

How Should the Singapore Government Regulate Online News Sites?

The Press Release

On 28 May 2013, the Media Development Authority of Singapore (MDA) dropped a bombshell on the online community. In a press release (see **Annex A**), MDA declared that within three days, websites reporting on Singapore news, and with significant reach, will have to be individually licensed.

For many, this came across as an attempt by the state to exert greater control and censorship over the Internet.

In brief, the new rules of the game were as follows: websites which produce an average of at least one Singapore news programme a week for a period of two consecutive months, and with average monthly visitors of at least 50,000 for the same two consecutive months, will have to be individually licensed. In addition, these websites will have to put up a performance bond of \$50,000 and will be obligated to comply with any content takedown notice by MDA within a 24-hour period.

The press release took many Singaporeans – not only citizens and Internet users, but also Members of Parliament (MPs) from both sides of the House – by surprise. It caused anger, indignation, and confusion among netizens and a number of Singaporeans. Several bloggers staged black-outs of their websites in protest, and a group of bloggers, #FreeMyInternet, staged a protest at Hong Lim Park on 8 June 2013.

MDA's policy shift was negatively received for several reasons. First, was it really necessary? Since 1996, Internet Content Providers (ICPs) had already been regulated under the Internet Code of Practice and the Class Licence framework. These appeared to apply the same content standards as the newly announced rules. Further, there were existing laws, such as defamation laws, the Penal Code, Sedition Act, and Maintenance of Religious Harmony Act, for prosecuting individuals who post content deemed to undermine racial and religious harmony or public order.

Second, how these new rules were released, suddenly and without consultation or early notice, seemed to go against the grain of the Government's earlier commitment to engage and consult citizens widely before making major policy changes. Workers' Party MP Pritam Singh, for example, asked the Communication and Information Minister, Yaacob Ibrahim, whether MDA had "considered seeking feedback from stakeholders given the potentially widespread application of the new regulations and, if not, what [we]re the reasons".¹

¹ Ministry of Communications and Information, "MCI's response to PQs on Licensing Framework for online news sites", http://mci.gov.sg/content/mci_corp/web/mci_pressroom/categories/parliament_qanda/mci_s_response_topqs_onslicensingframeworkforonlinenewssites.html (accessed 31 July 2013).

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Third, there were concerns that the regulation was an attempt at Internet censorship and a move by the Government to further restrict media freedom in Singapore. For instance, popular alternative news sites such as *The Online Citizen (TOC)*, *publichouse.sg*, and *TR Emeritus* issued a statement calling on the government to withdraw the new licensing framework which they feared would impinge on citizens' ability to "receive diverse news information".²

Fourth, the new rules appeared to give wide discretion to the regulator, MDA, rendering its actual impact uncertain. Many were concerned by the lack of transparency and clarity over how the new rules would be applied. A major point of contention was the definition of a Singapore news programme. The new rules defined it as "any programme ... containing any news, intelligence, report of occurrence, or any matter of public interest, about any social, economic, political, cultural, artistic, sporting, scientific or any other aspect of Singapore ...".³ Oddly, the alternative news websites, *TOC* and *TR Emeritus*, were both exempted from the new licensing framework despite providing regular local news and reaching a wide audience.⁴ Instead, MDA identified only ten websites⁵ as currently falling within the ambit of the new rules. The editors of *TOC* said it was "unclear" why this was the case.

Not all commentators rejected MDA's new rules though. Some argued that it might raise online journalism to the higher standards of traditional journalism, or to the standards of other online news sites, such as the *Huffington Post*. Former Nominated Member of Parliament, Calvin Cheng, thought that the fears over MDA's regulations were exaggerated for three reasons. First, had the government's objective been to censor alternative views, it would have been better served by existing laws such as the Sedition Act and the Internal Security Act. Second, he rejected couching the debate as a battle between a censored press and a free press because, in reality, every country chooses a policy position that lies between those two extremes. Third, even if a free press existed, it may only be free from government regulation but not from the influence of their owners whose objectives are to make profits.⁶ Nevertheless, Cheng too agreed that the regulations were drafted so widely that it could foreseeably be used to regulate more than the 10 sites MDA had identified.

The government too defended the policy shift, trying to assure Singaporeans that the rules were not intended to curtail online views critical of the government, but were meant to develop a regulatory framework that treated Internet and traditional news sources *consistently* in the context of media convergence.

² Published on independent news site *Publichouse.sg*, the statement featured over 20 prominent names. "Major websites to protest licensing requirement", by <http://publichouse.sg/categories/topstory/item/886-major-websites-to-protest-licensing-requirement>.

³ Regulation 3A(3) of the Broadcasting (Class Licence) Notification defines a "Singapore news programme" as any programme (whether or not the programme is presenter-based and whether or not the programme is provided by a third party) containing any news, intelligence, report of occurrence, or any matter of public interest, about any social, economic, political, cultural, artistic, sporting, scientific or any other aspect of Singapore in any language (whether paid or free and whether at regular intervals or otherwise) but does not include any programme produced by or on behalf of the Government.

⁴ The Online Citizen, "TOC's statement on MDA licensing of online news sites", <http://www.theonlinecitizen.com/2013/05/tocs-statement-on-mda-licensing-of-online-news-site/> (accessed 31 July 2013).

⁵ These websites are owned by three companies – Singapore Press Holdings, MediaCorp, and Yahoo! Singapore. Of the three, only Yahoo! Singapore was not accredited with the Ministry of Communications and Information (MCI).

⁶ Calvin Cheng, "Comment: Keep calm and carry on posting", <http://news.yahoo.com/blogs/singaporescene/keep-calm-carry-posting-064436432.html> (accessed 28 October 2013).

