

AN EVALUATION OF THE

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**FILM CENSORSHIP  
FRAMEWORK**

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IN MALAYSIA

A report commissioned by  
**FREEDOM FILM NETWORK**

Researcher

**MAHA BALAKRISHNAN**



## **An Evaluation of The Film Censorship Framework in Malaysia**

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# LIST OF ABBREVIATIONS

CMA	Communications and Multimedia Act 1998 (Act 588)
CMA Content Code	Malaysian Communications and Multimedia Content Code, 14 February 2020
FCA	Film Censorship Act 2002 (Act 620)
FC Guidelines	Film Censorship Guidelines 2010
FINAS	National Film Development Corporation of Malaysia, or <i>Perbadanan Kemajuan Filem Nasional</i>
FINAS Act	<i>Perbadanan Kemajuan Film Nasional Malaysia Act 1981 (Act 244)</i>
LPF	Film Censorship Board of Malaysia or <i>Lembaga Penapis Filem Malaysia</i>
MCM	Ministry of Communications and Multimedia
MCMC	Malaysian Communications and Multimedia Commission
MCMC Act	Malaysian Communications and Multimedia Commission Act (Act 589)
MOHA	Ministry of Home Affairs
OSA	Official Secrets Act 1972 (Act 88)
PPPA	Printing Presses and Publications Act 1984 (Act 301)
UDHR	Universal Declaration of Human Rights
UN	United Nations



# 1

# EXECUTIVE SUMMARY


# 1 Executive Summary

- 1.1 It has been observed that film censorship in Malaysia is driven by two factors – politics and religion.<sup>1</sup> These drivers have resulted in a film censorship framework that is premised on prior censorship, state control, and a set of content restrictions that are at once extensive in scale and prescriptive. In that context, this report explores the following questions:
- (a) Do the principal structural elements of the film censorship framework under the Film Censorship Act (FCA) create a rights-based, inclusive, transparent, and accountable regulatory system?
  - (b) Do the content restrictions imposed on films lead to a violation of the right to freedom of expression?
  - (c) Are these restrictions reasonable, proportionate and relevant?
  - (d) What improvements should be made to the film censorship framework?
- 1.2 To answer these questions, this report begins with a summary of the international and jurisprudential principles on freedom of expression (Chapter 3). It is followed by an analysis of the origins, laws, policies and operating guidelines for the FCA's film censorship framework (Chapter 4). For the purposes of a comparative analysis, Chapter 5 sets out the key features of parallel content control frameworks in Malaysia. In Chapter 6 of this report, the distilled components of the FCA's film censorship framework from Chapter 4 are evaluated through the lens of the principles on freedom of expression from Chapter 3, and compared to other domestic content control modalities from Chapter 5. The findings from this analysis include the following:
- (a) The government exerts 360° control over the content of films displayed on traditional (non-internet) platforms. The government defines what is restricted or unlawful content and it controls who are the decision-makers who enforce those content restrictions (i.e., the censorship board and its appeals panel). In addition, the government has the power to override the decisions of their appointed decision-makers. Under the FCA, there is also an attempt to exclude judicial oversight by the Malaysian courts.
  - (b) The operating rules do not expressly require that industry participants must be included in the process of reviewing films for censorship, or that the censorship board must be comprised of representatives from a cross-section of stakeholder groups, although individuals with industry experience have been appointed as members of the board in the past. This policy position is in polar opposition to the industry self-regulation framework under the Communications and Multimedia Act (CMA), which prioritises industry involvement in defining and administering content regulation in the online space. The mandatory inclusion of industry and civic society voices in the FCA's regulatory framework will counterbalance the likelihood of government or partisan political bias in decision-making, and ensure that a cross-section of Malaysian perspectives are taken into account in applying contemporary community standards to questions of content censorship and the balancing of fundamental rights.

## FOOTNOTE

<sup>1</sup> F.K. Hassan Basri and R.A. Alauddin, 'The search for a Malaysian cinema: between U-Wei Shaari Shuhaimi Yusof and LPFM', in Samsudin A. Rahim (ed.), *Isu-isu Komunikasi, Pusat Pengajian Media dan Komunikasi UKM, Bangi, Malaysia, 2003*, pp. 13-29.



- 
- (c) The imposition of prior censorship on filmmakers paired with criminal penalties for non-compliance is unreasonable, disproportionate and arguably unconstitutional. Parallel regulatory mechanisms for online content and print media do not include similar restrictions, which underscores the unequal treatment of filmmakers and that such prior censorship restrictions are not necessary in a contemporary democratic society.
  - (d) The censorship guidelines formulated and implemented by the government, and which have not received parliamentary approval, are also potentially unconstitutional, as they improperly prohibit and violate the right to freedom of expression under the Federal Constitution.
  - (e) While some of the content restrictions in the censorship guidelines are necessary and reasonable, many of them are vague or totally discretionary, such that their precise meaning cannot be easily ascertainable by those who need to abide by it, and they provide the censorship board with potentially arbitrary interpretive latitude. In addition, there are restrictions that conflate what is 'offensive' or 'distasteful' with 'harmful'.
  - (f) There is no obvious or discernible policy imperative for a wholly state-run content regulation scheme for films on traditional platforms, or for the imposition of prior censorship (prior restraint) and criminal penalties. Neither is there a clear policy rationale not to convert the existing regulatory framework into an industry self-regulation mechanism, similar in structure and operations to the Content Forum regulation model for online content under the CMA. The latter framework adopts self-regulation, does not include prior censorship and adopts a more inclusive approach to setting and implementing content standards.<sup>2</sup> That the Content Forum continues to operate in relative stability within the same unique socio-political landscape as the FCA, rebuts the perception that paternalistic, state-controlled content regulations are necessary in Malaysia, and presents a starting template for a new content regulation model for the traditional film industry.

**FOOTNOTE**

- <sup>2</sup> While there have been various instances in which the state's investigative and prosecutorial powers under the CMA have been used to quell criticisms against those in political leadership or to suppress public discourse on issues considered 'sensitive' to the government's political interests, these instances do not derogate from the operational durability of the CMA's content regulation framework.

- 1.3 Based on these findings, this report proposes several recommendations for reform. These include recommendations for a complete revamp of the film censorship framework, some of which are long term initiatives that require structural and legislative changes. There are also several recommendations that can be implemented in a more short-term or immediate time frame with minimal structural and policy support. The recommendations are detailed in Chapter 7, and fall within these headnotes:
- (a) Restrictions on freedom of expression in film must be approved by Parliament and fall within the range of permissible restrictions under the Federal Constitution.
  - (b) Prior censorship (prior restraint) of films must cease.
  - (c) The criminalisation of the failure to submit films to the censorship board for review must cease.
  - (d) A self-regulated industry forum should be established to determine, administer and enforce content standards for the film industry.
  - (e) The development of a Content Code for films must be industry-led and consultative.
  - (f) Restrictions on film content must conform with a rights-based approach, and strict tests of necessity and proportionality.
  - (g) The classification scheme for films must be standardised, based in statutory law, and not used as a censorship tool.
  - (h) The regulatory bodies administering the classification scheme must be independent, inclusive, consultative and accountable.

PHOTO: Adam Zainal



# INTRODUCTION

## 2

## Introduction

## BACKGROUND

- 2.1 Film censorship has played a peripheral role in the public discourse on freedom of expression in Malaysia. Efforts to reform policies impacting freedom of expression have been reflexive; they focus on cases that appeal to the urgency of the moment, and that have immediate consequences on personal liberty or financial security of the afflicted parties, such as the revocation of press permits, book banning and social media policing. In the instances when the spotlight has been trained on banned or censored films, resolution has often been swift and administrative, the surrounding conversation has rarely resulted in an in-depth assessment of the mechanisms of film censorship, and public sentiment never achieved the critical mass necessary to lead to policy change.
- 2.2 The prosecution of Malaysian activist Lena Hendry under the Film Censorship Act in the mid-2010s for the screening of Callum Macrae's documentary *No Fire Zone: The Killing Fields of Sri Lanka* brought to the fore the heavy hand of the state under the FCA,<sup>3</sup> such as the coercive requirement of prior censorship for films (even non-commercial films), the imposition of criminal sanctions and the powers of enforcement officers to raid and seize private property.<sup>4</sup> Lena Hendry's case however, fell squarely within the confines of 'political persecution',<sup>5</sup> and did not seem to elicit strong reaction from the local film industry.
- 2.3 To date, the local film industry has not mobilised in a discernible or concentrated way around regulatory reform. In fact, aspects of the film censorship framework disincentivise filmmakers from pushing back too hard against censors to exert their right to creative freedom or the audience's right to self-determination. Prior censorship in Malaysia requires that films must undergo censors' vetting before they can be publicly offered. Censorship restrictions are opaque and sweeping, and endow censors with significant veto power and interpretative latitude. Censors are authorised to impose scene and dialogue cuts, and the repercussions can be severe for filmmakers unprepared for post-production edits or reshoots. Self-censorship is often 'a means of survival' within the industry.<sup>6</sup> An informal practice has evolved of filmmakers running scripts and story outlines past censors and, at the urging of the censors, obtaining 'pre-approval' from authorities such as the police and religious bodies, who have assumed the power to veto how certain aspects like police behaviour, law and order or religion are portrayed in local films. Whether a filmmaker engages censors during the production process or only submits the film in accordance with the formal process (as would be the case for imported films), any pushback and negotiation over censored content, any assertion of creative freedom

## FOOTNOTE

- <sup>3</sup> *Film Censorship Act 2002 (Act 620) ["FCA"]*.
- <sup>4</sup> H.L. Fang, 'Case Study: The case of Lena Hendry and Freedom of Expression in Malaysia', *Forum-Asia*, 16 August 2018, <https://www.forum-asia.org/?p=27067>, (accessed 13 November 2020).
- <sup>5</sup> It was widely reported that the Sri Lankan High Commission had applied pressure on the Malaysian government to take action to stop the screening of the documentary and initiate prosecution. See: H.L. Fang, 'Case Study: The case of Lena Hendry and Freedom of Expression in Malaysia'.
- <sup>6</sup> T. Barker, *Censorship and its Impact on the Screen Industries in Malaysia*, Kuala Lumpur, Freedom Film Network (FFN) Malaysia, 2020, p. 2.

and any eventual compromise of the original vision is made behind the scenes and, crucially, out of the public eye. A filmmaker who chooses to legally challenge the censorship of her/his film puts at risk the return on their investment while the film is caught in stasis pending the resolution of the case. By the time the curtain is raised, the concessions on freedom of expression and self-determination have been made. It is not surprising therefore that there appear to be no reported legal cases in Malaysia of filmmakers challenging the censorship of their films.<sup>7</sup>

- 2.4 Contrast this with the print media: the power of the state to censor printed content (books and newspapers, etc.) occurs post-publication, through for example, the banning and confiscation of the offending material.<sup>8</sup> Numerous legal challenges have been taken against the state over the scope of its power to ‘censor’ content, and for violations of the right to freedom of speech and expression. The body of judicial precedents from these cases have defined and redefined the scope of the right to freedom of speech and expression, the parameters of what is and is not permissible content, and the limits of the state’s power to regulate content. These decisions bind the state’s powers as it does the rights of individuals and industry stakeholders. There is public value in taking such cases to court, as the resulting discourse on the parameters of freedom of expression and state power to control content takes place under public and political scrutiny, even as the courts make determinations on questions such as ‘national security’ and ‘public order.’
- 2.5 As Malaysia embraces industry self-regulation within the communications and multimedia industries, and as traditional media migrates to digital and online platforms, the film censorship framework is increasingly an anachronism in the field of content regulation in Malaysia. The policy distance between the two content regulation models relate partly to their origins and their functionality in advancing different state interests. Nevertheless, both serve the function of regulating content that is being delivered or accessible to all segments of contemporary Malaysia. As such, the issue is whether the policy rationale for the traditional film censorship framework remains valid, necessary and proportionate.
- 2.6 Against this backdrop, this report drills into the film censorship framework under the FCA, and subjects it to legal and comparative analysis on the following questions:
- (a) Do the principal structural elements of the film censorship framework create a rights-based, inclusive, transparent, and accountable regulatory system?
  - (b) Do the content restrictions imposed on films lead to a violation of the right to freedom of expression?
  - (c) Are these restrictions reasonable, proportionate and relevant?
  - (d) What improvements should be made to the film censorship framework?

#### FOOTNOTE

- 7 *The absence of reported decisions does not definitively mean that no legal actions have been taken to challenge the authorities’ censorship decisions under the FCA. However, it does indicate that the number of such cases are nil to nominal.*
- 8 *While publishers and printing press owners require a licence under the Printing Presses and Publications Act 1984 [“PPPA”], the regulations do not include a prior censorship mechanism for printed content. Instead, the government has the authority to ban printed material after publication on a number of grounds, and in the course of doing so, it can consequentially revoke or suspend publication/printing press licences.*

## METHODOLOGY

- 2.7 To answer the questions posed above, a review was conducted of primary and secondary documentary sources, including statutes, other legal and operational documents, academic studies and subject matter commentaries. Limited clarification and verification was obtained directly from regulators on specific background issues relating to the application of rules and procedural operations. The primary policy, regulatory and procedural features of the FCA were identified from these data sources, and pulled together into a comprehensive summary of the film censorship framework. The framework was then evaluated against legal principles on freedom of expression, and compared to domestic content control mechanisms for other mediums/platforms.
- 2.8 Domestic comparables were chosen for this purpose instead of a country-to-country comparative analysis for the following reasons: studies using the latter methodology already exist.<sup>9</sup> Such studies have often been dismissed by domestic state actors using normative arguments about the inapplicability of international or 'Western' human rights standards to Malaysia, i.e. that such 'borrowed' ideals are inappropriate to Malaysia's socio-political culture and landscape. Thus, domestic comparables and measures were used in this report to counteract that argument; since the 'unique' social and political conditions in Malaysia would apply across the board domestically.
- 2.9 In addition to medium-specific regulations, content delivered through speech and expression are subject to a host of general laws relating to sedition, defamation, consumer protection, advertising, contempt of court, and certain criminal offences under the Penal Code. Being of generic application to all content mediums and platforms, these laws are not specifically discussed in this report except where they are referred to in the FCA or its related guidelines.
- 2.10 Two aspects of the film censorship framework are not included in this report. First, special conditional exemptions under the FCA have been designed for broadcasters like Astro and the Media Prima platforms. In light of the exemptions, this report does not cover how these broadcasters regulate their content and operationalise the conditions under the exemptions. Efforts to do so would have required extensive data-gathering from a cross-section of industry participants, which was not possible within the timeline and resources for this project. Second, this report is limited to an evaluation of the regulatory framework in place to regulate film content; it does not include other matters falling under the FCA's jurisdiction, such as film-publicity materials or enforcement actions.
- 2.11 It is recommended that this report be read together with *Censorship and its Impact on the Screen Industries in Malaysia* by Thomas Barker which, among others, contains a comprehensive study of the impact of film censorship on screen industry practitioners.<sup>10</sup>

### FOOTNOTE

- <sup>9</sup> S.T. Guan, *Film censorship in the Asia-Pacific Region: Malaysia, Hong Kong, and Australia compared*, Oxford, UK, Routledge, 2013.
- <sup>10</sup> Barker, *Censorship and its Impact on the Screen Industries in Malaysia*.



# FREEDOM OF EXPRESSION IN MALAYSIA

## 3

# Freedom of Expression in Malaysia

- 3.1 Freedom of expression is a foundational liberty in a democracy. While integral in and of itself, it is also 'a lynchpin of democracy' - an indispensable condition for the realisation of other human rights and the fulfilment of democratic tenets such as transparency and accountability in governance.<sup>11</sup> Hence, the upshot of restrictions on the freedom of expression is that they not only impact the rights of persons to communicate, receive and access information, they also impede the fulfilment of other fundamental rights that impact society's overall role in promoting and preserving democracy.
- 3.2 Film censorship is a measure that curbs freedom of expression. There are legitimate reasons for some forms of censorship, in particular to protect individual reputations and uphold the interests of national security, and public order and morality. How the competing aims of freedom of expression and censorship are balanced in any given society will depend on the extent to which freedom of expression is understood and institutionalised within the fundamental - and evolving - diversities of its socio-political system.<sup>12</sup> This factor is of singular importance in the Malaysian context.

## MALAYSIA'S SOCIO-POLITICAL CONTEXT

- 3.3 Malaysia is situated within a region that has historically been buffeted by the crosswinds of Indo-China competition, and rival colonial and ideological forces. Since independence, Malaysia's deeply-rooted politics of ethno-religious identity have been the bulwarks for a political structure that combines authoritarian power<sup>13</sup> with consociational governance<sup>14</sup> where each condition relies on the other for symbiotic durability.<sup>15</sup> This political structure enabled a single political coalition, the *Barisan Nasional* (BN) to stay in power for 61 years. Over the last 12 years however, Malaysia's semi-authoritarian political structure experienced a measure of

### FOOTNOTE

- 11 T. Mendel, 'Restricting Freedom of Expression: Standards and Principles: Background Paper for Meetings Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression', Centre for Law and Democracy, 2010, p. 1, <http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf>, (accessed 13 November 2020); United Nations Human Rights Committee, General Comment No. 34: Article 19: Freedom of opinion and expression, U.N. Doc. CCPR/C/GC/34, 21 July 2011, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, (accessed 13 November 2020).
- 12 S. Sen, 'Right to Free Speech and Censorship: A Jurisprudential Analysis', *Journal of the Indian Law Institute*, Vol. 56, No. 2, 2014, pp. 175-201.
- 13 Malaysia's political structure has been categorised within the spectrum of authoritarianism by leading political scientists. See: L.J. Diamond, 'Thinking About Hybrid Regimes', *Journal of Democracy*, Vol. 13 No. 2, 2002, pp. 21-35; S. Levitsky, and L.A. Way, 'The Rise of Competitive Authoritarianism', *Journal of Democracy*, Vol. 13 No. 2, 2002, pp. 51-65; M.M. Howard and P.G. Roessler, 'Liberalizing Electoral Outcomes in Competitive Authoritarian Regimes', *American Journal of Political Science*, Vol. 50 No. 2, 2006, pp. 365-381; S. Levitsky and L.A. Way, *Competitive Authoritarianism: Hybrid Regimes After the Cold War*, Cambridge University Press, 2010.
- 14 Consociationalism is a political model based on the building of a grand coalition of the political elite, where political power is uniformly shared between the dominant political parties for each ethnic/religious group. See: A. Lijphart, *Thinking About Democracy: Power sharing and majority rule in theory and practice*, New York, Routledge, 2008.
- 15 W. Case, 'Post-GE13: Any Closer to Ethnic Harmony and Democratic Change?', *The Round Table: The Commonwealth Journal of International Affairs*, Vol. 102, No. 6, 2013, pp. 511-519; M. Balakrishnan, 'Evaluating Malaysia's Consociational Design: Movements towards a Different Political Model', unpublished manuscript, University College London, 2014b.



democratisation.<sup>16</sup> The political opposition's successive electoral gains in 2008 and 2013 led to greater political awareness and wider traction for public discourse on democratic governance.<sup>17</sup> In 2018, regime change was achieved for the first time in Malaysia's history when BN was defeated at the polls. That tidal change however, was short-lived; the new government's coalition collapsed in February 2020, returning component parties of BN to Putrajaya, but not fully to the reins of power.

3.4 These political dynamics underscore the singular nature of Malaysia's socio-political system. The reliance on ethno-religious identifiers to drive and divide interaction and competition in the political, economic and social spheres places communal dynamics under continuous stress. In addition, the interplay between these drivers is taking place as Malaysia's growing Malay-Muslim majority increasingly leans towards Islamic conservatism, and embraces Islam's role in providing organizational principles for both governance and societal life. The state (or dominant political elite of the day) is therefore invested, for its survival, in ensuring that the 'correct' version of religion, culture, ethnic identity, ethno-religious interactions and history are represented in the public sphere.

3.5 In such a political ecosystem, human rights often take a backseat to the policy (and political) imperative to emphasise society's collective duties over individual rights. Precedence is accorded to 'harmony of the socio-political order' and 'respect for hierarchy'; reverence is inculcated for 'nation, religion, culture, race, family and community',<sup>18</sup> all of which has influenced how most fundamental rights, particularly freedom of expression, are understood and prioritised in Malaysia.



PHOTO: ZSA Productions

FOOTNOTE

16 Case, 'Post-GE13: Any Closer to Ethnic Harmony and Democratic Change?'; B. Welsh, 'Malaysia's Elections: A Step Backwards', *Journal of Democracy*, Vol. 24, No. 4, 2013, pp. 136-150; M. Balakrishnan, 'Malaysia's Liberalising Electoral Outcomes in 2008 and 2013: Falling Short of Regime Change', unpublished manuscript, University College London, 2014a.

17 Ibid.

18 S.S. Faruqi, *Free Speech and the Constitution*, [1992] 4 CLJ 1 xiv, p. xiv.

## THE CONSTITUTIONAL GUARANTEE OF FREEDOM OF EXPRESSION

- 3.6 The Malaysian Federal Constitution guarantees freedom of speech and expression for its citizens. Article 10(1)(a) of the Constitution provides that, '...every citizen has the right to freedom of speech and expression'. As a constitutional guarantee, any law which is inconsistent with the Constitution will, to the extent of the inconsistency, be void.<sup>19</sup>
- 3.7 Fundamental liberties are not absolute; every system of law imposes some limitations on free speech and expression. In Malaysia however, the constitutional protection comes with substantial caveats. A total of 16 permissible restrictions are laid down within the Constitution,<sup>20</sup> 12 of which are within Article 10 itself.<sup>21</sup> Article 10(2), gives Parliament the authority to enact laws to impose:

***...such restrictions as it deems necessary or expedient in the interest of the security of the Federation [or any part thereof], friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence...***

- 3.8 Once a law that imposes restrictions on freedoms under Article 10(2) has been passed by Parliament, its validity cannot be challenged merely on whether the restrictions are necessary or expedient for the purposes laid out under Article 10(2).<sup>22</sup>
- 3.9 Article 10(4) empowers Parliament in the interest of the security of the Federation or public order to pass laws prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative under Articles 152, 153 or 181.
- 3.10 The Constitution also allows the regulation of the propagation of religion to Muslims,<sup>23</sup> and criminalisation of the propagation of ideas that are against the precepts of Islam.<sup>24</sup> Freedom of speech and expression may also be expressly curtailed by Parliament in passing laws relating to subversion<sup>25</sup> or in proclamations of emergency.<sup>26</sup>

### FOOTNOTE

<sup>19</sup> Federal Constitution, Art. 4(1).

<sup>20</sup> S.S. Faruqi, 'Reform needed to protect free speech', *The Star*, 27 September 2018, [http://202.58.80.74/newspaper/2018/September/PTAR%20Undang-Undang/PUU\\_20180927\\_TS\\_Reform\\_needed\\_to\\_protect\\_free\\_speech.pdf](http://202.58.80.74/newspaper/2018/September/PTAR%20Undang-Undang/PUU_20180927_TS_Reform_needed_to_protect_free_speech.pdf). See also Faruqi, *Free Speech and the Constitution*.

<sup>21</sup> *Ibid.*

<sup>22</sup> See Article 4(2) of the Federal Constitution; the material part reads: 'the validity of any law shall not be questioned on the ground that ... it imposes such restrictions as are mentioned in Article 10(2) but those restrictions were not deemed necessary or expedient by Parliament for the purposes mentioned in that Article'. This position runs counter to international law which requires governments to prove that the restrictions are objectively necessary and are the least intrusive way of achieving the purpose of the permissible restriction. See: 'Balancing Freedom of Expression and State Interests' below.

<sup>23</sup> Federal Constitution, Art. 11(4).

<sup>24</sup> Federal Constitution, Schedule 9, List II, para. 1. See also Faruqi, 'Reform needed to protect free speech'.

<sup>25</sup> Federal Constitution, Art. 149.

<sup>26</sup> Federal Constitution, Art. 150.

3.11 The use of sweeping language in these constitutional derogation clauses leaves them open to generous interpretation, and allows curbs to be imposed on public discourse in any of the shared spheres of interaction, whether political, civic, economic or cultural. In short, the restrictions themselves are absent restraints, which weakens the ostensible inviolability of human rights as a constitutional safeguard against state overreach. As summarised by constitutional academic Shad Saleem Faruqi:

**“ ... the presence of such a large number of constitutionally permissible restraints on freedom of speech and expression... [makes] it highly improbable that a parliamentary enactment will ever be held to transgress the limits of the Constitution. The Constitution has been so devised as to give the Government in Parliament virtually unfettered powers to do whatever it wishes to do to regulate speech, assembly and association...”<sup>27</sup> ”**

3.12 Currently, there are approximately 35 statutes that encroach on freedom of speech and expression either directly or indirectly, and many of these statutes confer absolute and/or subjective powers on the Executive to restrict freedom of speech and expression.<sup>28</sup>

3.13 Another shortcoming is that Article 10(1)(a) does not clearly define the scope of freedom of expression; it lacks the depth of articulation found in international human rights standards, where for example, freedom of expression has been expressed to encompass the freedom to hold opinions and to seek and impart information. In Malaysia, the definition of the scope of Article 10(1)(a) has been left to judicial interpretation. This has led to uneven results, as the tides shift between judicial conservatism and activism. Over the years, the Malaysian courts have agreed that the guarantee of freedom of expression includes the written word, signs, symbols, music, paintings, sculptures, photographs, films, videos, cartoons, computer art, print media and cyber speech, as well as symbolic speech such as ‘a person’s dress, attire or articles of clothing’.<sup>29</sup> Freedom of expression ‘by interpretive implication’ also includes the right to receive information<sup>30</sup> (though not necessarily the right to access information<sup>31</sup>) and freedom of the press.<sup>32</sup> However, unlike the position in the UK and other common law countries, political speech is not accorded special status, but it is exercisable within the boundaries of Article 10(1)(a) and other constitutional limits.

#### FOOTNOTE

<sup>27</sup> See Faruqi, *Free Speech and the Constitution*, p. xvi.

<sup>28</sup> Faruqi, ‘Reform needed to protect free speech’ and Faruqi, *Free Speech and the Constitution*.

<sup>29</sup> *Muhamad Juzaili Mohd Khamis & Ors v State Government of Negeri Sembilan & Ors* [2015] 1 CLJ 954, p. 972 (para. 70). See also Faruqi, *Free Speech and the Constitution*.

<sup>30</sup> *Gopal Sri Ram FCJ’s dictum in Sivarasa Rasiah v Badan Peguam Malaysia & Anor* [2010] 3 CLJ 507 FC, p. 519 is relied on as the authority for this position: ‘Article 10 contains certain express and, by interpretive implication, other specific freedoms. For example, the freedom of speech and expression are expressly guaranteed by art. 10(1)(a). The right to be derived from the express protection is the right to receive information, which is equally guaranteed.’

<sup>31</sup> *The Court of Appeal in Minister of Energy, Water and Communication & Anor v Malaysian Trade Union Congress & Ors* [2013] 1 MLJ 61, pp. 62-32 held by a majority that ‘In Malaysia, members of the public had no right to access documents relating to the operation of government departments and documents that were in the possession of government Ministers or agencies.’ The decision was upheld by the Federal Court on appeal (*Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145).

<sup>32</sup> *Mkini Dotcom Sdn Bhd v Ketua Setiausaha Kementerian Dalam Negeri & Ors* [2013] 6 AMR 668, per Abang Iskandar J (as he then was); *Public Prosecutor v Pung Chen Choon* [1994] 1 MLJ 566, pp. 572-573, per Edgar Joseph Jr SCJ.



