

Report on IPS-NUS Law Faculty Public Forum on the "Consultation Paper by the Advisory Council on the Impact of New Media on Society"

**September 19, 2008,
NUS Faculty of Law**

This public forum was organized jointly by the Institute of Policy Studies and the National University of Singapore Law Faculty, and was chaired by Mr. Tan Tarn How, IPS Senior Research Fellow. The aim was to gather public feedback on a consultation paper released by the Advisory Council on the Impact of New Media on Society (AIMS)¹. It was attended by about thirty members of the mass media and the general public. On the panel was chairman of the AIMS, Mr. Cheong Yip Seng; vice-chairman of AIMS, Professor Tan Cheng Han; chairman of the AIMS Working Committee, Mr. Charles Lim; AIMS committee member, Mr. Koh Su Haw; and AIMS Working Committee member, Professor Ang Peng Hwa.

Mr. Tan Tarn How opened the session, and noted that he and Mr. Arun Mahizhnan had written in an earlier commentary in The Straits Times that the Council's recommendations were "a great leap forward" and progressive in thinking. He summarized the recommendations of the AIMS report (see Annex).

Mr. Cheong prefaced his comments by noting that AIMS had received a fair amount of feedback since it released the consultation paper on 1 September. He thanked members of public who have taken the trouble to read the report and gave AIMS both the encouragement to take the process forward and robust criticism on certain parts of the report. The discussions online and offline on the paper has been serious, informed and meaningful, he said. He added that the debate that has been generated so far will produce a better outcome to AIMS' work.

Summary of Feedback Received

Mr. Cheong summarised the feedback to AIMS. He focused on two of the four key areas covered by the report: the Government's engagement with the public in the online arena ("e-engagement") and the regulation of online political content.

On e-engagement, he said he was very encouraged by the "positive response" from the public, and was unable to detect serious disagreement with AIMS' recommendations. Suggestions on how the Government can e-engage with citizens include the establishment of a "virtual homeland" for the discussion of issues and the drawing up of a code of practice to guide online discussion.

¹ The consultation paper can be found at:
<http://www.aims.org.sg/library/docs/AIMS%20consultation%20paper%20-%20Engaging%20New%20Media.pdf>

Most of the feedback received was on the regulation of online political content, Mr. Cheong said. The consultation paper offered three possible ways forward for Section 33 of the Films Act, which bans political films. There was a sense from the feedback that that “Option 1” - narrowing the scope of the law by allowing some political films while continuing to ban others - was impracticable given the very spirit of liberalization and the difficulties posed to enforcement by technology. He however cautioned against a headlong leap into “Option 2” – repealing Section 33 altogether – by pointing to international practices. For instance, the European Union prohibits hate speech and Holocaust denial. In Japan, there are also tough restrictions on online political content during general elections. In Canada, AIMS committee members learnt about the resurgence of political filmmaking in the West, including by individuals who were maximizing their use of technology to make and distribute films in order to make their political views known and effect political change. Films could be “deliberately slanted” to make particular points as well as convey any unhappiness with mainstream media, he said. He cited a Boston Globe newspaper editorial which expressed concern that scurrilous videos posted on the Internet could swing an election the wrong way at the eleventh hour. Mr. Cheong said some members of the public here opposed de-regulation for fear of innuendo and untruths being purveyed when there is a free for all on the Internet.

Discussion with forum participants

After Mr. Cheong’s summary of the feedback received by AIMS, a discussion with the participants followed and is summarized below.

a) Sections 33 and 35 of the Films Act

Mr. Choo Zheng Xi, editor of the blog *The Online Citizen* and member of the “Bloggers 13” group², said the question of whether to repeal Section 33 is a separate one from whether the Internet should be free for all. In their April paper containing their proposals on deregulating the Internet, the Bloggers 13 were never in favour of irresponsible speech on the Internet, he said. Hence it was not right to cite the proscriptions on hate speech by the EU when arguing the case of whether to repeal the Section 33. His second point was that narrowing Section 33 to leave only “symbolic legislation” prohibiting the distribution of political videos may backfire by making banned videos more popular than they would be in the first place. He cited the case of Martyn See’s short films *Singapore Rebel* and *Zahari’s 17 Years*, both of which gained a significant audience online as a result of the publicity following their ban.