This case examines the need for regulation of online news content, against a backdrop of rising online participation in civic and political affairs. It highlights the dilemmas faced by policymakers seeking to understand and regulate the news industry in the context of media convergence and a more active and engaged citizenry. Beyond examining the need for such regulations, the case also raises questions of how the government should formulate and implement such regulations. In doing so, the case surfaces possible reasons for why Singaporeans reacted adversely to rules which the government had thought were merely refinements to existing regulations, and which it argued did not contradict its long-standing “light-touch” approach to regulating the Internet.

The History: “Light Touch” Class Licence Scheme

Introduced in 1996, the Class Licence Scheme automatically licensed all Internet Service Providers (ISPs) and Internet Content Providers (ICPs). In practice, this meant that any corporation or group of individuals who provided any programme on the World Wide Web were automatically licensed. They were thus subject to Singapore laws and obligated to comply with the Class Licence Conditions and the Internet Code of Practice.⁷ In addition, certain groups, such as websites providing political and religious content, or providing an online newspaper for a subscription fee, must register with MDA within 14 days of the commencement of their services or as otherwise notified by MDA. Registration entailed disclosing key personnel. The editorial team would also have to sign a declaration stating that they would bear “full responsibility for the contents on the website(s) and shall take all reasonable steps to ensure that such contents comply with the laws in Singapore.”⁸

Under the Class Licence Scheme, ICPs did not have to pay an annual licence fee or a performance bond.⁹ They were, however, obligated to remove, or prohibit the broadcast of, any content that MDA ruled as being contrary to the terms of the Internet Code of Practice¹⁰; that was against the public interest, public order or national harmony, or that offended good taste and decency. Since 1996, MDA had issued 24 takedown notices which were fully complied with—one was for religiously offensive content, 21 were for pornographic content or advertisements soliciting sex or sex chats and two were for inappropriate gambling-related content.¹¹

When the Class Licence scheme was announced on 11 July 1996, it also caused surprise and consternation among many Internet users. When the Singapore Internet Community (Sintercom) – a site covering political, social and lifestyle issues – started a feedback page, it drew mainly adverse comments about the Scheme. One commentator wrote, “The vagueness and carte-blanche nature of these criteria run counter to the clarity, fairness and transparency that the rule of law is supposed to provide”. Another described the regulations as “just so much legalese to cover what is essentially an exercise of unchecked power”. Some saw in the regulations, which came into effect four days after they were announced, the “spectre of government surveillance and censorship”,

⁷ Media Development Authority, “Internet Service & Content Provider Class Licence”, <http://www.mda.gov.sg/Licences/Pages/IntSCPLLicence.aspx> (accessed 15 July 2013).

⁸ Refer to MDA’s Registration Form for Class Licensable Broadcasting Services. <https://mdaonline.mda.gov.sg/onlineservices/forms/RegFrmCRelgPolContJan2010.pdf> (accessed 31 July 2013).

⁹ ISPs, on the other hand, have to pay an annual fee of \$1,000.

¹⁰ The Internet Code of Practice is at **Annex B**.

¹¹ Ministry of Communications and Information, “MCI’s response to PQs on Licensing Framework for online news sites”, http://mci.gov.sg/content/mci_corp/web/mci/pressroom/categories/parliament_qanda/mci_s_response_topqs_licensingframeworkforonlinenewssites.html (accessed 31 July 2013).

and thought it marked the “death of the newsgroup”. Others, however, remained confident that the government would not succeed in controlling the Internet due to its “resilient architecture”.¹²

In response to the adverse reaction, the Singapore Broadcasting Authority (SBA, MDA’s predecessor) said that it was well aware that it cannot control the Internet and that it was not trying to do so. Rather, it was trying to encourage responsible use. In SBA’s view, the Class Licence Scheme imposed minimum standards on ISPs and ICPs, while protecting Internet users from content that runs counter to public morality, political stability, and racial harmony.

Writing in 2012, academic Cherian George acknowledged that the government had “refrained from blocking political content”, and that “netizens’ worst fears did not materialise”. He added that “by the late 2000s, seasoned bloggers would concede that the government had lived up to its ‘light touch’ assurance”.¹³

The Present: MDA’s case for new regulations¹⁴

Media convergence has transformed the way media content is distributed and consumed. Industry players that continue to operate on traditional media platforms, such as print newspaper, increasingly have to compete on the Internet. As Singapore’s media policies and regulatory frameworks were designed mainly for traditional media platforms and industry structures, they were no longer able to cope with a rapidly converging media environment.

A 2011 survey by Nielsen showed Internet usage in Singapore was at record levels. Two thirds of Singapore’s population aged 15 and above use the Internet, higher than the Southeast Asian regional average of 38 percent. Internet penetration in Singapore was almost complete (at 97 percent) among the country’s youths (15 to 19 years), but stood at 33 percent for Singaporeans aged 50 and above. The latter was still far above levels elsewhere: the figure stood at nine to 15 percent for a similar age group in the United Kingdom, the United States, France, and Japan. Singapore also exhibited the highest frequency of Internet access across the region. Eighty-five percent of those who are at least 15 have an Internet-capable mobile phone, compared to 68 percent in the US. Among those with online access, 80 percent accessed the Internet on a daily basis.¹⁵

The growing importance of the Internet in the lives of Singaporeans occurs against a background of growing Internet use worldwide, and along with it, changing patterns of how news is consumed. For example, in the Reuters Digital Report 2013, across all the countries surveyed, the under-35 age group overwhelmingly preferred online and interactive news (older segments of the population still preferred television, radio, and print).¹⁶

¹² George, Cherian, “Postings on New SBA Rules Flood the Net”, *Straits Times*, 17 July 1996.

