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Freedom House

Freedom on the Net 2018 - Malaysia

Key Developments:

June 1, 2017 - May 31, 2018

- In April 2018, the BN government rushed through the Fake News Act of 2018 to allegedly curb the spread of fake news. The new government pledged to abolish the fake news law, but it has yet to do so (see Legal Environment).
- Politicians and political websites were subjected to targeted attacks on election day in May 2018 (see Technical Attacks).
- Blocks of news websites and political blogs that had been imposed in 2015 and 2016 for covering political corruption allegations were lifted toward the end of the review period (see Blocking and Filtering).
- Internet users continued to be arrested and prosecuted based on their online activity, including at least one new arrest and conviction under the Fake News Act of 2018 (see Prosecutions and Detentions for Online Activities).

Introduction:

Internet freedom declined slightly in 2018 in Malaysia because of the new Fake News Act of 2018 which was then immediately used to prosecute an internet user. Meanwhile, technical attacks targeted politicians and websites of political parties during the general elections in May 2018. In a positive development, less violence and intimidation were reported against online journalists and internet users.

There are high hopes that restrictions to the internet will lessen in Malaysia following a change in government after the May 2018 elections, the tail end of this review period. The Pakatan Harapan pact that defeated the Barisan Nasional (BN) coalition, which had led Malaysia for 66 years, has promised a slew of reforms, including ensuring freedom of expression and cheaper and faster internet connection. As in past elections, Malaysians again turned to the internet and social media to fuel political mobilization and activism.

Prior to the election, officials of the BN government, who were embattled by allegations of government corruption, continued to muzzle free expression by arresting and prosecuting critics and manipulating online content. In April 2018, the BN coalition rushed through a fake news law, which many critics slammed as being a tool of the government to curtail free speech. The new incoming Pakatan government has pledged to revoke the fake news law, although its efforts to do so have failed thus far. The new government has also indicated that it will review the controversial agency which oversees online communications, the Malaysian Communications and Multimedia Commission (MCMC).

In a promising development following the elections, websites that were previously blocked became accessible, including the popular Sarawak Report and blog publishing platform Medium. These sites were originally banned for publishing corruption allegations linked to former Prime Minister Najib Razak.

Obstacles to Access:

Internet access continued to be considered excellent for the region. Efforts were under way to bridge the digital divide between rural and urban areas, including government policies that promote better access to high-speed internet connections. A relatively open market allows for competition among providers, resulting in attractive pricing though not always high-quality service.

Availability and Ease of Access

Internet penetration and average connection speeds continued to increase during the coverage period. Government statistics released in March 2018 showed that Malaysia’s internet penetration rate had risen to 85.7 percent in 2017, from 70 percent in 2015.1 (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote1sym>)

The figures also showed that households across Malaysia with computer and mobile-phone access rose to 74.1 percent and 98.1 percent, respectively, compared with 67.6 percent and 97.9 percent in 2015.2 (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote2sym>) At the same time, the share of individuals aged 15 years and above who used the internet rose by nine percentage points to 80.1 percent in 2017, from 71.1 percent in 2015. The percentage of individuals using computers increased 1.1 percentage points to 69.8 percent, compared with 68.7 percent in 2015, while smartphone usage for internet access increased to 97.7 percent, compared with 97.5 percent in 2015.

Government statistics continued to show that the highest internet penetration rates were found in the heavily developed Klang Valley area, which comprises the capital city Kuala Lumpur (99.9 percent) and the state of Selangor (99.7 percent). Free Wi-Fi connections are available in many urban spaces, including malls, restaurants, hotels, and tourist destinations. Penetration rates remained low in the underdeveloped, less populated East Malaysian states of Sabah (43.3 percent) and Sarawak (51.8 percent), where most residents belong to indigenous groups.3 (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote3sym>) Cybercafés play an important role in providing access outside cities.