PHOTO: Behind the scenes, Interchange

## THE ROLE OF INTERNATIONAL HUMAN RIGHTS STANDARDS

### The United Nations Human Rights System

- 3.14 While Malaysia has recognised the universality of many human rights norms and participates in international platforms that promote the observance of human rights, its international stance on human rights is not wholly replicated in domestic laws and policies. International human rights treaties must be expressly ratified and incorporated through legislation before they are accepted into domestic law.<sup>33</sup> Malaysian courts are otherwise reluctant to apply international human rights precepts, citing Separation of Powers and parliamentary sovereignty.<sup>34</sup>
- 3.15 At present, Malaysia has ratified the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).<sup>35</sup> It has not signed up to other core international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Despite this, successive Malaysian governments, through participation in the United Nations system, have acknowledged its responsibilities as a member state with regard to fundamental norms on human rights.
- 3.16 As a member of the United Nations (UN), Malaysia is by implication bound by the Universal Declaration of Human Rights (UDHR). At Malaysia's admission to the UN on 17 September 1957, it expressly committed that it would observe the principles and purposes of the Charter of the United Nations (UN Charter).<sup>36</sup> The UN

#### FOOTNOTE

- 33 The Constitution does not provide a direct pathway to incorporate international law into domestic law. Instead, Parliament and the Federal Government are vested with general legislative and executive power respectively over 'External affairs, including... [i]mplementation of treaties, agreements and conventions with other countries': Federal Constitution, Art. 74(1) and the 9th Schedule, List 1 – Federal List, Item 1(b).
- 34 The early decision in *Merdeka University Berhad v Government of Malaysia* [1981] 2 MLJ 356, p. 366, referring to the UDHR as a non-legally binding instrument that is 'merely a statement of principles devoid of any obligatory character and is not part of our municipal law', has been followed in later cases such as the Federal Court decision in *Mohamad Ezam bin Mohd Noor v Ketua Polis Negara & Other Appeals* [2002] 4 MLJ 449, p. 453.
- 35 Malaysia acceded to the CEDAW and CRC in 1995 and to the CRPD in 2010, all with certain reservations. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=EN), (accessed 13 November 2020)
- 36 U.N. General Assembly, 12th Sess., 678th plen. mtg., U.N. Doc. A/RES/1134(XII) and A/PV.678 (17 September 1957).

Charter is the foundational treaty document for membership in the UN, and names as one of its key objectives the determination 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.' Member states pledge to take 'joint and separate action'<sup>37</sup> to promote 'universal respect for, and observance of, human rights.'<sup>38</sup>

- 3.17 The UDHR, which was adopted unanimously by the UN General Assembly on 10 December 1948 as a 'common standard of achievement for all peoples and nations,' recognises civil and political rights, and economic, social and cultural rights. The UDHR codifies or gives substance to the human rights referred to in the UN Charter, and is regarded as setting the common, minimum standard of human rights to which all people are entitled,<sup>39</sup> pending member states' ratification of thematic multilateral UN human rights treaties such as the ICCPR and the ICESCR. The UDHR recognises the universality of freedom of expression under Article 19, which establishes that everyone has 'the right to freedom of opinion and expression' which includes 'the freedom to hold opinions without interference' and to seek and impart 'information and ideas through any media and regardless of frontiers'.<sup>40</sup> On the international stage, Malaysia has at numerous junctures also reaffirmed its commitment to 'the purposes and principles'<sup>41</sup> and 'the philosophy, concepts and norms'<sup>42</sup> of the UDHR. It is argued that Malaysia formally recognised the UDHR through the passing of the Human Rights Commission of Malaysia Act 1999 (SUHAKAM Act).<sup>43</sup> The SUHAKAM Act calls for regard to be had to the UDHR to the extent that it is not inconsistent with the Federal Constitution.<sup>44</sup>

### ASEAN and The Commonwealth

- 3.18 Freedom of expression is a protected principle within the Commonwealth. The Commonwealth Charter of 2013 adopted by all member states (including Malaysia) commits its members to democracy, human rights (including freedom of expression), the rule of law and good governance.<sup>45</sup>
- 3.19 The ASEAN Human Rights Declaration (AHRD), which affirmed all the civil and political rights in the UDHR and which was adopted by heads of member states of ASEAN (including Malaysia) on 18 November 2012, states in Article 23 that: 'Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person's choice.'<sup>46</sup>

#### FOOTNOTE

37 U.N. Charter, Art. 56, <https://www.un.org/en/sections/un-charter/chapter-ix/index.html>, (accessed 13 November 2020).

38 *Ibid.*, U.N. Charter, Art. 55(c).

39 United Nations, 'Vienna Declaration and Programme of Action', World Conference on Human Rights, U.N. Doc. A/CONF.157/23 (25 June 1993), Preamble, para. 8.

40 United Nations, Universal Declaration of Human Rights, U.N. Doc. A/Res/217(iii), 1948, Art. 19.

41 United Nations, 'Vienna Declaration and Programme of Action', Preamble, para. 3.

42 United Nations, General Assembly, Note verbal dated 5 January 2017 from the Permanent Mission of Malaysia to the United Nations addressed to the President of the General Assembly, U.N. Doc. A/72/77 (17 April 2017), para. 23 <https://undocs.org/en/A/72/77>, (accessed on 13 November 2020).

43 D. Jayasooria, 'Our constitution and human rights', *The New Straits Times*, 13 January 2019, <https://www.nst.com.my/opinion/columnists/2019/01/450208/our-constitution-and-human-rights>, (accessed on 13 November 2020).

44 Human Rights Commission of Malaysia Act 1999 (Act 597), s. 4(4).

45 Charter of the Commonwealth, 2013, <https://thecommonwealth.org/sites/default/files/page/documents/CharteroftheCommonwealth.pdf>, (accessed on 13 November 2020).

46 Association of Southeast Asian Nations, ASEAN Human Rights Declaration, 2012.

## BALANCING FREEDOM OF EXPRESSION AND STATE INTERESTS

### International principles

3.20 In international jurisprudence, freedom of opinion and expression contains both personal and social dimensions.<sup>47</sup> All forms of communication are protected, including political and religious discourse, commentary on public affairs, discussions of human rights, journalism, cultural and artistic expression.<sup>48</sup> As a result, the obligation to respect freedom of opinion and expression is binding on all branches of government (executive, legislative and judicial) including public or governmental bodies.<sup>49</sup>

3.21 However, freedom of expression is not absolute, and it is an accepted principle that legitimate restrictions may be imposed to protect compelling state interests so long as such restrictions '[do] not put in jeopardy the right itself.'<sup>50</sup> In international jurisprudence, any restrictions imposed on the right to freedom of expression must satisfy a three-part test to be considered legitimate:<sup>51</sup>

- (a) **The restriction must be provided by law.** Traditional, religious or customary norms cannot constitute a restriction on freedom of expression. Any law to restrict freedom of expression must be formulated with sufficient precision and must not confer an unfettered discretion on authorities empowered to restrict freedom of expression.<sup>52</sup>
- (b) **The restriction may only be imposed on the grounds of respecting the rights or reputations of others, protecting national security, or protecting public order, health or morals.** Restrictions on freedom of expression protect the rights of others, must not impede political debate.<sup>53</sup> With regard to protecting public morals, regard must be had to the universality of human rights and the principle of non-discrimination. Limitations on freedom of expression cannot be based on principles from a single tradition, as 'the concept of morals derives from many social, philosophical and religious traditions.'<sup>54</sup>
- (c) **The restriction must conform to the strict tests of necessity and proportionality.** Any restrictions on freedom of expression must be for a legitimate purpose, and must not be overly broad. The principle of proportionality requires that any restriction:<sup>55</sup>
  - Must be appropriate only to achieve its protective function;
  - Must be the least intrusive means available to achieve that protective function;
  - Must be proportionate to the interest to be protected;
  - Must be respected not only in the law, but also the application of the law by the authorities and judicial system;
  - Must take into account the form of the expression and the means used to disseminate it.

3.22 These principles for evaluating restrictions on freedom of expression are applied by international courts overseeing international human rights treaties, and have been adopted in many national courts when interpreting and effectuating human rights. However, these principles have not been applied to their fullest extent by the Malaysian courts.

#### FOOTNOTE

<sup>47</sup> UN Human Rights Committee (UNHRC), *General Comment No. 34: Article 19: Freedom of opinion and expression*, U.N. Doc. CCPR/C/GC/34 (21 July 2011), para. 2, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, (accessed on 13 November 2020).

<sup>48</sup> *Ibid.*, para. 11.

<sup>49</sup> *Ibid.*, para.7.

<sup>50</sup> *Ibid.*, para. 21.

<sup>51</sup> *Ibid.*, para. 22.

<sup>52</sup> *Ibid.*, paras.25 & 26.

<sup>53</sup> *Ibid.*, para. 28.

<sup>54</sup> *Ibid.*, para. 32.

<sup>55</sup> *Ibid.*, paras. 33 & 34.

**Legal principles framing constitutional freedoms in Malaysia**

3.23 A progressive stretch of judicial activism in the last decade or so - which has more or less run parallel to the period of increased democratic pressures in the political arena - has yielded stronger judicial protection for human rights. Nevertheless, the protection of human rights in Malaysia today still falls short of international standards. The Malaysian courts have displayed a willingness to subject executive discretion that violates freedom of speech and expression to close scrutiny, but challenges to nullify statutes and statutory provisions that violate fundamental rights are rarely successful. At the close of 2018, only five such legal challenges had resulted in judicial nullifications of statutory provisions, and only one out of those five cases was confirmed on appeal.<sup>56</sup>

3.24 The key legal principles that are applicable in Malaysia in assessing human rights infringements are set out in Table 3A below. These principles have been distilled from established case law, and are applied in the analyses of the film censorship framework in Chapter 6.

**Table 3A: Key legal principles in assessing human rights infringements in Malaysia**

Principle	Elaboration
<p><b>I</b> The constitutionality of a statute or state action can be challenged if it:</p> <p>(a) violates a fundamental liberty guaranteed under the Constitution; or</p> <p>(b) infringes a fundamental liberty beyond the permitted restrictions under the Constitution.</p> <p>An authority’s exercise of a statutory power or discretion that restricts or prohibits a fundamental right may also be challenged through judicial review proceedings.</p>	<p>A challenge to statutes or state action that impacts fundamental liberties can be raised through judicial review proceedings, although constitutional questions may also be brought directly before the High Court or Federal Court.<sup>57</sup></p> <hr/> <p>Judicial review proceedings can be brought against the state and public authorities if there are grounds to show that the disputed actions or decisions are ‘illegal’, ‘irrational’ or tainted by ‘procedural impropriety’.<sup>58</sup> The courts will apply an objective assessment of ‘whether a reasonable minister similarly situated would have acted in the same manner.’<sup>59</sup> The three traditional grounds for judicial review may be broadly categorised as follows, and may overlap:</p> <ul style="list-style-type: none"> <li>• <b>Illegality</b> occurs where a decision maker has failed to act in accordance with the law that regulates her/his power or has acted outside the ambit of her/his authority, or considered matters that are irrelevant to the decision;</li> <li>• <b>Irrationality</b> occurs where the decision maker has exercised a power in so unreasonable a manner that the exercise becomes open to review; and</li> <li>• <b>Procedural impropriety</b> impropriety occurs where the decision maker has failed to observe the basic rules of natural justice or procedural fairness, including affording the person affected an opportunity to be heard before a decision is made affecting her/his rights, or providing reasons for the said decision.</li> </ul> <p>Judicial review has also been used to challenge the <b>proportionality</b> of the decision maker’s actions, whether in combination with or distinct from the grounds listed above.<sup>60</sup></p>

**FOOTNOTE**

<sup>56</sup> Faruqi, ‘Reform needed to protect free speech’.

<sup>57</sup> Federal Constitution, Art. 128(2) read together with Courts of Judicature Act 1964, s. 84. The judicial power and jurisdiction of the High Court and Federal Court to determine constitutional questions was summarised in the Federal Court’s majority judgment in *Datuk Seri Anwar Ibrahim v Government of Malaysia & Anor* [2020] 3 CLJ 593, pp. 613-618.

<sup>58</sup> *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374.

<sup>59</sup> *Sepakat Efektif Sdn Bhd v Menteri Dalam Negeri & Anor and Another Appeal* [2015] 2 CLJ 328 CA, p. 339 (para. 10).

<sup>60</sup> *Council of Civil Service Unions v Minister for the Civil Service*.

Principle	Elaboration
<p><b>II</b> A statute or regulation is unconstitutional if the restriction it places on a fundamental liberty does not fall within one of the categories of permissible restrictions that can be imposed on fundamental liberties under the Constitution.</p>	<p>All laws that seek to restrict freedom of speech and expression must be 'traceable to and derivable from the Constitution'.<sup>61</sup> Any Act of Parliament that has the effect of restricting free speech and expression must fall within the limited categories of permissible restrictions under the Constitution<sup>62</sup>, and if it does not, it is invalid.<sup>63</sup></p> <p>Fundamental rights may only be restricted if Parliament uses clear and express words within its statutes to permit such an abrogation.<sup>64</sup> Parliament is presumed not to have intended to limit fundamental rights, unless it indicates this intention in clear terms.<sup>65</sup></p> <p>The word 'restriction' in Article 10 is not to be equated with 'prohibition', and so restrictions enacted under Article 10(2) cannot amount to total prohibitions on the exercise of those fundamental rights. In addition, the power of Parliament to impose a restriction on the exercise of a fundamental right is not equivalent to a power to criminalise a breach of that restriction, particularly if the criminal sanction is imposed merely on a breach of an administrative or procedural requirement, and not because the fundamental right was exercised in a manner that contravened the restrictions in Article 10.<sup>66</sup></p> <p>Similar principles apply if the provision that violates fundamental rights is not in the parent statute, but in subsidiary rules or regulations made by an executive authority under powers delegated to it in the parent statute. Statutory powers conferred to the Executive to make rules or regulations must be strictly construed.<sup>67</sup> Delegated or subsidiary legislation<sup>68</sup> must be <i>intra vires</i><sup>69</sup> the parent statute and Constitution. Hence, where a statute delegates power to an authority to make rules and regulations, that power does not authorise the doing of acts by the said authority which adversely affect the rights of a citizen, unless it is clear from the parent statute conferring the power that such was the intention of Parliament and is in accordance with the Constitution.<sup>70</sup></p> <p>In relation to this, delegated or subsidiary legislation cannot be broader than the parent statute; where it is inconsistent with the parent statute, delegated legislation may be rendered <i>ultra vires</i>,<sup>71</sup> illegal and void.<sup>72</sup></p>

## FOOTNOTE

- <sup>61</sup> Faruqi, *Free Speech and the Constitution*, p. xvi.
- <sup>62</sup> See the section in this report on *The Constitutional Guarantee of the Freedom of Expression in Malaysia*.
- <sup>63</sup> *Madhavan Nair v PP* [1975] 2 MLJ 264, p. 265, per Chang Min Tat J.
- <sup>64</sup> *Utusan Melayu (Malaysia) Bhd v Dato' Sri Diraja Hj Adnan Hj Yaakob* [2016] 5 CLJ 857, CA, pp. 872-874.
- <sup>65</sup> *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar* [2020] 1 MLJ 141 FC, pp. 160-167. *Sykt Perniagaan United Aces Sdn Bhd & Ors v Majlis Perbandaran Petaling Jaya* [1997] 1 MLJ 394, p. 402.
- <sup>66</sup> In the Court of Appeal case of *Nik Nazmi Bin Nik Ahmad v Public Prosecutor* [2014] 4 MLJ 157, s. 9(5) of the Peaceful Assembly Act 2012 (PAA), a statutory provision that makes it a criminal offence not to notify the police ten days before a public assembly was held, was deemed to be unconstitutional and void, because: (a) the statutory provision was not a mere restriction on the right to freedom of assembly, but a total prohibition on the right to hold/participate in spontaneous assemblies; and (b) the criminal sanction was imposed on an administrative issue concerning the giving of advance notice, and not on a failure to assemble peacefully. To note that a subsequent Court of Appeal panel departed from the decision in *Nik Nazmi* and upheld the constitutionality of s. 9(5): *PP v Yuneswaran a/l Ramaraj* [2015] 6 MLJ 47.
- <sup>67</sup> *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai*, p. 167; *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal* [2005] 3 MLJ 97 FC, p. 125. In *Malaysia*, the purposive approach is applied to statutory interpretation, i.e. the courts will apply a construction that would promote the purpose or object underlying the Act, whether that purpose or object is expressly stated in the Act or not. See: *Interpretation Acts 1948 and 1967 (Act 388)*, s. 17A and *Palm Oil Research and Development Board Malaysia*, pp. 108-109.
- <sup>68</sup> 'Subsidiary legislation' is any proclamation, rule, regulation, order, notification, by-law or other instrument made under any Act, Enactment, Ordinance or other lawful authority having legislative effect: *Interpretation Acts*, s 3.
- <sup>69</sup> 'Intra vires' is a legal term that means an act that is within the powers conferred by law.
- <sup>70</sup> *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai*, pp. 160-167; *Palm Oil Research and Development Board Malaysia*, pp. 121-125.
- <sup>71</sup> 'Ultra vires' is a legal term meaning an act that is beyond the powers authorised by law.
- <sup>72</sup> *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai*, pp. 160-167; *Interpretation Acts*, s. 23.



Principle	Elaboration
<p><b>III</b> A statutory provision or statutory exercise of power that infringes a fundamental right but purports to be a permitted restriction on fundamental liberties under the Constitution nevertheless may be unconstitutional if the impugned statutory provision or exercise of power is disproportionate or renders the exercise of that fundamental right ineffective or illusory.</p>	<p>Parliament can enact a statute that restricts the exercise of fundamental liberties, or that empowers an executive authority to take administrative action or make subsidiary legislation that restricts the exercise of fundamental liberties. However, such a statute or exercise of statutory power may still be challenged if its inevitable consequence is to render the exercise of that fundamental right ineffective or illusory.<sup>73</sup> In that regard, constitutionally guaranteed rights must be interpreted generously using a prismatic approach, in order to 'reveal the spectrum of constituent rights submerged in each article.'<sup>74</sup></p> <p>The principle of proportionality also applies to statutes that confer unfettered or absolute discretion on the Executive, e.g. where a statute confers wide discretionary powers on an authority without laying down any limits to regulate and control the exercise of such power. The constitutionality of a law that grants untrammelled discretion to the Executive to restrict freedom of speech<sup>75</sup> may be questioned in court under Article 8(1) in addition to Article 10(1)(a).</p> <p>Proportionality requires that the legislative or executive action must be both objectively fair and proportionate to the purpose and object sought to be achieved by that Act.<sup>76</sup> Proportionality requires the balancing of different interests, including the nature of the fundamental right, the purpose for which the right is limited, the extent and efficacy of the limitation, and whether the desired end could reasonably be achieved through less damaging means to the right in question.<sup>77</sup> The state action that is alleged to violate a fundamental right must be procedurally and substantively fair.<sup>78</sup> A court can strike down or nullify a state action if it is disproportionate to the object sought to be achieved.<sup>79</sup></p>

**FOOTNOTE**

- 73 *Sepakat Efektif Sdn Bhd*, p. 338 (para. 10). That decision was affirmed on appeal to the Federal Court on 11 November 2015. See: <https://www.thestar.com.my/news/nation/2015/11/11/court-zunar-upheld>, (accessed 13 November 2020).
- 74 *Alma Nudo Atenza v PP & Another Appeal* [2019] 5 CLJ 780 FC, p. 820 (para. 96); *Sepakat Efektif Sdn Bhd*, p. 339 (para. 10).
- 75 *J.B. Jeyaretnam v PP* [1990] 1 MLJ 129.
- 76 *Dr Mohd Nasir bin Hashim v Menteri Dalam Negeri Malaysia* [2007] 1 CLJ 19 CA, pp. 28-29 (para. 8); *Alma Nudo Atenza*, p. 825 (para. 118).
- 77 *Alma Nudo Atenza*, p. 825 (para. 120).
- 78 *Sivarasa Rasiah*, p. 522 (para. 19).
- 79 *Dr Mohd Nasir bin Hashim*, pp. 28-29 (para. 8).

PHOTO: Threemendous Films



# FILM CENSORSHIP IN MALAYSIA

# 4

# 4 Film Censorship in Malaysia

- 4.1 Films do not merely serve to entertain; they capture the state of society, reflecting the dominant beliefs of a society's prevailing culture, while also having the power to shape culture. In multicultural societies, filmic expression has the potential to guide intercultural dialogue as it 'introduces us to the life of "the other" in an entertaining yet engaging fashion, creating cultural bridges that foster a sense of unity amid our diversity.'<sup>80</sup> While a powerful vehicle for culture, education, leisure and propaganda, the film industry also has economic value.<sup>81</sup>
- 4.2 In Malaysia, the potential for films as a site of identity formation is the driving force for much of the state's extensive regulation of film content, and appears to be a legacy issue. Yet the effectiveness of such policy imperatives is questionable today, as the convergence of communication networks increasingly turns audiences away from traditional film platforms towards the Internet, which has evolved into 'a collective place where online audiences [can] share content and experiences.'<sup>82</sup>
- 4.3 This chapter starts with an overview of the origins of film censorship in Malaysia, as historic context for the subsequent analysis of the current content policies and regulations under the FCA.

## THE ORIGINS OF FILM CENSORSHIP

- 4.4 Film censorship in Malaysia traces its origins to British colonial rule.<sup>83</sup> 'Moving pictures' first arrived on Malayan shores at the turn of the 20th century. By the 1910s, there were cinemas in the larger towns, and travelling film shows catering to smaller localities. The first local films in Malaya were produced in 1938.<sup>84</sup> By the early years of the 20th century, British colonists had realised the power of films 'to entertain and to offend, to educate and to subvert', and took efforts to exert censorship control over the medium.<sup>85</sup>

### FOOTNOTE

- <sup>80</sup> M.P. John, *Film as Cultural Artifact: Religious Criticism of World Cinema*, Minneapolis, Fortress Press, 2017, p. 6, quoted in C. Wang, *Cinema Attendance and Cinema-Going Audience in Malaysia*, *Media Watch*, Vol. 10, No. 3, 2019, pp. 539-549, p. 540, <https://mediawatchjournal.in/cinema-attendance-and-cinema-going-audience-in-malaysia>, (accessed 13 November 2020).
- <sup>81</sup> U.K. House of Commons Culture, Media and Sport Committee, *The British Film Industry*, HC 667-1 (18 September 2003), <https://publications.parliament.uk/pa/cm200203/cmselect/cmcumeds/667/667.pdf>, (accessed 13 November 2020). The House of Commons committee concluded that for every £1 spent on film, there is a £1.50 benefit to the economy in terms of the use of services and purchase of goods by the industry.
- <sup>82</sup> C. Wang, *Cinema Attendance and Cinema-Going Audience in Malaysia*, p. 544, <https://mediawatchjournal.in/cinema-attendance-and-cinema-going-audience-in-malaysia>, (accessed 13 November 2020).
- <sup>83</sup> W.A. Wan Amizah et al., 'Film Censorship in Malaysia: Sanctions of Religious Cultural and Moral Values', *Jurnal Komunikasi, Malaysian Journal of Communication* Vol 25, 2009, pp. 42-49; W.A. Wan Amizah et al., 'Putting Policemen as Censors in Cinemas: The History of Film Censors in Malaysia', *Asian Social Science*, Vol 9, No. 6, 2013, pp. 43-49.
- <sup>84</sup> Wan Amizah et al., 'Film Censorship in Malaysia', pp. 42-43.
- <sup>85</sup> D. Newman, 'British Colonial Censorship Regimes: Hong Kong, Straits Settlements, and Shanghai International Settlement, 1916-1941', in Biltreyst, Daniel & Vande Winkel, Roel (eds.), *Silencing Cinema: Film Censorship around the World*, New York, Palgrave Macmillan, 2013, p. 167.

- 4.5 Regulated censorship had already existed over theatrical performances in Malaya; the earliest known regulations that controlled the content of art and cultural 'bangsawan' productions were the Theatre Ordinance 1895 enacted for the Straits Settlements. Ostensibly drafted as regulations prescribing building safety measures, they also allowed authorities to limit the content of performances and the morality of the performers.<sup>86</sup> These regulations were a means of controlling content production to serve the colonial interest, an objective that became imperative in the 1920s after reports emerged that films being screened in the East were spreading communism and tarnishing the image of the West.<sup>87</sup>
- 4.6 The local police had the authority to censor films as early as 1908, and could inspect and stop the screening of stage and film performances in theatres under the authority of the Police Commissioner.<sup>88</sup> 1912 saw the introduction of the first elements of a prior-censorship framework. An amendment to the 1908 Theatre Ordinance required film distributors to submit a description of the scenes from their films to the police prior to screening; the police were empowered to determine what were and were not suitable scenes and to seize unauthorised films.<sup>89</sup>
- 4.7 In 1917, the regulation of censorship was formally vested within the local police force, through the creation of an Official Censor of Cinematograph and a Cinematograph Films Appeal Committee.<sup>90</sup> The Cinematograph Films Appeal Committee comprised seven members, four appointed by the Governor and three by the Justices of the Peace, with the Inspector-General of Police as Chair.<sup>91</sup> The Official Censor was authorised to examine all films prior to their exhibition and to prohibit those considered unsuitable, and his approval was required before a film could be advertised or screened in public. Objectionable content included the depiction of murders, robberies, the modus operandi of criminals, violent assaults on females, content that would tend to produce racial ill-feeling, setting class against class or outraging religious sensibilities.<sup>92</sup> The Ordinance imposed criminal penalties (fines) for breaches of the regulations.
- 4.8 These censorship guidelines were adapted to local requirements from the guidelines prescribed by the British Board of Film Censors (BBFC). Censorship was considered a tool for colonial governments to exert control over information, ideas and the existing social order, and an expression of British hegemony across the colonies of the British Empire.<sup>93</sup> Thus, in the Straits Settlements, the guidelines included the banning of scenes 'showing Europeans in the power of natives or persecuted in some shape or form', or scenes 'that are likely to mean loss of prestige', or scenes 'likely to provoke racial feeling or religious animosity'.<sup>94</sup>

## FOOTNOTE

<sup>86</sup> Wan Amizah et al., 'Putting Policemen as Censors in Cinemas'.

<sup>87</sup> Wan Amizah et al., 'Film Censorship in Malaysia', pp. 43-44.

<sup>88</sup> Wan Amizah et al., 'Film Censorship in Malaysia', p. 43; Wan Amizah et al., 'Putting Policemen as Censors in Cinemas', p. 44.

<sup>89</sup> Theatre Ordinance 1908 (Amendment) 1912 (Straits Settlements), cited in Wan Amizah et al., 'Putting Policemen as Censors in Cinemas', p. 44.

<sup>90</sup> Theatre Ordinance 1908 (Amendment) 1917. See: Newman, 'British Colonial Censorship Regimes', p. 176. The jurisdiction of the Ordinance covered the Straits Settlements (Singapore, Malacca and Penang), Federated Malay States (Selangor, Perak, Pahang and Negeri Sembilan) and Johor. The Ordinance was extended to Kelantan, Terengganu, Kedah, Perlis, Sabah and Sarawak in 1927. See: Wan Amizah et al., 'Putting Policemen as Censors in Cinemas', p. 44.

<sup>91</sup> Newman, 'British Colonial Censorship Regimes', pp. 186-187.

<sup>92</sup> R. Braddell, *The lights of Singapore*, Kuala Lumpur, Oxford University Press, 1982, as quoted in Wan Amizah et al., 'Putting Policemen as Censors in Cinemas', p. 46.

<sup>93</sup> Newman, 'British Colonial Censorship Regimes', p. 175.

<sup>94</sup> Newman, 'British Colonial Censorship Regimes', pp. 171-175.

