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Is Being a WhatsApp Group Administrator a Legal Hazard?

Late last month, the Deputy Minister of Communications and Multimedia, Datuk Jailani Johari, was quoted in the press as saying that administrators of WhatsApp groups could face legal action if they are directly involved in or intentionally allow the spread of false information.^[1] The following day, the Malaysian Communications and Multimedia Commission explained that the dissemination of false information is an offence under section 233 of the Communications and Multimedia Act 1998.^[2]

Any member of a WhatsApp group may fall foul of section 233(1) if they personally make any post or remark that is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person. It is also an offence for a WhatsApp user to solicit such posts or remarks. On this, section 233 makes no distinction between an administrator and a group member.

Under section 233(2), it is an offence for anyone to provide or permit a network service or applications service under their control to be used to provide obscene communication for commercial purposes to any person. Apart from this prohibition on commercial pornographic sites, section 233 does not regulate the conduct of a person having the control of a network service or applications service. An administrator of a WhatsApp group is not responsible for the content posted by its members unless they have set up the group for commercial purposes as a pornographic site.

A WhatsApp user can be liable for the posts or remarks of others only if they are guilty of soliciting the post or remark. Being an administrator of a WhatsApp group cannot, of itself, amount to soliciting group members to make posts or remarks in contravention of section 233(1). If the administrator of a WhatsApp group “allows” (membiarkan) anything at all, it is only to determine who is or is not allowed to be a member.

It would appear that an administrator of a WhatsApp group is not any more vulnerable than any other WhatsApp user to prosecution under section 233. The position may be different for other forums where the administrator is also a moderator who regulates content by approving or deleting posts, but that is another story. — Prepared by *G Vijay Kumar and Aaron Wu Zhi Chung*

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^[1] The news report was published in Bahasa Melayu. “*Sekiranya terbukti individu (pentadbir) terbabit secara langsung atau membiarkan maklumat palsu itu disebar secara sengaja, dia akan dikenakan tindakan*” Mohd Iskandar Ibrahim, “Admin WhatsApp’ boleh dipenjara” *BH Online* (27 April 2017) <<https://www.bharian.com.my/node/276393>>

^[2] Danial Albakri, “MCMC: WhatsApp admin and members are accountable” *The Star Online* (28 April 2017) <<http://www.thestar.com.my/news/nation/2017/04/28/mcmc-probe-into-whatsapp-false-info-based-on-complaints/>>

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