



BAR COUNCIL MALAYSIA
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BAR COUNCIL MALAYSIA

PART G

**MALAYSIAN
COMMUNICATIONS AND
MULTIMEDIA COMMISSION**

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Communications and Multimedia Act 1998

Executive Summary

Position of the Bar: Repeal of Section 233 and Section 263 of the Communications and Multimedia Act 1998 (“CMA”)

1. The Malaysian Bar’s position with regards to the CMA is that its broad scope and authority given to the Malaysian Communications and Multimedia Commission (“MCMC”) pursuant to Sections 233 and 263 of the CMA allows for the MCMC to act arbitrarily in suppressing contrary views, muzzling press freedom, and denying democratic space.
2. Section 233 of the CMA deals with the broadly framed “improper use of network facilities and network service” stipulates, upon conviction, the imposition of a maximum fine of RM50,000 or a maximum one-year jail term or both, as well as a further fine of RM1,000 for every day the offence is continued after conviction.
3. Section 263 of the CMA allows for the Minister in charge of Communications and Multimedia to bar public access to various websites.
4. The broad scope and arbitrary use of Sections 233 and 263 CMA has been used to clamp down on views, discourse and expression, and to restrict democratic space, creates a climate of fear that threatens to silence Malaysians.
5. The Malaysian Bar through its various public statements have consistently maintained that MCMC as a responsible regulator, must always act in accordance with the law and must not arrogate to itself powers that have not been conferred on it by Parliament.
6. The various decisions by the MCMC in the past has shown that the MCMC and its supervising Minister have made arbitrary decisions without any proper justification. Examples of such instances can be found in the Annexure to this document.

*(See, Annexure: Examples of Instances
Concerning Blocking of Websites, Investigations / Charges under CMA, etc)*

7. The Malaysian Bar has called upon the government to repeal Sections 233 and 263 of the CMA.

8. The Malaysian Bar's premise is supported by the following:
 - a) Article 10(1)(a) of the Federal Constitution - The right to information, or the right to know, is implicit in the guarantee of freedom of speech and expression that belongs to every citizen;

 - b) The freedom of the press is integral to freedom of speech and expression¹, and is regarded as a necessary derivative of the right to know². The media, whether publicly- or privately-owned, must be free to report on matters of public interest. Press freedom encourages transparency, accountability and an open society³. A free press is imperative to the credibility of any democratic system of government; and

 - c) Article 19 of the Universal Declaration of Human Rights, which states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

¹ *Bennet Coleman v. Union of India*, AIR 1973 SC 106.

² Justice JS Verma, "Freedom of Expression." *World of All Human Rights*, Soli J. Sorabjee — A Festschrift. Ed. RN Trivedi. Universal Law Publishing Co Pvt Ltd, 2015, pp. 18- 19

³ *Ibid*, p.19.

Examples of Instances Concerning Blocking of Websites, Investigations / Charges under CMA, etc

1. It was reported in Parliament¹ that, from 2018 to September 2021, 564 cases were investigated under section 233 of CMA, out of which 24 cases were charged, as follows:

Year	Investigations	Charges
2018	171	9
2019	156	8
2020	189	7
Up to Sept 2021	48	-

2. Blocking of various websites such as:
- Sarawak Report*;
 - Medium, Outsied the Box*,
 - Tabunginsider*,
 - Jinggo Photopages*,
 - Din Turtle*,
 - Asia Sentinel* and
 - Malaysia Chronicle*
3. Examples of Investigations and/or Charges against:

2022

- Member of Parliament, Teo Nie Ching, was investigated in January 2022 for an alleged social media posting shared in April 2017;
- Activist, Adam Adli Abdul Halim, was investigated in January 2022 for an alleged article published in relation to the #TangkapAzimBaki rally;
- Political artist, Fahmi Reza, has been investigated multiple times throughout the years, and was charged in February 2022, for alleged posting of satirical works;
- Former UMNO Supreme Council Member, Lokman Noor Adam, was charged in September 2022, for alleged postings regarding offensive communications against then-Prime Minister, Ismail Sabri Yaakob and the Government;

¹ Written Answer in Parliament (Question 24): 2nd Meeting of the 4th Session of the 14th Parliament

