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Case Analysis on the Liability of Internet Content Provider for Contempt of Court

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ABSTRACT

The Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor [2021] 2 MLJ 652 set a precedent as the internet content provider was found guilty of contempt of court for publishing readers' postings containing contemptuous comments. Due to technological advancement, people can freely express their opinions through various online platforms, including social media, by linking everyone nationwide and globally. In Malaysia, the Federal Constitution guarantees freedom of expression where Malaysian netizens can comment on the administration of justice using various online platforms, including social media. However, freedom of expression is not an absolute right. This study discusses the issue of liability on the internet content provider in contempt of court over comments posted by third-party subscribers. This study implemented a qualitative method to analyse the issue of duty and liability of the host platform provider. The findings from this study can be used to examine the extent of the internet content provider's liability for the impugned comment by the third party. Therefore, this study proposed clear guidelines for internet content providers for contemptuous comments posted online by third-party subscribers.

Keywords: Internet content provider; internet intermediaries; freedom of expression; contemptuous comments, contempt of court

INTRODUCTION

It is the first time the Malaysian Court has considered the liability of an online news portal (Malaysiakini) as the internet content provider for third-party comments of contemptuous nature posted by the users. This case analysis provides insights into the online intermediary liability corresponding with the commission of contempt of court. It must be examined simultaneously against legal lacunae in the current law to preserve the users' online freedom of expression within the limit of reasonable courtesy (PP v The Straits Time Press Ltd).[1]

The Malaysiakini case placed a heavy responsibility on the content hosts in allowing the readers (third parties) to exercise their freedom of speech by commenting on the online portal. Relatively, it strikes a blow on the journalists' credibility when providing a digital democratic public sphere for the readers to interact and comment.[2] Alternatively, disabling the comments section is never an avenue to consider in this interconnected world, as it can hinder an individual's freedom of expression.

The impacts of Malaysiakini's decisions and recommendations are discussed comprehensively to highlight the contempt of court due to the liability of internet content providers (not the content's original author) for the readers' comments. This study analogised Malaysiakini's case as a good law to enable the effective incorporation of established principles in developing law for online contempt of court. The methodology applied herein was the doctrinal legal analysis focusing on an in-depth understanding of the described case, explaining the impacts from the lesson generalised, and observing any developing issue derived from the case findings.[3]

FACTS OF THE CASE

The case revolved around third-party comments posted on Mkini Dotcom Sdn Bhd (Malaysiakini)'s website following an article entitled "CJ orders all courts to be fully operational from July 1", published on June 9th, 2020. In this case, the Applicant (the Attorney General) applied for leave to commence contempt proceeding against Malaysiakini and its Editor-in-Chief. The impugned comments posted through the third-party online subscribers were as follows:

(a) Under the pseudonym of '*Ayah Punya kata*':-

'The High Courts are already acquitting criminals without any trial. The country has gone to the dogs';

(b) Under the pseudonym of '*GrayDeer0609*':-

'Kangaroo courts fully operational? Musa Aman 43 charges fully acquitted. Where is law and order in this country? Law of the Jungle? Better to defund the Judiciary!';

(c) Under the pseudonym of '*Legit*':-

'*This Judge is a shameless joker. The judges are out of control, and the judicial system is completely broken. The crooks are being let out one by one in an expeditious manner and will running wild looting the country back again. This Chief Judge is talking about opening of the courts. Covid 19 slumber kah!';*

(d) Under the pseudonym of '*Semua Boleh - Bodoh pun Boleh*':-

'*Hey Chief Justice Tengku Maimun Tuan Mat - Berapa JUTA sudah sapu - 46 kes corruption - satu kali Hapus!!! Tak Malu dan Tak Takut Allah Ke? Neraka Macam Mana? Tak Takut Jugak? Lagi – Bayar balik sedikit wang sapu – lepas jugak. APA JUSTICE ini??? Penipu Rakyat ke? Sama sama sapu wang Rakyat ke???;* and

(e) Under the pseudonym of *'Victim'*:-

'*The Judiciary in Bolihland is a laughing stock'.*

On the same day (June 9th, 2020), Malaysiakini published another article entitled "Musa Aman acquitted after prosecution applies to drop charges." Upon an *ex parte* motion, the court identified that the Attorney General made a *prima facie* case; hence, leave to commence contempt proceedings was granted. This case attracted considerable publicity because it greatly impacted the landscape of the law of contempt in connection with the liability of internet intermediaries. Based on the majority judgment delivered, Malaysiakini (1st Respondent) was found to be liable for contempt in facilitating the publication of impugned comments. However, the liability was not extended to the Editor-in-Chief (2nd Respondent) as there was no evidence to demonstrate that the 2nd Respondent held sole control to edit or remove any third-party comment on the news portal.

