MALAYSIA

	2012	2013
INTERNET FREEDOM STATUS	PARTLY FREE	PARTLY FREE
Obstacles to Access (0-25)	10	9
Limits on Content (0-35)	14	15
Violations of User Rights (0-40)	19	20
Total (0-100)	**43**	**44**

* 0=most free, 100=least free

POPULATION: 29 million
INTERNET PENETRATION 2012: 66 percent
SOCIAL MEDIA/ICT APPS BLOCKED: No
POLITICAL/SOCIAL CONTENT BLOCKED: Yes
BLOGGERS/ICT USERS ARRESTED: Yes
PRESS FREEDOM 2013 STATUS: Not Free

KEY DEVELOPMENTS: MAY 2012 – APRIL 2013

- In the run-up to the May 2013 elections, news outlets covering the opposition faced cyberattacks and content disruptions (see **VIOLATIONS OF USER RIGHTS**).

- A legal amendment holding website owners liable for seditious comments posted by users took effect in July, despite civil society opposition (see **VIOLATIONS OF USER RIGHTS**).

- A 2012 act on public security effective since 2012 may strengthen police surveillance powers (see **VIOLATIONS OF USER RIGHTS**).

- Police charged a blogger for criticizing the Malaysian state of Johor's new Sultan in 2012 (see **VIOLATIONS OF USER RIGHTS**).

- Toronto-based Citizen Lab found spyware sold only to governments on "a Malaysian election-related document" circulating before the polls (see **VIOLATIONS OF USER RIGHTS**).

INTRODUCTION

The Malaysian government's encouragement of internet and mobile phone access has driven steady growth in new media since the first internet service provider (ISP) was inaugurated in 1992. By 2012, internet penetration was measured at 66 percent, among the highest in the region.

In May 2013 general elections, the Barisan Nasional coalition clung to power with just under 50 percent of the popular vote, having lost its two-thirds parliamentary majority in 2008 for the first time since 1969.[1] Its leader, Prime Minister Najib Razak, publicly promotes internet freedom.[2] Yet his government detained at least eight bloggers in the months following 2008 elections, many for sedition, or criticism of Malaysia's royalty, which includes the sultans who constitutionally rule nine of the country's 16 states and federal territories. In the past two years, with elections looming, officials reinforced commitments not to censor the internet, prosecuted fewer bloggers, and pledged legislative reforms.[3] When these reforms materialized in 2012, however, they fell short of international standards. One notorious security law was repealed, but its replacement allows the public prosecutor to intercept electronic communications without judicial oversight in security investigations. An amendment to the Evidence Act 1950 rendering intermediaries liable for seditious comments posted by users raised considerable civil society opposition in April, but went quietly into effect in July. Meanwhile, police launched two new investigations for online criticism of the Sultan of Johor; one blogger still faces charges.

Online mobilization was widely perceived as contributing to the opposition's 2008 electoral gains,[4] and elections this year were marred by attempts to manipulate online discourse. Internet users noted a palpable increase in the presence of "cybertroopers," commentators paid by political parties on all sides to attack their opponents. Other activity seemed to favor the government: Web news outlets covering the opposition faced cyberattacks in the lead-up to the polls, and some apparent filtering, though it was not clear if this was executed by the hackers or signaled a more formal intervention by officials or service providers. Online reporting—some from the past year—helped expose the government's multi-million dollar sponsorship of pro-Najib articles published by supposedly objective international blogs and news outlets since 2008. And in mid-2013, Toronto-based Citizen Lab reported that at least one electronic document containing election-related information in Malay appeared to be spreading spyware to recipients. The government is

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1 In 1973, the Barisan Nasional, which translates as National Front, absorbed the Alliance Party coalition which had governed Malaysia since 1957. "A Tawdry Victory," *Economist* (blog), May 6, 2013, http://www.economist.com/blogs/banyan/2013/05/malaysias-election-0.

2 The government first pledged to keep Malaysia's internet free of interference in 1998. See OpenNet Initiative, "Country Profile—Malaysia," August 7, 2012, http://opennet.net/research/profiles/malaysia.

3 Kal Kamel, "No Internet Censor, But Bloggers Must Know Where to Draw the Line: Malaysian Prime Minister," *Grey Review*, April 25, 2011, http://www.greyreview.com/2011/04/25/no-internet-censor-but-bloggers-must-know-where-to-draw-the-line-malaysian-prime-minister/.

4 "Malaysia's Uneasy Dance with the Web," *Asia Sentinel*, August 17, 2010, http://asiasentinel.com/index.php?option=com_content&task=view&id=2645&Itemid=178.

investigating online news portal *Malaysian Insider* for quoting international reports about that spyware, which could allow authorities to spy on citizens without their knowledge.[5]

Despite these challenges, citizens continued to communicate voraciously via social networks. News websites, once outliers, are now an indispensable part of Malaysia's information landscape. Internet users effectively documented police crackdowns on political protests in 2011 and 2012 that were downplayed by tightly-controlled traditional media, and police cooperated with organizers of a much more peaceful rally in January 2013. In October 2012, an appeals court ruling overturned an "irrational" home ministry ruling against *Malaysiakini*, an independent news website seeking a print publication license.[6] The ministry repeatedly refused to grant the outspoken outlet a license—the kind of decision which encourages self-censorship among print and broadcast owners, even though some licensing requirements were relaxed in 2012.[7] In characterizing *Malaysiakini's* right to publish a newspaper as fundamental, the judge took a step towards ensuring that Malaysia's vibrant internet culture will continue to have a powerful, positive impact on the nation's broader free expression restrictions. That vision was not shared by the home minister and the attorney general, who appealed the ruling.[8]

OBSTACLES TO ACCESS

Internet penetration was measured at 66 percent in 2012, one of the higher rates in Asia;[9] officials pledged to increase it to 80 percent in 2013.[10] Malaysians can access the internet through home connections, workplaces, and mobile phones. In April 2012, Kuala Lumpur's municipal government even introduced a policy requiring businesses seeking food and beverage licenses to provide inexpensive Wi-Fi.[11]

Cybercafes also play an important role in bridging the digital divide, though one persists. More than 80 percent of internet users lived in urban areas as recently as 2010,[12] and penetration remains low in less populated states in East Malaysia, where most residents belong to indigenous groups.

