Journal of Information, Law and Technology

Re-Visiting the Singapore Internet Code of Practice

Professor Samtani Anil
Professor of Law, Nanyang Technological University, Singapore

ASamtani@ntu.edu.sg

This is a **refereed** article published on: 2 July 2001

Citation: Anil S, 'Re-Visiting the Singapore Internet Code of Practice', 2001 (2) *The Journal of Information, Law and Technology (JILT)*.
<http://elj.warwick.ac.uk/jilt/01-2/anil.html>

Abstract

This article seeks to examine the controversies and debates surrounding Internet content regulation and their application in the Singapore context. This is followed by an examination of the key provisions of the new Internet Code of Practice as well as the old Internet Code of Practice and culminates in a comparison of the two codes. The article also seeks to briefly discuss the policy of the Singapore Broadcasting Authority and its approach towards Internet content regulation and examines the case for harmonization of the laws of the different jurisdictions towards Internet content regulation, particularly amongst the ASEAN member states. The article ends by providing some suggestions on how the applicable laws in Singapore could be further fine-tuned to meet the aspirations of its citizenry and to reflect and accommodate the realities and new dynamics created as a result of the advent and development of the Internet.

Keywords: Information Superhighway, Networks, Information, Internet Content, Regulation, Code of Practice, Singapore, SBA, Singapore Broadcasting Authority, Class Licence Scheme, National Internet Advisory Committee, NIAC, ASEAN, Internet Service Provider, Internet Content Provider, Prohibited material, Industry Guidelines, Internet Policy, Interpretation Act, blocking, newsgroup, access, usergroups, mirror sites, mirroring, hyperlinks, search engines, public interest, public morality, public order, public security, national harmony, pornography, homosexuality, lesbianism, incest, paedophilia, bestiality, necrophilia, e-ASEAN, censorship, human rights, free speech.

1. Introduction

In 1899, Charles H Duell, Commissioner of the United States Patent Office, declared that:

> '[e]verything that can be invented has been invented',

and urged that his office be abolished. In today's world of rapid technological change and development, where patents are sought for various inventions on an almost daily basis, the assertion made by the Commissioner appears somewhat unreal and almost comical. It must be appreciated, however, that the comments were made without the benefit of the knowledge that we have today: that technology has the ability and the capacity to alter the way we live and relate to each other in ways that are almost unimaginable.

One of the lasting impressions of the twentieth century must surely be the impact that technology has had in effecting a revolution in the way information is disseminated and communicated. The development and construction of the information superhighway, which essentially refers to the interconnected series of networks that provide the infrastructure for transporting information throughout the world, is now a global phenomenon undertaken by entrepreneurs working in isolation, in teams or with institutions or governments. Today, we are constantly bombarded with sensationalist accounts of the burgeoning information infrastructure, and its phenomenal effect on the way we live.

In this respect, the Internet, the precursor of the information superhighway, heralds the beginning of a new age in communication, commerce and entertainment and is a tremendous vehicle of economic growth. It is probably not an exaggeration to say that the Internet has had, in one way or the other, an impact on all stratums of society and radically altered the way communications may be made and business may be conducted worldwide.

The Internet is essentially made up of a shared infrastructure (usually referred to as the Internet network or the network of networks), set up by all of the parties speaking the same computer language and linking computers scattered throughout the world, thus enabling these computers to communicate in different ways. The Internet evolved from the 'ARPANET' project of the 1960s, in which a few military supercomputers were connected in order to allow users in geographically remote areas to access them. The rapid development of the Internet is all the more remarkable when one observes that the commercial use of the Internet is contrary to the initial spirit of the Internet inspired by its pioneers and was once forbidden. As one commentator so aptly puts it:

> 'the most important parts of the Net piggybacked on technologies that were created for very different purposes' and this has yielded the 'accidental history of the Net'.

Today, the Internet is a federation of networks which is constantly developing and which can now be accessed by everyone. Commercial use of the Internet has been developing steadily over the past few years. The Internet is experiencing exponential growth and is now a social phenomenon that has transformed social policy, politics and the diffusion of knowledge and has given rise to a whole new breed of entrepreneurs. The Internet has aptly been referred to as an 'electronic El Nino' that has and will continue to transform customers, careers and relationships.

The Internet greatly increases the ease of accessing, reproducing, and transmitting information. This ease raises a host of legal issues including the risk of copyright infringement, the protection of patent rights, and the preservation of trade secrets.

In addition to the plethora of legal issues created as a result of the advent of the Internet, a pressing concern which has plagued many jurisdictions worldwide is the relative ease of gaining access to offensive material (and in particular, pornography) via the medium of the Internet. In most countries, pornography is more freely available over the Internet than in other mass communications media. It is also generally true that pornographic repositories on the Internet tend to be heavily accessed. Additionally, there is a pressing need to protect children from obscene, indecent and offensive material available on the Internet. In Singapore, these concerns are being addressed through measures taken by the Singapore Broadcasting Authority ('SBA').

1.1 The Singapore Broadcasting Authority

Since its formation on 1 October 1994, the SBA has been tasked with the job of developing quality broadcasting, building a well-informed and culturally rich society and

making Singapore a dynamic broadcasting hub. At this juncture, it is also perhaps apt to note that Singapore has one of the highest Internet penetration rates in the world with Internet users growing from 240,000 in 1996 to about 670,000 users in June 1999. Similarly, the number of websites registered with SGNIC in Singapore has also seen a significant growth, from 900 sites in 1996 to more than 6,500 sites. Singapore's household computer penetration is 41% and one in four Singaporeans are Internet users.

