

Press Statement by the SOAC & ECWA Advocacy Group

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CMA Amendments Tighten Grip, Yet Miss the Mark In Protecting Children

The SOAC & ECWA Advocacy Group appreciates the government's intention to protect children, who are increasingly vulnerable to online harm, through its proposed amendments to the Communications and Multimedia Act 1998 (Act 588) ("CMA"), which were tabled for first reading in Parliament on 2 December.

However, we are deeply concerned that children (who will be most affected), child rights groups and other key stakeholders were not consulted during the drafting of these amendments. The proposed changes will significantly impact children's rights and online safety. Children in Malaysia are high-frequency internet users, with 94% of 12–17-year-olds using the internet¹. Yet, their voices have been excluded from this critical conversation.

This failure to engage highlights a lack of recognition of the specific vulnerabilities of children in the digital environment and raises questions about the adequacy of this legislative process. It also underscores the government's failure to understand and respect children's rights to freedom of expression and participation under the Convention on the Rights of the Child (CRC).

It is our view that the proposed CMA amendments, while ostensibly tightening measures and increasing punishments all around, are problematic as they stand and thus miss the mark in adequately protecting children as intended.

From a child rights perspective, we wish to highlight three critical areas of concern:

1. Children are not exempted from liability for offences under the CMA

The lack of provisions exempting children from liability for offences under this law is deeply troubling, as it fails to consider a child's mental developmental process and comprehension, and the potential harm that criminalising children may cause. While we understand that the increased penalty for offences involving child victims in Section 233, for instance, is intended to improve protections for children, such provisions would cut both ways in the sense that thousands of children are also potentially liable to criminalisation under the same section². Criminalising children also ignores their capacity for change and rehabilitation, often leading to long term negative impacts on their future, including perpetuating cycles of criminal behaviour and social marginalisation.

¹ ECPAT, INTERPOL and UNICEF. (2022). Disrupting Harm in Malaysia: Evidence on online child sexual exploitation and abuse. Global Partnership to End Violence Against Children.

² The National Health and Morbidity Survey 2022 showed that one in five school-going adolescents in Malaysia were involved in cyberbullying perpetration.

2. No clear obligations to directly tackle child sexual abuse material

The CMA amendments miss a critical opportunity to address the growing problem of child sexual abuse material (CSAM). The industry's obligations with respect to CSAM are the same as for any other obscene material, and there is no clear requirement for industry players to actively filter, block, or report CSAM.

3. Section 233 - offences are too broad and overlap with the Sexual Offences Against Children Act 2017

While the addition of the term “grossly” before “offensive” is a step towards narrowing the scope of this section, it does not go far enough. The parameters of harmful content – that which is “obscene,” “indecent,” “false,” and “menacing” - remain alarmingly broad. The lack of clear and specific definitions of these terms makes it nearly impossible for industry players to comply with, let alone enforce, the law. The use of vague “explanations” rather than concrete legal definitions only adds to this uncertainty, leaving room for highly subjective interpretation while the child remains unprotected.

Content deemed to be “offensive” or “annoying” is harshly penalised by this legislation, regardless of whether any tangible harm has been done to the individual in question. Without requiring actual harm (either physical or emotional), this opens the door to unjust criminalisation of everyday speech, by merely requiring that victims be annoyed, negatively influenced, or corrupted, or feel disgusted or offended by the communication. In particular, references to “menacing” content that “causes annoyance” or “leads to public disorder” is worryingly over-broad.

We are particularly alarmed by the significant overlap between the harmful content described in these amendments and offences such as child sexual abuse material, sexual communication with a child and child grooming, which are already covered under the Sexual Offences Against Children Act 2017 (“SOACA”).

Should these CMA amendments be passed, there is a considerable risk that perpetrators of child sexual abuse material may face lesser penalties if charged under the CMA instead of SOACA, undermining the seriousness of such crimes. For instance, the penalty for making, producing, or directing the making or production of child sexual abuse material under the SOACA includes imprisonment for a maximum of 30 years, whereas under the amendments to Section 233 of the CMA, it is a maximum of 5 years. Coupled with our earlier concerns on the lack of clarity surrounding harmful content, and hence a lower bar for investigation, we fear that the authorities would choose the easier path of prosecuting such crimes under the CMA instead of the SOACA.

This is a major setback for child protection efforts and could create a loophole for perpetrators of such crimes against children. It also allows for inconsistent or arbitrary practices in the charging of offences.

In addition to the above, we would also like to highlight the following concerns:

- The overall approach of these amendments remains highly punitive, with no provisions for restorative justice or alternatives to criminal prosecution. Section 243 allows for some offences to be compounded by negotiating a fine with the Malaysian Communications and Multimedia Commission (MCMC), but this does nothing to resolve the underlying issues between disputing parties, for instance through mediating a satisfactory resolution, or to provide child perpetrators and victims with the support they need.
- The amendments in Section 252 and Section 252B, which grant the prosecution and police expanded powers to intercept private communications and access communication data without requiring a warrant nor judicial oversight, represent a significant erosion of children's privacy rights under the CRC. These provisions undermine the principle of due process and open the door to potential abuses of power.

In conclusion, we are unable to support the CMA amendments tabled by the government. We urge MPs to push for a postponement of the debate on the bill, or a withdrawal of the bill, so that thorough consultation can be conducted and improvements can be made to the bill.

Rather than expanding the reach of the CMA with vague, broad, and overly punitive measures, we call for more focused reforms that prioritise the safety of children, uphold privacy rights, and provide clear and enforceable guidelines for content regulation.

We stand ready to engage in further dialogue to ensure that any legislation passed is effective, balanced, and protects the rights and wellbeing of all children in Malaysia.

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Issued by the Sexual Offences Against Children & Evidence of Child Witness Act (SOAC & ECWA) Advocacy Group, comprising the following 12 civil society organisations working on the intersecting rights of children and victims of sexual and gender-based violence:

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| 1. <i>Child Rights Innovation & Betterment (CRIB Foundation)</i> | 7. <i>Association of Women Lawyers (AWL)</i> |
| 2. <i>Voice of the Children</i> | 8. <i>Women's Aid Organisation (WAO)</i> |
| 3. <i>Kemban Kolektif</i> | 9. <i>All Women's Action Society (AWAM)</i> |
| 4. <i>Women's Centre for Change (WCC)</i> | 10. <i>Protect and Save The Children</i> |
| 5. <i>ENGENDER Consultancy</i> | 11. <i>End CSEC Network Malaysia</i> |
| 6. <i>Sarawak Women for Women Society (SWWS)</i> | 12. <i>Childline Foundation</i> |