



**A LEGAL ANALYSIS OF DIGITAL EXPRESSION AND
ONLINE CONTENT REGULATION IN MALAYSIA**

BY

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**A thesis submitted in fulfilment of the requirement for the
degree of Doctor of Philosophy in Laws**

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ABSTRACT

Vision 2020 sets a high expectation to develop Malaysia into values-based information society in its own mould through ICT integration. In this model, Malaysian society was aspired to grow with local customs, moral and religious values preserved through maximising the benefits of the Internet. Consequently, the growth of communication and multimedia industry led to the development of right to digital expression in Malaysia. This research aims to (1) analyse the scope of digital expression within the theory of information society, (2) to identify and examine the threats posed by content risks online particularly towards children as torchbearer of the Vision 2020, (3) to scrutinise the comprehensiveness and efficiency of the existing legislations including technical measures in balancing digital expression and online content regulation and (4) to examine and analyse the implementation and the efficiency of self-regulation as mechanism for balancing content regulation and digital freedom. Qualitative approach with doctrinal and non-doctrinal methods were applied to achieve the above objectives. Research have shown that digital expression elevated Malaysians to greater heights in the exercise of freedom of expression online, which allows interactive retrieval and sharing of knowledge across geographical boundaries. However, literatures have also shown that benefits offered through the Internet were misused to spread content risks online in the form of prohibited contents such as pornography, violence, and hatred, which injures the aspirations of Vision 2020 to become an information society that preserves cultures, moral and religious values. This study also reveals that the present self-regulation scheme practiced in the Internet industry in Malaysia exposes its netizens further to content risks online due to legal and technical gaps that existed within. Hence, this study proposes for necessary amendments in relevant legislations and practices towards co-regulation of Internet content.

خلاصة البحث

رؤية 2020 تضع توقعات عالية لتطوير ماليزيا إلى مجتمع ذي معلومات مستندة إلى القيم في قلبه الخاص من خلال تكامل تكنولوجيا المعلومات والاتصالات. في هذا النموذج، يتطلع المجتمع الماليزي إلى النمو المتوافق مع العادات المحلية والأخلاقية والقيم الدينية المحافظة من خلال الاستفادة القصوى من الإنترنت. وبناء على ذلك، أدى نمو الاتصالات وصناعة الوسائط المتعددة إلى تطوير حق التعبير الرقمي في ماليزيا. أشارت الأبحاث أن التعبير الرقمي رفع الماليزيين إلى المستوى الأعلى في ممارسة حرية التعبير على الإنترنت، والذي مكنهم من التفاعل ومشاركة المعلومات والمعارف إلى خارج الحدود الجغرافية. ومع ذلك، فقد أشارت الدراسات أيضا أن الفوائد المقدمة من خلال الإنترنت أسيء استخدامها لنشر مخاطر المحتوى على الإنترنت في شكل محتويات محظورة مثل المواد الإباحية والعنف والكراهية، والذي يسبب إلى طموحات رؤية 2020 التي تريد أن يصبح مجتمع المعلومات الذي يحفظ الثقافات، والقيم الأخلاقية والدينية. اكتشفت هذه الدراسة أيضا أن مخطط التنظيم الذاتي الحالي الذي يمارس في صناعة الإنترنت في ماليزيا يعرض مستخدمي الإنترنت بشكل أكبر لمخاطر محتوى على الإنترنت بسبب الثغرات القانونية والتقنية التي كانت موجودة داخله. وبالتالي، اقترحت هذه الدراسة التعديلات اللازمة في التشريعات والممارسات نحو إعادة صياغة لوائح المشاركة لمحتوى الإنترنت.

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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**A LEGAL ANALYSIS OF DIGITAL EXPRESSION AND ONLINE
CONTENT REGULATION IN MALAYSIA**

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CHAPTER ONE

INTRODUCTION TO THE RESEARCH

1.1 INTRODUCTION

This chapter aims to introduce the present PhD research in a bird's eye view. It shall start with brief key themes of the research followed by research background, research questions, objectives, hypothesis, research scopes, and limitations. Research methodology adopted shall be explained to demonstrate how data were gathered and analysed. The structure of this thesis shall then be outlined to provide clear objectives of each chapter. Finally, literatures shall be reviewed to identify relevant research gaps necessitating this research.

