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THE STATE OF THAILAND'S INTERNET REGULATION

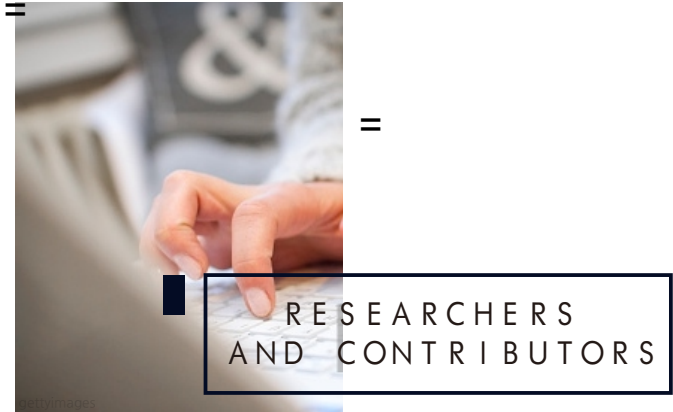


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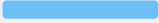
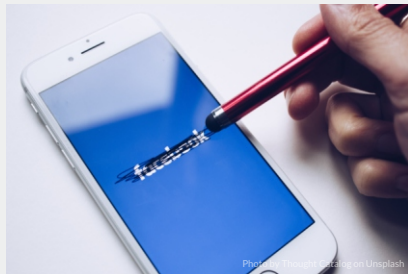


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■ CONTENTS

Background	2
Defining Internet Regulation	3
Challenge 1: Unclear Laws and Administrative Structure	6
Challenge 2: Cultural Competence & Distrust towards Foreign Private Companies	10
Challenge 3: Volatility of Thai politics	14
Bibliography	24





■ BACKGROUND

Online video platform YouTube, was banned twice in Thailand in 2007. Users were unable to access the website for between 3 days to 4 months because videos featured content related to political parties and the Thai Monarchy. In 2017, Facebook faced the threat of a ban due to its refusal to remove posts that were considered defamatory of the royal family. In June 2017, a Thai man that was sentenced to 35 years in jail for sharing Facebook posts believed to be slandering the

King. These are all examples of how Thailand has been cracking down on internet freedoms.

On the other hand, the Thai government has expressed strong interest to further develop its digital economy, a policy strategy known as Thailand 4.0. How does the perceived tightening of internet regulation go hand-in-hand with Thailand's dreams of achieving 4.0?

DEFINING INTERNET REGULATIONS

There are many examples and variations of internet regulations across the world. Regulations are highly contextualised to each country, dependent upon various national characteristic such as governance structure, civil society participation and private sector motivations. Table 1 illustrates the most common levels of internet regulation and indicates how different countries are ranked in the Freedom on the Net 2017 report.

Table 1: Types of Internet Content Regulation

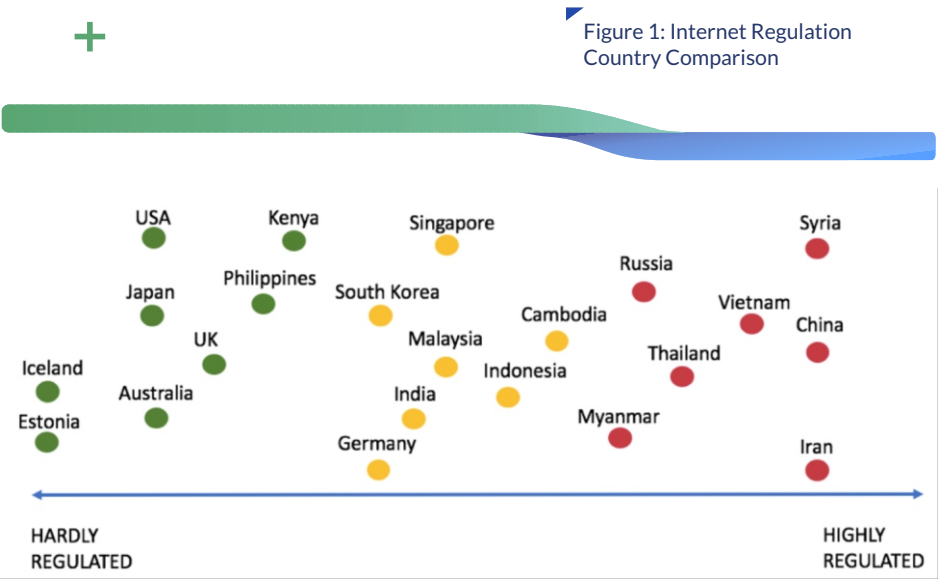
Who is Leading?	Industry Led (Free)	Multi-stakeholder (Partly Free)	State Led (Not Free)
Demand from	Industry	State / Industry / Public	State
Codedrafter	State / Industry	State / Industry / Public	State
Code enforces	Industry	Industry / State	State
Penalties	Industry (exclusion from industry)	Industry (exclusion from industry) State (brought to court)	State (brought to court)
Policy Setting	Market driven; Nudges from State pushes industries to solve problems	State sets objective, market executes; A means to achieve government policy	Normally having an independent body of experts