The introduction of wireless WiMax technology in 2008 has helped bring broadband to regions that are difficult to reach via cable; four WiMax providers were in operation as of mid-2013. The government has also prioritized development of the broadband infrastructure. In 2010, a National

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5 The presence of the spyware in Malaysia does not reveal who is employing it, but it is marketed to governments. See Violations of User Rights.

6 Hafiz Yatim, "Malaysiakini Wins Court Battle Over Print Licence," *Malaysiakini,* October 1, 2012, http://bit.ly/V5bcKG.

7 Reporters Without Borders, "Media Freedom in Malaysia is Far From Assured, Open Letter Tells Prime Minister," May 15, 2012, http://en.rsf.org/malaisie-media-freedom-in-malaysia-is-far-15-05-2012,42628.html.

8 Human Rights Watch, World Report 2013, Country Reports, "Malaysia," January 31, 2013, http://bit.ly/ZbdTes, 2.

9 International Telecommunication Union, "Percentage of Individuals Using the Internet, 2000-2012," http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx; The Economic Transformation Programme Report 2012, 188.

10 The Economic Transformation Programme Report 2012, 188, http://bit.ly/17l5Y0j.

11 Choong Mek Zhin, "DBKL to Make it a Requirement for Restaurants to Provide Wi-Fi Services," *Star Online*, January 9, 2012, http://thestar.com.my/metro/story.asp?file=/2012/1/9/central/10210201&sec=central.

12 ComScore, "Malaysian Internet Usage Driven Primarily by People in Central Region," press release, October 7, 2010, http://bit.ly/bQWgXU.

Broadband Initiative introduced five programs to expedite broadband and mobile expansion, some in cooperation with Telekom Malaysia, the country's largest—and formerly state-owned—telecommunications company, which retains a monopoly over the fixed-line network.[13] By 2011, around 250 Community Broadband Centers were established nationwide and nearly 500,000 netbooks distributed to students and low income citizens in rural and suburban areas.[14] In 2012, the 1Malaysia Broadband Affordable package offered five states with lower penetration rates decent broadband speeds for under MYR 38 ($12) per month.[15]

Mobile phone usage surpassed the country's total population in 2011. By 2012, mobile penetration was at 141 percent, indicating that some individuals had multiple phone lines.[16] Mobile internet access is available, generally affordable and popular among young people. Approximately 20 percent of Malaysians aged 20-24 reportedly accessed the internet via their mobile phones in 2011.[17]

Regulation of the internet falls under the purview of the Malaysian Communications and Multimedia Commission (MCMC), which is overseen by the minister of information, communications, and culture. Both the MCMC and the ministry are guided by the 1998 Communication and Multimedia Act (CMA), which gives the information minister a range of powers, including licensing the ownership and operation of network facilities. This could serve as a means of control as it does for the traditional media, though no examples of this have been documented, perhaps because the 25 private ISPs often have government connections. The two largest ISPs are TMnet, a subsidiary of the privatized national phone company Telekom Malaysia, and Jaring, which is owned by the Ministry of Finance. The same is true for mobile providers. The largest, Maxis Communications, was founded by Ananda Krishnan, who also owns Malaysia's biggest satellite broadcaster and enjoys close ties to former Prime Minister Mahathir Mohamad.[18] Two new mobile phone providers, YTL Communications and Umobile, have joined the market since 2008. Though ostensibly unrelated to the government, observers believe they benefit from political connections.

In recent years, some local authorities have introduced restrictions on cybercafes to curb illegal online activities, particularly gambling, which is grounds for closure if detected on cafe premises. Select states have capped the number of cybercafe licenses available, making it difficult for legitimate new venues to open.[19]

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13 Sira Habu and Shaun Ho, "RM 1 Billion Initiative to Promote High-Speed Broadband Usage," *Star Online*, March 25, 2010, http://thestar.com.my/news/story.asp?file=/2010/3/25/nation/5931577&sec=nation.
14 Ministry of Information Communication and Culture Malaysia, "Rural Broadband Initiatives in Malaysia," September 21, 2011, http://www.scribd.com/doc/68533475/Rural-Broadband-Initiatives-in-Malaysia.
15 "1Malaysia Broadband Affordable Packages for 5 States," *Malaysian Wireless*, September 8, 2012, http://www.malaysianwireless.com/2012/09/1malaysia-broadband-affordable-packages-for-5-states/.
16 International Telecommunication Union, "Mobile-cellular Telephone Subscriptions, 2000-2012."
17 "Malaysian Internet Usage Takes Off in 2010," Nielsen Wire (blog), April 25, 2011, http://bit.ly/fh3qMN.
18 Colin Kruger, "Billionaire Eyes Australian Media," *Sidney Morning Herald*, May 28, 2011, http://www.smh.com.au/business/billionaire-eyes-australian-media-20110527-1f81u.html.
19 Peter Boon, "Cyber Cafe Licences Not Issued Anymore—Ministry," *Borneo Post Online*, October 15, 2012, http://www.theborneopost.com/2012/10/05/cyber-cafe-licences-not-issued-anymore-ministry/.

The CMA provides for the ministry to appoint the MCMC chairman and three government commissioners, plus two to five commissioners from non-governmental entities; the current three are from the private sector.[20] Since 2008, the process for appointing members of the MCMC advisory board has become more transparent and participatory, involving consultations with diverse stakeholders and the inclusion of civil society members on the board. Yet the MCMC remains a driving force in efforts to curtail online speech, including investigations into online portals and bloggers.

