rights that people have offline must also be protected online and that what is legal offline should also be allowed online.

Second, while the government claims that licensing is necessary to hold platforms accountable, we note that it will enable more monitoring and stricter controls and restrictions of users' speech to avoid liability.

The objective to protect the public against online harm cannot be achieved in a manner that undermines human rights and is counterproductive. The expansion of the licensing regime is just that.

What steps should the government take instead to address the issue of problematic content online?

We believe that tightening internet regulation and creating a more restrictive online environment is not the right approach to addressing challenges in the information ecosystem or the spread of problematic content. The licensing requirement is therefore a misguided solution. It will also do nothing to ensure that users will engage in less radical, inciting, or abusive speech online.

On the contrary, the current censorious approach could actually lead to more problematic behaviour as users are likely to look for different outlets for these issues.

Instead, we believe that government should focus on two key areas to address issues like hate speech, online harassment, and abuse:

First, it should tackle the underlying societal causes of hate speech, cyberbullying, gender-based violence and other online harms, including by maximizing inclusivity, diversity and pluralism in public discourse – whether online or offline. There should also be more investment in education to make relevant stakeholders and the general public aware of the challenges posed by problematic content online.

More concretely, we recommend that the government set up an independent committee to review the root causes of hate speech, harassment, abuse and cyberbullying, and relatedly develop a comprehensive plan of action to address these issues in Malaysia.

By addressing these root causes directly, user behavior can be more effectively and sustainably improved.

What steps should the government take instead to address the issue of problematic content online?

Second, regulatory solutions must be rights-respecting and tackle social media companies' problematic business models. Social media networks are a vital space for us to connect, share, and access information. Yet, social media companies have rightly been accused of prioritising profit over user safety. Because the business models of large social media platforms rely on capturing our attention and selling it to advertisers, their algorithms are designed to keep us engaged for as long as possible – including by amplifying problematic content. We agree that companies must be accountable for their lack of transparency and due diligence and the problems they cause in amplifying online abuse, hate speech, and other problematic content which drives many users away.

We believe that solutions based on transparency, data protection and sound competition policies that address the market power of the largest social media companies, would be far more effective in making the internet safer for children and adults in Malaysia.

This way, we believe problematic content can be addressed without putting freedom of expression at risk.

How should social media companies approach moderation of problematic content?

Regardless of Malaysia's specific regulatory framework, social media companies should ensure that they respect human rights in line with the United Nations Guiding Principles on Human Rights. This applies not only to their content moderation practices but also to how they algorithmically recommend content, collect data, and implement advertising and monetization schemes. This will have specific impacts on the circulation of problematic content online.

In content moderation, social media companies should establish clear terms of service that uphold human rights, including freedom of expression, privacy, and due process. We recognise that social media companies are in principle free to restrict content based on lower thresholds than permitted for State restriction under international freedom of expression standards.

However, given their significant influence on public discourse, we believe that social media companies – especially the largest ones – have a responsibility to allow protected expression, including political speech like criticism of politicians, public officials, and other public figures. At the same time, they should take measures to address incitement and violent content, in line with international hate speech standards, such as the Rabat Plan of Action.

How should content moderation of harmful content on social media be conducted?

Many social media companies must still significantly improve their content moderation practices to meet their human rights responsibilities. They must also increase transparency – towards users, regulators, and other relevant stakeholders – about when and how they restrict content, how algorithms are used to present, rank, promote, or demote content, and how they generate revenue.

The lack of transparency points to a broader issue of insufficient resources allocated by the largest social media companies to understanding and properly moderating the content in many countries where they operate, including Malaysia.

More investment and increased transparency should be the foundation of all their actions, enabling scrutiny, accountability, and ultimately, greater user trust.

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