Who is Leading?	Industry Led (Free)	Multi-stakeholder (Partly Free)	State Led (Not Free)
Management	Adheres to the idea of peer review; Allows State to delegate responsibility	Adheres to the idea of peer review; A safety net in case self-regulation fails; Balance between industry and non-industry	False sense of independent or autonomous policy decision - complex to manage
Principles	Based on constitutional principles	Based on constitutional principles	Hammering out a lasting compromise rather than a legal outcome
Market Responds	Fast respond to fast changing markets	Pragmatic respond to fast changing markets	Legislation always lags behind technology
Risks to Agenda Setting	Members held hostage by large companies	Members held hostage by industry funders; State at risk of being taken over by big industry players to pursue their own agenda	State at risk of being covertly taken over by big industry players to pursue their own agenda
Consumer Protection	Alternative complaints and dispute resolution; Less accountability as it is not held to the same transparency standards of a public body	Alternative complaints and dispute resolution	
Classification, Freedom House 2017 Scoring	Estonia (6), Iceland (6), Germany (20), USA (21), Australia (21), Japan (23) UK (24), <u>Philippine (28)</u> , Kenya (29)	South Korea (35), India (41), <u>Malaysia (44)</u> , <u>Singapore (41)</u> , <u>Indonesia (47)</u> , <u>Cambodia (52)</u>	<u>Myanmar (63)</u> , Russia (66), <u>Thailand (67)</u> , <u>Vietnam (76)</u> , Iran (85), Syria (86), China (87)

Note: "Country (number)" indicate the score for that country over a total of 100. Lower scores mean more internet freedom. Underlined countries indicate ASEAN countries where Thailand is a member of and geographically located. (Marsden, 16 Dec 2004, Kleinsteuber, 16 Dec 2004)

See Appendix 1: Examples of internet regulation from different countries.

How does Thailand compare to the rest of the world? The graph below roughly plots the comparison to illustrate the extent of regulation in various countries.



Not to scale. Green dots indicates 'free', yellow dots indicates 'partly free', red dots indicate 'not free'. (FreedomHouse, 2017, Scott et al., 2018)

■ CHALLENGE 1: UNCLEAR LAWS AND ADMINISTRATIVE STRUCTURE

Computer Crime Act 2017

Under Thailand's Computer Crime Act, anyone found publishing any content online that is deemed offensive or damaging to Thai moral values, can be sentenced to 5 years imprisonment and/or fined 100,000 baht, equivalent to about 46 million rupiah.

Thailand's parliament passed controversial amendments to the 2007 version of the Computer Crime Act in mid-2017. And the law is now enforced by a newly established government ministry, the Ministry of Digital Economy and Society. The updated legislation is

controversial because it gives officers from the Ministry the ultimate power to investigate or delete any content online that it finds offensive or damaging to Thai moral values, without having to go through the judiciary for approval.

In addition, the updated Act expands the Ministry's jurisdiction to cover a wider range of offences related to “national security” and “public safety”. A section of the law that could critically impact the digital ecosystem, states that service providers would be held criminally liable for crimes committed by individuals that use their service (Tilleke.com, 5 January 2017)..

Figure 2: Screenshot of a translated section of the Computer Crime Act (Somwaiya and Kerativitayanan)

ISP LIABILITY AND SAFE HABOUR

Any service provider who cooperates, consents or acquiesces to a computer crime shall face the same penalty as the offender. However, if service providers are able to prove compliance to the procedural rule issued by the Minister regarding the notification and the request for suppression of the dissemination of such data and the removal of such data from a computer system, they shall be exempted from penalty.

Upcoming Cybersecurity Bill

The Cybersecurity bill was introduced by government officials to support and promote Thailand's digital economy (Zeldin). The draft bill states that Thai authorities will have the power to demand that private companies take actions or share user data, if the Ministry finds that the content is related to cybersecurity. Public and private companies can also be required to testify or submit documents to the Ministry as part of investigations.

Another part of the bill states that a committee under the Ministry will have the authority to access private communications, including telephone calls, fax, computers, mobile phones and devices and other information, in the name of cybersecurity. Similar to the Computer Crime Act, the Ministry will be able to gain access to such information without approval from the courts (Somwaiya and Kerativitayanan). Those who violate the two laws could face harsh punishment. The below graphic is from the Thai Government Campaign on Digital Literacy.

