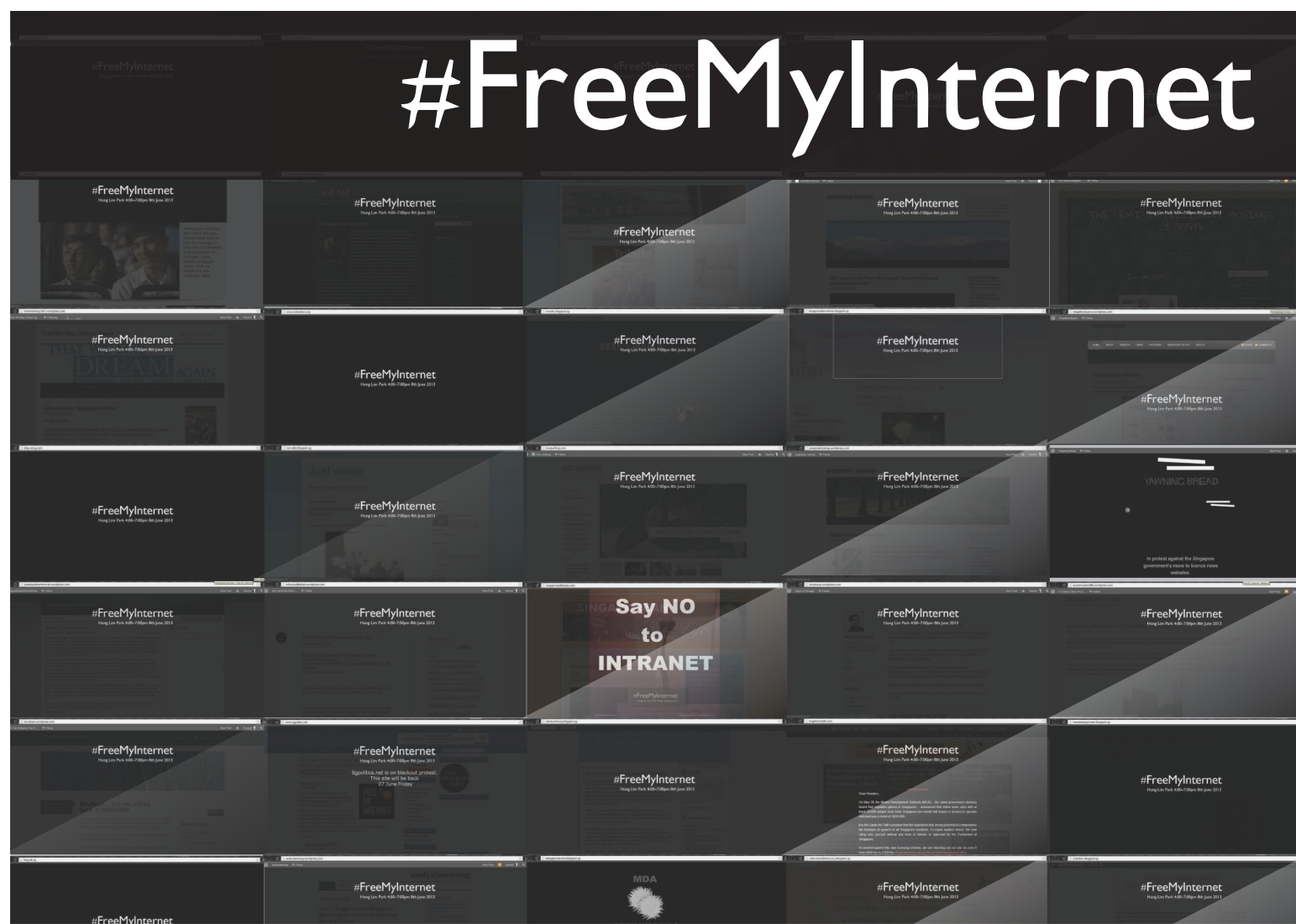


POLICY BRIEF



01 July 2013

EXECUTIVE SUMMARY

From 1 June 2013, the Media Development Authority of Singapore put into effect a new licensing regime that gives MDA the power to require a computer online service (including websites) deemed to carry at least 1 Singapore news programme per week and receive at least 50,000 unique visits per month from Singapore for 2 consecutive months to be individually licensed. Ten websites have been identified for licensing.

