

Public Consultation: Draft Code of Conduct (Best Practice) for Internet Messaging Service Providers and Social Media Service Providers

In brief

The Malaysian Communications and Multimedia Commission ("**MCMC**") has announced that it is holding a public consultation on the draft Code of Conduct (Best Practice) for Internet Messaging Service Providers and Social Media Service Providers ("**Draft Code of Conduct**").

The objective of the public consultation is to collect public opinion on the Draft Code of Conduct, which outlines the best practices for applications service provider class licence holders who offer Internet messaging and social media services in Malaysia to address harmful online content and other relevant conduct requirements.

The deadline to make submissions to MCMC is by **5.00PM, 5 November 2024**.

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Scope and Application

The Draft Code of Conduct is part of a broader regulatory framework established under the Communications and Multimedia Act 1998 ("**CMA**"). As you will recall in our **last alert**, providers of Internet messaging services and social media services with eight million or more users in Malaysia ("**Licensed Service Providers**") will need to apply for an applications service provider class licence ("**ASP(C) Licence**") by 1 January 2025.

The Draft Code of Conduct sets out **best practices** for Licensed Service Providers to address harmful content online, through **four overarching pillars of priority**. The Licensed Service Providers in implementing each priority, will be guided by the specific conduct obligations set out in the Draft Code of Conduct.

What is "Harmful Content"?

Under the Draft Code of Conduct, "harmful content" is defined as content that is in violation of the CMA and/or any other relevant Malaysian laws which includes, among others:

Child Sexual Abuse Material (" CSAM ")	Non-consensual sharing of intimate content	Content related to online financial scams such as phishing, romance scams, investment scams and other deceptive schemes
Content that is used to bully	Content that can incite violence, extremism and/or terrorism	Content that is likely to induce a child to cause physical and/or psychological harm to themselves
Content that incites hate speech	Content related to the sale of illegal drugs	Manipulated media, such as deepfakes and/or doctored images that can cause harm to individuals or society

High Level Overview of the 4 Priorities

In the sections below, we set out a brief summary and overview of the conduct obligations being proposed for the various principles under the various priorities.

Priority 1 - User Safety

Principle	Corresponding Conduct Obligation of Licensed Service Providers
Users should be able to use the platform safely, safeguarded against exposure to harmful content.	Licensed Service Providers to (among others): <ol style="list-style-type: none"> (a) establish (and consistently review) clear and robust systems, mechanisms and procedures for timely identification, assessment and removal of harmful content; (b) establish a dedicated and trained local content moderation team, for quick response in both standard and crisis situations; (c) immediately report CSAM upon identification to the relevant law enforcement authorities (including the MCMC) and remove such harmful content within 24 hours from the time of reporting or deal with such harmful content in such manner as directed by the law enforcement authority(is); (d) take appropriate action against users who create or distribute harmful content that breaches the platform's community guidelines, the CMA and/or any other relevant Malaysian laws (e.g., block users from creating new accounts, if they have a history of repeatedly violating the platform's community guidelines, the CMA and/or any other relevant Malaysian laws).
Users should be empowered to take proactive measures against online harm and make informed decisions when using the platform.	Licensed Service Providers to (among others): <ol style="list-style-type: none"> (a) provide users with tools and settings to enable them to manage their online safety, control their privacy and easily access and manage their data, including options for account deletion; (b) establish clear and transparent guidelines, timelines and processes for user reporting and appeals related to: <ol style="list-style-type: none"> (i) harmful content, ensuring users receive an acknowledgement of receipt and are kept informed of the status and progress of their report, flag and/or appeal; (ii) harmful content and/or harmful behaviour in private chats, ensuring user privacy is respected while providing necessary evidence to authorities; (c) respond to user reports and flags related to CSAM within 24 hours and take action to remove such content upon determination that the reported and/or flagged content constitutes CSAM; (d) ensure anonymity and confidentiality for users who report and/or flag harmful content; (e) establish clear limits on the use of personal data for targeted advertising and inform users about these limits, providing them with options to opt-out of targeted advertising and data collection for such purposes.
Users with disabilities	Licensed Service Providers to: <ol style="list-style-type: none"> (a) ensure accessibility for users with disabilities by complying with international standards, such as the Web Content Accessibility Guidelines ("WCAG"), including support for screen readers, keyboard navigation and sufficient colour contrast for readability; (b) provide alternative content formats (such as audio descriptions for videos) to enhance accessibility for users with disabilities.