Figure 3: Screenshot of a Thai Government Campaign on Digital Literacy (DICy Thailand)



10 Things to Not Post

Porn
[100,000bhat and/
or 5 years jail]



Rumours, spreading false info
[100,000bhat and/
or 5 years jail]



Photoshopped pictures with malicious intent
[60,000bhat and/
or 3 years jail]



Stealing others' info
[Not specified,
follow computer
crime act]



Using others' ID
[Fine and jail.
Depending on
who and how]



Editing someone else's social media posts
[100,000 bhat and/or 5 years]



Fear mongering
[Not specified]



Defamation
[100,000bhat
and/or 5 years]



Forwarding, spamming
[100,000bhat]



Lesè Mejesté
[15 years]





Lacking Capacity and Structure to Govern the Internet and its Contents

The current Thai government lacks the capacity to effectively govern the internet, let alone online content. The following statement was made by an expert in Thai internet laws: *“I’m ok with internet censorship and all that if they can do it. What’s hindering (Thailand 4.0) is, the crucial infrastructure to reach that point is not yet ready.”*

The government is also in search for ways on how to better regulate the internet without disrupting businesses. There is an intention to get public feedback on proposed laws before they are enacted. However, not every concerned stakeholder was consulted.

The Office of the National Broadcasting and Telecommunications Commission (NBTC) is facing structural challenges in carrying out what many assumed to be NBTC’s role as the internet regulator. NBTC currently does not have the mandate to regulate the internet or online content such as streaming media. This is commonly referred to as Over the Top (OTT) services.

NBTC is also tasked with finding a source of revenue to maintain its autonomy as a body outside of government. However, this is made impossible as the broadcasting arm of NBTC still relies on revenue from TV licenses, a dying industry that does not include broadcasting over the internet. This creates the wrong motivation for NBTC to pursue OTT regulation, which is to gain revenue.



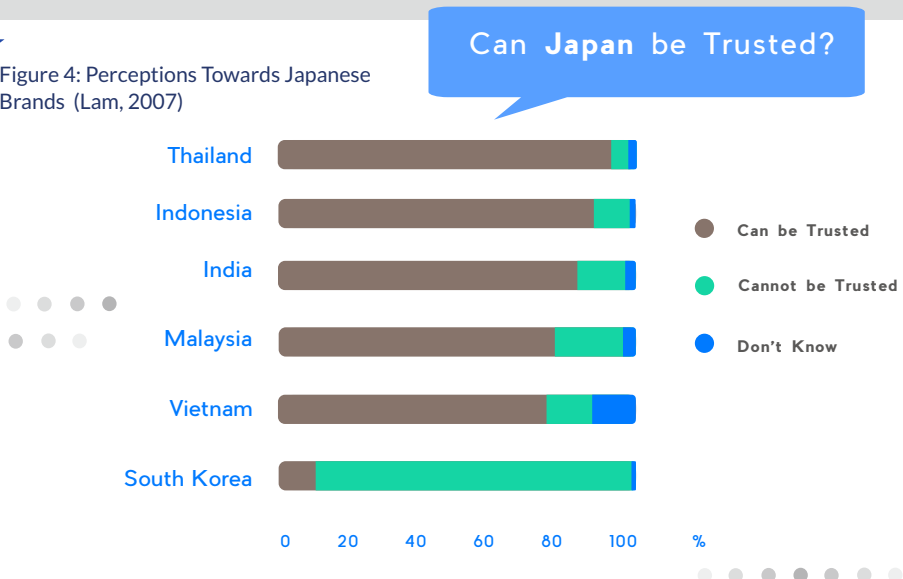
■ CHALLENGE 2: CULTURAL COMPETENCE & DISTRUST TOWARDS FOREIGN PRIVATE COMPANIES

Our research illustrated that cultural differences between Thailand (and ASEAN nations) and the West are recognised. Specifically because Thai people prefer to avoid conflict, and steer clear of mentioning negatives in public. Awareness or lack thereof for this value system reflects the quality of communication and the resulting relationship between the Thai government and foreign private companies.

Foreign companies running content related services in Thailand include tech giants Google and Facebook. Both companies have come under hot water over alleged illegal content on their platforms. (BBC.com, 4 April 2007, Holmes, 16 May 2017).