Licensing conditions include:

- Put up a performance bond of S\$50,000
- Upon receiving a notice from MDA, remove any content that is purported to breach MDA's content standards within 24 hours, failing which the performance bond may be forfeited.
- Such conditions as may be prescribed under Section 8 of the Broadcasting Act, which do not have to be made public.
- If the computer online service is provided by a company incorporated under the Companies Act, the MDA must approve the appointment of Chairman, Chief Executive Officer or Director, and no person may (either alone or together with associates) own more than 5% of the company's shares without the Minister's approval.

We have identified 4 key issues:

- Lack of consultation and transparency in MDA's policy-

making process.

- Disregard for findings from previous consultation exercises like that of the Advisory Council on the Impact of New Media on Society (AIMS) in 2007-08.
- Arbitrary and non-transparent implementation of the new licensing regime, including the overtly broad definition of Singapore news programme.
- Ownership and management controls over computer online services hinder Singapore's development as a global information hub.

An ideal media regulation regime should address concerns of online censorship and aspirations for a larger media and political space online while providing a conducive and predictable legal environment for credible and responsible players to develop and flourish. We appeal to Members of Parliament to consider the following:

- Withdraw the new licensing regime, or at the very minimum suspend its operation.
- Commission an open and transparent public consultation process with all stakeholders.
- Press for an opportunity for MPs to debate in Parliament the need for changes to the current licensing regime, and if one is necessary the principles required for a fair and transparent framework that does not limit free expression beyond what is strictly needed.
- Address the onerous ownership and management controls over computer online services



01 July 2013

BACKGROUND

On 28 May 2013, the Media Development Authority (MDA) announced that Singapore news websites could be brought under a new licensing regime. The Minister and the MDA have claimed that this new regime was intended to ensure parity between online media and mainstream media.

Since 1996, Singapore websites have been regulated as “computer online services” under a class licence scheme established by the Broadcasting (Class Licence) Notification.¹ The Broadcasting (Class Licence) (Amendment) Notification 2013 gave the MDA the power to exclude certain computer online services from the class licence, such that they will then have to be individually licensed.

The MDA may require any computer online service satisfying the following criteria to be individually licensed:²

- The computer online service is accessed from at least 50,000 different Internet Protocol (IP) addresses per month on average over a period of any 2 consecutive months.
- The computer online service contains at least one Singapore news programme per week on average, over the abovementioned period of 2 consecutive months.

The amendment notification defined a “Singapore news programme” as “a programme containing any news, intelligence, report of occurrence, or any matter of public interest, about any

social, economic, political, cultural, artistic, sporting, scientific or any other aspect of Singapore in any language but does not include any programme produced by or on behalf of the Government.”

Based on the Broadcasting Act and the Government’s public statements to date, individually licensed computer online services will be required to comply with the following conditions:

- Put up a performance bond of S\$50,000²
- Upon receiving a notice from MDA, remove any content that is purported to breach MDA’s content standards within 24 hours, failing which the performance bond may be forfeited.²
- Such conditions as may be prescribed under Section 8 of the Broadcasting Act,³ which do not have to be made public.
- If the computer online service is provided by a company incorporated under the Companies Act, the MDA must approve the appointment of Chairman, Chief Executive Officer or Director,⁴ and no person may (either alone or together with associates) own more than 5% of the company’s shares without the Minister’s approval.⁴

The MDA has named 10 websites² as being subject to individual licensing. Of the 10, 7 belong to the Singapore Press Holdings (SPH), 1 belongs to Mediacorp, 1 is a joint-venture between SPH and Mediacorp, and 1 belongs to Yahoo! News Singapore.



01 July 2013

PUBLIC RESPONSE

The MDA announced the new licensing regime just five days before it took effect and it has elicited responses globally and locally.