The SBA is, in addition to its various other functions, responsible for regulating Internet Service Providers and Internet Content Providers. This is done chiefly through the Internet Class Licence Scheme and the Internet Code of Practice which was first introduced in July 1996 via Gazette Notification No: 2400/96.

The Internet Code of Practice was subsequently revised to remedy some of the shortcomings and perceived inadequacies of the earlier version of the Code as well as to take into account the recommendations made by the National Internet Advisory Committee ('NIAC') in its report released in September 1997. The revised Code of Practice came into effect on 1 November 1997 via Gazette Notification No: 3810/97.

For ease of reference, all references to the new Internet Code of Practice in this write-up shall mean the revised Internet Code of Practice whilst all references to the old Internet Code of Practice shall mean the Internet Code of Practice which was introduced in July 1996. Any reference to the Internet Code of Practice shall mean both the old Internet Code of Practice and the new Internet Code of Practice.

This article will begin by examining, briefly, the controversies and debates surrounding Internet content regulation and their application in the Singapore context. This will be followed by an examination of the key provisions of the new Internet Code of Practice as well as the old Internet Code of Practice. This will culminate in a comparison of the two codes. The article will also briefly discuss the policy of the SBA and its approach towards Internet content regulation. The article will then briefly examine the case for harmonization of the laws of the different jurisdictions towards Internet content regulation, particularly amongst the Asean member states. The article will end by providing some suggestions on how the applicable laws in Singapore could be further fine-tuned to meet the aspirations of its citizenry and to reflect and accommodate the realities and new dynamics created as a result of the advent and development of the Internet.

2. The New Internet Code of Practice

Let us now turn to the specific provisions of the Singapore Internet Code of Practice. The Internet Code of Practice is, in essence, a set of guidelines on acceptable Internet content with which Internet Service Providers and Internet Content Providers are required to comply.

The new Internet Code of Practice begins with a foreword which stipulates that the Singapore Broadcasting Authority Act (Cap 297) (hereafter referred to as 'the Act') makes it the duty of the SBA to ensure that nothing is included in any broadcasting

service which is against public interest or order, national harmony or which offends against good taste or decency. The protection which this statement appears to afford to persons aggrieved by SBA's failure to perform its duty is merely illusory, however, as the aforesaid Act goes on to state that:

> '[n]othing [in the provision imposing the duty on the SBA] … shall be construed as imposing on the [SBA], directly or indirectly, any form of duty or liability enforceable by proceedings in any court'.

The Code then goes on to direct all Internet Service Providers and Internet Content Providers licensed under the Singapore Broadcasting Authority (Class Licence) Notification 1996 to comply with the provisions contained in the Code. To serve as a salutary reinforcement of the direction to comply with its provisions, the Code stipulates that pursuant to the Act, the SBA has the power to impose sanctions (including fines) for any contravention of the Code. This stipulation in the Code, unfortunately, appears to have been based on an erroneous interpretation of the powers conferred on the SBA by the Act.

Section 28 of the Act, which is presumably the provision which the SBA is seeking to rely upon to cloak itself with the power to impose sanctions, simply enables the SBA to issue directions to Internet Service Providers and Internet Content Providers requiring them to take action to comply with the Internet Code of Practice. Section 28, additionally, has the effect of making any Internet Service Provider, Internet Content Provider or any person responsible for the broadcasting of any programme prohibited by such a direction guilty of an offence, thereby rendering them liable to certain penal sanctions.

From a reading of the Act, it is clear that it is the judiciary, and not the SBA, which has the power to impose penal sanctions for non-compliance of the Code (provided, of course, that the requirements set out in section 28 of the Act are satisfied). Although the SBA has the power to compound certain offences and the ability to modify or impose additional conditions on the licences it grants, this should not be misconstrued as conferring upon the SBA the power to impose penal sanctions on parties who infringe the Act or the Internet Code of Practice. The Code should, thus, be reworded to remove the reference to the SBA having the power to impose penal sanctions.

The substantive portion of the Code contains a direction to all Internet Service Providers and Internet Content Providers to use their best efforts to ensure that 'prohibited material' is not broadcast via the Internet to users in Singapore. The Code then goes on to state the manner in which the obligations imposed upon Internet Service Providers and Internet Content Providers pursuant to the Code may be discharged.

From the general tenor of the Code and the recurrent use of the phrase 'discharges his obligations under this Code' in Clause 3 of the Code, it would appear that in so far as the particular scenarios and the specific aspects of the Internet referred to in Clause 3 are concerned, compliance with the respective requirements stipulated would amount to a complete discharge of the obligations imposed upon Internet Service Providers and Internet Content Providers pursuant to the Code. In other words, in the scenarios set out

in Clause 3 of the Code, the performance of the acts required in Clause 3 shall be equated to the use of 'best efforts' as provided in Clause 2 of the Code.

Such a reading of Clause 3 would not only achieve the aims of the Code and give effect to the terminology employed in Clause 3, but would also enable Clause 3 to be reconciled with Clause 2 of the Code. In situations which do not fall within the ambit of Clause 3, however, it is clear that the obligation set out in Clause 2 (ie., to use best efforts to ensure that 'prohibited material' is not broadcast) would continue to apply.

