

## 1. COM 401 — Lesson 02

### 2. Singapore's Regulation of Print & Broadcast Media, Films & the Net

#### 2.1. Laws and their sources

##### A. Constitution — Constitutional convention, amendments

##### B. Statutes — Legislatures (Parliament)

- a) e.g. Film Act, NPPA
- b) A similar set of statutory laws can be codified, eg. the Penal Code

##### C. Common law — Made by judges, taking into consideration past decisions, general principles and precedents

- a) Also known as case laws
- b) eg. "actual malice" standards for US libel fault standards derived from *New York Times Co. v Sullivan*, 1964

#### 2.2. Singapore Laws

##### A. Vaguely defined statutory terms

- a) For all their detail, they offer surprisingly little guidance; they are worded to give wide flexibility for interpretation

##### B. Invest wide discretion in administrative agencies

- a) Power often appears unreviewable by the courts
- b) Effectively vests control in the ruling party, which has ultimate control over the administrative agencies
  - (1) Through appointment of the cabinet ministers that oversee those agencies, generally from among the party

##### C. Limits the jurisdiction of the courts

- a) Limiting avenues for judicial review of decisions made by admin agencies
- b) Courts are by constitutional design more independent of the political branches of government., but not given the power to review the decisions
- c) Thus ruling party can effectively solidify control

##### D. Set in context of Asian values

- a) Tradition of deference to authority

#### 2.3. Singapore as a Constitution-supremacy

##### A. This Constitution is the supreme law of the Republic of Singapore

- a) "any law enacted by the Legislature after the commencement of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void"

##### B. Constitution empowers the branches of government—executive, legislative, and judiciary and,

##### C. Limits government power, through the granting of any rights to the people

- a) In Singapore the limitations are called the "Fundamental Liberties."

#### 2.4. Constitutional Democracy

##### a. Possible only when constitution is written and rigid

##### b. Constitution must declare that it is the supreme law, and void other inconsistent laws

##### c. Parliament is created by Constitution, and must exercise its legislative power within bounds of constitution

##### D. See: <http://www.scribd.com/doc/2024125/Parlemantary-Constitutional-Supremacy>

#### 2.5. Compared with Parliamentary Supremacy in UK

##### A. Parliament is the highest power and cannot be overruled by a court or the executive

##### B. ---

**C. No law which parliament cannot change or modify**

**D. No distinction between constitutional law and ordinary law**

**E. No body can declare law passed by parliament illegal or inconsistent**

## 2.6. Distribution of power in Singapore

### **A. Legislative Power — Parliament**

- a) Composed of members elected in GE

### **B. Executive Power — President**

- a) Elected by citizens
- b) Relinquish membership in any political party upon nomination
- c) Westminster-style parliamentary democracy: President appoints head of government, PM, and other cabinet ministers
- d) Appoints the judges in the highest court of Singapore—the Supreme Court—with concurrence of the PM representing ruling party

### **C. Executive Power — Ministers**

- a) After appointed by President
- b) Direct the administrative agencies of a parliamentary democracy, their ministries, and perm secs
- c) Create regulations (or “subsidiary legislation”), detailed rules with the force of law developed to implement acts they administer

### **D. Executive Power — Statutory Boards**

- a) Statutory boards and their mandates are established by statute
- b) Unique to Singapore
- c) Cabinet minister oversees a statutory board and appoints the chairman of the board of directors that oversees it

### **E. Judicial Power — Supreme Court, Subordinate Courts**

- a) Supreme Court, the highest court
  - (1) Comprise High Court and Court of Appeal
- b) SC judges appointed by President, with concurrence of the PM representing ruling party
- c) PM can order removal of judge through tribunal
- d) The remuneration of the Court is determined by Parliament
  - (1) Thus not entirely separate from the political branches of government

## 2.7. Media Law in Singapore

### **A. Ministry of Information, Communications and The Arts (MICA) — Ministry, overseeing**

- a) MICA’s Minister appoints the chairman and the other five to sixteen members of the MDA.
- b) Minister is empowered to give MDA direct orders