¹³ George, Cherian, *Freedom from the Press: Journalism and State Power in Singapore*. (Singapore: NUS Press, 2012).

¹⁴ This section draws heavily from the Communication and Information Minister’s reply to Parliamentary Questions (PQs) raised on MDA’s licensing framework for online news sites. The full transcript of the PQs and the reply is available from http://mci.gov.sg/content/mci_corp/web/mci/pressroom/categories/parliament_qanda/mci_s_response_topqsonlicensingframeworkforonlinenewssites.html

¹⁵ Nielsen, “Southeast Asia Digital Consumer Habits”, <http://www.nielsen.com/us/en/reports/2011/south-east-asian-digital-consumer-habits.html> (accessed 31 Jul. 2013).

¹⁶ Reuters Institute, “RISJ Digital Report”, <https://reutersinstitute.politics.ox.ac.uk/publications/risj-digital-report.html> (accessed 31 July 2013).

Similarly, the Institute of Policy Studies (IPS)' Survey on Political Traits and Media Use found that younger Singaporeans (between 21 and 39 years old), the better educated, and the better off were more likely to consume political news¹⁷ provided by online sources such as TOC and TRE. The young and better educated were also more likely to place greater importance on the Internet as a source of political news, and to trust it as a channel for political news.

Overall, however, the consumption of online news, the importance ascribed to online news channels, and the level of trust commanded was low compared to traditional media outlets such as television, radio, and print newspaper: only 13 percent of those surveyed consumed online news.¹⁸ The Internet also ranked lower (3.09 out of 5) in terms of its importance as a source of news as compared to television (3.79), radio (3.22), and print newspaper (3.86). Trust in the Internet scored 2.82 out of five, lagging behind television (3.55), radio (3.39), and print newspaper (3.58).¹⁹ Nonetheless, generational changes and a more educated population all point to a future of news and information consumption that would be largely online, mobile, and instantaneous. The nature of the medium also suggested that information consumption will be increasingly social and discursive.

In this context of high Internet penetration and media convergence, the government faced two main challenges. The first is a lack of consistency in how online and traditional industry players were treated. In spite of their (potentially) wide reach, online news providers were not individually licensed but automatically class licenced under the Class Licence Scheme. In contrast, traditional newspapers were individually licensed under the Newspaper and Printing Presses Act to safeguard the public interests and to impress on news providers the special responsibility that they have in providing accurate news. As a result of this inconsistency, the same news providers were also subject to different regulations depending on whether their content was disseminated online or in print.

The second challenge for the government was that media convergence had made the Internet a significant source of news and information for Singaporeans. Inaccuracies and biased reporting had a higher risk of creating information cascades with adverse consequences. Left unchecked, the spread of misinformation could undermine racial harmony and threaten public order very rapidly. Had MDA been faced with such a scenario under the old regime, it would have been caught flat-footed because it did not have the legal powers to compel content providers to promptly remove malicious content from their websites.

The government's initial approach was to encourage "a bottom-up process" in which online practitioners would spearhead the development of an Internet Code of Conduct to "build a safe and responsible online environment".²⁰ The Communications and Information Minister Yaacob Ibrahim had said in an interview with the *Straits Times* in October 2012 that while he did not "see

¹⁷ This includes information on politics, governance, and public policy issues.

¹⁸ Institute of Policy Studies, "Survey on Political Traits and Media Use: 2011 Report", http://lkyspp.nus.edu.sg/ips/wp-content/uploads/sites/2/2013/07/Media-Survey-Report_230511.pdf (accessed 30 July 2013).

¹⁹ In spite of their importance and the trust that they command, a majority of respondents (56.2 percent) agreed or strongly agreed that "there is too much Government control of newspaper and television". Close to half (48 percent) agreed or strongly agreed that "newspapers and television are biased when they report on Singapore politics, political parties and elections."

²⁰ Ministry of Communications and Information, "MCI's response to PQs on misinformation during the haze episode and role of Media Literacy Council", http://www.mci.gov.sg/content/mci_corp/web/mci/pressroom/categories/parliament_qanda/mci_s_response_topqs_omnismisinformationduringthehazeepisodeandthero.html (accessed 15 July 2013).

the need for more regulations”, the government’s intention was to “encourage people to have their own understanding or guidelines on what is acceptable.”²¹

However, the government’s initiative for a bottom-up and collaborative approach to develop an Internet Code of Conduct was roundly rejected by bloggers who saw it as a veiled attempt at regulation.²² Local blogger, Alex Au, for instance, was sceptical of the Internet Code of Conduct, which he thought sought to regulate the same kind of speech as “water-cooler, cocktail-bar and kitchen sink chat”. He said of the Code,

Some people were aghast. More laughed. Most ignored him [Minister Yaacob Ibrahim]. Codes don’t work unless there is organisation, as far as internet speech goes, there simply isn’t. Internet speech is not a bigger, more democratic form of journalism. It is human interaction at electron speed.²³

MDA later adopted the regulatory route to bridge the gap in the disparate treatments of online and traditional news sites, and to emphasise the special responsibility that news providers in Singapore had in ensuring accurate and responsible reporting of news. While the new licensing regime did not fully harmonise the regulation of online and traditional news providers under a single statutory act, it did achieve greater consistency by ensuring that all providers were individually licensed or permitted. An added benefit of preserving the two separate acts – Broadcasting Act and Newspaper and Printing Presses Act – was that the new licensing regime did not bring any change in the content standards for online news providers that were already complying with requirements set under the previous regime. In other words, MDA was still able to retain its “light touch approach” to regulating ICPs.