The Wall Street Journal characterised⁵ the new licensing regime as a source of confusion and that it also unsettles users as well as the media industry.

Meanwhile, The Economist⁶ concluded that MDA's "*purpose would seem to be to tighten its grip on what is already a claustrophobic media environment*". The magazine also assailed both the "*complete lack of public consultation*" prior to the announcement as well as the regulations' vague definitions.

The New York based Human Rights Watch noted that "Singapore is placing its status as a world-class financial centre at clear risk by extending its record of draconian media censorship to the digital world. Websites will be forced into the role of private censors on behalf of the government."

In Singapore, The Online Citizen (TOC), a prominent socio-political website, pointed out that⁸ it met the stipulated criteria of the new online licensing regime and asked the MDA to clarify if it would be required to obtain a license. It also indicated that it cannot afford the S\$50,000 performance bond.

publichouse.sg accused the government of going back its promise to approach the Internet with a '*light touch*' in its editorial "*Government reneges on 'light touch' promise*."⁹

Bertha Henson, Editor of Breakfast Network and former Associate Editor of the Straits Times, raised some

important questions: "*Is it entirely within its discretion which sites to "notify" for licensing? If so, does this mean it might well not bother with some 'nice' sites even though they meet both criteria on reach and local news content? What about individual bloggers and Facebook commentators with huge followings?*"¹⁰

Many Singaporeans also pointed out that there was no public consultation on this policy shift, and it was also not debated in Parliament at all. The MDA also did not appear to have considered the recommendations¹¹ of the Advisory Council on the Impact of New Media on Society (AIMS) from 2008. MDA's release of these new policies also appears to have superseded its ongoing consultations with the Media Literacy Council (MLC).

A campaign movement known as #FreeMyInternet quickly gained traction in Singapore. The campaign consisted of three parts:

- A petition calling for the government to repeal the new licensing regime
- An online blackout protest
- A physical protest at Speaker's Corner.

So far, the petition has recorded 4,232 signatures¹² while 162 blogs and websites from all walks of life (e.g. parenting, lifestyle, technology, socio-political, entrepreneurship, current affairs) participated in the online blackout on 6 June 2013.¹³ An estimated 2,500 individuals participated in the #FreeMyInternet protest at Speaker's Corner on 8 June 2013.¹⁴

The online licensing regime was also



01 July 2013

discussed on Talking Point¹⁵ dated 4 June 2013, a free-to-air current affairs TV programme by Channel News Asia. It featured 3 panellists: BG (NS) Tan Chuan-Jin (Acting Minister of Manpower), Bertha Henson (Editor of Breakfast Network and former Associate Editor of The Straits Times) and Professor Arun Mahizhnan (Institute of Policy Studies).

The programme ran a live poll¹⁵ over its one hour duration. At the start, 48.9% of respondents believed that the new licensing rules would limit online news content, while 50.2% disagreed. By the end of the TV programme, 73.4% of respondents believed that the new licensing rules would limit online news content, while 26.6% disagreed.

It is therefore clear that most Singaporeans recognise the chilling effect of the new licensing rules and the potential for unjustifiable censorship and abuse.



01 July 2013

ANALYSIS

We have identified 4 key issues with the new MDA licensing regime:

- Lack of consultation and transparency in MDA's policy-making process
- Disregard for findings from previous consultation exercises
- Arbitrary and non-transparent implementation
- Ownership and management controls over computer online services

Lack of consultation and transparency in MDA's policy-making process

The MDA did not undertake any public consultations on these new measures. Indeed, it seems that the Ministry of Communications & Information (MCI) and MDA did not even consult the relevant Government Parliamentary Committee beforehand. GPC Deputy Chairman Baey Yam Keng has confirmed¹⁶ that the GPC was only "briefed" before the announcement was made.

This marks a disturbing regression from the trend in recent years for the Government to consult stakeholders on significant policy moves - and more importantly, MDA in making this subsidiary legislation has violated the legal principle that it is Parliament that debates and sets new policy.