### **B. Media Development Authority (MDA) — The Statutory board**

- a) Runs by a chairman appointed by the minister, along with board of directors
- b) The statutory board that administers media and expression regulations

## 3. How does Singapore license?

### 3.1. Licensing: Newspaper (NPPA)

**A. Normally 1 year (21(4))**

**B. No anonymous printing (5)**

**C. Bond (21(3)(b))**

- a) to secure the payment of any penalties which may be imposed upon the newspaper company

**D. Printing press licensed too (3)**

- a) No person shall keep for use or use any printing press without a licence. (3(4))

**E. Defines newspapers broadly, and could include magazines, among other publications**

- a) "newspaper" means any publication containing news, intelligence, reports of occurrences, or any remarks, observations or comments...,
- b) printed in any language and published for sale or free distribution at regular intervals or otherwise,
- c) --
- d) Does an in-house newsletter require a permit? Yes
- e) Vaguely worded, law students question if sending out wedding invitation card require a permit??

**F. Government-publications excluded from NPPA**

- a) "but does not include any publication published by or for the government"

**G. MDA has unqualified discretion of determining who may publish**

- a) No criteria for license approval and renewal are enumerated

**H. Ownership: MDA has unqualified discretion over who controls newspaper companies**

- a) Newspaper companies

(1) Any newspapers published weekly or more frequently, unless exempted

(2) All the directors shall be citizens of Singapore;

- i) Able to find them and have jurisdiction over them if things go wrong

- b) Newspaper company is a special kind of corporation with two classes of shares

(1) Management Shares

i) Constitute 1% of stock issued

ii) Same value and dividends as ordinary shares,

iii) But 200 times the voting power

iv) Not trade on stock exchange

v) Must be issued/transferred to citizens of Singapore/corporations

(a) With the written approval of the Minister

vi) But can be held by non-SG citizens with special permission

(a) "The Minister may ... grant ... any person who is not a citizen of Singapore and for the appointment of any such person as a director of a newspaper company" (10(15))

vii) Newspaper company *must* transfer/issue management shares on MDA's approval

viii) Any appeal of its decision is to the President, whose decision is final

(2) Ordinary Shares

i) No one can own more than 5% of a company's stock without government approval

ii) Criteria are not enumerated for approving ownership under these provisions; discretion is unqualified

- c) Thus, all newspapers publish at the government's discretion and are financially controlled by board members it approves

**I. Appeals regarding MDA's exercise of authority over licensing and ownership to President**

- a) Decision is final
- b) No judicial review

## **J. Compared with other countries**

### a) Britain

- (1) Repealed all licensing requirements by 1694
- (2) 2 forms of prior restraint for newspapers in the past
  - i) required printers to submit individual articles to government censors
  - ii) printers obtain a license to publish from the Stationers' Company, the "monopoly body of printers"
    - (a) The Stationers, a quasi-governmental agency, was authorized to smash the presses of printers who didn't have licenses

### b) US

- (1) Never had licensing of the printing press

## **3.2. Licensing: Foreign Newspapers (also NPPA)**

### **A. Distributing Malaysian publications requires a permit**

- a) Granted using undisclosed criteria, subject to conditions unenumerated in the NPPA
- b) Mutual restrictions date to 1965 Separation
  - (1) Necessary when Singapore first gained independence
  - (2) But not so much for now, although restrictions continue due to security issues

### **B. Other offshore newspapers (23)**

- a) Published at least weekly
- b) > 300 circulation in SG
- c) Address SE Asia current affairs

### **C. Gazette: engaging in domestic politics of Singapore**

- a) Minister may declare any newspaper published outside Singapore to be engaging in the domestic politics
  - (1) Approval is required to:
    - i) import it or
    - ii) possess it for distribution
      - (a) Presumed to possess for distribution
      - (b) (3) It shall be presumed until the contrary is proved that any person found in possession, custody or control of any such newspaper had it for the purpose of the publication, sale or distribution thereof.
  - (2) May limit the number of copies distributed in Singapore
    - i) Each copy would be marked. Having an unmarked copy would get into trouble.
- b) Publications that have been gazetted before
  - (1) Asian Wall Street Journal, Asiaweek, The Economist, Far East Economic Review, Newsweek and Time
- c) Vague, but at least some operational definition: "engaging in the domestic politics of Singapore"