CONCEPT OF INTERNET INTERMEDIARY

Companies that facilitate internet use, such as online media platforms, are called intermediaries. Such platforms aid transactions and interactions between third parties within the virtual space through hosting, transmitting, routing, granting access to and indexing content originated by the third parties in two-fold.[4] The Malaysian Communications and Multimedia Act 1998 and the Content Code classified the categories of internet intermediaries into access service providers, content hosting providers, online content developers, online content aggregators, and link providers ('these platforms'), embracing different roles and services provided by them.[5] Nevertheless, the issue has always been the liability of such internet intermediaries for content posted online via their platforms by third parties. The EC Directive 2000/31 *on Certain Legal Aspects of Information Society Services, In Particular Electronic Commerce, In The Internal Market (Directive On Electronic Commerce)* provides exemptions for service providers who are mere 'conduits' and in no way involved in the information transmitted. However, this exemption applies only if the service providers did not modify the information transmitted subject to technical manipulations (if any) during the transmission.[6]

The presence of extant law is key to this issue with Malaysiakini. Malaysiakini unwittingly hosted the contents its subscribers authored, leading to contempt charges. Therefore, the Court granted no immunity or exemption to the host service provider (internet intermediary) even the provider can prove that it was unaware of any unlawful information and has taken expeditious measures to remove it upon obtaining actual knowledge.[7]

MALAYSIAKINI AS A PUBLISHER FOR ITS SUBSCRIBERS' COMMENTS

The presumption of section 114A of the Evidence Act 1950 has been invoked in Malaysiakini's case to presume that a publisher facilitates the publication of the impugned comments by providing an online platform for its subscribers to post the comments. The duty is on the publisher to rebut such presumption. The application of subsection (1) of section 114A alleviates the burden of proof in implicating Malaysiakini (administers and operates the online forum section), to be held liable for the content regardless of its knowledge.[8] Section 114A allows the prosecution or claimant to prove the individual's identity as a content publisher by establishing the presumption of guilt unless proven otherwise.[9] However, anyone can post content online with a click of a button, placing the facilitator at risk for liability under the presumption of section 114A. Hence, the online media proprietor's liability needs to be re-evaluated with a clear metaphor of "publisher" to provide a *prima facie* clarification based on what amounts to a "publisher" and who is responsible

for the publication of contemptuous online content. The mere application of the presumption does not clarify the operation of the law of contempt. It is necessary to establish the act of publication related to modern media under the category of contempt by publication.[10] The act of publication should include elements of the offence to be accepted as a guideline for future prosecution.

KNOWLEDGE: ACTUAL OR CONSTRUCTIVE

The court acknowledged that there is no clear jurisprudence to determine the liability of Malaysiakini as an online platform provider. In this case, Malaysiakini put forward the argument of knowledge to rebut the presumption of liability. They contended that they did not know the content published as they were not authors of the impugned comments. However, the court differed with the majority upholding that constructive knowledge is sufficient as it is inferred from the facts and circumstances of the case.[11] In contrast, the minority judgement maintained the opposite, highlighting that constructive knowledge is insufficient to establish liability of Malaysiakini under the heading of "scandalising the court" contempt. The minority stated that the actual knowledge is necessary and that the intention to publish is the key in establishing contempt of scandalising the court.[12]

The common law of contempt by publication can fall under scandalising the court (Arun Kasi case[13]) and sub judice contempt (Dato Sri Mohd Najib bin Hj Abd Razak v PP).[14] In the present case, the court identified it as a publication of comments that scandalised the Judiciary. Notwithstanding whether it is scandalising the court or sub judice contempt, it is best to adopt a consistent analogy in a finding for contempt liability. A contempt liability can be imposed only when there is an "intentional" publication of any matter that undermines public confidence in the administration of justice outside the limits of reasonable courtesy and good faith (Shadrake Alan v Attorney-General)[15] or prejudges a pending proceeding to result in a real risk of prejudice to the course of justice.[16] The intention is a mental element that requires actual knowledge of the publication's content. Therefore, an online intermediary can be held liable as a principal for the publication of the material when it (Delfi v Estonia[17]; Arun Kasi case):

