

A photograph of a tablet displaying a streaming service interface. The screen shows various movie and TV show thumbnails, including 'THE LAST DANCE', 'SEX EDUCATION', 'THE KISSING BOOTH', 'DARK', 'MONEY HEIST', and 'DOWN TO EARTH'. A yellow rectangular text box is overlaid on the center of the screen, containing the title of the article. In the top right corner of the image, there is a blue box with the text 'Legal Updates'.

LEGAL INDUSTRY CONFRONTS NETFLIX AND DISNEY+:  
NAVIGATING THE LEGAL LANDSCAPE OF MOVIE  
STREAMING PLATFORMS IN MALAYSIA

The days of flocking to crowded theaters or patiently waiting for a favorite show to air on television have long been left in the past. Over the past few decades, the emergence of movie streaming platforms has heralded a transformative era in on-demand entertainment. These platforms redefine the way viewers engage with movies and shows by bestowing the power of choice upon the viewers with just a few clicks. Subscription services offered by these platforms grant access to a vast library of movies and television (“TV”) shows across various devices and viewers are no longer required to procure Digital Video Discs (“DVDs”) to catch the latest drama series. This paradigm shift underscores that traditional methods of content consumption have been unequivocally replaced by the immediacy and convenience of streaming.

While this wave of innovation has opened doors to a diverse range of content and furnished filmmakers with unprecedented avenues for creativity, it has also cast a spotlight on the legal industry's ongoing struggle to regulate the dissemination of this content. Hence, the path for movie streaming platforms demands meticulous navigation to ensure steadfast adherence with the legal requirements. In this article, we will explore various streaming services available in the market, discuss the regulatory framework governing movie streaming platform in Malaysia and delve into the legal considerations crucial for those operating a movie streaming platform in Malaysia.

### **Movie Streaming Platforms**

Movie streaming platform, also known as the Over-The-Top (“OTT”) platform, signifies a digital content distribution service that delivers video and audio content via the internet without requiring conventional cable or satellite TV subscriptions. OTT platforms such as Netflix and Disney+ have become the go-to choice for Malaysian viewers nowadays supplanting traditional TV. These OTT platforms offer a fantastic glimpse on the transformation of online streaming services on the entertainment landscape. For instance, Netflix initially emerged as a personalized web-based movie recommendation and rental system wherein DVDs and Blu-rays were dispatched by mail to its subscribers.

However, it has now completely transitioned to online streaming by building a robust video delivery infrastructure. Disney+, on the other hand, was officially launched in November 2019, featuring its original Disney content such as Pixar, Marvel and Lucasfilm. This service was made possible through Disney's acquisition of the controlling interest in BAMTech which fortified its position in the digital streaming arena.[1] In addition, iQIYI and iFlix have also solidified their standing as preferred movie streaming platforms among Malaysian viewers, catering to a diverse array of entertainment needs. Based on the survey conducted by Nielsen, an impressive 95% of the audience, particularly among Chinese entertainment (C-entertainment), now embraces OTT content compared to the 80% who still tune in to traditional TV channels.[2] The survey findings unequivocally demonstrate a pronounced shift from the conventional TV channels to the OTT platform in Malaysia. In light of this rapid growth, it is inevitable that a comprehensive examination of the regulatory framework governing OTT platforms is imperative to ensure the smooth integration of this innovative landscape into the broader media landscape.

### **Overview of the Regulatory Framework Governing Movie Streaming Platforms in Malaysia**

The regulatory framework governing OTT platforms in Malaysia falls under the purview of the Malaysian Communications and Multimedia Commission ("**MCMC**"), an agency under the Ministry of Communications and Multimedia which protects the overall interests and rights of end-users, industry and investors in the communications and multimedia industry in Malaysia. Unlike the public and private broadcasting services, the OTT platform is exempted from the MCMC licensing requirements, similar to other OTT content application providers like Facebook. As of the current date, the Malaysian government has yet to introduce new provisions under the Communications and Multimedia Act 1998 ("**CMA**") to impose licensing requirements on OTT platforms.

While OTT platforms stream films such as "Bumblebee" and "The Amazing Spiderman" which are primarily governed by the Film Censorship Act 2002 and Film Censorship Guidelines, the regulation of content intended for streaming and internet-based platforms remains distinct from the purview of Film Censorship Board of Malaysia.[3] Likewise, the censorship laws and regulations are also not applicable to the OTT platform. Nevertheless, the series of TV shows and movies hosted on an OTT platform are subject to the MCMC's content standards as outlined in the CMA and the Malaysian Communication and Multimedia Content Code 2022 ("**Content Code**"), that is co-regulated by the Malaysian Communications and Multimedia Content Forum.

