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**REGULATING ONLINE NEWS PORTALS IN MALAYSIA –
REFERENCE TO INDEPENDENT PRESS STANDARDS
ORGANISATION**



Nazli Ismail Nawang (a)*, Aminuddin Mustaffa (b), Abdul Majid Tahir Mohamed (c)

*Corresponding author

- (a) Universiti Sultan Zainal Abidin, Terengganu, Malaysia, inazli@unisza.edu.my
(b) Universiti Sultan Zainal Abidin, Terengganu, Malaysia, aminuddinm@unisza.edu.my
(c) Universiti Sultan Zainal Abidin, Terengganu, Malaysia, amtmaid@unisza.edu.my

Abstract

Online news portals in Malaysia are at present not governed by any specific legislative controls. Neither the licensing regimes of the Printing Presses and Publications Act 1984 nor the Communications and Multimedia Act 1998 that govern the traditional print as well as the new communications and multimedia industries respectively apply to online news portals and other online publication platforms. The present setup is detrimental to the media industry since only the print media are controlled by pre- and post-publication laws, whilst online news portals appear to enjoy greater freedom due to the government's guarantee not to censure the Internet. The discriminatory treatment between the traditional and new media has contributed to the change in the media landscape as online news portals and other online publications are continuously preferred and gaining wide acceptance by the people in the country. In line with the proposed establishment of an independent media council in Malaysia, it is therefore pertinent to examine the regulatory mechanism that has been adopted to self-regulate the print and online media in other countries. For this reason, the present study, which is qualitative in nature, will adopt legal doctrinal and comparative analysis to examine the Independent Press Standards Organisation in the UK and to determine the possibility of adopting such system to the media industry in Malaysia. To sum up, it is submitted that in this era of IR4.0, the same regulatory framework should be applied to both the print and online media.

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1. Introduction

The 2020 Digital News Report, which was recently published by the Reuters Institute for the Study of Journalism, has once again revealed that online and social media continued to have a great impact on the news consumption among the people in Malaysia (Newman et al., 2020). Though the statistics on source of news showed that online media suffered a slight decrease by one per cent from the preceding year to 86 per cent in 2020, online news portals, such as Malaysiakini, The Star online, Astro Awani online, Free Malaysia Today and many others, have been considered as the preferred sources of news among the surveyed respondents in the country. On the contrary, the data on sources of news for the print media have dropped significantly from 45 per cent in 2019 to merely 30 per cent this year. There are a number of factors that could have led to the downfall of the print media industry (Nain, 2018), but this study will only focus on the legal mechanisms affecting the traditional print as well as the online media in the country.

The principal legislation governing the publication of news by means of printed materials like newspapers and magazines is the Printing Presses and Publications Act 1984 (PPA). The PPA originated from the Printing Press Ordinance 1948 that was enacted by the British government before Malaysia's independence. The Printing Press Ordinance 1948 remained in operation until the occurrence of the 13th May 1969 incident that had caused the ruling government to revise it into the Printing Press Act 1948 (Revised 1971) (Sani, 2009). Later, the Printing Press Act 1948 (Revised 1971) together with the Control of Imported Publications Act 1958 were repealed and consolidated into the PPA in 1984. Since then, the provisions of the PPA have been resorted to by the authorities to strictly control the printing and publication of all printed materials in the country. (Rachagan, 1993). Nonetheless, online news portals or other types of online platforms fall outside the PPA's remit as the statute has been principally legislated to govern the print industry (Buang, 2015). Therefore, the most relevant legislation for the governance of such platforms is the Communications and Multimedia Act 1998 (CMA).

The CMA, which came into force on 1 April 1999, was specifically formulated "to regulate the converging communications and multimedia industries" in the country. As such, it seems that online news portals or various other types of online platforms will be subject to the regulatory regime of the CMA. Nonetheless, detailed analysis of the relevant provisions of the CMA reveals the Communications and Multimedia (Licensing) (Exemption) Order 2000 has explicitly exempted proprietors or operators of online platforms including online news portals from procuring any license. As a result, though this arrangement may arguably be detrimental to the traditional media, it was alleged that the exclusion is conforming to the government's guarantee not to censure the Internet which is deliberately stated in section 3 of the CMA as well as the MSC Bill of Guarantees (Ismail Nawang et al., 2020).