- 4.9 Following World War II and the return of the British to Malaya,<sup>95</sup> film censorship was tightened to further counter remnants of Japanese propaganda and the growing influence of communism, which had festered in the resistance to the Japanese occupation.<sup>96</sup> The ensuing 1947 Film Censorship Guidelines for Singapore and the Federation of Malaya continued the policy of prior censorship, and required the Film Censor to use the lens of 'the least sophisticated' cinema-goer in assessing a film for racial or religious denigration/offence, or the promotion of violence, superstitious beliefs or sexuality.<sup>97</sup> The 1947 Guidelines were constructed to address four principle areas of concern, and these policy parameters continue to underpin the film censorship framework in Malaysia today: issues of security and public order; religion; sociocultural norms; and civility and etiquette.<sup>98</sup>
- 4.10 As Malaya transitioned towards independence, the British administration took steps to establish a Board of Film Censors<sup>99</sup> under the Cinematograph Films Ordinance 1952, and turn the task of film censorship over to local officials. The Board - which was the precursor to the LPF - was officially established in January 1954 and had jurisdiction to implement film censorship regulations over Malaya, Singapore, Sabah and Sarawak.<sup>100</sup> Following Singapore's withdrawal from the Federation of Malaysia in 1965, the Board of Film Censors was dissolved and the LPF established in March 1966 under an amendment to the 1952 Act.
- 4.11 The history of film censorship in Malaysia reveals that from the beginning, films were regarded as a critical influencer of socio-cultural norms and political and cultural identity, and thus vital for the state to strictly control and leverage. The imposition of film censorship policies was not a socio-political construct that evolved organically from the development of local art and theatre in Malaya, but rather an external construct that was originally imposed as a means of colonial control. As Newman notes, during the pre-war colonial era, there was 'considerable concern regarding maintaining the prestige and dignity of the Europeans' as the dominant group, and a fear based on the 'hypodermic needle' theory that a linear communication of portrayals on screen to a susceptible native audience would lead to an inclination to imitate and to challenges to the authority or dominance of the colonial power or European people in general.<sup>101</sup>
- 4.12 Yet even following independence, having shed its colonial shackles, the imperialist imperative of keeping control over dominant narratives were retained and recast in the policies of an independent Malaya. Whether the rationale for doing so is rooted in nation building and the cultivation of ideas of Malaya or Malaysian-ness within the populace, or to lock in the paternal dominance of the political elite, it continues to underpin the country's policies today.

## FOOTNOTE

- <sup>95</sup> Wan Amizah et al., 'Putting Policemen as Censors in Cinemas' traces the history of film censorship in Malaya during the Japanese Occupation in World War II (1942 – 1945).
- <sup>96</sup> Wan Amizah et al., 'Putting Policemen as Censors in Cinemas', p. 47.
- <sup>97</sup> D.J. Enright, 'Malaysian complexities', *Censorship*, Vol. 1, No. 4, 1965, as quoted in Wan Amizah et al., 'Putting Policemen as Censors in Cinemas', p. 47.
- <sup>98</sup> Wan Amizah et al., 'Putting Policemen as Censors in Cinemas', p. 47.
- <sup>99</sup> The Board of Film Censors was established under the Cinematograph Film Ordinance No. 76 of 1952 (Federation of Malaya) and the Cinematograph Film Ordinance No. 25 of 1953 (Singapore). See Wan Amizah et al., 'Film Censorship in Malaysia', p. 44.
- <sup>100</sup> Wan Amizah et al., 'Film Censorship in Malaysia'; Wan Amizah et al., 'Putting Policemen as Censors in Cinemas'.
- <sup>101</sup> Newman, 'British Colonial Censorship Regimes', at p. 184.

## THE FILM CENSORSHIP FRAMEWORK TODAY

### Overview of the regulatory matrix for films

4.13 Control of the production, screening and distribution of films falls across several regulatory frameworks and ministerial portfolios. Currently, the key ministries holding responsibility for different aspects of policy formation, enforcement and supervision are the Ministry of Communications and Multimedia (MCM) and the Ministry of Home Affairs (MOHA). The MCM holds policy and supervisory authority over the development and regulation of the creative film industry as a whole. However, responsibility for regulating filmic content is bisected along mediums of display:

- (a) Content regulation for films displayed and transmitted on any platform apart from the internet or intranets falls under MOHA's purview and are enforced primarily by the LPF under the provisions of the FCA.<sup>102</sup>
- (b) Digitised film content intended for publication, display and transmission on streaming and internet-based platforms falls under the Communications and Multimedia Act (CMA) which is overseen by the Malaysian Communications and Multimedia Commission (MCMC) under MCM's purview.

4.14 The primary statutory body responsible for promoting, nurturing and facilitating the development of Malaysia's film industry, namely the National Film Development Corporation of Malaysia (*Perbadanan Kemajuan Filem Nasional*, or FINAS), falls under the MCM's authority.<sup>103</sup> Under its enabling Act, FINAS issues licenses for the production, distribution and exhibition of films; monitors the development of the local film industry; and facilitates the marketing and promotion of Malaysian films overseas.<sup>104</sup> At a granular level, FINAS also provides financial assistance, production facilities and equipment to local filmmakers.<sup>105</sup> FINAS' substantial powers to control film production and exhibition have the potential to restrain freedom of speech and expression, as a recent controversy exposed.<sup>106</sup>

4.15 To summarise, the MCM holds the bulk of policy and regulatory authority over the creative film industry. It is unclear why the aspect of content regulation for films displayed/distributed on traditional platforms continues to remain separate and in the hands of the MOHA.

#### FOOTNOTE

<sup>102</sup> FCA, s 2(3).

<sup>103</sup> FINAS was established under the *Perbadanan Kemajuan Filem Nasional Malaysia Act 1981 (National Film Development Corporation of Malaysia Act 1981)*, Act 244 ["FINAS Act"].

<sup>104</sup> FINAS Act, ss. 21-22A.

<sup>105</sup> Corporate Info, FINAS, <https://www.finas.gov.my/en/introduction/>, (accessed on 13 November 2020).

<sup>106</sup> A recent documentary on Malaysia by international news media Al Jazeera drew criticism and reprisal from the government, which escalated public outcry when the government sought to interpret the scope of FINAS' licensing authority within the FINAS Act as requiring that all video-makers would require a licence from FINAS to shoot and produce their videos, regardless of the platform on which they seek to broadcast their videos, whether linear or online and whether for commercial or personal social media. See: <https://www.aljazeera.com/news/2020/7/23/outcry-in-malaysia-as-government-cracks-down-on-video-making>. The ensuing public backlash forced the government clarify that it would not impose an obligation on social media users to obtain licences from FINAS and that it would move to revise ambiguities in the Act. As of the date of this report, the government has yet to table any amendments to the FINAS Act. FFN and its cohorts have issued public statements and sought to engage the government on the issue. See: <https://www.malaymail.com/news/what-you-think/2020/07/24/finas-act-must-be-reformed-to-protect-freedom-of-expression-cfi-and-ffn/1887780>, (accessed 13 November 2020).

- 4.16 What follows below is a description of the policies, laws and rules to control filmic content under the FCA. A critical analysis of these policies, laws and rules, is presented in Chapter 6. As this report is limited to an evaluation of the mechanisms in place for the control of film content, it does not include other matters falling under the purview of the FCA, such as the regulation of film-publicity materials, and the enforcement actions against the reproduction and distribution of uncertified films.
- 4.17 The primary instruments governing film censorship in Malaysia<sup>107</sup> are the FCA and the Film Censorship Guidelines 2010 (FC Guidelines).<sup>108</sup> The FC Guidelines is the principal authority for the principles and rules on restricting or prohibiting film content, and is the LPF's mainstay in the censorship of films. The LPF also issues circulars from time to time that offer additional procedural guidance to LPF members and stakeholders.

## The Regulators

- 4.18 The FCA establishes the LPF as a statutory body. The LPF must have a minimum of 4 members, all of whom are appointed by the Minister.<sup>109</sup> Members of the Federal Parliament and State legislative assemblies cannot be members of the LPF, nor can members, officers or employees of local authorities or statutory public bodies, or members of trade unions or their affiliates.<sup>110</sup> However, public servants may be appointed to the LPF.<sup>111</sup> In fact, it appears to be a practice of long standing to appoint retired public servants to the LPF.<sup>112</sup>
- 4.19 The FCA does not require that every member of the LPF must hold technical or subject specific qualifications to be eligible for appointment to the LPF.<sup>113</sup> There is no requirement that the LPF membership must include representatives from segments of the film industry or from civil society. LPF members are appointed for a three-year term or less, and may be reappointed or have their appointments revoked at the Minister's discretion.<sup>114</sup>
- 4.20 Apart from the LPF, the FCA confers authority on an Appeals Committee to review the decisions made by the LPF. The LPF also empowers the Minister to issue directions, prohibitions, exemptions and regulations. These aspects are discussed later in this chapter.

### FOOTNOTE

- 107** Excluding filmic materials which are solely displayed, transmitted or distributed through the internet or intranets. See: FCA, s. 2(3).
- 108** Ministry of Home Affairs, *Guidelines on Film Censorship, Film Censorship Control and Enforcement Division, Ministry of Home Affairs, Putrajaya, Pencetakan Nasional Malaysia Berhad, 2010, p.1*, [http://lpf.moha.gov.my/lpf/images/Perundangan/GARIS\\_PANDUAN\\_PENAPISAN\\_FILE M\(1\).pdf](http://lpf.moha.gov.my/lpf/images/Perundangan/GARIS_PANDUAN_PENAPISAN_FILE%20M(1).pdf), (accessed 13 November 2020). It is to be noted that the LPF website refers to a third document called the 'Specific Guidance for Film Censorship' (Panduan Khusus Penapisan Filem) that it relies on in reviewing films for censorship. However, a copy of the Specific Guidance for Film Censorship has not been made available on the website.
- 109** FCA, s. 4(1).
- 110** FCA, Schedule, para. 2(1).
- 111** FCA, Schedule, paras. 2(1) and 2(2). Para. 2(2) merely bars the appointment of public servants as Chairperson or Vice-Chairperson of the LPF. Para. 3 of the Schedule also disqualifies the following persons from membership of the LPF Board: a bankrupt, a judgment debtor, anyone found to be of unsound mind or anyone convicted of an offence of fraud, dishonesty or moral turpitude.
- 112** Guan, *Film censorship in the Asia-Pacific Region*, p. 56. From the interviews conducted for the FFN project, there also was anecdotal evidence of an established practice of including representatives of the police and religious authorities, as well as industry representatives on the LPF Board; however, there was no opportunity to verify this fact with the LPF or the relevant ministerial department.
- 113** A description of the position advertised on the LPF website specifies certain minimum requirements relating to age, health, and language and computer skills. To qualify, retired public servants need a background in either security and public order, communication and broadcasting, religion, education, enforcement or 'any other relevant fields'. Candidates who are not retired public servants need only hold a degree, have the equivalent of seven years' working experience and have 'knowledge of or interest in' the film and broadcasting industries. See: [http://www.moha.gov.my/images/maklumat\\_perkhidmatan/kawalan\\_filem/IKLAN-JAWATAN-DAN-SYARAT-KELAYAKAN-PERMOHONAN-SEBAGAI-ANGGOTA-LPF-WEBSITE-II.pdf](http://www.moha.gov.my/images/maklumat_perkhidmatan/kawalan_filem/IKLAN-JAWATAN-DAN-SYARAT-KELAYAKAN-PERMOHONAN-SEBAGAI-ANGGOTA-LPF-WEBSITE-II.pdf), (accessed 13 November 2020).
- 114** FCA, Schedule, paras. 4 and 6.

## Filmic materials subject to LPF review

4.21 The FCA applies to the following filmic materials:<sup>115</sup>

- (a) Cinematograph films, or video tapes, diskettes, laser discs, compact discs, hard discs and other records whether originals or copies, of a sequence of visual images that can be shown as a moving picture;
- (b) Promotional trailers, which are material or extracts from a film that promote the film;
- (c) Film publicity materials, which are whole or part of a picture, photograph, poster, figure, handbill, slide, newspaper advertisement and any other form of advertisement intended to publicise a film;
- (d) Advertising films which are commercial films that promote products or services and any form of announcement.<sup>116</sup>

4.22 The FCA does not apply to films on online platforms - the Act expressly provides that it is not to be construed as permitting the censorship of any film or film publicity material aired or shared over the internet or intranets.<sup>117</sup> The FCA also does not apply to films intended for private use and that remain in private possession, unless the film is obscene or lewd.<sup>118</sup> Films sponsored by the Federal Government or State Governments also do not fall within the jurisdiction of the Act.<sup>119</sup> In addition, the FCA does not apply to any films transhipped within Malaysia for delivery to a foreign country.<sup>120</sup>

4.23 Broadcasters Astro and the Media Prima platforms have received ministerial exemptions under the FCA and so do not need to submit for the LPF's prior approval the content that they intend to broadcast; however a condition of these exemptions is that the broadcasters must ensure that any content broadcasted on their platforms is internally self-regulated and filtered based on content guidelines issued to them by the LPF for this purpose.<sup>121</sup> As broadcasters and content applications service providers, Astro and Media Prima content platforms also fall under the purview of the CMA and the CMA's content regulation framework (which is discussed in Chapter 5).

### FOOTNOTE

<sup>115</sup> FCA, s. 3; Ministry of Home Affairs, *Guidelines on Film Censorship, Part I*, p. 3.

<sup>116</sup> As explained in the Methodology section, this report is confined to an analysis of the film censorship framework for cinematograph films and does not include an evaluation of the legal and policy framework for commercial advertisements / advertising films.

<sup>117</sup> FCA, s. 2(3).

<sup>118</sup> FCA, s. 2(2)(d).

<sup>119</sup> FCA, s. 2(2)(a).

<sup>120</sup> Films produced in or imported into Malaysia which are not intended to be screened in Malaysia will be exempted from the film censorship process under the FCA; however, the owners must obtain a certificate of exemption from the LPF under Section 8 of the Act. See: FCA, s. 8(3).

<sup>121</sup> These facts were confirmed by the Deputy Home Minister Datuk Nur Jazlan Mohamed to the Malaysian Senate (Dewan Negara) on 25 April 2017, in his response to a parliamentary question. See: Dewan Negara, *Penyata Rasmi Parlimen (Parliament Official Report)*, 25 April 2017, D.N.25.4.2017, p. 2. For an example of guidance issued by LPF to television stations for the conduct of internal content monitoring/ censorship, see: Lembaga Penapis Filem, *Pekeliling LPF (Stesen TV) Bil. 1/2015: Panduan Khusus Penapisan Filem Stesen Televisyen*, Ministry of Home Affairs, 2015, in Appendix F of Barker, *Censorship and its impact on the Screen Industries in Malaysia. Some television stations have seconded LPF staff to monitor their broadcast content and the internal self-censorship processes*. See: Barker, *Censorship and its impact on the Screen Industries in Malaysia*, p. 15.



4.24 A failure to submit a film to the LPF for censorship review and certification constitutes a crime.<sup>122</sup> A film must be submitted to the LPF within 14 days from the date of the completion of the film.<sup>123</sup> The elements of this offence appear to crystallise whether or not the film in question has been screened or distributed in Malaysia, and whether or not the film contains offensive content that infringes the restrictions laid down by the authorities. On a strict reading of the FCA therefore, mere possession of a film that is intended for public screening or distribution which has not been submitted to the LPF would amount to a criminal offence under the FCA. The penalty is a fine of between RM5,000 – RM30,000 and/or imprisonment for a maximum term of 3 years.<sup>124</sup>

### The LPF censorship review process

4.25 The main thrust of the FCA is the imposition of a prior censorship scheme for films, i.e. that films are censored before they are able to be publicly screened, sold or distributed. As stated above, it is mandatory under the FCA to submit films for LPF's censorship review within 14 days after the making or production of the film is complete (if they are Malaysian made films),<sup>125</sup> or within the timeline set out in their importation permits issued by the LPF (if they are imported films).<sup>126</sup> The prior censorship scheme is secured by the imposition of a criminal penalties if one fails to comply.<sup>127</sup>

4.26 For the film review process, the Chairman of the LPF appoints a panel of at least three members of the Board to examine each film. The Chairman may appoint more than three members to the panel if the film under review contains controversial issues which are difficult to examine.

4.27 The reviewing panel applies the FCA Guidelines in examining the scenes, sounds, dialogues and subtitles of the film, and in deciding whether, and if so how, the film must be altered to comply with the guidelines. Once the LPF panel completes its review of a film, it will either:

- (a) Approve the film for screening and distribution without requiring alterations to the content of the film.<sup>128</sup> The LPF will proceed to issue a viewership classification for the film<sup>129</sup> and certify the film.<sup>130</sup>

#### FOOTNOTE

<sup>122</sup> FCA, ss. 6(1)-(2) & ss. 9(1)(b)-(2).

<sup>123</sup> FCA, s. 9(1)(b). For imported films to be screened in Malaysian, the film must be submitted to the LPF for review within the date stated under the import permit for the film. See FCA, s. 9(1)(a).

<sup>124</sup> FCA, ss. 6(2)(a) & 9(2).

<sup>125</sup> FCA, s. 9(1)(b).

<sup>126</sup> FCA, s. 9(1)(a) read together with s. 8(2)(b). For foreign film imported into Malaysia for the purpose of being screened or distributed in Malaysia, a permit from the LPF is required for such a film to clear customs (s. 7). The permit provides temporary clearance for the film, so that it can be submitted for censorship review to the LPF (ss. 8(1)-(2)). It is a criminal offence to remove or facilitate the removal of an imported film from customs control without the relevant permit. A person who commits this offence could face a fine of between RM5,000 – RM30,000 and/or imprisonment for a maximum term of 3 years (s. 7(3)).

<sup>127</sup> It is a criminal offence not to submit such a film to the LPF for censorship review within the time prescribed, for which the punishment is a fine of between RM5,000 – RM30,000 and/or imprisonment for a maximum term of 3 years. See: FCA, ss. 6(1)-(2) & 9(1)-(2).

<sup>128</sup> FCA, s. 10(1)(a).

<sup>129</sup> FCA, s. 15.

<sup>130</sup> A Certificate "A" is issued: See FCA, s. 14.

- (b) Require that the film be altered before it can be approved and certified for screening and distribution.<sup>131</sup> Alterations will be required to be made to part(s) of the film that the LPF panel deems are in conflict with the criteria and restrictions laid out in the FC Guidelines. The LPF can make the alterations itself<sup>132</sup> or may direct the film owner to do so.<sup>133</sup> The owner must make the alterations in the manner and within the time prescribed by the LPF and resubmit the film to the LPF for review.<sup>134</sup> It is a criminal offence not to make the alterations and resubmit the film for review, for which the penalty is a fine of between RM5,000 – RM30,000 and/or imprisonment for a maximum term of 3 years.<sup>135</sup> A film that has been altered in accordance with the LPF's directions will be approved for screening, and issued a viewership classification<sup>136</sup> and certified.<sup>137</sup>
- (c) Refuse to approve the film for screening and distribution.<sup>138</sup> The LPF can reject a film, and upon rejection retain the film for up to three months.<sup>139</sup> After which, the LPF can confiscate, destroy or otherwise dispose of the film.<sup>140</sup> If there is an appeal and the Appeal Committee affirms the decision of the LPF, the film can be disposed of after that decision has been communicated to the LPF.<sup>141</sup> However, if the film is an imported film and the owner is able to satisfy the LPF that (s)he intends to re-export it, the LPF may return the film to the owner.<sup>142</sup>

4.28 The other key feature of the film censorship framework is the classification system. Films that are approved for screening and distribution in Malaysia either without or after alterations will undergo a classification process, where they are categorised with the following labels that define and limit their viewership:

- 'U': For general audience; suitable for viewing by all ages and levels of society.
- 'PG13': For viewers aged 13-years old and above, with younger viewers requiring the guidance of a parent or guardian. These films contain some scenes of violence or horror.
- '18': For viewers aged 18-years old and above. These films contain some non-excessive scenes of violence, horror and/or sex, or may touch on aspects of religion, socio-culture and politics, and are further classified as 18PL, 18SX, 18PA and 18SG.

The LPF has issued guidance to its members on the criteria to take into consideration in allocating classification codes to films.<sup>143</sup>

#### FOOTNOTE

<sup>131</sup> FCA, s. 10(1)(b).

<sup>132</sup> FCA, s. 11(1)(a).

<sup>133</sup> FCA, s. 11(1)(b).

<sup>134</sup> FCA, s. 11(2).

<sup>135</sup> FCA, s. 11(3).

<sup>136</sup> FCA, s. 15.

<sup>137</sup> A Certificate "A" is issued. See: FCA, s. 14.

<sup>138</sup> FCA, s. 10(1)(c).

<sup>139</sup> FCA, s. 12(1).

<sup>140</sup> FCA, s. 13(a).

<sup>141</sup> FCA, s. 13(b).

<sup>142</sup> FCA, s. 12(2).

<sup>143</sup> For example, see: Lembaga Penapis Filem, *Pekeliling LPF Bil. 2/2012: Panduan Khusus Klasifikasi Filem*, Ministry of Home Affairs, 2012, [http://www.moha.gov.my/images/maklumat\\_bahagian/LPF/pekelling/PanduanKhususKlasifikasiFilem.pdf](http://www.moha.gov.my/images/maklumat_bahagian/LPF/pekelling/PanduanKhususKlasifikasiFilem.pdf), (accessed 13 November 2020).

- 4.29 The LPF must inform the film owner in writing of its decision on the censorship review,<sup>144</sup> and provide written reasons if it requires content in the film to be altered or if the film is refused approval for screening and distribution.<sup>145</sup> However, there is no requirement that the LPF must provide an explanation for the classification code it assigns to the film.
- 4.30 The FCA does not provide an opportunity for the filmmaker to make representations to the LPF either in relation to the censorship review of her/his film or with regard to the viewership classification process, whether to defend the permissibility / appropriateness of their film content, and/or to advocate for a particular classification code. The FC Guidelines also do not include any requirement or guidance that the LPF should engage with or consult filmmakers for their input when it conducts the censorship review and classification processes.

### **Pre-censorship advice and consultation**

- 4.31 While it is not expressly provided for in the FCA, a practice has evolved where filmmakers run story outlines, scripts, or pre-edited films past the LPF for their feedback and advice to identify any significant censorship concerns prior to the completion of the film. Such efforts are encouraged in the Introduction to the FC Guidelines, which states that:<sup>146</sup>

*The Film Censorship Board is prepared to offer advisory services prior to the production of a film. It is also prepared to scrutinise the script and storyboard before the producer commences shooting. Film owners may submit a film earlier, at the editing stage, in the form of VCD/DVD for pre-screening purpose.*

- 4.32 At the urging of the censors, some filmmakers also seek out 'pre-approval' from authorities such as the police and religious authorities, who have assumed the power to veto how certain aspects like police behaviour, law and order or religion are portrayed on local films.<sup>147</sup> These informal pre-consultation processes do not obviate the obligation on filmmakers to submit the completed film to the LPF in accordance with the FCA.

#### **FOOTNOTE**

<sup>144</sup> FCA, s. 10(2).

<sup>145</sup> FCA, s. 10(3).

<sup>146</sup> Ministry of Home Affairs, *Guidelines on Film Censorship*, p. ix.

<sup>147</sup> Barker, *Censorship and its impact on the Screen Industries in Malaysia*, pp. 12-16.

## Policy and objectives

4.33 The policy objectives for the film censorship regulations are not set out in, nor reasonably inferable from, the FCA. The Act does not provide direction on the purpose and object for the prior censorship of films, in that it is not evident the grounds on which Parliament intended films to be censored. Nor is it evident the outcomes that Parliament intended to achieve or avoid by creating a prior censorship mechanism. The only clearly defined object in the FCA with regard to content is the intention to illegalise and prevent the screening, sale and distribution of obscene films.<sup>148</sup>

4.34 The FC Guidelines on the other hand, lay out a set of general **policy** objectives for film censorship,<sup>149</sup> followed by a pair of **principles**<sup>150</sup> to guide the LPF, which are in turn subject to three **conditions**.<sup>151</sup> The FC Guidelines also enumerate several factors relating to the **genre** of a film which the LPF is to take into consideration.<sup>152</sup> These policy objectives, principles, conditions and genre factors are reproduced in **Appendix I** to this report. As an overview, the policy objectives in the FC Guidelines purport to:

- (a) Protect the public from films that would influence them to engage in immoral activities that can threaten security and public order, or cause them to imitate and sympathise with ideologies that are contrary to the *Rukun Negara* (national Principles of Nationhood).
- (b) Protect the country and the government from films that are anti-government, show a negative image of the government and its agencies or discredit the sovereign rulers and leaders of countries having diplomatic relations with Malaysia.
- (c) Prevent against films that promote deviationist teachings and fanaticism, or that criticise and degrade any religion without showing repentance or punishment.
- (d) Preserve racial harmony, by mirroring in film, the cultures and behaviour that are in line with the national vision.
- (e) Guide national values and culture to ensure their preservation.
- (f) Avoid physical or moral loss to any person or party as a result of false claims on film.

4.35 However, none of the objectives laid out in the FC Guidelines are adopted from or reflected in the FCA, which is the principal legal instrument vesting statutory authority in the LPF.

4.36 In carrying out its functions, the LPF is urged to follow the principle that a film should be allowed to be widely distributed to viewers 'consistent with its theme and message'. The LPF is also urged to bear in mind that adults should have the freedom to choose the content they view, but only if it is 'permissible and not potentially detrimental'.<sup>153</sup> However, the applicability of these principles are conditional on the film not being contrary to law, potentially detrimental to a target group or clearly contrary to public opinion.<sup>154</sup> Taken as a whole, these conditions are wide ranging and vague, and give the LPF extensive latitude not to give effect to the principles that a film should be allowed to be widely distributed and that adults should have the freedom to choose the content they view.

4.37 The LPF is also required to consider the genre of the film under review, and factors such as the film's theme and messages, and lessons that may be gained from the film and its influence on viewers of different ages, whether it glorifies or offends any group and whether it is 'suited to the aspirations of the government and national vision'.<sup>155</sup>

### FOOTNOTE

<sup>148</sup> FCA, s. 5.

<sup>149</sup> Ministry of Home Affairs, *Guidelines on Film Censorship*, p.1.

<sup>150</sup> Ministry of Home Affairs, *Guidelines on Film Censorship*, p. 2.

<sup>151</sup> Ministry of Home Affairs, *Guidelines on Film Censorship*, p. 2.

<sup>152</sup> Ministry of Home Affairs, *Guidelines on Film Censorship*, p. 4.

<sup>153</sup> Ministry of Home Affairs, *Guidelines on Film Censorship*, p. 2.

<sup>154</sup> Ministry of Home Affairs, *Guidelines on Film Censorship*, p. 2.

<sup>155</sup> Ministry of Home Affairs, *Guidelines on Film Censorship*, p. 4.

### Content restrictions in the FC Guidelines

4.38 In terms of specific standards and criteria on restricted content in films, as stated previously, the FCA only specifies the prohibition against obscene films.<sup>156</sup> The FC Guidelines however, set out a range of content restrictions and prohibitions. The Guidelines disclose two processes of censorship:

- Films on which there is an absolute ban (Part V of the FC Guidelines, entitled “Films That Are Not Approved for Screening”); and
- Filmic content which the LPF has discretionary power to censor or ban (Part II and Part IV of the FC Guidelines).

However, these 2 categories are not clearly differentiated from each other; in fact, the prohibited elements that would render a film automatically banned under Part V of the FC Guidelines also arise in the discretionary restrictions under Part II of the FC Guidelines. These contradictions give rise to confusion and the risk of arbitrary application of the Guidelines.

4.39 Part V of the FC Guidelines (quoted near verbatim below) states that the following films are wholly prohibited:<sup>157</sup>

- (a) Films that have a theme, storyline, or plot contrary to socio-culture, noble values, are seditious or anti-religious, or insult the beliefs or customs of a particular community or group, have elements that contradict the policies of the government, excessive violence and cruelty;
- (b) Films that have an illogical theme, storyline or plot that may lead the citizens astray and cause foreign countries to have a poor perception of the socio-culture and noble values of the local population;
- (c) Films that do not respect Malaysia as a sovereign nation but instead condemn Malaysia, smear the good name and image of the country and its people, contravene decorum and the *Rukun Negara*, whether the films are produced in or outside Malaysia.

These prohibitions are widely framed and imprecise, and thus able to encompass almost any genre and find purchase in any storyline. They give considerable censorship latitude to the LPF.

4.40 **Part II** of the FC Guidelines is divided into four categories: security and public order; religion; socio-culture; and decorum and morality, each of which contains a list of restricted content that the LPF will look for in a film during the censorship review process.<sup>158</sup> A summarised description of each of these categories is provided in **Table 4A**.