Government figures reveal a slight gender imbalance in access rates, with men representing 59.4 percent of both internet and mobile users. The age group that accounted for the biggest share of users was that aged 20 to 24 (22 percent). However, the average age of internet users (32.4 years)

and of nonusers (50.7 years) showed an incremental increase over the 2014 averages, indicating that older age groups make up a growing proportion of the online community.⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote4sym>)

The most affordable broadband service is offered by the state telecommunications company Telekom Malaysia through its Unifi product for RM120 (US\$30) per month.⁵ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote5sym>) The average monthly income as of 2016 was US\$880.6 (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote6sym>)

The average connection speed is still comparatively slow, and many users complain of inefficient service.⁷ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote7sym>) Malaysia ranked 74th in the world in 2016 when it came to internet speeds, having fallen one place since 2015. In the Asia-Pacific region, Malaysia was 9th among 15 countries.⁸ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote8sym>) As for 4G mobile technology, it is available 74.88 percent of the time to Malaysians but it still lacks in speed, according to a report by OpenSignal, a company that specializes in wireless coverage mapping. The report said the 4G speed in Malaysia was only 14.83 Mbps, whereas Singapore, which has 84.43 percent availability, offers a 4G speed of 44.31 Mbps.⁹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote9sym>)

In the national budget for 2017, then Prime Minister Najib Razak announced that internet service providers (ISPs) would increase fixed-line broadband internet speeds without raising prices. The MCMC was slated to invest heavily in improving broadband coverage and quality, aiming to achieve connection speeds of 20 Mbps throughout the country. The government also planned to launch an initiative to increase internet speeds at public universities to 100 Gbps.¹⁰ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote10sym>) Communications and Multimedia Minister Gobind Singh Deo, who took office as part of the new government in May 2018, has said he will work toward achieving broadband connections that are "double the speed, half the price" for the people.¹¹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote11sym>)

Restrictions on Connectivity

There were no reported cases of government-imposed restrictions on access to the internet during this coverage period.¹² (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote12sym>) However, a partly state-owned company continues to dominate the network infrastructure.

In 2017, the government said it had issued 218 licenses to network facilities providers (up from 181 in 2016).¹³ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote13sym>) But Telekom Malaysia, the largest telecommunications company, retains a monopoly over the fixed-line network and owns the country's last-mile connections.¹⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote14sym>) Other providers must lease infrastructure from the company on its own terms, resulting in higher prices.¹⁵ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote15sym>) The government retains a 29 percent stake in Telekom Malaysia, which was formerly state owned.¹⁶ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote16sym>)

The nonprofit Malaysia Internet Exchange allows service providers to exchange local traffic more efficiently.¹⁷ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote17sym>) Malaysia has several connections to the international internet, making the network more resilient.¹⁸ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote18sym>)

ICT Market

The government said it had issued 187 network service provider licenses in 2017, up from 170 in 2016,¹⁹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote19sym>) but the Telekom Malaysia subsidiary TMNet enjoys a virtual monopoly on the broadband market.²⁰ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote20sym>)

The largest mobile provider, Maxis Communications, was founded by Ananda Krishnan, who also owns Malaysia's biggest satellite broadcaster and enjoys close ties to Mahathir Mohamad, the prime minister from 1981 to 2003 who returned to office after the May 2018 elections.²¹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote21sym>) Newer mobile phone providers like YTL Communications and Umobile are ostensibly unrelated to the government, but observers believe they benefit from political connections.

Fiber-optic home broadband service is provided by Astro IPTV. Other providers of broadband and mobile internet service include Celcom, DiGi, Time Internet, Tune Talk, and Yes, a wireless 4G provider.²² (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote22sym>)

Some local authorities have introduced restrictions on cybercafés to curb illegal online activities, particularly gambling.²³ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote23sym>) In 2017, officials said cybercafés in federal territories could not operate above the ground floor or behind tinted windows.²⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote24sym>) Café operators in some areas have separately complained of high license fees.²⁵ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote25sym>)

Regulatory Bodies

The national regulator, the MCMC, is government run. Despite its multistakeholder advisory board, it has a poor record of upholding internet freedom.