2. Problem Statement

Publishers of the print media are bound by prior publication restrictions in the form of printing license and publication permit under the PPA. On the contrary, online publishers, including online news portals, can simply publish and disseminate any news or information on their platforms without procuring license under the CMA. Despite the fact that other post publication laws including the Penal Code, the

Sedition Act 1948, the Defamation Act 1957, the Official Secrets Act 1972 and many others may equally apply to both offline and online media, the regulatory regime under the PPA and the CMA has resulted in two different sets of standards for the print and online media. It is unfortunate for the print media as not only they are struggling to survive in the digital era, but their proprietors are also compulsorily obliged to comply with strict regulations under the PPA. As for online news portals, not only they are gaining growing acceptance and rising influence among the people in the country, the current legal setup under the CMA seems to provide greater freedom of speech and expression in the cyber world (Ismail Nawang, 2014). Therefore, with the proposed establishment of a media council is on the horizon, it is indeed timely to resolve the issue of two distinct standards for the traditional print and the online media in Malaysia by analysing and referring to the legal approach that is currently being employed by the Independent Press Standards Organisation (IPSO) in supervising online and offline media in the UK.

3. Research Questions

The main research question of the study is centred on comparative analysis with the legal framework in the UK in governing the traditional print as well as the internet-based media. For that reason, the article seeks to determine whether the traditional media and the new online news platforms in the UK are governed by the same regulatory controls and legal standards. Consequently, the related question is what is the regulatory style that has been employed by IPSO in governing the media industry in the UK.

4. Purpose of the Study

The study aims to explore the UK's approach in regulating the print and online media and to examine the application of self-regulatory style that has been adopted by IPSO to supervise and administer all media industries under its remit. Ultimately, it will explore the possibility of applying or adopting self-regulatory style to govern the media industry in Malaysia.

5. Research Methods

This is a qualitative research that adopts pure legal doctrinal methodology. Bhat (2019) has elaborated legal doctrinal research as an “entirely library-based research, relying on primary and secondary sources almost monotonously, and aiming at a coherent exposition of the law with diverse arguments drawn from theoretical perspectives and secondary materials on social experience” By utilising doctrinal research, the article examines the provisions of the IPSO's Articles of Association (AOA), the IPSO's Regulations and the Editor's Code of Practice (Code) as these documents are the primary sources in overseeing and regulating the media industry in the UK. Apart from these instruments, certain rulings by the IPSO related to this study have also been analysed in this study.

In searching for an effective legal framework to govern online platforms in Malaysia, the article has adopted a comparative study with the UK with the intention that the practice in that country could be of assistance in the setting up of the proposed Media Council in the country. Manning (1983) has argued that a comparative study can be used to avert the potential occurrence of future mistakes as past

experience and practices in other nations would be very valuable in determining and solving uncertainties. It is further argued by Zweigert & Kötz (1987) that for a comparative study, a researcher is required to “first lay out the essentials of the relevant foreign law and then uses this material as a basis for critical comparison, ending up with a conclusion about the proper policy for the law to adopt, which may involve a reinterpretation of his own system”.

6. Findings

The Independent Press Standards Organisation (IPSO) is an independent regulator that has been authorised to oversee and self-regulate most of the UK’s newspapers and magazines. IPSO was officially established on 8 September 2014 subsequent to the findings of the Leveson Report in 2012 which among others recommended for the setting up of a new regulator to replace the Press Complaints Commission (PCC) (Hunt of Wirral, 2017). The proposal for the establishment of a new regulator was mooted as the PCC was regarded as an ineffective and ‘toothless’ regulator in safeguarding the public interest as well as the interest of the press industry, in particular after the exposure of the British phone hacking controversy involving the News of the World (BBC, 2014; Des Freedman, 2012).