There were three key elements that distinguished the new licensing framework from the Class Licence Scheme, summarised in **Exhibit 1**.

Exhibit 1. Summary of the key changes made to the Class Licence scheme

S/N	Key change	What it was under the Class Licence scheme	What it has been amended to under the new licensing framework
1.	Individual licence – the specific terms of the licence will be commensurate with the ICP’s role as a news provider but will not differ from the content standards that online news site complied with under the Class Licence Scheme.	<ul style="list-style-type: none"> All ICPs were automatically class-licensed under the Broadcasting Act and had to comply with the content standards under the Internet Code of Practice as well as the Class Licence. 	<ul style="list-style-type: none"> MDA is empowered to identify websites that have to comply with the requirements of the new licensing scheme. These websites must <ul style="list-style-type: none"> (i) report an average of at least one Singapore news programme per week over two

²¹ Goh, Chin Lian, “New Goals, new ideas; Yaacob Ibrahim: Connecting with people better,” *Straits Times*, 27 October 2012.

²² Loh, Andrew, “Code of conduct ‘within the realm of possibilities’: MLC chief”, <http://sg.news.yahoo.com/blogs/singaporescene/code-conduct-within-realm-possibilities-mlc-chief-102358592.html> (accessed 15 July 2013).

²³ Yawning Bread, “Re-introducing the climate of fear”, updated on 22 July 2013, <http://yawningbread.wordpress.com/2013/07/22/re-introducing-the-climate-of-fear/> (accessed 28 October 2013).

S/N	Key change	What it was under the Class Licence scheme	What it has been amended to under the new licensing framework
			consecutive months, AND (ii) be visited by a monthly average of at least 50,000 unique IP addresses from Singapore a month over the same two consecutive months ²⁴
2.	Performance bond of \$50,000 – a similar bond is imposed on other individually licensed broadcaster to secure compliance by the licensee with any condition attached to the licence. The sum of \$50,000 is pegged to that put up by niche broadcasters.	<ul style="list-style-type: none"> • There was no such provision for ICPs. 	<ul style="list-style-type: none"> • Licensees have to provide at \$50,000 performance bond, which can take the form of cash, a banker's guarantee, or insurance. • If a licensee cannot afford the bond, MDA would be willing to consider the specific circumstances of that licensee and adjust the bond accordingly.
3.	24-hour take-down – News on high-reach websites spread quickly and can have an adverse impact on society	<ul style="list-style-type: none"> • While Class Licensees were obligated to comply with takedown notices, they did not have to do so within 24 hours. 	<ul style="list-style-type: none"> • MDA can direct news websites to remove prohibited content within a 24-hour period.

The impact of the new licensing framework can also be understood in terms of the types of websites it covers and the impact on their operations. On type, MDA had identified ten news websites and stated that it was not considering licensing any other sites individually.²⁵ The Communications and Information Minister provided special assurance to bloggers, Internet commentators and niche sites. He said

In general, bloggers, Internet commentators and niche sites provide their personal perspective of various issues, and do not regularly report on the news and current affairs of the day. As a result, they have not been determined to be reporting on Singapore news and current affairs, and so these websites do not fall within the scope of the licensing framework.²⁶

²⁴ Media Development Authority, "Internet Service & Content Provider Class License", <http://www.mda.gov.sg/Licences/Pages/IntSCPCLicence.aspx> (accessed 31 July 2013).

²⁵ See **Annex A** for the listing of the ten websites, which are owned by Singapore Press Holdings, MediaCorp, and Yahoo! Singapore.

²⁶ Ministry of Communication and Information, "MCI's response to the PQs on Licensing Framework for online news sites", http://mci.gov.sg/content/mci_corp/web/mci/pressroom/categories/parliament_qanda/mci_s_response_topqsonlicensingframeworkforonlinenewssites.html (accessed 28 October 2013).

On the issue of the impact on news sites' operations, the government did not anticipate significant compliance burden because it saw the new licensing framework a minor refinement of the Class License Scheme that these 10 sites were already familiar with. Crucially, like its predecessor, the new licensing framework was not aimed at curtailing online discussions that were critical of the government and its policies. As a matter of fact, the government had never once issued a takedown notice to an ICP on account of politically contentious content.

A Critical Examination of the Policy Process

Many Singaporeans, especially netizens, were unmoved by the government's assurances that it was not after censoring politically contentious Internet content. That the government had a clean past record of never having issued such take down notices did not appear to appease netizens. Instead, they were dismayed by the various stages of the policymaking process – the diagnosis of the problem, policy intervention undertaken, and policy implementation.

1. *Diagnosis of the problem*

It was unclear what problem MDA sought to address with the new rules. Although announced on 28 May, the rationale for the new licensing scheme was only fully articulated on 9 July when Communications and Information Minister responded to eight Parliamentary Questions on the new licensing framework.

Unlike the Minister's response in Parliament, MDA's Press Release made no mention of the special responsibilities of news providers or of safeguarding the public interest. Instead, the Press Release presented the new licensing framework as placing online news websites with a substantial reach "on a more consistent regulatory framework with traditional news platforms which are already individually licensed."²⁷

It was only during an interview with the BBC on 31 May that the Minister invoked the objective of safeguarding public interest. He said,

Really at the end of the day, what we want to do here is to protect the interest of the ordinary Singaporean. As long as they go onto online news sites to read the news I think it's important of us to make sure that they read the "right thing", insofar as what has transpired yesterday – if there's an event, it is reported accurately, this was said by so-and-so and what have you.²⁸

On 4 June, the Minister added yet another dimension to the objectives of the regulation when he said that new licensing framework was "to ensure that those who are in the business of reporting news do it responsibly" – a view repeated by his Cabinet colleague, Tan Chuan Jin, during his 5 June appearance on Channel News Asia's *Talking Point*.²⁹

²⁷ Media Development Authority, "Fact Sheet – Online news sites to be placed on a more consistent licensing framework as traditional news platforms", <http://mda.gov.sg/NewsAndEvents/PressRelease/2013/Pages/28052013.aspx> (accessed 28 October 2013).