But one overseas firm has managed to operate generally unscathed, that is LINE. It's the most popular chat application in Thailand (ThailandRedCat.com, 29 March 2017, TastyThailand.com, 7 Feb 2014). The company is a Japanese subsidiary of the South Korean internet search giant Naver Corporation. Its taken several business cooperation measures with local Thai companies to demonstrate efforts to integrate with the local media market (Kishimoto, 19 Sept 2017, NationMultimedia.com, 20 Feb 2018, Suchiva, 10 Feb 2018).

Figure 4: Perceptions Towards Japanese Brands (Lam, 2007)





LINE escaped a ban in 2016 for its quick removal and apology over 3rd party apps emojis that were critical of the monarchy. However, LINE has encountered some cultural challenges. In April 2016, a user-generated emoji that mocked the Thai monarchy passed through LINE's screening and was available for sale to the public on the evening of 6th April. After receiving public complaints, LINE removed the stickers from users accounts within 24 hours. The police initiated an investigation to find the independent sticker's creator. A day later, the Tokyo based company issued a public apology through its social media. It cited 'cultural sensitivity', 'discomfort to Thai users', 'taking users' concerns seriously', 'consideration towards each country's cultural aspects' as the reason for removing the sticker and assured the continual improvement of the LINE Creators Market. (Charuvastra, 7 April 2016).

LINE's apologetic approach was a stark contrast to how Facebook and Google responded to content considered sensitive by Thai authorities. Both Facebook and Google waited for court orders before proceeding with content removal; in line with international standards for local content management. The follow up from the government was a form of retaliation to 'show who is boss', jumping straight to legal action.

Another instance in 2007 saw Google offering to 'educate' Thai authorities on how its online video platform, YouTube, works. The firm exposed local authorities inability to block YouTube videos, a move that is frowned upon in Thailand's "face-saving" culture. Our research revealed that Western powers are often perceived to be of higher status in Thailand. So, Google's actions of 'looking down' added insult to injury. That would explain why Thai authorities responded that they 'don't want to hear a lecture on free speech' and that the content was 'culturally insensitive and offensive' (Ahuja, 7 April 2007).

The following table details incidents where LINE, Facebook and Google encountered conflicts and or challenges with authorities over content on their platforms.

Table 2: Controversial Internet Content
Incidents in Thailand

SOCIAL MEDIA COMPANY	RESPONSE				
	Issue	Raised	Take Down	Apology	Other Actions
 LINE (StraitsTimes.com, 2 Feb 2016)	 Stickers mocking monarchy	 Evening of 6 April 2016	 Night of 6 April 2016	 7 April 2016	 Statement included the following words: Sensitivity, discomfort, consideration
 Facebook	Posts mocking monarch	12 May 2017 for remaining 131 posts	10am 16 May 2017, within 24 hours after receiving original court order	None found	Using Streisand effect to highlight the matter that the Thai junta is trying to close. Facebook was waiting for original court orders for remaining 131 posts.

SOCIAL MEDIA COMPANY	RESPONSE				
	Issue	Raised	Take Down	Apology	Other Actions
 Google (BBC.com, 4 April 2007)	 YouTube video mocking monarchy	 4 April 2007	 Refused after request made several days prior	 Said will 'educate' the government	 YouTube blocked. Statement included the following words: Disappointed, looking into the matter, new and unique cultural challenges

See Appendix 2: Examples of press statements from Facebook and Google.

During our research interviews, we found out that the Thai government would like to meet with big tech players to discuss their concerns. However, government officials hold the perception that big Western companies will not listen to smaller countries such as Thailand. As a result, officials feels the need to rally its ASEAN neighbours and partners in order to be heard by big multinationals.

We also learned that the government believes foreign tech firms are in Thailand to make money without giving back to local society. This creates the sense of unfair competition as foreign companies are free from regulation, yet they collect revenues without paying taxes. The view is that foreign firms can “*say whatever they want to say, and show whatever they want to show.*”

■ CHALLENGE 3: VOLATILITY OF THAI POLITICS

Internet content filtering in Thailand, like many other countries, is determined by national social norms. Besides the common filtering of pornographic sites for under age viewers, there are also country specific filters to reflect a country's history. France and Germany filter out Holocaust denial sites (Deibert, 2008, p. 41), while Singapore filters out news leading to racial conflict and offensive public expression (Ang and Nadarajan, 1996).

For Thailand, the Lèse Majesté law is a major determinant of filtering, along with the need

to block pornography, online gambling and the sale of sex equipment. Prior to the 2014 coup, the 1997 Constitution guaranteed Thai citizens the “right to express opinions; to communicate by ‘lawful’ means; and to access information with certain limitations for state security, maintaining public order or morals, and safeguarding others’ right to privacy and reputation.” The late King Bhumibol had encouraged public criticism towards the Thai royalty. Yet, the Lèse Majesté law is still enforced with jail terms of up to 13 or 15 years (Deibert, 2008, p. 391, Laungaramsri, 2016, p. 202).