There was also a lack of transparency on the issues and considerations that were considered when deciding on the scope of the new regulations, the criteria for individual licensing, the reasons for decisions, and so on. For example, the MDA has sought to justify the new regime on the need to

ensure that unlawful content is taken down expeditiously; it cited as support the various take-down notices issued by it to various internet sites under the class licence scheme, including one to YouTube in relation to the "Innocence of Muslims" video.¹⁷ Yet, the MDA does not explain why, if that case was a reason for the new licensing scheme, YouTube itself has not been brought under the new scheme.

Disregard for findings from previous consultation exercises

AIMS was set up in April 2007 by then Minister for Information, Communications and the Arts, Dr Lee Boon Yang. It was chaired by the retired SPH Editor-in-Chief Cheong Yip Seng. Committee members were drawn from academia, the judiciary, the Law Reform Division of the Attorney-General's Chambers, and mainstream media practitioners.

The AIMS Committee undertook an extensive consultation and study process. It consulted broadly amongst local stakeholders in the internet and new media; conducted overseas study trips; sought input from foreign trade delegations and media outlets; and drew on the expertise of local and foreign think tanks. It also conducted focus group sessions with students and teachers from secondary schools, junior colleges and tertiary institutions, as well as single and married participants both with and without school-going children.¹⁹

The AIMS report published in 2008 concluded that the online space for political speech should be expanded. The committee wrote:

- "There are many groups of people who are utilising the Internet to



01 July 2013

advance political and civic discussion in a measured and reasoned manner. They want to be heard and are willing to contribute time to thinking about and proposing solutions. This should be encouraged. It should also be noted there is a difference between being heard and being watched. Netizens want to be heard, not watched.”²⁰

- *“The sheer amount of content available on the Internet makes it impossible for any one agency to monitor and regulate it efficiently. The wider community has a role to play in fostering an online environment which is conducive to the good of society. A relationship built on trust among all parties is more likely to last compared to one built on a list of do’s and don’ts.”²¹*

It is puzzling why the MCI and the MDA failed to reconsider the unimplemented liberalisations proposed by the AIMS Committee and instead decided to further regulate the internet. The non-transparent approach of the MCI and the MDA contrasted starkly with the inclusiveness, breadth and depth of the AIMS process.

Besides triggering fears of online censorship, the MCI’s and MDA’s actions have also engendered cynicism about the Government’s policy-making process, its commitment to consulting Singaporeans, and the value of long-drawn public consultation exercises that seem to be conveniently ignored when expedient to do so.

Arbitrary and non-transparent implementation, including overtly broad definition of a Singapore news programme

The MDA announced a list of ten websites that would be subject to individual licensing from 1 June 2013. But at least one site, namely TOC, has pointed out that it satisfies the MDA’s criteria for individual licensing, and yet it has not been identified for individual licensing.⁸ This suggests that the MDA’s application of the individual licensing criteria may be arbitrary and/or include considerations not explicitly set out in the amendment notification.

Section 8 of the Broadcasting Act³ also empowers the MDA to include such conditions in the individual licences as it deems fit. It seems that these conditions do not have to be published; certainly, mainstream media outlets keep their licensing terms confidential. It is therefore open to the MDA to impose additional secret restrictions on individual licensees.

Acting Minister Tan Chuan-Jin made a reassurance on the Talking Point show that the regulation does “not encompass blogs” but may if “blogs evolve into news sites”.²² This has rightly troubled Singapore bloggers, who believe this indicates that blogs can be subject to individual licensing in some circumstances, and fear that they will be forced to shut down if they are asked to put down S\$50,000 performance bonds if individually licensed. The overtly broad definition of a Singapore news programme does not help to reassure anyone.

The Broadcasting Act sets the minimum reach of a broadcast company to be licensed at “50,000 dwelling-houses”.⁴ The MDA’s threshold to license computer online services at 50,000 different IP addresses does not take into account



01 July 2013

that an average household may be associated to at least 3 different internet protocol addresses due to the proliferation of mobile internet devices.

