

MEDIA SELF-REGULATION IN ASIA

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[155] Differences between the political systems of the Anglo-Saxon countries and many Asian countries are reflected in their regulatory approach to internet service providers (ISPs). In the Anglo-Saxon countries, there is a healthy tension between the media and the government which promotes both the probity and quality of the both institutions. In the Asian countries, a more consensual approach between media and government is pursued in the interests of the 'national good'.² Reflecting these government-media relations, Anglo-Saxon countries use regulatory and judicial measures more actively in determining the rights and obligations of ISP whereas Asian countries rely much more on 'negotiated solutions' and consensus which becomes either formal or tacit agreements between government and public/private media organisations. If Anglo-Saxon countries 'self-regulate' they do so to forebear government action. If Asian countries 'self-regulate', they do so as part of a larger system and historically established system of institutional mutual adjustment.

Given the inherent self-regulatory nature of the Asian media, this brief will focus on the self-regulatory model in four Asian regions: China, Singapore, Hong Kong and Japan by looking at the ISPs' connection with the government and assess the degree of self-regulation.

[156] **China**

In China, there is little self-enforcement. ISPs serve Chinese law enforcement, acting as an information gatekeeper and implementing State regulations rather than acting a

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² Different from the Anglo-Saxon perspective, some Asian countries such as Singapore hold that there is good reason to have the media co-operate with the government. There have been incidents in the past where media reports have caused racial riots and the shedding of blood — such as the 1950 Maria Hertogh riots, the 1964 riots during the Prophet Muhammad's birthday, and the 1969 riot which spilt-over from Malaysia. These riots have been blamed partly on irresponsible reporting and are often cited as examples of how the press can incite racial and ethnic violence: B Nair in A Mehra (ed), *Press Systems in ASEAN States* (1989) Singapore: Asian Mass Communication Research and Information Centre, Sing 85–90.

public information gateway.³ The regulation of the internet began in 1996 with State Council Order #195, *Temporary Regulations Governing Computer Information Networks and the Internet* which stipulated that 'under no circumstances should the internet be used to endanger national security or betray state secrets'.⁴ In October 2000, further regulation prohibited

content that subverts state powers, disturbs social order, undermines reunification with Taiwan, spreads rumours, preaches the teaching of evil cults, distributes salacious materials, disperses pornography, slanders others or harms the honour of China.⁵

The regulation of January 2002 by Ministry of Information Industry states that, all ISPs operating in 'sensitive and strategic sectors' such as news sites and bulletin board services must record details about users, including viewing times, addresses, phone numbers, and account numbers. ISPs are also required to install software that would record every message sent and received by their users. If an ISP finds a message that it thinks violates the law, the ISP must send a copy of the message to three government agencies (the Ministry of Information Industry, the Ministry of Public Security, and the Bureau for the Protection of State Secrets), then delete the message. All key network management systems are now required to use domestically produced software.⁶

Regulations also control not just service providers (the ISPs) but also the internet *Content* Providers (ICPs) based in China. The regulation in 2002 stipulated that, 'sites publishing news must obtain special licences, may never generate their own content, and instead may only republish stories from official sources.'⁷ Licensing and registration requirements for ISPs help enforce these content restrictions. Under the regulations, ISPs are required to sign an agreement not to harm the nation and are responsible for blocking access to banned sites (based on site address lists distributed

³ China has a two-tier ISP structure determined by regulatory arrangements. In 1997, only four operators were licensed to provide access to the World Wide Web, while the rest were licensed to provide access to a restricted, national set of internet pages.

⁴ Greg Sinclair, *The Internet in China: Information Revolution or Authoritarian Solution?* (2002) available at: <<http://www.geocities.com/gelaige79/intchin.htm>>.

⁵ Ibid.

⁶ This Ministry of Information Industry regulation was passed in January (2002) and reported on by the Digital Freedom Network: <<http://www.dfn.org/focus/china/shutdown.htm#jan2002>>.

⁷ Ibid.

by the Ministry of Public Security). The government has also directly blocked access to sites considered to be politically or morally unsuitable.⁸ ISP and user compliance with content restrictions is continually monitored by the four operator-regulators and the Ministry of Public Security.

The close relation between the government and ISPs are reflected in ISP ownership as depicted in Table 1 (see p 157). As can be seen, the four major ISPs are owned by government agencies.

[157] **Table 1: Major ISPs in China**⁹

| ISPs | Owned by |
|---|--|
| Chinanet (the country's largest ISP) | Ministry of Posts and Telecommunications* |
| Golden Bridge Network (GBNet) | Ministry of Electronic Industry* and Jitong |
| China Science and Technology Network (CASNet) | China Academy of Sciences and Institute of High Energy Physics |
| China Education and Research Network (CERNET) | State Education Commission |

* The Chinese government announced in March 1998 that the Ministry of Posts and Telecommunications and the Ministry of Electronic Industry merged to form the Ministry of Information Industry. The MII is now a super-agency overseeing telecommunications, multimedia, broadcasting, satellites, and the internet.