3. Obligations of Internet Service Providers

3.1 Websites

Clause 3 of the Code states that in relation to programmes on the World Wide Web, an Internet Service Provider discharges its obligations when it denies access to sites notified to it by SBA as containing prohibited material. In its *Industry Guidelines on the Singapore Broadcasting Authority's Internet Policy ('Industry Guidelines')*, the SBA has clarified that this limited duty imposed on Internet Service Providers would effectively mean that Internet Service Providers do not have to actively search the Internet for websites containing prohibited material.

At this stage, it may be opportune to discuss the legal nature and effect of the *Industry Guidelines* as they contain various statements dealing with the obligations of Internet Service Providers and Internet Content Providers under the Code. The *Industry Guidelines* do not constitute written law and thus do not have the legal force of written law. It is unfortunate that some of the clarifications and statements made in the *Industry Guidelines* are not incorporated in the Code as their incorporation would have the effect of setting out more clearly the *legal* obligations imposed upon Internet Service Providers and Internet Content Providers.

The stipulations and clarifications made in the *Industry Guidelines*, whilst reassuring in most part, do not (as stated above) have force of law and in the event of conflict between the provisions in the Code and the Industry Guidelines, the provisions in the Code will prevail.

Section 9A of the Interpretation Act (Cap 1), which allows extrinsic materials to be consulted in certain situations, provides an opportunity for the *Industry Guidelines* to be referred to in ascertaining the meaning of provisions in the Code. It must be noted, however, that section 9A operates within narrow confines and applies only if the requirements set out in section 9A(2) are satisfied.

Perhaps Internet Service Providers and Internet Content Providers can find some solace in the fact that they are unlikely to be prosecuted in a manner contrary to the SBA's stated intentions as expressed in the *Industry Guidelines*. Nevertheless, should the SBA decide to do so, the Internet Service Providers and Internet Content Providers must be mindful of the fact that there is little they can do unless section 9A of the Interpretation Act applies

in the circumstances.

3.2 Newsgroups

In relation to newsgroups, clause 3(2) states that an Internet Service Provider discharges its obligations when it:

> (a) refrains from subscribing to any newsgroup which, in its opinion, is likely to contain prohibited material; and
>
> (b) 'unsubscribes' from any newsgroup that the SBA may direct.

The specific phraseology of clause 3(2) may be seen as a response to a perceived misconception held amongst some members of the public that the SBA dictates to the Internet Service Providers on the particular newsgroups to which they may subscribe.

Nevertheless, the SBA adopts the practical view that the blocking of access to newsgroups which run counter to the intention and spirit of the Code cannot be dependent on the SBA's directions alone as the SBA does not have the requisite manpower to police the World Wide Web continuously. Some degree of responsibility is therefore placed on Internet Service Providers to ensure that they do not subscribe to newsgroups likely to contain prohibited material.

It must be appreciated, however, that in practice most Internet Service Providers are completely oblivious to what goes on during discussions in their respective newsgroups unless specific matters have been brought to their attention. Even if they so desire, the task of scrutinizing newsgroups is a daunting one which may aptly be likened to searching for the proverbial needle in a haystack. The onus placed on Internet Service Providers to refrain from subscribing from newsgroups *likely* to contain prohibited material does, therefore, appear to impose fairly onerous obligations on them.

In addition, the phrase 'likely to contain prohibited material' has not been amplified or explained in the Code. This creates some uncertainty on the matter. For instance, how does one ascertain whether a newsgroup is likely to contain prohibited material? What percentage of a newsgroup's discussion must contain or pertain to prohibited material before the duty on an Internet Service Provider to refrain from subscribing for it arises? Would past complaints against the newsgroup, on its own, invoke this obligation?

These are the questions which the Code leaves unanswered. Unfortunately, this ambiguity in the Code may have the unfortunate practical consequence of stifling on-line discussion.

A conservative Internet Service Provider may take the convenient step of unsubscribing from a newsgroup at the slightest hint of trouble. A puritanical and narrow-minded user of the Internet may abuse this fear by lodging complaints whenever he observes liberal views or ideologies (which do not necessarily constitute prohibited material as defined by the Code) being espoused on the newsgroup discussions, knowing that the threat of prosecution would induce the Internet Service Provider to act immediately on his

complaint.

It is suggested that the better way of approaching the matter would be to remove the obligation on Internet Service Providers to refrain from subscribing to newsgroups likely to contain prohibited material. Instead, Internet Service Providers should be under an obligation to refer all complaints on any newsgroup to the SBA for investigation. It would then be for the SBA to evaluate and, if necessary, investigate these complaints with a view to ascertaining if the newsgroup is one which the Internet Service Provider should refrain from subscribing. If necessary, directions should then be given to the Internet Service Providers concerned.

4. Obligations of Internet Content Providers

Although this is not made explicit in the new Internet Code of Practice, the SBA has clarified that Internet Content Providers do not have to seek its prior approval for content posted on the Internet. Clause 4(4) of the new Internet Code of Practice, however, stipulates that in the event of doubt as to whether any content is prohibited by the Code, such content may be referred to the SBA for its decision on the matter.