The Ministry of Communications and Multimedia oversees the MCMC. The 1998 Communications and Multimedia Act (CMA) gives the ministry a range of powers, including the authority to license the ownership and operation of network facilities.

The CMA directs the ministry to appoint the MCMC chairman and three government commissioners, plus additional commissioners representing nongovernmental entities.²⁶ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote26sym>) In 2017, there were six commissioners from the private sector. The process for appointing members of the MCMC advisory board is more transparent and participatory, involving consultations with diverse stakeholders, and civil society members are included on the board. Nevertheless, the MCMC has taken steps to curtail online speech (see Blocking and Filtering).

In May 2018, activists called on the new government to review the ambit of MCMC’s powers and to investigate whether it had abused its position under the previous government.²⁷ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote27sym>)

Limits on Content:

The BN government led by Najib Razak, who faced a high-profile corruption scandal, had blocked popular news sites and critical blogs in the last review period. However, these bans were lifted by the new government shortly after it came to power in May 2018. The new government also pledged to revoke a restrictive “fake news” law passed by the outgoing government just before the elections, but has yet to do so.

Blocking and Filtering

MCMC blocks on news websites and political blogs that had been imposed in 2015 and 2016 over coverage of political corruption allegations were lifted toward the end of this review period.

At least three international websites had been blocked due to corruption reporting that implicated then prime minister Najib. In July 2015, the MCMC ordered service providers to block access to the UK-based whistle-blower site *Sarawak Report* over articles on the misallocation of resources from the 1Malaysia Development Berhad (1MDB) state investment fund. The government claimed that the articles were detrimental to national security.²⁸ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote28sym>) The blog-publishing platform Medium was blocked in January 2016, after it refused to take down *Sarawak Report* articles.²⁹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote29sym>) The Hong Kong-based commentary site *Asia Sentinel* was also blocked in January 2016 for “violating national laws” after it published an article about Najib.³⁰ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote30sym>)

Local content was targeted for similar reasons. Two local news portals, *Malaysia Chronicle* and *The Malaysian Insider*, were blocked in October 2015 and February 2016, respectively, for publishing articles about the 1MDB scandal that were deemed to be critical of the government and the prime minister.³¹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote31sym>) Officials described the content as “obscene, indecent, false, menacing, or offensive” and a threat to national security.³² (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote32sym>) The government also blocked a handful of prominent blogs that were critical of the government, such as *Din Turtle*, which publishes sociopolitical commentary, and *Syed Outsyed The Box*, a blog that had reposted content from *Sarawak Report*.³³ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote33sym>)

These bans were lifted in May 2018 under the instructions of the new government.³⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote34sym>) *The Malaysian Insider* website made a comeback in 2017 under a new name, *The Malaysian Insight*.

Prior to 2015, there were limited reports of blocked content apart from websites that violated national laws governing pornography,³⁵ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote35sym>) though many government-linked companies and public universities restricted access to the *Malaysiakini* news website and others perceived as politically sensitive. A provision of the CMA states that none of its wording “shall be construed as permitting

the censorship of the internet." The Multimedia Super Corridor, an information technology development project, includes a 10-point Bill of Guarantees to member ICT businesses that promises freedom from censorship.³⁶ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote36sym>)

Transparency about blocking is limited. Blocks are implemented on the authority of the MCMC, which reports to the government (see Regulatory Bodies). No list of affected sites is available. Site owners can appeal a block directly to the MCMC, though there is no guarantee that they will receive a reply. Combative political reporting online may have caused the government or its supporters to try to censor a handful of news websites in the lead-up to 2013 elections. The sites were simultaneously targeted by hackers, and the cause of the service disruptions remained unclear.³⁷ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote37sym>) At least two outlets filed a complaint with the MCMC, which never responded.