Priority 2: Child Safety Measures

Principle	Corresponding Conduct Obligation of Licensed Service Providers
Children should be able to use the platform safely, safeguarded against exposure to harmful content that specifically affects them.	<p>Licensed Service Providers to:</p> <ul style="list-style-type: none"> (a) implement effective age verification measures (including deploying robust age assurance mechanisms to prevent child users from accessing harmful content). Sole reliance on self-declaration of age is inadequate; (b) provide tools and settings: <ul style="list-style-type: none"> (i) for parents/guardians to monitor and manage the online activities of child users (e.g., options for limiting screen time and restricting access to harmful content); and (ii) that empower child users to protect themselves from harmful content and potentially harmful interactions that could cause physical and/or psychological harm to themselves; (c) ensure all tools and settings provided to both parents/guardians and child users are clear, user-friendly, easily accessible (and for these tools and settings to be regularly updated); (d) conduct regular audits and reviews of child safety measures to ensure their effectiveness.

Priority 3: Risk Mitigation

Principle	Corresponding Conduct Obligation of Licensed Service Providers
Service Providers to proactively identify and mitigate against any potential <u>risks of online harm</u> on their platforms before such risks materialise.	<p>As it relates to risks of harmful content, Licensed Service Providers to:</p> <ul style="list-style-type: none"> (a) conduct regular assessments of systemic risks on their platform, using a skilled qualified risk assessment team; (b) review and update risk assessment methods regularly to reflect changes in the user base, the platform's community guidelines and an ever-evolving online environment; (c) implement effective measures to anticipate, detect and mitigate systemic risks based on the risk assessments above; (d) establish an internal assurance function to continuously monitor and ensure the effectiveness of risk anticipation, detection and mitigation measures, with regular reporting to the platform's audit committee or governing body within the Licensed Service Provider.
Effectively address online safety challenges and foster a safer online environment for all users in Malaysia.	Licensed Service Providers to actively collaborate with law enforcement agencies, regulatory bodies, civil society organisations and other stakeholders, which may involve information sharing, joint training initiatives and the development of shared resources aimed at enhancing user safety.

Priority 4: Accountability

Principle	Corresponding Conduct Obligation of Licensed Service Providers
<p>Licensed Service Providers must be held accountable for their fulfilment of the above conduct requirements to ensure a safer online environment. This includes providing reports to demonstrate the Licensed Service Providers' commitment to creating a safer online environment for all users in Malaysia, especially children and those vulnerable to online harm.</p>	<p>Licensed Service Providers to:</p> <ul style="list-style-type: none"> (a) keep and maintain records of harmful content removals, including the process and reasons/rationale behind each removal, for a period as may be prescribed in accordance with the CMA and/or any other relevant Malaysian laws; (b) conduct regular audits to assess their compliance with this Code of Conduct, the platform's community guidelines, the CMA and any other relevant Malaysian laws relating to online safety. This includes conducting a "Safety by Design" assessment to evaluate the integration of online safety considerations into platform design and operation, as well as audits on accessibility for users with disabilities and child safety measures. (c) submit half-yearly online safety reports to the MCMC, which include: (i) results of assessments of systemic risks on the platform; and (ii) descriptions of specific measures and resources to enhance online safety, including actions taken to address harmful content, enforcement actions, training and support for content moderators, the use of automated tools and the management of user reports, flags and appeals, along with additional improvements, particularly for child safety; (d) publish annual public reports on the platform's online safety practices, covering: (i) handling of and enforcement actions related to harmful content, particularly for child safety; (ii) training and support for content moderators; (iii) use and reliance on automated tools for content management; (iv) management of user reports, flags and appeals; and (v) platform data requests received.

Public Consultation Deadline

Members of public, including service providers, industry players and interested parties may provide feedback on the Draft Code of Conduct to MCMC by **5.00PM on 5 November 2024**.

Concluding remarks

The Draft Code of Conduct represents another step towards creating a safer online environment in Malaysia. Service providers are urged to examine the draft, engage in the public consultation process and help shape the final Draft Code of Conduct.

As the digital landscape continues to evolve, online service providers are encouraged to remain vigilant and to strategically navigate the regulatory landscape to ensure continued compliance and success in the Malaysian market.

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