² **Bloggers 13 group.** The “ Bloggers 13” is a group of thirteen Singaporean bloggers who have written a proposal, which was been submitted to the Minister for Information, Communication and the Arts in April 2008, calling for the deregulation of legislation pertaining to online political content. The letter may be found at <http://www.yawningbread.org/ybsamplerfiles/bloggerssub.pdf>. In response to the release of the AIMS consultation paper , they have also issued a statement to the media (found at <http://theonlinecitizen.com/2008/09/bloggers-13-statement-for-the-media/>).

Mr. Choo also raised the issue of Section 35 of the Films Act, which was not addressed in the AIMS paper. He feared that even if Section 33 were repealed the authorities could use Section 35 to ban political films now prohibited by Section 33. This is because Section 35 bans films “contrary to public interest” and can be interpreted broadly enough to cover the political films now dealt with by Section 33. Mr. Cheong replied that as far as he knew, only one film (*Zahari's 17 Years*) has been banned under Section 35. He was in favour of keeping Section 35 since it could be used to cover the type of scurrilous videos raised by the Boston Globe and the *Fitna* video made by a Dutch parliamentarian which criticized Islam.

Mr. Choo inquired if the language of Section 35 could be refined its prohibition against films deemed “contrary to the public interest” was too broad. Mr. Cheong stated that he was open to the possibility. Professor Tan Cheng Han added that if Section 33 were to be amended or repealed by Parliament, it is unlikely that the courts would then use Section 35 to ban films no longer covered by Section 33 as Parliament’s intention to allow such films would be made clear in the process of amending or repealing Section 33. He was also in favour of keeping Section 35 for the same reasons as Mr. Cheong. Mr. Choo said since the public may still be worried about putting political material online if only Section 33 and not 35 were to be repealed, it would be important to make clear to the public that Section 35 would not be used to cover films under Section 33 in such an eventuality.

b) Individual Responsibility, Community Moderation and Government Regulation

Assistant Professor Cherian George of the Wee Kim Wee School of Communications, Nanyang Technological University, and member of Bloggers 13 expressed concern with the framing of the debate. He suggested that AIMS should differentiate between what he called the “nice-to-have” versus the “must-have” for a society. While society may feel that some phenomena are not “nice to have” on moral grounds, that does not mean that it should then enact laws to prohibit such phenomena. Otherwise, an “over-paternalistic state” may end up with too much legislation on online political material in a “political sleight-of-hand.” While he had not read the Boston Globe editorial in question, he surmised that the editors were not calling for a repeal of the First Amendment and the freedom of speech that it protects, but were instead encouraging services such as YouTube to be more socially responsible and exercise some control over the material individual users put up on their websites. In reply, Mr. Cheong stated that the job of AIMS was to identify concerns and addressing them, and the “political sleight-of-hand” assumption that A/P George made was not useful as it would already assume that the Government would not be ready to implement liberalization in any form.

Mr. Alex Au from of the website *Yawning Bread* and a member of Bloggers 13 said that one's view of how to regulate the Internet depends one's position on three "sliding scales": 1) whether one emphasises the symbolism and spirit of legislation or the practicality of enforcement; 2) whether one thinks the responsibility of regulating online speech lies with the government or with the private citizen; and 3) whether one believes censorship should be done in a pre-emptive manner or after the offensive material has come to light. Professor Tan sees this as very good way of casting the discussion, but states that where one lies on each of the sliding scales depends on the issue in question. He acknowledged, for instance, that MDA's current symbolic ban on 100 pornographic sites is misleading as it gives parents a false sense of security that their children are protected from exposure. On the other hand, he added, he believed that caution is needed in dealing with websites carrying material on race and religion, as these are issues that need to be treated with sensitivity.

Mr. Cheong added that although some prohibitions are indeed not enforceable, it does not mean that their effect is merely symbolic. He gave the example of the current bans on pornographic material. Even if the authorities cannot get rid of pornographic online content entirely, the ban will prevent people from downloading the videos and burning them onto DVDs and showing them at public venues. In addition, prohibitions may actually have an educational effect on the public in helping to set out certain boundaries for discussion.