LIMITS ON CONTENT

Malaysian bloggers, though still practicing self-censorship on some issues, were an effective check on power in 2012. Though content manipulation increased in the run-up to elections, websites helped expose it, and also thwarted an apparent effort to block or throttle their content that coincided with coordinated cyberattacks. As they had in 2011, internet users braved a police crackdown to muster protesters in a massive demonstration in late April and early May 2012 that was barely reflected in traditional media reports. A more peaceful January 2013 rally benefitted from digital tools to ensure it went smoothly.

A provision of the CMA explicitly 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 that promises no censorship to member ICT businesses.[21]

While the Malaysian government blocks some websites for violating Malaysian laws, it has not systematically targeted political content in the past. In 2009, Information, Communications, and Culture Minister Dr. Rais Yatim sought to "evaluate the readiness and feasibility of the implementation of the Internet filter at [the] Internet gateway level," but backtracked due to opposition.[22] In mid-2013, officials said a total 6,640 sites had been blocked since 2008.[23]

Authorities also take administrative measures to restrict information. The MCMC can instruct websites to remove content, including some perceived as critical of the government. Issues such as Islam's official status, race, royalty, and the special rights

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20 Malaysian Communications and Multimedia Commission Act 1998, available at:
http://www.agc.gov.my/Akta/Vol.%2012/Act%20589.pdf.
21 Multimedia Super Corridor, "MSC Malaysia 10-Point Bill of Guarantees," accessed August 2013,
http://www.mscmalaysia.my/news/introducing-msc-malaysia-certified-solutions; MCMC, "Communications and Multimedia Act
1998," accessed August 2013, http://www.skmm.gov.my/Legal/Acts/Malaysian-Communications-And-Multimedia-
Commission.aspx.
22 Rebekah Heacock, "Malaysia Considers, Backs Down from National Internet Filter," OpenNet Initiative (blog), August 13,
2009, http://opennet.net/blog/2009/08/malaysia-considers-backs-down-national-internet-filter.
[23] "More Than 6,000 Websites Blocked for Violations Since 2008," *Bernama,* via *Malay Mail Online,* July 5, 2013,
http://www.themalaymailonline.com/malaysia/article/more-than-6000-websites-blocked-for-violations-since-2008.

enjoyed by *bumiputera*, who are ethnic Malays and other indigenous people, as opposed to the ethnic Chinese and Indian minorities, are also considered sensitive. Discussing them can lead to prosecution, so internet users do exercise self-censorship, levels of which appeared to remain constant in 2012 and early 2013.

Procedures for administrative requests are generally nontransparent and lack judicial oversight and avenues for appeal. In 2009, the MCMC directed *Malaysiakini* to take down two videos containing sensitive religious and political content. When *Malaysiakini's* Editor-in-Chief Steven Gan refused, the MCMC urged the attorney general to prosecute him. He still risks a potential fine of up to MYR 50,000 ($14,300) and up to one year in prison,[24] but in 2013 the attorney general had yet to pursue the case, which remains the only reported one of its kind. The MCMC also issues administrative requests to service providers. In 2011, ISPs blocked access to 10 file-sharing websites citing Section 263 of the CMA and copyright laws.[25] Google blocked access to the infamous anti-Muslim video, "Innocence of Muslims," at the MCMC's request in September 2012.[26]

Many government-linked companies and public universities internally restrict access to *Malaysiakini* and other sites perceived as politically sensitive, though online news outlets represent an increasingly serious challenge to traditional media. *Malaysiakini* was listed as the nation's 15th most popular website by one source in 2013.27 This popularity, combined with the combative political reporting published by independent or opposition-aligned outlets, may have lead the government or its supporters to try and stop readers accessing them in the lead-up to 2013 elections, when a handful of news website technical staff discovered packets of information sent by their servers were not reaching readers, rendering their content temporarily inaccessible.[28] Some remained available on select ISPs. The platforms all fixed the problem within 48 hours, and at least two filed a complaint with the MCMC, which has yet to respond. The exact nature of the apparent blocking or throttling—which occurred while many of the sites were being targeted by hackers—remains unclear.

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24 One showed Muslim demonstrators desecrating the head of a cow—an animal Hindus consider sacred—to protest the relocation of a Hindu temple; the second showed a political speech. See Reporters Without Borders, "Malaysiakini Website Refuses to Bow to Censorship," news release, September 24, 2009, http://en.rsf.org/malaysia-malaysiakini-website-refuses-to-24-09-2009,34575.

25 "Pirate Bay, MegaUpload and Others Blocked By Government Order," *Torrent Freak* (blog), June 9, 2011, http://torrentfreak.com/pirate-bay-megaupload-others-blocked-by-government-order-110609/.

26 Tashny Sukumaran, "Google Malaysia blocks 'Innocence of Muslims' video clip," September 17, 2012, http://www.thestar.com.my/story.aspx?file=%2f2012%2f9%2f17%2fnation%2f20120917111604.

27 "Top Sites in Malaysia," Alexa Web Information Company, accessed January 29, 2013, http://www.alexa.com/topsites/countries/MY.>

28 Oiwan Lam and Leila Nachawati, *"*Malaysia: News Sites Face Attacks on Eve of Elections," *Global Voices Advocacy,* May 4, 2013, http://advocacy.globalvoicesonline.org/2013/05/04/malaysia-news-sites-face-attacks-on-eve-of-elections/.