### **D. Does not bar judicial review by limiting appeal to the President or Minister himself**

- a) Allow legal challenge of those discretionary decisions
- b) Dow Jones complained to Court of Appeal that minister abused his discretion in gazetting AWSJ
  - (1) But the judge says...
    - i) It does not expressly require him to be personally satisfied, whether subjectively or objectively,
    - ii) Nor does it require him to hear the foreign newspaper before or to give reasons after the making of his decision

- iii) ...since the minister has no formal, procedural or other requirements to be satisfied before he can make the order,
- iv) it must follow that any declaration that he makes under [this section] must be deemed to be valid until it is proved otherwise by any foreign newspaper aggrieved by his decision.
- v) The court has no right to interfere with the minister's decision in that respect unless it is made in bad faith or perversely

### 3.3. Licensing: Broadcasting

#### A. Can cancel/suspend, modify, fine

- a) BA12 Suspension or cancellation of broadcasting licence, etc.

#### B. Any conditions

- a) BA9 Class licences
  - (1) (2) The Authority may include in a class licence such conditions as it thinks fit.
  - (2) (4) Without limiting the conditions that may be imposed, the Authority may impose a condition on a class licence requiring the licensee to comply with a Code of Practice

#### C. Code of Practice

- a) BA13 Compliance with Codes of Practice, etc.
  - (1) 13. —(1) Every broadcasting licensee shall comply with the Codes of Practice relating to standards of programmes and advertisements and broadcast standards.

#### D. Minister: "directions as he thinks fit" (BA 3(1))

E. --

#### F. No one can provide any broadcasting service in or from Singapore without license from MDA

- a) MDA to determine terms, conditions, duration of license
- b) Licensee to pay fee for license

#### G. MDA can modify license with 28 days' notice

#### H. License required for satellite dishes too

### 3.4. Licensing: Films

#### A. License for "business of" (6) — "whether or not the business is carried on for profit"

- a) Importing
- b) Making
- c) Distributing
- d) Exhibiting

### 3.5. Licensing: Internet

#### A. Via the Internet Class Licensing Scheme, requiring the registration of:

- a) ISPs
- b) Political parties registered in SG providing online content
- c) Individuals, groups, organizations & corporations involved in propagation, promotion or discussion of:
  - (1) political or
  - (2) religious issues relating to Singapore online
- d) Those in business of providing online newspaper

#### B. eg. Sintercom and Think Centre

- a) MDA asked Sintercom and Think Centre, two non-party sites, to register as political websites

- b) Think Centre complied, Sintercom refused
- c) Founding editor Tan Chong Kee pointed out that he had to sign a document taking on personal liability for all content appearing on Sintercom
- d) Sent emails, sought clarifications about whether content was acceptable, but Singapore Broadcasting Authority (SBA) didn't respond—just said you have to register
- e) Shut down when SBA refused to answer his emails
- f) Later moved overseas and register as New Sintercom <http://www.newsintercom.org>
- g) *Anecdotally MDA was not known to pursue additional sites for registration under the Class Licence Scheme post-Sintercom*

### 3.6. Licensing compared with other countries

#### A. Newspaper

- a) Britain
  - (1) Repealed all licensing requirements by 1694
  - (2) 2 forms of prior restraint for newspapers in the past
    - i) required printers to submit individual articles to government censors
    - ii) printers obtain a license to publish from the Stationers' Company, the "monopoly body of printers"
      - (a) The Stationers, a quasi-governmental agency, was authorized to smash the presses of printers who didn't have licenses
- b) US
  - (1) Never had licensing of the printing press

