
Technology, Media and Telecommunications & Data Protection

Content Code 2022 | Part 1: The Content Forum Publishes the Revamped Communications and Multimedia Content Code

Introduction

The Malaysian Communications and Multimedia Content Code ("**Content Code**"), which was first introduced in September 2004, is governed and enforced by the Communications and Multimedia Content Forum of Malaysia ("**Content Forum**"), an industry body registered under the Malaysian Communications and Multimedia Commission ("**MCMC**"). The Content Code outlines procedures for self-regulation by setting out the governing standards and best practices for content dissemination within Malaysia.

On 30 May 2022, a Third Edition of the Content Code ("**Content Code 2022**") was registered with MCMC and officially released. The Content Code 2022 is accessible [here](#). It contains a significant number of new amendments to the Second Edition of the Content Code, which was registered with MCMC and released on 14 February 2020 ("**Content Code 2020**").

In our previous [Client Update](#), we provided an overview of the key proposed amendments in the Revamped Content Code Draft ("**Draft Content Code 2021**") that was issued for a nationwide public consultation exercise last year. As a follow-up, in this Client Update, which is Part 1 of our series of updates on the Content Code 2022, we offer a brief introduction to the Content Code 2022, where we set out the key changes that have been finalised and incorporated into the new code.

Recap of Draft Content Code 2021

To recap, the Draft Content Code 2021 previously proposed the introduction of the following enhancements:

- (a) refining the meaning of indecent content;
- (b) inserting new provisions in relation to online abuse and gender-based violence;
- (c) protecting the rights of Persons with Disabilities in content production;
- (d) expanding the scope of provisions regulating advertisements;
- (e) raising the standard required pertaining to advertisements;

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- (f) proposing amendments to better consumer protection;
- (g) removing the list of products and services unacceptable for advertising;
- (h) refining provisions on the use of women, children, religion, cosmetic and financial products as well as intoxicating liquor in advertisements;
- (i) permitting advertisements by licensed gambling or betting companies;
- (j) expanding the application of the Content Code to online service providers; and
- (k) refining the complaints procedure in respect of complaints regarding content disseminated over the electronic networked medium.

The Content Code 2022 has largely incorporated the amendments as proposed in the Draft Content Code 2021, which we further explore below.

Key Changes in the Content Code 2022

(a) Refining the meaning of indecent content

The Content Code 2022 no longer contains a blanket prohibition on the depiction of nudity and sex. Rather, nudity can be depicted in limited circumstances, for instance, where the nude content is non-sexual and is based on art, information and/or sciences. However, the Content Code 2022 sets out the parameter that the depictions shall not be excessive or explicit in nature.

(b) Inserting new provisions in relation to online abuse and gender-based violence

As anticipated from the Draft Content Code 2021, a new provision has been inserted into the Content Code 2022 which prohibits content that incites or provokes any act of abuse and gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering.

(c) Protecting the rights of Persons with Disabilities in content production

The Content Code 2022 enhances the protection of Persons with Disabilities in content production by requiring references to disabilities to be expressed neutrally and by requiring code subjects to make reasonable accommodations in respecting the rights of Persons with Disabilities. This includes the requirement to deliver content in formats accessible to them. The Content Code 2022 also expressly defines the term Persons with Disabilities, and in doing so, has incorporated a reference to the statutory definition of the term as set out under the Persons with Disabilities Act 2008.

(d) Expanding the scope of provisions regulating advertisements

The Content Code 2022 has widened the scope of advertisements under its regulation to include those communicated over a networked medium as well as those displayed on devices that are able to process

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content electronically, including digital media. The newly inserted definition of digital media is expansive and includes any content capable of being transmitted over the internet or computer networks, including through networked electronic media such as wearable devices and interactive devices.

Notably, the scope of the responsibility to observe the provisions on advertisements has also been expanded to cover online marketplace operators. Additionally, social media influencers are also obliged to abide by the Content Code 2022 in respect of the advertisement requirements. The heavily amended Part 3 of the Content Code 2022, entitled "Advertisements (Marketing Communications)" imports the proposals under the Draft Content Code 2021 that were aimed at regulating third party advertisers such as social media influencers, through the imposition of certain disclosure requirements. Interestingly, virtual influencers, which is defined therein as computer-generated characters or avatars who have realistic characteristics, features, and personalities of humans, and behave in a similar manner as influencers, have also made an appearance in the Content Code 2022, whereby they are also subject to such disclosure obligations.