1. Actively and intentionally authorised the publication of the material;
2. Exercised a substantial degree of direct editorial control over the material by modifying, moderating, removing, or blocking;
3. Exercised a degree of caution to monitor the content of information in some manner in the act, constituting a position to predict the nature of the material that can prompt negative reactions concerning a matter of public interest;
4. Exercised supervising and corrective measures immediately to ensure no material published that amounts to contempt of court either poses a real risk to undermine public confidence in the administration of justice or prejudges an issue in a pending court proceeding that interferes with the administration of justice;
5. Undertakes corrective measures, including pro-active monitoring activity, notice-takedown, and counter-notice policy.

The crucial test takes place once the essential elements mentioned above are fulfilled, where a real risk of undermining public confidence in the administration of justice is determined (S-G v Radio Avon Ltd and Anor).[18] It is also important that the intermediary balances the interests of the subscribers' freedom of expression, online intermediaries' freedom of information and conduct business, and the course of administration of justice.[19]

The failure of Malaysiakini in fulfilling its responsibility to safeguard as a hosting provider and as an online professional journalist by not controlling or preventing the impugned comments from being published is said to have fulfilled the intention element to interfere with the administration of justice.

EDITORIAL CONTROL

We agree with the majority's decision that Malaysiakini is liable for the impugned comments because Malaysiakini could exert substantial control over subscriber comments. Professional publishers should be able to seek legal advice on the risks involved in their business. However, Malaysiakini emphasised that their editorial team had taken all measures to safeguard themselves legally from the liability of publishing third-party comments in their Terms and Conditions. The subscribers have been

warned about the prohibition of offensive posting. Malaysiakini also used a filter program to block the use of foul words and a peer reporting system that enables the intermediary to reserve the right to remove or modify the comments posted upon receipt of user complaints. The minority judgement, in this case, is of the view that Malaysiakini's intention will only be established if it fails to implement and respond to the flag and takedown process under its absolute control (Section 95(2) Communications and Multimedia Act 1998 (CMA); Malaysian Communications and Multimedia Content Code – (Content Code)). However, Malaysiakini can be said to have the required intention for publishing the impugned comments when the team admitted that it did not 'monitor' such contemptuous content during its business.[20]

TAKEDOWN POLICY

The Minority Judgment reported that Malaysiakini did not know of the impugned comment as these comments were taken down within 12 minutes after being alerted by the police, which fell well within the purview of 'reasonable time'. The content code in Section 10.2 stated that once notified of a complaint, the Internet Content Hosting Provider (ICH) shall conduct the following steps:

(a) Within two working days of the notification, inform the user or subscriber to remove the Prohibited Content.
(b) Prescribe a period within which the user or subscriber is to remove the Prohibited Content, ranging from 1 to 24 hours from the time of notification.
(c) If the user or subscriber does not remove such prohibited Content within the prescribed period, the ICH shall have the right to remove such Content.

Nevertheless, Malaysiakini did not comply with the abovementioned procedure in this case. There was no mention of whether prior notice was given to the Malaysiakini subscribers before removing the impugned comments, as the comments were taken down immediately after being notified by the police within 12 minutes. Had monitoring been done, Malaysiakini would have been aware of the impugned comment before being alerted by the police, where they would have had the time to act according to the guidelines provided by the content code.

On the other hand, one of the criteria for assessing 'intention" refers to the implementation of a takedown policy by the publisher who possesses the power to control, remove, take down or block any unlawful content. The lack of detailed guidance on the takedown policy could rapidly spread contemptuous comments, undermining public confidence in the administration of justice.

Internet intermediaries play an important role as a moderator to avoid taking down subscribers' lawful content (which will thwart freedom of expression). However, they have to simultaneously supervise contemptuous content that may interfere with the administration of justice.[21] Hence, a clear and detailed takedown policy is important before liability is imposed on internet intermediaries or ICH. For instance, in their Code of Conduct on Countering Illegal Hate Speech Online, the European Commission suggested taking expeditious action to prevent the dissemination of hate speech upon receipt of a valid notification (European Commission, Code of Conduct on Countering Illegal Hate Speech Online).[22] Due to the severe impact brought by scandalising the court in an online environment, 'qualified valid notification' could include:

1. own detection through a filtering system; or,
2. when administering the monitoring care; or,
3. upon the receipt of a report from peer reporting; or,
4. when receiving a legal notification from a relevant government agency or Complaints Bureau.