#### FOOTNOTE

<sup>156</sup> It is a criminal offence to possess, have custody of, control over or own obscene films or to circulate, exhibit, distribute, display, manufacture, produce, sell or hire obscene films,<sup>156</sup> and this also applies to obscene films for private use. See: FCA, ss. 2(2)(d) & 5(1)(a). The penalty for this offence is a fine of between RM10,000 – RM50,000 and/or imprisonment for a maximum term of 5 years. See: FCA, s. 5(2).

<sup>157</sup> Ministry of Home Affairs, *Guidelines on Film Censorship*, p. 23.

<sup>158</sup> Ministry of Home Affairs, *Guidelines on Film Censorship*, pp. 5-14.

4.41 Under each category in Part II, the LPF's task is to scrutinise a film for the items of restricted and prohibited content to ensure that they 'do not create any controversy and doubt among the general public.' The evaluation of what may or may not create controversy and doubt among the general public is an objective, not subjective, evaluation. However, there is little within the censorship review process to suggest that the LPF is capable of making such an objective evaluation. For example, the LPF is not required to consult the public, industry stakeholders or other interested parties in the process of reviewing a film. The LPF is not even required to consult the filmmakers. Also, the composition of the LPF membership is not required to be a representative reflection of the public at large. In other words, the film censorship regulations do not ensure that the LPF is equipped to determine what may or may not create controversy and doubt among the general public.

**Table 4A: Summary of the four categories of content restrictions under Part II of the FC Guidelines<sup>159</sup>**

Category	Elaboration
<p><b>I</b> Security and public order</p>	<p>There are 15 restrictions relating to security and public order, and these include any content that:</p> <ul style="list-style-type: none"> <li>(a) is contrary to the principles of the Federal Constitution and <i>Rukun Negara</i>;</li> <li>(b) portrays the triumph of violence, anarchy and evil over the rule of law, justice and truth;</li> <li>(c) discredits or denigrates the ruling government, its leaders or foreign governments;</li> <li>(d) is provocative, slanderous or stir social unrest;</li> <li>(e) describes a modus operandi for wrongdoing that can provoke imitation;</li> <li>(f) glorifies crime and dangerous driving without eventual retribution;</li> <li>(g) portrays legal authorities as not eventually taking action against criminals;</li> <li>(h) portrays the use of destructive weapons in a violent and shocking manner against a group of individuals; or</li> <li>(i) has close up scenes of drug abuse, or beatings and torture (of humans or animals).</li> </ul> <p>The restrictions relating to public order and national security are widely-framed, and can be interpreted to justify cuts to content that criticises or censures the government of the day, or portrays government mismanagement or failure to perform, or promotes differing political views or identities.</p>
<p><b>II</b> Religion</p>	<p>On <b>religion in general</b>, the following is considered restricted content:</p> <ul style="list-style-type: none"> <li>(a) Teachings against God and religion, that support fanatical beliefs, or criticise or discredit any religion;</li> <li>(b) Misinterpretations of the concept of Jihad and equating it with violence.</li> </ul> <p>For <b>content relating to the Islamic religion</b>, the LPF can restrict content regarding how Islam and Muslims are depicted, to ensure that films do not stray from the dominant State-prescribed narrative of Islamic religious beliefs, practices and precepts. The FC Guidelines list 17 aspects on which the LPF may reject or censor films, and they range:</p> <ul style="list-style-type: none"> <li>(a) <b>from the general and imprecise</b>, e.g. 'ridiculing and derision of the purity of Islam'; 'contrary to the belief, laws and teachings of Islam'; 'conflicting with the opinions of Muslim clerics' or 'Making use of Islamic issues and depicting scenes that can lead to disunity among the Muslim community in this country';</li> </ul>

FOOTNOTE

<sup>159</sup> Sourced from Ministry of Home Affairs, *Guidelines on Film Censorship*, pp. 5-14.

Category	Elaboration
	<p>(b) <b>to the specific and prescriptive</b>, e.g. ‘historically incorrect, for example of the life history of the Prophets’; ‘the writing of the Qur’anic verses in a language other than Arabic’; ‘dialogue or scenes that celebrate the victory or glorify the gains and benefits of a person who has forsaken the Islamic religion without any retribution to the offender’; or ‘a Muslim who plays the character of non-Islamic faith such as a monk, clergyman, nun and who performs acts of worship in a temple, church, etc’.</p> <hr/> <p>Films that include content with <b>polytheistic elements</b> may also be scrutinised, and the FC Guidelines lists 36 aspects on which the LPF may reject or censor such a film. However, such a film will be allowed if the objective is to redress the faith and prevent polytheism and the characters contravening the faith must repent or receive retribution. There are polytheistic elements in religions or belief systems such as Hinduism, Buddhism, Confucianism and Taoism. Taken in totality, the restrictions on polytheism provide the LPF extensive and arbitrary discretion to censor content that portrays the practices of such religions and beliefs.</p> <hr/> <p>Besides the category labelled ‘Religion’ in the FC Guidelines, there are other restrictions and prohibitions relating to religious content in films that appear in the categories of ‘socio-culture’ and ‘decorum and morality’. All criteria relating to religion are collated and reproduced in <b>Appendix III</b>.</p>
<p><b>III</b> Socio-culture</p>	<p>There are 30 content restrictions under ‘socio-culture’, and they also range from the general and imprecise, to the specific and prescriptive. They can be grouped within these broad headings:</p> <ul style="list-style-type: none"> <li>(a) <b>Political structures and positions of authority</b>, e.g. content that degrades the Malay Rulers, governors and ‘national issues’; matters inconsistent with the Federal Constitution and <i>Rukun Negara</i>;</li> <li>(b) <b>Superstition and religion</b>, e.g. showcasing lifestyles that are ‘contrary to religious teachings and culture that can lead to the destruction of the noble values of society’; superstitious rituals that display ‘shocking cruelty’ towards humans or animals; worshipping the devil without retribution; portraying a Muslim man who is a main character with earrings and a tattoos, or Malay folk tales and legends that glorify matters contrary to the Islamic faith;</li> <li>(c) <b>Sexuality and obscenity</b>, e.g. sex scenes, including homosexual and ‘unnatural’ sex; scenes and dialogue that are sexually provocative, including of passionate kissing on the mouth, or provocative kissing on other parts of the body, or embraces and fondling in a provocative manner; full nudity; erotic sounds; women in scanty or transparent clothing; artwork displaying sexual acts;</li> <li>(d) <b>Violence and oppressive behaviour</b>, e.g. scenes of excessive violence; or scenes of oppression of a race or society;</li> <li>(e) <b>Portrayal of children</b>, i.e. content showing children smoking, drinking, alcohol or taking drugs.</li> </ul> <hr/> <p>Additional restrictions on religious content particularly with regard to Islam, are included in this category. Additional restrictions on political criticism and discourse, and on depictions of violence and oppression, which fall under the ‘security and public order’ category, are also included here. Content depicting non-heteronormative behaviour or orientation is restricted under both ‘socio-culture’ and ‘decorum and morality’.</p>

Category	Elaboration
<b>IV</b> Decorum and morality	Under the rubric of 'decorum and morality' there are 11 restrictions covering several subject matters: <ul style="list-style-type: none"> <li>(a) <b>Attire</b>, e.g. actors in revealing clothing exposing much of their bodies;</li> <li>(b) <b>Cultural/moral beliefs</b>, e.g. glorification of wicked deeds; deriding the disabled or marginalised; disrespectful behaviour towards parents, senior citizens, women, children and the disabled; content that normalises or turns into amusement actions that are discourteous or despicable; content that induce the performance of immoral, deviationist or wicked acts; portrayal of artistic skills disrespectful or in conflict with the 'artistic values of the Malaysian values';</li> <li>(c) <b>Transgenderism</b>, i.e. depictions of transgender behaviour and lifestyle;</li> <li>(d) <b>Environmental protection</b>, e.g. showing actions polluting the environment which is not part of the storyline;</li> <li>(e) <b>Language</b>, e.g. uncivil, obscene, hate-filled language; code-switching unless the Malay subtitles are accurate.</li> </ul>

#### Part IV: Obscene or coarse language

4.42 In Part IV of the LPF Guidelines,<sup>160</sup> obscene or coarse language in films are not prohibited outright, but the LPF is empowered to make an assessment on whether to censor such language 'in the context of the film.' In this regard, the FC Guidelines lays out lists of commonly recognised obscenities in the Malay, English, Chinese, Tamil, Hindi, Bengali and Punjabi languages.

#### The appeal process before the Appeal Committee

4.43 A film owner has the right to appeal to the Appeal Committee against any decision of the LPF.<sup>161</sup> The Appeal Committee is empowered to confirm, vary or reverse decisions of the LPF.<sup>162</sup> The LPF is obligated to abide by and enforce decisions of the Appeal Committee.<sup>163</sup>

4.44 In order to appeal from a decision of the LPF, the film owner must lodge a written notice of appeal (which can contain her/his representations against the LPF's decision) with the Secretary of the LPF within 30 days from receipt of the notification of the LPF's decision.<sup>164</sup> However, unlike the obligation imposed on the LPF panel reviewing the film to provide written reasons for its decisions, the FCA does not require the Appeal Committee to provide the film owner with written reasons for its decision to confirm, vary or reverse the LPF's original decision.

4.45 The Appeal Committee is composed of 19 members, 15 of whom are appointed by the Home Minister (including the Chairperson and Vice-Chairperson, while the remaining 4 are *ex-officio* members representing the police,

#### FOOTNOTE

<sup>160</sup> Ministry of Home Affairs, *Guidelines on Film Censorship*, pp. 19-22.

<sup>161</sup> FCA, s. 21(1).

<sup>162</sup> FCA, s. 23(1).

<sup>163</sup> FCA, s. 24(2).

<sup>164</sup> FCA, s. 21.



Home Ministry and Education Ministry.<sup>165</sup> Appeal Committee members apart from the *ex-officio* members are appointed for a three-year term or less, and may be reappointed or have their appointments revoked at the Minister's discretion.<sup>166</sup>

4.46 Unlike membership of the LPF Board, the FCA does not prevent politicians, public servants and public officer holders from being members of the Appeal Committee.<sup>167</sup> The FCA does not require that the members of the Appeal Committee must hold specific qualifications or experience - such as law or industry experience - to be eligible for appointment. It is also not a requirement that the Appeal Committee must include representatives from the creative sectors or from civil society.

### **Minister's powers to direct, exempt, prohibit and regulate**

4.47 The Home Minister has the power to issue general directions to the Board and the Appeal Committee on government policy 'relating to public exhibition of films and film-publicity materials', which the Board and Appeal Committee must implement.<sup>168</sup>

4.48 The Minister also has the power to issue regulations relating to the manner of submitting films to the LPF for the purpose of censorship; the prescription of fees under the FCA; the classification of films, the procedure for disposal of unclaimed films; and the compounding of offences.<sup>169</sup>

4.49 Notwithstanding any decision that the LPF or Appeal Committee may have taken upon reviewing a film, the Minister has the absolute discretion to prohibit the screening, distribution, possession, circulation and sale of the said film, if (s)he is of the opinion that it would be contrary to the public interest. The prohibition order must be published in the Gazette.<sup>170</sup>

4.50 The Minister also has the power to exempt any film or class of films from being subjected to censorship review under the FCA, if (s)he is satisfied that it is in the public interest or the interest of the country to do so.<sup>171</sup>

### **Judicial oversight**

4.51 The FCA prohibits any decision of the LPF, Appeal Committee or Home Minister, from being challenged in court through an appeal or review,<sup>172</sup> and provides members of the LPF and the Appeal Committee and their staff as well as Enforcement Officers immunity from civil and criminal proceedings for actions taken in good faith in the course of implementing the provisions of the FCA.<sup>173</sup>

#### **FOOTNOTE**

**165** FCA, s. 22(1). *The ex officio members comprise: the Inspector-General of Police; the Secretary-General of the Ministry responsible for film censorship (by practice, the Home Ministry); the Secretary General of the Ministry responsible for broadcasting regulation (by practice, the Home Ministry); and the Director-General of Education. Representatives of these ex-officio members may be appointed to the Appeal Committee in their stead.*

**166** FCA, Schedule, paras. 4 and 6.

**167** FCA, Schedule, para. 2 expressly applies to the LPF Board only. However, para. 3 of the Schedule disqualifies the following persons from membership of the Appeal Committee: a bankrupt, a judgment debtor, anyone found to be of unsound mind or anyone convicted of an offence of fraud, dishonesty or moral turpitude.

**168** FCA, s. 25.

**169** FCA, s. 27.

**170** FCA, s. 26.

**171** FCA, s. 28.

**172** FCA, s. 48 & 23(2).

**173** FCA, s. 50.



5

**CONTENT  
REGULATION**

**IN OTHER MEDIUMS  
OF EXPRESSION**

## 5

# Content Regulation in Other Mediums of Expression

- 5.1 This chapter discusses other content regulation mechanisms in Malaysia. The first section in this chapter provides an overview of the industry forum regulatory framework under the CMA. It identifies the relevant policy objectives, regulatory approach and operational aspects. For the purposes of the comparative exercise in this report, only the main components of the CMA content self-regulation mechanism will be discussed.
- 5.2 The next section of this chapter analyses judicial interpretation of content restrictions imposed on print media under the PPPA, through the study of select case law.

## INDUSTRY SELF-REGULATION UNDER THE CMA

### Background and Limitations

- 5.3 The CMA serves as the source legislation for technical, economic, consumer and social regulation of networked communications systems (including the telecommunications and broadcasting industries).<sup>174</sup> Within this jurisdiction, the CMA creates a system of self-regulation for content provided by content applications service providers, through an industry-led forum under the supervisory control of the MCMC and MCM. Underpinning the regulatory matrix is the Multimedia Super Corridor (MSC) Bill of Guarantee<sup>175</sup> which includes a commitment that Malaysia will not impose censorship of the internet, a commitment that is reiterated in the CMA and deferred to in the FCA.
- 5.4 The core principle underlying the CMA regulatory framework is industry self-regulation. The CMA sets the parameters for prohibited content and its punishment, and lays out a regulatory mechanism for the creation of a voluntary industry forum and content code. The setting of content standards and limits, as well as compliance and enforcement procedures, is left to the industry forum and content code. The first edition of the CMA Content Code was registered on 1 September 2004. The second, and currently operative edition of the Code was registered on 14 February 2020.<sup>176</sup>

#### FOOTNOTE

<sup>174</sup> *Explanatory Statement to the Communications and Multimedia Bill 1998.*

<sup>175</sup> *The MSC was launched in 1996 as part of the government's ambition to become the Silicon Valley of the region. The Bill of Guarantee was intended to assure and attract international technology companies and multinational investment.*

<sup>176</sup> *The Communications and Multimedia Content Forum of Malaysia, The Malaysian Communications and Multimedia Content Code, 2nd Ed., 14 February 2020 ["CMA Content Code"], <http://www.cmcf.my/download/cmcf-content-code-english.pdf>, (accessed on 13 November 2020).*

- 5.5 The CMA Content Code is applicable to content applications service providers.<sup>177</sup> The Code covers all forms of content, whether written, audio or video; and whether on microblogging, instant messaging or streaming services. Compliance with the Code is voluntary,<sup>178</sup> but compliance to the Code may be attached as a condition of an operating licence issued under the CMA.<sup>179</sup> The CMA also provides that compliance with the Code is a defence against any prosecution, action or proceeding in court.<sup>180</sup> The CMA thus incentivises compliance by turning it into a benefit for industry participants.
- 5.6 Conceptually, the CMA content regulation mechanism is progressive relative to the other content regulation mechanisms in Malaysia. The fact that this framework continues to operate in relative stability within the same socio-political landscape as the FCA, makes it a useful comparison for this report. This is not to overlook or downplay the various instances in which the state's investigative and prosecutorial powers under the CMA have been used to quell criticisms against those in political leadership, or to suppress public discourse on issues considered 'sensitive' to the government's political interests; it is also not intended to dismiss the evolving complexities over controlling misinformation and disinformation online. However, instances of state overreach do not derogate from the operational durability of the CMA's industry-led content regulation mechanism, one that is based on self-regulation, does not include prior censorship and adopts a more inclusive and consultative approach to content restrictions.

## The Regulators

- 5.7 Under the CMA, the MCMC is given the authority to set up and monitor an industry-based content forum. The Content Forum is tasked with creating and operationalising a content code to deal with the classes of prohibited content under the CMA.<sup>181</sup> The MCMC also advises the Minister on national communications and multimedia policy, recommending reforms to related laws, supervises and monitors communications and multimedia activities and promotes self-regulation in the communications and multimedia industry.<sup>182</sup> The members of the MCMC including the Chairman are appointed by the Minister, and includes at least 3 representatives of the government.<sup>183</sup>

### FOOTNOTE

<sup>177</sup> Content application service providers are defined to include direct-to-home (DTH) satellite or cable subscription broadcasting, terrestrial free-to-air television and radio, and internet web casting and streaming videos. See: CMA Content Code, p. 9.

<sup>178</sup> CMA, s 98(1); CMA Content Code, p. 10 (para. 6.2).

<sup>179</sup> CMA, s 99. For example, compliance with the recognised industry code is a condition in the content applications service provider licences issued to entities like Astro, Media Prima platforms, Unifi TV, etc. It is to be noted however, that entities that provide content applications services via the internet (for example, internet content applications service providers like Astro Go, iFlix and Netflix) are exempted from requiring licences under the CMA. See: Communications and Multimedia (Licensing) (Exemption) Order 2000 [P.U.(A) 125/2000], <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Communications-and-Multimedia-Licensing-Exemption-Order-Regulation-2000.pdf>, (accessed on 13 November 2020).

<sup>180</sup> CMA, s 98(2); CMA Content Code, Part 1, p. 10 (para. 6.3).

<sup>181</sup> Communications and Multimedia Act 1988 ["CMA"], ss. 212-213.

<sup>182</sup> Malaysian Communications and Multimedia Commission Act [MCMC Act], s. 16(1).

<sup>183</sup> MCMC Act, s. 6.

- 5.8 On 29 March 2001, the MCMC established/designated the Communications and Multimedia Content Forum of Malaysia (Content Forum).<sup>184</sup> The Content Forum is composed of members from different sectors of the communications and multimedia industry. The Ordinary members consist of broadcasters, internet access service providers, content creators / distributors, advertisers, audiotext hosting service providers and civic groups.<sup>185</sup> Entities that fall outside the six Ordinary member categories but have an interest in communications and multimedia industry content regulation may join the Content Forum as Associate members.<sup>186</sup> The Content Forum currently consists of 41 Ordinary members and 4 Associate members.<sup>187</sup> The Content Forum is managed by a Council comprising a Chairperson and 18 others elected from the Forum's Ordinary membership for a 2-year term.<sup>188</sup>
- 5.9 The Content Forum's statutory mandate<sup>189</sup> is to prepare a content code with model procedures for dealing with offensive and indecent content,<sup>190</sup> which may include:<sup>191</sup>
- (a) Restrictions on the provision of unsuitable content;
  - (b) Methods for classifying content;
  - (c) Procedures for handling public complaints; and
  - (d) Representing Malaysian culture and national identity.
- 5.10 The Content Forum's stated objectives are to enable a balanced representation of the relevant sectors of the industry and society to ensure that the CMA Content Code reflects the views of the community at large.<sup>192</sup> The application of community standards to assess the suitability of content is a principle that underpins the CMA content regulation framework.<sup>193</sup>
- 5.11 The Content Forum has the responsibility of administering the Code and imposing sanctions in the case of any breach.<sup>194</sup> A Complaints Bureau has been set up under the Content Forum for the purpose of receiving, mediating and if necessary adjudicating on complaints and grievances relating to breaches of the CMA Content Code.<sup>195</sup> The remit and functions of the Complaints Bureau and the procedures relating to complaints is discussed later in this section.

#### FOOTNOTE

<sup>184</sup> *The Communications and Multimedia Content Forum of Malaysia, History & Mission*, <http://www.cmcf.my/history-mission>, (accessed on 13 November 2020).

<sup>185</sup> *The Communications and Multimedia Content Forum of Malaysia, Fact Sheet*, <http://www.cmcf.my/fact-sheet>, (accessed on 13 November 2020).

<sup>186</sup> *Ibid.*

<sup>187</sup> *Ibid.*

<sup>188</sup> *The Communications and Multimedia Content Forum of Malaysia, History & Mission*. The representatives are drawn from each of the six categories of Ordinary members of the Content Forum: Advertisers, Audiotext Service Providers, Broadcasters, Civic Groups, Content Creators / Distributors and Internet Access Service Providers.

<sup>189</sup> The Content Forum is denoted as an Industry forum under the CMA (see s. 212 read with s. 94). It's statutory remit as an Industry forum is spelt out in the CMA (ss. 212 & 213 read with ss. 94-103).

<sup>190</sup> CMA, s. 212.

<sup>191</sup> CMA, s. 213(2).

<sup>192</sup> *The Communications and Multimedia Content Forum of Malaysia, History & Mission*.

<sup>193</sup> *Explanatory Statement to the Communications and Multimedia Bill 1998*, para. 119.

<sup>194</sup> *CMA Content Code*, p. 57 (para. 2.3). Notwithstanding the Content Forum's mandate to manage complaints relating to the CMA Content Code, the MCMC retains the authority under the CMA to directly investigate perceived violations of the Content Code. This topic is discussed later in this chapter.

<sup>195</sup> *The Communications and Multimedia Content Forum of Malaysia, Fact Sheet; CMA Content Code*, p. 57 (para. 2.4).

## Policy and objectives

5.12 Unlike the FCA, the CMA reaffirms the national policy objectives for the communications and multimedia industry;<sup>196</sup> which include:

- (a) To establish Malaysia as a major global centre and hub for communications and multimedia information and content services;
- (b) To promote a civil society where information-based services will provide the basis for continuing enhancements to quality of work and life;
- (c) To grow and nurture local information resources and cultural representation that facilitate the national identity and global diversity; and
- (d) To regulate for the long-term benefit of the end user.

5.13 Also unlike the FCA, the purpose and objects of the CMA are expressly spelt out in the Act.<sup>197</sup> These national policy objectives and the CMA's purpose and objects are also included in the preamble, principles and objectives of the CMA Content Code,<sup>198</sup> which clearly links the policy objectives and delegation of authority between the CMA and the Content Forum.

5.14 The preamble, principles and objectives of the Code are reproduced in Appendix I. Several consistent themes, such as a rights-based approach, inclusivity and representativeness, non-prescriptiveness, and the achievement of balance between competing interests and priorities, are reaffirmed throughout the CMA Content Code. For example:

- (a) The freedom to create content and to choose and access content on the one hand, and the protection of public and national security interests on the other, are all equally relevant, and must be balanced in formulating content standards and guidelines.
- (b) The plurality and diversity of consumer needs and preferences across the political, economic and cultural spectrum must also be reflected in the types of content that is made available to the consumer.
- (c) The Code takes a rights-based approach when requiring that content does not contain discriminatory material but instead reflects intersectional diversity with regard to a wide range of societal divisions and protected classes.
- (d) The responsibility of balancing these often conflicting interests in creating and consuming content, is shared between the content producer and the consumer.
- (e) The Code is to be interpreted and implemented based on the CMA's overarching purposes of self-regulation, liberalisation and transparency.

### FOOTNOTE

<sup>196</sup> CMA 1998, s. 3(2).

<sup>197</sup> CMA, ss. 3(1)(b)-(d).

<sup>198</sup> CMA Content Code, pp. 5-7.

5.15 In particular, the Code's preamble acknowledges the right of consumers to freedom of choice in their selection of content, but that such freedom must be balanced against the public interest,<sup>199</sup> and that the responsibility for the choice is shared by the consumer.<sup>200</sup> The preamble also acknowledges the importance of news and reporting in creating an informed public<sup>201</sup> and that information and entertainment must meet the diverse business, political, recreational, informational, cultural and educational needs of consumers.<sup>202</sup>

5.16 The general principles of the Code require, among others, that:

- (a) In determining restrictions on content, the desire of consumers for a wide range of content and for access to information must be balanced against the need to 'preserve law, order and morality'.<sup>203</sup> Content should cater to the diverse tastes and expectations of the Malaysian public.<sup>204</sup>
- (b) Content should not contain abusive or discriminatory material, but should include and respect diversity, of race, religion, culture, ethnicity, national origin, gender, age, marital status, socio-economic status, political persuasion, educational background, geographic location, sexual orientation, or physical or mental ability, while acknowledging every person's right to full and equal recognition and the enjoyment of fundamental rights and freedoms under the Federal Constitution.<sup>205</sup>
- (c) Content must portray men and women fairly and equitably based on intersectional diversity by age, civil status, race, ethno-cultural origin, physical appearance, background, religion, occupation, socio-economic condition and leisure activities, and while actively pursuing a wide range of interests.<sup>206</sup>

### **Content guidelines and restrictions**

5.17 The CMA itself sets down broad descriptions of content that are restricted and considered offensive: the Act prohibits the provision of content which is indecent, obscene, false, menacing, or offensive in character with the intent to annoy, abuse, threaten or harass any person.<sup>207</sup> The task of the CMA Content Code is to lay out standards and guidelines that define or provide specificity to the broad descriptions of restricted content in the CMA. The Content Forum's powers to define and regulate content is circumscribed by the CMA's statutory provisions; the Forum cannot prohibit or restrict content that does not fall within the statute.

5.18 The content regulation mechanism requires content producers and providers to self-regulate the content they produce by applying the standards and guidelines in the CMA Content Code. A content producer or provider will determine if the content they produce or intend to produce complies with the standards in the Code before they broadcast or disseminate it. If complaints are raised that the content is 'indecent, obscene, false, menacing, or offensive in character with the intent to annoy, abuse, threaten or harass any person' it is for the content producer / provider to show that they have following the content standards and guidelines set out in the Code.

#### **FOOTNOTE**

<sup>199</sup> CMA Content Code, p. 5 (para. 1.5).

<sup>200</sup> CMA Content Code, p. 6 (para. 1.6).

<sup>201</sup> CMA Content Code p. 5 (para. 1.3).

<sup>202</sup> CMA Content Code, p. 5 (para. 1.4).

<sup>203</sup> CMA Content Code, p. 6 (para. 2.2).

<sup>204</sup> CMA Content Code, p. 7 (para. 2.8).

<sup>205</sup> CMA Content Code, pp. 6-7 (paras. 2.4, 2.7 & 2.9).

<sup>206</sup> CMA Content Code, p. 6 (para. 2.5).

<sup>207</sup> CMA, s. 211. S.233 uses similar descriptors for the type of content deemed unlawful. 'Content' is defined in s. 6 of the CMA as any sound, text, still picture, moving picture or other audio-visual representation, tactile representation or any combination of the preceding capable of being created, manipulated, stored, retrieved or communicated electronically.



PHOTO: *Threemendous Films*

- 5.19 The CMA Content Code is divided into general content guidelines (Part 2) and additional guidelines for specific sectors: Advertisements (Part 3); Broadcasting (Part 4); Online (Part 5); Audiotext Hosting Services (Part 6); Limited Content (Part 7); and Consumer Protection (Part 10). This report only focuses on the guidelines in the Code that are relevant to content created through the medium of film. The specific content criteria for each of the sections in the Code are generally non-prescriptive (barring a few exceptions). The Content Forum is authorised to review and revise the Code; and the review undergoes public consultation.<sup>208</sup>
- 5.20 Part 2 of the CMA Content Code provides specific content standards and restrictions for 10 areas, and these are summarised in **Table 5A**.
- 5.21 **Broadcasters** are additionally required to abide by additional directions in Part 4 relating to classification and scheduling of programmes.<sup>209</sup> The LPF's classification standards are applied to broadcasted content and must be displayed at regular intervals of the programme.<sup>210</sup> Programmes carrying 'U' and 'P13' classifications may be shown at any time of the day, while programmes carrying a classification of '18' can only be shown after 10.00 p.m.<sup>211</sup>
- 5.22 Broadcasters are required to take notice of the importance of providing content that caters to the varied tastes and expectations of Malaysian viewers,<sup>212</sup> and the importance of ensuring that content is free from abusive or discriminatory material on matters that include race, religion, culture, ethnicity, national origin, gender, age, marital status, socio-economic status, political persuasion, educational background, geographic location, sexual orientation, or physical or mental ability.<sup>213</sup> Specific directions are also provided to broadcasters regarding religious content and the exploitation or degradation of specific groups. These restrictions and guidelines are included in Table 5A.
- 5.23 Additional guidelines from Part 5 on the regulation of online content, and from Part 10 in relation to obligations regarding consumer protection, are also described in Table 5A.