Much to the relief of Internet Content Providers, no doubt, is SBA's clarification that web publishers and server administrators do not have to monitor the Internet or pre-censor content. The Internet Content Providers are, however, obliged to deny access to prohibited materials when directed to do so by the SBA.

4.1 Websites

Clause 3(3)(a) of the Code stipulates that in relation to private discussion fora hosted on its service (such as chat groups), the Internet Content Provider discharges its obligation when it chooses discussion themes which are not prohibited pursuant to the Code.

The *Industry Guidelines* clarify that Internet Content Providers are not required to monitor or censor the discussions held although they are encouraged to take 'discretionary action against the abusers of [the] chat channels'. The *Industry Guidelines* do not clarify on the type of discretionary action that may be taken; nor does it proffer any guidance on the appropriate defences an Internet Content Provider may avail itself of in the event that aggrieved users decide to take action against the former for curtailing its right to carry on discussions on the chat channels.

It is important to note that neither the Act nor the Code confer a right on Internet Content Providers to take appropriate action against abusers of its chat channels. In the absence of a clearly identifiable contractual term conferring a right to take appropriate action, Internet Content Providers are advised to refrain from doing so; otherwise, they face the prospect of having civil suits instituted against them by users of the chat channels.

Clause 3(3)(b) goes on to state that in relation to programmes on its service contributed by other persons who are invited to do so on its service for public display (such as

bulletin boards), the Internet Content Provider discharges its obligation when it denies access to contributions which contain prohibited material which it discovers in the normal course of exercising its editorial duties or which it is informed about (presumably by SBA or otherwise).

In its *Industry Guidelines*, SBA clarifies that its focus is on discussions targetted at the general public and as such, business or professional closed usergroups which conduct professional discussions on websites will not be regulated.

Clause 3(3)(c) provides that in relation to all other programmes on its service, the Internet Content Provider discharges its obligations if it ensures that such programmes do not include material which is prohibited pursuant to the Code. Read on its own, this clause may appear to impose fairly onerous obligations upon Internet Content Providers and run counter to the general tenor of the rest of the Code. Clause 3(5), however, militates against the rigour of this provision by stipulating that clause 3(3), which has been described above, does not apply to any web publisher or web server administrator in respect of programmes on its service for which it has no editorial control.

4.2 Mirror Sites, Hyperlinks and Search Engines

In its *Industry Guidelines*, SBA has clarified that the mirroring of foreign sites is encouraged. In deciding which sites to mirror or hyperlink to, Internet Content Providers should, however, make an initial assessment of whether a site contains prohibited material. SBA has assured Internet Content Providers that they will not be held responsible for mirror sites or hyperlinks which are subsequently found to contain prohibited material although they are encouraged to remove such links after these are brought to their attention.

The use of the term 'encouraged' in this context is puzzling. The tenor of the Code would suggest that in situations where the existence of prohibited material is brought to the attention of an Internet Content Provider or an Internet Service Provider, steps should be taken (where possible) to prevent the material from being accessed. Internet Content Providers are thus advised, after due investigation to ascertain the veracity of the information, to immediately remove links to mirror sites or hyperlinks alleged to contain prohibited material. In any event, it must be noted that in situations where the SBA has directed Internet Content Providers to deny access to prohibited materials, they are obliged to do so.

The *Industry Guidelines* also clarify that broad-based search services, such as Yahoo! and Alta Vista, which base or mirror their sites in Singapore, do not have to pre-censor their sites.

4.3 Prohibited Material

Clause 4(1) defines 'prohibited material' broadly as material that is objectionable on the grounds of public interest, public morality, public order, public security, national

harmony or which is otherwise prohibited by applicable Singapore laws.

Clause 4(2) then goes on to provide some guiding factors that should be taken into account in considering what is prohibited material. These are:

- whether the material depicts nudity or genitalia in a manner calculated to titillate;
- whether the material promotes sexual violence or sexual activity involving coercion or non-consent of any kind;
- whether the material depicts a person or persons clearly engaged in explicit sexual activity;
- whether the material depicts a person who is, or appears to be, under 16 years of age in sexual activity, in a sexually provocative manner or in any other offensive manner;
- whether the material advocates homosexuality or lesbianism, or depicts or promotes incest, paedophilia, bestiality or necrophilia;
- whether the material depicts detailed or relished acts of extreme violence or cruelty; or
- whether the material glorifies, incites or endorses ethnic, racial or religious hatred, strife or intolerance.

Clause 4(3) goes on to stipulate that in determining whether any material is 'prohibited material' for the purposes of the Code, consideration of the intrinsic medical, scientific, artistic or educational value of the material may be made. Clause 4(3) appears to have been inserted into the Code to ensure that the legitimate use of material, which is otherwise prohibited in accordance with the guidelines contained in Clause 4(2), is not unduly hampered. For instance, it is likely that images featuring acts of brutality inflicted during the apartheid era in South Africa will not be considered as prohibited material if it is featured in a webpage relating to the history of South Africa.

The inclusion of the phrase 'homosexuality or lesbianism' within the same provision that prohibits material that depicts or promotes incest, paedophilia, bestiality or necrophilia is troubling, to say the least. This inclusion may create the impression that the Code views both sets of activities as equally reprehensible. It would have been better if the prohibition on material advocating homosexuality or lesbianism were to be listed in a separate provision. The inclusion of this prohibition is, in itself, bound to be controversial as - in the light of greater societal tolerance and acceptance of homosexuals and lesbians - it is debatable whether the Code should prohibit material advocating homosexuality or lesbianism.