Despite these limits, 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. Social networking is almost ubiquitous. One 2011 report said Malaysians over 15 spent approximately a third of their time online social-networking,[29] while a November 2012 article said Malaysians visited social media platforms a staggering 14 billion times a month.[30] Prime Minister Najib leads the way with his own blog and over a million followers on both Facebook and Twitter.[31] Other government representatives are embracing ICTs. The police force, for example, has Facebook and Twitter accounts where officers provide updates on policing activities and occasionally respond to accusations of abuse by members of the public.[32]

Some of this engagement is manipulative in nature, something that has become increasingly evident in the past three years. Both government and opposition figures privately acknowledge paying "cybertroopers," including bloggers and other online commentators, to generate favorable content on their behalf and denigrate their opponents.[33] Since traditional media restrictions caused opposition groups to embrace online platforms relatively early, the government's efforts to catch up have been costly—and so far, comparatively ineffective. The Barisan Nasional has a dedicated group of bloggers, Unit Media Baru, generating content on their behalf. Its members deny accepting payment for their efforts, which observers point out are deliberately misleading: they countered the well-established opposition news website *Sarawak Report* by creating a pro-government equivalent titled *Sarawak Reports*.[34]

The scale of these campaigns was exposed in 2012, when the government admitted paying international PR firm FBC Media MYR 83.8 million ($26.5 million) between 2008 and 2010 to boost Prime Minister Najib's image abroad after the BBC publicly apologized for airing programs with "inappropriate" sponsorship.[35] *Sarawak Report* also said Abdul Taib

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29 ComScore, "Social Networking Accounts for One Third of All Time Spent Online in Malaysia," press release, October 17, 2011,http://www.comscore.com/Press_Events/Press_Releases/2011/10/Social_Networking_Accounts_for_One_Third_of_All_Time_Spent_Online_in_Malaysia.

30 "Malaysia Internet Usage Statistic," SEO Consultant (blog), November 24, 2012, http://www.seoconsultant.com.my/2012/11/malaysia-internet-usage-statistic/.

31 Najib Razak's Facebook page, accessed July 19, 2012, www.facebook.com/najibrazak; Najib Razak's blog, "1Malaysia," accessed July 19, 2012, http://www.1malaysia.com.my/.

32 Polis Diraja's Facebook page, http://www.facebook.com/PolisDirajaMalaysia.

33 Joanna Yap, "PRS' Cyber-Troopers Ready for Coming Polls," *Borneo Post Online*, March 22, 2012, http://www.theborneopost.com/2012/03/22/prs-cyber-troopers-ready-for-coming-polls/; Lim Guan Eng, "Najib's New Army of Cyber Troopers with a History of Dirty Tricks is Proof that the 13th General Election Will be the Dirtiest Election Yet," *DapMalaysia*, November 21, 2011, http://dapmalaysia.org/english/2011/nov11/lge/lge1414.htm.

34 Yu Ji, "Taking the Battle Online," February 8, 2012, http://thestar.com.my/news/story.asp?file=/2012/2/8/sarawak/10692418.

35 Mariam Mokhtar, "Sorry No Cure, BBC," *Free Malaysia Today,* February 17, 2012, http://www.freemalaysiatoday.com/category/opinion/2012/02/17/sorry-no-cure-bbc/; "BBC's Worldwide Apology Exposes Malaysian Govt's Image," *Harakah Daily*, February 13, 2012, http://en.harakahdaily.net/index.php/berita-utama/4376-bbcs-worldwide-apology-exposes-malaysian-govts-image.html.

Mahmud, the chief minister of Sarawak State, had separately contracted FBC Media for online publicity campaigns.[36] FBC Media, which denied wrongdoing, collapsed in 2011.[37] In March 2013, the U.S.-based media company BuzzFeed revealed that U.S. lobbying firms working on behalf of the Malaysian ruling party or its associates funded a print and online campaign, "spanning May 2008 to April 2011," in American media outlets, much of it criticizing opposition leader Anwar Ibrahim.[38]

Despite this kind of intervention, online tools have been effective for political mobilization and exposing the government's grip on traditional media. Disparate groups united to quash a 2011 government proposal to expand the Printing Presses and Publications Act to online content,[39] and leaders subsequently pledged to abolish it altogether,[40] though in practice this resulted only in tepid reforms in 2012. The act, one of several that restrict traditional media, helped give their more aggressive online counterparts the edge when reporting on political issues.

Nowhere is this more apparent than during the political rallies for electoral reform, whose organizers, the Coalition for Free and Fair Elections, have leveraged online platforms to bring tens of thousands of supporters to the streets; even the name of the rallies—Bersih 2.0 in 2011 and 3.0 in 2012—is borrowed from the technology community. In 2011, while mainstream media downplayed reports of police brutality against the largely peaceful protesters, internet users circulated nearly 900,000 tweets and 1,600 videos documenting violence, and 200,000 Facebook users petitioned for Najib's resignation.[41] In 2012, that gap widened. More bloggers and online news portals weighed in to keep people informed about the rally and the security forces' methods to control it, which included beatings, tear gas and water cannons.[42] Yet print media coverage declined compared to the previous year to what the local Centre for Independent Journalism described as a "near blackout."[43]

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36 "New Revelations Link FBC Media to BN's Dirty Tricks Blogging Campaigns—Latest Expose!" *Sarawak Report*, August 7, 2011, http://www.sarawakreport.org/2011/08/dirty-tricks-new-revelations-link-fbc-media-to-bns-blogging-campaigns/.
37 Ian Burrell, "TV Company at Centre of Global News Fixing Row Goes into Administration," October 28, 2011, http://www.independent.co.uk/news/media/tv-radio/tv-company-at-centre-of-global-news-fixing-row-goes-into-administration-2376943.html.
38 "Govt Paid US Writers for Covert Campaign," *FMT News,* March 2, 2013, http://www.freemalaysiatoday.com/category/nation/2013/03/02/govt-paid-us-writers-to-handle-covert-campaign/.
39 "Publications Act to be Amended to Address Loopholes," *Star Online*, January 26, 2011, http://thestar.com.my/news/story.asp?file=/2011/1/26/nation/7873307&sec=nation.
40 Committee to Protect Journalists, "CPJ Welcomes Malaysian Reform Vow," news alert, September 16, 2011, http://cpj.org/2011/09/cpj-welcomes-malaysian-reform-vow.php.
41 Jerrenn Lam, "Malaysia: Bersih 2.0 Rally Rattles the Government," *Global Voices*, July 11, 2011, http://globalvoicesonline.org/2011/07/11/malaysia-bersih-2-0-rally-rattles-the-government/; Joshua Ongys, "Statistics on Bersih 2.0 Rally – Malaysia 9 July 2011," *Joshuaongys*, July 9, 2011, http://joshuaongys.com/2011/07/bersih-2-0-rally-malaysia-9-july-2011-online-social-media-statistics-youtube-facebook-twitter/.
42 Jerrenn Lam, "Malaysia: Thousands Joined Bersih 3.0 Protest," *Global Voices*, April 30, 2012, http://globalvoicesonline.org/2012/04/30/malaysia-thousands-joined-bersih-3-0-protest/.
43 Reporters Without Borders, "Major Protest Prompts Attacks on Journalists, Censorship and Missing Media Replaced by Civil Society," May 5, 2012, http://en.rsf.org/malaisie-major-protest-prompts-attacks-on-05-05-2012,42567.html.