#### B. Broadcasting

- a) Even US, bastion of liberal democracy, has licensing in broadcasting; in fact it is virtually regulated in every country
- b) Rationale
  - (1) Potential impact of the medium; broadcast-media engages more than print media
    - i) Broadcasting is more intrusive and invasive than print, where people take a more active approach
  - (2) Less intuitive reasons: assume that people who are exposed to the broadcast media has different intelligence and maturity level
  - (3) Competing stations would try to drown each other out
  - (4) The authorities have to act as broadcasting police for the people
  - (5) Scarcity of spectrums, though it is a problem of the past, was a problem of representation of groups

## 4. Ownership

### 4.1. Newspaper (SPH) Ownership

#### A. SPH Management Shareholders (2008)

- a) Great Eastern Life 22.61%
- b) OCBC 16.80%
- c) NTUC Income Insurance Cooperative 16.34%
- d) Singtel 13.30% (63% Temasek)
- e) DBS 9.50% (28% Temasek)
- f) UOB 8.05%
- g) NUS 5.36%
- h) Fraser & Neave 4.02%

- i) Fullerton Pte. Ltd. 4.02%
- j) CEO: 4 shares (~0%)
- k) 10 Directors: 4 shares each (~0%)

**B. Can make decisions about the directors of the corporation**

- a) Who in turn will decide the content of the newsroom and the personality in the newsroom, i.e. editor-in-chief.

**C. Also concerns about conflict of interest**

- a) eg. stories that put Great Eastern Life in bad light?

**D. Why these organisations?**

- a) Insurance companies, banks, want stability, keep status quo
- b) Pro-business approach. Pro status-quo.
- c) Will be more interested in keeping PAP in power. Can exercise their interest as well

**E. SPH Largest ordinary shareholders**

- a) DBS, HSBC, Citibank, Raffles, DBSN, UOB
  - (1) Banks, banks, banks

## 4.2. Broadcast Ownership

**A. MediaCorp own by Temasek, which is essentially a government holding**

- a) Compared with SPH which is not government-owned

**B. Unless MDA approves**

- a) CEO, 1/2 of directors must be citizens; CEO/board approved (33)
- b) Shareholders cannot own >5% (35(3))
- c) Foreign ownership capped at 49% (44)
- d) No foreign financing (43)

## 5. Content Regulation in Singapore

### 5.1. Overview of Regulation

	Prohibit (UPA, FA)	Obscene (UPA, FA)	Objectionable	Gazetted (NPPA)
A. Possess	No	No—(Penal Code s. 292)	Ok	Ok if marked
Distribute	No	No	No	Limited copies

### 5.2. Prohibited (UPA, FA)

**A. "contrary to the public interest" (UPA 5(1), FA 35(1))**

**B. Some UPA publications**

- a) (previously) Cosmopolitan, Hustler, Playboy, Playgirl
- b) All publications by: Watch Tower Bible and Tract Society, International Bible Students' Association

### 5.3. Obscene (UPA, FA)

**A. “effect... if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear... it”**

a) UPA(3), FA(2)

**B. Offences related to obscene films**

- a) Making
- b) Reproducing
- c) Importing
- d) Distributing
- e) Exhibiting
- f) Advertising
- g) Involving kids
- h) Possessing

**C. Punishment for involved dealings in obscene films**

- a) Makes, reproduces, imports, distribute
- b) Fine, imprisonment  $\leq$  2 years, or both

## 5.4. Objectionable (UPA, 4)

**A. Deals with:**

**B. — matters such as sex, horror, crime, cruelty, violence or the consumption of drugs or other intoxicating substances**

- a) in such a manner that the availability of the publication is likely to be injurious to the public good; or

**C. — matters of race or religion in such a manner that the availability of the publication is likely to**

- a) cause feelings of enmity, hatred, ill-will or hostility between different racial or religious groups

**D. Whether or not a publication is objectionable is a matter for the expert judgment... to determine...**

a) Content

- (1) Violence, sexual conduct, coercion
- (2) Exploits the nudity of persons or children or both;
- (3) Promotes criminal acts or acts of terrorism;
- (4) Represents any community or group as inferior to others

b) The impact of the medium in which the publication is presented;

c) Literary, artistic, social, cultural, educational, scientific value;

