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13 October 2008

Mr Cheong Yip Seng  
Chairman  
Advisory Council On The Impact of New Media on Society

Dear *Mr Cheong*

**ADVISORY COUNCIL ON THE IMPACT OF NEW MEDIA ON SOCIETY -  
CONSULTATION PAPER**

We refer to your letter dated 17 September 2008 and the Advisory Council on the Impact of New Media on Society's (AIMS) Consultation Paper dated 29 August 2008.

The Society's views on the recommendations set out in AIMS's Consultation Paper are as follows –

**1. E-engagement**

The Society has no comments on this matter.

**2. Regulation of online political content**

**2.1 Section 33 Films Act**

The Society agrees with AIMS's recommendation to liberalise section 33 of the Films Act. The Society has considered AIMS's three options and is of the view that Option 3 - to repeal section 33 in phases - is the most appropriate option.

**2.2 Parliamentary Elections (Election Advertising) Regulations**

We note that currently there is a 'positive list' of permissible election advertising on the Internet. The Society supports AIMS's recommendation to change the Parliamentary Elections Act to allow more digital content by expanding the positive list for Internet election advertising.

**3. Protection of minors**

The Society supports AIMS's recommendations on this matter.



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#### **4. Intermediary immunity for online defamation**

##### **4.1 Immunity under section 10 Singapore Electronic Transactions Act – whether it extends to online content intermediaries**

We note that section 10 of the Singapore Electronic Transactions Act (ETA) confers immunity from civil and criminal liability to network service providers in respect of 3<sup>rd</sup> party material to which they merely provide access. The phrase 'network service providers' is not defined. It appears that the term '*network*' in section 10 ETA may be interpreted to exclude those service providers that do not operate telecommunications or broadcasting networks. Hence, the immunity referred to in section 10 ETA may not be applicable to service providers who provide services such as content hosting or information location tools without operating or providing access to networks. Further, the term, '*to which they merely provide access*' in section 10 ETA does not seem to extend to permanent storage or hosting and location tools.

We note that AIMS has stated in the Consultation Paper that the term '*network service providers*' in section 10 ETA does not include content hosts. If this is the position, the Society agrees with the recommendation of AIMS to enact legislation to confer limited immunity upon online content intermediaries in respect of civil and criminal liability for defamation with regards to third party content where such intermediaries have acted in good faith.

##### **4.2 Proposed legislation to extend immunity to online content intermediaries**

###### **a) Scope of the proposed legislation**

The Society agrees with AIMS's recommendation that there should be no derogation/dilution of the existing immunity granted to "network service providers" under section 10 ETA and that the proposed regime should not impose any additional liability to the intermediaries beyond the existing law.

###### **b) Class of intermediaries to be protected**

In enacting legislation to extend the immunity in section 10 to this group of intermediaries, express references to the functions that these intermediaries carry out may have to be specified. This may pose some challenges to the legislators as the evolution of technology in the internet will make it difficult to identify the language that encompasses all present and future functions that should be included in the definition of intermediaries to be protected under the proposed new legislation.

Even within each category of intermediaries, the relationship over the data that they possess may differ. For example, some host owners own and actively control all data whilst some on the other hand, may only have tenuous connection with the stored connection, taking no part in the selection and design of the materials. AIMS may wish to consider whether immunity should be accorded only to the latter category of content hosts.

c) Scope of immunity

i) Actual knowledge

The Society agrees with AIMS's recommendation that the legislative provision should not deprive a content host of immunity merely because he had constructive or imputed knowledge of the third-party defamatory material, provided he has acted in good faith. Content hosts cannot be expected to review and scrutinise every remark posted on the internet and therefore, there should be no liability unless there is actual knowledge of defamatory material. AIMS may wish to consider whether it would be appropriate to require, as an alternative to actual knowledge, special circumstances that give the content hosts reason to be aware of the defamatory material.

It must be noted that knowledge requirements vary according to the function being performed by the service provider.

ii) Intermediaries who exercise moderation

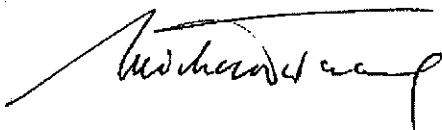
The Society agrees with AIMS recommendation that the proposed legislation should protect intermediaries who exercise some degree of editorial control, instead of penalising them. This will provide an incentive for intermediaries who exercise moderation and remove any defamatory material as they do not lose the immunity by exercising some degree of editorial content.

iii) 'Notice & take-down and 'put-back' regimes.

The Society agrees with AIMS recommendation that there be immunity subject to the obligation of intermediaries to take down defamatory content on receiving a credible and authenticated request from person allegedly defamed. The Society also agrees with the recommendation that the legislators consider the introduction of a "put-back regime" based on a counter-notification to protect interests of originators and to prevent abuse of the take-down regime as a means of censoring speech.

Thank you for giving the Society the opportunity to comment on AIMS's Consultation Paper.

Yours faithfully



Michael Hwang SC

President