#### FOOTNOTE

<sup>208</sup> CMA Content Code, Part 8, pp. 63-64 (paras. 11.1-11.7).

<sup>209</sup> CMA Content Code, Part 4, p. 34 (para. 3.1).

<sup>210</sup> CMA Content Code, Part 4, p. 34 (para. 3.2).

<sup>211</sup> Subscription-based broadcasters that provide information on programme classification prior to broadcasting a programme or that employ technological safeguards like parental locks are exempt from the scheduling guideline. See: CMA Content Code, Part 4, p. 35 (paras. 3.3-3.5).

<sup>212</sup> CMA Content Code, Part 4, p. 35 (para. 3.6).

<sup>213</sup> CMA Content Code, Part 4, p. 35 (para. 3.7).



**Table 5A: Summary of the content standards and restrictions under the CMA Content Code**

Category	Elaboration
<b>I</b> Indecent Content	Indecent content is defined as material which is ‘offensive, morally improper and against standards of acceptable behaviour.’ <sup>214</sup> Nudity and sex scenes are wholly barred, unless approved by the LPF. <sup>215</sup>
<b>II</b> Obscene Content	Obscene content is lewd portrayals that give rise to ‘a feeling of disgust’ and is ‘offensive to one’s prevailing notion of decency and modesty.’ <sup>216</sup> The test of obscenity is whether the content ‘has a tendency to deprave and corrupt those whose minds are open to such communication.’ <sup>217</sup> Portrayal of any sexual activity that ‘a reasonable adult’ would consider ‘explicit and pornographic’ is prohibited. <sup>218</sup> Child pornography, portrayal of sex crimes, and content that degrades or demeans any adult or child as sexual objects are prohibited. <sup>219</sup>
<b>III</b> Violence	<p>Recognising that violence can occur through acts of nature and human conflict and both in fact and through popular fiction, content providers may need to reflect, portray and report on ‘hard truths’ in ‘understanding the human condition’ and the role that stories of violence play in ‘the civilising process.’<sup>220</sup> Within this context, it is required that:<sup>221</sup></p> <ul style="list-style-type: none"> <li>(a) Violence be portrayed responsibly and not exploitatively, and should not be excessive, gratuitous, humiliating or instructional.</li> <li>(b) The portrayal of violence should include consequences to its victims and perpetrators.</li> <li>(c) Particular care should be exercised if children may see or be involved in the depiction; the susceptibility of younger, impressionable audiences must be considered.</li> <li>(d) Violence should be treated appropriate to the context and audience expectations. Gratuitous presentation of sadistic practices, and explicit imagery of injury, aggression and blood should be avoided.</li> <li>(e) In the reporting or analysis of news and sports events, the portrayal of violence is permitted upon the exercise of appropriate editorial judgement, caution and discretion in the selection of the material and audio-visual representation, and upon viewers being cautioned in advance.</li> <li>(f) Displaying easily imitable dangerous behaviour must be justified and ideally excluded.</li> <li>(g) Graphic representations of sexual violence are not allowed.</li> </ul>
<b>IV</b> Menacing Content	<p>Menacing content that ‘causes annoyance, threatens harm or evil, encourages or incites crime, or leads to public disorder’ is prohibited.<sup>222</sup> This includes:<sup>223</sup></p> <ul style="list-style-type: none"> <li>(a) Hate propaganda that advocates genocide or hatred against an identifiable group; and</li> <li>(b) Information that might be a threat to national security or public health and safety, such as guidance on bomb-making, illegal drug production or counterfeit products, providing false information regarding racial disturbances, or circulating information about possible terrorist attacks or the outbreak of deadly or contagious diseases.</li> </ul>

**FOOTNOTE**

<sup>214</sup> CMA Content Code, Part 2, p. 12 (para. 2.1).

<sup>215</sup> *Ibid.*

<sup>216</sup> CMA Content Code, Part 2, p. 13 (para. 3.1).

<sup>217</sup> *Ibid.*

<sup>218</sup> *Ibid.*

<sup>219</sup> *Ibid.*

<sup>220</sup> CMA Content Code, Part 2, p. 13 (paras. 4.1 & 4.2).

<sup>221</sup> CMA Content Code, Part 2, pp. 14-15 (para. 4.3).

<sup>222</sup> CMA Content Code, Part 2, p. 15 (paras. 5.1 & 5.2).

<sup>223</sup> CMA Content Code, Part 2, pp. 15-16 (para. 5.3).

Category	Elaboration
<b>V</b> Bad Language	<p>The use of disparaging or abusive words calculated to offend an individual or group is prohibited, as are words in commonly-used languages in Malaysia that are considered obscene or profane, including crude references to sexual intercourse and sexual organs. But the Code stops short of listing out prohibited offensive language and crude references.<sup>224</sup></p> <p>Hate speech is prohibited, and is defined as portrayals which denigrate, defame or otherwise devalues a person or group based on race, ethnicity, religion, nationality, gender, sexual orientation, or disability. The use of strong or crude language, sexual references or obscene gestures in the description of such groups is also considered hate speech.<sup>225</sup></p> <p>Content providers are also required to exercise care in the use of explicit or graphic language in content involving destruction, accidents or sexual violence which could be disturbing for general viewing.<sup>226</sup></p>
<b>VI</b> False Content	<p>Content providers are required to avoid the inclusion of false material that is likely to mislead, and to take steps to limit the likelihood of perpetuating untruths.<sup>227</sup> For the purposes of the Code, false content is content that the content provider has not taken reasonable measures to verify the truth of prior to communication.<sup>228</sup> However, false content in satire and parody, or where it is 'clear to an ordinary user that the content is fiction' is permitted under the Code.<sup>229</sup></p>
<b>VII</b> Children's Content	<p>In the context that content for children (defined to be 14-years old and below) reaches 'impressionable minds and influences social attitudes and aptitudes',<sup>230</sup> it is required that:</p> <ul style="list-style-type: none"> <li>(a) The selection, control of material, characterisations and plot be closely supervised, but without impacting the 'vigour and vitality common to children's imaginations and love for adventure'.<sup>231</sup></li> <li>(b) Where it involves real-life characters, violence should only be portrayed when it is essential to character and plot development, and even in animated content, violence must not be the central theme or invite dangerous imitation.<sup>232</sup></li> <li>(c) Scenes of violence minimising the effects of violent acts should not be included in children's content, and where violence is included it must portray the consequences of such violence to its victims and perpetrators.<sup>233</sup></li> <li>(d) Content with themes that can threaten a child's sense of security or that could invite children to imitate acts which they see on screen, must be dealt with carefully.<sup>234</sup></li> </ul>

## FOOTNOTE

<sup>224</sup> CMA Content Code, Part 2, p. 16 (paras. 6.1(i)-(ii)).

<sup>225</sup> CMA Content Code, Part 2, p. 16 (para. 6.1(iii)).

<sup>226</sup> CMA Content Code, Part 2, p. 16 (para. 6.1(iv)).

<sup>227</sup> CMA Content Code, Part 2, p. 17 (paras. 7.1 & 7.4).

<sup>228</sup> CMA Content Code, Part 2, p. 17 (para. 7.2).

<sup>229</sup> CMA Content Code, Part 2, p. 17 (para. 7.3).

<sup>230</sup> CMA Content Code, Part 2, p. 17 (para. 8.1).

<sup>231</sup> CMA Content Code, Part 2, p. 17 (para. 8.1).

<sup>232</sup> CMA Content Code, Part 2, pp. 17-18 (paras. 8.1(i)(a)-(b)).

<sup>233</sup> CMA Content Code, Part 2, p. 18 (para. 8.1(i)(c)).

<sup>234</sup> CMA Content Code, Part 2, p. 18 (para. 8.1(ii)).

Category	Elaboration
<b>VIII</b> Family Values	A holistic rights-based approach is required as it relates to portrayals of gender and gender stereotypes. This includes respect for the intellectual and emotional equality and indignity of both sexes. Despite the realities of ‘societal discrimination’, <sup>235</sup> content providers should provide content that: <ul style="list-style-type: none"> <li>(a) Reflects an awareness of the need to avoid and overcome biased portrayals of gender;<sup>236</sup></li> <li>(b) Portrays women and men as equals both economically and emotionally, and in the public and private spheres;<sup>237</sup></li> <li>(c) Portrays ‘all persons as supporting participants in the family unit’;<sup>238</sup> and</li> <li>(d) Portrays men and women as ‘equal beneficiaries of family or single-person life, in both work and leisure activities and, as far as possible, under all types of thematic circumstances.’<sup>239</sup></li> </ul>
<b>IX</b> Persons with Special Needs	Within the context that humour based on physical, mental or sensory disability runs the risk of offence even if malice is not present, the Code’s standard is that references to disability should be in neutral, non-patronising terms. <sup>240</sup>
<b>X</b> Privacy	Content providers and disseminators are required to respect and adhere to personal data and privacy laws. <sup>241</sup>
<b>XI</b> Religious content <i>For broadcasters</i>	Broadcasters are to give regard to Islam as the official religion of the country, and to the constitutional guarantee of freedom of religion for all other communities. <sup>242</sup> Broadcasters must ensure that religious content is not used to convey attacks on any race or religion or is likely to create disharmony. <sup>243</sup> <p>Broadcasters must ensure that all Islamic religious programming is approved by the relevant religious authorities prior to transmission.<sup>244</sup> Advice from the appropriate religious authorities should be obtained in relation to content relating to other religions.<sup>245</sup></p>
<b>XII</b> Exploitation <i>For broadcasters</i>	Broadcasters are required to ensure that the exploitation of women, men and children should not be condoned, <sup>246</sup> and negative or degrading content on the role or nature of women, men and children should be avoided. <sup>247</sup> This includes the use of modes or dress or camera focus on the body to imply lewd conduct. <sup>248</sup>

**FOOTNOTE**

235 CMA Content Code, Part 2, p. 18 (para. 9.1).  
 236 CMA Content Code, Part 2, p. 18 (para. 9.1).  
 237 CMA Content Code, Part 2, p. 18 (para. 9.1).  
 238 CMA Content Code, Part 2, p. 18 (para. 9.2).  
 239 CMA Content Code, Part 2, p. 18 (para. 9.2).  
 240 CMA Content Code, Part 2, p. 19 (para. 10.1).  
 241 CMA Content Code, Part 2, p. 19 (para. 11.1).  
 242 CMA Content Code, Part 4, p. 38 (para. 3.12).  
 243 CMA Content Code, Part 4, p. 38 (para. 3.13).  
 244 CMA Content Code, Part 4, p. 38 (para. 3.14).  
 245 CMA Content Code, Part 4, p. 38 (para. 3.14).  
 246 CMA Content Code, Part 4, p. 38 (para. 3.17).  
 247 CMA Content Code, Part 4, p. 38 (para. 3.17).  
 248 CMA Content Code, Part 4, p. 38 (para. 3.18).

Category	Elaboration
<b>XIII</b> Online Content	While responsibility for online content primarily rests with the content creator, <sup>249</sup> users or consumers are responsible for their choice and utilisation of online content. <sup>250</sup>
<b>XIV</b> Consumer protection provisions	<p>In protecting young children, all content must have due regard to the welfare of a child at all times, and all efforts made to ensure that any content will not result in causing, encouraging or promoting physical injury or abuse to a child or expose a child to moral danger.<sup>251</sup></p> <p>Content should not glorify events and occurrence relating to horror, sex and violence unless it is in the context of an actual and real situation.<sup>252</sup></p> <p>Content should respect, protect and actively promote cultural diversity, including the interests of minority and marginalised groups.<sup>253</sup></p>

## Implementation and enforcement

5.24 In the event that a complaint is raised against a content producer or provider, the Content Forum, through its Complaints Bureau, will conduct an inquiry, and if it finds that the complaint is justified, it may impose non-penal penalties on the content producer. The Complaints Bureau set up under the Content Forum receives, mediates and adjudicates on complaints and grievances relating to a breach of the CMA Content Code.<sup>254</sup> The power to enforce the Code derives from the express undertaking by those who subscribe to the Code.<sup>255</sup>

5.25 The Bureau comprises six representative members<sup>256</sup> of the Forum, led by a Chairperson who should be a retired judge or judicial officer. A Complaints Bureau inquiry panel is composed of the Chairperson and at least three members. Panel members must disclose to the Chairperson any personal interest that may place them in a position of conflict regarding the complaint at hand.<sup>257</sup> The Council of the Content Forum has the power to suspend any member of the Bureau for inappropriate behaviour, incapacity or any other reason rendering her/him unfit for such membership.<sup>258</sup>

5.26 Among the Bureau's powers and functions are to:<sup>259</sup>

- (a) Consider and deal with complaints relating to content;
- (b) Investigate possible breaches of the Code, pursuant to a complaint or otherwise;
- (c) Interpret provisions of the Code.

### FOOTNOTE

<sup>249</sup> CMA Content Code, Part 5, p. 42 (para. 4.1(b)).

<sup>250</sup> CMA Content Code, Part 5, p. 42 (para. 4.1(d)).

<sup>251</sup> CMA Content Code, Part 10, p. 67 (para. 3.2).

<sup>252</sup> CMA Content Code, Part 10, p. 68 (para. 3.3(iii)).

<sup>253</sup> CMA Content Code, Part 10, p. 68 (para. 3.4).

<sup>254</sup> CMA Content Code, p. 57 (para. 2.4).

<sup>255</sup> CMA Content Code, p. 57 (para. 1.1). It should be noted that s. 99 (read with s. 51) of the CMA authorises the MCMC to require that any entity or person comply with the CMA Content Code as part of its licence conditions.

<sup>256</sup> Comprising representatives from each of the six categories of Ordinary members of the Content Forum. Representatives are appointed for a two-year term at the Annual General Meeting of the Content Forum, and cannot hold office for more than two consecutive terms. See: CMA Content Code, p. 62 (paras. 10.1 & 10.2).

<sup>257</sup> CMA Content Code, p. 62 (para. 10.5).

<sup>258</sup> CMA Content Code, p. 63 (para. 10.8).

<sup>259</sup> CMA Content Code, p. 58 (para. 3.1).

5.27 The Complaints Bureau may hold an inquiry into a complaint in response to a written request or on its own initiative.<sup>260</sup> Complaints must be made within two months of its occurrence.<sup>261</sup> The Bureau cannot consider complaints that involve matters that are the subject of legal proceedings.<sup>262</sup>

5.28 In keeping with the characteristics of self-regulation, including the voluntary assumption of obligations, the enforcement and dispute resolution mechanism under the Code requires resolution through mediation as a first resort,<sup>263</sup> under the guidance and assistance of the Bureau.<sup>264</sup> An inquiry will only be initiated if mediation fails.<sup>265</sup>

5.29 A step-by-step guide to the complaints procedure is provided in the Code:

- (a) The complainant submits a written complaint to the Complaints Bureau, which should specify the part of the CMA Content Code that is alleged to have been breached and include supporting documents.<sup>266</sup>
- (b) The Chairperson makes an initial assessment whether the complaint is frivolous, lacking merit on the face of it or outside the scope of the Code. If so, she/he will notify the complainant that no further action will be taken and provide reasons. If further investigation of the complaint is warranted, the complaint will be forwarded to the party complained against, who is required to respond within two working days.<sup>267</sup>
- (c) After two working days, the Chairperson will review the complaint and the response from the party complained against, if any. The Chairperson will circulate the documents to the other Bureau members for their views, with the Chairperson's opinion on whether the complaint has merits or there are insufficient grounds to uphold the complaint.<sup>268</sup>
- (d) If at least a majority of the Bureau members agree with the Chairperson's opinion that the complaint has insufficient grounds, the complainant is so informed. If the Bureau unanimously agrees that the complaint has merits, the complaint moves to the inquiry stage. If the Bureau is not unanimous in its decision to escalate the complaint, the Bureau will meet to deliberate the matter.<sup>269</sup>
- (e) In the inquiry stage, the Bureau has the power to require the parties involved to provide evidence in support or against the complaint, and this includes the presence of witnesses and other parties required for clarification or independent verification.<sup>270</sup>

#### FOOTNOTE

<sup>260</sup> CMA Content Code, p. 58 (para. 3.4).

<sup>261</sup> CMA Content Code, p. 58 (para. 3.3).

<sup>262</sup> CMA Content Code, p. 58 (para. 3.4).

<sup>263</sup> CMA Content Code, p. 57 (para. 2.5).

<sup>264</sup> CMA Content Code, p. 58 (para. 3.5).

<sup>265</sup> CMA Content Code, p. 57 (para. 2.5) & p. 58 (para. 3.6).

<sup>266</sup> CMA Content Code, p. 59 (para. 4.1).

<sup>267</sup> CMA Content Code, p. 59 (paras. 4.2-4.3).

<sup>268</sup> CMA Content Code, p. 59 (paras. 4.4 & 4.6).

<sup>269</sup> CMA Content Code, p. 59 (paras. 4.5 & 4.6).

<sup>270</sup> CMA Content Code, p. 60 (para. 6.1).

5.30 If the Bureau makes a finding that there has been a breach of the CMA Content Code, it may impose any or all of the following penalties:<sup>271</sup>

- (a) A written reprimand;
- (b) A fine not exceeding RM50,000.00; and/or
- (c) The removal of the content.

The Bureau may also refer the offending party to the MCMC for further action.<sup>272</sup>

5.31 Any ruling by the Bureau is decided by a majority of votes of its members.<sup>273</sup> The parties concerned will be notified in writing of the Bureau's decision and the action to be taken.<sup>274</sup> The Bureau must publish its findings within 30 days of the conclusion of the inquiry.<sup>275</sup> Any party may request that the Bureau reconsider its decision if new evidence comes to light; and any decision on reconsideration is final.<sup>276</sup>

5.32 As a parallel mode of enforcement, the MCMC and the police may conduct their own (criminal) investigations for a breach of content prohibitions under Sections 211 or 233 of the CMA.<sup>277</sup> The criminalisation of the breach of content regulations does not neatly reconcile with the CMA's principles of self-regulation. However, measures appear to have been built into the CMA to provide a content producer a defence against criminal prosecution if they can show that they complied with the CMA Content Code.<sup>278</sup> It has been argued that the power to criminalise violations relating to the creation and sharing of content may be justified as necessary to respond to egregious or organised violations of the CMA. In the past however, criminal action has been taken under the CMA to penalise content producers and providers for lesser infractions in politically-charged or motivated cases.

## Reviewing the Complaints Bureau's decisions

5.33 The CMA permits a complainant who is dissatisfied with the rulings of the Complaints Bureau to take the grievance to the consumer complaints mechanism under the MCMC.<sup>279</sup> This consumer complaints mechanism is specifically available to consumers, and only applicable to licensees under the CMA.<sup>280</sup> A step-by-step guide to the MCMC consumer complaints procedure is provided online, and follows a similar process as the Complaints Bureau procedure, with parties able to make written representations to the panel.<sup>281</sup>

### FOOTNOTE

<sup>271</sup> CMA Content Code, p. 61 (para. 8.1).

<sup>272</sup> CMA Content Code, p. 61 (para. 8.2).

<sup>273</sup> CMA Content Code, p. 61 (para. 7.1).

<sup>274</sup> CMA Content Code, p. 61 (paras. 7.1 & 7.2).

<sup>275</sup> CMA Content Code, p. 61 (para. 9.2).

<sup>276</sup> CMA Content Code, p. 61 (para. 7.3).

<sup>277</sup> CMA, ss. 245-246 & 258-259.

<sup>278</sup> CMA, s 98(2).

<sup>279</sup> CMA, ss. 195-196. The relationship between the complaints mechanism under the Content Forum and the consumer dispute mechanism under the MCMC is described on the MCMC website: Malaysian Communications and Multimedia Commission. Complaint Diagram, <https://www.mcmc.gov.my/en/make-a-complaint/complaint-circle>. The procedure for making a complaint to the MCMC is summarised in the Malaysian Communications and Multimedia Commission (MCMC), Guidelines for Complaints Handling, September 2004, <https://www.mcmc.gov.my/skmmgovmy/files/attachments/Consumer%20Complaint%20Guidelines-amended%20Sep04.pdf>, (accessed 13 November 2020).

<sup>280</sup> MCMC, Guidelines for Complaints Handling, p. 5 (para. 6).

<sup>281</sup> MCMC, Guidelines for Complaints Handling, p. 6-8 (paras. 13-22).

5.34 The CMA also appears to provide an avenue for those who are aggrieved by a perceived breach of the CMA Content Code, to make a complaint directly to the Commission.<sup>282</sup> The dispute resolution process requires that the parties first attempt to negotiate a resolution of the dispute among themselves<sup>283</sup> and (if applicable) through the Content Forum's complaints procedure.<sup>284</sup> If the parties remain in dispute, the parties may request the MCMC to resolve the dispute.<sup>285</sup> A step-by-step guide to the dispute resolution procedure is provided in the Act and supplemented by guidance online.<sup>286</sup> Parties are entitled to provide written representations and to respond to each other's allegations, and to submit witness statements and supporting documents. The MCMC can call for oral evidence and must provide its decision with reasons to the parties in writing. Any decision of the MCMC may be enforced through an order of court, if necessary.

### **Consideration of complaints by the Appeal Tribunal**

5.35 Anyone who is aggrieved or whose interest is adversely affected by a decision or direction of the MCMC may appeal to the Appeal Tribunal for a review of the merits and process of that decision.<sup>287</sup> An Appeal Tribunal is convened on an *ad hoc* basis and is composed of a Chairperson (who must be a sitting Judge) and at least two other members, all appointed by the Minister.<sup>288</sup> Members of the Appeal Tribunal must have knowledge or experience in either the communications and multimedia industry, engineering, law, economics or commerce, or public administration.<sup>289</sup> Members must disclose to the Chairperson any personal interest that may place them in a position of conflict regarding the appeal at hand.<sup>290</sup>

5.36 The Appeal Tribunal has the power to summon the parties to the appeal and any other person to provide evidence on the appeal, whether under oath or otherwise and whether written or oral, and also to require the production of relevant documents. The Tribunal has the power to punish for contempt of court, anyone who fails to attend to give evidence when required to do so.<sup>291</sup>

5.37 Any decision by the Appeal Tribunal will be decided on a majority of votes; the Appeal Tribunal's decision is final and binding on the parties and is not subject to further appeal; and its decision may be enforced in the same manner as a judgment or order of court.<sup>292</sup>

### **Judicial oversight**

5.38 Anyone who is aggrieved by a decision of the MCMC may apply to court for a judicial review of the decision, so long as she/he has first exhausted all other remedies under the Act.<sup>293</sup>

#### **FOOTNOTE**

<sup>282</sup> MCMC, *Guidelines for Complaints Handling*, p. 5 (para. 8). See: CMA, ss. 82-89. See also: Malaysian Communications and Multimedia Commission (MCMC), *Guidelines for Dispute Resolution*, July 2003, [https://www.mcmc.gov.my/skmmgovmy/files/attachments/Guidelines\\_Dispute\\_Resolution\\_.pdf](https://www.mcmc.gov.my/skmmgovmy/files/attachments/Guidelines_Dispute_Resolution_.pdf), (accessed 13 November 2020).

<sup>283</sup> CMA, s. 82(1). MCMC, *Guidelines for Dispute Resolution*, p. 4 (para. 2).

<sup>284</sup> CMA, s. 82(2). MCMC, *Guidelines for Dispute Resolution*, p. 4 (para. 2).

<sup>285</sup> CMA, s. 82(3). MCMC, *Guidelines for Dispute Resolution*, p. 4 (para. 3(a)).

<sup>286</sup> CMA, ss. 83-89. MCMC, *Guidelines for Dispute Resolution*.

<sup>287</sup> CMA, ss. 18(1) & 120(1). However, 'determinations' of the MCMC are not subject to appeal. See: CMA, s. 55.

<sup>288</sup> CMA, s. 17.

<sup>289</sup> CMA, s. 19.

<sup>290</sup> CMA, s. 26.

<sup>291</sup> CMA, s. 24A.

<sup>292</sup> CMA, ss. 23, 18(2) & 23A.

<sup>293</sup> CMA, s. 121.

## PRINTED CONTENT

5.39 Judicial decisions on legal challenges against regulations that censor or restrict content are vital in defining the scope of the powers of the state to restrict freedom of expression. It is noteworthy that there are no reported legal cases specifically challenging the authority or discretion powers of the LPF, or the implementation of the FC Guidelines.

5.40 Conversely, the Malaysian Printing Presses and Publications Act 1984 (PPPA) has faced a steady volley of legal challenges through the years. The PPPA regulates the publication of written content on mediums such as newspapers, magazines, periodicals and books. Alongside a licensing mechanism for printing presses and publishers, the PPPA allows for post-publication censorship. Under Section 7(1) of the Act, the Minister has the discretion to issue an Order to prohibit a publication:

*...which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest...*

5.41 As a mechanism to control content in printed form, the PPPA has been widely criticised for imposing unreasonable and disproportionate restrictions on the right to free speech and expression. Nevertheless, judicial decisions that have resulted from proceedings taken against the Executive's exercise of its statutory discretion under the PPPA have defined the parameters of the government's powers to censor print media, and the protected right of freedom of speech and expression in Malaysia. The principles from these decisions will be instructive in interpreting the extent and limits of other content regulation legislation such as the FCA. The outcomes in a selection of these PPPA legal cases are summarised in Table 5B.



PHOTO: Freedom Film Network



**Table 5B: Summary of select cases on Section 7(1) of the PPPA**

Case	Summary
<p><b>I</b> Sisters in Islam</p>	<p>In the judicial review proceedings regarding the banning of the book <i>'Muslim Women and the Challenges of Islamic Extremism'</i><sup>294</sup> on the ground that it was prejudicial to public order, the court quashed the Minister's ban, holding that the government had failed to show actual prejudice to the public as a result of the book being in circulation.</p> <hr/> <p>The court held that the government's reliance on JAKIM's opinion that the book infringed its guidelines because it allegedly had a 'tendency to confuse Muslims' as it contained 'statements regarding the religion of Islam,' was insufficient to justify the ban, as it did not address the issue of the publication being directly prejudicial to public order. The court also took into consideration that the book had been in circulation for two years prior to the issuance of the order banning the book, and no disruption of public order had occurred.</p>
<p><b>II</b> Zunar</p>	<p>In the judicial review proceedings regarding the banning of two cartoon compilations by Malaysian cartoonist and political satirist Zunar<sup>295</sup> on the ground that the cartoons were prejudicial to public order, the Court of Appeal quashed the bans.</p> <hr/> <p>The court held that political satire, which ridicules political leaders and institutions with humour to deliver a political message, may subject politicians and institutions to public odium, but public odium on its own cannot be equated with a threat public order, let alone sedition. No reasonable person would read cartoons with the same seriousness as a work of literature.</p>
<p><b>III</b> Faisal Tehrani</p>	<p>In the judicial review proceedings regarding the banning of four books by local author Faisal Tehrani,<sup>296</sup> on the ground that the books were 'likely to be prejudicial to public order,' the Minister relied predominantly on the advice of JAKIM who advised that the books had a tendency to confuse, anger and divide Muslims, and consequently prejudice public order. The books had been in circulation between four to seven years prior to the issuance of the bans.</p> <hr/> <p>The Court of Appeal quashed the bans; in evaluating the authorities' grounds for the bans, the judges conducted their own assessment of the contents of the books, and arrived at the conclusion that the Minister's reliance on the opinion of the religious authorities was not sufficient to prove the books would likely be prejudicial to public order.</p>



**PHOTO:** Freedom Film Network

**FOOTNOTE**

**294** Dato' Seri Syed Hamid Syed Jaafar Albar (Menteri Dalam Negeri) v SIS Forum (Malaysia) [2012] 9 CLJ 297 CA.  
**295** Sepakat Efektif Sdn Bhd v Menteri Dalam Negeri & Anor and Another Appeal.  
**296** Mohd Faizal Musa v Menteri Keselamatan Dalam Negeri [2018] 9 CLJ 496 CA.