- (1) In-depth with 40 respondents about sexually explicit material
- (2) Respondents found literary, artistic, social, cultural, educational value
- (3) Porn for self-realization, educate them into their own sexuality.
- (4) Trend of change in attitude when being exposed to such material. Proven. Become more immune to it, desensitized.

d) Standards of morality, decency and propriety generally accepted by reasonable members of the community;

e) Persons, classes of persons or age groups of the intended audience; or audience with access

**E. Criticism**

- a) We do not get through explanations as to why things are banned. Bans aren't accounted for. Hence it makes it difficult for people to produce content as they are unsure if it's prohibited.
- b) eg. Janet Jackson's "Would You Mind" (2001) is deemed objectionable



(1) "And I'm gonna, Kiss you, suck you, taste you, ride you, Feel you deep inside me ooh"

(2) But what about other songs that are more explicit?

## 5.5. OB Markers — Extra-Legal Discretionary Power

### A. Rules which stipulate what people can and cannot say in/about Singapore

- a) When OB markers are crossed, the government may respond with rebukes or “raps” without resorting to the expensive and cumbersome legal machinery

### B. Effective because they're undefined and vague

- a) Firstly, it allows the government to have its own interpretation of each case as it arises, to suit its purpose. (Catherine Lim, 2007)

### C. Encourages self-censorship

- a) Secondly, since no one knows when or whether the markers are being overstepped, everyone plays safe by practising self-censorship, which can be a more effective curb than direct censorship. (Catherine Lim, 2007)

### D. “One OB marker, which remains firmly in place, is the requirement that foreign journalists stay out of Singapore's politics.”

- a) MICA Minister Dr Lee Boon Yang responding to
- b) Australian writer Michael Backman, in London, who argued for abolition of NPPA licensing in Today

## 6. Film regulation

### 6.1. Film Act

#### A. Three possible outcomes are (FA(15)) after submission of film for censorship (FA(14))

- a) Prohibit
- b) Approve & classify
- c) Approve (& classify) w/ alterations—at your expense

#### B. The Board shall furnish to the owner in writing its reasons for the prohibition or for requiring the alterations or excisions

- a) Compared with the discretion and vagueness involved in the UPA and other laws where government not obliged to give reasons

#### C. Exempted, any film

- a) Sponsored by the Government
- b) Not intended for distribution or public exhibition (the ones already banned)
- c) Reproduced from local television programmes and is not intended for distribution or public exhibition.

### 6.2. Section 35 — Prohibited / Contrary to Public Interest

#### A. Section 35. [if] the Minister is of the opinion that the ... film would be contrary to the public interest, he may, ... prohibit the possession or distribution of that film by any person.

#### B. AND/OR Punishment for possession/distribution of film gazetted under section 35

- a) Fine \$10,000 AND/OR 2 years prison
- b) Punishment is AND/OR, compared with EITHER/OR punishment under Section 33
- c) "fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both, and the film shall be destroyed or otherwise disposed of as the Minister thinks fit."

#### C. Examples

- a) Martyn See's Zahari's 17 years, second film to be banned under Section 35 (2007)
  - (1) Twice given a “parental guidance” rating by the board of film censors for two film festival screenings
    - i) Board clarified that it “gives greater leeway to films meant for festival screenings...

ii) because ‘unlike films for general release, film festivals are usually limited in their screenings and reach.’”

b) First film banned under section 35 was SDP's party-made political videotape in 1996

(1) Before Films Act was introduced in 1998

(2) The ministry said “it was not in the national interest for political debates to be conducted through such a medium”

## 6.3. Section 33 — Party Political Films

**A. Section 2 — For the purposes of this Act, a film is directed towards a political end in Singapore if the film contains**

a) any matter ... intended or likely to affect voting in any election or national referendum...

b) partisan or biased references to or comments on any political matter, eg:

(1) election, referendum, candidates in election, MP, issue submitted before electors, (previous) government, (previous) opposition, current policy, public controversies, political parties

**B. Section 33 — \*\*\*EITHER fine <= \$100,000, jail OR <= 2yr for party political films**

a) imports

b) makes or reproduces

c) distributes

d) exhibits

e) possession for the purposes of distributing or exhibiting

**C. Punishment under Section 33 is either fine or jail**

a) "fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years"

**D. Examples — Warnings only**

a) 2002: 3 Ngee Ann Poly lecturers, "A Vision of Persistence", 15-min docu on JBJ

b) 2005: Martyn See, "Singapore Rebel", 25-min docu on SDP Chee Soon Juan

(1) Mr See had to surrender his tapes and video camera to the police, and withdraw the film from the Singapore International Film Festival.