From historical perspective, the print media in the UK has been governed by a self-regulatory body for the print industry starting from the inauguration of the Press Council in 1953. Unfortunately, the Press Council had after a few years failed to effectively carry out its expected functions, especially in tackling privacy problems (Tambini et al., 2008) and was regarded to have ‘reached a state of terminal discredit’ (Shannon, 2001). Subsequently in the year of 1990, the Report of the Calcutt Committee suggested for the setting up a statutory tribunal to replace the Press Council, but the print industry was still given a final chance to incorporate a voluntary regulatory body. This has led the print industry to hastily rush into launching the Press Complaints Commission in 1991 (PCC) (Munro, 1997) as its desperate efforts to persuade the relevant authorities that the press industry could still supervise and control itself without the need of establishing a statutory-backed institution (Robertson & Nicol, 2008). From 1953 and until today, the self-regulatory system has been employed to regulate newspapers and magazines in the UK.

At present, IPSO is the self-regulatory body that is charged with enforcing the Editor’s Code of Practice (the Code). As part of its setup, selected members from the press have been jointly appointed as the Editor’s Code of Practice Committee (the Code Committee) that is responsible for framing and revision of the rules of the Code. These rules have been incorporated in the contractual agreement between IPSO and the subscribing members of IPSO that voluntarily pledge to accept it. The Code is therefore the cornerstone of the self-regulatory system administered by IPSO which aims to equate the conflicting individual rights, particularly the right to privacy, with the public’s right to know. Even though the Code does not replace other existing laws or confer special protections to media practitioners in civil or criminal proceedings (Jordan, 2009), its significance is duly recognised by statutes including the Human Rights Act 1998 and the Data Protection Act 1998. As such, it is pertinent to examine IPSO’s remit and various sanctions that are prescribed by the Code as well as IPSO’s Regulations and Articles of Association (AOA).

6.1. IPSO's Remit

The remit (or terms of reference) of IPSO is clearly specified in its AOA and Regulations. According to Article 7.1 of IPSO's AOA, all "editorial content included in a printed newspaper or magazine" and "editorial content on electronic services operated by Regulated Entities such as websites and apps, including text, pictures, video, audio/visual and interactive content" will be monitored and controlled by IPSO. Similarly, Regulation 1 of the IPSO's Regulations has adopted the same provisions on the remit of IPSO. Therefore, it is apparent that all editorial materials published by Regulated Entities (i.e. member publishers that have voluntarily subscribed to the Scheme Membership Agreement with IPSO) are subjected to IPSO's regulation. Nevertheless, a number of exclusions to IPSO's remit have been explicitly stipulated in Article 7 of its AOA and Regulation 4 of its Regulations. These exemptions include complaints relating to 'user generated content' that is displayed on the member publishers' websites and such content is not moderated or reviewed by the publishers. Further, it is also beyond IPSO's remit to entertain complaints relating to online publications that do not belong to member publishers' website. As such, these exclusions indicate that member publishers need to have actual knowledge of any disputed content before they could be held responsible for such publications by their readers or subscribers of their websites.

It is further observed that the remit of IPSO is similar to the PCC's whereby it was initially applicable to editorial content of printed newspapers and magazines only. Due to the rapid advancement of web-based publications, the remit was in 1997 extended by the Press Standards Board of Finance (PressBof) to online versions of the printed publications. In 1999, the remit of the PCC was revised to include UK based publications that are only published in the electronic forms and voluntarily subscribe to the Code and the PressBof. To sum up, it is clear that the remit of IPSO is similar to its predecessor as it has been established to replace the PCC and has been commissioned to solve complaints on all edited publications of its members.