Figures illustrating the number of sites blocked for breaking local laws are periodically reported in response to questions in Parliament, but without further detail. The MCMC said that 1,375 websites had been blocked in 2016 and 2017 for "false content."³⁸ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote38sym>) A campaign against "false news" was launched in 2017 (see Media, Diversity, and Content Manipulation). In March of that year, the government said it had blocked 10,962 websites found to be involved in online fraud between 2008 and January 2017.³⁹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote39sym>)

On May 9, 2018, the day of the general elections, politicians from both the incumbent BN coalition and the opposition Pakatan Harapan coalition reported being hacked (see Technical Attacks). There was a brief disruption that affected *Malaysiakini* website on the night of the elections; the site was accessible again several hours later, as were the party-linked websites that had apparently gone down on election day.

Content Removal

The MCMC periodically instructs websites to remove content, including some that is perceived as critical of the government.⁴⁰ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote40sym>) Blog owners and Facebook users have been told to remove content touching on sensitive issues involving race, religion, and royalty. No such instructions were made public in the review period.

Removal requests are generally nontransparent and lack judicial oversight or avenues for appeal. Medium was blocked in 2016 after refusing a government request to remove content (see Blocking and Filtering), but this order was revoked in May 2018, again without any public disclosure. Users simply discovered that previously banned sites were accessible.

Companies risk liability for some content posted by users, though it is not clear whether this leads them to remove more content than necessary. In 2012, Parliament passed an amendment to the 1950 Evidence Act that holds intermediaries liable for seditious content posted anonymously on their networks or websites.⁴¹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote41sym>) This would include hosts of online forums, news outlets, and blogging services, as well as businesses providing Wi-Fi services.⁴² (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote42sym>) The amendment holds individuals liable if their name is attributed to the content or if the computer it was sent from belongs to them, whether or not they were the author.⁴³

(<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote43sym>) The change was pushed through hurriedly and garnered significant public backlash after its passage.⁴⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote44sym>)

Media, Diversity, and Content Manipulation

At the end of the coverage period it was too early to say whether the new government would keep its pledges to improve transparency and media freedom or, alternatively, maintain the draconian policies of the previous government. Until the elections in May, the climate for digital media outlets remained challenging. Some blogs and news portals were still inaccessible after being blocked during the last review period (see Blocking and Filtering). Defamation suits filed by politicians against online journalists were pending, and outlets were subjected to raids (see Prosecutions and Detentions for Online Activities).

Digital media represent an increasingly serious challenge to traditional media, which are restricted by the state.⁴⁵ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote45sym>) More established sites such as *Malaysiakini* and *Malay Mail Online* have been joined by smaller platforms that contribute to the diversity of information.⁴⁶ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote46sym>) Several digital news platforms are among the nation's most popular websites.⁴⁷ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote47sym>)

Online news outlets have withstood attempts to restrict them in the past. In 2013, a judge ordered the Home Ministry to grant *Malaysiakini* the right to reapply for a print license.⁴⁸ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote48sym>) The ministry had repeatedly refused to grant the license and challenged a 2012 appeals court ruling that characterized *Malaysiakini's* right to publish a newspaper as fundamental.⁴⁹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote49sym>) Cyberattacks against news portals have declined since 2013, when many reported content disruptions or possible censorship (see Blocking and Filtering). Some online journalists have been subject to informal, inconsistent bans from select government press conferences.⁵⁰ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote50sym>)

Yet many platforms struggle to stay economically viable, and government restrictions contribute to difficult market conditions. A handful of news websites are fighting defamation charges from political leaders and face significant financial penalties (see Prosecutions and Detentions for Online Activity). In 2016, the eight-year-old outlet *The Malaysian Insider* was shut down shortly after it was blocked, though it cited commercial reasons for its closure.⁵¹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote51sym>) The outlet reopened under the name *The Malaysian Insight* in 2017, though it closed again for about two months in early 2018 before resuming operations in May.