Finally, there seem to be no guidelines or restrictions around how the MDA notification process to individual licensees will operate. The MDA does not seem to have a practice of consistently publishing take-down notices to websites; of its past take-down notices, only the YouTube notice was widely publicised. There seems to be no independent appeal process if the computer online service disagrees with the takedown notice. The MDA also does not seem to have taken into account the viral nature of today's internet, where takedown of content by the original publishing outlet may well be ineffectual in preventing its circulation.

Ownership and management controls over computer online services

Part X of the Broadcasting Act imposes ownership restriction and management controls by the Government on individually licensed computer online services, which may include blogs, search engines, cloud and mobile applications, and online data services.

Unless exempted by the Minister, a computer online service that is provided by a company incorporated under the Companies Act is required to meet the following conditions:⁴

- Appointment of the Chief Executive Officer, Chairman and Director must be approved by the Government.
- The Chief Executive Officer and at least one-half of the Board of Directors must be Singaporeans.

- No person shall be a direct or indirect 5% controller without approval of the Minister.
- No person shall be a direct or indirect 12% controller without approval of the Minister.

These are the same conditions that apply to mainstream media outlets in Singapore. But the key difference is that mainstream media outlets need to comply with these conditions from the very beginning of their operations; imposing these conditions on a computer online service long after it becomes established will likely be highly disruptive. This will probably prevent Singapore from ever producing its own version of organisations like the Huffington Post.

In addition, this type of management and ownership controls are known for being inimical to both local and foreign investment. This move will likely prove detrimental to the development of Singapore as a global information hub, by discouraging investors from participating in independent Singapore online media companies. Consequently, the media sector becomes state-driven as opposed to market-driven, and this will harm Singapore's aspiration to become a global information hub.



01 July 2013

APPEAL TO MP

An ideal media regulation regime should address concerns of online censorship and aspirations for a larger media and political space online while providing a conducive and predictable legal environment for credible and responsible players to develop and flourish. To foster this environment, we appeal to Members of Parliament (MP) to consider the following:

- Withdraw the new licensing regime, or at the very minimum suspend its operation.
- Commission an open and transparent public consultation process with all stakeholders.
- Press for an opportunity for MPs to debate in Parliament the need for changes to the current licensing regime, and if one is necessary the principles required for a fair and transparent framework that does not limit free expression beyond what is strictly needed.
- Address the onerous ownership and management controls over computer online services

In addition, #FreeMyInternet would like to highlight additional, but no less pressing concerns.

Disregard for findings from previous consultation exercises

We are concerned with the rejection by MDA of AIMS's recommendations for intermediary immunity for online defamation.

As highlighted by AIMS, case law suggests that an intermediary that takes steps to moderate third-party material is subject to a higher level of

liability than an intermediary that does not attempt to moderate or monitor material. The current law therefore encourages intermediaries to turn a blind eye to material being carried, hosted or linked, which is a perverse outcome that penalises providers who proactively encourage credible, responsible and balanced content online.²³

Absence of a formal media regulation process

We are also concerned about the current state of the media regulation process. We believe that in order for Singapore to mature as a media hub, and for investors to have confidence in Singapore as a media hub, that the process of media regulation should be transparent, predictable, and formalised.

For instance, all individual licence conditions should be published and all content takedown notices from MDA should be published, instead of being kept secret. Individual licensees should be able to appeal to an independent administrative tribunal whose decisions and deliberations are published.

Prohibitive licensing conditions

As pointed out earlier, the figure of at least 50,000 unique Internet Protocol (IP) addresses is an underestimation of the reach of 50,000 dwelling-houses, considering the proliferation of mobile internet devices.

We are also concerned that the performance bond is not set at a reasonable level. S\$50,000 is prohibitively high for non-commercial sites, and would likely force them to shut down if they are individually licensed. If any new scheme



01 July 2013

introduced is to require a performance bond, then one possible approach is to require the individual licensee to put up a performance bond set at a percentage (e.g. 2.5%) of its revenue over the preceding 12 months, subject to a maximum of S\$50,000.