(e) Raising the standard required pertaining to advertisements

As foreshadowed in the Draft Content Code 2021, the Content Code 2022 provides that it is driven by ensuring the continued high standards of advertisements which are to be delivered through self-regulation and in accordance with the expectations of consumers and internationally recognised good practices that govern advertisements by advertisers. This is a step up from the Content Code 2020, which was aimed at ensuring the continued reliable standards of advertisements. A host of new amendments have also been introduced in relation to claims, testimonials and endorsements, prices, guarantees, product availability, denigrating behaviour and imitation in relation to advertisements, building on the developments foreshadowed in the Draft Content Code 2021. Furthermore, several updated provisions on specific categories of advertisements have also been introduced, which cover advertisements on pesticides, medical products and treatment as well as direct sales.

(f) Proposing amendments for better consumer protection

The Content Code 2022 has also introduced new general principles to prohibit advertisements from directly or indirectly infringing the rights of consumers. Advertisement content must not contain any misrepresentation of any matters which are likely to influence consumers on various aspects of a product, such as its source, quality, price, and terms and conditions. The proposed amendments under the Draft Content Code 2021 which relate to misrepresentations, omissions of "material information" and limited use of hyperboles in advertisements, have also been imported into the Content Code 2022. These amendments have been supplemented with new provisions governing advertisements in respect of violence and anti-social behaviour and truthful presentation, among others.

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(g) Removing the list of unacceptable products and services under the Content Code 2020

The list of products and services which were unacceptable for advertisement under the Content Code 2020 has been removed as proposed in the Draft Content Code 2021. As such, all advertisements should be permissible, unless otherwise prohibited under Malaysian laws (for example, advertisements that contravene ethical codes of professional bodies).

(h) Refining provisions on the use of women, children, religion, cosmetic and financial products as well as intoxicating liquor (among others) in advertisements

Notable amendments have been made in this regard. Provisions regarding the use of women and children in content must not condone the exploitation or degradation of women or children. Extensive provisions addressing content at the intersection of children and advertisements have also been inserted, which extend to prohibitions against encouraging children to copy practices that may be potentially unsafe for them, as well as restrictions on the portrayal of prices for children's products. Further, the use of religion in advertisements is also generally prohibited under the Content Code 2022.

The provisions in the Content Code 2022 governing advertisements of cosmetic products, financial services and products, and intoxicating liquor are consistent with the proposed amendments in the Draft Content Code 2021. The advertisements must comply with any regulatory guidelines or statutes which are relevant to the product in question.

The advertisement of intoxicating liquor is now permissible if conducted over electronic mediums based in Malaysia but excluding television, radio and public digital platforms. However, such advertisements must comply with the list of specifications prescribed in the Content Code 2022, which range from requirements regarding the permissible target audience to the inclusion of disclaimers or warnings on the same.

(i) Permitting advertisements by licensed gambling or betting companies

Advertisements by licensed gambling or betting companies are now permitted under the Content Code 2022, subject to compliance with the Common Gaming Houses Act 1953 and Betting Act 1953. Corporate Social Responsibility ("**CSR**"), Public Service Announcements ("**PSA**") and certain sponsorships by such companies may also be made, subject to adherence to the requirements prescribed under the Content Code 2022, for example, by giving due care to the appropriateness of any festive CSR or PSA messages. Helpfully, illustrations of permissible and non-permissible advertisements in this regard have also been provided in the Content Code 2022.

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(j) Expanding the application of the Content Code to online service providers

The Content Code 2022 introduces online service providers as new code subjects. In this regard, all code subjects must take a responsible approach in providing content by implementing reasonable, practicable and proportionate measures and in providing a proactive and reactive mechanism in cases where prohibited material or activity is identified. Significantly, it needs to be noted that Over-The-Top ("OTT") content services, such as Video-on-Demand services, linear OTT services and other similar television streaming services, continue to benefit from being exempt from the Content Code.

(k) Refining the complaints procedure in respect of complaints regarding content disseminated over the electronic networked medium.

The amendments proposed in the Draft Content Code 2021 in respect of such complaints have been incorporated into the Content Code 2022. As such, the time limits for the respondents to prepare their justifications, for the Chairman of the Complaints Bureau to review the complaint and response, for members to agree with the view of the Chairman and to write to the complainant stating that there are insufficient grounds to uphold the complaint, is now set at five working days instead of two working days. An option for mediation of complaints is also provided by the Complaints Bureau, subject to the payment of fees imposed by the Complaints Bureau for facilitating the process. The procedure for complaints regarding comparative, superlative and misleading claims as well as provisions on inquiry proceedings by the Complaints Bureau, as proposed in the Content Code 2021, are featured in the Content Code 2022.