International blog-hosting and social media services were freely available, with the exception of Medium, which was blocked between January 2016 and May 2018 (see Blocking and Filtering). During the review period, 21.9 million internet users were reported to be active on social media.⁵² (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote52sym>) Expanded internet access has led to the emergence of a vibrant blogosphere. English and Malay are the dominant languages, and many civil society groups, including those representing ethnic minorities, have a dynamic online presence. Websites in Chinese and Tamil are also increasing in number and influence.

Prime Minister Mahathir Mohamad, though a new social media user, has millions of followers.⁵³ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote53sym>) Many leaders of the new governing coalition, including ministers, are more tech savvy than their predecessors from the BN, though former prime minister Najib also had his own blog and several million followers on Facebook and Twitter.⁵⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote54sym>) The police force and other government agencies continue to provide updates on social media and occasionally respond to accusations of abuse from members of the public.⁵⁵ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote55sym>)

Both government and opposition figures are known to pay online commentators, known as “cybertroopers,” to generate favorable content and denigrate their opponents.⁵⁶ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote56sym>) The battle between opposing cybertroopers continued in 2017. Najib’s Facebook page was flooded with comments urging him to step down as prime minister, and users aligned with his government responded with messages of support.⁵⁷ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote57sym>)

Partisan manipulation increased on social media ahead of the general elections. In January 2017, the leading party in Najib’s ruling coalition, the United Malays National Organisation (UMNO), urged all its members to master the use of the social media to win the war of perception.⁵⁸ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote58sym>) In March of that year, the party called on local divisions to activate newly formed information technology bureaus to “counter the slander” on social media.⁵⁹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote59sym>)

The BN government took steps to combat what it characterized as “false news” in 2017. The SEBENARNYA portal, launched by the Communications and Multimedia Ministry in March of that year, encouraged social media users to verify the content of all news reports shared on popular platforms with the slogan, “not sure, don’t share.”⁶⁰ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote60sym>) Officials said the portal was nonpartisan.⁶¹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote61sym>) However, Najib accused “the government’s opponents” of spreading “false propaganda,” highlighting how easily a government campaign against inaccurate content can become politicized.⁶² (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote62sym>)

Issues considered potentially sensitive online include Islam’s official status, race, royalty, and the special rights enjoyed by Bumiputera—the term for ethnic Malays and other indigenous people, as opposed to the ethnic Chinese and Indian minorities. Discussing these topics can lead to prosecution, and some internet users exercise self-censorship.

Digital Activism

Digital tools have been used effectively for political mobilization and have helped expose and undercut the government’s control over traditional media.

In the run-up to the polls in May 2018, netizens took to social media to offer financial aid as well as transportation assistance for voters who needed to return to their home villages to cast ballots.⁶³ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote63sym>) Hashtags such as #CarPoolGE14 and #ReturnHomeToVote were trending in the weeks before the elections.⁶⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote64sym>)

On election night, Malaysians relied heavily on social media and smartphone applications such as WhatsApp to get a clearer picture of the outcome. Tweets and Facebook postings from opposition leaders were continuously monitored as the Elections Commission delayed releasing official results. Even in the aftermath of the elections, social media users were on high alert to prevent BN leaders, including Najib and his wife, Rosmah Mansor, from fleeing the country to avoid criminal prosecutions.⁶⁵ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote65sym>)

Digital activists periodically campaign to defend online speech. In February 2016, after police used an official Twitter account to warn a graphic artist who uploaded an image of Najib as a clown, internet users shared similar images under a hashtag meaning "we are all seditious."⁶⁶ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote66sym>) The artist was subsequently prosecuted and sentenced to a month in jail and a fine of RM30,000 (US\$7,500) in February 2018 (see Prosecutions and Detentions for Online Activities).