Pursuant to Section 211 of the CMA, OTT platforms are prohibited from transmitting content that is indecent, obscene, false, menacing or offensive in character with intent to annoy, abuse threaten or harass any person. In cases where an OTT platform broadcasts a movie that promotes discrimination or violence against a particular race, it constitutes an offence. Violators may be subject to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or both. In addition, they may face further fines of one thousand ringgit for every day or part of a day during which the offence is continued after conviction. A recent example of this enforcement can be seen in the case of an 89-second

video clip posted by Jocelyn Chia, in which she made jokes about Malaysia being a developing country that was once “abandoned” by Singapore and referenced the missing Malaysian Airlines flight MH370. This case is currently being investigated under Section 211 of the CMA.[4]

## **Key Legal Considerations in Operating Movie Streaming Platforms**

In order to ensure full compliance with the regulatory requirements in Malaysia and ensure smooth and lawful operation within the country, OTT platform operators may start considering the primary legal factors that are critical for OTT platform operators who are seeking to establish and maintain their presence in Malaysia via an internet-based platform. The key legal considerations include, but not limited to, the following:

### **(a) Copyright Infringement**

Before offering any content, OTT platform operators must obtain proper authorisations or licenses from copyright owners or the collective management organisation appointed by the copyright owner to stream their movies or shows in Malaysia. Securing licenses from local distributors, production houses, or international content aggregators is essential to avoid copyright violations as it may lead to legal actions, hefty fines or even the shutdown of the platform.

For instance, Netflix has no legal issues with the copyright of TV shows like “Bridgerton” and “Stranger Things” as they are the original series produced by Netflix. However, Netflix is required to obtain consent or licenses from the copyright owner to stream movies such as “Green Book” and “Little Women”, which they do not own.

### **(b) Data Protection and Privacy**

OTT platforms collect a substantial amount of user data to personalize content recommendations and enhance user experience. In Malaysia, data protection is governed by the Personal Data Protection Act 2010 (“**PDPA**”). OTT platform operators are required to obtain explicit consent from users before collecting their personal information and must ensure proper security measures to safeguard user data against breaches or unauthorized access. Furthermore, OTT platforms must also have transparent privacy policies outlining how user data is handled, stored, and shared. Non-compliance with the PDPA can lead to severe penalties and damage to the platform's reputation.

### **(c) Censorship and Content Regulation**

Another legal hurdle for OTT platforms in Malaysia is content regulation and censorship. Malaysia enforces strict guidelines for media content, particularly concerning cultural and religious sensitivities. Movies and TV shows that violate these guidelines may face bans or require content alterations before being allowed for distribution.

Although the laws and regulations concerning the censorship of online content have yet to

be fully implemented in Malaysia, MCMC is actively reviewing online content management frameworks to address the proliferation of harmful and provocative online material.[5] Thus, OTT platforms like Netflix and Disney+ are advisable to closely monitor the changes in the law, carefully curating their libraries and implement content filtering mechanisms to ensure compliance with Malaysian regulations.

#### **(d) Payment and Financial Transactions**

Since OTT platforms often offer premium content through subscription models, it is utmost important for OTT platform operators to prioritise secure and fully compliant payment processing systems.

Compliance with the Financial Services Act 2013 and the Payment Services Act 2019 becomes paramount when handling financial transactions on the platform in Malaysia. OTT platform operators must implement robust security measures to protect users' financial data and comply with anti-money laundering and counter-terrorism financing regulations.

#### **Conclusion**

The burgeoning popularity of movie streaming platforms in Malaysia presents an exciting opportunity for the entertainment industry. Nevertheless, venturing into the realm of movie streaming platforms in Malaysia necessitates a thorough understanding of various critical aspects, including copyright laws, content regulations, data protection, and financial transactions laws. By obtaining proper licenses, respecting content creators' intellectual property, and adhering to local regulations, streaming platforms can establish a strong legal foundation while delivering a seamless and delightful experience to Malaysian audiences. Additionally, collaboration with regulatory authorities to ensure compliance with the relevant laws and regulations can foster a positive relationship, benefiting both the streaming platforms and the country's vibrant media ecosystem. As the industry continues to evolve, staying updated on changes in regulations and best practices is essential to remain compliant and successful in the competitive movie streaming market in Malaysia.

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