4.4 Right of Appeal

Internet Service Providers and Internet Content Providers aggrieved by any decision of the SBA or by anything contained in the Internet Code of Practice may appeal to the Minister whose decision shall be final. The aggrieved party must, however, ensure that any decision or direction made by the SBA is complied with until the determination of the appeal.

The Internet Code of Practice does not stipulate the factors which will be taken into account by the Minister in arriving at his decision. Bearing in mind, however, the evinced intention that the regulations do not stifle the development of the Internet or place an unduly onerous burden on Internet Service Providers and Internet Content Providers, one can optimistically hope that the Minister will be fairly liberal in his treatment of appeals made to him and will give due weight to any difficulty faced by aggrieved parties in complying with the Code or in adhering to the SBA's decisions and directions.

5. The National Internet Advisory Committee and its Recommendations

The amendments introduced by the new Internet Code of Practice are based primarily on recommendations made by the NIAC in its recent report released in September 1997. It is useful to look at the substantive provisions of the report in order to fully appreciate the aims and policy underlying the new Internet Code of Practice. A brief overview of the role and work of the NIAC would, in this respect, serve as a useful introduction to understanding the context in which the report was made.

The NIAC was formed on 15 August 1997 to advise the SBA on the regulation of electronic information services and the development of the industry. More specifically, the NIAC was tasked to assist the SBA in the development of its regulatory framework for the Internet. Members of the NIAC are drawn from a wide cross-section of society, presumably as a result of SBA's hope and desire that its regulatory framework adequately takes into account the needs and concerns of a wide cross section of society.

The broadly stated Terms of Reference of the NIAC are as follows:

- to provide feedback and advise on SBA's policies and regulatory framework;
- to advise on SBA's content guidelines;
- to advise on concerns raised by the public and the industry;
- to advise on SBA's public education initiatives;
- to advise on promotion and growth of the industry; and
- to advise on the impact of technological developments and related issues.

The limited resource of the NIAC meant that it could only focus on several specific and key issues at any one time and somewhat unsurprisingly, the NIAC chose to focus on the following issues in its first year of work:

- feedback on the impact of SBA's Internet regulations;
- recommendations on the Code of Practice;
- promotion of industry self-regulation;
- promotion of positive sites and public education initiatives on the Internet;
- promotion of Internet content production in Singapore;
- positioning of Singapore as a major international Internet hub; and
- encouragement of multi-lingual content on the Internet.

Through its dialogue with industry players and the Singapore Federation of the Computer Industry, the NIAC concluded that whilst the introduction of the SBA's Internet regulations (including the Internet Code of Practice) did not pose a major hindrance to the use of the Internet, there were certain areas of concern in which improvements could be made. The relevant areas, for our present purposes, are listed below:

- improper or ineffective use of proxy servers may slow down information transfer and impede the progress of electronic commerce;
- individual mail and sites, and newsgroup discussions should continue to be kept out of the purview of SBA's regulations to allow free discussion of opinions and issues;
- the responsibilities of Internet Service Providers and Internet Content Providers expected under the Internet Class Licence Scheme should be more clearly spelt out;
- there may be a need to describe the circumstances under which content providers are required to register;
- the inclusion of web hosts and server administrators in the definition of content provider gives rise to uncertainty on the extent to which they are liable for content provided by their customers; and
- the extent to which content providers are liable for material on mirrored

sites and chat facilities is unclear.

Amongst the proposals made by the NIAC were recommendations to amend the Internet Code of Practice. The specific recommendations made by the NIAC will, where relevant, be highlighted in the discussion below on the comparison of the old and new Internet Code of Practice. From the discussion of the new Internet Code of Practice the reader would, of course, already have seen how the new Internet Code of Practice seeks to address some of these concerns.

6. The Old Internet Code of Practice

The old Internet Code of Practice similarly begins with a foreword stipulating that the SBA has a duty to ensure that nothing is included in any broadcasting service which is against public interest or order, national harmony or which offends against good taste or decency. The old Internet Code of Practice also contains a similar direction to all Internet Service Providers and Internet Content Providers licensed under the Singapore Broadcasting Authority (Class Licence) Notification 1996 to comply with the provisions contained in the Code. There is also the same reminder to all Internet Service Providers and Internet Content Providers that pursuant to the Act, the SBA has the power to impose sanctions (including fines) for any contravention of the Code. Clause 1(2) of the old Internet Code of Practice, unlike clause 1(2) of the new Internet Code of Practice, contains an additional stipulation that all Internet Service Providers and Internet Content Providers must satisfy the SBA that they have taken reasonable steps to fulfil their responsibility to comply with the Code of Practice.

Clause 2 of the old Internet Code of Practice begins by imposing a general obligation on Internet Service Providers and Internet Content Providers to use their best efforts to ensure that nothing is included in any programme on the Internet which is against public interest, public order, national harmony or which offends against good taste or decency. Clause 2 then goes on to particularise specific 'Internet contents' which should not be allowed. These are as follows:

(a) Public Security and National Defence

- Contents which jeopardise public security or national defence.
- Contents which undermine public confidence in the administration of justice in Singapore.
- Contents which present information or events in such a way as to alarm or mislead all or any part of the public.
- Contents which tend to bring the Government of Singapore into hatred or contempt, or which excite disaffection against the Government of Singapore.