Violations of User Rights:

For most of the review period, the BN government continued to press charges against social media users, civil society activists, and politicians for their online remarks. The new government signaled that it would buck this trend. Ousted prime minister Najib withdrew a series of defamation suits against his critics after leaving office, while the first person was convicted under a new "fake news" law.

Legal Environment

Malaysia's constitution provides citizens with "the right to freedom of speech and expression" but allows for limitations on that right. While some progovernment court decisions have disappointed freedom of expression advocates,⁶⁷ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote67sym>) other rulings suggest more judicial independence. The government exercises tight control over online as well as print and broadcast media through laws like the Official Secrets Act and the Sedition Act, which dates to 1948. Violations can be punished with fines and several years in prison.

Amendments in April 2015 widened the scope of the Sedition Act, allowing the government to block electronic content that is considered seditious.⁶⁸ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote68sym>) The maximum penalty in general sedition cases is now seven years in prison, up from three years before the amendments. A new provision also allows for up to 20 years in prison for seditious activities that result in physical harm or destruction of property.⁶⁹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote69sym>) In October 2015, the Malaysian Federal Court rejected a constitutional challenge to the Sedition Act.⁷⁰ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote70sym>)

In the months before the general elections in May 2018, the BN government rushed through the Fake News Act of 2018, which it said was needed to curb the spread of fake news, especially through social media.⁷¹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote71sym>) In pushing for the law, the government said the majority of Malaysians get fake or unverified news via WhatsApp, followed by Facebook, blogs, and other sources.⁷² (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote72sym>)

The sweeping law, which was debated and passed within a week, covers news, information, data, reports, images, or recordings in any form that are wholly or partly false. It is apparently an offense to possess, produce, offer, or share fake news content.⁷³ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote73sym>)

The law is applicable to non-Malaysians and to those outside the country, and offenders can be fined up to RM500,000 (US\$125,000) or imprisoned for up to six years, or both. Those financially supporting the offenders would also be liable. Any failure to eradicate the production of fake news could lead to fines of up to RM100,000 (US\$25,000). The courts can order the destruction of publications containing fake news.

Critics said the new law was open to abuse in the hands of the government.⁷⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote74sym>) The online news portal *Malaysiakini* filed a court petition to have the law declared unconstitutional, as it imposed an "insurmountable burden" by requiring proof that every item published "by way of reportage or opinion is true in every sense."⁷⁵ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote75sym>) The matter was pending in court at the end of the coverage period.

The new government pledged to abolish the fake news law during the next Parliament sitting in June.⁷⁶ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote76sym>) The lower house repealed the law in August, after this report's coverage period, but the upper house voted down the repeal bill in September, calling for the law to be revised rather than repealed outright.⁷⁷ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote77sym>)

Defamation is a criminal offense under Sections 499 to 520 of Malaysia's penal code. Media outlets benefit from stronger privileges under the Defamation Act of 1957 if they can prove that the content is accurate and was published without malice;⁷⁸ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote78sym>) bloggers, who lack this protection, are at greater risk of punitive damages.

The government has also pursued prosecutions for online content under the 1998 CMA. The act's broadly worded Section 211 bans content deemed "indecent, obscene, false, threatening, or offensive"; spreading such content over the internet constitutes "improper use of network facilities or network service" under Section 233. Amendments to the CMA and the related Communications and Multimedia Commission Act (CMCA) of 1998 were expected to be presented in late 2016,⁷⁹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote79sym>) including measures to curb the use of social media to inflame "religious and racial sensitivities" or support the "recruitment of terrorists."⁸⁰ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote80sym>) Critics said the intention was to restrict criticism of the government.⁸¹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote81sym>) A minister of the BN government argued that the planned amendments were not designed to limit free speech, but to "create a mechanism to detect irresponsible individuals who cause false news and slanderous allegations."⁸² (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote82sym>) They have not been brought to Parliament yet.

Prosecutions and Detentions for Online Activities

During this review period, internet users were arrested and prosecuted for online speech, including under the new Fake News Act.