In short, the publisher must play an active role in the publication process. Once notified, an automatic temporary takedown of the contemptuous content must be done without undue delay (Sabu Mathew George v Union of India).[23] This act could prevent the spreading of contemptuous content while simultaneously holding true to balancing the author's freedom of expression. However, the key question which attracted our deliberation here is the difficulty in precisely identifying contemptuous content. An inaccurate identification may cause erroneous removal of lawful content, challenging the subscribers' right to comment by wrongfully interpreting their comments.[24] Suppose the content is identified to be contemptuous. In that case, the internet intermediary/ICH must provide the right to be heard to the author of the alleged contemptuous content to respond and justify posting the content within a stipulated time frame. Unfortunately, the Content Code does not implement such right to be heard.

The Malaysian Copyright Amendment Act 2012, under section 43H, provides a mechanism for removing infringing electronic copyrighted works and a time limit for counter-notification to the hosting provider.[25] Before a permanent takedown is performed, the author should be given time to justify or amend the comment posted to ensure that the freedom of expression is not disillusioned. Contrarily, time is crucial to prevent the mass dissemination of contemptuous comments in contempt law. Therefore, to avoid jeopardising freedom of expression, a notice-wait-and-takedown as stated below is suggested. The suggested policy below can also be used to examine the existence of "intention" on the publisher's part.

1. To auto-block the contemptuous comment upon notification temporarily;
2. To issue a notice to the author of the impugned comment, within a time frame of 24 hours;
3. To consult with in-house legal experts after receiving the reply from the author;
4. To inform the author about the decision within three days of receiving his/her response.

The impugned comment shall be removed permanently if the hosting provider is dissatisfied with the author's justification or the author's failure to respond. Based on the proceedings, Malaysiakini failed to implement a successful takedown policy. Nevertheless, we point out the drawbacks of the available takedown procedure that requires a detailed guideline to ensure an efficient mechanism to balance the author's interests and administration of justice fairly. In brief, Malaysiakini should be held liable for failing to monitor and filter the content.

SPECIFIC MONITORING ACTIVITY

Malaysiakini contended that they are not required to monitor the subscribers' activities until complaints are received. They claimed that moderating comments before being uploaded is impossible due to the sheer volume of comments. The minority judgment found that it was untenable for Malaysiakini to provide round-the-clock supervision to prevent the impugned comments from appearing on their website. Contrarily, the Majority Judgment observed a need for the platform to monitor the comments and not sit to be alerted and proved unable to control or prevent the offensive comments from being published. The judgement imposes a proactive and mandatory monitoring obligation to the online news portal.

The Content Code declares to uphold the principle that the content contains no offensive and discriminatory material while preserving the balance of the right of the viewers, listeners, and users to access information under an environment which preserves the law and individual's fundamental rights as stated in the Federal Constitution within a democratic society. The very point is taken by quoting Michael Deturbide's saying, '*if you do not monitor you may not be taking reasonable care, but if you do monitor, you may have knowledge or perhaps should have knowledge'*.[26] Hence, the online platform should have exercised its specific monitoring obligation rather than general (L'Oréal v eBay C-324/09 L'Oréal).[27]

Content monitoring is always targeted as an impracticable course as it burdens the intermediary too heavily in reviewing each comment uploaded by the third party.[28] There is no provision to specify the special management obligation of the hosting provider. An online intermediary is best placed as a gatekeeper in the cyber world to the extent of moderating healthy content on its platform in line with accountability, transparency, and proportionality by not putting itself into the role of censor.[29]

Article 15/1, E-commerce Directive, provides that Member States 'may not' impose the service providers the general duty to conduct monitoring activity.[30] Service providers can opt to voluntarily monitor activities on its platform to preserve a civilised environment. In one of the landmark rulings, *Case C-18/18 Eva Glawishnig-Piesczek v Facebook Ireland Limited* ordered Facebook and similar websites to remove the illegal post worldwide instead of waiting for individual applications/complaints. The concern with the clarity between the distinction of duty of care and general supervision was raised in connection with this "global" order.[31] What should be considered here is to revamp a regime which ensures the service provider is neutral and diplomatic in safeguarding the subscriber's right to disseminate and receive information.[32] Relatively, an intermediary should act as a gatekeeper to monitor its internet service by removing alleged illegal content and protecting the platform from liability.[33]