1.2 RESEARCH BACKGROUND

Vision 2020 sets a thirty-year goal to elevate Malaysia into a fully developed nation, which safeguards national culture, moral and religious values¹. The Vision particularly targets to develop higher thinking order among Malaysians through usage of ICT. As a result, the National ICT Agenda (NITA) was established for Malaysia to become values-based knowledge society by year 2020². To strengthen this agenda, the Communication and Multimedia Act 1998 (CMA 1998) is introduced to promote self-regulation by

¹ Mahathir Mohamad, "Malaysian: The Way Forward (Vision 2020)," The United Nations, <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan003223.pdf> (accessed 8 January 2014).

² National IT Council, "National IT Agenda - NITA," National IT Council, http://nitc.mosti.gov.my/nitc_beta/index.php/national-ict-policies/national-it-agenda-nita (accessed 10 June 2013).

guaranteeing non-censorship of the Internet content under Section 3(3). The central idea is to let the ICT industry self-regulate themselves based on sets of guiding principles known as the Content Code. However, the voluntary nature of the Content Code has led to inconsistencies in the application of the provision in the Content Code by the industry players. As a result, prohibited contents are available on the Internet exposing children and adult alike to indecent and obscene, violence and menacing, bad language and false contents which could threaten national security, protection of cultural, moral and religious values in the Malaysian harmonious society.

Meanwhile, the adoption of self-regulation by the Internet industry does not deter the Malaysian public to express their thoughts and opinion online. Freedom of expression guaranteed under Article 10 of the Federal Constitution allows limited freedom of expression. However, literatures reported that Malaysian netizens used the Internet through to express dissent, defaming, uploading indecent and obscene content, making seditious statement, ridiculing religion and more through blogs and social media³. Consequently, Malaysia is able to create an information society but on the other hand, cultural, moral, and

³ Roslee Ahmad et al., "Punca, Kesan Dan Langkah Untuk Menangani Tingkah Lakuseksual Pelajar Mengikuti Pendekatan Kaunseling Islam," in *Konvensyen Pendidikan Nasional 2008* (Perak, Malaysia: Universiti Pendidikan Sultan Idris, 2008), http://www.academia.edu/1842239/PUNCA_KESAN_DAN_LANGKAH_UNTUK_MENANGANI_TINGKAH_LAKU_SEKSUAL_PELAJAR_MENGIKUT_PENDEKATAN_KAUNSELING_ISLAM; Tan Yi Liang, "Alvin and Vivian Granted Bail," *The Sun Daily*, <http://www.thesundaily.my/news/780264> (accessed 18 April 2014); Samuel Chan Hsin Chlen and Mohamed Sarif Mustaffa, "Divorce in Malaysia," Seminar Kaunseling Keluarga 2008, http://eprints.utm.my/6058/1/SamuelChanHsinChlen2008_DivorceInMalaysia.pdf (accessed 28 May 2015); Muhammad Solihin; Jabatan Kemajuan Islam Malaysia, "Implikasi Perzinaan Dengan Perceraian," Jabatan Kemajuan Islam Malaysia, http://www.islam.gov.my/sites/default/files/28.implikasi_zina_terhadap_perkahwinan.pdf (accessed 17 May 2015); Nor Azah Abdul Aziz and Che Zarrina Saari, "Menangani Permasalahan Laman Web Pornografi : Antara Perisian Penapis, Penguatkuasaan Undang-Undang Dan Amalan Spritual," *Journal of Islamic and Arabic Education*, vol. 3, no. 1 (2011): 29–46, journalarticle.ukm.my/2205/1/23.pdf; Sinar Harian, "Kes Khalwat ...".

religious values are diminishing. This challenges the achievement of Vision 2020 envisaged by Malaysia. Thus, finding appropriate measure to reduce Malaysian netizens' exposure to content risks online is crucial to ensure protection of moral, customs, and traditional values of Malaysian citizens in line with the development towards Vision 2020.

1.3 RESEARCH QUESTIONS

In view of the above research background, the following research questions should be addressed:

1. What are the scope and limitations to the right to digital expression in Malaysia?
2. How exposure to content risks online damages the aspirations of Vision 2020?
3. How effective is the present self-regulation scheme to reduce netizens' exposure to content risks online in Malaysia?
4. What are the self- and co-regulatory measures used by major jurisdictions in reducing exposure to content risks online?