The Fake News Act was used for the first time in April 2018, when Danish national Salah Salem Saleh Sulaiman was fined RM10,000 (US\$2,500) after posting a video on YouTube that accused police of taking 50 minutes to respond to the shooting of a Palestinian lecturer in Kuala Lumpur on April 21. Police said they took eight minutes to respond to the incident. The charge against Sulaiman said he had "with ill intent, published fake news through a video on YouTube." He failed to pay the fine and opted to spend a month in jail.⁸³ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote83sym>)

As cases from the last review period made their way through the courts, some additional defendants were sentenced for their online activity. Activist and graphic designer Fahmi Reza was sentenced to one month in jail and fined RM30,000 (US\$7,500) in February 2018 for posting a caricature of then prime minister Najib on social media. He had first been charged under Section 233(1)(a) of the CMA in June 2016.⁸⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote84sym>) Fahmi used an online crowd-funding campaign to raise the money for the fine, collecting the necessary sum within 18 hours. He remained free pending an appeal of his jail sentence.⁸⁵ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote85sym>)

In March 2018, a Facebook user was sentenced to eight months in jail for allegedly insulting the current head of state, Sultan Muhammad V of Kelantan, in April 2017. She appealed the decision.⁸⁶ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote86sym>) In April 2018, independent preacher Wan Ji Wan Hussin was sentenced to nine months in jail for allegedly issuing seditious statements against another of the country's nine state-level constitutional monarchs, the sultan of Selangor, via Facebook in 2012. He also appealed his sentence.⁸⁷ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote87sym>) Separately, in January 2018, an activist was arrested under the CMA for allegedly hurting religious feelings. The police were still investigating the matter at the end of the coverage period.⁸⁸ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote88sym>)

Other cases involving online speech that were filed under the sedition law or the CMA during the last review period were still pending. The targets included Facebook users accused of offending the crown prince of Johor,⁸⁹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote89sym>) a youth who allegedly insulted the sultan of Terengganu,⁹⁰ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote90sym>) seven individuals who made comments about a deceased politician,⁹¹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote91sym>) and two members of a civil society group who mentioned the sultan of Johor while criticizing environmental problems in the area.⁹² (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote92sym>)

A case involving the news outlet *Malaysiakini* was pending during the entirety of the reporting period, but later a court issued acquittals in September 2018, following the coverage period.⁹³ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote93sym>) The MCMC raided the outlet's offices in November 2016 and seized two computers in response to a video uploaded on its subsidiary, KiniTV, in July of that year.⁹⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote94sym>) The video showed an opposition leader criticizing the attorney general at a press conference. KiniTV and its two directors were charged with improper network use under the CMA, which carries a jail term of up to one year and fines of up to RM50,000 (US\$12,500), as well as a further fine of RM1,000 (US\$250) for every day that the video remains available after conviction.

News websites have also been subject to defamation charges. Najib and UMNO sued *Malaysiakini* in 2014 and three additional news sites in 2015.⁹⁵ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote95sym>) Cabinet minister Abdul Rahman Dahlan filed a defamation suit against *Malaysiakini* in December 2015, saying he had failed to receive a satisfactory reply regarding a report that he said had misquoted him.⁹⁶ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote96sym>) In April 2017, Najib threatened to sue an opposition lawmaker for allegedly defaming him in a Facebook video.⁹⁷ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote97sym>) However, following his coalition's defeat in the May 2018 elections, Najib withdrew several defamation suits he had filed against his critics.⁹⁸ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote98sym>)

Surveillance, Privacy, and Anonymity

The extent of government surveillance of ICT content is not known, but privacy protections are generally poor.⁹⁹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote99sym>) There are legal provisions allowing for the police, prosecutors, and even the communications and multimedia minister to intercept communications online and via mobile phones. While judicial oversight is sometimes required, in practice the courts usually grant requests for interception warrants, and the laws are generally interpreted to mean that network operators and service providers should assist law enforcement and intelligence agencies even where clear procedures are lacking. A court order is not required for emergency interception in cases involving security offenses. Under the Security Offences (Special Measures) Act of 2012, a police officer under the rank of superintendent of police may intercept communications without the authorization of the public prosecutor in urgent cases.¹⁰⁰ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote100sym>)