It is evident from the current case that Malaysiakini is a professional and commercial online news portal managed by an editorial team with a total of 25 staff with, about 10 of them being editors and assistant editors. The editor-in-chief of

the editorial team was the second respondent in this case. We believe there is no merit in imposing a heavy burden on the service provider to monitor the information stored on its platform since Malaysiakini runs on a 'commercial basis' and obtains economic interest from posting comments. In the meantime, the platform allows its subscriber to freely express their ideas on the comments forum to attract more subscribers (identified or anonymous) (Delfi v Estonia, 64569/09, Grand Chamber).

In light of the evidence, we are not suggesting the intermediary act as a preliminary judge to decide whether the content is contemptuous. The recommendation stated under the takedown policy proposes that the hosting content provider temporarily auto-block the suspected unlawful speech and seek legal consultation after receiving the author's justification before permanently removing such comments.

In limiting liability, a proactive monitoring obligation on the part of the internet intermediary[34] and filtering software to monitor the general content is suggested. For instance, the Intermediaries and Digital Media Rules 2021 (India) mentioned due diligence requirements for internet intermediaries, including actively monitoring information content through technology-based and human resources.[35]

This study strongly emphasises the importance of corrective measures that must be performed by the internet intermediaries, which, in our view, failed to be implemented in the present case. The Majority Judgment noted that the measures taken by Malaysiakini were insufficient as an online news portal that could have foreseen the adverse reaction by exercising caution to monitor content for contempt (applying the principle in the Delfi case). Therefore, we agree that this law is relevant to hold an online intermediary liable for third-party comments when the website operator failed to monitor the activity on its platform by ensuring no offensive or prohibited content. The failure to monitor fits into the requirement of intent to cause the publication of those impugned comments.

CONCLUSION

The study discussed the contempt by publication against an online intermediary under a situation which carefully balanced the competing interests in freedom of speech of the subscribers or press or the internet intermediary, which is just as important as the integrity of the administration of justice. The focal point of liability was the intention to publish on the part of the internet intermediaries. To prevent such issues from recurring, a clear procedure to control and monitor online comments should be put in place for the intermediaries. Additionally, all internet intermediaries should implement and practice a clear monitoring and takedown policy to limit their liabilities. The issues that arise due to the Malaysiakini case and recommendations in this study certainly provide certainty in the law of contempt applied to the internet hosting content provider. In conclusion, the liability of a professional news portal stands independently from an individual subscriber, and both are held liable for obstructing the course of justice by publishing or allowing the publication of demeaning comments that affect the Judiciary's integrity.

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NOTES

1 [1949] 1 MLJ 8.

2 P. Weber, 'Discussions in the comments section: Factors influencing participation and interactivity in online newspapers' reader comments', (2014) 16 *New Media & Society*, p 941-957. doi: 10.1177/1461444813495165.

3 R. Klonoski, 'The case for case studies: Deriving theory from evidence', (2013) 9(2) *Journal of Business Case Studies*, p 261-266.

4 K. Perset, The Economic and Social Role of Internet Intermediaries, *OECD Digital*, 2010, https://www.oecd.org/digital/ieconomy/44949023.pdf [6 November 2021].

5 Ida Shafinaz bt Mohamed Kamil & Prof. Dr. Ida Madieha bt Abdul Ghani Azmi, 'Gatekeepers liability for internet intermediaries in Malaysia: Way forward', (2020) 21(4) *International Journal of Business, Economics and Law*, p 23-31.

6 EC Directive 2000/31. https://eur-lex. europa.eu/legal-content/EN/ALL/?uri=celex:32000L0031 [6 November 2021].

7 G. Fernandez & R.A. Pangalangan, 'Spaces and responsibilities: review of foreign laws and an analysis of philippine laws on intermediary liability', (2015) 89(4) *Philippine Law Journal*, p761-801.

8 M. Peters, (2012) 6 MLJ ciii, p 1-12.

9 C.L. Foong, Black day for internet users, 2012, http://foongchengleong.com/tag/evidence-act-1950/ [6 November 2021].

10 Law Commission Consultation Paper No 209. 2012. Contempt of Court. http://www.lawcom.gov.uk/app/uploads/2015/03/cp209_contempt_of_court.pdf [6 November 2021].

