

KEY POINTS ON THE ONLINE SAFETY BILL 2024

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Introduction

On 16 December 2024, the Online Safety Bill 2024 (**“the Bill”**) was passed in the Parliament. The Bill will now be presented for the Royal Assent to be gazetted. Once gazetted, it will take effect on a date specified.

The Bill aims to protect online users, with special attention paid to child users, from online harms such as cyberbullying, exploitation, and misinformation. To better safeguard the interests of the relevant individuals, the Bill introduces provisions to govern online content by implementing measures on the service providers licensed under the Communications and Media Act 1998 (**“CMA”**). The service providers concerned are the licensed network service providers (LNSPs), application service providers (ASPs) and content applications service providers (CASPs), including licensed Service Providers who operate within and out of Malaysia. Notably, the CMA will soon be amended by the CMA Amendment Bill 2024 once the latter takes effect as law.

Regulating Online Content: “harmful content” & “priority harmful content”

In light of online safety, the Bill establishes 2 categories concerning contents. There are the “harmful content” and the “priority harmful content”, which are provided under the First Schedule and the Second Schedule of the Bill respectively.

The First Schedule (Section 4) outlines the categories of “harmful content”:

1. Content on child sexual abuse material as provided for under section 4 of the Sexual Offences against Children Act 2017 [Act 792]
2. Content on financial fraud
3. Obscene content, including content that may give rise to a feeling of disgust due to lewd portrayal, which may offend a person’s manner on decency and modesty
4. Indecent content, including content which is profane in nature, improper and against generally accepted behaviour or culture
5. Content that may cause harassment, distress, fear or alarm by way of threatening, abusive or insulting words or communication or act
6. Content that may incite violence

- or terrorism
7. Content that may induce a child to cause harm to himself
 8. Content that may promote feelings of ill-will or hostility amongst the public at large or may disturb public tranquility
 9. Content that promotes the use or sale of dangerous drugs

The First Schedule further elaborates that:

- (a) Content that promotes awareness or education relating to financial fraud does not fall within the scope of content on financial fraud under paragraph 2;
- (b) Content that portrays private parts for education, scientific or medical purposes is not an obscene or indecent content pursuant to paragraphs 3 and 4; and
- (c) Content that promotes awareness or education relating to drug abuse is not a content that promotes the use or sale of dangerous drugs for the purposes of paragraph 9.

The Second Schedule provides additional controls over the existing harmful contents in the First Schedule, with priorities to impose over categories under paragraphs 1 and 2:

1. Content on child sexual abuse

material as provided for under section 4 of the Sexual Offences against Children Act 2017 [Act 792]; and

2. Content on financial fraud.

Nevertheless, the above categories are subject to amendments as provided under section 82 of the Bill.

Duties & Responsibilities of Service Providers on User Protection

The Bill imposes various duties and key measures on ASPs and CASPs ("Service Providers"), as outlined in sections 13-20:

- (a) **Section 13** imposes a duty whereby the Service Providers must implement measures to detect and mitigate harmful content;
- (b) **Section 14** requires the Service Providers to issue user guidelines on measures implemented to mitigate the risk of exposure to harmful content as well as the terms of use of their services;
- (c) **Section 15** to enable users to manage online safety by providing tools and settings which allow users to prevent or limit others from identifying, locating or communicating with them and

- other tools and settings sufficient for users to manage their online safety;
- (d) **Section 16** provides that the Service Providers must implement robust reporting mechanisms on their platforms, such as easily accessible complaint channels for users to contact the Service Providers;
 - (e) **Section 17** to provide mechanism to assist users e.g. responsive assistance to make any enquiry and to raise concerns relating to online safety and/or online safety measures;
 - (f) **Section 18** protects child users by specifically requiring the Service Providers to ensure the protection of child users by implementing measures as specified in the code issued by the MCMC, or any alternative measures that are proven to be more effective. According to this provision, such implementation must include measures to prevent access to harmful content, limit communication with adults, control personalised recommendation systems, limit features that extend the use of the service by children, and protect personal information;
 - (g) **Section 19** states that there should be a mechanism in place to make priority harmful content inaccessible

to all users.

- (h) **Section 20** mandates the abovementioned service providers to prepare and submit an Online Safety Plan detailing the compliance of their duties to the Malaysian Communications & Media Commission (MCMC) as well as making such plan available on their services.