Since 2007, mobile phone owners, including customers using prepaid service, have been required to register as part of an effort to decrease rumor mongering.¹⁰¹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote101sym>) The rule appears to have been weakly enforced and real-name registration is not required for participation in Malaysia's blogosphere or to use cybercafés. In April 2017, the Home Ministry separately denied reports on social media that it was passing new laws to spy on internet users.¹⁰² (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote102sym>)

The Malaysian Personal Data Protection Act of 2010, which regulates the processing of personal data in commercial transactions, came into effect in 2013. The law makes it illegal for commercial organizations to sell personal information or allow third parties to use it, with penalties of up to RM100,000 (US\$25,000) or one year in prison. Federal and state governments are exempted from the law, as are data processed outside Malaysia.¹⁰³ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote103sym>) The act requires that information about Malaysians be stored locally and limits conditions under which the data can be transferred abroad, though it is not clear how seriously those rules are enforced.¹⁰⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote104sym>)

Some official agencies may have obtained equipment enabling them to monitor digital activity without oversight. In 2013, the University of Toronto-based research group Citizen Lab reported detecting software known as FinFisher—described by its distributor Gamma International as “governmental IT intrusion and remote monitoring solutions”—on 36 servers worldwide, including one in Malaysia.¹⁰⁵ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote105sym>) The software potentially allows the server to steal

passwords, tap Skype calls, or record audio and video without permission from other computers.¹⁰⁶ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote106sym>) Citizen Lab later identified "a Malaysian election-related document" that it characterized as a "booby-trapped candidate list" containing surveillance software.¹⁰⁷ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote107sym>) Because the spyware is only marketed to governments, "it is reasonable to assume that some government actor is responsible," the group concluded. A separate Citizen Lab report published in 2014 said a Malaysian government agency was a "current or former user" of Remote Control System spyware marketed by the Milan-based company Hacking Team.¹⁰⁸ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote108sym>) In 2016, the Prime Minister's Office denied having purchased this spyware but could not confirm whether other government agencies had done so.¹⁰⁹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote109sym>)

Intimidation and Violence

Physical violence sporadically affects both traditional and online journalists, though no such cases were reported in the current review period. In October 2016, progovernment protesters intimidated three journalists, including one from a Malay-language news portal, who were covering a demonstration to promote free and fair elections. Three people were arrested for criminal intimidation in connection with the incident.¹¹⁰ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote110sym>)

Technical Attacks

No severe or crippling technical attacks aimed at suppressing political information were reported during this review period. However, there were several technical attacks targeting politicians and political websites on election day in May 2018.

On May 9, 2018, the day of the general elections, politicians from both the incumbent BN coalition and the opposition Pakatan Harapan coalition claimed that their phones were hacked, causing them to receive a wave of unsolicited calls from overseas.¹¹¹ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote111sym>) Political parties also claimed that their websites were down. Later that night, the MCMC temporarily banned access to *Malaysiakini*.¹¹² (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote112sym>) allegedly in the interest of public order.¹¹³ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote113sym>) The Communications and Multimedia Ministry under new minister Gobind Singh Deo said in late May that it was gathering reports on these alleged election-day cyberattacks.¹¹⁴ (<https://freedomhouse.org/report/freedom-net/2018/malaysia#sdfootnote114sym>)

In previous years, independent online news outlets and opposition-related websites have faced intense distributed denial-of-service (DDoS) attacks. DDoS attacks force sites to crash by overloading the host server with requests for content. Some observers believe such attacks are either sponsored or condoned by Malaysian security agencies, since they often align with government priorities.

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