



UNIVERSITI TEKNOLOGI MARA

**LAW 533
HONOURS PROJECT PAPER**

BLOG AND FREEDOM OF SPEECH IN MALAYSIA

**Submitted in Partial of the Requirements
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Appropriate credit has been given where reference has made to the work of others.**

ABSTRACT

Although there has been studies or researches done related to this topic or issue but those research does not cover the relevance and applicability of **Section 3, 233, 211 of Communication and Multimedia Act 1998 [Act 588]** to control the bloggers in express their comment online the legal reason why this act should come into force. This purpose of this research is to analyst as to the interpretation of the freedom of speech under **Article 10(1)(a)**, the restrictions under **Article 10 (2) of Federal Constitution** and the inconsistency of **Section 3, 233, 211 of Communication and Multimedia Act 1998 [Act 588]** with Federal Constitution. Under **Article 10 Federal Constitution**, every citizen has the right to express themselves by way of verbal or written on any issues arise. This study will also will look whether or not **Section 3, 233, 211 of Communication and Multimedia Act 1998 [Act 588]** violating blogger's freedom of speech in our country because **Section 233 of CMA** have prevented any person who using network facilities and network service having knowledge to creates solicits and initiates any obscene comment, indecent, false, menacing or offensive in character with intention to annoy, abuse, threaten or harass another person commits an offence and **Section 211 of CMA** imposed to the blogger to control their blog and failure to comply with these two sections will result to an offences and punishable under **Section 233(3) of CMA** to a fine not exceeding RM50,000 and 2 years imprisonment or both. We will also make a comparison between freedom of speech and its application on the internet in Malaysia as well as in United States. Moreover, there have been many cases where the accused had been charge in the court of law and their blogs had been blocked even before the court rule judgment. These researches also will do analyst the use and limitation of the exclusion clause or disclaimer as a defense in blogs on the internet for future benefit.

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1.0 INTRODUCTION

1.1 Introduction

The Malaysian law is based on the Federal Constitution, which is the supreme law of the land.¹ In Malaysia, the fundamental rights of a human are embodied from article 5 to 13 of the Federal Constitution. Among the rights stipulated is entrenched under Article 10 that provides freedom of speech to its citizen by way of verbal or written.² Further, the citizens does not have absolute right on freedom of speech because of there are restrictions to limit the free speech.³ However, article 10 does not expressly mentioned that the freedom of Speech and its restriction can be applied in blog on the internet. In 1998, the Government has created two legislations and had been gazette as Communication and Multimedia Act 1998 [Act 588] (*Hereinafter referred as to 'CMA 1998'*) and Malaysian Communication and Multimedia Commission Act 1998 (*Hereinafter referred as to 'MCMC Act'*). MCMC Act created a new regulatory body, the Malaysian Communications and Multimedia Commission (*hereinafter referred as to 'MCMC'*). The function of MCMC is to carry out the duty in regulate licensing framework for a convergent communications and multimedia industry and monitoring the Internet including the blogger's blogs.⁴

The CMA 1998 indirectly had prevented the bloggers to express out their views in their blogs and failure to comply under CMA 1998 will result to an offences and punishable under section 233(3) of CMA to a fine not exceeding RM50,000 and 2 years imprisonment or both.⁵ One case scenario is where, MCMC had took an 'administrative' initiative to block

¹ Federal Constitution at Article 4.

² Federal Constitution at Article 10(1)(a).

³ Federal Constitution at Article 10(2).

⁴ "Overview and History" in www.skmm.gov.my, accessed on 5th April 2012

⁵ Section 233(1)(a) and Section 211 Communication and Multimedia Act 1998 [Act 588]