'Non-governmental organisations' such as the Internet Society of China (ISOC) which is the major professional association for the internet industry is heavily influenced by government authorities — including the Ministry of Information Industry (MII), the Ministry of Science and Technology, the Ministry of Education, the Ministry of Civil Affairs and the State Council Information Office. In 2002, the ISOC initiated a 'Public Pledge of Self-Regulation and Professional Ethics for China's Internet Industry'. Signatories to the pledge agree to investigate all websites

⁸ Financial Times, *Internet Development in Asia Pacific — Current Realities and Emerging Opportunities* (1998) 139.

⁹ Adapted from *ibid* using data from the Asia Pacific Telecoms Analyst and updated using company sources.

to which they provide links and block access to pages which the Chinese government would consider 'harmful information' (as well as report those sites to Chinese authorities). The pledge stipulates in Ch 1 art 3 that 'the basic principles of self-regulation and Professional Ethics for Internet the Industry are the patriotic observance of law, equitableness, trustworthiness and honesty'.

Self-regulation of ISPs in China consists of either the State sector regulating itself or a semi-autonomous domestic private sector self-regulating to forestall aggressive Chinese enforcement of existing regulations. International firms have also been known to practice such self-censorship as illustrated by Yahoo's appeasement of the Chinese government and Rupert Murdoch's agreement not to broadcast BBC in China on his Hong Kong-based Star TV.¹⁰

Singapore

Similar to China, the Singaporean government exerts a heavy influence over ISPs. Singapore has three major ISPs: Pacific Internet (PacNet), SingNet and Starhub Cable Vision which are mainly run by the government or government linked companies (GLCs) — see Table 2. Singapore regulates these ISPs through its Media Development Authority (MDA).¹¹ The MDA is responsible for regulating internet [158] content and its internet policy is comprised of a set of Industry Guidelines on Internet Policy and Internet Code of Practice formulated in November 1997.

Table 2: Major ISPs in Singapore

| ISPs | Ownership |
|--------------------------------|--|
| SingNet, subsidiary of SingTel | Singapore government. The Chairman and CEO of SingTel is Mr Lee Hsien Yang, the second son of Singapore Senior Minister Lee Kuan Yew |
| Pacific Internet | The information technology arm of public-listed Sembawang Corporation, a GLC ¹² which has businesses |

¹⁰ For more on Yahoo, see 'Yahoo! Risks Abusing Rights in China' in the Human Right Watch of 9 August 2002 <<http://www.hrw.org/press/2002/08/yahoo080902.htm>>. For more on Murdoch, see Reuters, 'In China, The Net Grows Up: To Avoid Censors, "Web Worms" Police Themselves' (25 January, 2000) <http://abcnews.go.com/sections/tech/DailyNews/china_webpolice000125.html>.

¹¹ The MDA was formed by the merger of the Singapore Broadcasting Authority, the Films and Publications Department, and the Singapore Film Commission (SFC) on 1 January 2003.

¹² The company is described as such on its website.

| | |
|----------------------|--|
| | in Utilities, Environmental Engineering, Engineering & Construction, Logistics and Marine Engineering. |
| Starhub Cable Vision | Mainly owned by ST Telemedia, the telecoms and media arm of Singapore Technologies, a GLC (60 per cent), NTT Communications (22 per cent) and British Telecom (18 per cent). |

According to these regulations, Singapore's ISPs, political parties, as well as groups and individuals who run discussion sites on politics and religion, are controlled and licensed by the MDA. They must abide by the agency's strict guidelines regarding 'objectionable content', ranging from pornography to 'areas which may undermine public morals, political stability or religious harmony'. Other material which may be banned includes content which 'tends to bring the government into hatred or contempt, or which excites disaffection against the government', jeopardizes public security or national defence; ridicules racial or religious groups, promotes gambling, involves the gross exploitation of violence, sex or horror, or involves the depiction of 'sexual perversions' such as homosexuality. Violation of those guidelines will result in an ISP's licence being revoked. To assist in enforcing these regulations, the government employs at least eight censors to surf the internet daily in pursuit of undesirable sites that the government then demands that ISPs block.¹³ As with China, Singaporean ISPs collect data on users who violate the regulations.

Hong Kong

Unlike in China and Singapore, the Hong Kong media industry is less connected to the government. There are no limits on the number of licensed ISPs that may enter the market and no foreign ownership restriction.¹⁴

The Internet Service Providers' Association attempt to follow the self-regulatory model of the UK led to the establishment of a voluntary code to control launched in 1997 and revised in 2003. But the code can only be applied against obscene and indecent material put on to the internet in Hong Kong, with no effective sanction

¹³ For more, see 'Privacy and Human Rights 2003: Singapore' <<http://www.privacyinternational.org/survey/phr2003/countries/singapore.htm>>.