Thailand's Coup Culture

The context for Thailand's internet content regulation is its coup culture. It has had 12 coups and 7 attempted coups since the abolishment of absolute monarchy in 1932. The reasons for Thailand's coup culture varies. Some say it's the government's inability to resolve the political stalemate, making coups an attractive method. Over time and repetitive use, coups have become a norm in Thailand. Some say it's the





monarchy's way of wielding unofficial powers over the government, military and or the people. With a country so used to military coups and royal intervention to settle political stalemates (Fisher, 14 May 2015), how will Thailand fare when one side of the equation, the monarchy, shifts its intentions?

It is therefore important to understand the unique relationship between Thai people and their monarchy (Bunbongkarn, 14 May 2014, Nivat, 1947), and the motivation behind the almost worship-like adoration of former King Bhumibol (Peel 12 Oct 2017). Followed with a study of former King Bhumibol's impact on Thailand's political trajectory throughout his reign (TheEconomist.com, 23 July 2016, TheEconomist.com, 4 Dec 2008) and how the new King Vajiralongkorn's actions are impacting Thai politics and laws. The movement of these equations that make up Thai politics is of utmost importance to the military government, to the point of suspense and anxiety-lead law amendments (Mérieau, 4 Feb 2017).



Photo by Jen Tse on Time.com





See Appendix 3: Historical evolution of Thai politics.

Considering the country's economic aspirations and progression of internet related laws, we believe that the Lesè Majesté law, the Computer Crime Act and the Cybersecurity bill may counter government efforts to develop its digital economy and keep abreast of technological advancements. At the same time, it would be prudent for private sectors especially foreign-owned, to develop mechanisms that can detect and navigate potentially sensitive content or positions that can be misconstrued in Thailand. Clearing the air for a much needed private sector participation in the drafting of internet regulation.



APPENDIX 1

The figure below gives detailed examples of the numerous ways governments across the world approach internet regulation.

Co-Regulation

Australia

The Australian Broadcasting Authority is responsible for internet content regulation in Australia. It follows a co-regulation scheme, where the industry develops and manages its own regulatory system. The government then supports the regulatory framework by providing legislation to help with enforcement. In a sense, the government partners with industry members to regulate the internet. (humanrights.gov.au, October 2002)

Figure 5: Examples of Internet Content Regulation

However, the authority operates a complaints-based system. If a complaint is received about something online, content hosts are required to delete the content from the Australian web servers. This can be content that is 'unsuitable' for young children or offensive content. (alrc.gov.au)



Self-Regulation



United Kingdom

The government wanted to make sure that in controlling internet content, it did not restrict growth and innovation in its digital economy.

It decided to partner with members of the digital industries to implement technical solutions that would make their platforms safer.

In addition, it set up a list of best practices for private companies and start-ups to promote online safety to digital developers.

The UK government is now taking steps to involve groups of society, schools, businesses and members of the public in dealing with internet regulation. It believes this coordinated approach will help in ensuring a safer online environment.

The main goal of their regulatory policies are to deter bullying, insulting users, or other behaviour that is likely to intimidate or humiliate. (gov.uk, October 2017)



State Regulation

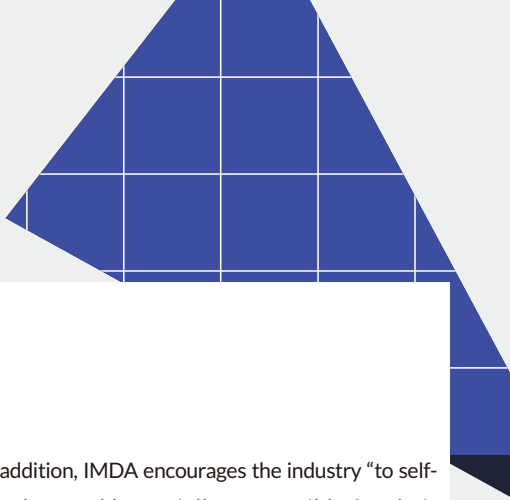
China

China is a key example of State Regulation. The country's leaders have implemented systems to block thousands of websites in an attempt to regulate the internet domestically (Griffiths, 18 November 2014).

Known as the 'Great Firewall of China', the system filters the URLs of certain websites and blocks IP addresses from being routed through (bloomberg.com, 1 December 2017). In mid 2017, reports surfaced that China will ban the use of

Virtual Private Networks, which were being used to bypass the 'Great Firewall' (economist.com, 4 January 2018).