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Prior to the 2013 general elections, authorities changed tactics and allowed an opposition demonstration to go ahead without riot police. Organizers agreed to 27 conditions to obtain approval to gather under the new Peaceful Assembly Act which opposition leaders have criticized as a measure to restrict legitimate gatherings.[44] On January 12, 2013, 100,000 Malaysians participated in a People's Uprising Rally championing a change in government and various political reforms. While subsequent demonstrations were more restive, in this case at least, both police and organizers communicated effectively to inform the public about the event on social media.

VIOLATIONS OF USER RIGHTS

Legal harassment remained a primary means for the authorities to intimidate critical bloggers in 2012 and 2013, with at least one blogger facing charges for criticizing the Sultan of Johor. A much-touted legislative reform package failed to check many existing laws used against internet users, and even amended one law to hold intermediaries liable for content posted by others. Though heavy jail terms are unusual, that threat—along with the risk of fines for defamation—still prevents many bloggers from taking full advantage of Malaysia's dynamic online environment. While one higher court supported *Malaysiakini's* right to a license to expand to print form, another decision disappointed internet freedom activists when a judge determined that the 2010 detention of a cartoonist and blogger was lawful. The May 2013 election also had an impact on user rights, as opposition news websites faced cyberattacks, and a list of candidates circulating online was discovered to contain spyware.

Malaysia's constitution provides citizens with "the right to freedom of speech and expression," but allows for limitations on this right. The government exercises tight control over online media—along with print and broadcast media—through restrictions on licensing and the use of laws including the Official Secrets Act and the Sedition Act. Violations of these laws are punishable by fines and several years in prison.

The government has also pursued prosecutions based on the CMA's broadly worded section 211, which bans content deemed "indecent, obscene, false, threatening, or offensive," and Section 233, when such content is shared via the internet.[45] Defamation is a criminal offence under sections 499-520 of Malaysia's penal code.[46] Media outlets benefit from stronger privileges under the Defamation Act 1957 if they can prove allegedly libelous content is accurate and was published without malice;[47] lacking this protection, bloggers risk punitive damages.

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44 "100,000 Throng Stadium Merdeka for 'Uprising' Rally," *Malaysiakini*, January 12, 2013, http://www.malaysiakini.com/news/218741; Human Rights Watch, "Malaysia: Backsliding on Rights," press release, February 1, 2013, http://www.hrw.org/news/2013/02/01/malaysia-backsliding-rights.
45 OpenNet Initiative, "Country Profile—Malaysia."
46 Bhag Singh, "Criminal Offence," *Star Online*, July 29, 2008, http://bit.ly/1hfKwhc.
47 Abdul Latiff Ahmad et al., "Regulating Blogs in Malaysia," The Innovation Journal: The Public Sector Innovation Journal, Vol. 16(3), 2011, http://www.innovation.cc/scholarly-style/latiff_ahamad_regulating_malasian_blogs16v2i11a.pdf.

In April 2012, several important changes were made to the legal framework surrounding freedom of expression and national security. In the year's most troubling development, parliament passed an amendment to the 1950 Evidence Act that holds intermediaries liable for seditious content posted anonymously on their networks or websites.[48] This would include hosts of online forums, news outlets, and blogging services, as well as businesses providing Wi-Fi services.[49] The amendment also holds someone 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.[50] The legal change was pushed through hurriedly, but garnered significant public backlash after its passage, including online petitions; this failed to prevent it going into effect in July 2012.[51]

At the same time, the Internal Security Act—which allowed for infinitely renewable detentions without trial and had been used to hold bloggers,[52]—was abolished and replaced by the Security Offenses (Special Measures) Act (SOSMA). The new law provides several improved protections to detainees, requiring police to immediately inform a detainee's family and reducing the maximum amount of time they can hold a suspect without charge or trial.[53] It also includes a provision explicitly stating that "no person shall be arrested and detained…solely for his political belief or political activity."[54] Despite these improvements, the law also includes restrictive provisions absent in its predecessor. For example, it grants wide-ranging powers for the public prosecutor—and in emergency situations, the police—to intercept communications without the need for a court order in cases involving security offenses.[55]

The government also made changes to the penal code that could allow for punishment of political speech by classifying ill-defined "activity detrimental to parliamentary democracy" as a criminal offence. Civil society groups fear this could render criticism of government officials or policies punishable with jail time, although the law minister said the provision would only apply to violent activities.[56] Meanwhile, the legislative revisions failed to check other problems, like the use of sedition and official secrets charges to harass bloggers and internet users.