Mr. Charles Lim, in reply to Alex Au's pre-emptive vs. post-facto formulation, expressed concern that an over-hasty liberalization may backfire on those who put up objectionable content. This is because if the government does not have the option of taking pre-emptive action through "light touch" administrative actions such as warnings to the offender, then its only choice is to charge the person in court. The result would be much more "heavy-handed". Mr. Au countered Mr. Lim's point on pre-emptive law, saying laws and statutes are often written "in trawler-net fashion" which leave them open to the risk of abuse by the authorities. He also pointed out that the MDA's authority is backed by existing laws and statutes and hence its actions cannot be regarded as a "light touch" as heavy fines have been imposed in some of the administrative actions in the past. He further pushed for community moderation as a way of "filling the gap" between a minimal level of regulation and "government interference." He added that that "transgressive speech" should be dealt with through the use of specific laws and statutes and through the courts rather than through "broad-sweeping injunctions" giving wide powers to the bureaucracy such those provided for in Sections 33 and 35.

Mr. Koh Su Haw pointed out that community moderation and responsibility are fundamental in a light-touch approach. As community moderation is in itself not a top-down process, he suggested that it was an issue that the blogging community - and not AIMS - could take action on. Mr.

Choo Zheng Xi proposed that the Bloggers 13 group work with the AIMS council in formulating a structure for community moderation in return for a lighter regulatory touch. Mr. Cheong indicated that it was a feasible proposal.

Another attendee said that there appears to be an implicit fear that Singaporeans are not mature enough, and cannot distinguish truth from falsehood on the Internet despite the nation's years of development. Professor Tan expressed hopes that the paper does not give the impression that AIMS believes that Singaporeans are not mature enough. For him, the crux of the issue was the speed at which liberalization is practicable, for there are some Singaporeans who wish to see the process managed. He has "great faith in the Singaporean community," but is clear on the need to take into account all points of view from a wide segment of Singapore society.

Mr. Tan Tarn How said it is important to consider and clarify how feedback from different groups, sometimes competing, would be gathered and then factored into policy-making. Whose views should be given more weight? He noted that some Singaporeans who have views about Internet regulation may not know very much about the subject at all, unlike bloggers. The question is if AIMS would listen more to those who are specialists in the subject or to the general public. He said this issue has dogged earlier committees, and needs to be answered by AIMS. Mr. Cheong said AIMS would listen to and study all views, rather than make decisions by popular vote. To this end, Professor Ang Peng Hwa said decisions will be made based on which ideas are the best rather than who had expressed them.

c) Regulation of Political Videos during General Elections

Mr. Leong Sze Hian, who is a financial advisor and also a member of the Bloggers 13 group, framed the issue from a risk management point of view. He suggested the greatest risk that may arise from a complete liberalization of online political media is the "freak election," but also suggested that not liberalizing online space may inadvertently lead to the same scenario in a Catch-22 situation. He said that people do not believe that there is a level playing field in politics, so any restrictions imposed by the Government on political speech will provoke more resistance among members of the public, thereby increasing the risk of any political fallout. He used the 2008 Malaysian general election as an example of this scenario.

Mr. Cheong asked for ways to deal with the situation where a scurrilous video may sway a tight political race, and expressed concern that once freak elections occur, reversing the results will be difficult. Mr. Alex Au stated that there are solutions to this problem, and suggested staggered elections, with elections spread over a period of time instead of being conducted on a single day, as a way of minimizing the possibility of a freak election.

Mr. Choo Zheng Xi added that the playing field is not level as the Government has privileged information on the timing of the elections, and credited AIMS for raising this issue in the report. In a challenge to the concerns expressed by the panel members, he raised the concept of the social immune system, which is the idea that a community has the innate capacity and mechanisms to regulate and correct the harmful behaviour of any its member or elements. He believed that such an immune system existed as Singaporeans could be trusted to distinguish between the different kinds of material that may be available to them on the Internet and subsequently make informed political decisions.

Professor Tan points out that the increased space for content afforded by cyberspace can create a level playing field. He said AIMS is suggesting a blackout period for posting new political content in the days leading up to polling day during an election because of the concern for a freak election swayed by misinformation. There is no reason for political parties or anyone else to not put up content online before the blackout periods unless they are they do not have enough time to produce the content earlier, which is unlikely, or they are "mischievous." The 9-day blackout period may also serve a practical purpose in comforting certain segments of society with a minimal loss in the quality of debate, he argued. Mr. Choo disagreed, stating that the nine days immediately preceding the election are in fact the best time for the production of political communications and other material.

Mr. Cheong added that the Council had studied the recent Malaysian general elections with the help of IPS, and understood that the Internet was not the most important reason for the Barisan Nasional ruling coalition's setback. He also recognized that the social immune system Choo mentioned is an ideal scenario Singaporeans should work towards.