1.4 RESEARCH OBJECTIVES

This research seeks to achieve the following objectives:-

1. To analyse the scope of digital expression within the theory of information society;
2. To identify and examine the threats posed by content risks online particularly towards children as torchbearer of the Vision 2020;

3. To examine and analyse the implementation and the efficiency of self-regulation as mechanism for balancing content regulation and digital freedom;
4. To scrutinise the comprehensiveness and efficiency of the existing legislations including technical measures in balancing digital expression and online content regulation.

1.5 HYPOTHESIS

Unrestricted digital expression and lack of effectiveness in self-regulatory control have raised issues and challenges that undermined the foundation of values based information society in Malaysia. Therefore, an efficient co-regulation of the Internet provides effective control in addressing issues and challenges towards realisation of the Vision 2020.

1.6 SCOPE AND LIMITATION OF RESEARCH

The research shall begin with an evaluation of Vision 2020 within the concept of information society and its relationship to the development of higher thinking abilities. Along this line, the concept of digital expression will be explored and examined within the context of international, regional, and national legal instruments. Limitations provided by law to suppress expression shall be explored to understand the scope of the digital expression in line with the laws of Malaysia. Relevant social, legal, and technical counter-measures shall be meticulously examined as international standard or benchmark for

Malaysian Internet content regulation that fit the agenda of Vision 2020. However, this research reserves business and commercial implication as prospects for future research.

1.7 RESEARCH METHODOLOGY

The researcher proposes qualitative method by engaging into doctrinal and non-doctrinal legal research.⁴ For the doctrinal legal research, the researcher shall examine primary data from available treaties and statutes, such as the Vision 2020, Universal Declaration of Human Rights⁵, International Covenant on Civil and Political Rights⁶, International Covenant on Economic, Social and Cultural Rights⁷ (ICESCR), and other regional treaties on protection of digital expressions. National statutes including CMA 1998, Penal Code, Defamation Act 1957, Evidence Act 1950, Film Censorship Act 2002, the Content Code and decided cases shall be relied upon when advancing arguments. Secondary references include usage of textbooks, academic journals, newspaper reports, official and non-official websites including LexisNexis, CLJLaw, ProQuest, Google Scholar and alike shall be used throughout the discussions.

The non-doctrinal legal research shall be carried out by performing semi-structured interviews with government agencies and professionals relevant to the field. Semi-structured interview was chosen due to minimum chances to have regular meetings with

⁴ Qualitative Research Consultants Association, “What Is Qualitative Research?,” Qrca.org, <http://www.qrca.org/?page=whatisqualresearch> (accessed 22 December 2015).

⁵ Universal Declaration of Human Rights (adopted by the United Nations General Assembly on 10 December 1948) (UDHR).

⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

⁷ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) (ICESCR).

the respondents. Furthermore, semi-structured interview allows the respondents to express their opinions in their own ways. Since this method allows the researcher to prepare interview questions ahead of time, the researcher could appear prepared and competent during the interviews. More importantly, this method offers, “a clear set of instructions for interviewers and can provide reliable, comparable qualitative data”.⁸

Qualitative data gathered during the interviews were intended to understand the Internet content regulatory practices in Malaysia and identify significant flaws in relevant legislations and practices. In this regard, officers from the Malaysian Communications and Multimedia Commission (MCMC), the Communication and Multimedia Content Forum Malaysia (CMCF), CyberSecurity Malaysia, Telekom Malaysia, a practising lawyer and a Sessions court judge were interviewed. Doctrinal and non-doctrinal findings shall then be assessed in exploratory research design where analytical and comparative methods of study will be employed to propose relevant suggestions.

1.8 LITERATURE REVIEW

This literature review briefly examines on previous works in relation to this research topic. First, it establishes the relationship between Vision 2020 and information society. Secondly, the development of information society calls for recognition of freedom of expression, which requires an insight into its scope and limitations. Finally, the review

⁸ D. Cohen and B. Crabtree, “Qualitative Research Guidelines Project,” Robert Wood Johnson Foundation, <http://www.qualres.org/HomeLinc-3684.html> (accessed 18 April 2013).