(b) Racial and Religious Harmony

- Contents which denigrate or satirise any race or religious group.
- Contents which bring any race or religious group into hatred or resentment.
- Contents which promote religious deviations or occult practices such as Satanism.

(c) Public Morals

- Contents which are pornographic or otherwise obscene.
- Contents which propagate permissiveness or promiscuity.
- Contents which depict or propagate gross exploitation of violence, nudity, sex or horror.
- Contents which depict or propagate sexual perversions such as homosexuality, lesbianism, and paedophilia.

7. A Comparison of the Old Internet Code of Practice and the New Internet Code of Practice

Unsurprisingly, the old Internet Code of Practice brought howls of protest when it was first announced. There were calls for petitions to be sent to SBA and Internet users were encouraged to place blue ribbons in their websites as a sign of protest against the Code. In particular, the Code was criticised for being overly broad, vague and ambiguous. There were also fears that the Code would stifle online discussion and critical thinking and bring about the death of free speech on the Internet.

Viewed against the backdrop of the old Internet Code of Practice, the new Internet Code of Practice can be seen to be less stifling and more specific in its approach. This has been done largely to deflect the criticisms levied against the old Internet Code of Practice. For instance, the loosely-termed 'best efforts' obligation imposed upon Internet Service Providers and Internet Content Providers in the old Internet Code of Practice does not accurately or adequately describe the extent of that obligation. In this respect, the NIAC noted that this obligation may be construed to imply that Internet Service Providers have a duty to exclude all prohibited material from the Internet.

The new Code seeks to remedy this criticism of the old Code by stipulating precisely what Internet Service Providers and Internet Content Providers must do (in relation to the different aspects of the Internet) in order to discharge their obligations under the Code. The precise scope of these obligations has already been discussed elsewhere in this article. Although the 'best efforts' obligation does play a residual role in the new Internet Code of Practice in situations not covered by Clause 3 of the Code, its application is quite limited as most conceivable situations pertaining to Internet Service Providers and Internet Content Providers in their respective roles are already dealt with by Clause 3.

In dealing with the issue of material to be prohibited, Clause 2 of the old Code adopts the cumbersome practice of replicating provisions from other legislation prohibiting certain conduct. The NIAC was of the view that some of these provisions were incorrectly cited thereby causing a great deal of controversy in the press.

The new Code seeks to remedy this by introducing a definition of 'prohibited material' which includes material 'otherwise prohibited by applicable Singapore laws'. It is, however, not clear whether this was exactly what the NIAC meant in its exhortation to SBA to remind Internet users and Internet Service Providers that all Singapore laws,

insofar as they apply to the electronic medium, are fully effective and operative in respect of acts committed in cyberspace. Perhaps an overriding stipulation that all relevant parties continue to be subject to all other Singapore laws, as applicable to the electronic medium, would have served the NIAC's intended purpose better. This, of course, does not detract from the fact that the parties continue to be subject to all other Singapore laws whether or not the Code stipulates as such.

8. SBA's Internet Policy and Approach

The general tenor and scope of the new Internet Code of Practice is consistent with SBA's stated aim of adopting a regulatory regime that is not overly restrictive or overbearing. In this regard, the coverage and ambit of the new Internet Code of Practice can be seen to be consistent with the seven key principles identified by SBA in its *Industry Guidelines* as underlying its Internet policy. For the sake of completeness, these seven principles are reproduced below:

- SBA fully supports the development of the Internet. The Internet is an important communication medium as well as a rich source of information, education and entertainment;

- SBA's framework for the Internet emphasizes public education, industry self-regulation, the promotion of positive sites and minimum regulation through a transparent licensing framework which reflects the community values;

- SBA's purview only covers the provision of material to the public. SBA is not concerned with what individuals receive, whether in the privacy of their own homes or at their workplace. Corporate Internet access for business use is also outside the scope of SBA's regulation, as is private communications such as electronic mail and the Internet Relay Chat;

- SBA's emphasis is on issues of concern to Singapore. For instance, in the case of racial and religious material, SBA is only concerned with material which may incite racial or religious hatred among the races in Singapore;

- SBA's main concern is with the ease of access to pornography on the Internet, especially by children and minors. SBA's regulatory focus is on mass impact websites which distribute pornography;

- SBA takes a light-touch approach in regulating services on the Internet. For example, licensees found to be in breach of regulations will be given a second chance to rectify the breach before action is taken; and

- SBA believes in open channels of communication with the public and the industry. The SBA encourages the industry and members of the public to continue to provide feedback to it so that the regulatory framework currently

in place may be fine-tuned to reflect technological advances and society's concerns.

The new Internet Code of Practice can also be seen to be in line with SBA's three-pronged approach to the development of the Internet in Singapore, namely:

- to promote public regulation;
- to encourage industry self regulation; and
- to implement a light touch licensing framework which is regularly fine-tuned based on consultation.