## 7. Radio Regulation

### 7.1. Radio Code of Practice

**A. 2003: DJ Pete Leung fired, MediaCorp fined for asking caller to simulate sex**

**B. 2004: MediaCorp fined after complaints to ST Forum**

a) DJs Sheikh Haikel fired for telling caller to ask girl if she is wearing white panties

b) Jamie Tan fired for “we are enjoying ourselves here massaging and masturbating each other”

## 8. Internet regulation

### 8.1. Internet code of Practice

**A. Class licensees must follow Internet Code of Practice**

a) “Sanctions, including fines”

**B. Licensees must deny access to prohibited material**

a) "A licensee shall use his best efforts to ensure that prohibited material is not broadcast via the Internet to users in Singapore."

**C. Not known to have been enforced before**

## 9. Constitutional Democracy

### 9.1. Singapore Constitution: Part IV Fundamental Liberties

**A. Art. 11 Protection Against Retrospective Criminal Laws and Repeated Trials**

- 1) Person should be aware, or have notice of the offence/law, and suffer no greater punishment than what was prescribed by law at time of committal
- 2) A person convicted or acquitted shall not be tried again, except when a retrial by a superior court quashes the previous ruling

## **B. Art. 14 Freedom of Speech, Assembly, and Association**

- 1) Subject to clauses (2) and (3) —
  - (a) every citizen of Singapore has the right to freedom of speech and expression;
  - (b) all citizens of Singapore have the right to assemble peaceably and without arms; and
  - (c) all citizens of Singapore have the right to form associations.
- 2) Parliament may by law impose —
  - (a) on the rights conferred by clause (1) (a), such restrictions as it considers necessary or expedient in the interest
    - a) of the security of Singapore or any part thereof,
    - b) friendly relations with other countries,
    - c) public order or morality and
    - d) restrictions designed to protect the privileges of Parliament or
    - e) to provide against contempt of court, defamation or incitement to any offence

## **B. Article 11 — Protection Against Retrospective Criminal Laws and Repeated Trials**

### **A. Probably based on the ancient Latin maxim *nullum crimen sine lege, nulla poena sine lege***

- a) That there can be no crime or punishment unless it is in accordance with law that is certain, unambiguous and not retroactive.

## **C. Article 14 — Freedom of Speech, Assembly, and Association**

### **A. Broad declaration of rights ("every citizen")**

### **B. Phrasing of the article emphasizes the condition on it**

- a) By placing reference to restriction before declaration

### **C. Rights are granted to citizens, not to the many others residing in Singapore**

- a) Foreign journalists have their work permits cancelled when they are seen as meddling in Singapore's domestic politics

### **D. Rights not granted to the press**

### **E. Restrictions need not be "necessary" but merely "expedient"**

- a) Defined in a dictionary as "suitable for achieving a particular end in a given circumstance."
- b) Might be indicative of Singapore's approach to controlling expression:
  - (1) Essentially granting the government power suitable for achieve its objectives

### **F. No constitution offers detailed guidance as to how governments and people should conduct themselves...**

- a) and so courts interpret the constitution
- b) The potentially vast categories of restrictions in Article 14 requires such interpretation

### **G. vs First Amendment of United States**

- a) Congress shall make no law . . . abridging the freedom of speech, or of the press
  - (1) But no law does not mean no law
  - (2) Only that the restrictions are not enumerated in constitution
  - (3) Similar restrictions as listed in SG constitution applies to US in practice

(4) But no restriction on “friendly relations with other countries,”

i) Presumably used to restrict expression in Singapore critical of other countries

## **10. Credits**

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