²⁸ See "New regulations hit Singapore's online press", *BBC News*, 31 May 2013, <http://www.bbc.co.uk/news/world-asia-22725863>. The Minister's use of the phrase "right thing" was widely misinterpreted, especially by the online community, as meaning news that was sympathetic to the government.

²⁹ Lim, Adrian, "Govt to continue light touch approach on Web", *AsiaOne*, 5 June 2013. <http://www.asiaone.com/print/News/Latest%2BNews/Singapore/Story/A1Story20130605-427518.html> (accessed 31 July 2013).

Singaporeans had to therefore decipher both the problem and the government's motives from both the Press Release and the series of refinements and restatements which the government made to the policy objective articulated in the Press Release. This prompted Bertha Henson, editor of alternative news site *Breakfast Network*, to comment that the Government "is terribly short of answers, repeating that fig leaf about "parity" between MSM [mainstream media] and online news reports".³⁰

2. Policy intervention undertaken

The policy intervention – the new licensing regime – drew flak for several reasons. Most of the criticisms centred on the details of the regulations, which were deemed as giving MDA wide discretionary powers which came at the cost of certainty for ICPs and Internet users; imposing a potential barrier to entry to the online news market due to the performance bond, and of riding roughshod over the Internet's democratic function.

(a) Regulator's discretion versus citizens' desire for certainty

The wide *discretion* that MDA had in determining if a website is an online news site with a significant reach came at the price of *certainty* for users and providers alike as to the types of websites that are covered by the new licensing regime. The #FreeMyInternet movement criticised the MDA's discretion as enabling "arbitrary and non-transparent implementation of the new licensing regime".³¹

A significant source of uncertainty was whether blogs, Internet commentators, and alternative news websites would (eventually) have to be individually licensed. On 31 May, MDA published a Facebook (FB) post clarifying that, among others, "[a]n individual publishing views on current affairs and trends on his/her personal website or blog does not amount to news reporting", and therefore will not need to be individually licensed. This clarification proved to be unsatisfying for at least two reasons.

First, as the clarification was made on MDA's FB page, it was not legally binding on the government and hence offered little certainty to bloggers, Internet commentators, and alternative news websites. Former nominated member of parliament, Siew Kum Hong, said,

If this was indeed the intent, why not simply embed these principles in regulations, instead of a FB posting by an anonymous person without any legal effect? And MDA's refusal to confirm in this posting that non-commercial sites like TOC (which are not "personal" blogs because they are community blogs) will not be subject to individual licensing is very telling.³²

Siew's words turned out to be prescient because both Ministers Yaacob and Tan Chuan Jin later clarified that while blogs did not *currently* fall within the ambit of the new licensing regime, they might in future if MDA assesses that they have morphed into news websites.

This leads to the second reason why the government's assurances were not satisfactory for many: the amount of administrative discretion and latitude that the government was keen to reserve for itself – arguably understandable in the context of a rapidly changing online landscape – was seen

³⁰ Henson, Bertha, "Disquiet over licensing scheme – all quiet on the MDA front", <http://www.breakfastnetwork.sg/?p=4906> (accessed 15 July 2013).

³¹ #FreeMyInternet, "Policy Brief", <http://www.freemyinternet.com/policy-brief/> (accessed 31 July 2013).

³² Media Development Authority, Facebook post at <https://www.facebook.com/MDASingapore/posts/477728388976557> (accessed 31 July 2013).

by those less inclined to trust government by default as evidence that the new regulations were the thin end of a wedge, a first step towards ever more regulation of online speech. Non-Constituency MP Lina Chiam argued in Parliament on 9 July that the inability of the Government to provide a straight answer as to whether or not blogs will be individually licensed was the reason why “Singaporeans continue to believe that the regulations had been crafted to censor blogs”.³³

(b) Incentive to comply versus disincentive to innovate

Unlike mainstream media, the online world offers lower barriers to entry due to lower start-up costs and overheads. A hefty performance bond, while providing online news providers with the incentive to comply with regulations, may deter the establishment of new news websites or the continuation of existing ones. The editors of *TOC*, for example, responded to MDA’s scheme by saying that they “will have to reassess the viability of continuing the website in light of the significant financial and legal liability the new rules impose”.³⁴ During her appearance on *Talking Point*, Bertha Henson also highlighted the barrier posed by the \$50,000 performance bond.³⁵

Concerns were also raised about the impact of the regulations on innovation. For example, Hong Kong-based Asia Internet Coalition (AIC), an industry association comprising eBay, Facebook, Google, Salesforce, and Yahoo! Incorporated, sent a letter to MCI to register its concerns with MDA’s regulations. In AIC’s view, the regulations “hamper Singapore’s ability to continue to drive innovation, develop key industries in the technology space and attract investment in this key sector.” Human Rights Watch also criticised the move in a statement, saying that the Singapore licensing policy “casts a chill over the city-state’s robust and free-wheeling online communities,” and will limit Singaporeans’ access to independent media. Senior Internet researcher at Human Rights Watch, Cynthia Wong, said, “Singapore is placing its status as a world-class financial centre at clear risk by extending its record of draconian media censorship to the digital world.” This was played up against the 2013 Reporters Without Borders World Press Freedom Index in which Singapore had fallen 13 places to rank 149.³⁶

Further, the performance bond could stymie the growth of not-for-profit news websites (the most common type of alternative news sites) or cause them to shut down. The resultant decline in market players could reduce the diversity of news source and consequently dampen competition and innovation. One consequence of this would be to stymie the development of healthy and vibrant online discourse about matters of public interest, the promotion of a more active and engaged citizenry, and the supply of a diverse range of online news.