¹⁴ Financial Times, above n 8.

against publishers in the rest of the world, where the vast bulk of the material originates.¹⁵ The code which covers all major internet firms is supported by the Television and Entertainment Licensing Authority (TELA).

The code stipulates that members will take 'reasonable steps' to prevent users of their services from [159] placing material on the internet likely to be classifiable as Class III (obscene) under the *Control of Obscene and Indecent Articles Ordinance*. Category II (indecent) material must be preceded by warning notices similar to those on printed material.¹⁶ Users who repeatedly break the above rules should be disconnected and internet firms are encouraged to promote technologies which provide a content rating classification or block certain kinds of sites. The public may also make formal complaints to a page's host internet firm. The firm must 'act promptly and conscientiously on the complaint'.¹⁷ The unresolved complaints may be referred to the TELA and statistics on complaints should be sent to the TELA monthly.

Japan

In contrast to the other countries in the region, Japan has no formal regulation of the internet. ISPs are, however, subject to the *Telecommunications Business Law* and guidelines for protecting private information online are being drawn up by organisations such as the Japan Network Information Center (JPNIC). A non-profit organisation consisting of many computer companies — called the Electronic Network Consortium — address in general terms the issue of 'inappropriate' material on the internet.

The Ministry of Posts and Telecommunications¹⁸ (the Current Ministry of Public Management, Home Affairs, Posts and Telecommunications) set up a study group on the issue of self regulation and published a report in December 1997. The report highlighted self-regulation by internet service providers and concluded that since it is not clear whether internet service providers are legally liable for illegal or harmful content distributed by the third parties, for the time being, self-regulation by providers

¹⁵ For details, see <<http://www.hkispaspa.org.hk>>.

¹⁶ Hong Kong Internet Services Providers Association, *Code of Practice: Practice Statement on Regulation of Obscene and Indecent Material* Revision 1 (2003).

¹⁷ Ibid.

¹⁸ See <<http://www.mpt.go.jp/index-e.html>>.

would be the most suitable. Under the *Telecommunications Business Law*, providers may warn senders, erase such contents, suspend use of services, or terminate contracts where illegal content is sent. The report recommended that ISPs establish procedures for processing complaints and inquiries.¹⁹ Following the study group's report, in January 1998, the Telecom Services Association of Japan (an association of internet service providers) adopted Guidelines of Practice for Internet Service Providers.²⁰

Comparisons and Contrasts

In her analysis of Anglo-Saxon countries, Campbell suggests that internet self regulation can be analysed in terms of legislation, enforcement and adjudication.²¹ Presumably, self-regulation in this context comprises areas where government has not deemed it necessary to impose statutory or other regulation. Table 3 shows that [160] in the Asian context, government plays an important role in regulation.²² Legislation of internet service provision in China and Singapore falls exclusively to the government while a more consensual approach is taken between government and industry. The division of labour in questions of enforcement appears to be much more clearly defined. While all countries rely on ISPs to enforce internet standards, the de facto lack of government enforcement in Japan and Hong Kong necessarily implies that enforcement should be undertaken by ISPs.

Table 3: Degree of government involvement in Four Asian Countries

| | China | Singapore | Hong Kong | Japan |
|-------------|---------------------|------------------------------|--------------------------|--------------------------|
| Legislation | Government | Government | Industry + Government | Industry + Government |
| Enforcement | State-owned ISPs | State-owned or influenced | Mainly Industry | Mainly Industry |

¹⁹ For a discussion, see Tsuneo Matsumoto, *The Development and Future Challenges of Self-Regulation in Japan, with Special Regard to Electronic Commerce* (1998), available at <<http://www.law.kyushu-u.ac.jp/~luke/eccommerce.html>>.

²⁰ For a copy of the Guidelines, see the JETRO Japanese Market Report at <<http://www.jetro.go.jp/ec/e/market/jmr/028/2.html>>

²¹ Angela J Campbell, 'Self Regulation and the Media' (1999) 51 *Federal Communications Law Journal*.

²² Table 3 does not compare adjudication (as Campbell does) as the courts in these countries have yet to deal with ISP cases.

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|--|--|------|--|--|
| | | ISPs | | |
|--|--|------|--|--|

While government involvement in internet service provision in an Anglo-Saxon suggests the relative lack of self-regulation, in an Asian context this interpretation can not hold. If ISPs are state-owned, what constitutes 'self-regulation'? As shown in the Chinese, Singaporean and to a lesser extent the Hong Kong case, the state is regulating itself. In the case of Japan, 'self-regulation' has corresponded to the lack of regulation.