No bloggers were serving long-term jail sentences in 2013, though Malaysian authorities have a history of criminally prosecuting online content producers. Police charged at least eight internet

48 Eva Galperin, "This Week in Internet Censorship: Points system for Weibo, Activist Released in Bahrain, Censorship in Malaysia, Ethiopia, and More," Electronic Frontier Foundation, May 31, 2012, https://www.eff.org/deeplinks/2012/05/week-internet-censorship-points-system-weibo-activist-released-bahrain-censorship.
49 Teoh El Sen, "Pakatan Seeks to Halt New Evidence Act," *Free Malaysia Today*, June 28, 2012, http://www.freemalaysiatoday.com/category/nation/2012/06/28/pakatan-seeks-to-halt-new-evidence-act/.
50 Parliament of Malaysia, "Act to amend the Evidence Act 1950, 2012," http://www.parlimen.gov.my/files/billindex/pdf/2012/DR162012E.pdf.
51 A. Asohan, "Govt Stealthily Gazettes Evidence Act Amendment, Law is Now in Operation," *Digital News Asia*, August 8, 2012, http://www.digitalnewsasia.com/digital-economy/govt-stealthily-gazettes-evidence-act-amendment-law-is-now-in-operation.
52 "Malaysia Detains 'Dissent' Writer," BBC News, September 23, 2008, http://news.bbc.co.uk/2/hi/asia-pacific/7630789.stm.
53 Parliament of Malaysia, "Security Offences (Special Measures) Act 2012," http://www.parlimen.gov.my/files/billindex/pdf/2012/DR152012E.pdf.
54 Security Offences (Special Measures) Act 2012.
55 Security Offences (Special Measures) Act 2012.
56 Shahanaaz Habib, "A Matter of Trial and Error," *Star Online*, April 22, 2012, http://thestar.com.my/news/story.asp?file=/2012/4/22/nation/11153338&sec=nation.

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users for criticism of the monarchy in 2009,[57] and questioned others.[58] Many prosecutions were dropped, but at least one defendant elected to pay a fine of RM10,000 ($ 2,700) rather than face the threat of trial.[59] Legal proceedings can be lengthy and uncertain, regardless of the outcome. Police continue to investigate Raja Petra Kamarudin, founder of the *Malaysia Today* blog, who fled into exile in 2009 to avoid sedition charges and continues to criticize the administration from overseas.[60] Sedition charges against another blogger, Khairul Nizam Abdul Ghani, dating from 2010 comments about the late Sultan of Johor, were only abandoned in June 2012.[61]

While the use of sedition laws against internet users declined in 2011,[62] police detained two critics of Johor's new Sultan on the charge in 2012. One Facebook user was arrested in November 2012 for posts considered insulting to the Sultan. When a judge declined to extend his remand after three days, police released and immediately rearrested him; he later told journalists he was questioned in solitary confinement for a total seven days before being released without charge.[63] In July, police briefly detained Syed Abdullah Syed Hussein al-Attas, who blogs pseudonymously as "Uncle Seekers," also on allegations that 64 of his posts insulted the Sultan under the Official Secrets Act.[64] Charges against him are still pending.

Politically-motivated defamation suits seeking damages disproportionate to the offense have become another threat to online expression since a landmark 2007 blogger prosecution by a government-linked newspaper.[65] In August 2012, a Kuala Lumpur court sentenced blogger and opposition People's Justice Party member Amizudin Ahmat to three months in jail for breaking a gag order relating to Dr. Rais Yatim, Malaysia's information and culture minister, resulting from one such case. In 2011, Ahmat was ordered to pay MYR 300,000 ($97,000) in damages for falsely

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57 International Freedom of Expression eXchange, "Government Hounds Bloggers That Criticise Royalty," news alert, March 25, 2009, http://www.ifex.org/malaysia/2009/03/25/government_hounds_bloggers_that/.

58 Centre for Independent Journalism, "Debate on Royal Powers Draws Attacks and Threats; Bloggers Ahiruddin Attan and Jed Yoong Questioned by Police," via International Freedom of Expression eXchange, March 4, 2009, http://www.ifex.org/malaysia/2009/03/04/capsule_report_debate_on_royal/.

59 Centre for Independent Journalism, "Six People Charged with 'Insulting' Royalty Online," International Freedom of Expression eXchange, March 16, 2009, http://www.ifex.org/malaysia/2009/03/16/six_people_charged_with_insulting/.

60 Teh Eng Hock, "Raja Petra Can't Be Tried in Britain," *Star Online*, May 26, 2010, http://thestar.com.my/news/story.asp?file=/2010/5/26/nation/6340987&sec=nation. K. Kabilan, "RPK: 1Malaysia Will Be Najib's Downfall," *Free Malaysia Today*, May 25, 2010, http://politicalwatchmalaysia.blogspot.com/2010/05/rpk-1malaysia-will-be-najibs-downfall.html; "Perkasa Makes Police Report Against Raja Petra," *Malaysia Today*, January 7, 2010, http://malaysia-today.net/mtcolumns/newscommentaries/29452-perkasa-makes-police-report-against-raja-petra.

61 "Malaysian Blogger Charged with Insulting Dead Sultan," *China Post*, January 31, 2010, http://www.chinapost.com.tw/asia/malaysia/2010/01/31/243065/Malaysian-blogger.htm; Sarban Singh, "Blogger pleads not Guilty to Insulting Johor Royals (Update)," *Star Online*, January 29, 2010, http://thestar.com.my/news/story.asp?file=/2010/1/29/nation/20100129170602&sec=nation.

62 Only one blogger was held for 24 hours in March 2011. See, "Blogger 'Arrested' at Midnight Under Sedition Act," *Malaysia Today*, March 19, 2011, http://malaysia-today.net/mtcolumns/from-around-the-blogs/38903-blogger-arrested-at-midnight-under-sedition-act.

63 G. Vinod, "PAS Member: I Did Not Threaten to Kill Saiful," *Free Malaysia Today*, May 19, 2010, http://www.freemalaysiatoday.com/fmt-english/news/general/5771-pas-member-i-did-not-threaten-to-kill-saiful; Nerea Rial, "Malaysian Arrested Over Facebook Insults," *New Europe Online*, November 5, 2012, http://www.neurope.eu/article/malaysian-arrested-over-facebook-insults; Susan Loone, "Ahmad Subjected to Daily Grilling of 8-9 Hours," *Malaysiakini*, November 10, 2012, http://www.malaysiakini.com/news/213941.