While MDA sought to assure netizens that it was willing to consider the individual circumstances of licensees and to adjust the performance bond accordingly, its assurances, which again relied on Singaporeans trusting regulators to do the right thing, failed to produce the desired effect.

³³ Singapore People’s Party, “NCMP Lina Chiam: Motion speech in Parliament on MDA licensing framework for news websites (8 July 2013)”, <http://www.spp.org.sg/motion-speech-on-mda-regulations/> (accessed 28 October 2013).

³⁴ The Online Citizen, “TOC’s statement on MDA licensing of online news sites”, <http://www.theonlinecitizen.com/2013/05/tocs-statement-on-mda-licensing-of-online-news-site/> (accessed 28 October 2013).

³⁵ “TOC’s statement on MDA licensing of online news sites”, *The Online Citizen*, 28 May 2013, <http://www.theonlinecitizen.com/2013/05/tocs-statement-on-mda-licensing-of-online-news-site/> (accessed 15 July 2013).

³⁶ Tan, Heather, “Singapore struggles to control cyberspace”, *Al Jazeera*, 8 June 2013, <http://m.aljazeera.com/story/201368112023976117> (accessed 31 July 2013).

(c) *The Internet as an essential tool of democracy*

The Internet's democratising potential is particularly salient in Singapore's context. Nanyang Technological University's professor Mark Cenite pointed out, "Social media have lowered the barriers of entry into political discourse everywhere. But that's particularly significant in Singapore because here the barriers to entry into political discourse and the accompanying risks have been so high."³⁷ Don Tapscott also noted, "Just as the Internet drops transaction and collaboration costs in business and government, it also drops the cost of dissent, of rebellion and even insurrection."³⁸

As a network dependent on participation, the Internet relies on a "spirit of conversation". As a modern technology, it also redresses the lost areas in modern life for civil society and the public sphere. The potential of social media thus lies mainly in their "support of civil society and the public sphere, which is a change measured in years and decades rather than weeks or months". As such, an "instrumental approach", according to Clay Shirky, is counter-productive in the long run. Anthony E. Varona claims the Internet has similarly "served as powerful check on governments and elected representatives, both by exposing abuses...and by providing citizens of speech-repressing regimes a vehicle for dissenting, information sharing, and organising".

Beyond the specific details of the new regulations

Apart from specific details of the regulations, some, like Alex Au, questioned if parity between the mainstream and alternative news websites could not have been achieved by deregulating the former.³⁹ In Au's view, the expansion of MDA's regulatory oversight could also potentially undermine the Internet community's efforts at self-regulation. He said,

The best defence a community has against irresponsible speech is to firstly acquire an immunity to it and secondly for many individuals to feel empowered to speak up against it. Government playing nanny again is the surest way to thwart this maturing process. A government that puts on iron gloves disempowers citizens from doing their bit.⁴⁰

3. Policy implementation

Although MDA is authorised to make regulations with only the approval of the Communications and Information Minister, many were dismayed that a regulation with such wide-ranging implications was introduced suddenly, without provocation, and without public consultation and a prior parliamentary debate. For instance, MPs from both sides of the House filed Parliamentary Questions asking the Communications and Information Minister why the public was not consulted on the regulations. The lack of consultation over the new rules was also perceived as contrary to the ethos of the on-going "Our Singapore Conversation". Minister Yaacob responded to these concerns by saying,

The Government is committed to wider consultation on issues that affect the public. Over the past few months, Singaporeans have given their views on various Government policies as part of "Our Singapore Conversation". However, in this instance, the licensing framework only applies to a small number of news sites and does not affect the overwhelming majority of Internet content providers. Besides, content standards have remained unchanged and the

³⁷ Mydans, Seth, "In Singapore, Political Campaigning Goes Viral," *The New York Times*, 11 May 2011, http://www.nytimes.com/2011/05/06/world/asia/06iht-singapore06.html?_r=0 (accessed 31 July 2013).

³⁸ Tapscott, Don, Ted Talks lecture for "Four principles for the open world", http://www.ted.com/talks/don_tapscott_four_principles_for_the_open_world_1.html

³⁹ Yawning Bread, "Parity's a good idea," updated on 30 May 2013, <http://yawningbread.wordpress.com/2013/05/30/paritys-a-good-idea/> (accessed 28 October 2013).

⁴⁰ Ibid.

licence will not impact the public in general. Therefore, when implementing the framework, we did not feel there was a need for wider public consultation before the licensing framework was announced. Nevertheless, we will continue to engage stakeholder groups on this issue to allay any concerns they may have.⁴¹

The government's reply, however, glossed over the widespread discomfort with the regulations, the ambiguity over the types of websites covered, and the international attention attracted. Nevertheless, it showed that the government's framing of the regulations – as a low impact, non-consequential change – sat uncomfortably with the citizen's framing of the regulation – potentially high-impact with significant consequences on the diversity of alternative voices in the public discourse. These very different underlying assumptions were perhaps the main reason why the government's responses failed to resonate with the online community.