Dr. Cherian George drew to the panel's attention what he calls an anomaly in current regulations, where "news" is defined as material put out by a licensed news outlet regardless of its form. Under such guidelines, opinion columns and commentaries published during an election in traditional media channels such as newspapers and television are regarded as news while the same material put out by, for instance, a personal blog would be in contravention of Internet regulations. Conversely, during an election, a video documentary of a political rally would not be allowed on a website that is not licensed as a news outlet.

d) Cyber-bullying

Mr. Cheong stated that the feedback received so far on the protection of minors section was largely supportive, with the feedback chiefly about the means of accomplishing such protection. However, the discussions on this subject were "not quite completed," and meetings have been arranged to reach out to stakeholders in order to obtain more feedback on this issue.

Mr. Alex Au commented that with regards to the protection of minors, rules geared towards keeping pornographic material away from children are more or less in place. He was more concerned about the issue of cyber-bullying. Professor Tan Cheng Han concurred, saying that cyber-bullying is becoming a major problem as one could be smeared online and not know who is reading.

In conclusion, Mr. Tan Tarn How reminded everyone of further opportunities for discussion, and concluded the session.

Notes taken by Tan Simin, Research Assistant, IPS.

Annex: Summary of AIMS Council Recommendations

AIMS was guided by four principles in their work:

- i. Government regulation should be used as a last resort
- ii. "Free-for-all" is not feasible
- iii. Shifting the focus from regulation towards engagement
- iv. Community participation is key

AIMS made recommendations in four areas:

- Engaging the public online
- Regulation of online political content
- Protection of minors
- Intermediary immunity for online defamation

a) Engaging the public online

The Government should push further ahead with e-engagement. Things to do:

- a. Evaluate the capacity of the Government to communicate effectively online. Dedicated manpower resources will be required.
- b. Rethink some of its current citizen engagement processes. The Government should examine what it means to listen and adjust its processes with this desired outcome in mind.
- c. Engage voices outside of current Government platforms. For instance, it might be useful to join in the conversation that is taking place in the blogosphere, instead of hoping that the conversation gravitates to existing Government-operated sites like REACH.
- d. Set up a panel of young digital natives to serve as a consultative body. The young are often ahead of the curve and up-to-date on the latest developments and trends in the digital world.

b) Regulation of online political content

- a. Liberalize Section 33 of the Films Act regarding party political films. There are three options that AIMS would like to hear feedback on:
 - i. Narrow scope of section to clearly misleading films, for instance, with an independent body to adjudicate in transparent manner.
 - ii. Repeal the section. But impose a blackout period for new party political films from the issue of the writ of election to the end of the polling day.
 - iii. Repeal in phases.
Other ideas are welcome.
- b. Extend positive list for Internet election advertising
Include videos or recordings of live events, such as election rallies, party press conferences and constituency tours; broadcasts of party manifestoes and stories; use of Web 2.0 technologies, such as blogs and social networks.

- c. Remove the registration requirement under the Class License Scheme for websites on politics or religion

c) Protection of minors

Put in a holistic and coordinated approach with the investment of more resources on protecting minors. What to do:

- a. Focus on education
- b. Increase utilization of filtering resources
Government can provide subsidies to make Family Access Network service free to all.
- c. Develop local research capabilities
- d. Collaborate with overseas counterparts
- e. Foster spirit of volunteerism
Do so by encouraging more like-minded community groups to be established.

How to do it:

- f. Establish a special fund
Funding to come from Government with some from private sector.
- g. Establish a dedicated coordinating agency
Agency will develop and implement a national strategy for cyber safety and cyber wellness; coordinate activities and resources across different players, administer the annual fund, tap the expertise of youths.
- h. Lift ban on 100 websites after the holistic approach has been put in place.

d) Intermediary immunity for online defamation

The aim is to improve the environment for credible and responsible new media players to develop and flourish.

- a. Put in laws to give limited immunity to intermediaries providing content
The new law should cover intermediaries such as Internet content hosts and aggregators in respect of civil and criminal liability for defamation with regards to third party content where such intermediaries have acted in good faith.
- b. Immunity subject to the obligation to take down defamatory content
To protect against defamation, intermediaries should take down defamatory content on receiving a credible and authenticated request from the person allegedly defamed. There could be a "put-back regime" based on a counter-notification to protect originator and prevent censorship.