Conclusion

All in all, it is apparent that the Content Code 2022 has comprehensively incorporated the proposed amendments in the Draft Content Code 2021, and this represents a leap forward for content self-regulation in Malaysia. It is commendable to note the forward-thinking ways in which the Content Code 2022 is addressing issues of the day, which includes the governance of advertisements by online influencers as well as addressing the need to be more sensitive to certain social groups within the society such as children and Persons with Disabilities. OTT service providers are also expected to embrace the continued exemption from the Content Code.

Ultimately, all media industry players as well as content creators, owners and disseminators are strongly encouraged to review their existing practices and procedures in light of the extensive amendments introduced in the Content Code 2022.

We trust the above provides you with a useful update on the latest development within the content regulation area.

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This Client Update will be followed up with another update (Part 2) on the Content Code 2022, wherein we will further analyse and highlight the key points of concern and potential impact of the code on various industry players and consumers. Should you require any legal advice regarding the Content Code 2022 or about any other aspects of content regulation and media laws, please feel free to get in touch with our team, through any of **Christopher & Lee Ong** partners listed below.

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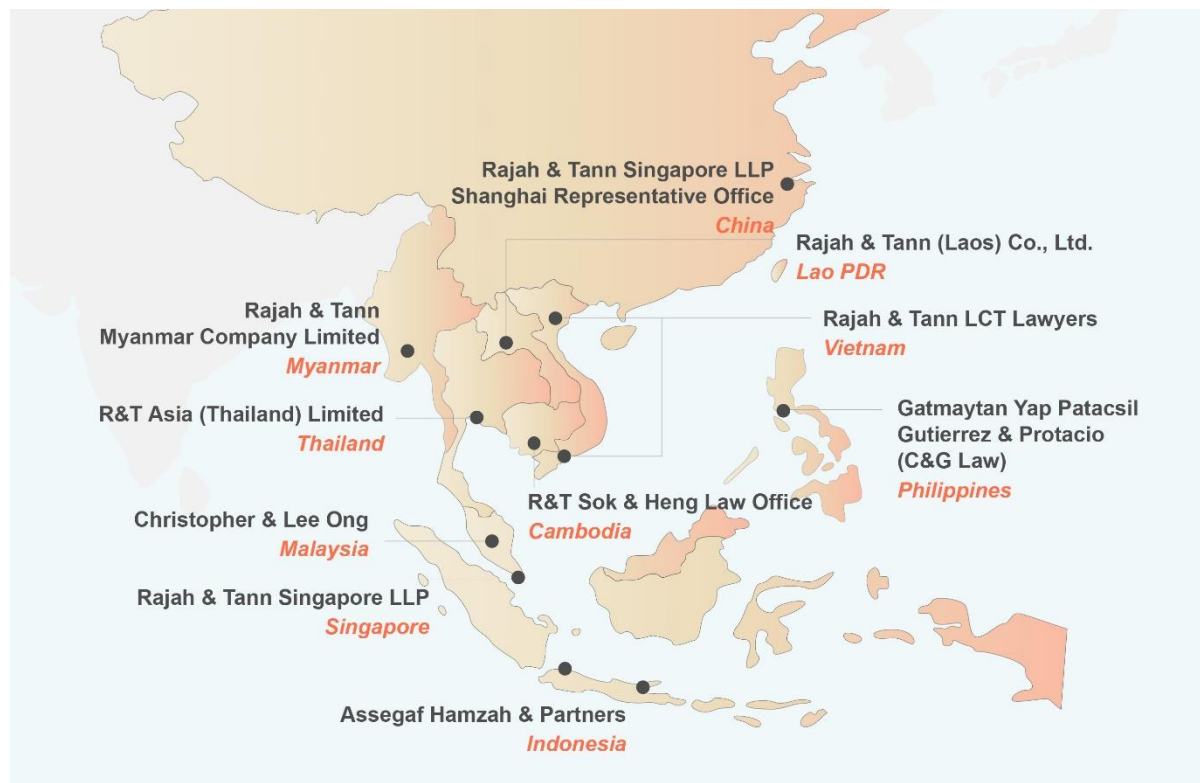
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