Apart from the lack of public consultation, there appeared to also be concerns about MDA's independence as a regulatory body. This was indicated by a Parliamentary Question submitted by PAP MP, Mr Zaqy Mohamad, about establishing an independent board to determine the future sites to be included under the licensing scheme, content to be taken down and appeals from licensees. The Communications and Information Minister rejected his suggestion for three reasons. First, the Minister said that MDA already convened panels comprising members of the community to provide inputs on community standards. Second, the Minister thought "it would be wrong in principle for MDA to abrogate its regulatory responsibility, and to pass decisions such as whether an entity should be licensed, to another body." Third, there were established processes for parties aggrieved by a regulatory decision under the Broadcasting Act to seek redress.⁴² Curiously, under the Broadcasting Act, such aggrieved parties would have to appeal to the Communications and Information Minister and "The decision of the Minister in any appeal shall be final".⁴³ This lend credibility to claims that the "government will be prosecutor, judge and jury"⁴⁴ where the licensing scheme was concerned.

The timing of the MDA's regulations did not help. They came on the back of a number of prominent online media controversies, which may have primed some segments of the online community to perceive it as part of the government's continuing efforts to quell online dissent. These controversies included the arrest of Leslie Chew, the cartoonist behind *Demon-cratic Singapore*, in April 2013 for alleged sedition and contempt of court.⁴⁵ Earlier in January 2013, lawyers acting on behalf of Prime Minister Lee Hsien Loong had also sent a letter of demand to Alex Au. The letter demanded that Au remove, within three days, an article and 21 other comments that he had posted on his blog *Yawning Bread*, which, taken together, suggested that the Prime Minister was guilty of corruption in relation to the transaction between PAP town councils

⁴¹ Ministry of Communication and Information, "MCI's response to the PQs on Licnesing Framework for online news sites", http://mci.gov.sg/content/mci_corp/web/mci/pressroom/categories/parliament_qanda/mci_s_response_topqsonlicensingframeworkforonlinenewssites.html (accessed 28 October 2013).

⁴² Ibid.

⁴³ Section 59(1) of the Broadcasting Act (Cap No. 28) provides that any licensee aggrieved by (a) any decision of the Authority (MDA) in the exercise of any discretion vested in it by or under the Act; or (b) anything contained in any Code of Practice of direction issued by the Authority, may appeal to the Minister. Section 59(4) provides that the decision of the Minister in any appeal shall be final.

⁴⁴ Yawning Bread, "Parity's a good idea", <http://yawningbread.wordpress.com/2013/05/30/paritys-a-good-idea/> (accessed 28 October 2013).

⁴⁵ Loh, Andrew, "S'pore cartoonist arrested for alleged sedition," *Yahoo! News*, 23 April 2013, <http://sg.news.yahoo.com/blogs/singaporescene/pore-cartoonist-arrested-alleged-sedition-143415161.html> (accessed 31 July 2013).

and the PAP-owned Action Information Management (AIM). Au complied and published an apology to the Prime Minister in accordance with terms of the letter of demand.

The Policymaker's Considerations: consistency, necessity, democracy

To recapitulate, as a result of media convergence, the Internet had become – and will continue to become – an increasingly important source of news for Singaporeans. In this context, Singapore's policymakers addressed the question of whether and how online news providers should be regulated by imposing top-down regulations that brought greater parity between the treatment of mainstream and online news providers.

The negative reception of this policy suggests that policymakers need to be alive to the pitfalls of regulating the online space. First, was *consistency* a sufficiently sound basis for the new regulations? Should people who produce news content online be viewed and treated as if they were journalists in mainstream media? Even if there was agreement on the merits of consistency and of treating ICPs as if they were mainstream journalists, should consistency be achieved by imposing tighter regulations on online news sites? There are, after all, other ways to achieve consistency, such as by liberalising mainstream news providers or by adopting international practices and norms on how the Internet and news providers should (or should not) be regulated. These alternatives are pertinent given Singapore's aspirations to be a hub of media and creative industries.

The second area of concern is one of establishing *necessity*. Given that existing laws and regulations already afforded the authorities a great deal of discretionary powers for prosecuting individuals who produced online content that undermine racial and religious harmony or public order, why were the new regulations on online news providers with wide reach deemed necessary? Seen in this light, it was perhaps unsurprising that sceptical Singaporeans viewed the new rules as an attempt to crimp the vibrant online space that had opened up in the last decade or so. This view was buttressed by the fact that by the government's own admission there were not any specific events which led the government to decide that the new rules were necessary. Anticipating this, how should policymakers have tried to frame the debate over the necessity and merits of the new rules?

The third area of concern is the need to *uphold democratic ideals*, especially in the context of growing activism. Citizens everywhere placed a very high burden of proof on their governments to justify any restraints on political speech. This emerges from the fact that governments (even those in liberal democracies) often have selfish interests for trying to regulate such speech. Given the public's natural and heightened suspicion of the motives of those in power, how should the new rules have been formulated and communicated? What institutions might be necessary to assure the public of the regulator's independence from politics? How should regulators strike the right balance between preserving flexibility and discretion for themselves and providing those whom they regulate with a degree of certainty, predictability and transparency? In trying to regulate the Internet, what principles should the Singapore government be mindful of?