6.2. IPSO's Sanctions

The PCC, which is the previous regulatory body for the press industry in the UK, was only allowed to publish critical adjudication against its member publishers that have violated the provisions of the Code. On the contrary, IPSO is authorised by Regulation 66 of the IPSO's Regulations to impose additional sanctions including the termination of the membership agreement upon the endorsement of such complaint by the Complaints Committee. Nonetheless, it is alleged that despite the availability of these sanctions, the publication of adverse adjudication against the member publishers is a very forceful 'name and shame' sentence as nobody desires his faults to be publicly exposed (Sellars, 2011). The argument is founded upon records from previous years that are reported in the PCC annual reviews which revealed that most of these complaints have been settled without formal adjudication but rather through conciliation between the parties. As such, Regulation 22 provides that remedial actions ought to comprise an obligation for member publishers to publish a correction or adjudication. In addition, IPSO is authorised to decide on the magnitude and position of corrections and adjudications provided that they consider the nature of member publishers and their publications. The exercise of this discretionary power

by IPSO in resolving complaints can be seen illustrated by the case of *Wilson v The Press Journal*. In this case, the member publisher was instructed to publish the corrections “in full, on page 3 or further forward” despite the fact that it had initially proposed to publish such corrections in page 5 or 6.

Apart from the publication of critical adjudication, IPSO has now been authorised to inflict financial penalties on its member publishers or grant monetary compensation to the persecuted complainants. The amount of fines and costs to be imposed on the Code violators will be flexible and is subject to IPSO Financial Sanctions Guidance issued by the Regulatory Funding Company (the RFC). By virtue of Paragraphs 2.1 and 2.2 of the IPSO Financial Sanctions Guidance, any member publishers that have been found in a Standards Investigation to have committed a Systemic Failure may be inflicted with a fine not exceeding 1% of their annual turnover or up to the maximum of £1,000,000 for every Standards Investigation. The publishers may also be requested to pay reasonable costs for a Standards Investigation. Thus, it is argued that the power to impose financial sanction or fine is indeed timeous to respond to criticisms which had labelled the PCC as “toothless” for its inability to pass financial sanctions. In addition, the additional monetary sanction would correspond with the argument that the imposition of fine is a crucial balance as it was alleged that more often than not member publishers breach the Code for monetary benefits like ratings among their readers, revenues from advertisements and others. (Coad, 2003).

7. Conclusion

Online news portals and various other types of online platforms in the country are at present not bound by specific legislative controls. The licensing regime under the PPA that controls and regulates the print media is clearly not applicable to the non-printed platform. On the same note, the licensing scheme of the CMA is also not applicable to supervise and govern online news portals although the CMA has been specifically formulated to cater the converging information and communication technology. As such, there exists two distinct regulatory controls governing the traditional print media and the new online media like online news portals and various other types of online news platforms. This situation is definitely undesirable and thus reference to the practice or regulatory framework in other countries would be appropriate to address the issue.

In the UK, both the traditional and online media are administered by IPSO, the current self-regulatory body that is empowered to adjudicate any complaints against Regulated Entities i.e., member publishers that have voluntarily subscribed to the Code to be enforced by IPSO. The remit of the IPSO has clearly shown that there will be no different treatment between offline and online media and the same regulations shall apply to all publishers regardless of their medium. This kind of arrangement will definitely provide clarity and consistency to all media players in the UK. In relation thereof, it is submitted that the same model should be ideally considered or adopted by the proposed media council in Malaysia in regulating the media industry in the country. It is further argued that the government should also consider the application of self-regulation for the media as it has been successfully employed for more than 60 years in the UK. Self-regulation is not something new in Malaysia as this regulatory style has been used to regulate online content by the Communications and Multimedia Content Forum (CMCF) since its establishment in February 2001.

In short, it is submitted that the existing legal framework that seems to accord greater advantage to online news portals and online publications over the traditional print media should be thoroughly revisited and revamped. In this digital era, online platforms should be treated on the same footing with their printed counterparts and thus similar legislative measures or regulatory controls should equally apply to both media. IPSO in the UK would be a great and beneficial reference as it a regulatory body that has been designated for offline and online media. Further, IPSO has just continued the application of self-regulatory style from its predecessors since 1953 and such regulatory style appears to be effective and appropriate for the media industry.

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