64 Committee to Protect Journalists, "In Detaining Blogger, Malaysia Invokes Secrets Act," news alert, July 11, 2012, http://www.cpj.org/2012/07/in-detaining-blogger-malaysia-invokes-secrets-act.php.

65 Soon Li Tsin, "Bloggers Sued for Defamation," *Malaysiakini*, January 18, 2007, http://www.malaysiakini.com/news/62257.

accusing the minister of criminal actions in a blog post, even though he subsequently deleted and apologized for the content. An appeals court reduced additional costs Ahmat was required to pay for related legal expenses but upheld the ruling, which included an order not to blog further about the minister.[66] When Ahmat ignored this order in eleven subsequent articles, the high court found him in contempt; the jail term was deferred pending appeal. A suit brought by an opposition parliamentarian was less successful. In 2012, Nga Kor Ming sought 10 million MYR ($3,200,000) in damages over corruption allegations made by Ahmad Sofian Yahya on the blog *Sekupangdua*. Though Nga withdrew the claim, the blogger countersued when articles on the politician's website implied the court had ruled in Nga's favor; he, too, withdrew the suit.[67]

Another 2012 high court ruling disappointed free expression advocates. In September 2010, police arrested cartoonist Zulfiklee Anwar Ulhaque, better known as Zunar, and seized newly-published volumes of his cartoons—including many previously published on his blog—deemed insulting to the prime minister and his deputy. After they released him without charge,[68] Zunar and his publishing house sued the government for unlawful detention and loss of income.[69] In a ruling that missed the point that satirical content should not be criminalized, a judge ruled in July 2012 that the arrest was lawful, though confiscating the books was not.[70]

A small number of other criminal cases have involved religion.[71] One in particular may contribute to Malaysia's global reputation for negative intervention in online freedom of expression issues: In 2012, the authorities stopped Saudi Arabian journalist Hamza Kashgari at a Malaysian airport en route to seek asylum in New Zealand after his online comments about the Prophet Mohammed attracted death threats and government harassment in his own country.[72] Although his lawyer said he had filed a court injunction to prevent Kashgari from being deported, Malaysian authorities sent him home, saying they did not receive it in time.

Real-name registration is not required for participation in in Malaysia's blogosphere, nor is it required to use a cybercafe. Civil society groups have successfully resisted tentative efforts to implement registration, such as the 2011 Computing Professionals Bill that, if passed, would have

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66 International Freedom of Expression eXchange, "Opposition Blogger Ordered to Pay Exorbitant Damages to Minister," news alert, July 22, 2011, http://www.ifex.org/malaysia/2011/07/22/amizudin_defamation_suit/; http://en.rsf.org/malaysia-opposition-blogger-ordered-to-pay-20-07-2011,40659.html.
67 "Blogger Sues DAP's Nga for Defamation," September 22, 2012, *Bernama*, via *Malaysian Insider*, http://www.themalaysianinsider.com/litee/malaysia/article/blogger-sues-daps-nga-for-defamation/.
68 "Malaysian Cartoonist Goes into Hiding After Sedition Arrest," RFI English, September 28, 2010, http://www.english.rfi.fr/asia-pacific/20100928-malaysian-cartoonist-goes-hiding-after-sedition-arrest.
69 K. Pragalath, "Partial Victory for Cartoonist Zunar," *Free Malaysia Today*, July 31, 2012, http://www.freemalaysiatoday.com/category/nation/2012/07/31/partial-victory-for-cartoonist-zunar/; Tom Spurgeon, "CR Holiday Interview #7: Zunar," *Comics Reporter*, December 27, 2010, http://www.comicsreporter.com/index.php/cr_holiday_interview_7_zunar/.
70 Reporters Without Borders, "Court's Ruling on Cartoonist's Suit Sets Disturbing Precedent for Media Freedom," July 31, 2012, http://en.rsf.org/malaisie-court-s-ruling-on-cartoonist-s-31-07-2012,43134.html.
71 In August 2010, the right–wing group Perkasa lodged a complaint against blogger Helen Ang for authoring an article that questioned the position of Islam in Malaysia; as of 2013, the case was still pending, but observers felt it was unlikely the attorney general would pursue it. "Perkasa Lodges Report Against Blogger," *Malaysian Insider*, August 9, 2010, http://www.themalaysianinsider.com/malaysia/article/perkasa-lodges-report-against-blogger/.
72 Committee to Protect Journalists, "Malaysia Deports Saudi Arabian Columnist," news alert, February 13, 2012, http://www.cpj.org/2012/02/malaysia-deports-saudi-arabian-columnist.php.

required IT professionals working on Critical National Information Infrastructure projects to register with a government-appointed board.[73] Responding to critics, the Ministry of Science, Technology, and Innovation said that registration would be voluntary, and the bill never made it to parliament.[74] Beginning in 2007, all mobile phone owners, including the roughly 18 million customers using prepaid service at the time, were required to register as part of an effort to decrease rumor mongering.[75] The rule appears to have been weakly enforced.

The extent of government surveillance of ICT content is not known, but privacy protections are generally poor in Malaysia.[76] In 2008, the MCMC formed a panel composed of representatives from the police, the attorney general's office, and the Home Ministry to monitor websites and blogs. Although it still appears to be active, it has not publicly intervened in internet freedom issues. Court documents indicate that police regularly gain access to the content of text messages from telecommunications companies, sometimes without judicial oversight. A 2011 government initiative to provide free email accounts to all citizens over the age of 18 prompted fears it would expand the government's ability to monitor people's online activities.[77] The project, which was designed to offer an "authenticated online identity through which the people can securely carry out their transactions with the government," had only 23,000 subscribers by March 2013.[78] SOSMA, which allows for the interception of communications without a judicial order in poorly-defined security investigations, also contains scope for abuse.[79]

