



12 MARCH 2021



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Australia vs Facebook: Greater Restrictions on Tech Giants?

Australia recently passed the News Media and Digital Platforms Mandatory Bargaining Code (**Media Code**), seeking to address the inequality in bargaining power that exists between tech giants such as Facebook and Google and local media organisations. The Media Code requires tech giants to enter into commercial deals with local media organisations, in the circulation of content on their platforms. If an agreement cannot be reached, an appointed arbitrator will decide whose offer is more reasonable.



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Facebook, which was initially opposed to the Media Code becoming law, decided to remove news content from its Australian platform. However, just before the Media Code was passed, Facebook announced that it would lift the contentious ban on Australian news content after regulators agreed to make amendments to the Media Code.

With the reversal in decision by Facebook, Australia has successfully attained a breakthrough in striking its first significant regulation on the social media industry that will permanently change the Australian media landscape.

While Malaysia has not hinted at a similar move to make online platforms pay for news, there are laws regulating the internet and social media to consider, should it choose to emulate Australia. The main law regulating this space in Malaysia is the Communications and Multimedia Act 1998 (**CMA**), which is under the purview of the Malaysian Communications and Multimedia Commission (**MCMC**). The MCMC describes this law as being founded on principles such as transparency and clarity, better competition and less regulation, flexibility, regulatory forbearance, and industry self-regulation.

The CMA requires entities that intend to operate in the telecommunications, broadcasting and internet industries to apply for a licence. As an example, a company like Facebook would qualify as a content applications service provider under

the CMA, and would therefore require a content applications service provider licence. However, the Communications and Multimedia (Licensing) (Exemption) Order 2000 exempts content applications service providers that provide content via the internet from obtaining a licence under the CMA.

Based on the regulatory approach under the CMA, Malaysia practises a “light-touch” approach in regulating the internet. In this regard, the government should not be too quick to make changes to the law, or to regulate any media or internet issues.

However, given the considerable pressure on the global stage to regulate social media, the possibility of the Malaysian government rethinking this approach remains open. A live example is as seen in 2020, when the Minister of Communications and Multimedia issued a statement of the government’s intention to license social media platforms. Even though the Minister later backtracked on his statement, it shows there is some pressure on the government to regulate social media. If the government had insisted on the requirement to license social media platforms, that would have signified a marked shift in the existing regulatory approach in Malaysia.

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Published by the Technology, Media & Telecommunications Practice

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