6

ANALYSIS

# 6

## Analysis

- 6.1 This chapter contains an analysis of the core elements of the film censorship framework that are summarised in Chapter 4, against an application of the relevant legal principles set out in Chapters 3 and a comparison to parallel content regulation mechanisms summarised in Chapter 5. Findings and conclusions are broken down by sub-headings and presented below.

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### THE EXECUTIVE MAINTAINS 360° CONTROL OVER FILM CENSORSHIP

- 6.2 The executive branch of government retains control over every significant aspect of the Malaysian film censorship process, as explained below:

#### Defining what is restricted or unlawful content

- 6.3 The FCA itself fails to define, or set out criteria to define, what is restricted or unlawful content. The FCA also does not clearly set out conditions or limits on how either the LPF or the Minister must exercise their powers in censoring films, or in issuing exemptions, prohibition and regulations. In the absence of clear statutory direction from the legislative branch, the executive branch (through MOHA), assumes authority to formulate and enforce regulations that define and decide what is lawful content and what is prohibited content in films for public consumption.

#### Controlling who are the decision-makers

- 6.4 Apart from controlling the scope and meaning of restricted/prohibited content, the Executive (through MOHA), has full authority to select the decision-makers who determine whether the content of a film complies with the FC Guidelines, i.e. the members of the LPF and Appeal Committee. In that regard, the Executive is not statutorily prevented from appointing government officials or political appointees. Hence, there is no legal protection against political or partisan influence and interference in the approval, censorship and classification of films under the FCA.

### **Retaining ultimate control over film censorship decisions**

- 6.5 The Executive also has the power to override any decisions of the LPF or Appeal Committee, whether by prohibiting the screening, sale or distribution of a film, or by exempting a film from being subject to censorship review.
- 6.6 The FCA also includes provisions that, on the face of it, attempt to ensure that the decisions of the Minister and those of the LPF and Appeal Committee cannot be reviewed or set aside by a court of law. The attempt to exclude judicial oversight may not be effective, for reasons discussed in a later section on 'Exclusion of Judicial Review'. The CMA on the other hand, specifically preserves the jurisdiction of the courts to review certain decisions of the MCMC.

### **Absence of safeguards on the Executive's power**

- 6.7 The broad discretionary powers of the LPF, Appeal Committee and Minister interfere with individual fundamental rights. Yet there is little to no effective limits or controls in the FCA over the exercise of such powers. In addition, by assuming the authority to define and determine what is and is not restricted content, these executive bodies are in essence setting the parameters of their own powers in the regulation of film content. This leads to a serious lack of policy and administrative accountability, and exposes the system to arbitrary abuse.

## **NO SEAT FOR INDUSTRY AND OTHER RELEVANT VOICES**

### **Critical competences excluded from the LPF and Appeal Committee**

- 6.8 Industry input and participation in the censorship process is not formally required under the FCA. Although the Minister's powers of appointment of the LPF and the Appeal Committee are wide enough to include representatives from the film industry, and although such representatives are appointed from time to time, the absence of a formal requirement for industry participation is a significant impediment. An express obligation to include industry representatives or those with filmmaking experience will provide the LPF with experts who can identify the creative merit of the films under consideration, the nuance within artistic expression, the diversity and trends of audience needs and preferences, and the preferred outcomes that would promote the growth and development of the creative industry in Malaysia.<sup>297</sup> Legally mandating the inclusion of relevant experience and expertise within both the LPF and the Appeal Committee will guarantee the technical competence of those regulatory bodies and improve the integrity of their decision-making process.
- 6.9 In comparison, technical competence is a guaranteed feature of the relevant regulatory bodies under the CMA content regulation mechanism in the formulation and administration of the CMA Content Code. The Content Forum is composed of industry participants, while its Complaints Bureau must be led by a retired judge or judicial officer. The CMA's Appeal Tribunal (to which any person aggrieved or adversely affected by a decision of the MCMC may appeal) also requires a Chairperson who is a sitting Judge and members with knowledge or experience in either the communications and multimedia industry, engineering, law, economics or commerce, or public administration.

#### **FOOTNOTE**

<sup>297</sup> Guan, *Film censorship in the Asia-Pacific Region*.



*PHOTO: Freedom Film Network*

### **Lack of diversity that is representative of society**

- 6.10 The FCA does not require that the LPF must comprise a diverse membership that is inclusive and representative of Malaysian society as a whole, whether by gender, age, ethnicity, religion, geographical location, or mental and physical ability. Diversity and inclusivity is of vital importance, for several reasons. Their inclusion will help balance against any likelihood of government/partisan bias from those who are current or former public servants or government officials. A demographically diverse membership is also more likely to ensure that a cross-section of society's views is taken into account in applying contemporary community standards to questions of content censorship.
- 6.11 In fact, each of the four categories of content restrictions under Part II of the FC Guidelines require that in evaluating the content of a film for compliance with the guidelines, the LPF is required to assess whether the content will 'create any controversy and doubt among the general public.' Hence, the membership of the LPF should be as inclusive and representative of the general public as possible, so that a diverse range of views and perspectives can be brought to bear in assessing what are the contemporary political, religious, socio-cultural and moral standards of the general public.

### **Film censorship is not a matter that requires the heavy hand of the state**

- 6.12 The control of filmic content is not an area of policy that requires intrusive, state-controlled regulation. If valid reasons exist that a film could incite national security or public order or morality concerns, these can be dealt with through existing laws such as the Sedition Act, the OSA and the relevant Penal Code offences. Specific concerns of public morality can also be addressed by the stringent application of the classification code, and enforcement of punishments against theatre owners who allow minors into films that are classified above their age group. Equally, defamation laws provide recourse for false or defamatory content. There is no obvious case for empowering a separate authority like the LPF to conduct prior censorship of films on those grounds.
- 6.13 The state's overreach in the traditional film industry is underscored by the alternate policy approach applied to content applications service providers under the CMA Content Code. The CMA content regulation framework is based on self-regulation, which means industry (and civil society) involvement in major aspects of regulation, namely from the creation of the CMA Content Code, to its implementation and enforcement. This undercuts the argument that traditional film platforms, as a general question of regulatory policy, require intrusive state intervention.

## PRIOR RESTRAINT/CENSORSHIP IMPOSED ON THE FILM INDUSTRY

- 6.14 Prior restraint or prior censorship is the prevention of the dissemination of a film before it is screened. The FCA imposes a ban in principle on all films intended for public release, until they have been examined by the LPF. All films, including their promotional content, must secure the prior approval of the LPF and be censored according to any LPF directions to that effect, before they can be exhibited, displayed, circulated, distributed, produced, hired or sold in Malaysia. In other words, even if the film in question does not contain unlawful or restricted content, it is an offence for any cinema to publicly screen a film, and for any film distributor to distribute and sell a film, if the film does not bear a certificate and classification code signifying prior LPF approval.
- 6.15 The prior censorship scheme under the FCA is an outlier compared to other content regulation mechanisms such as the CMA and PPPA.
- 6.16 In the U.S., prior restraint is presumptively unconstitutional, unless it falls under a few narrow exceptions.<sup>298</sup> Malaysia's restrictions are viewed as harsh not only at an international level but also in comparison to the region. Although other countries in Asia such as Hong Kong, India and Thailand have prior restraint systems in place, controversial films are frequently permitted to be screened in those countries, with viewership control exercised through restricted ratings.<sup>299</sup>

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## CRIMINAL PENALTIES USED TO ENFORCE PRIOR CENSORSHIP

- 6.17 The FCA goes further than merely requiring the submission of films for prior censorship; it additionally seeks to criminalise the possession of a film intended for public screening that has not been submitted to the LPF for review within 14 days of the completion of production or within a prescribed time line. This criminalisation of the possession of a film occurs whether or not the film contains unlawful or restricted content. It is also a criminal offence if a film owner chooses not to make the alterations to a film that are prescribed by the LPF or to resubmit it for review.
- 6.18 The effect of these criminal provisions is to render the possession of any film that is intended for public display or distribution automatically illegal, if it is not submitted to the LPF for censorship review. Thus, the consequences for failing to comply with the prior-censorship procedure is not simply that the filmmaker or owner does not get to screen or sell his /her film. Instead, the film owner is compelled to submit a film to censorship and to comply with the censorship cuts directed by the LPF, on pain of committing a criminal offence. Further, the criminal penalty is not simply monetary; it includes the deprivation of liberty through the possible imposition of sentences of imprisonment.
- 6.19 The criminalisation of prior censorship is regulatory overreach and disproportionate to any legitimate purpose for film censorship. It is already impossible for those films to be screened and distributed because they will not have the necessary FCA certificates and classifications that are required for the films to be commercially screened, distributed and sold.

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### FOOTNOTE

<sup>298</sup> American Bar Association Centre for Human Rights, *International and Comparative Law Analysis on FCA*, Pusat KOMAS, 2014, [https://komas.org/download/lena\\_campaign\\_materials/International-and-Comparative-Law-Analysis-on-FCA-April-1-2014-Report\\_2.pdf](https://komas.org/download/lena_campaign_materials/International-and-Comparative-Law-Analysis-on-FCA-April-1-2014-Report_2.pdf), (accessed on 13 November 2020).

<sup>299</sup> *Ibid.*

6.20 In addition, the criminalisation of the failure or refusal to submit a film for censorship or to comply with the censorship cuts directed by the LPF, even if the film is not publicly screened, sold or distributed, is arguably unconstitutional. While restrictions may be imposed on freedom of expression under Article 10(2) of the Federal Constitution, such restrictions cannot amount to the imposition of total prohibitions on the exercise of that fundamental right.<sup>300</sup> In addition, the power of Parliament to impose a restriction on a fundamental right is not synonymous with a power to criminalise a breach of that restriction, particularly if the criminal sanction is imposed merely on a breach of an administrative or procedural requirement, and not because the fundamental right was exercised in a manner that contravened the restrictions in Article 10(2).<sup>301</sup>

6.21 Applying these legal principles to Sections 6(1)(a) and 9(1) of the FCA: what is being criminalised is not the public screening or distribution of a film containing content that is unlawful under the FCA or the Constitution. Instead, what is being criminalised is simply the failure to follow administrative or procedural rules regarding compliance with timelines under the FCA. It is therefore arguable that Sections 6(1)(a) and/or 9(1) of the FCA are unconstitutional, as they make it unlawful and a crime for a person to simply produce and possess a film intended for public consumption but not in fact so shared, and regardless of whether the film contains unlawful or prohibited content.<sup>302</sup>

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## INFORMAL PROCESSES WITHIN THE CENSORSHIP FRAMEWORK

6.22 As discussed in Chapter 4, the censorship structure has evolved to incorporate both formal and informal stages of censorship. The incentives to take advantage of these informal ‘pre-approval’ processes are apparent: the FC Guidelines are opaque and sweeping, and endow the LPF with significant veto power. Scene or dialogue cuts by censors can have severe repercussions for filmmakers unprepared for post-production edits or reshoots. For some filmmakers, these aspects combined make it an economic imperative to engage censors and other authorities during the early stages of production. There are consequences to taking this path however: the earlier that elements of prior censorship are introduced into the filmmaking process, the more vulnerable one’s creative vision becomes to the influence and pressures of the censors and state authorities. Pushback and negotiation over contentious dialogue and scenes, and the eventual compromise of creative vision and artistic expression, occurs during those early creative stages. In short, these informal processes deepen the state’s encroachment into a filmmaker’s freedom of expression.

### FOOTNOTE

**300** Nik Nazmi Bin Nik Ahmad.

**301** Nik Nazmi Bin Nik Ahmad. *The issue in that case was a statutory provision under the Peaceful Assembly Act 2012 [PAA] that made it a criminal offence not to notify the police ten days before an assembly was held. The Court of Appeal held that the statutory provision was unconstitutional and void, as the provision was not a mere restriction on the right to freedom of assembly but instead a total prohibition on the right to hold/participate in spontaneous assemblies, and because the criminal sanction was imposed on an administrative issue concerning the giving of advance notice, and not on a failure to assemble peacefully. It is to be noted that a later panel of the Court of Appeal departed from the Nik Nazmi Bin Nik Ahmad decision to hold the relevant section of the PAA was in fact constitutional. See: Yuneswaran a/l Ramaraj.*

**302** It is to be noted that in September 2015, in a case before the Federal Court involving the prosecution of Malaysian activist Lena Hendry under Section 6(1)(b) of the FCA for exhibiting a foreign documentary without first submitting it for censorship, the Federal Court upheld the constitutionality of Section 6(1)(b). The grounds for this decision are not available, and it is not known whether the Federal Court simply rejected the unconstitutionality argument against Section 6(1)(b) of the FCA, or whether the court’s reasoning would also apply to Section 6(1)(a).

## FILM CENSORSHIP INCLUDES A CLASSIFICATION (RATING) SYSTEM

6.23 All films reviewed under the FCA must receive a classification certificate that stipulates the minimum age of the audience and whether adult supervision is required to watch the film. The effect of the rating system is not simply to restrict who can watch a particular film, but also when and where, as films bearing a classification code of 18 have restricted viewing hours in public cinemas. The pairing of a classification system with prior censorship is otiose – a content regulation mechanism can function effectively by pairing self-regulation with a classification system, thereby ensuring an oversight role for the state. Concerns regarding underaged access to harmful content, can be addressed by improving regulations that impose ‘time, manner, place’ limits on when films can be broadcast or screened, alongside a mandatory classification scheme.

## EXCLUSION OF JUDICIAL OVERSIGHT

6.24 Sections 23(2) and 48 of the FCA attempt to exclude judicial oversight of the decisions and actions of the LPF, Appeal Committee and the Minister. Such ouster clauses are against the spirit of the rule of law and democratic governance, which prioritises transparency and accountability in the State’s decision-making processes particularly where they impinge on public or private rights.

6.25 Notwithstanding Sections 23(2) and 48 however, the courts may nevertheless be prepared to judicially review the actions or decisions of those executive entities. Taking the lead from the U.K. and other Commonwealth jurisdictions, the Malaysian courts have adopted a ‘robust approach in reviewing the legality of decisions by public authorities even in the face of express ouster clauses.’<sup>303</sup> Statutory clauses purporting to declare an executive authority’s decisions or actions as ‘final’ and not open to question by the courts, or as not being subject to ‘appeal or review’, have been construed restrictively. Such clauses are not sufficient in themselves to exclude the supervisory jurisdiction of the courts.<sup>304</sup> An executive authority that commits an error of law, resorts to unfair procedures or comes to an unreasonable decision is deemed to have acted outside its jurisdiction, enabling the courts to exercise their supervisory jurisdiction, no matter how widely drafted the ouster clause.<sup>305</sup>

### FOOTNOTE

<sup>303</sup> *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 145, p. 195 (para 121), per Zainun Ali FCJ.

<sup>304</sup> *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers’ Union* [1995] 2 MLJ 317 CA. *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1 FC. *Indira Gandhi a/p Mutho*.

<sup>305</sup> *Ibid.*



## THE FCA CONTENT RESTRICTIONS ARE POTENTIALLY UNCONSTITUTIONAL

- 6.26 A case can be made that the FC Guidelines or the content restrictions within it are unconstitutional, on the basis that they unlawfully restrict and thus violate the right to freedom of expression guaranteed under Article 10(1)(a) of the Federal Constitution.
- 6.27 The grounds under which film content is currently being censored, or banned, are laid out in the FC Guidelines in Part II (restrictions relating to security and public order; religion; socio-culture; and decorum and morality); Part IV (obscene and offensive language); and Part V (classes of film that are absolutely prohibited). In other words, these are the grounds on which freedom of expression is being restricted or wholly prohibited with regard to filmmaking.
- 6.28 However, these grounds are not explicitly set out or otherwise referenced in the FCA itself, which is the statutory source of the LPF's and Minister's powers to impose censorship and content restrictions on films. The FCA does not provide the purpose and object for the censorship of films, nor is it evident from the wording of the statute the grounds on which Parliament intended that films may be censored. It is also not evident what outcomes Parliament intended to achieve or avoid by creating the censorship mechanism. The only clearly defined object with regard to film censorship is that Parliament intended to illegalise obscene films.<sup>306</sup> The authorities' efforts to censor film content on any other grounds apart from obscenity, and thereby restricting freedom of expression, find no purchase in the FCA, which is their enabling statute.
- 6.29 With reference to the legal principles set out in Table 3A in Chapter 3, while the Constitution allows Parliament to impose restrictions on freedom of expression on specific grounds (for example restrictions in relation to the interests of security, friendly relations with other countries, public order or morality,<sup>307</sup>) those grounds must be referenced in a statute (i.e. parliamentary legislation). If the grounds are not referenced in a statute, or do not fall within the limited classes of permissible restrictions under the Constitution, they cannot be validly imposed in a manner that limit freedom of expression.<sup>308</sup>
- 6.30 Although the Minister has been given authority under the FCA to make regulations, the scope and substance of those regulations must fall within the closed boundaries of the parent statute (i.e. the FCA) and the limits under the Federal Constitution. Therefore, the mere authority to make regulations does not empower the Minister or the MOHA to take action that may adversely affect the fundamental rights of an individual, when the FCA does not show that such was the intention of Parliament.<sup>309</sup> Any such action by the authorities could be deemed to be ultra vires or beyond the powers authorised by the Act,<sup>310</sup> and so illegal and void.<sup>311</sup>

### FOOTNOTE

<sup>306</sup> FCA, s. 5.

<sup>307</sup> Federal Constitution, Art. 10(2)(a).

<sup>308</sup> Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai, pp. 160-167; Sykt Perniagaan United Aces Sdn Bhd, p.402. Madhavan Nair v PP, p. 265.

<sup>309</sup> Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai, pp. 160-167.

<sup>310</sup> 'Ultra vires' is a legal term meaning an act that is beyond the powers authorised by law.

<sup>311</sup> Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai, pp. 160-167. Interpretation Acts, s. 23.

6.31 As a comparison, the CMA, which empowers the MCMC and its ancillary bodies to regulate and restrict content, lays out in Section 211(1) several classes of restrictions to the freedom to produce and publish content:

***No content applications service provider, or other person using a content applications service, shall provide content which is **indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.** (emphasis added)***

6.32 Similarly, the PPPA, which regulates the publication of print content, empowers the Minister under section 7(1) of the Act with the absolute discretion to issue an Order to prohibit a publication:

***which is in any manner prejudicial to or likely to be prejudicial to **public order, morality, security, or which is likely to alarm public opinion,** or which is or is likely to be **contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest...** (emphasis added)***

6.33 Section 211(1) of the CMA and Section 7(1) of the PPPA serve as local examples of how a statute is phrased if the policy objective and legislative intent of the statute is to circumscribe freedom of expression under Article 10 of the Federal Constitution. These sections of the CMA and PPPA are used here solely as a comparative example of how restrictions on constitutional liberties have been drafted into Malaysian statutes. Their reference here is not an acceptance of either the proportionality or legitimacy of the restrictions they impose on free speech and expression.<sup>312</sup>

6.34 Nevertheless, it is evident that the requisite statutory descriptors like those in the CMA and PPPA are absent from the FCA. It is therefore arguable that the FCA does not give the Minister or the LPF the necessary authority to impose content restrictions on films on the basis of 'security and public order', 'religion', 'socio-culture' or 'decorum and morality', or to wholly prohibit/ban films based on the grounds set out in Part V of the FC Guidelines. Unlike the PPPA, the FCA also does not expressly authorise the Minister or the LPF to impose content restrictions on the basis that such content 'is or is likely to be contrary to any law'; in other words, to censor films on the basis that their content may breach other laws like the Sedition Act, the Penal Code or the Defamation Act. Consequently, it can be argued that it was/is not within the authority of the Minister or relevant ministerial department to have formulated and enforced the FC Guidelines in its current form.

#### FOOTNOTE

<sup>312</sup> *The proportionality and legitimacy of these restrictions in the CMA and PPPA and the legality of their enforcement have drawn and continue to draw widespread criticism and legal challenge. The author notes that legal advocates and jurists have convincingly argued that the powers accorded to the executive branch to restrict freedom of expression in the CMA and PPPA are disproportionate, and the enforcement of the restrictions in the past has been tainted with illegality, irrationality and procedural impropriety.*

## SOME CONTENT RESTRICTIONS ARE DISPROPORTIONATE AND UNREASONABLE

- 6.35 Apart from the potential invalidity and unconstitutionality of the FC Guidelines, there is the question of whether, on a criteria-by-criteria basis, the content restrictions in the FC Guidelines are proportional in their scope and effect, and whether they are reasonable and legitimate in the context of the authority given to the LPF under the FCA.
- 6.36 In evaluating whether the exercise of a discretion by an executive or public authority to impose a restriction on a fundamental right is proportional, the test is whether the authority's action directly affects that fundamental right, or whether the inevitable consequence of the authority's action on that fundamental right is such as to render the exercise of that right ineffective or illusory. In evaluating these questions, priority is given to fundamental rights in any balancing exercise between the interests of the state and the rights of the individual.<sup>313</sup>
- 6.37 From the framing of the policy objectives, principles and restrictions in the FC Guidelines, it is apparent that the Executive approaches film censorship as a means of asserting a particular set of norms and narratives that promote, prioritise or protect its interests, and these include: that government and its leaders are to be shielded from public censure; that public interests and social values are state-defined concepts; that religious homogeneity is a protected state interest; that socio-cultural values include the preservation of the dominant political and religious narratives. Absent in this approach is equal prioritisation of the rights of individuals to freely express themselves through the medium of film and to determine their viewing choices. Also absent is the acknowledgement that individuals and parents/guardians also bear responsibility for viewing choices.
- 6.38 The CMA Content Code highlights the government's alternative policy approach for online content, where regulation is put in place to balance conflicting state and individual interests. The Code underscores the point that the scope and implementation of the FC Guidelines are a disproportionate intrusion into individual rights; the comparison also raises real questions about the legitimate purpose/aims of the film censorship regulations. To highlight the contrast, the policies, objectives and principles of both the FC Guidelines and the CMA Content Code are presented side-by-side in Appendix I of this report.
- 6.39 The CMA Content Code approaches content regulations as an exercise of balancing individual rights and freedoms on the one hand, against communal, public and national interests on the other. It acknowledges the freedom to create content and to choose and access content, and expressly affirms the human rights protections under the Constitution. It also pays heed to the fact that the plurality and diversity of consumer needs and preferences across political, economic and cultural spectrums must be reflected in the types of content that are made available and accessible to the consumer. When it comes to protected classes, the Code takes a rights-based approach by requiring that content must not contain discriminatory material but instead should reflect intersectional diversity with regard to a wide range of divisions and protected classes. Equally important, the Code underscores that the power and responsibility of balancing these often conflicting interests to determine what is and is not suitable content, is shared and diffused between the content producer and the consumer.
- 6.40 The CMA Content Code and the FC Guidelines are two diametrically opposed regulatory approaches that involve or include the medium of film; although the content being regulated is delivered on different platforms, these regulatory systems operate in the same socio-political landscape. As such, there is no justifiable differential for adopting a regressive, paternalistic approach to the regulation of traditional film platforms, when a more inclusive, rights-based approach for the internet and online platforms has and continues to operate in relative stability.

### FOOTNOTE

<sup>313</sup> *Sepakat Efektif Sdn Bhd. This Court of Appeal decision was affirmed on appeal to the Federal Court on 11 November 2015.*

6.41 Another consequence of approaching film censorship as a means of promoting and protecting the Executive's interests and hegemonic narratives, is that a substantial portion of the content restrictions in the FC Guidelines are efforts to censor or stifle content that may be offensive or critical to a segment of society or the government, but is not content that is tangibly harmful to vulnerable groups or to national security, or public order or morality. A side-by-side comparison of the FC Guidelines and the CMA Content Code (the latter a lesser instrument for promoting state narratives), reveals the disjunction. Accordingly, while some content restrictions in the FC Guidelines can be classified as necessary and proportional, a significant number of restrictions are not. Specific examples are discussed below.

### **Political expression and public authorities**

6.42 Within the extensive content restrictions under 'security and public order' in Part II of the FC Guidelines, and within 'socio-culture', is the ability to censor content that critiques or censures the government of the day; portrays government mismanagement or failure to perform; or promotes a diversity of political views or identities. Such political censorship should not be capable of being prohibited or restricted in a healthy democracy.

6.43 In contrast, the CMA Content Code, using a rights-based approach, specifically requires that the expression of a diversity of political persuasions is respected and must not be discriminated against. Satire and parody – often used as tools to communicate political criticisms, are permitted forms of expression. Appendix II to this report compares the treatment of political diversity and criticism between the FC Guidelines and the CMA Content Code.

6.44 Political criticism as a legitimate act of free expression has been recognised by the courts. In the case of the ban on two cartoon compilations by Malaysian cartoonist and political satirist Zunar<sup>314</sup> on the ground that the cartoons were prejudicial to public order, the Court of Appeal held that political satire ridiculing political leaders and institutions with humour to deliver a political message, may subject politicians and institutions to public odium, but public odium on its own cannot be equated with a threat to public order, let alone to national security.

6.45 With regard to crime and criminal behaviour, it is not the commission of crime that attracts censorship under the provisions of the FC Guidelines, but the absence of scenes depicting punishment or retribution for criminal behaviour. The rationale appears to be that the failure to highlight the negative consequences of crime will encourage public misbehaviour and therefore threaten public order and security, and that negative depictions of the police and other enforcement bodies will diminish their authority in the public eye.

6.46 Such a reasoning is irrational, as it leads to the exclusion of stories and documentaries that are fact-based or based on actual events. Public authorities, predominantly enforcement authorities, are not invulnerable to amoral or illegal behaviour. Instances of corruption, abuse of power and incompetence is present in state organs here as they are elsewhere. To require that such storylines must include punishment and retribution for/against the wrongdoer, or must ultimately portray enforcement authorities in a positive light, when these outcomes may be contrary to factual record, does a disservice to the larger conversations that need to take place in society regarding the institutional and cultural failings that allow for such circumstances to exist.

#### FOOTNOTE

<sup>314</sup> *Sepakat Efektif Sdn Bhd.*

## Religion

- 6.47 The FC Guidelines empower the LPF to closely police how religious beliefs and practices are represented on film. More so than any other category, the restrictions on religious content (or content perceived to offend religion) are highly prescriptive. In relation to the portrayal of Islam in particular, the criteria require a significant number of positive portrayals of the religion and its practices on film, as opposed to merely prohibiting negative portrayals. Empowered by the provisions in the FC Guidelines, the LPF is also authorised to reject film scenes that depict other religious beliefs and practices.
- 6.48 The FC Guidelines contain both specific and general criteria in relation to how Islam, Islamic beliefs and practices, and the behaviour and actions of Muslims, may be portrayed. Taken as a whole, these restrictions seem all-encompassing; at the same time, they are filled with ambiguous terms, or terms that can only be interpreted authoritatively by religious authorities. It is therefore difficult for filmmakers to undertake their own independent assessment on whether elements of their storyline, script, scenes or dialogue would be deemed to have run afoul of the restrictions. The difficulty is exacerbated by the uncertainty over whether the censors have the requisite expertise to appreciate the nuances and depth of meaning within which the religious beliefs and practices are portrayed.
- 6.49 Underpinning the restrictions relating to the religion of Islam is the promotion of homogeneity in its precepts and practices in Malaysia, and of the Islamic authorities as the arbiters of the faith. However, when it comes to determining if content directly or indirectly relating to Islam is capable of confusing Muslims and threatening public order, the Malaysian courts have not always accepted the Islamic authorities' opinions on the subject at face value. In two cases relating to the PPPA, books by Sisters in Islam<sup>315</sup> and Faisal Tehrani<sup>316</sup> were banned on the grounds that they were prejudicial (or likely prejudicial) to public order. In both cases, the courts quashed the Minister's bans. The government partly relied on the opinion of religious authorities that the books infringed its guidelines because it contained statements regarding the religion that allegedly had a 'tendency to confuse Muslims'. However, this was held to be an insufficient basis to justify the banning of the books, as the opinion of the religious authorities did not satisfy the requirement of showing that the books would prejudice or likely prejudice public order. What was required was evidence of a real risk of a disruption to public order.
- 6.50 The restrictions relating to polytheistic elements in film – all 36 of them - have far-reaching consequences to the protection of freedom of religion in Malaysia. There are polytheistic elements in some aspects of Hinduism, Buddhism, Confucianism and Taoism, and all these religions or belief systems are practised by minority groups in Malaysia. Taken in totality, the restrictions relating to polytheism provide the LPF extensive and arbitrary discretion to censor content relating to the practices of those religions or beliefs. Furthermore, the requirement that any portrayal of polytheism in films may only be allowed if the portrayal is such as to 'prevent polytheism' or if the characters 'repent or receive retribution,' suggests that such religions may only be portrayed if those religions are being renounced, which is an egregious violation of freedom of religion.
- 6.51 The treatment of religious content by the CMA Content Code stands in sharp contrast to that of the FC Guidelines (see the comparison in APPENDIX III to this report). Religion in general and Islam in particular do not appear as a separate class of content warranting specific restrictions under Part 2 of the CMA Content Code. The 'protection' of religion is instead grouped together with other individual or group identity markers in the general restrictions against hate speech, and against discriminatory and abusive content.