In its attempts to mollify opponents of the Internet Code of Practice, SBA has taken great pains to reiterate its stance that the Code is not meant to stifle online discussion or the exchange of information. SBA has sought to reassure Internet Service Providers that in seeking to enforce the Internet Code of Practice, the context in which any allegedly offensive material is found will be taken into consideration. If it is incidental or presented in good faith or used for educational, artistic, scientific or medical purposes, it will not be in breach of the Code. SBA has also stated that it typically alerts Internet Service Providers if it comes across or receives any complaints of websites that flout its Internet guidelines. SBA has also given its assurance that a light-touch enforcement approach will be adopted, which means that an offender will be given a chance to rectify the breach before SBA takes any action. To date, SBA has not taken action against anyone for objectionable content on the Internet. According to the SBA, this is because:

> 'service and content providers have generally abided by the guidelines'.

As can be seen from the above discussion, the new Internet Code of Practice, whilst retaining much of the original aims and flavour of the old Internet Code of Practice, is much more specific and unambiguous. Although the new Internet Code of Practice is not entirely without its faults, from the perspective of Internet Service Providers and Internet Content Providers it does present a marked improvement when compared to the old Internet Code of Practice.

In particular, the SBA has taken cognizance of the constraints currently faced by existing Internet Service Providers and Internet Content Providers and has introduced revisions to clarify the ambit of their obligations. In this respect, the new Internet Code of Practice has done much to allay the fears of Internet Service Providers and Internet Content Providers that an unduly great burden has been placed upon them in relation to the regulation of the Internet.

The new Internet Code of Practice can also be seen to reflect an awareness that regulation of the Internet can only go so far and that, by and large, it is not practical or wise to over-regulate the Internet. The tolerant slant of the new Code exemplifies this awareness.

Nevertheless, there are some commentators who advocate complete and unfettered freedom in respect of the use of the Internet and who are of the view that there should be no regulation of the Internet whatsoever. There appears, however, to be an increasing perception that in order to promote the healthy development of the Internet some regulation (albeit one that is evolved after due consultation with all interested parties) is necessary and may even be desirable. In this regard, it may be observed that the new Internet Code of Practice is consonant with SBA's aim to:

> 'adopt a consultative approach and fine-tune its regulations to ensure that the regulatory framework will promote and facilitate the growth of the Internet'.

The generally warm reception to the new Internet Code of Practice bears testimony to SBA's commitment to devising a regulatory framework that is not too rigid or restrictive and which seeks to assimilate the views and responses of all segments of society. Such an approach can only bode well for the industry as a whole as the development of the Internet has presented the world with a vast array of new problems and issues which it is only now beginning to grapple with.

It is, thus, encouraging to see that the SBA has adopted a fluid approach in respect of the regulation of the Internet that gives an opportunity for various new ideologies, views and concerns to be reflected in its ongoing policy aims. It is only hoped that interested participants in the development of the Internet will take this opportunity to make their views and suggestions known to the SBA so that these concerns may be addressed in subsequent revisions of the Internet Code of Practice.

9. An Asean Internet Code of Practice?

It is perhaps timely to ask ourselves if the time has come for a uniform Asean regulatory framework to apply to content regulation of the Internet. Recent initiatives to harmonize the electronic commerce laws of the various Asean member countries may provide an impetus for a similar framework to be considered in respect of Internet content regulation.

It is this author's view that, at the present moment, such an initiative is unlikely to succeed. Despite sharing some common goals and, to a certain extent, a shared heritage, the different Asean member countries have very different outlooks on issues pertaining to censorship. What is permissible in say, the Philippines, could potentially flout Singapore's censorship laws. Moreover, the censorship laws of many countries are based, to a large extent, on the social mores and values of the people in those countries. These laws would, therefore, differ from country to country.

In the foreseeable future, however, the position may change and one could then optimistically hope for a common charter on Internet content regulation. This is because in this age of globalization, there appears to be a higher degree of confluence in the mores and values of the younger generation in the different Asean countries and, for that matter, in countries in other parts of the globe. This is, no doubt, due in part to the pervasive impact of the popular media and the greater 'global interconnectedness' experienced by youngsters today as a result of the advent of new technologies such as the Internet.

Needless to say, a global charter on Internet content regulation is highly unlikely to find favour in the near future as the differences in the cultural attitudes and social norms that prevail in the various countries will be even more marked than that which exists in the Asean context. As noted earlier, different countries may adopt different standards over the same material. What one jurisdiction might regard as reasonable material another might regard as obscene.

10. The Censorship Debate

It has been said that censorship is as old as language itself. One needs to look no further than the Bible to observe ancient examples of censorship. For instance, the third commandment that Moses, a leader of the Jews, presented to his people around 1250 BC, forbade the speaking of the name of God, except in prayer or during a religious ceremony. This ancient law is still observed by devout Jews, Christians and Muslims, who consider this to be part of their religious obligations.

Greek history provides us with a resounding illustration of how censorship can be abused. Socrates, one of the greatest thinkers and teachers of ancient Greece, was censored by the government in 399 BC. He was charged with corrupting the youth of Athens. This arose as a result of his teachings that encouraged his students to challenge conventional thinking. Socrates refused to renounce his teachings or accept the punishment of exile from the city. Socrates was sentenced to death and given a cup containing the deadly juice of the hemlock plant which he drank without fear. It comes as no surprise that the death of Socrates remains one of the most historically stirring protests against censorship.