[11] PP v Kenneth Fook Mun Lee (No. 2) [2003] 3 MLJ 58

[12] PCP Construction Sdn Bhd v Leap Modulation Sdn Bhd; Asian International Arbitration Centre (Intervener) [2019] 3 MLRA 429 hereinafter referred as 'Arun Kasi case'.

[13] [2019] 3 MLRA 429.

[14] [2018] MLJU 1679.

[15] [2011] SGCA 26.

[16] S.Y. Siong, 'Evaluating the statutory test for sub judice contempt in Singapore or: How I learned to stop worrying and love the act', (2017) 35 *Singapore Law Review,* p 185-218.

[17] 64569/09, Grand Chamber; New South Wales Law Reform Commission, 2000.

[18] [1978] 1 NZLR 225.

[19] G.F. Frosio, 'From horizontal to vertical: An intermediary liability earthquake in Europe', (2017) 12 *Oxford Journal of Intellectual Property Law and Practice,* p 565. https://dx.doi.org/10.2139/ssrn.2956859

[20] C. Lumby, L. Green & J. Hartley, Untangling the net: the scope of content caught by mandatory internet filtering, Edith Cowan University,Perth, Australia, 2009. This Report is posted at Research Online. https://ro.ecu.edu.au/ecuworks/7120 [6 November 2021].

[21] C. Angelopoulos & S. Smet, 'Notice-and-fair-balance: How to reach a compromise between fundamental rights in European intermediary liability', (2016) 8(2) *Journal of Media Law*, p 266-301.

[22] European Commission, Code of Conduct on Countering Illegal Hate Speech Online. http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf [6 November 2021].

[23] [2017] 2 SCC 516(1).

[24] K.D. Kumayama, 'A right to pseudonymity, (2009) 51 *Arizona Law Review,* p 427.

[25] Suzi Fadhilah bt Ismail, Ida Madieha Abdhul Ghani Azmi & Mahyuddin Daud, 'Transplanting the United States' Style of Safe harbour Provisions on internet service providers via multilateral agreements: Can one size fit all?' (2018) 26(2) *IIUMLJ,* p 369-400.

[26] M. Deturbide, 'Liability of ISPs for defamation in the US and Britain: Same competing interests, different responses', (2020) 3 *J Info L & Tech,* p 73.

[27] [2011] E. T. M. R. 52.

[28] T. Longke, 'On an internet service provider's content management obligation and criminal liability', (2019) 1 *Journal of Eastern-European Criminal Law*, p 145-158.

[29] E.B. Laidlaw & H. Young, 'Internet intermediary liability in defamation', (2018) 56 *Osgoode Hall Law Journal,* p 112-161.

[30] K.K. Radoja, 'Freedom of expression on the internet – Case 18/18 Eva Glawisching-Pieczek v Facebook Ireland Limited', (2020) 15 *Balkan Social Science Review,* p 7-25.

[31] P. Valcke, A. Kuczerawy P. J. Ombelet, Did the Romans get it right? What Delfi, Google, eBay, and UPC TeleKabel Wien have in common, In L. Floridi and M. Taddeo (eds.), *The Responsibilities of Online Service Providers,* Springer, 2016.

[32] K.K. Radoja, 'Freedom of expresson on the internet – Case 18/18 Eva Glawisching-Pieczek v Facebook Ireland Limited', p 7-25.

[33] M. Cooray, 'The law relating to ISPS Liability in Malaysia and policy strategies that service provider could adopt to avoid third party liability', (2015) 2 *Malayan Law Journal,* p 1-8.

[34] V. Jurkevicius & J. Sidalauskeine. 'Civil liability of companies for anonymous comments posted on their sites: a criterion of potential consequences of liability', (2021) 19(1)*Business, Management and Economic Engineering,* p 1-11.

[35] Khaitan & Co. 2021. India: Intermediaries and Digital Media Rules 2021. Mondaq. Intermediaries And Digital Media Rules 2021 - Media, Telecoms, IT, Entertainment - India (mondaq. com) https://www. mondaq. com/india/social-media/1044060/intermediaries-and-digital-media-rules-2021 [6 November 2021].

REFERENCES

1-8EC Directive 2000/31. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32000L0031 [6 November 2021].