2021

- e) Political cartoonist, Zulkiflee Anwar Alhaque (“Zunar”), was investigated in May 2021, for an alleged posting on the Kedah Menteri Besar’s decision regarding the cancellation of Thaipusam holiday in the state;
- f) A dentist, known as “Dr. Han”, was investigated in July 2021, in connection with the #CodeBlack campaign which sought to show support and solidarity to the plight of healthcare contract workers in Malaysia;
- g) Filmmaker, Anna Har, and cartoonist, Amin Landak, was investigated in July 2021, in connection with the alleged production and screening of an animation titled ‘Chili Powder and Thinner’ which was said to be based on the real-life experience of a teenager who witnessed and experienced torture while in police custody. Others were also called in for questioning;
- h) Multiple activists were called in for questioning and to assist in investigations in July 2021, in relation to the organising of the #Lawan protest;
- i) Activist, Heidy Quah, was charged in July 2021, for alleged posting regarding the conditions of an immigration detention center in Malaysia and alleged mistreatment of refugees;
- j) Former editor-in-chief, Steven Gan, and former Member of Parliament, Charles Santiago, were investigated in February 2021, for allegedly criticising the Federal Court’s decision that found news portal, *Malaysiakini*, guilty of contempt;

2020

- k) Activist, Fadiah Nadwa, was investigated in March 2020, in connection with the peaceful protest which was held following the state of political events and change in Government at that time;
- l) Former executive director of the Center to Combat Corruption and Cronyism (C4), Cynthia Gabriel, was investigated in June 2020, for the alleged posting of an open letter titled ‘Anti-corruption rhetoric will never purify the unelected Perikatan Nasional gov’t’;
- m) Member of Parliament, Syed Saddiq, was called for investigation in June 2020, for alleged statements made which were critical of the then-Prime Minister, during an interview that broadcasted on news portal, Al-Jazeera;

- n) Two students from the Universiti Malaya Association of New Youth (UMANY) were investigated in November 2020, for an alleged posting made regarding the powers of the Yang di-Pertuan Agong;

Others

- o) Member of Parliament, Nga Kor Ming, was investigated in January 2018, for alleged offensive social media postings criticizing the Government;
- p) Radio journalist Aisyah Tajuddin and two of her colleagues were investigated on 23 March 2015 for her alleged appearance in a video posted online, entitled “Hudud Isi Periuk Nasi? (Kupas)”;
- q) *The Malaysian Insider* (“TMI”) managing editor Lionel Morais, Bahasa Malaysia news editor Amin Shah Iskandar, and features and analysis editor Zulkifli Sulong were arrested on 30 March 2015; and chief executive Jahabar Sadiq and group CEO of The Edge Media Group (which owns TMI) Ho Kay Tat were arrested on 31 March 2015, for allegedly publishing a news report that claimed the royal institution had opposed the amendment of the Federal Constitution to enable *hudud* laws to be implemented;
- r) Whistleblower website *Sarawak Report* was investigated, and access to it blocked, in July 2015 for allegedly publishing unverified information relating to the Prime Minister and 1MDB;
- s) Political analyst Shahbudin Husin was investigated on 29 September 2015 for allegedly posting a comment piece entitled “Kenapa lawatan rasmi Zahid ke Indonesia sama tarikh dengan majlis sanding anaknya di Jakarta?”;
- t) Former Chief Minister of Malacca Tan Sri Abdul Rahim Thamby Chik was charged on 5 October 2015 for allegedly posting an item on his Facebook account concerning the Selangor Raja Muda;
- u) Parti Sosialis Malaysia Secretary-General S Arutchelvan was charged on 23 November 2015 for allegedly criticising the Court of Appeal's decision against then-Opposition leader Anwar Ibrahim, in a Facebook post;
- v) Activist Khalid Mohd Ismath was charged on 13 November 2015 for making allegedly seditious online posts regarding the Johor royalty;

- w) Former Minister in the Prime Minister's Department Dato' Zaid Ibrahim was charged on 3 December 2015 for the alleged offence of publishing the transcript of a speech that he delivered at the Royal Selangor Club on his blog. The blog post, entitled "Rally Behind Tun Dr Mahathir Mohammad", called for the removal of the Prime Minister; and
- x) "Letak Jawatan" Facebook page administrator Joe Haidy Sulaiman was investigated on 4 December 2015 for allegedly defaming the Prime Minister in a Facebook post.

Printing Presses and Publications Act 1984

Executive Summary

Position of the Bar: Repeal the Printing Presses and Publications Act 1984 (“PPPA”).

1. The Malaysian Bar’s position insofar as the PPPA is that the PPPA be repealed in its entirety.
2. The Malaysian Bar’s position above is premised on the right to freedom of speech and expression as stated in Part II under “Fundamental Liberties” in Article 10(1)(a) of the Federal Constitution.
3. The Bar proposes the establishment of an independent Media Commission by an Act of Parliament to regulate the media industry.