Any legal framework that seeks to censor the flow of certain types of information is bound to be controversial and the Internet Code of Practice is no exception. The Internet Code of Practice, along with other similar initiatives elsewhere, has received widespread condemnation from advocates of free speech who decry what they see as a violation of free speech guarantees enshrined in democratic institutions and international law. The following extract, taken from a 1999 Report by the Human Rights Watch on 'Freedom of Expression on the Internet', is reflective of the type of stinging criticism often levelled against attempts to regulate content on the Internet:

> 'Despite growing acknowledgment during 1998 among governments around the world that the Internet promotes participation in civil and political life within countries and beyond, legislative proposals continued to threaten free speech on the Internet. While dissidents in authoritarian countries continued to take risks using the Internet to seek help and information, regulators in these parts of the world were quick to refine screening and other controlling technologies. As a result, in a half-dozen countries, Internet access providers (including public libraries) were implementing filtering technologies and other voluntary measures to make prior censorship of on-line communications a reality. The trend is towards extending these technologies more broadly, with global implications for free expression. On-line content providers may soon be forced to start rating their content; those failing to rate their content may find their material blocked

> from public access. As local rating criteria are used to define ratings, the danger is that these restrictive criteria will limit the diversity of expression on the Internet, where content is as diverse as human thought'.

Calls for a hands off approach to the Internet continue almost unabated today. AT&T Corporation's Chairman and Chief Executive Michael Armstrong recently called on telecommunications regulators to refrain from adopting 'patchwork regulation' to the Internet. These views have been mirrored elsewhere.

In a controversial conference held in Munich recently, the creation of an international rating and filtering system for Internet content has been proposed as an alternative to national legislation regulating online speech. Civil liberties advocates argue that if a single rating system is broadly adopted, it will be easier both technologically and legally for governments to mandate ratings regimes or the use of filters, or to ban controversial sites altogether. Moreover, prominent news organizations such as MSNBC, the Wall Street Journal, and CNN have stated in the past that they will not comply with ratings. It has also been suggested that contrary to their original intent, such systems may actually facilitate governmental restrictions on Internet expression. Additionally, it has been argued that rating and filtering schemes may prevent individuals from discussing controversial or unpopular topics, impose burdensome compliance costs on speakers, distort the fundamental cultural diversity of the Internet, enable invisible 'upstream' filtering, and eventually create a homogenized Internet dominated by large commercial interests.

The debate on whether there should be content regulation of the Internet is a multi-faceted one and this paper does not attempt to answer the question of whether content regulation of the Internet, *per se*, is good or bad. It should be noted, however, that regulation of the Internet in the various countries have tended to take on different forms that may well reflect the unique cultural norms and concerns of the respective countries. Viewed from this perspective, Internet content regulation may even be seen to be desirable.

Despite widespread condemnation from international organizations that advocate an unfettered right of free speech, content regulation of the Internet continue to be popular amongst the governments of a large number of countries. In some cases, attempts at content regulation has garnered considerable support from the local citizenry. In Singapore for instance, a very recent Gallup poll conducted by Channel News Asia revealed that most Singaporeans are satisfied with the level of censorship in Singapore, although many felt that the community should play a bigger role in making censorship decisions. The poll revealed that 85% of the respondents felt that censorship was necessary. The need to protect children and maintain moral standards were given as important and justifiable reasons for the level of censorship in Singapore. 82% of the respondents stated that they were satisfied with the level of censorship in Singapore.

11. Conclusion - Some Final Thoughts

At this juncture, it may be apt to note that the peculiar features of the Internet and its propensity to change the dynamics and form of human interaction has generated a degree

of unease amongst persons concerned with the applicable laws that govern their transactions and communications in cyberspace. This is hardly a new problem as history abounds with situations where the law struggles to catch up whenever new technology acts as a catalyst for sweeping social and economic change.

At the risk of oversimplifying the debate somewhat, there are generally three views that have been canvassed in relation to the laws that should apply to the Internet. Some commentators have argued that cyberspace is a unique and novel environment that cries out for a new set of rules tailored specifically for it. For example, it has been argued that the Internet should be governed in a manner suited to its particular history, customs and technological capabilities. Adherents of this school of thought vehemently oppose attempts to apply conventional models of regulation to the Internet. Some commentators adopt a 'middle-path' and argue that the law of cyberspace should evolve slowly through a careful application of common law principles, with particular attention paid to the aspects of cyberspace that make transactions in cyberspace unique. The last category of commentators share the opinion that existing legal principles are adequate in dealing with issues relating to transactions conducted in cyberspace.

It is therefore important for the Singapore government (or for that matter, the governments of all other countries) to review its laws and regulations so that they are consonant with the underlying conceptual approach it wishes to take towards the Internet. Amidst the flurry of legislative initiatives that are taking place at breakneck speed all over the globe, it is important that 'knee-jerk' reactions are not adopted. As cyberspace has largely eviscerated the traditional concepts that underlie traditional legal dogma, there is an increasing need to constantly review existing laws and regulations to accommodate new technologies and to address the legal issues that arise as a consequence.

The Internet Code of Practice is meant to be a fluid document that should evolve to meet the aspirations and needs of Singaporeans. The clamour amongst many younger Singaporeans for a more relaxed stance on censorship, coupled with the more internationalist outlook of younger Singaporeans, could well auger the eventual demise of the Internet Code of Practice. Until that day arrives, it is important that the Internet Code of Practice, along with other laws in Singapore that seek to regulate the dissemination of information, be constantly tinkered with so as to ensure that they remain relevant and reflective of the needs of Singaporeans.