The Malaysian Personal Data Protection Act 2010, which regulates the processing of personal data in commercial transactions, came into effect on January 1, 2013. The law makes it illegal for commercial organizations to sell personal information or allow third parties to use it, with penalties up to RM100,000 ($ 27,400) or one year imprisonment. Federal and state governments are exempted from the law, as is data processed outside Malaysia.[80]

In March 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.[81]

73 Lim Yung-Hui, "Malaysian IT Community Response to Board of Computing Professionals Malaysia Bill 2011: Where's the Beef?," *Forbes*, December 12, 2011, http://www.forbes.com/sites/limyunghui/2011/12/12/malaysian-it-community-response-to-board-of-computing-professionals-bill-2011-wheres-the-beef/; Vijandren Ramadass, "Computing Professionals Bill 2011 – Draft," *Lowyat*, December 9, 2011, http://www.lowyat.net/v2/index.php?option=com_content&task=view&id=5800&Itemid=2.
74 "MCA: Computing Professionals Bill Will Stifle Talent Growth," *New Straits Times,* December 21, 2011, http://www.nst.com.my/latest/mca-computing-professionals-bill-will-stifle-talent-growth-1.22120.
75 "Dec 15 Registration Deadline Stays: MCMC," *Bernama*, August 18, 2006, http://www.bernama.com/kpdnhep/news.php?id=214811&lang=en.
76 Privacy International, "Privacy in Asia: Final Report of Scoping Project," November 2009, https://www.privacyinternational.org/issues/asia/privacy_in_asia_phase_1_report.pdf.
77 Rebekah Heacock, "Malaysia: Government's Free E-mail Plan Met with Opposition," OpenNet Initiative (blog), April 26, 2011, http://opennet.net/blog/2011/04/malaysia-governments-free-e-mail-plan-met-with-opposition.
78 Economic Transformation Programme Report 2012, 187.
79 Mickey Spiegel, "Smoke and Mirrors: Malaysia's "New" Internal Security Act," *Asia Pacific Bulletin,* no. 167, East West Center (June 2012), http://www.eastwestcenter.org/publications/smoke-and-mirrors-malaysias-new-internal-security-act.
80 Barry Ooi, "How the Personal Data Protection Act Impacts the Market Research Industry," December 29, 2012, http://biz.thestar.com.my/news/story.asp?file=/2012/12/29/business/12511744&sec=business.
81 Morgan Marquis-Boire et al., "You Only Click Twice: FinFisher's Global Proliferation," Citizen Lab, March 13, 2013, https://citizenlab.org/2013/03/you-only-click-twice-finfishers-global-proliferation-2/.

The software potentially allows the server to steal passwords, tap Skype calls, or record audio and video without permission from other computers, according to Citizen Lab, which noted that the presence of such a server did not prove who was running it. The same month, the *Malaysian Insider* documented Fin Fisher's presence in Malaysia, based on a *New York Times* report.[82] In response, the MCMC launched an investigation into the report, which it described as "speculative and ill-researched," and threatened the site with a fine of up to RM 50,000 ($15,200) or one year imprisonment for false reporting under the CMA. No charges have been reported against the website or its staff. In May, however, Citizen Lab reported they had further identified "a Malaysian election-related document" they characterized as a "booby-trapped candidate list" containing surveillance spyware.[83] Because the spyware is only marketed to governments, "it is reasonable to assume that some government actor is responsible," the group concluded.

Physical violence, though less extreme than in many neighboring countries, still affects journalists reporting for traditional media in Malaysia, and their online colleagues are not immune: a *Malaysiakini* photojournalist was among several who reported security forces obstructing and beating them on the sidelines of the political rally Bersih 3.0.[84]

A graver threat to independent online news outlets and some opposition-related websites is distributed denial-of-service (DDoS) attacks, which force sites to crash by overloading the host server with requests for content, often at moments of political importance. Some observers believe such attacks are either sponsored or condoned by Malaysian security agencies, since they often align with government priorities. In March 2013, the new U.K.-based online radio station Free Malaysia Radio—which promised listeners content prohibited in traditional media—suffered DDoS attacks during its first program, an interview with opposition leader Anwar Ibrahim.[85] The online radio portal was inaccessible for some days. Malaysiakini, which has endured 35 DDoS attacks, was one of many sites reporting on the opposition which was subjected to an apparently coordinated assault in April 2013 before the elections.[86]

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82 The contested report: Boo Su-Lyn, "Malaysia Uses Spyware Against Own Citizens, NYT Reports," *Malaysian Insider,* March 14, 2013, http://www.themalaysianinsider.com/malaysia/article/Malaysia-uses-spyware-against-own-citizens-NYT-reports. The original *New York Times* report: Nicole Perlroth, Researchers Find 25 Countries Using Surveillance Software," *New York Times* (blog), March 13, 2013, http://bits.blogs.nytimes.com/2013/03/13/researchers-find-25-countries-using-surveillance-software/.
83 "Short Background: Citizen Lab Research on FinFisher Presence in Malaysia," Citizen Lab, May 2013, https://citizenlab.org/wp-content/uploads/2013/05/shortbg-malaysia1.pdf.
84 Committee to Protect Journalists, "Journalists Assaulted, Detained During Rally in Malaysia," April 30, 2012, http://www.cpj.org/2012/04/journalists-assaulted-detained-during-rally-in-mal.php.
85 "New Radio Station Under DDOS Attack, *Free Malaysia Today,* March 26, 2013, http://www.freemalaysiatoday.com/category/nation/2013/03/26/new-radio-station-under-ddos-under-attack/.
86 Human Rights Watch, "Malaysia: Violence, Cyber Attacks Threaten Elections," May 1, 2013, http://www.hrw.org/news/2013/05/01/malaysia-violence-cyber-attacks-threaten-elections. See also, Shawn Crispin, "Internet Opening is Shrinking," *Attacks on the Press*, Committee to Protect Journalists (Wiley: New York, February 2013), http://cpj.org/2013/02/attacks-on-the-press-internet-opening-is-shrinking.php.