Fact Sheet - Online news sites to be placed on a more consistent licensing framework as traditional news platforms⁴⁶

1. From 1 June 2013, online news sites that report regularly on issues relating to Singapore and have significant reach among readers here will require an individual license from the Media Development Authority (MDA). This will place them on a more consistent regulatory framework with traditional news platforms which are already individually licensed.
2. Under the licensing framework, online news sites will be individually licensed if they (i) report an average of at least one article per week on Singapore's news and current affairs⁴⁷ over a period of two months, and (ii) are visited by at least 50,000 unique IP addresses from Singapore each month over a period of two months. Currently, these sites are automatically class-licensed under the Broadcasting Act. When MDA has assessed that a site has met the criteria to be individually licensed, MDA will issue a formal notification and work with the site to move it to the new licensing framework. Please see Annex for the sites that MDA will be issuing licensing notifications to when the licensing framework is launched.
3. The new Licence provides greater clarity on prevailing requirements within the Class Licence and Internet Code of Practice, and explains what MDA would consider "prohibited content" in the existing Internet Code of Practice, e.g. content that undermines racial or religious harmony. As the sites are already subject to these requirements, no change in content standards is expected to result. The Licence also makes it clear that online news sites are expected to comply within 24 hours to MDA's directions to remove content that is found to be in breach of content standards. The only other additional requirement is that online news sites are required to put up a performance bond like all other individually-licensed broadcasters, and the sum of \$50,000 is consistent with that required of niche TV broadcasters.
4. These updates in the licensing framework are part of MDA's efforts to periodically review all policies, to ensure they are in line with industry and consumer developments.

Annex

1. asiaone.com
2. businesstimes.com.sg
3. channelnewsasia.com
4. omy.sg
5. sg.news.yahoo.com
6. stomp.com.sg
7. straitstimes.com
8. tnp.sg
9. todayonline.com
10. zaobao.com

⁴⁶ Press release reproduced from <http://www.mda.gov.sg/NewsAndEvents/PressRelease/2013/Pages/28052013.aspx>

⁴⁷ A "Singapore news programme" is any programme (whether or not the programme is presenter-based and whether or not the programme is provided by a third party) containing any news, intelligence, report of occurrence, or any matter of public interest, about any social, economic, political, cultural, artistic, sporting, scientific or any other aspect of Singapore in any language (whether paid or free and whether at regular interval or otherwise) but does not include any programme produced by or on behalf of the Government.

INTERNET CODE OF PRACTICE⁴⁸

1. It is hereby notified for general information that, in exercise of the powers conferred by section 6 of the Broadcasting Act (Cap. 28), the Media Development Authority of Singapore has issued, with effect from 1st November 1997, the Internet Code of Practice as set out in the Schedule.
2. Notification no. 2400/96 of 15th July 1996 is cancelled.

THE SCHEDULE
INTERNET CODE OF PRACTICE

Foreword

- 1.- (1) The Broadcasting Act (Cap. 28) makes it the duty of Media Development Authority of Singapore to ensure that nothing is included in any broadcasting service which is against public interest or order, national harmony or which offends against good taste or decency. This Code of Practice has been produced by the Media Development Authority of Singapore for this purpose.
- (2) All Internet Service Providers and Internet Content Providers licensed under the Broadcasting (Class Licence) Notification (N1) are required to comply with this Code of Practice. Under the Broadcasting Act, the Media Development Authority of Singapore has the power to impose sanctions, including fines, on licensees who contravene this Code of Practice.

Internet Code of Practice

2. A licensee shall use his best efforts to ensure that prohibited material is not broadcast via the Internet to users in Singapore.

Obligations under this Code

- 3.- (1) An Internet Access Service Provider or Reseller discharges his obligations under this Code, in relation to programmes on the World Wide Web, when he denies access to sites notified to him by the Authority as containing prohibited material, under clause 4 below.
- (2) An Internet Access Service Provider or Reseller discharges his obligations under this Code, in relation to Internet Newsgroups, when it:-(a) refrains from subscribing to any newsgroup if, in his opinion, it is likely to contain prohibited material; and
- (b) unsubscribes from any newsgroups that the Authority may direct.
- (3) An Internet Content Provider discharges his obligation under this Code:-
 - (a) in relation to private discussion fora hosted on his service (eg. chat groups), when the licensee chooses discussion themes which are not prohibited under the guidelines in clause 4 below;
 - (b) in relation to programmes on his service contributed by other persons who are invited to do so on the licensee's service for public display (eg. bulletin boards), when the licensee denies access to any contributions that contain prohibited material that he discovers in the normal course of exercising his editorial duties, or is informed about; and
 - (c) in relation to all other programmes on his service, if the licensee ensures that such programmes do not include material that would be considered to be prohibited under the guidelines in clause 4 below* .
- (4) An Internet Content Provider shall deny access to material considered by the Authority to be prohibited material if directed to do so by the Authority.

⁴⁸ Reproduced from http://www.mda.gov.sg/Documents/PDF/licences/mobj.981.Internet_Code_of_Practice.pdf (accessed 14 Jul. 2013).

(5) Paragraph (3) does not apply to any web publisher or web server administrator in respect of programmes on his service for which he has no editorial control.

Prohibited Material

4.-(1) Prohibited material is material that is objectionable on the grounds of public interest, public morality, public order, public security, national harmony, or is otherwise prohibited by applicable Singapore laws.

(2) In considering what is prohibited material, the following factors should be taken into account:-

(a) whether the material depicts nudity or genitalia in a manner calculated to titillate;

(b) whether the material promotes sexual violence or sexual activity involving coercion or non-consent of any kind;(c) whether the material depicts a person or persons clearly engaged in explicit sexual activity;

(d) whether the material depicts a person who is, or appears to be, under 16 years of age in sexual activity, in a sexually provocative manner or in any other offensive manner;

(e) whether the material advocates homosexuality or lesbianism, or depicts or promotes incest, paedophilia, bestiality and necrophilia;

(f) whether the material depicts detailed or relished acts of extreme violence or cruelty;

(g) whether the material glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance.

(3) A further consideration is whether the material has intrinsic medical, scientific, artistic or educational value.

(4) A licensee who is in doubt as to whether any content would be considered prohibited may refer such content to the Authority for its decision.