China is considered to have one of the most extensive internet control systems in place (Croft, 6 July 2015, en.wikipedia.org). The country has several internet laws and imposes harsh punishments for violators, to deter illegal activities online (hrw.org, 6 November 2016).



Self-Regulation - State Regulation

Singapore

Singapore's system is a mixture of state regulation and self-regulation.

Both Internet Service Providers (ISPs) and Internet Content Providers (ICPs) are regulated under a licensing scheme set up by the InfoComm Media Development Authority (IMDA). ISPs and ICPs are required to comply with an Internet Code of Practice set up by IMDA, which provide a set of guidelines on what the community finds offensive or harmful.

Online content should not go “against public interest or order, national harmony or which offends against good taste or decency”. The aim of the code is to safeguard public interest, protect children from harmful content and to ensure societal harmony in the multi-religious and multi-ethnic city.

In addition, IMDA encourages the industry “to self-regulate and be socially responsible for their content.” Content providers have been asked to develop industry codes of practice to complement the existing Internet Code of Practice and internet regulations.

The main goal of their regulatory policies are to deter bullying, insulting users, or other behaviour that is likely to intimidate or humiliate. (gov.uk, October 2017).

The final measure of internet regulation in Singapore involves public education. IMDA has implemented several programs to build awareness about media literacy and cyber wellness. The education programmes also promote that parents supervise their children's access to the internet. (imda.gov.sg, 3 November 2017)





Co-Regulation - Intentional Self-Regulation

Self-Regulation - State Regulation

Germany

Germany Germany's regulation has shifted from intentional self-regulation to co-regulation and now to self-regulation with elements of state regulation.

In the 90s, members of the internet industry in Germany banded together and established a self-regulation system to avoid being regulated by the government. The main Internet Service Providers in the country also formed their own regulatory agency FSM Voluntary Self-Regulation of Multimedia Service Providers. The government then recognised FSM as a legal entity for regulating internet content.

It's been said that this approach to self-regulate by the internet industry has been a positive alternative to a top-down government approach. It helped the government to outsource enforcement and minimise its cost. For the private sector, it is a positive as they have more flexibility and can influence how the regulations are reformed.

Based on this system, the state was seen as having limited control over the sector. Access to online content was seen as free and open. (Breindl and Kuellmer, 16 May 2013) However, the German government implemented new internet regulation laws at the start of 2018 to tackle the problem of 'hate speech'.

Germany decided to implement this law after it faced an unprecedented surge in cases of 'hate speech' online. Authorities struggled to prosecute the large volume of social media posts.

Any social media website or online platform that violates the new Network Enforcement Act, will face hefty fines if they fail to take down content deemed to be illegal by German authorities. As a result of this, content providers are at the risk of censoring themselves and over regulating the content they publish. (Oltermann, 5 Jan 2018)



APPENDIX 2



LINE Corporation is aware of the culturally sensitive sticker set that may have caused discomfort among our users in Thailand. The sticker set in question has been pulled from LINE Sticker Shop, the Tokyo-based company posted on Facebook Thursday. As we take our users concerns seriously and consider cultural aspects of each country, we will continue to improve our LINE Creators Market.

It added, We regret any inconvenience this may have caused and appreciate your understanding.



Figure 6: LINE's statement on offensive stickers:
7 April 2016 (Charuvastra, 7 April 2016)



"When governments believe that something on the Internet violates their laws, they may contact [us]...when we receive such a request, it is scrutinised to determine if the specified content does indeed violate local laws," a Facebook spokesperson told news outlet the Bangkok Post.

"If we determine that it does, then we make it unavailable in the relevant country or territory and notify people who try to access it why it is restricted."



Figure 7: Facebook's statement on Thai government request to block posts: 9 May 2017
(Tan, 9 May 2017)



Figure 8: Google's and Thai authority's statement on YouTube video removal: 7 April 2007 (Ahuja, 7 April 2007)