Non-Compliance of the Bill

The Bill provides that the Service Providers may provide an undertaking on their compliance before the MCMC issues a notice of non-compliance. In cases where the MCMC has reasonable grounds to believe that a Service Provider has failed to comply with the Bill, the MCMC will issue a notice of non-compliance to the Service Provider.

The notice of non-compliance will contain the details of the non-compliance, the stipulated fine and any other information deemed necessary. Upon receipt of such notice, the Service Provider has the option to pay the stipulated fines, or request that a review be conducted by the MCMC.

If the outcome of the review is unfavourable, the Service Provider is given a further opportunity to appeal

to the Online Safety Appeal Tribunal. Upon review, the Tribunal may either confirm or set aside the review which was appealed against.

Powers of the Commission & Enforcement

The MCMC, in addition to its powers granted under the Communications and Multimedia Act 1998 and Malaysian Communications and Multimedia Commission Act 1998, has been granted extensive powers under the Bill, such as:

- The power to register and issue directions;
- The power to gather information and retain documents; and
- The power to direct for proof of compliance.

To ensure that the relevant parties are compliant with the Bill, there are various enforcement powers made available to the MCMC or its authorized officers, for example:

- The power to investigate, search and seize;
- The power to gain access to computerised data; and
- The power to preserve and disclose communications data.

User Reporting of Harmful Content

Sections 21-29 sets out circumstances where the Service Providers and the MCMC must take when receiving user reports relating to harm content. This includes procedures to assess the report (for both the Service Providers and the MCMC) and making such contents inaccessible (for the Service Providers) and issuing written instructions to the Service Providers or the relevant NSPs (for MCMC).

Where the user makes a report to the MCMC and the MCMC determines, on reasonable grounds, that the content falls within the scope of “harmful content” or “priority harmful content”, the MCMC will issue a written instruction to the Service Provider to compel it to make such content inaccessible to all users on its service. If the Service Provider fails to do so, it may lead to a penalty not exceeding RM1,000,000 and a further fine not exceeding RM100,000 for each day or part of a day which the offence continues post-conviction. The Service Provider is required to inform MCMC and the reporting user on the action taken in light of the written instruction.

Where the user makes a report to the Service Provider and the Service Provider determines, on reasonable grounds, that the content falls within the scope of “harmful content” or “priority harmful content”, the Service Provider must make such content inaccessible to all users on its service. A failure to do so may result in the same stipulated penalty and fine as above. The Service Provider is required to inform the reporting user of its decision taken with regards to the reported content.

Setting Up of an Online Safety Committee & Online Safety Appeal Tribunal

To further promote and ensure users' online safety, the Bill establishes the Online Safety Committee and the Online Safety Appeal Tribunal.

The Online Safety Committee is formed mainly to advise and give recommendations to the MCMC on matters concerning online safety, including determining the types of “harmful content” or “priority harmful content”. In addition, it advises on best practices to encourage accountability among service providers.

The Online Safety Appeal Tribunal serves as a regulatory body that reviews the

written instructions, determinations, directions, and/or decisions issued or made by the MCMC pursuant to the Bill.

Comments

In a nutshell, establishing the Online Safety Act 2024 would achieve the following milestones:

- Modernising the current legislations and answering the challenges to enhance online safety pursuant to the increasing use of internet across the nation;
- Aligning the government's efforts to protect children/vulnerable groups against online contents that are harmful to the public/groups concerned;
- Complementing existing legislations such as the Child Act 2001 and incoming amendments to the CMA and Penal Code;
- Legislating contents that constitute harmful content. Previously there was no statute in protecting online users against harmful content, we had the Content Code devised by the Malaysian Content Forum which serves as user guidelines on content

Nevertheless, businesses and Service Providers should stay updated with the current developments in this respect to ensure compliance and that the usage of

their online users can be better safeguarded against harmful content through such compliance.

This article was written by our partners, Sri Sarguna Raj, Steven Cheok Hou Cher & Nicole Chong from the Intellectual Property, Media, Sports & Gaming Practice Group, with the assistance of Soo An Qi, Lim Chaw Zen and Michelle Yap Siew Hui (Senior Associate, Associate & Pupil). It contains general information only. It does not constitute legal advice or an expression of legal opinion and should not be relied upon as such.