Angelopoulos, C. & Smet, S. 2016. Notice-and-fair-balance: How to reach a compromise between fundamental rights in European intermediary liability. *Journal of Media Law* 8(2): 266-301.

Cooray, M. 2015. The law relating to ISPS Liability in Malaysia and policy strategies that service provider could adopt to avoid third party liability. *Malayan Law Journal* 2.

Deturbide, M. 2000. Liability of ISPs for defamation in the US and Britain: Same competing interests, different responses. *J Info L & Tech* 3: 73.

European Commission. Code of Conduct on Countering Illegal Hate Speech Online. http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en. pdf [6 November 2021].

Fernandez, G. & Pangalangan, R.A. 2015. Spaces and responsibilities: review of foreign laws and an analysis of Philippine laws on intermediary liability. *Philippine Law Journal* 89(4): 761-801.

Foong, C.L. 2012. Black day for internet users. http://foongchengleong. com/tag/evidence-act-1950/ [6 November 2021].

Frosio, G.F. 2017. From horizontal to vertical: An intermediary liability earthquake in Europe. *Oxford Journal of Intellectual Property Law and Practice* 12: 565. https://dx.doi.org/10.2139/ssrn.2956859

Ida Shafinaz bt Mohamed Kamil & Ida Madieha bt Abdul Ghani Azmi. 2020. Gatekeepers liability for internet intermediaries in Malaysia: Way forward. *International Journal of Business, Economics and Law* 21(4): 23-31.

Jurkevicius, V. & Sidalauskeine, J. 2021. Civil liability of companies for anonymous comments posted on their sites: A criterion of potential consequences of liability. *Business, Management and Economic Engineering* 19(1): 1-11.

Khaitan & Co. 2021. India: Intermediaries and Digital Media Rules 2021. *Mondaq*. https://www.mondaq.com/india/social-media/1044060/intermediaries-and-digital-media-rules-2021 [6 November 2021].

Klonoski, R. 2013. The case for case studies: Deriving theory from evidence. *Journal of Business Case Studies* 9(2): 261-266.

Kumayama, K.D. 2009. A right to pseudonymity. *Arizona Law Review* 51: 427.

Laidlaw, E.B. & Young, H. 2018. Internet intermediary liability in defamation. *Osgoode Hall Law Journal* 56(1):112-161.

Law Commission Consultation Paper No 209. 2012. Contempt of Court. http://www.lawcom.gov.uk/app/uploads/2015/03/cp209_contempt_of_court.pdf [6November 2021].

Longke, T. 2019. On an internet service provider's content management obligation and criminal liability. *Journal of Eastern-European Criminal Law* 1: 145-158.

Lumby, C., Green, L. & Hartley, J. 2009. Untangling the net: the scope of content caught by mandatory internet filtering. Perth, Australia: Edith Cowan University. This Report is posted at Research Online. https://ro.ecu.edu.au/ecuworks/7120 [6 November 2021].

Perset, K. 2010. The economic and social role of internet intermediaries. *OECD Digital*. https://www.oecd.org/digital/ieconomy/44949023.pdf [6 November 2021].

Peters, M. 2012. *Malayan Law Journal* 6 MLJ ciii: 1-12.

Radoja, K.K. 2020. Freedom of expression on the internet – Case 18/18 Eva Glawischnig-Pieczek v Facebook Ireland Limited. *Balkan Social Science Review* 15:7-25.

Siong, S.Y. 2017. Evaluating the statutory test for sub judice contempt in Singapore. *Singapore Law Review* 35: 185-218.

Suzi Fadhilah bt Ismail, Ida Madieha Abdul Ghani Azmi & Mahyuddin Daud. 2018. Transplanting the United States' style of safe harbour provisions on internet service providers via multilateral agreements: Can one size fit all? *IIUMLJ* 26(2): 369-400.

Valcke, P., Kuczerawy, A. & Ombelet, P.J. 2016. Did the Romans get it right? What Delfi, Google, eBay, and UPC TeleKabel Wien have in common. In *The Responsibilities of Online Service Providers*, edited by Floridi, L. & Taddeo, M. Springer.

Weber, P. 2014. Discussions in the comments section: Factors influencing participation and interactivity in online newspapers' reader comments. *New Media & Society* 16: 941-957. doi: 10.1177/1461444813495165.

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