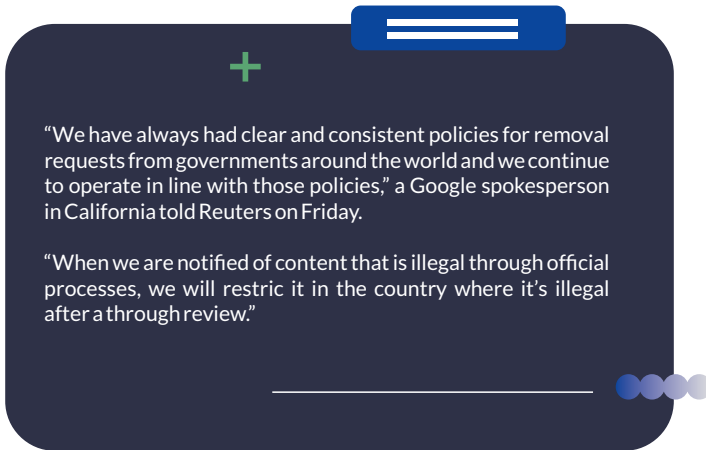


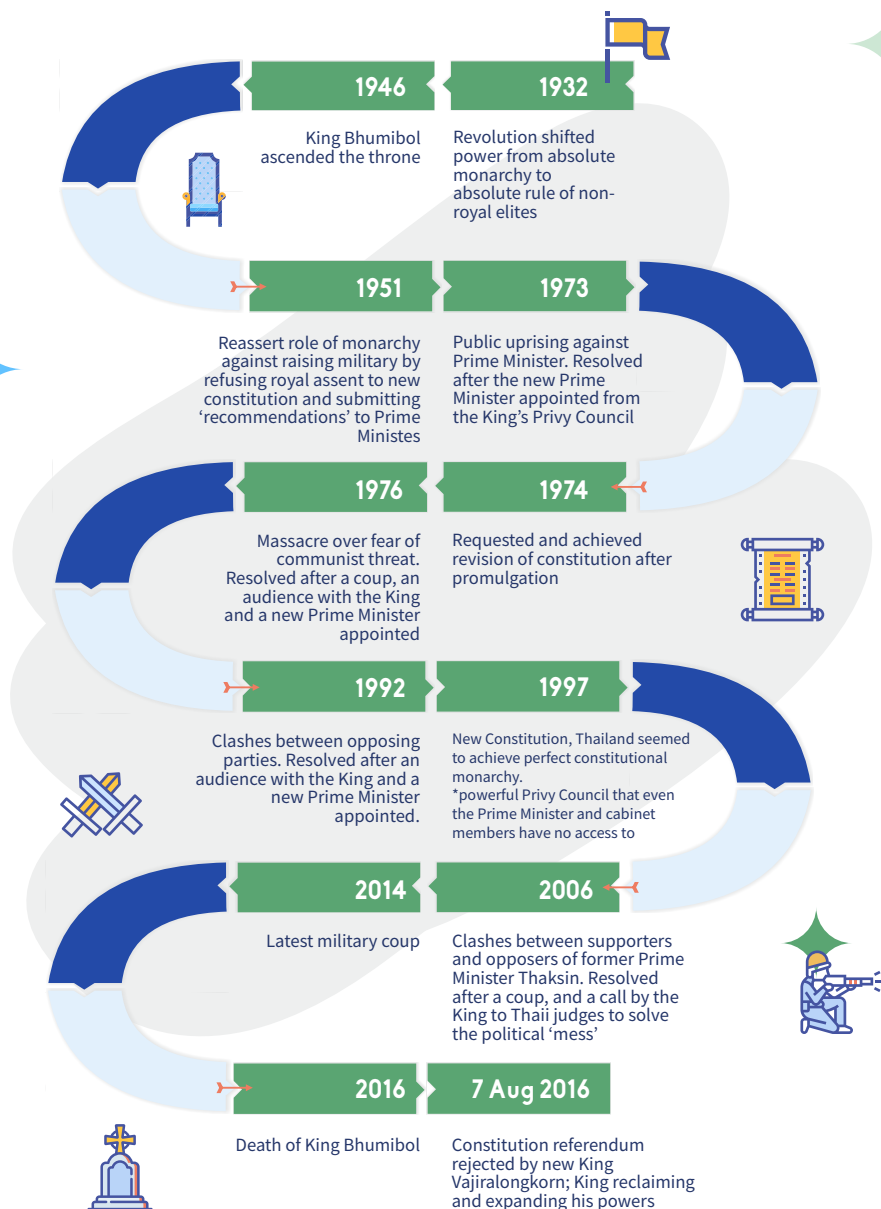
Figure 9: Google’s reply to Thai authority’s request for YouTube video removal: 22 Oct 2016 (ReutersStaff, 22 Oct 2016)



Figure 10: Thai authorities’ reply to Facebook’s delayed removal of offensive posts: 12 May 2017 (Holmes, 12 May 2017)

Figure 11: Historical Evolution of Thai Politics (Klein, 1998, BangkokPost, 2016)