### FOOTNOTE

<sup>315</sup> Dato' Seri Syed Hamid Syed Jaafar Albar.

<sup>316</sup> Mohd Faizal Musa

6.52 However, special provisions regarding religion are included in the additional guidelines for broadcasters in the CMA Content Code. Here, the special significance of Islam in Malaysia is noted, as is the 'constitutional rights to freedom of religion' for other communities. The only specific guidelines are: (a) a requirement that Islamic religious programming (but not all programming that may contain religious elements) must be approved by the relevant religious authorities prior to transmission; and (b) a restriction on programmes propagating any religion other than Islam. Unlike the multitude of specific and general restrictions found in the FC Guidelines, the broadcasting guidelines in the CMA Content Code only restrict content that is 'wrongful, fanatical, critical and insulting against any religion.'

### Morals, gender stereotypes and heteronormativity

6.53 Under the FC Guidelines, morality is primarily constructed as a matter of controlling sexuality and sexual activity. A high conservative bar that closely aligns with Muslim codes of dress and behaviour is applied, and carries a clear gender bias. Therefore, prohibitions are not limited to on-screen nudity and sex, but include almost any form of sexual intimacy from kissing and visuals of body parts, to attire and the depiction of actions such as dancing. The categories of morality and socio-culture are also used to suppress portrayals of homosexuality and transgenderism.

6.54 In contrast, the CMA Content Code, while it does not go so far as to encourage the normalising of homosexuality and transgenderism, adopts a rights-based approach that requires content producers not to include content that is abusive and discriminatory based on (among others) sexual orientation. The CMA Content Code also expressly addresses gender bias and the importance of intersectionality in the portrayal of gender. It requires content producers to among others, actively avoid biased portrayals of gender, and to promote portrayals of men and women as equal economically and emotionally, both in the public and private spheres.

### Summary

6.55 For the most part, the criteria for restricted content under the FC Guidelines requires film content to adhere to a homogeneity in the portrayal of cultural and political identity, and to represent a positive image of key political institutions, including the monarchy and government and the enforcement and religious apparatus of the State. It discourages the representation of fluidity and diversity in concepts such as religious piety, political ideology, and ethnic, gender and sexual identity.

6.56 As the examples in the preceding paragraphs highlight, within the FC Guidelines are content restrictions that are vague, undefined or totally discretionary, such that their precise meaning cannot be easily ascertainable by those who need to abide by it. There are also restrictions that are so prescriptive or all-encompassing, that filmmakers would struggle to frame their stories on such issues without seeking clarification from the authorities. Restrictions on freedom of expression must be articulated with some precision or they cannot be considered to be law; the interpretation of such restrictions must not be left to 'the whim of an official'.<sup>317</sup> In addition, there are restrictions that conflate what is 'offensive' or 'distasteful' with 'harmful'. Fundamental rights are based on the presumption that all adults are equal and responsible moral agents. And therefore 'absent a real risk of actual harm, the state should not step in to play the role of moral custodian.'<sup>318</sup>

#### FOOTNOTE

<sup>317</sup> *Re Ontario Film & Video Appreciation Society v. Board of Censors*, (1983) 41 OR (2d) 583, p. 592, quoted in Article 19, 'Obscenity Laws and Freedom of Expression: A Southern African Perspective', *Media Law and Practice in Southern Africa*, No. 12, January 2000, <https://www.article19.org/data/files/pdfs/publications/obscenity-law-paper.pdf>, (accessed 13 November 2020).

<sup>318</sup> Article 19, 'Obscenity Laws and Freedom of Expression: A Southern African Perspective'.

PHOTO: Behind the Scenes, Lelaki Komunis Terakhir



# RECOMMENDATIONS

## 7

# Recommendations

## THE CASE FOR REFORM

- 7.1 The film censorship regulations in Malaysia rely on legacy motivations for state-led censorship. The rationale for Executive-controlled, prior censorship is built on the premise that the mass adult film audience lacks the capacity to think critically, resist manipulation, and look beyond the surface storyline to exercise independent judgement regarding morality and religiosity. They are presumed to be unable to find the distinction between fact versus fiction, humour versus seriousness, satire versus propaganda, and critique versus sedition; and that they will instead be swayed to imitate actions of crimes gone unpunished, or behave against prevailing religious beliefs, or reject the legitimacy of the police and other enforcement authorities because of filmic depictions of corrupt practices.<sup>319</sup>
- 7.2 The analysis in the preceding chapters exposes the gap between the constitutional intent to protect freedom of expression on the one hand, and the state's policy imperatives on the other. The solution is to strike the appropriate balance between competing interests: the fundamental right to freedom of expression, and legitimate national and societal interests. As it stands, the film censorship framework is mired in issues relating to its constitutionality, and the validity of restrictions imposed on film content that severely stifle freedom of expression. Some of the restrictions in the FC Guidelines are necessary and reasonable; but many relating to political and religious expression and social and moral values are disproportionate, a fact which is made clear when the FC Guidelines are compared to the parallel CMA Content Code.
- 7.3 Efforts to find the balance are demonstrated in the laws for new media, and the pursuance of industry self-determination and regulation of content. There is no rational justification for the separate policy rationales for different mediums and platforms of content. The fear that the lifting of the Executive's leash over cinematic / filmic content will lead to public disorder and immorality is also misplaced. The CMA's self-regulatory framework continues to operate with relative stability within the same unique socio-political landscape as the FCA. Events have proved that the state has more than the necessary armoury of other laws at its disposal to clamp down on content they deem to be against national security or public order. Concerns of protecting the under aged and other vulnerable groups can be addressed through both content standards and the classification system. Moving regulation of content out of the hands of the public authorities is not an abdication of the state's authority; it is a transference of primary ownership and responsibility into the hands of the content producers, the film industry and civic society, to collaboratively determine content standards, implement the standards and resolve complaints and disputes. Unresolved disputes are adjudicated by the judicial branch of government. The role of the executive branch is supervisory; it only steps in to protect legitimate security interests and public order.

### FOOTNOTE

<sup>319</sup> D.K. Mutlu, 'Film Censorship during the Golden Era of Turkish Cinema', in Biltereyst & Vande Roel, *Silencing Cinema: Film Censorship around the World*, pp. 131-146.



## RECOMMENDATIONS

7.4 Based on the findings and conclusions of this report, several recommendations are proposed below to reform and strengthen the content regulation mechanisms and structures for the traditional film industry. These proposals are not complete and are not intended as a blueprint; their purpose is to seed further discussion.

**Table 7A: Recommendations for the Regulation of Film Content**

Recommendation	Elaboration
<p><b>I</b> Restrictions on freedom of expression in film must be approved by Parliament and fall within the range of permissible restrictions under the Federal Constitution</p>	<p>The grounds on which film content can be restricted must be prescribed by or under the authority of Parliament (i.e. through statutory legislation). As such restrictions violate or curtail the fundamental right to freedom of expression, it is unconstitutional and illegal for these grounds to be prescribed by the executive branch and enforced through administrative guidelines.</p> <hr/> <p>The grounds for restricting film content must fall within the categories of permissible restrictions under Article 10 of the Constitution, and satisfy the tests of necessity and proportionality (see VI below).</p> <hr/> <p>Laying out such grounds in statutory legislation will ensure a minimum level of public debate on the nature of the restrictions, as this will impact the fundamental rights of content producers and viewers.</p> <hr/> <p>Including the grounds within statutory legislation will also set limits and safeguards on any discretionary power conferred to regulatory bodies to formulate, apply and resolve disputes relating to the content standards.</p> <hr/> <p>Powers may be conferred on regulatory bodies to issue administrative guidelines or subsidiary legislation to operationalise and implement content standards. Any subsidiary instruments must fall within the confines of the grounds set out in the parent statute and the provisions of the Constitution, and should be published and publicly accessible.</p>
<p><b>II</b> Prior censorship (prior restraint) of films must cease</p>	<p>Laws that allow for the prior censorship of films under the FCA must be repealed on the basis that they are unconstitutional and an egregious overreach of Executive power.</p> <hr/> <p>Self-regulation and the imposition of penalties for unlawful content, coupled with imposing reasonable time, manner and place restrictions on the broadcasting of films, can be sufficient to ensure that unsuitable content is not accessible to vulnerable groups, such as underaged children (see VII below).</p>
<p><b>III</b> The criminalisation of the failure to submit films to the LPF for censorship review must cease</p>	<p>The criminalisation and imposition of criminal penalties on content producers for failing to automatically submit their films to the LPF must be repealed, as it is unconstitutional, disproportionate and an egregious overreach of Executive power. The criminal penalties imposed on content producers who fail to carry out the censorship cuts directed by the LPF should similarly be repealed.</p>

Recommendation	Elaboration
<p><b>IV</b> A self-regulated industry forum should be established to develop, administer and enforce a content code for the film industry</p>	<p>A self-regulated industry forum should be created by law to formulate and implement a content code for traditional film platforms (see V below). The set up and structure of such an industry forum could be modelled on (but not necessarily replicate) the Content Forum under the CMA. Consequently, the role of any public authority such as the LPF should be limited to the administration of classification codes for films (see VII and VIII below).</p> <hr/> <p>Laws to establish an industry forum should set the parameters of the industry forum’s objectives, powers and functions, as well as those of the overseeing Minister.</p> <p>The industry forum should meet minimum standards of independence and accountability.</p> <hr/> <p>Membership of the industry forum should be voluntary and encompass / be open to the key sectors within the film industry, civic groups, and related professional associations. The membership should be representative of Malaysian society as a whole. The typical rules regarding disqualification of appointment to a management body should apply.</p> <hr/> <p>The forum should be governed by a council elected from its members on a fixed-term basis. The council should be the management body for the forum.</p> <hr/> <p>The complaints mechanism regarding breaches of the content code should, at first instance, be situated within the forum, with an appeals process that is independent and externally situated. The proceedings of the complaints body and the appeal panel must be transparent, and their decisions must be accompanied by written reasons. Decisions of the complaints body or the appeal panel must be open to either appeal or review by the courts.</p> <hr/> <p>During the proceedings of the complaints body and the appeal panel, minimum procedural guarantees of due process must be respected. Applicants and other interested parties must be given the opportunity to be heard or to present written submissions.</p> <p>The industry forum should publish and make publicly available periodic reports detailing its decisions and activities.</p>
<p><b>V</b> The development of a Content Code for films must be industry-led and consultative</p>	<p>The content code should be developed by an industry forum (see IV above). The process of developing the code should be inclusive and participatory, and include opportunities for industry and public consultations.</p> <hr/> <p>The general policy principles and grounds for the content code must be rooted in its parent statute (see I above).</p> <hr/> <p>The content code should specify the objectives and principles for the application of the content standards and guidelines; set out the content standards and guidelines; and specify the rules for the administration and enforcement of the code.</p> <hr/> <p>In setting the principles and parameters for content standards and guidelines, the code should adopt a rights-based approach while balancing the protection of state and public interests (see VI below).</p>

Recommendation	Elaboration
<p><b>VI</b> Restrictions on film content must conform with a rights-based approach, and strict tests of necessity and proportionality</p>	<p>Any restrictions on freedom of expression, through the imposition of restrictions on film content, must be for a legitimate purpose, and must not be overly broad.</p> <hr/> <p>In compliance with the principle of proportionality, any restriction:</p> <ul style="list-style-type: none"> <li>• Must be appropriate only to achieve its protective function;</li> <li>• Must be the least intrusive means available to achieve that protective function;</li> <li>• Must be proportionate to the interest to be protected;</li> <li>• Must take into account the form of the expression and the means used to disseminate it.</li> </ul> <hr/> <p>Restrictions should only be imposed on content which can be shown to be harmful. Merely offensive material should not be prohibited. In particular, expressive depiction of legal acts should normally not be prohibited.</p> <hr/> <p>Where there is genuine risk of offensive content that may lead to harm, this may be ameliorated by requiring broadcasters, to inform viewers, in a manner which accords with the principles underlying film classification, of the nature of potentially upsetting programmes. Such efforts may be coupled with suitable time, manner and place restrictions on broadcasts to protect vulnerable groups (see VII below).</p> <hr/> <p>The principle that a diversity of views should be allowed expression must be incorporated in formulating content restrictions.</p> <hr/> <p>Vague words and concepts and subjective terms should be avoided. Definitions should provide as much precision as possible by elaborating in detail exactly what is prohibited.</p>
<p><b>VII</b> The classification scheme for films must be standardised, based in statutory law, and not used as a censorship tool</p>	<p>Films may be subject to mandatory classification in order to assist viewers in making informed decisions about their viewing choices and to assist parents/guardians in supervising the content available to children.</p> <hr/> <p>Classification codes should be standardised across media platforms as far as reasonable.</p> <hr/> <p>The general classification standards must be set out in statutory legislation.</p> <hr/> <p>Laying out classification standards in a statute will ensure at least a minimum level of public debate and input on the nature of the classification codes, as this will impact the fundamental rights of content producers and viewers.</p> <hr/> <p>Including general classification standards within statutory legislation will also set limits and safeguards on any discretionary power conferred to regulatory bodies to apply, administer and resolve disputes relating to classification.</p> <hr/> <p>Powers may be conferred on regulatory bodies to issue administrative guidelines or subsidiary legislation to operationalise and implement classification codes. Any subsidiary instruments must fall within the confines of the grounds set out in the parent statute and the provisions of the Constitution, and should be published and publicly accessible.</p> <hr/> <p>Provisions should be made in the laws and operating guidelines to allow for films to be submitted for re-classification after a certain period of time to allow for societal changes and developments.</p>

Recommendation	Elaboration
	<p>The classification process should not include the power to censor film content; however, the process may include the opportunity for consultations between filmmakers and the regulatory authority on content changes necessary to achieve a lower classification standard.</p> <p>No film should be refused a classification, but the regulatory body may be given discretion in clearly defined exceptional cases (for example where a real risk arises of seditious content) to consult with the filmmaker in order to share their concerns. Failing a negotiated resolution, the regulatory body may refer the matter to the industry forum responsible for administering the relevant industry content code (see IV above).</p>
<p><b>VIII</b> The regulatory bodies administering the classification scheme must be independent, inclusive, consultative and accountable</p>	<p>The regulatory body administering classification codes for films should meet minimum standards of independence and accountability. Existing laws should be amended to set the parameters of the regulatory body's objectives, powers, functions and limits, as well as those of the overseeing Minister.</p> <p>The appointments process for membership to the regulatory body must be open, transparent and participatory, designed to ensure that the collective membership is representative of society as a whole. Individuals should be appointed on the basis of relevant expertise. Members should include a fair balance of representatives from the industry, related professional associations and civic groups. Anyone who holds a party political position or public office, or who has a vested interest in the relevant area, should be ineligible for appointment. Members should hold office for a fixed term and should be subject to removal only in limited, specific circumstances.</p> <p>The regulatory body must provide written reasons for its decisions on the allocation of classification codes. Timelines must be prescribed for the decision-making process.</p> <p>Decisions of the regulatory body should be subject to appeal before an independent panel. The appeals process must be transparent, and its decisions must be accompanied by written reasons. Decisions of the regulatory body or its appeal panel must be open to either appeal or review by the courts.</p> <p>During the proceedings of the regulatory body and appeal panel, minimum procedural guarantees of due process must be respected. Applicants and other interested parties must be given the opportunity to be heard or to present written submissions.</p> <p>The regulatory body should publish and make publicly available periodic reports detailing its decisions and activities.</p>



# APPENDICES

# Appendices

## APPENDIX I: COMPARING POLICY, OBJECTIVES, PRINCIPLES & CONDITIONS BETWEEN THE FCA GUIDELINES AND CMA CONTENT CODE<sup>320</sup>

FC Guidelines	CMA Content Code
<p><b>Part 1: General Policy</b></p> <ol style="list-style-type: none"> <li>1. To protect the public from negative influences that can result from viewing films and film publicity material that can induce them to act in the following manner:               <ol style="list-style-type: none"> <li>1.1 To engage in immoral activities that can threaten security and public order;</li> <li>1.2 To imitate, practise and sympathise with ideologies that are contrary to Rukun Negara (principles of nationhood)</li> </ol> </li> <hr/> <li>2. To protect the country and the Malaysian Government from the distribution of films that are anti-government or show a negative image of the government and its agencies as well as discredit the sovereignty and leaders of countries that have diplomatic relations with Malaysia</li> <hr/> <li>3. To prevent the screening of films that promote deviationist teachings and fanaticism and criticise and degrade any religion but do not conclude with repentance or punishment</li> <hr/> <li>4. To preserve the harmonious relations among the races, by mirroring the cultures, character and national aspirations that are in line with the national vision</li> <hr/> <li>5. To become a guide so that national values and culture are preserved and developed in line with the national identity</li> <hr/> <li>6. To avoid physical or moral loss to an individual or organisation from the screening of a film that makes false claims or wild accusations.</li> </ol>	<p><b>Part 1: 1.0 Preamble</b></p> <ol style="list-style-type: none"> <li>1.1 BEARING IN MIND the national policy objectives of and for the communications and multimedia industry and the need to establish agreed standards of behaviour in respect of industry members and to:</li> <li>1.2 BEING AWARE of the need to avoid Content, which is indecent, obscene, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass any person.</li> <li>1.3 ACKNOWLEDGING THE NEED of the viewers and listeners to be provided with news and reporting to create an informed public bearing in mind the need to ensure and preserve the country's harmony and growth.</li> <li>1.4 RECOGNISING THE NEED to disseminate and to provide information and entertainment to meet the diverse needs of the Malaysian viewers and listeners in all Content relating to business, politics, recreation, information, culture and education.</li> <li>1.5 REALISING THAT VIEWERS as consumers should have the freedom to view contents of their choice. That choice must be balanced against public interest for which as a compromise, guidelines may be formulated to classify contents and suitability.</li> <li>1.6 AND WHILE RECOGNISING the right of the consumer to choose it is AGREED that choice should be exercised with care and that the responsibility could be shared by the individuals, parents, teachers and guardians.</li> </ol> <hr/> <p><b>Part 1: 2.0 General Principles</b></p> <ol style="list-style-type: none"> <li>2.1 IT IS DECLARED AND ACCEPTED that the following general principles shall apply to all that which is displayed on or communicated and which is subject to the Act.</li> <li>2.2 In creating and offering news, reports, entertainment and advertisements, content providers will bear in mind the need for a balance between the desire of the viewers, listeners and users to have a wide range of Content options and access to information on the one hand and the necessity to preserve law, order and morality on the other.</li> <li>2.3 The principle of ensuing that Content shall not be indecent, obscene, false, menacing or offensive shall be observed.</li> </ol>

### FOOTNOTE

<sup>320</sup> Data extracted from Ministry of Home Affairs, Guidelines on Film Censorship ([http://lpf.moha.gov.my/lpf/images/Perundangan/GARIS\\_PANDUAN\\_PENAPISAN\\_FILEM\(1\).pdf](http://lpf.moha.gov.my/lpf/images/Perundangan/GARIS_PANDUAN_PENAPISAN_FILEM(1).pdf)) and CMA Content Code (<http://www.cmf.com.my/download/cmf-content-code-english.pdf>), (accessed on 13 November 2020).

FC Guidelines	CMA Content Code
<p><b>Part 1: General Principles</b></p> <ol style="list-style-type: none"> <li>1. The detailed statements of the guidelines are found in the following pages. Nevertheless, it must be stated here that the foundation for which the Film Censorship Board carries out its functions should be based on two main principles, namely:                             <ol style="list-style-type: none"> <li>1.1 A film should be allowed to be widely distributed to viewers consistent with its theme and message;</li> <li>1.2 Adults should be given the freedom to choose any content that they may wish to view as long as it is permissible and not potentially detrimental.</li> </ol> </li> <li>2. There are three matters to contend with in upholding the principles, namely:                             <ol style="list-style-type: none"> <li>2.1 Film content that is contrary to the law; or</li> <li>2.2 Film content that is potentially detrimental to a target group; or</li> <li>2.3 Film content that is clearly contrary to public opinion. Based on the above principles, the Film Censorship Board can curb screening of the film through prohibitions related to sex, superstition, violence and uninhibited lifestyles</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>2.4 There shall be no discriminatory material or comment, which is based on matters of race, national or ethnic origin, colour, religion, age, sex, marital status, or physical or mental handicap.</li> <li>2.5 Women and men shall be portrayed with fair and equitable demographic diversity taking into account age, civil status, race, ethno-cultural origin, physical appearance, background, religion, occupation, socio-economic condition and leisure activities, while actively pursuing a wide range of interests.</li> <li>2.6 Particular attention shall be given to Content that is created for children and to Content in which children are portrayed.</li> <li>2.7 Attention will be given to include and respect diversity such as may be expressed through differences due to, but are not limited to, cognitive or physical ability, culture, ethnicity, religion, socio-economic status, gender, age, national origin, political persuasion, marital status, educational background or geographic location.</li> <li>2.8 Code subjects shall endeavour to provide Content that, as far as possible, caters to the various tastes and expectations of Malaysian viewers and listeners recognising the varied tastes of the Malaysian public.</li> <li>2.9 Code subjects will ensure, to the best of their ability, that their Content contains no abusive or discriminatory material or comment on matters of, but not limited to, race, religion, culture, ethnicity, national origin, gender, age, marital status, socio-economic status, political persuasion, educational background, geographic location, sexual orientation or physical or mental ability, acknowledging that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms as contained in the Federal Constitution and other relevant status.</li> </ol>
<p><b>Part 1: Film Category/Genre</b></p> <ol style="list-style-type: none"> <li>1. The matter that needs to be considered by the Film Censorship Board before making any decisions about a film is the type of film, for example drama, documentary, animation, advertisement and experimental film, in the following aspects:                             <ol style="list-style-type: none"> <li>1.1 Theme of the film;</li> <li>1.2 The message conveyed by the producer (explicit message and implied message);</li> <li>1.3 The lesson that can be gained from it;</li> <li>1.4 The influence on any age groups (children, youth or adults);</li> <li>1.5 Glorification of any clan, race, religion, nation or belief;</li> <li>1.6 Offence to other parties from the point of view of clan, race, religion, and belief;</li> <li>1.7 Suited to the aspirations of the government and the national vision,</li> </ol> </li> <li>2. In addition, the decision will take into account the film category/genre such as crime, war or conflict, science fiction, adventure, sports, religion, horror, history, love/social and medical drama, comedy, mystery/fantasy/cowboy/ western, musical, educational, entertainment and sex.</li> </ol>	<p><b>Part 1: 3.0 Objectives of the Code</b></p> <ol style="list-style-type: none"> <li>3.1 The overriding purpose of this Code is to recommend guidelines relating to the provision of Content through self-regulation by the industry in a practical and commercially feasible manner and at the same time foster, promote and encourage the growth and development of the industry.</li> <li>3.2 In doing so, it is noted and acknowledged that the following specific objectives shall guide the parties affected, governed by, administering and subject to the Code:                             <ol style="list-style-type: none"> <li>(a) Meeting and supporting the national policy objectives set out in the Act.</li> <li>(b) Ensuring effective self-regulation of the development, production and dissemination of Content.</li> <li>(c) Empowering users of Content to make an informed selection of the Content they consume.</li> <li>(d) Recognise and keeping updated with international as well as national standards, trends and sensitivities in applying and reviewing this Code.</li> <li>(e) Ensuring compliance through a regular process of monitoring.</li> </ol> </li> </ol>

## APPENDIX II: COMPARING CONTENT RULES BETWEEN THE FCA GUIDELINES AND CMA CONTENT CODE ON POLITICAL DIVERSITY AND CRITICISM<sup>321</sup>

FC Guidelines	CMA Content Code
<p><b>Part II, para. 2.1: Security and Public Order</b></p> <p>2.1.1 Films with a theme, storyline, scenes or dialogue touching on security and public order are permitted. However, the matters set out below need to be given attention and scrutinised so that they do not create any controversy and doubt among the general public:</p> <ul style="list-style-type: none"> <li>ii. Violence and anarchy that overthrows the rule of law;</li> <li>iii. Discrediting of a government or derision and denigration directed at a foreign government;</li> <li>iv. Disdain or mocking of a leader or government, thus creating tension within the country;</li> <li>v. Dialogue, lyrics or actions that are provocative, slanderous or stirs up social unrest by bringing about doubt and uneasiness which finally threatens safety, public order and national security;</li> <li>x. Legal authorities do not take any action against the criminals even upon conclusion of the story.</li> </ul> <p>2.2.2 Films with a theme, storyline, scene or dialogue touching on socio-cultural issues are permitted. However, the matters set out below need to be given attention and scrutinised so that they do not create any controversy and doubt among the general public:</p> <ul style="list-style-type: none"> <li>ix. Scenes of oppression of a race or society.</li> </ul>	<p><b>Part 1, para. 2.0: General Principles</b></p> <p>2.7 Attention will be given to include and respect diversity such as may be expressed through differences due to, but are not limited to, cognitive or physical ability, culture, ethnicity, religion, socio-economic status, gender, age, national origin, <b>political persuasion</b>, marital status, educational background or geographic location.</p> <p>2.9 Code subjects will ensure, to the best of their ability, that their Content contains no abusive or discriminatory material or comment on matters of, but not limited to, race, religion, culture, ethnicity, national origin, gender, age, marital status, socio-economic status, <b>political persuasion</b>, educational background, geographic locations, sexual orientation or physical or mental ability, acknowledging that every person has a right to full and equal recognition and to enjoy certain fundamental rights and freedoms as contained in the Federal Constitution and other relevant statutes.</p> <hr/> <p><b>Part 2, para 1.0: General Requirements</b></p> <p>1.3 The standards by which content is measured, given the requirements, will be viewed in the context of the country's social, religious, <b>political</b> and educational attitudes and observances, as well as the need to accommodate global diversity in a borderless world.</p> <hr/> <p><b>Part 2, para. 7.0: False Content</b></p> <p>7.3 Content which is false, is expressly prohibited except in any of the following circumstances:</p> <ul style="list-style-type: none"> <li>(a) Satire and parody;</li> <li>(b) Where it is clear to an ordinary user that the content is fiction.</li> </ul>

### FOOTNOTE

<sup>321</sup> Data extracted from Ministry of Home Affairs, Guidelines on Film Censorship ([http://lpf.moha.gov.my/lpf/images/Perundangan/GARIS\\_PANDUAN\\_PENAPISAN\\_FILEM\(1\).pdf](http://lpf.moha.gov.my/lpf/images/Perundangan/GARIS_PANDUAN_PENAPISAN_FILEM(1).pdf)) and CMA Content Code (<http://www.cmf.com.my/download/cmf-content-code-english.pdf>), (accessed on 13 November 2020).