Finally, given that a computer online service provider would have been in operation for some time before the MDA subjects it to individual licensing, any new licensing regime should exempt the licensee from the ownership restriction and management controls in the Broadcasting Act. This would avoid unnecessary hardship to established operations. There is a precedent for this, as the niche TV license exempts the broadcaster from such conditions.²⁴

We would like to thank you, our representatives in Parliament, for taking time to read our brief.



01 July 2013

BIBLIOGRAPHY

1. <http://www.mda.gov.sg/Documents/PDF/licences/mobj.487.ClassLicence.pdf>, accessed on June 28, 2013. A class licence scheme essentially automatically licenses all potential licensees falling within the defined class, on the terms defined for that class.
2. <http://www.mda.gov.sg/NewsAndEvents/PressRelease/2013/Pages/28052013.aspx>, accessed on June 28, 2013. There is a similar performance bond requirement for niche broadcasters, also regulated by MDA.
3. Section 8: 'Licensing of Broadcasting Services', Part IV: 'Broadcasting Services', The Broadcasting Act.
4. Part X: 'Ownership and Control of Broadcasting Companies', The Broadcasting Act. The Companies Act defines substantial shareholding as the amount of shares that corresponds to at least 5% of the voting rights.
5. <http://online.wsj.com/article/SB10001424127887323844804578527222881965906.html>, accessed on June 28, 2013
6. <http://www.economist.com/blogs/banyan/2013/06/regulating-singapores-internet>, accessed on June 28, 2013
7. <http://www.hrw.org/news/2013/06/07/singapore-licensing-regime-chills-news-climate>, accessed on June 28, 2013
8. <http://www.theonlinecitizen.com/2013/05/tocs-statement-on-mda-licensing-of-online-news-site/>, accessed on June 28, 2013
9. <http://publichouse.sg/categories/topstory/item/884-govt-reneges-on-light-touch-promise>, accessed on June 28, 2013.
10. <http://www.breakfastnetwork.sg/?p=4858>, accessed on June 28, 2013
11. [http://www.mci.gov.sg/content/dam/mica_corp/Publications/MasterPlan/Download/Download1/AlMSReport\(Dec08\)-EngagingNewMedia,ChallengingOldAssumptions.pdf](http://www.mci.gov.sg/content/dam/mica_corp/Publications/MasterPlan/Download/Download1/AlMSReport(Dec08)-EngagingNewMedia,ChallengingOldAssumptions.pdf), accessed on June 28, 2013.
12. http://www.petitions24.com/petition_for_the_immediate_withdrawal_of_the_licensing_regime, accessed on June 28, 2013.
13. <http://www.freemyinternet.com/participating-partners.html>, accessed on June 28, 2013
14. <http://www.sgpolicy.net/?p=8391>, accessed on June 28, 2013.
15. http://www.youtube.com/watch?v=AE-H_HCX7rA, accessed on June 28, 2013.
16. <http://www.tremeritus.com/2013/06/03/mda-saga-mp-baey-indirectly-reveals-the-redundancy-of-gpcs/>, accessed on June 28, 2013
17. <http://www.channelnewsasia.com/news/singapore/mda-clears-air-over-licensing-framework-693822.html>, accessed on June 28, 2013.
18. Broadcasting (Class License) Notification, Chapter 28, Section 9, Broadcasting Act
19. AIMS Report: Pages 121 – 125
20. AIMS Report 1.18-1.19
21. AIMS Report 1.20
22. <http://www.channelnewsasia.com/news/singapore/people-should-continue-airing-views-onli/697760.html>, accessed on June 28, 2013
23. AIMS Report 6.9
24. <http://www.mda.gov.sg/Licences/Pages/NicheandNationwideTVLicence.aspx>, accessed on June 28, 2013



01 July 2013

#FREEMYINTERNET

The #FreeMyInternet movement was founded by a collective of bloggers who are against the licensing requirements imposed by the Singapore government on 1 June 2013, which requires online news sites to put up a performance bond of S\$50,000 and comply within 24 hours to remove content that is found to be in breach of content standards. The group believes this to be an attempt at censorship and an infringement on the rights of Singaporeans to access information online and calls for a withdrawal of this licensing regime.

<http://www.freemyinternet.com/>