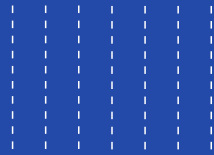
APPENDIX 3





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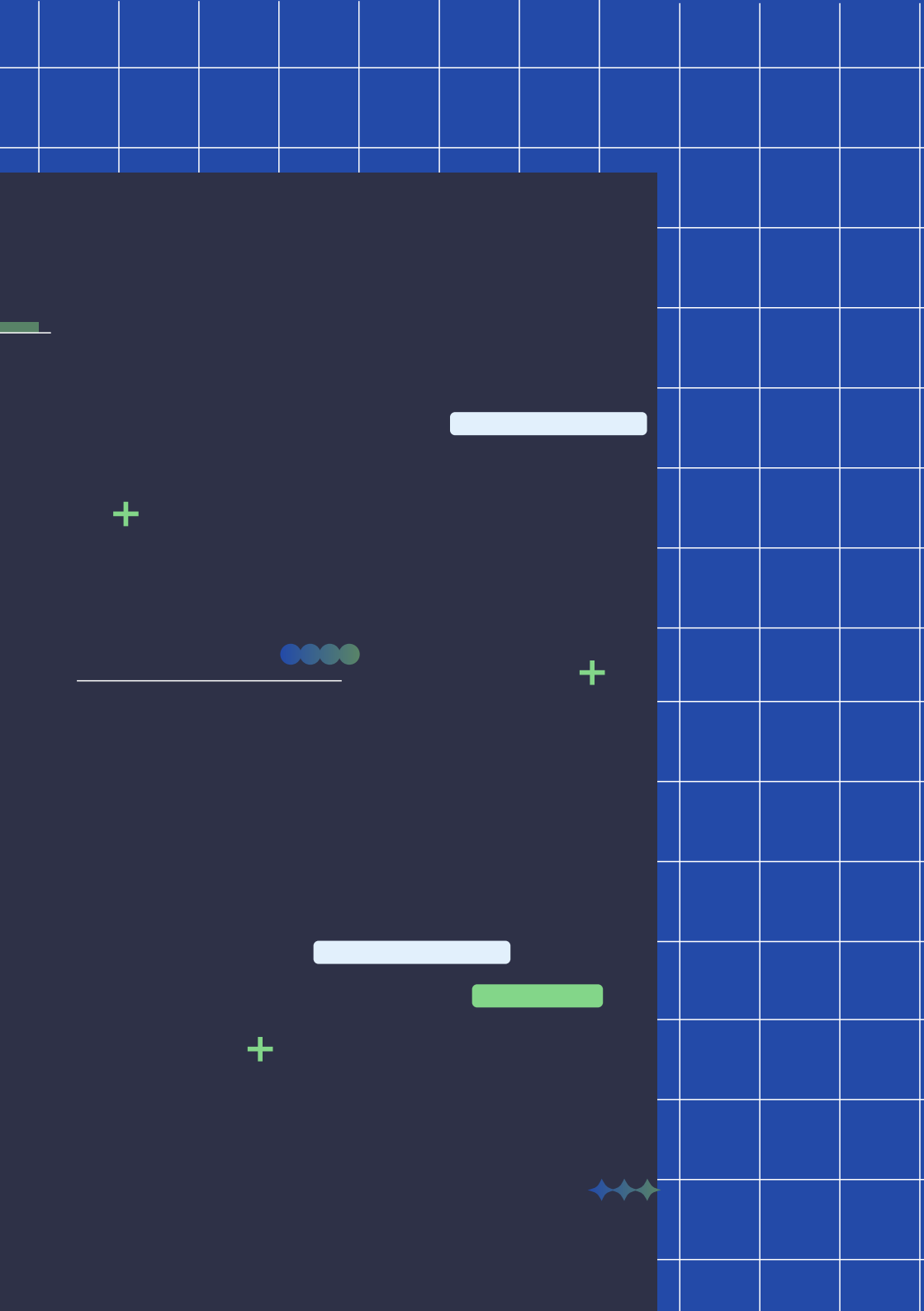
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ABOUT CFDS

Center for Digital Society (CfDS) is the research center established by the Faculty of Social and Political Sciences, Universitas Gadjah Mada. The institution is created under the concern over the contemporary dynamics of socio-political condition of the world that is accentuated by the impeccable influence of information technology. The phenomenon triggers the new patterns and complexities in the society, and thus requires new approaches in managing such complexities.

CfDS pledged to delve more on the study of contemporary digital society, including related issues surrounding the topic; such as the issues of smart city and urban development. The emphasis is then put on the utilization of technology to shape the society in becoming digitalized, as well as to bring solvency to social issues.

Vision

Solving Social Problem and Accelerating Prosperity through Indonesia Digital Society

Activities

1. Research and Development
2. Dissemination and Publication
3. Education and Policy Advocacy

Research Scopes

1. Digital Governance
2. Digital Economy
3. Future Technology



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