FC Guidelines	CMA Content Code
<p><b>Part V: Films That Are Not Approved for Screening</b></p> <p>1. Films that have a theme, storyline or plot contrary to socio-culture, noble values, are seditious, anti-religious, insult the beliefs or customs of a particular community or group, have <b>elements that contradict the policies of the government</b>, excessive violence and cruelty.</p>	<p><b>Part 4: Non-Discrimination</b></p> <p>3.7 Broadcasters must ensure, to the best of their ability, that their Content contains no abusive or discriminatory material or comment on matters of, but not limited to, race, religion, culture, ethnicity, national origin, gender, age, marital status, socio economic status, <b>political persuasion</b>, education background, geographic location, sexual orientation or physical or mental ability.</p> <hr/> <p><b>Part 4: News and Current Affairs</b></p> <p>3.7 Broadcasters recognise that the fundamental purpose of news dissemination and current affairs Content in a democracy is to enable people to know what is happening, and to understand affairs that may affect them as members of the community so that they may form their own conclusions.</p> <p>3.9 Broadcasters will ensure that Content of news and current affairs programmes are presented:</p> <ul style="list-style-type: none"> <li>(e) With due respect to the rights of any individual [or] group of persons who should not be portrayed in a negative light by placing gratuitous emphasis on matters pertaining, but not limited to, race, religion, culture, ethnicity, national origin, gender, age, marital status, socio economic status, political persuasion, educational background, geographic location, sexual orientation or physical or mental disability.</li> <li>(g) Presented by taking into account that news materials and current affairs always in line with government’s principles. This is to avoid confusion and misunderstanding among the people and also other countries. Materials received from foreign countries must also be ensured that they don’t contradict with national foreign policies.</li> </ul>

## APPENDIX III: COMPARING CONTENT RULES BETWEEN THE FCA GUIDELINES AND CMA CONTENT CODE ON RELIGION AND RELIGIOUS DIVERSITY<sup>322</sup>

FC Guidelines	CMA Content Code
<p><b>Part II: Para. 2.2 Religion</b></p> <p>2.2.1 Films that have a religious theme, storyline, scene or dialogue are permitted. However, the matters set out below need to be given attention and scrutinised so that they do not create any controversy and doubt among the general public:</p> <ol style="list-style-type: none"> <li>i. Any teaching that is against god and religion, supports fanatical beliefs, criticises or discredits any religion;</li> <li>ii. A confusing message and interpretation of <i>jihād</i> which equates it with violence.</li> </ol> <p>2.2.2 Films with a theme, storyline, scene or dialogue touching on socio-cultural issues are permitted. However, the matters set out below need to be given attention and scrutinised so that they do not create any controversy and doubt among the general public:</p> <ol style="list-style-type: none"> <li>i. Questioning, ridicule and derision of the purity of Islam;</li> <li>ii. Contrary to the belief, laws and teachings of Islam;</li> <li>iii. Contrary to the beliefs of the respected religious sects;</li> <li>iv. Conflicting with the opinions of the Muslim clerics;</li> <li>v. Elements of myth and superstition;</li> <li>vi. Leading to public doubt and unease;</li> <li>vii. Historically incorrect, for example, the life histories of the Prophets;</li> <li>viii. The writing of the Qur’anic verses in a language other than Arabic;</li> <li>ix. Questioning the credibility of the sources of publicly accepted religious laws, namely the Qur’an, hadiths (sayings of the Prophet Muhammad), <i>ijmak</i> (general opinions) and <i>qias</i> (perceptions);</li> <li>x. Disputing the rulings issued by the National Council for Islamic Affairs and the Religious Councils of the states;</li> <li>xi. Ridiculing the credibility of the opinions of any of the four Islamic sects, namely Shafie, Hanafi, Maliki and Hambali and the beliefs of the Ahli Sunnah Wal Jamaah;</li> </ol>	<p><b>Part 2: 6.0 Bad Language</b></p> <p>6.1(iii) Hate Speech</p> <p>Hate speech refers to any portrayal (words, speech or pictures, etc.), which denigrates, defames, or otherwise devalues a person or group on the basis of race, ethnicity, <b>religion</b>, nationality, gender, sexual orientation, or disability, and is prohibited.</p> <hr/> <p><b>Part 4: Non-Discrimination</b></p> <p>3.7 Broadcasters must ensure, to the best of their ability, that their Content contains no abusive or discriminatory material or comment on matters of, but not limited to, race, <b>religion</b>, culture, ethnicity, national origin, gender, age, marital status, socio economic status, political persuasion, education background, geographic location, sexual orientation or physical or mental ability.</p> <hr/> <p><b>Part 4: Religious Content</b></p> <p>3.12 In dealing with Religious Content, broadcasters shall have regards to Islam as the official religion of the country and the constitutional rights to freedom of religion of all other communities.</p> <p>3.13 Religious broadcasts are aimed at respecting and promoting spiritual harmony and to cater to the varied religious needs of the community. Broadcasters must ensure that its religious content is not used to convey attacks upon any race or religion or is likely to create any disharmony.</p> <p>3.14 All religious programming on Islam must be approved by the relevant religious authorities prior to transmission. Advise from the appropriate religious authorities should be obtained in relation to Content relating to other religions.</p> <p>3.15 However, propagation of any religion other than Islam whether directly or indirectly is not permitted.</p> <p>3.16 Content that is wrongful, fanatical, critical and insulting against any religion shall not be permitted.</p>

### FOOTNOTE

<sup>322</sup> Data extracted from Ministry of Home Affairs, Guidelines on Film Censorship ([http://lpf.moha.gov.my/lpf/images/Perundangan/GARIS\\_PANDUAN\\_PENAPISAN\\_FILEM\(1\).pdf](http://lpf.moha.gov.my/lpf/images/Perundangan/GARIS_PANDUAN_PENAPISAN_FILEM(1).pdf)) and CMA Content Code (<http://www.cmf.my/download/cmf-content-code-english.pdf>), (accessed on 13 November 2020).

FC Guidelines	CMA Content Code
<p>xii. Belittling and ridiculing the credibility and the dignity of the religious leaders from the respected sects especially the muftis (jurors);</p> <p>xiii. Making use of Islamic issues and depicting scenes that can lead to disunity among the Muslim community in this country;</p> <p>xiv. Dialogue or scenes that celebrate the victory or glorify the gains or benefits of a person who has forsaken the Islamic religion without any retribution to the offender;</p> <p>xv. A Muslim who plays a character of non-Islamic faith such as a monk, clergyman, nun and who performs acts of worship in a temple, church, etc;</p> <p>xvi. A Muslim who drinks alcohol, gambles, commits sinful acts, except to portray a character who transforms from sinful to religious; and</p> <p>xvii. Acts that approve of suicide in which the scene is protracted.</p> <p><b>2.2.3 Films that contain scenes and dialogue with polytheistic elements and touch on beliefs need to be examined carefully so that they do not give rise to controversy and doubt among the public. Such portrayal is allowed if the objective is to redress the faith and prevent polytheism. The character contravening the religious faith must gain awareness and repent or receive retribution. The circumstances include the following:</b></p> <p>i. A teacher or student of a certain school of thought, practice or method who claims to have received a divine message;</p> <p>ii. A teacher who claims to hold the key to the door to heaven;</p> <p>iii. Recitation in a loud voice, or under a mosquito net, in a dark place where there is free interaction between the sexes;</p> <p>iv. Claim that the teacher is of the stature of a prophet or an angel;</p> <p>v. Belief in the reincarnation of the soul of a dead person in a living person;</p> <p>vi. Claim that one is a saint;</p> <p>vii. Belief that the supplications of a teacher can prevent the onset of judgment day;</p> <p>viii. Belief that the teacher can assist one on judgment day;</p> <p>ix. The followers of a certain religious belief promoted by a certain group are guaranteed a place in heaven;</p> <p>x. Belief that the teacher can pardon any sin if money is offered;</p>	

FC Guidelines	CMA Content Code
<ul style="list-style-type: none"> <li data-bbox="233 365 635 389">xi. Belief that all religions are the same;</li> <li data-bbox="233 405 655 454">xii. Belief that there will other prophets to come after Prophet Muhammad SAW;</li> <li data-bbox="233 470 639 519">xiii. Belief that pleas to the dead can give one assistance and blessings;</li> <li data-bbox="233 535 675 629">xiv. Seeking for help from the teacher or other persons or objects such as stones and rings as an intermediary to relay a message to God;</li> <li data-bbox="233 645 628 694">xv. Imparting or teaching knowledge in secret;</li> <li data-bbox="233 710 655 781">xvi. Claim that a certain kind of knowledge that is taught cannot be learned by others;</li> <li data-bbox="233 797 663 846">xvii. Vow that a certain teaching will not be disclosed to others;</li> <li data-bbox="233 862 668 911">xviii. Reflecting on the image of the teacher when worshipping;</li> <li data-bbox="233 927 660 999">xix. Spiritual or physical submission to the teacher, whether through a physical or spiritual marriage;</li> <li data-bbox="233 1014 639 1064">xx. Claim that the self or the teacher is a prophet or Messenger of God;</li> <li data-bbox="233 1079 660 1128">xxi. Claim that the self or the teacher is the Imam Mahadi;</li> <li data-bbox="233 1144 665 1256">xxii. Claim that only the self and the followers are qualified to receive direct assistance from Allah SWT, whereas others are clearly not qualified to receive such assistance;</li> <li data-bbox="233 1272 624 1321">xxiii. Claim that Allah SWT is embodied in one's soul;</li> <li data-bbox="233 1337 660 1408">xxiv. Claim or admission that one is a representative of the prophet who can bring benefits to the students;</li> <li data-bbox="233 1424 660 1496">xxv. Belief that the divine message is still being sent down even after the demise of Prophet Muhammad SAW;</li> <li data-bbox="233 1512 647 1583">xxvi. Claim that the teachings and beliefs practices are taken direct from the Prophet in a conscious state;</li> <li data-bbox="233 1599 639 1671">xxvii. Belief that certain individuals have not died and will be reborn as special persons such as Imam Mahadi;</li> <li data-bbox="233 1686 660 1798">xxviii. Claim and belief that a person can have direct contact with Allah SWT through the light of Muhammad that is present within him and through which he can be assured of a place in heaven;</li> <li data-bbox="233 1814 665 1908">xxix. Belief and claim that the soul of the dead enters the body of a living person, similar to the practice of resurrection by a shaman or a witch doctor;</li> </ul>	

FC Guidelines	CMA Content Code
<ul style="list-style-type: none"> <li>xxx. Instruction to drink a certain type of water as a condition in a ceremony to follow a certain teaching;</li> <li>xxxi. Doing away with Islamic principles such as performing prayers, fasting, performing pilgrimage, and forming new principles;</li> <li>xxxii. Forsaking the Friday noon prayers in order to practise non-compliance;</li> <li>xxxiii. Claim that the hajj pilgrimage need not to be performed in Makkah but may be performed at other places;</li> <li>xxxiv. Misuse of verses of the Quran to attract a crowd of people;</li> <li>xxxv. Belief that the recitations of a teacher over an object such as a stone, mountain, hill and wood can give good or bad outcomes for the followers;</li> <li>xxxvi. Redirection or veering of Muslims' beliefs from the true path.</li> </ul>	
<p><b>Part II: Para. 2.3 Socio-culture</b></p> <p>2.3.1 Films with a theme, storyline, scene or dialogue touching on socio-cultural issues are permitted. However, the matters set out below need to be given attention and scrutinised so that they do not create any controversy and doubt among the general public:</p> <ul style="list-style-type: none"> <li>iii. An unrestrained lifestyle without any principles, deviant and contrary to religious teachings and culture that can lead to the destruction of the noble values of society;</li> <li>vi. Reverence and worship of the power of the devil without retribution even at the end of the story;</li> <li>x. Glorification of a certain race, tribe or religion to the extent of slighting other races, tribes or religions;</li> <li>xxviii. Close-up scenes of the main character, a Muslim man with earrings and a tattoos, that is inconsistent with the storyline;</li> <li>xxx. Scenes of singing and dancing against a backdrop of a mosque unless appropriately depicted.</li> </ul> <p>2.3.3 A local film that is based on legends, myths, oral tales, and Malay folk tales are allowed as long as it does not glorify or deify matters contrary to the Islamic faith.</p>	



# REFERENCE LIST

# Reference List

**A** Aljazeera, 'Outcry in Malaysia as government cracks down on video-making', *aljazeera.com*, 23 July 2020, <https://www.aljazeera.com/news/2020/7/23/outcry-in-malaysia-as-government-cracks-down-on-video-making>, (accessed 13 November 2020)

*Alma Nudo Atenza v PP & Another Appeal* [2019] 5 CLJ 780 FC

American Bar Association Centre for Human Rights, *International and Comparative Law Analysis on FCA*, Pusat KOMAS, 2014, [https://komas.org/download/lena\\_campaign\\_materials/International-and-Comparative-Law-Analysis-on-FCA-April-1-2014-Report\\_2.pdf](https://komas.org/download/lena_campaign_materials/International-and-Comparative-Law-Analysis-on-FCA-April-1-2014-Report_2.pdf), (accessed 13 November 2020)

Article 19, 'Obscenity Laws and Freedom of Expression: A Southern African Perspective', *Media Law and Practice in Southern Africa*, No. 12, January 2000, <https://www.article19.org/data/files/pdfs/publications/obscenity-law-paper.pdf>, (accessed 13 November 2020).

Association of Southeast Asian Nations, *ASEAN Human Rights Declaration*, 2012

**B** Balakrishnan, M., 'Evaluating Malaysia's Consociational Design: Movements towards a Different Political Model', unpublished manuscript, University College London, 2014b

Balakrishnan, M., 'Malaysia's Liberalising Electoral Outcomes in 2008 and 2013: Falling Short of Regime Change', unpublished manuscript, University College London, 2014a

Barker, T., *Censorship and its Impact on the Screen Industries in Malaysia*, Kuala Lumpur, Freedom Film Network Malaysia, 2020

Bernama, 'Court keeps decision to lift ban on Zunar's comics', *The Star*, 11 November 2015, <https://www.thestar.com.my/news/nation/2015/11/11/court-zunar-upheld>, (accessed 13 November 2020)

**C** Case, W., 'Post-GE13: Any Closer to Ethnic Harmony and Democratic Change?', *The Round Table: The Commonwealth Journal of International Affairs*, Vol. 102, No. 6, 2013, pp. 511-519

Centre for Independent Journalism and Freedom Film Network, 'Finas Act must be reformed to protect freedom of expression', *Malay Mail*, 24 July 2020, <https://www.malaymail.com/news/what-you-think/2020/07/24/finas-act-must-be-reformed-to-protect-freedom-of-expression-cfi-and-ffn/1887780>, (accessed 13 November 2020)

Charter of the Commonwealth, 2013, <https://thecommonwealth.org/sites/default/files/page/documents/CharteroftheCommonwealth.pdf>, (accessed 13 November 2020)

Communications and Multimedia (Licensing) (Exemption) Order 2000 [P.U.(A) 125/2000], <https://www.mcmc.gov.my/skmmgovmy/media/General/pdf/Communications-and-Multimedia-Licensing-Exemption-Order-Regulation-2000.pdf>, (accessed 13 November 2020)

Communications and Multimedia Act 1998 (Act 588)

*Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374

**D** *Dato' Seri Syed Hamid Syed Jaafar Albar (Menteri Dalam Negeri) v SIS Forum (Malaysia)* [2012] 9 CLJ 297 CA

*Datuk Seri Anwar Ibrahim v Government of Malaysia & Anor* [2020] 3 CLJ 593

Dewan Negara, *Penyata Rasmi Parlimen (Parliament Official Report)*, 25 April 2017, D.N.25.4.2017

Diamond, L.J., 'Thinking About Hybrid Regimes', *Journal of Democracy*, Vol. 13 No. 2, 2002, pp. 21-35

*Dr Mohd Nasir bin Hashim v Menteri Dalam Negeri Malaysia* [2007] 1 CLJ 19 CA

- E** Explanatory Statement to the Communications and Multimedia Bill 1998
- 
- F** Fang, H.L., 'Case Study: The case of Lena Hendry and Freedom of Expression in Malaysia', *Forum-Asia*, 16 August 2018, <https://www.forum-asia.org/?p=27067>, (accessed 13 November 2020)
- 
- Faruqi, S.S., 'Reform needed to protect free speech', *The Star*, 27 September 2018, [http://202.58.80.74/newspaper/2018/September/PTAR%20Undang-Undang/PUU\\_20180927\\_TS\\_Reform\\_needed\\_to\\_protect\\_free\\_speech.pdf](http://202.58.80.74/newspaper/2018/September/PTAR%20Undang-Undang/PUU_20180927_TS_Reform_needed_to_protect_free_speech.pdf), (accessed 13 November 2020)
- 
- Faruqi, S.S., *Free Speech and the Constitution*, [1992] 4 CLJ 1 xiv
- 
- Federal Constitution of Malaysia
- 
- Film Censorship Act 2002 (Act 620)
- 
- FINAS, 'Corporate Info', National Film Development Corporation Malaysia, <https://www.finas.gov.my/en/introduction/>, (accessed 13 November 2020)
- 
- G** Guan, S.T., *Film censorship in the Asia-Pacific Region: Malaysia, Hong Kong, and Australia compared*, Oxford, UK, Routledge, 2013
- 
- H** Hassan Basri, F.K. and Alauddin, R.A., 'The search for a Malaysian cinema: between U-Wei Shaari Shuhaimi Yusof and LPFM', in Samsudin A. Rahim (ed.), *Isu-isu Komunikasi*, UKM Bangi, Pusat Pengajian Media dan Komunikasi, 2003, pp. 13-29
- 
- Howard, M.M. and Roessler, P.G., 'Liberalizing Electoral Outcomes in Competitive Authoritarian Regimes', *American Journal of Political Science*, Vol. 50 No. 2, 2006, pp. 365-381
- 
- Human Rights Commission of Malaysia Act 1999 (Act 597)
- 
- I** *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545 FC
- 
- Interpretation Acts 1948 and 1967 (Act 388)
- 
- J** *J.B. Jeyaretnam v PP* [1990] 1 MLJ 129
- 
- Jayasooria, D., 'Our constitution and human rights', *The New Straits Times*, 13 January 2019, <https://www.nst.com.my/opinion/columnists/2019/01/450208/our-constitution-and-human-rights>, (accessed 13 November 2020)
- 
- L** Lembaga Penapis Filem, *Pekeliling LPF Bil. 2/2012: Panduan Khusus Klasifikasi Filem*, Ministry of Home Affairs, 2012, [http://www.moha.gov.my/images/maklumat\\_bahagian/LPF/pekelling/PanduanKhususKlasifikasiFilem.pdf](http://www.moha.gov.my/images/maklumat_bahagian/LPF/pekelling/PanduanKhususKlasifikasiFilem.pdf), (accessed 13 November 2020)
- 
- Lembaga Penapis Filem, 'Iklan Jawatan', Ministry of Home Affairs, [http://www.moha.gov.my/images/maklumat\\_perkhidmatan/kawalan\\_filem/IKLAN-JAWATAN-DAN-SYARAT-KELAYAKAN-PERMOHONAN-SEBAGAI-ANGGOTA-LPF-WEBSITE-II.pdf](http://www.moha.gov.my/images/maklumat_perkhidmatan/kawalan_filem/IKLAN-JAWATAN-DAN-SYARAT-KELAYAKAN-PERMOHONAN-SEBAGAI-ANGGOTA-LPF-WEBSITE-II.pdf), (accessed 13 November 2020)
- 
- Levitsky, S. and Way, L.A., 'The Rise of Competitive Authoritarianism', *Journal of Democracy*, Vol. 13 No. 2, 2002, pp. 51-65
- 
- Levitsky, S. and Way, L.A., *Competitive Authoritarianism: Hybrid Regimes After the Cold War*, Cambridge, Cambridge University Press, 2010
- 
- Lijphart, A., *Thinking About Democracy: Power Sharing and Majority Rule in Theory and Practice*, New York, Routledge, 2008
-



- M** *Madhavan Nair v PP* [1975] 2 MLJ 264
- 
- Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1 FC
- 
- Malaysian Communications and Multimedia Commission (MCMC), *Guidelines for Complaints Handling*, September 2004, <https://www.mcmc.gov.my/skmmgovmy/files/attachments/Consumer%20Complaint%20Guidelines-amended%20Sep04.pdf>, (accessed 13 November 2020)
- 
- Malaysian Communications and Multimedia Commission Act 1998 (Act 589)
- 
- Malaysian Communications and Multimedia Commission. *Complaint Diagram*, <https://www.mcmc.gov.my/en/make-a-complaint/complaint-circle>, (accessed 13 November 2020)
- 
- Malaysian Trade Union Congress & Ors v Menteri Tenaga, Air dan Komunikasi & Anor* [2014] 3 MLJ 145
- 
- MCMC, *Guidelines for Complaints Handling*, p. 5 (para. 8). See: CMA, ss. 82-89. See also: Malaysian Communications and Multimedia Commission (MCMC), *Guidelines for Dispute Resolution*, July 2003, [https://www.mcmc.gov.my/skmmgovmy/files/attachments/Guidelines\\_Dispute\\_Resolution\\_.pdf](https://www.mcmc.gov.my/skmmgovmy/files/attachments/Guidelines_Dispute_Resolution_.pdf), (accessed 13 November 2020)
- 
- Mendel, T., 'Restricting Freedom of Expression: Standards and Principles: Background Paper for Meetings Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression', Centre for Law and Democracy, 2010, <http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf>, (accessed 13 November 2020)
- 
- Merdeka University Berhad v Government of Malaysia* [1981] 2 MLJ 356
- 
- Minister of Energy, Water and Communication & Anor v Malaysian Trade Union Congress & Ors* [2013] 1 MLJ 61
- 
- Ministry of Home Affairs, *Guidelines on Film Censorship*, Film Censorship Control and Enforcement Division, Ministry of Home Affairs, Putrajaya, Pencetakan Nasional Malaysia Berhad, 2010
- 
- Mkini Dotcom Sdn Bhd v Ketua Setiausaha Kementerian Dalam Negeri & Ors* [2013] 6 AMR 668
- 
- Mohamad Ezam bin Mohd Noor v Ketua Polis Negara & Other Appeals* [2002] 4 MLJ 449
- 
- Mohd Faizal Musa v Menteri Keselamatan Dalam Negeri* [2018] 9 CLJ 496 CA
- 
- Muhamad Juzaili Mohd Khamis & Ors v State Government of Negeri Sembilan & Ors* [2015] 1 CLJ 954
- 
- Mutlu, D.K., 'Film Censorship during the Golden Era of Turkish Cinema', in Biltereyst, D & Vande Roel, W. (eds.), *Silencing Cinema: Film Censorship around the World*, New York, Palgrave Macmillan, 2013.
- 
- N** Newman, D., 'British Colonial Censorship Regimes: Hong Kong, Straits Settlements, and Shanghai International Settlement, 1916-1941', in Biltereyst, D & Vande Roel, W. (eds.), *Silencing Cinema: Film Censorship around the World*, New York, Palgrave Macmillan, 2013
- 
- Nik Nazmi Bin Nik Ahmad v Public Prosecutor* [2014] 4 MLJ 157
-

- P** *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal* [2005] 3 MLJ 97 FC
- 
- Perbadanan Kemajuan Filem Nasional Malaysia Act 1981 (National Film Development Corporation of Malaysia Act 1981) (Act 244)*
- 
- Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v Muziadi bin Mukhtar* [2020] 1 MLJ 141 FC
- 
- PP v Yuneswaran a/l Ramaraj* [2015] 6 MLJ 47
- 
- Printing Presses and Publications Act 1984*
- 
- Public Prosecutor v Pung Chen Choon* [1994] 1 MLJ 566
- 
- S** *Sen, S., 'Right to Free Speech and Censorship: A Jurisprudential Analysis', Journal of the Indian Law Institute, Vol. 56, No. 2, 2014, pp. 175-201*
- 
- Sepakat Efektif Sdn Bhd v Menteri Dalam Negeri & Anor and Another Appeal* [2015] 2 CLJ 328 CA
- 
- Sivarasa Rasiyah v Badan Peguam Malaysia & Anor* [2010] 3 CLJ 507 FC
- 
- Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* [1995] 2 MLJ 317 CA
- 
- Sykt Perniagaan United Aces Sdn Bhd & Ors v Majlis Perbandaran Petaling Jaya* [1997] 1 MLJ 394
- 
- T** *The Communications and Multimedia Content Forum of Malaysia, Fact Sheet, <http://www.cmcf.my/fact-sheet>, (accessed 13 November 2020)*
- 
- The Communications and Multimedia Content Forum of Malaysia, History & Mission, <http://www.cmcf.my/history-mission>, (accessed 13 November 2020)*
- 
- The Communications and Multimedia Content Forum of Malaysia, The Malaysian Communications and Multimedia Content Code, 2nd Ed., 14 February 2020 ["CMA Content Code"], <http://www.cmcf.my/download/cmcf-content-code-english.pdf>, (accessed 13 November 2020)*
- 
- U** *U.K. House of Commons Culture, Media and Sport Committee, The British Film Industry, HC 667-1, 18 September 2003, <https://publications.parliament.uk/pa/cm200203/cmselect/cmcomeds/667/667.pdf>, (accessed 13 November 2020)*
- 
- U.N. Charter, Art. 56, <https://www.un.org/en/sections/un-charter/chapter-ix/index.html>, (accessed 13 November 2020)*
- 
- U.N. General Assembly, 12th Sess., 678th plen. mtg., U.N. Doc. A/RES/1134(XII) and A/PV.678, 17 September 1957*
- 
- UN Human Rights Committee (UNHRC), General Comment No. 34: Article 19: Freedom of opinion and expression, U.N. Doc. CCPR/C/GC/34, 21 July 2011, para. 2, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, (accessed 13 November 2020)*
- 
- United Nations (1966). International Covenant on Civil and Political Rights, Article 19*
- 
- United Nations Human Rights Committee, General Comment No. 34: Article 19: Freedom of opinion and expression, U.N. Doc. CCPR/C/GC/34, 21 July 2011, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, (accessed 13 November 2020)*
- 
- United Nations Human Rights Office of the High Commissioner, Ratification Status for Malaysia, OHCHR.org, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=105&Lang=EN), (accessed 13 November 2020)*
- 
- United Nations, 'Vienna Declaration and Programme of Action'*

---

**U** United Nations, 'Vienna Declaration and Programme of Action', World Conference on Human Rights, U.N. Doc. A/CONF.157/23, 25 June 1993

---

United Nations, General Assembly, Note verbal dated 5 January 2017 from the Permanent Mission of Malaysia to the United Nations addressed to the President of the General Assembly, U.N. Doc. A/72/77, 17 April 2017, para. 23 <https://undocs.org/en/A/72/77>, (accessed 13 November 2020)

---

United Nations, Universal Declaration of Human Rights, U.N. Doc. A/Res/217(iii), 1948

---

*Utusan Melayu (Malaysia) Bhd v Dato' Sri Diraja Hj Adnan Hj Yaakob* [2016] 5 CLJ 857 CA

---

**W** Wan Amizah, W.M. et al., 'Film Censorship in Malaysia: Sanctions of Religious Cultural and Moral Values', *Jurnal Komunikasi, Malaysian Journal of Communication* Vol 25, 2009

---

Wan Amizah, W.M. et al., 'Putting Policemen as Censors in Cinemas: The History of Film Censors in Malaysia', *Asian Social Science*, Vol 9, No. 6, 2013

---

Wang, C., *Cinema Attendance and Cinema-Going Audience in Malaysia*, *Media Watch*, Vol. 10, No. 3, 2019, pp. 539-549, <https://mediawatchjournal.in/cinema-attendance-and-cinema-going-audience-in-malaysia>, (accessed 13 November 2020)

---

Welsh, B., 'Malaysia's Elections: A Step Backwards', *Journal of Democracy*, Vol. 24, No. 4, 2013, pp.136-150

---



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9 786299 706700